

# CHILE

## TRADE SUMMARY

The U.S. trade deficit with Chile was \$984 million in 2003, a decrease of \$192 million from \$1.2 billion in 2002. U.S. goods exports in 2003 were \$2.7 billion, up 4.2 percent from the previous year. Corresponding U.S. imports from Chile were \$3.7 billion, down 2.2 percent. Chile is currently the 35<sup>th</sup> largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Chile were \$1.2 billion in 2002 (latest data available) and U.S. imports were \$721 million. Sales of services by majority U.S.-owned affiliates were \$2.9 billion in 2001 (latest data available), while sales of services in the United States by majority Chile-owned firms were \$29 million.

The stock of U.S. foreign direct investment (FDI) in Chile in 2002 was \$11.6 billion, down from \$12.0 billion in 2001. U.S. FDI in Chile is concentrated in the mining, finance, and manufacturing sectors.

## IMPORT POLICIES

### Tariffs

The United States and Chile concluded negotiations on a bilateral Free Trade Agreement (FTA) in December 2002. The FTA entered into force on January 1, 2004. The FTA eliminates tariffs on 87 percent of bilateral trade immediately, and will establish duty-free trade in all products within a maximum of twelve years. Approximately 75 percent of U.S. farm exports will enter Chile duty-free within four years.

Chile also concluded FTAs with the European Union, the European Free Trade Association (EFTA), and South Korea during 2002. The Chile-European Union FTA entered into force in February 2003. Chile's agreement with EFTA, the latter comprised of Iceland, Norway, Liechtenstein, and Switzerland, also entered into force in 2003. The Chile-Korea FTA is to enter into force on April 1, 2004.

Chile has a generally open trade regime. The country reduced its applied tariffs unilaterally by one percent per year between 1999 and 2003. The uniform rate for virtually all imports declined to 6 percent in January 2003, concluding the pre-established reductions. Imports also pay the 19 percent Value-Added Tax (VAT) calculated over the Customs value plus the import tariff. In the case of duty-free imports, the VAT is calculated over the Customs value alone. Most of Chile's tariffs are bound at 25 percent *ad valorem*.

There are several exceptions to the uniform tariff. Higher tariffs will remain throughout the U.S. - Chile FTAs 12-year transition period for wheat, wheat flour, and sugar. In August 2001, Chile formally notified its new consolidated sugar import tariff to 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 obligated to offer quotas as compensation to its three principal suppliers, Argentina, Guatemala and Brazil.

Under the FTA, the 50 percent surcharge on used goods has been eliminated for U.S.-originating goods. The importation of used passenger and cargo transport vehicles is prohibited except for personal use. Many computer products and books enter Chile duty free.

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## Import Controls

Customs authorities must approve and issue an import report for all the imports valued at more than \$3,000. Imported goods must generally be shipped within 30 days from the day of the import permit, but longer periods may be authorized. Commercial banks may authorize imports of less than \$3,000. All imports must be reported by the importer in Chile to the Central Bank. Approval for this report is automatic and comes through the assignment of a number and a date for the report. 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 in the import reports. There are virtually no restrictions on the types or amounts of goods that can be imported into Chile, nor any requirements to use the official foreign exchange market.

## Non-Tariff Barriers

Chile maintains a complex price band system for wheat, wheat flour, and sugar, which will be phased out under the U.S.-Chile Free Trade Agreement for imports from the U.S. by 2016. The price band system was created in 1985 and is intended to guarantee a minimum and maximum price for the covered commodities. When certain prices, including insurance and freight, are calculated by Chilean authorities as falling below the floor, a special tax is added to the uniform tariff rate to raise the price to the floor. Price bands effectively set a minimum import price that is normally higher than both international and Chilean domestic prices.

