

CHILE

TRADE SUMMARY

The U.S. trade deficit with Chile was \$1.2 billion in 2002, an increase of \$792 million from \$377 million in 2001. U.S. goods exports in 2002 were \$2.6 billion, down 16.2 percent from the previous year. Corresponding U.S. imports from Chile were \$3.8 billion, up 8.2 percent. Chile is currently the 34th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Chile were \$1.3 billion in 2001 (latest data available), and U.S. imports were \$840 million. Sales of services in Chile by majority U.S.-owned affiliates were \$3.1 billion in 2000 (latest data available), while sales of services in the United States by majority Chile-owned firms were \$202 million.

The stock of U.S. foreign direct investment (FDI) in Chile in 2001 was \$11.7 billion, up from \$9.5 billion in 2000. U.S. FDI in Chile is concentrated largely in the finance, manufacturing and banking sectors.

IMPORT POLICIES

Tariffs

The United States and Chile concluded negotiations on a bilateral free trade agreement (FTA) in December 2002. The agreement will be submitted for approval to the congresses of both countries during the course of 2003 and is expected to enter into force in January 2004. If approved, the FTA will eliminate most tariffs immediately, and will establish duty free bilateral trade in all products within a maximum of twelve years. Chile also concluded FTA's with the European Union and South Korea during 2002 that are expected to enter into force in 2003. The tariff coverage of those agreements is less ambitious than that of the U.S.-Chile FTA.

Chile has a generally open trade regime and has been reducing its applied tariffs unilaterally by one percent per year since 1999. The uniform rate for virtually all imports declined to 6 percent in January 2003, concluding the pre-established reductions. Nearly all of Chile's tariffs are bound at 25 percent *ad valorem*.

There are several exceptions to the uniform tariff. Imports of used goods are currently subject to a tariff surcharge, bringing the total to 9 percent. However, the used goods surcharge will be eliminated with the U.S.-Chile FTA. The importation of used passenger and cargo transport vehicles is prohibited. Some computer products and books enter Chile duty free. In July 2002, a 10 percent safeguard measure was imposed on imports of a range of hot-rolled steel products and wire rods for a maximum of one year. Through this action the Chilean steel industry won protection for approximately 20 percent of national steel production. On November 19, 2002, the Government of Chile imposed the application of a 14 percent surcharge as a safeguard measure on fructose imports. This measure applies to all imports of fructose, a corned-based sweetener, and corn syrup. This has been collected since July 30 of this year as a temporary safeguard measure, and will be valid as a definitive measure until July 29, 2003. The safeguard will be renewable for 12 more months.

In August 2001, Chile formally registered its new consolidated sugar import tariff with the World Trade Organization (WTO), which increased from the current level of 31.5 percent to 98 percent. In order to increase the import tariff, Chile was obliged to offer quotas in compensation to its three principal suppliers, Argentina, Guatemala and Brazil.

Import Controls

Customs authorities must approve and issue a report for all the imports greater than \$3,000. Imported goods must generally be shipped within 30 days from the day of the import permit, but authorities may establish a different period. Commercial banks may authorize imports less than \$3,000. All imports must be reported to the Central Bank. Commercial banks may sell foreign currency to any importer to cover the price of the imported goods and related expenses, as well as to pay interest and other financing expenses that are authorized by the import reports. Legal entities and individuals may import any type or amount of goods either through the formal or informal exchange market, except for goods specifically prohibited.

Non-Tariff Barriers

Chile's obligations under the WTO Customs Valuation Agreement (CVA) took effect on

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January 1, 2000, but WTO records do not indicate that Chile has notified its legislation or the Customs Valuation Checklist to the WTO Committee on Customs Valuation as yet. The Chilean Senate Finance Committee is currently reviewing the Miscellaneous Law, whose objective it is to implement all Chilean WTO commitments from the Uruguay Round including Customs Valuation Agreement. This law is expected to be approved by early 2003. In 2001, the Chilean congress also passed a law on Tax Evasion that includes a new set of rules for the application of customs valuation.

