

# CHILE

## TRADE SUMMARY

The U.S. trade deficit with Chile was \$1.1 billion in 2004, an increase of \$119 million from \$990 million in 2003. U.S. goods exports in 2004 were \$3.6 billion, up 33.5 percent from the previous year. Corresponding U.S. imports from Chile were \$4.7 billion, up 27.8 percent. Chile is currently the 30<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 \$1.0 billion in 2003 (latest data available), and U.S. imports were \$650 million. Sales of services in Chile by majority U.S.-owned affiliates were \$2.3 billion in 2002 (latest data available).

The stock of U.S. foreign direct investment (FDI) in Chile in 2003 was \$10.0 billion, the same as in 2002. U.S. FDI in Chile is concentrated largely in the finance, manufacturing, and mining sectors.

## IMPORT POLICIES

### Tariffs

Chile has actively pursued free trade agreements with its leading commercial partners for over a decade and has concluded several major pacts in the last several years. The U.S.-Chile Free Trade Agreement (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 has a relatively open trade regime. The uniform applied rate for virtually all goods is 6 percent. Importers also must pay a 19 percent Value Added Tax (VAT) calculated on the customs value plus the import tariff. (In the case of duty-free imports, the VAT is calculated on the customs value alone.)

There are several exceptions to the uniform tariff. Higher effective tariffs will remain throughout the U.S.-Chile FTA's 12-year transition period for wheat, wheat flour, and sugar, which are still subject to an import price band system. In August 2001, Chile formally registered its new consolidated sugar import tariff with the World Trade Organization (WTO), which increased the tariff from 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.

## FOREIGN TRADE BARRIERS

Under the U.S.-Chile 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, with a few exceptions. Many computer products and books enter Chile duty-free. Used clothing and other used textile articles classified under HS 63.09 became duty-free upon entry into force of the Agreement.

### **Import Controls**

Customs authorities must approve and issue a report for all imports valued at more than \$3,000. Imported goods must generally be shipped within 30 days from the day of the report, but longer periods may be authorized. Commercial banks may authorize imports of less than \$3,000. Larger firms must report their import and export transactions 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 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 FTA for imports from the United States 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 CIF prices (as calculated by Chilean authorities) fall 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 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. The Lagos Government 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 the price band system or eliminate it. Mixtures (e.g. high fructose corn syrup) containing more than 65 percent sugar content are now subject to the sugar price band system.

## **FOREIGN TRADE BARRIERS**

## **STANDARDS, TESTING, LABELING AND CERTIFICATION**

Prior to the FTA, many of Chile's trade-restrictive sanitary and phytosanitary (SPS) requirements prevented the entry of a number of U.S. agricultural and food exports. The FTA established a committee to follow up on the implementation of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures and address any trade-restrictive SPS measures. During the negotiations, a bilateral committee was established to address a limited number of issues of concern to both the United States and Chile and important progress was made. However, in 2004 the United States continued to experience difficulties with Chile's unjustified and/or non-science-based restrictions.

Chile maintains restrictions on U.S. beef exports due to concerns about bovine spongiform encephalopathy (BSE) that are not supported by science and are not in conformance with international standards. As a result, the anticipated market access for U.S. beef to Chile envisioned under the FTA has not been realized.

Chile permits the planting of agricultural biotechnology products for export seed propagation only. Biotechnology crops may not be marketed domestically in Chile. A Presidential Commission in Chile was created to review all aspects of agricultural biotechnology and issued its report in June 2003. While the Commission's report supported the increased use of biotechnology crops in Chile for both export and domestic consumption, the old laws and regulations remain in place and restrictions on biotechnology crops continue.

## **GOVERNMENT PROCUREMENT**

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.

## **FOREIGN TRADE BARRIERS**

The U.S.-Chile FTA covers the procurement of most Chilean central government agencies, 13 regional governments, 11 ports and airports, and more than 340 municipalities in Chile. The FTA 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 on approved market promotion activities.

Chile provides a simplified duty drawback program for nontraditional exports that reimburses 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 Value Added Tax (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 eliminates over a transition period the use of duty drawback and duty deferral for imports 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.

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## **Export Controls**

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. Exporters may freely dispose of hard currency derived from exports. As with imports, exporters may use the formal or informal exchange market. Large firms must report all exports 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**

Chile was placed on the 2004 Special 301 Watch List because of substantive deficiencies in Chile's IPR laws and the lack of adequate IPR enforcement.