The WTO ruled on October 23, 2002, that Chile's price band system was inconsistent with Article 4.2 of the WTO Agreement on Agriculture. Following arbitration, Chile was given until December 23, 2003, to implement the rulings and recommendations of the WTO to bring the price band system into compliance with its WTO obligations. President Lagos' Administration and the Chilean Parliament agreed on a compromise proposal on August 7, 2003, eliminating the price band system on vegetable oils and introducing a number of modifications for wheat, wheat flour, and sugar. In the case of sugar, wheat, and wheat flour, the new values for the floor and ceiling prices began in November 2003 and will remain fixed until 2007. Beginning in 2008, the floor will be adjusted downward by 2 percent a year, until 2014, when Chile's President will evaluate whether to continue with the price band system or eliminate it. Mixtures (high fructose corn syrup) containing more than 65 percent sugar content are now subject to the sugar price band system.

## Safeguards

On June 30, 2003, safeguards on a range of hot-rolled steel products and wire rods, which had been imposed the year before, were removed. On February 14, 2003, a 14 percent safeguard measure on fructose imports which had been imposed in November 2002 was removed.

The FTA establishes a bilateral safeguard mechanism that allows parties to impose a temporary safeguard measure when a good of the other party is being imported in such increased quantities and under such conditions to constitute a substantial cause of serious injury or threat thereof to a domestic industry. These safeguards can be applied only during the transition period of 10 years for industrial products and 12 years for agricultural products. The FTA does not affect the ability of each party to take global safeguard actions.

In addition, the FTA provides two special safeguard provisions, one for textiles and one for agricultural products. If, as a result of the elimination of a duty under the FTA, a textile or apparel good is being imported into either Party in such increased quantities as to cause serious damage to the domestic industry, the Party may take an "emergency action" by increasing the rate of duty on those imports. The

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agricultural safeguard allows the imposition of additional import charges over the preferential tariff on certain agricultural products depending on the relationship between the import price and a "trigger price" specified in the FTA. The charges can never go above the MFN rate. Once the preferential tariffs reach zero, the ability to use the safeguard disappears.

### STANDARDS, TESTING, LABELING AND CERTIFICATION

Prior to U.S.-Chile FTA negotiations, Chile's strict animal health and phytosanitary requirements prevented the entry of a number of U.S. products. The U.S.-Chile FTA addresses sanitary and phytosanitary concerns by establishing a committee to follow up on the implementation of the WTO's Agreement on Sanitary and Phytosanitary Measures. The committee will provide a special mechanism for channeling technical inquiries on problems that arise in bilateral commerce and for recognizing inspection and certification systems that facilitate trade.

In March 2002, a Bilateral Technical Working Group on Sanitary and Phytosanitary Issues was established in order to facilitate the solution of technical matters that could create obstacles for certain products from one of the two countries. The Technical Group has resolved several matters of interest to both the U.S. and Chile, such as:

- New or improved market access for several horticultural products was obtained on both sides;
- The Chilean Plant and Animal Health Inspection Service (SAG) delegated to the Food and Drug Administration the authority to approve U.S. dairy plants to export to Chile, eliminating the need for SAG to approve each facility on a plant-by-plant basis;
- Both parties reached an agreement regarding beef quality grades, allowing products to be sold according to the grades of the originating country and thus avoiding the requirement that the product be specifically cut to the specifications of the other market;
- Both parties engaged in a meat and poultry equivalency review process. Chile now recognizes the U.S. red meat inspection system administered by USDA's Food Safety Inspection Service and the U.S. is in the final stages of completing a similar review to make the same determination for SAG. The equivalency review process for poultry is ongoing.

The Chilean Ministry of Health administers Chile's labeling standards. All U.S. food imports must be registered with the Ministry of Health and all must be approved on a case-by-case basis. The Chilean Ministry of Health is expected to issue an amendment to its food labeling law, but it is not expected to address these requirements. However, the changes may clarify how agricultural biotechnology products are handled. Currently, there are no specific labeling requirements relating to agricultural biotechnology products. Chile has controlled production of agricultural biotechnology products for export, but does not allow these products to be marketed domestically. A Presidential Commission formed to review all aspects of biotechnology (including cloning) released a report in June 2003 that favored increased use of biotechnology in Chile. The commission also recommended that Chile's current laws provide adequate authority to regulate biotechnology, although it called for a new interagency regulatory committee to provide better oversight. The Chilean government is likely to implement the recommendations of the Commission report with respect to the regulation of agricultural biotechnology products, treating these products in a manner similar to that of the Food and Drug Administration.