Chile maintains a complex price band system for wheat, wheat flour, edible vegetable oils and sugar. The price band system was created in 1985 and is intended to protect the domestic production of the above goods. Under this system, specific duties based on the quantity of imported goods are imposed on top of *ad valorem* tariffs to keep domestic prices within a predetermined range. Even though Chile is gradually reducing *ad valorem* rates, the specific duties can effectively keep tariffs on these agricultural products quite high. For example, due to low international wheat prices in 1999 and 2000 effective tariff rates rose as high as 90 percent, well above Chile's WTO bound rate. However, on 17 May 2001, the price bands applicable for sugar, oil seeds and their derivatives were lowered for the following harvest season, extending through March 2003. The price band system will be phased out with the implementation of the U.S.-Chile FTA.

Safeguards

Chile adopted a provisional safeguard measure on imports of mixtures of edibles oils, consisting of an *ad valorem* tariff surcharge of 48 percent on January 11, 2001. Argentina subsequently initiated a case before the WTO Dispute Settlement Body, charging that the measure was incompatible with Chile's obligations under Article XIX of the 1994 General Agreement on Trade Tariffs and Trade (GATT) and the Agreement on Safeguards. Chile suspended the price band for oils on April 25, 2001 when the Government lifted the 48 percent safeguard tariff, which in practice concluded this year. On October 23, 2002, the WTO ruled that Chile must modify its price band system to make it more transparent. Chile had 30 days to formalized its willingness to adopt measures to adjust the price band system taking into consideration the observations made by the WTO. According to the WTO ruling, Chile

and Argentina must agree on a period of implementation for the ruling and the changes in domestic norms and practices.

In November 2002, Chile adopted a 14 percent surcharge as a safeguard measure on all imports of fructose and corn syrup. The surcharge has been collected since July 30, 2003. The safeguard will be renewable for 12 more months. Imports of fructose from Canada, Mexico and Peru are excluded from the safeguard because of free trade and commercial agreements between Chile and these countries.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Chile's strict animal health and phytosanitary requirements prevent the entry of a number of U.S. products, such as Northwest cherries and some citrus. As a result of efforts by the U.S. Government on sanitary and phytosanitary issues, however, Chile has begun to open its market to some trade in certain U.S. horticultural products, including citrus, table grapes, kiwis, apples, and pears from the U.S. West Coast. In October 2000, the Chilean government published final rules providing market access for avocados and walnuts from California. In June 2001, Chilean authorities also provided market access to apples and pears from Oregon, grapes from California, and strawberries and raspberries. During 2002 Chile also granted market access to certain citrus from California.

U.S. exports of fresh and frozen uncooked poultry are effectively blocked from the Chilean market by salmonella inspection requirements. Both poultry and red meat imports from the United States are also severely constrained by Chile's failure to recognize the U.S. meat and poultry inspection systems, thus limiting access only to those plants that pay for Chilean inspectors to travel to the United States to inspect and certify them. The same rule applies to and constrains U.S. trade in other livestock products. Further, Chile does not permit U.S. beef in consumer cuts to enter the market without being graded and labeled to Chilean standards, which are incompatible with U.S. grading and labeling systems. The U.S. and Chilean authorities made significant progress toward resolving these issues in 2002 through a working group and expect to achieve definitive solutions in 2003.

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According to U.S. and Chilean industry sources, U.S. dry peas exported to Chile are subject to Chilean fumigation requirements, although Canadian dry peas are not. The Chilean government is studying a rule proposed by the Health Ministry to require mandatory labeling of food products containing transgenic ingredients. The U.S. continues to press Chile to implement and enforce WTO-consistent sanitary and phytosanitary requirements.

GOVERNMENT PROCUREMENT

Government entities in Chile usually do their own procurement. Chilean law calls for public bids for large purchases, although procurement by negotiation is permitted in certain cases. Foreign and local bidders on government tenders must register with the Chilean Direccion de Provisionamiento del Estado (Bureau of Government Procurement Supplies). They must also post a bank and/or guarantee bond, usually equivalent to 10 percent of the total bid; to assure compliance with specifications and delivery dates. Chile is not a member of the WTO Agreement on Government Procurement.