### **Patents and Trademarks**

During 2004, the United States and Chile held a series of meetings on implementation of Chile's FTA obligations to protect intellectual property for pharmaceutical products.

The Institute of Public Health (ISP in Spanish), Chile's version of the U.S. Food and Drug Administration, has issued marketing approvals for unauthorized copies of patented products. Chilean authorities have not established effective coordination between the actions of the ISP and the Industrial Property Department, Chile's patent and trademark office, to prevent this undermining of effective patent protection. To try to prevent the issuance of such marketing approvals, U.S. firms have been obliged to engage in expensive and time-consuming court proceedings.

After a five-year delay, Chile's Congress approved in December 2004 legislation intended to bring the country into compliance with a number of its TRIPS commitments. The new law provides for, among other things, expedited court proceedings and authority to seize illegal copies of patented products. It also is intended to implement certain FTA obligations, such as the extension of the term of protection for patents when there are unreasonable delays in the patent application process, as well as stronger protection for confidential test data submitted to obtain marketing approval for pharmaceutical products and agricultural chemical products. Implementing regulations are expected in mid-2005. The Chilean Government maintains that the new law will address key weaknesses in Chile's patent and data protection. The United States will continue to work with the Chilean government to ensure full implementation of its FTA obligations.

Chile's Trademark Law is generally in line with international standards. Some U.S. trademark holders have complained of inadequate enforcement of trademark rights in Chile. In relation to

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Internet domain names, the United States and Chile committed to make a system available for the resolution of disputes, following international standards, to address problems of cyber-infringement of trademarks. The FTA also requires Chile to respect the principle of "first-in-time, first-in-right" to trademarks and geographical indications (geographical names that have a particular association with a product).

## **Copyrights**

Despite 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. According to the International Intellectual Property Alliance (IIPA), estimated losses due to piracy of copyrighted materials totaled \$106.7 million in 2004. Chile made two sets of amendments to its copyright law in 2003—one to implement TRIPS and one to implement immediate FTA obligations. The FTA's provisions increase 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, protects temporary copies, and establishes a legal framework to combat online piracy. The FTA also criminalizes end-user piracy and mandates both statutory and actual damages for IPR violations and penalizes tampering with anti-piracy technology. The United States will continue to work with the Chilean government to improve enforcement and ensure full implementation of the FTA's enforcement obligations, which enter into force in 2008.

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, among others.

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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 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**

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 operate with unlimited 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 will operate in 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

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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 that stipulates the time period within which the investment will be implemented, which varies according to the type of investment. Under D.L. 600, profits from an investment may be repatriated immediately, but none of the original capital may be 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 during which they may own property in Chile. Foreign investors have access to all sectors of the economy with some limited exceptions in coastal trade, air transportation and the mass media. Chile permits investment in the fishing sector to the extent that an investor'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 D.L. 600 (e.g., pertaining to environmental protection). All investors, 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 its foreign currency through the formal or informal exchange market. The Central Bank suspended in 2001 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 further strengthened the legal framework for U.S. investors operating in Chile. All forms of investment are protected under the FTA, including enterprises, debt, concessions, contracts and intellectual property. The FTA prohibits certain restrictions on investors, such as requirements to buy domestic rather than imported inputs.

The U.S. and Chilean Governments 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.

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## **ELECTRONIC COMMERCE**

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. Under the U.S.-Chile FTA, each country committed to non-discriminatory treatment of digital products and to refrain from imposing customs duties on such products.

Chile's 2002 Digital Signature Act establishes the legal framework to regulate commercial operations completed in Chile over the Internet, essentially according electronic contracts the same legal recognition and protections that are given to traditional contracts. In 2003, the government began implementing the electronic invoice, which is intended to promote e-commerce, facilitate tax compliance by firms and strengthen the State's regulatory control. The Chilean Internal Revenue Service (SII) is currently conducting a trial run of the system with eight companies.

## **OTHER BARRIERS**

### **Luxury Tax**

A luxury tax of 42.5 percent is applied to automobiles whose CIF value exceeds \$22,788.49. Under the terms of the FTA, the luxury tax on automobiles is being phased out over 4 years by raising the threshold value and lowering the rate each year. The luxury tax is charged on the amount exceeding the threshold value.

### **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), natural or artificial nonalcoholic beverages (13 percent).

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