### GOVERNMENT PROCUREMENT

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Individual government entities in Chile usually conduct their own procurement. In general, 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 Bureau of Government Procurement. 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 the Public Sector ([www.chilecompras.cl](http://www.chilecompras.cl)) in March 2000. 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 processes and requirements on the Internet. Public agencies also publish detailed reports on the results of procurement processes.

The U.S.-Chile FTA covers 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 disciplines aimed at preventing 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, including through grants to private companies or industries for some export promotional activities. ProChile, the Export Promotion Bureau of Chile, promotes specific products to targeted exports markets. It provides matching funds of up to 50 percent to participating firms for approved market promotion activities.

Chile provides a simplified duty drawback program for nontraditional exports that reimburses to firms 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.

Under Chile's separate VAT reimbursement policy, exporters have the right to recoup the VAT that they have paid when purchasing goods and using services intended for export activities. Chile's export credit guarantee program guarantees 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 in target export markets. The program is a joint venture between the Chilean public and private sector.

The FTA's Chapter on Market Access eventually eliminates the use of duty drawback and duty deferral for inputs from third countries that are incorporated into any good exported to the U.S. or Chile. Full drawback rights are allowed for the first eight years from entry into force. Beginning on year nine, the amount of drawback allowed is reduced until reaching zero by year 12.

### Export Controls

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Chilean Customs authorities must approve and issue 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 certain conditions. Export reports are filed with the Central Bank by Chilean exporters purely for statistical purposes. 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 VAT if re-exported.

### **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Protection and enforcement of intellectual property rights in Chile has been inadequate in several important respects in recent years. As a result, Chile was placed on the 2003 Special 301 Watch List. The FTA addresses these deficiencies by incorporating an extensive chapter on intellectual property rights that includes stipulations on trademarks or manufacturing brands, internet domain names, geographic indications, copyrights and related rights, protection of satellite signals carrying codified programs, patents, and regulated products. The FTA also commits Chile to ratify and adhere to certain multilateral agreements on intellectual property. With full implementation of this agreement, Chile will be in compliance with its TRIPS obligations as well as providing WTO-plus intellectual protections.

#### **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. The FTA significantly strengthens protections under pre-existing Chilean Law. For example, the FTA provides for the extension of the protection period for patents when there are unjustified delays in the patenting process. The Agreement also requires both parties to protect confidential information provided to authorities in order to obtain marketing or health permits for pharmaceutical products and agricultural chemicals. In addition, the FTA establishes the obligation to undertake reasonable efforts to extend patent rights to qualifying plants.

The Institute of Public Health (ISP in Spanish), Chile's version of the U.S. FDA, is the agency charged with granting health/marketing approval to new drugs. The ISP has issued health approvals -- which have effectively constituted marketing approval -- for unauthorized copies of patented products as well as of products whose patent application is in process or whose period of data exclusivity has not yet expired. U.S. firms have been obligated to defend their patent rights in costly court proceedings that take several years. The FTA requires Chilean authorities to establish a reasonable link between the actions of the ISP and the Ministry of Economy's Industrial Property Department, Chile's patent and trademark office, to prevent this undermining of effective patent protection. The U.S. Government continues to monitor Chile's performance.

Chile's Trademark Law is generally consistent with international standards, but also contains some deficiencies addressed by the FTA. Some U.S. trademark holders have complained of inadequate enforcement of trademark rights in Chile. In relation to Internet domain names, the U.S. and Chile committed to making a system available for the resolution of disputes, following international standards with respect to problems such as the cyber-piracy of brands and trademarks for higher-level country domain names. Furthermore, both countries committed to putting together a database containing information on individuals who have registered higher-level domain names, which will protect the personal data of those that have done the registration. The FTA also applies the principle of "first-in-time, first-in-right" to trademarks and geographical indicators (place-names).