The Government of Chile created the Information System for Procurements and Public Contracts for Public Sector (www.chilecompras.cl) in March 2000. The object of the system is to simplify, modify and introduce transparency to the process for procurement of goods and contracting of services of the Government of Chile. Through this site anyone can offer products or services and register in the system as a potential supplier for government procurement in their area of interest, free of charge. The system also allows all public agencies with needs for goods and services to publish information concerning their public bidding process and estimate requirements for all their purchases through the Internet. Public agencies also publish all details of the results of the procurement process.

The U.S.-Chile FTA will cover the procurement of most Chilean central government agencies, 13 regional governments, 11 ports and airports, and more than 350 municipalities in Chile. It also establishes strong government procurement disciplines ensuring non-discrimination against U.S. firms when bidding on government procurement opportunities that are covered by the FTA.

EXPORT SUBSIDIES

Chile's Ministry of Foreign Affairs promotes the country's exports by providing grants to private companies or industries for export promotional activities that go beyond what would be considered general export promotion. The goal of ProChile, the Export Promotion Bureau of Chile, is the promotion of specific products to targeted exports markets. It also provides direct financial assistance to participating firms. Chile provides a simplified duty drawback program for nontraditional exports, which does not rebate actual duties paid on imported components. Instead, the program refunds a percentage of the value of the export. Companies purchasing capital equipment domestically can borrow up to seventy-three percent of the amount of customs duties that would have been paid on the capital goods if they had been imported. If the capital goods are ultimately used in the production of exports, the loan balances and any unpaid interest are waived and the producer is not required to repay the loan. Another export-promotion measure lets all exporters defer import duties for up to seven years on imported capital equipment or receive an equivalent subsidy for domestically produced capital goods. Chile has announced that it will phase out the simplified drawback program, in accordance with its WTO commitments. The Value Added Tax (VAT) reimbursement policy is another export-promotion measure. Exporters have the right to recoup the VAT that they have paid when purchasing goods and using services intended for export activities. During 1999, the Ministry of Economy announced the creation of an export credit guarantee program that will guarantee 80 percent of exporter credits up to a limit of \$132,000. Eligible exporters must have annual sales of less than \$16.7 million.

The "Country Image" Program is an advertising campaign intended to enhance Chile's image among the population and opinion leaders in target export markets. The program is a "joint venture" between the Chilean public and private sector. The program's beneficiaries include all companies that currently export, as well as those with export potential.

Export Controls

The Customs Authority must approve and issued export reports. Exported goods must generally be shipped within 90 days from the date of the export report, but this period may be extended under

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certain conditions. Exporters may freely dispose of hard currency derived from exports. As with imports, exporters may use the formal or informal exchange market. All exports must be reported to the Central Bank, except for copper exports, which are authorized by the Chilean Copper Commission. Duty free import of materials used in products for export within 180 days is permitted with prior authorization. Free-zone imports are exempt from duties and value-added tax if re-exported.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Patents and Trademarks

Chile implemented a patent, trademark and industrial design law in 1991 that provides product patent protection for pharmaceuticals and a limited form of pipeline protection. While the law is generally strong, deficiencies exist, including: a term of protection inconsistent with TRIPS term of 20 years from filing; no provisions for restoring the patent term in appropriate circumstances; inadequate industrial design protection; lax enforcement mechanisms and a lack of full "pipeline" protection for pharmaceutical products patented in other countries prior to the time in which product patent protection became available in Chile. The Government of Chile introduced legislation in 1999 intended to make this and other Chilean intellectual property laws fully TRIPS consistent. However, this legislation was not passed prior to January 1, 2000, when Chile's TRIPS obligations came into effect and still has not been approved by the Chilean Congress. The U.S. Government has urged the Government of Chile to ensure that TRIPS consistent intellectual property protection be provided as soon as possible. The Chilean Congress was making progress on a draft bill in late 2002. If approved, the U.S.-Chile FTA would enhance the protection of copyrights, patents, trademarks and trade secrets. Patent terms could be extended to compensate for administrative or regulatory delays in granting the original patent, consistent with U.S. practice. Grounds for revoking a patent would be limited to those for refusing a patent initially, thus protecting against arbitrary revocation.

U.S. pharmaceutical firms and other applicants for patents currently face significant delays in patent approval owing to extensive case backlogs in Chile's patent office. In addition, in November

2001 the Chilean Institute of Public Health announced that it would issue health registrations of drugs without regard to whether a patented version of the drug already exists. Health approvals were granted on the basis of unauthorized use of confidential test data in a number of cases in 2002, though the practice was stopped later in the year. In practice there is no effective link between health authorities and the patent office so as to guarantee effective protection of intellectual property rights. The marketing of unauthorized copies of patented drugs remains a serious problem in Chile. The United States and Chile committed in the FTA to grant protection against disclosure of pharmaceutical data a period of 5 years and 10 years for agricultural chemicals test data.

Chile's trademark law is generally consistent with international standards, but contains some deficiencies, including: no requirement of use to maintain trademark protection; a "novelty" requirement for trademark registration; unclear provision for trademarking figurative marks, color or packaging; and no provisions for protection of "well-known" marks. Some U.S. trademark holders have complained of inadequate enforcement of trademark rights in Chile. The U.S.-Chile FTA would require government involvement in dispute resolution between trademarks and Internet domain names in order to prevent "cyber-squatting" of trade marked domain names. It also applies the principle of "first in-time, first-in-right" to trademarks and geographical indicators (place-names).

Copyrights

Chile revised its copyright law in 1992, extending the term of protection to the author's life plus 50 years, the standard in the WTO TRIPS Agreement. While the copyright law provides protection that is nearly consistent with international standards in most areas, shortcomings remain. The Chilean law does not provide adequate penalties for copyright infringement, has no provision for ex parte civil searches, is uncertain regarding the availability of injunctions and temporary restraining orders, and places unnecessary constraints on contractual rights. Despite increasingly active enforcement efforts by the police, piracy of computer software and video recordings remains significant. Attempts to enforce copyrights in Chile have met with considerable delays in the courts and weak sentences. The U.S. industry estimates losses

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related to video piracy alone to exceed \$2 million annually. Revision of the 1992 copyright law is also addressed in the Government of Chile's 1999 intellectual property rights bill, but drafts of the law do not appear to provide for more effective use of injunctions in infringement cases.

Chile signed the World Intellectual Property Organization (WIPO) Treaties on Copyright and Performances and Phonograms in April 2001. The U.S.-Chile FTA would provide state-of-the-art protection for digital products.

SERVICES BARRIERS

Chile's relatively open services trade and investment regime stands in contrast to its relatively limited General Agreement on Trade in Services (GATS) commitments. In particular, Chile maintains a "horizontal" limitation, applying to all sectors in Chile's GATS schedule, under which authorization for foreign investment in service industries may be contingent on a number of factors, including: employment generation, use of local inputs and compensation. This restriction undermines the commercial value and predictability of Chile's GATS commitments.

Chile has made WTO commitments on most basic telecommunications services, adopting the WTO reference paper on regulatory commitments and ratifying the GATS Fourth Protocol. Nonetheless, U.S. companies occasionally complain of regulatory delays and a lack of transparency in regulatory decisions. Chile's WTO schedule of commitments excludes local basic telecommunications services, one-way satellite transmissions of Direct-to-Home and Direct Broadcast Satellite television services and of digital audio services. It also excludes free reception broadcasting services. Upon implementation of the U.S.-Chile FTA, greater levels of transparency are ensured and access to the market for local basic services is secured.

During the 1997 WTO financial services negotiations, Chile made commitments in banking services and most securities and other financial services. However, Chile made commitments neither for asset management services, including the management of mutual funds or pension funds, nor for financial information services. Chile also reserved the right to apply economic needs and national interest tests when licensing foreign financial service suppliers. In practice, Chile has allowed foreign banks to establish as branches or