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## Copyrights

Despite increasingly active enforcement efforts by the police, piracy of computer software and video recordings in Chile 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 related to video piracy alone to exceed \$2 million annually. Chile's copyright law of 1970 offered inadequate penalties for copyright infringement and had no provision for ex parte civil searches. It was also vague with respect to injunctions and temporary restraining orders, and placed unnecessary constraints on contractual rights. Chile approved the long-pending Miscellaneous Law in November 2003 to bring the country into compliance with TRIPS obligations and addressed some concerns about copyrights and authors rights. However, U.S. industry representatives have questioned whether the law is adequate. The FTA's provisions on copyrights seek to strengthen Chile's legal framework for protection of copyrights and related rights such as protection for phonogram producers. For example, the agreement increases the period of protection for copyrights and related rights to life of the author plus 70 years, establishes strong prohibitions against circumvention of encryption technology attached to digital works, performances and phonograms and provides for certain limitations on secondary liability for Internet Service Providers. The FTA also criminalizes end-user piracy and mandates both statutory and actual damages for IPR violations and penalizes tampering with anti-piracy technology.

Chile joined both the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty in April 2001.

## SERVICES BARRIERS

Chile's relatively open services trade and investment regime stands in contrast to its relatively limited commitments under the General Agreement on Trade in Services (GATS). 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.

Commitments in services under the U.S.-Chile FTA cover both cross-border supply of services and the right to invest. Market access commitments apply across a wide range of sectors, including computer and related services, telecommunications, audiovisual services, construction and engineering, tourism, advertising, express delivery, professional services, distribution services, adult education and training services and environmental services, as well as market access commitments for local basic telecommunications services.

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. The U.S.-Chile FTA establishes requirements for greater levels of transparency in regulatory processes.

## Financial Services

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During the 1997 WTO financial services negotiations, Chile made commitments in banking services and most securities and other financial services. However, the Chilean WTO Commitment Schedule in the securities sector does not include asset fund management (mutual funds, investment funds, foreign capital investment funds, and pension funds). 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 branches or subsidiaries and to provide the same range of services as domestic banks. Foreign insurance companies established in Chile face no limitation on access to the Chilean market as long as their legal incorporation meets requirements established in the Chilean Corporate Law Code. Foreign-based insurance companies cannot offer or contract insurance policies in Chile directly or through intermediaries.

Under the U.S.-Chile FTA, U.S. banks, insurance, securities, and related services firms face a more open, competitive, and transparent market. The financial services chapter of the FTA includes core obligations concerning non-discrimination and most-favored-nation treatment as well as additional market access obligations. U.S. insurance firms now 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 are now allowed to establish branches and subsidiaries and may invest in local firms without restriction, except under very limited circumstances. U.S. financial institutions are also able to offer financial services to citizens participating in Chile's privatized voluntary saving plans and they have gained increased market access through Chile's mandatory social security system. Chile now allows U.S.-based firms to offer services cross-border to Chileans in areas such as financial information, data processing, and financial advisory services, with limited exceptions. Chilean mutual funds are permitted to use foreign-based portfolio managers.

### INVESTMENT BARRIERS

While Chile welcomes foreign investment, some controls and restrictions exist. Foreign direct investment is subject to pro forma screening by the Government of Chile. The Foreign Investment Committee (FIC) of the Ministry of Economy is the institution responsible for approving foreign investment as well as setting terms and conditions for related contracts. FIC approval is required for the following categories of investment projects: those whose total value exceeds \$5 million; those related to sectors or activities that are normally developed by the government or carried out by public services; those involving the mass media; and those made by foreign governments or by foreign public entities. Foreign investment projects worth more than \$5 million are entitled to the benefits and guarantees of Decree Law (DL) 600. Under this law, the FIC signs a separate contract with each investor, which must stipulate the time period within which the investment will be implemented. In the case of mining investments, this period is eight years. The FIC may extend this period to 12 years. 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. Under DL 600, profits from an investment may be repatriated immediately, but none of the original capital maybe repatriated for one year.