subsidiaries and to provide the same range of services that domestic banks are allowed to provide. According to Article 46 of Decree of Law (DFL) 251, the business of insuring or covering risk based upon premiums can only be undertaken in Chile by insurance and re-insurance corporations which are exclusively dedicated to carrying out insurance and other related activities. Foreign insurance companies established in Chile have no limitation on access to the Chilean market as long as their legal incorporation has been done according to the dispositions set in the Chilean Corporate Law Code. Foreign-based insurance companies cannot offer or contract insurance policies in Chile directly or through intermediaries. However, under the Capital Reform Law of 2001, insurance companies will face less regulatory restrictions on their investment portfolio, allowing them to make more flexible use of the range of assets offered by modern capital markets. The WTO Chilean Commitment Schedule in the securities sector does not include asset fund management (mutual funds, investment funds, foreign capital investment funds, and pension funds). As with the insurance companies, restrictions on mutual funds' investment portfolios and investment fund regulations have also been relaxed. Mutual fund administrators will also be allowed to undertake complementary activities, and net-worth requirements have been standardized. The reform allows different types of investment funds- mutual funds, private equity funds and real state fund to be managed by a single company.

Upon implementation of the U.S.-Chile FTA, U.S. banks, insurance, securities and related services, as well as telecommunications will face a more open, competitive and transparent market. The financial services chapter of the FTA includes core obligations of non-discrimination, most-favored nation treatment, and additional market access obligations. U.S. insurance firms will have full rights to establish subsidiaries or joint ventures for all insurance sectors with limited exceptions. Chile also committed to phase in insurance branching rights and to modify its legislation to open cross-border supply of key insurance sectors such as marine, aviation and transport (MAT) insurance, insurance brokerage of reinsurance and MAT insurance. U.S. banks and securities firms will be allowed to establish branches and subsidiaries and may invest in local firms without restriction, except in very limited circumstances. U.S. financial institution will also be able to offer financial services to citizens participating in

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Chile's privatized voluntary saving plans and they will gain some increased ability to offer products through Chile's mandatory social security system. Chile will allow U.S. based firms to offer services cross-border to Chileans in areas such as financial information and data processing, and financial advisory services with limited exception. Chilean mutual funds will be allowed to use foreign-based portfolio managers.

Commitments in services under the FTA cover both cross-border supply of services and the right to invest and establish a local service presence. Market access commitments apply across a wide range of sectors, such as: computer and related services, telecommunications services, audiovisual services, construction and engineering, tourism, advertising, express delivery, professional services, distribution services, adult education and training services and environmental services, among others.

Chile has notified to the WTO measures inconsistent with WTO rules on Trade-Related Investment Measures (TRIMS). These measures deal with local content and trade balancing in the automotive industry. Proper notification allowed developing country WTO Members to maintain such measures for a five-year transitional period after entry into force of the WTO, but Chile did not meet the January 1, 2000 deadline for eliminating these measures. The Chilean Government requested two extensions in its deadlines and was most recently granted an additional extension until December 31, 2001, to legislate the end of its TRIMS inconsistent laws. The request for an extension was based on the need for more time to fully dismantle the exemption from payment of customs duties envisaged in Article 3 of the Chilean Automotive Statute (Law No. 18,483), thereby bringing the statute fully into line with Chile's TRIMS commitments. Chile has not yet addressed these TRIMS inconsistencies, however. The United States is working with other WTO Members to carry out a case-by-case review of all TRIMS extension requests in an effort to ensure that the individual needs of those countries that have made requests can be addressed.

On April 16, 2001 the Central Bank of Chile suspended its remaining controls on capital flows in an effort to encourage inward portfolio investment and help resuscitate small and medium-sized business. Among the measures is the suspension of the "encaje", a deposit

requirement, which applied to foreign capital introduced into Chile for most lending purposes, investment in government securities and other short-term flows. This deposit requirement was reduced from 30 percent to 10 percent in June 1998 and to zero in 2000. In the last two years the Central Bank has also eliminated the one-year holding period for non-direct investment. Also, outflows associated with capital returns, dividends, and other investments will no longer need government approval. Restrictions on the issuance of American Depositary Receipts (ADRs) have been lifted, and Chilean companies will be free to take out loans or issue bonds in a greater range of currencies.