Foreign investors in Chile may own up to 100 percent of an enterprise established under Chilean law, and there is no limit on the period for which they may own property in Chile. They have access to all sectors of the economy except for a few restrictions in coastal trade, air transportation, and the mass media. Restriction in the fishing industry is subject to international reciprocity (i.e., Chile permits a person to invest in this sector to the extent that that person's home country permits Chilean nationals to invest in that sector). Most investment projects require additional permits and/or must fulfill other requirements aside from those set forth in DL 600 (e.g., those pertaining to environmental protection). All investors,

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both local and foreign, must comply with sector-specific legislation at the national, regional, and municipal levels.

Investors domiciled abroad may bring foreign currency into Chile under Chapter 14 of the Foreign Exchange Regulations of the Central Bank. Chapter 14 allows the investor to freely sell his foreign currency through the formal or informal exchange market. On April 16, 2001 the Central Bank of Chile suspended its prior controls on capital flows, including the "encaje"--a deposit requirement that applied to short-term flows. The Central Bank also eliminated an earlier one-year holding period for indirect investment. Outflows associated with capital returns, dividends, and other investments no longer need government approval. Restrictions on the issuance of American Depositary Receipts (ADRs) have also been lifted. Chilean companies are free to take out loans or issue bonds in a wide range of currencies.

The U.S.-Chile FTA establishes a secure, predictable legal framework for U.S. investors operating in Chile. All forms of investments are protected under the FTA, including enterprises, debt, concessions, contracts, and intellectual property. The FTA removes and prohibits certain potential restrictions on U.S. investors, such as requirements to buy Chilean rather than U.S. inputs.

Chile notified the WTO in 2000 concerning measures related to local content and trade balancing in the automotive industry that were inconsistent with the WTO Agreement on Trade-Related Investment Measures (TRIMS). The Chilean government was granted an extension until December 31, 2001 to legislate the end of its TRIMS-inconsistent laws. Chile finally came into WTO compliance in this area when the measures concerned were abolished in November 2003.

The U.S. and Chilean Governments and have been discussing a bilateral tax treaty. Until such a treaty takes effect, profits of U.S. companies will continue to be subject to taxation by both Governments.

### **ELECTRONIC COMMERCE**

Chile has enjoyed rapid growth in the computer/telecommunications sector and Internet use. 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, to refrain from imposing 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 establishes the legal framework to regulate commercial operations completed in Chile over the Internet. The Digital Signature Act provides electronic contracts the same legal recognition and protections that are given to traditional contracts. In 2003, the Government implemented the electronic invoice, which is intended to promote e-commerce, facilitate tax compliance by firms and strengthen the Government's regulatory control. The Chilean Internal Revenue Service, the SII, is currently conducting a trial run of the system with eight companies.

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

### **OTHER BARRIERS**

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## Luxury Tax

The luxury tax is currently applied to automobiles whose import value, including insurance and freight, exceeds \$15,740. Under the terms of the FTA, the luxury tax on automobiles will be phased out over 4 years. Starting on January 1, 2004, the threshold for applying the luxury tax will increase each year by \$2,500. Simultaneously, the luxury tax rate will fall to 63.75 percent during the first year, 42.5 percent during the second year and 21.25 percent during the third before reaching 0 percent during the fourth year.

## Distilled Spirit Tax and Other Taxes

Chile collects an *ad valorem* tax rate of 27 percent for all liquor. Beers and wine are also subject to a 15 *ad valorem* percent tax rate. Other merchandise subject to additional taxes are: articles of gold; platinum; ivory; jewelry; natural or synthetic precious stones (15 percent); compressed air arms, their accessories and bullets (15 percent); fine carpets and upholstery (15 percent); motor homes and caviar (15 percent); caviar preserves and its substitutes (15 percent); and natural or artificial nonalcoholic beverages (13 percent).