INVESTMENT BARRIERS

While Chile welcomes foreign investment, controls and restrictions exist. The Foreign Investment Committee (FIC) of the Ministry of Economy is the sole institution empowered to accept foreign investments covered by Decree Law (DL) 600 and to set terms and conditions of corresponding contracts. Foreign investments exceeding \$1 million are currently entitled to the benefits and guarantees of DL 600. Under DL 600, profits may be repatriated immediately, but none of the original capital may be repatriated for one year. Foreign direct investment is subject to pro forma screening by the Government of Chile. The FIC signs a separate contract with each investor. Contracts must stipulate the time period within which the investment is to be implemented. In the case of mining investments, this period is eight years. The FIC may extend this period to 12 years if exploration activities are undertaken. In all other areas the period is three years. In the case of investments in industrial or extractive projects (excluding mining) in amounts of at least \$50 million, the term may be extended up to eight years depending on the nature of the project. FIC approval is required for the following investments: those exceeding a total value of \$5 million; those related to sectors or activities that are normally developed by the government or carried out by public services; those involving the media; and, those made by foreign governments or by foreign public entities.

Also, under Chapter 14 of the Foreign Exchange Regulations of the Central Bank, natural or juridical persons, domiciled abroad, may bring capital in foreign currency into Chile. Chapter 14 allows the investor to freely sell his foreign

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currency through the formal or informal exchange market.

If approved, the FTA between the United States and Chile will establish a secure, predictable legal framework for U.S. investors operating in Chile. All forms of investments are protected under the FTA, such as enterprises, debt, concessions, contracts and intellectual property. Also, the FTA will prohibit and remove certain restrictions on U.S. investors, such as requirements to buy Chilean rather than U.S. input.

Chile and the United States have discussed a bilateral tax treaty. Until the agreement takes effect, profits of U.S. companies will continue to be subject to taxation by governments of both nations.

ELECTRONIC COMMERCE

There is a growing recognition of the vast potential of electronic commerce in an economy characterized by an export and services orientation. Chile has enjoyed rapid growth in the computer/telecommunications sector and Internet use. There is evidence of a growing consensus between market participants and policy officials that the regulatory treatment of the industry should promote the sector's competitiveness. While there is an awareness of the myriad privacy, security, contract law, etc., issues raised by electronic commerce, there is also recognition that the eventual creation of national policies addressing such issues will have to move hand-in-hand with developments internationally. In February 2000, Chile became the first country in Latin America to sign a Joint Statement on Electronic Commerce with the United States, highlighting the countries' agreement that the private sector should take the lead on the establishment of business practices related to electronic commerce. Furthermore, under the U.S.-Chile FTA, each country committed to non-discriminatory treatment of digital products, agreed not impose customs duties on such products and to cooperate in numerous policy areas related to electronic commerce.

On January 15, 2002 the Chilean Congress passed a law authorizing digital signatures. Law 19,799 is the legal framework that regulates commercial operations done in Chile through the use of Internet, with the objective to attract foreign investment. The Digital Signature Act provides electronic contracts the same legal recognition and protection as are given to traditional contracts.

Electronic government also has acquired great importance in Chile and is a priority for the Lagos administration. As part of the overall modernization of the State, the president has issued guidelines for the development of electronic government. The Chilean Government has made substantial progress toward implementation.

OTHER BARRIERS

Luxury Tax

Automobile imports are subject to subsequent taxation, in addition to a 7 percent import tariff (6 percent starting in January 2003) and an 18 percent valued-added tax. A "luxury tax" of 85 percent is levied on CIF value above a certain price level. The Chilean Government raised this price threshold from \$10,000 in 1999 to \$15,000 in 2000, easing -but not eliminating - the competitive disadvantage placed on higher priced U.S.-made automobiles. This value is readjusted yearly, so, as of 2002 this tax is applied on vehicles whose price exceeds \$15,834.65. Under the terms of the FTA, the luxury tax on automobiles would be phased out over 4 years.

Distilled Spirit Tax

The controversy with the European Union related to the Chilean tax on alcoholic beverages was put to rest in February 2001, with the publication of Law 19.716 in the Official Gazette. The new law establishes an *ad valorem* tax rate of 27 percent for all liquor, which will take full effect in March 2003 following a transition period during which the rates for the different categories of alcoholic beverages (pisco, whiskey, and others) gradually converge. The tax rate applicable to pisco, a popular local liquor, is 27 percent from the date of publication of the law, while the rates on whiskey and other alcoholic beverages will be gradually reduced until reaching the same level.