

# CHILE

## TRADE SUMMARY

The U.S. goods trade deficit with Chile was \$692 million in 2007, a decrease of \$2.1 billion from \$2.8 billion in 2006. U.S. goods exports in 2007 were \$8.3 billion, up 22.5 percent from the previous year. Corresponding U.S. imports from Chile were \$9.0 billion, down 5.9 percent. Chile is currently the 28th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Chile were \$1.5 billion in 2006 (latest data available), and U.S. imports were \$781 million. Sales of services in Chile by majority U.S.-owned affiliates were \$4.3 billion in 2005 (latest data available), while sales of services in the United States by majority Chile-owned firms were not available in 2005 (\$2 million in 2003).

The stock of U.S. foreign direct investment (FDI) in Chile was \$10.2 billion in 2006 (latest data available), up from \$9.6 billion in 2005. U.S. FDI in Chile is concentrated largely in the finance, manufacturing, banking, and mining sectors.

## IMPORT POLICIES

### Tariffs

The United States-Chile Free Trade Agreement (FTA) entered into force on January 1, 2004. Under the FTA, the Parties eliminated tariffs on 87 percent of bilateral trade immediately and will establish duty free trade in all products within a maximum of 12 years.

Chile has one of the most open trade regimes in the world. The uniform applied tariff 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 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. For example, higher effective tariffs will remain for wheat, wheat flour, and sugar during the FTA's 12 year transition period due to the application of an import price band system.

### 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. 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 report. 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.

### Export Policies

Chile currently provides a simplified duty drawback program for nontraditional exports that reimburses firms a percentage of the value of the items they export. Companies purchasing capital equipment can borrow up to 73 percent of the amount of the customs duties that would normally be paid on such equipment if it were not used exclusively for exporting. If the capital equipment is imported, it must carry a minimum value of \$3,813. For imported vehicles to be used in an export business, such vehicles

must have a minimum value of \$4,830. Another export promotion measure lets all exporters defer import duties for up to 7 years on imported capital equipment or receive an equivalent subsidy for domestically-produced capital goods.

In accordance with its commitments under the FTA, Chile is eliminating, over a transition period, the use of duty drawback and duty deferral for imports that are incorporated into any goods exported to the United States. Full drawback rights are allowed for the first 8 years from entry into force of the FTA. Beginning with year 9, the amount of drawback allowed is reduced until it reaches zero by year 12. However, the Chilean Congress is currently reviewing a bill that will continue providing support to small and medium sized enterprises (SMEs) and increases the funds available for credit financing of their exports. In 2007, the Chilean government approved \$90 million for the program.

Under Chile's separate VAT reimbursement policy, exporters have the right to recoup the VAT they have paid when purchasing goods and using services intended for export activities. To be eligible for the VAT reimbursement policy, exporters must have annual sales of less than \$16.7 million.

Chile also offers the Guarantee Fund (*Fondo de Garantia*) for SMEs. Through this fund, Chile guarantees access to credit provided by financial institutions and technical cooperation agencies to SMEs. This Guarantee Fund benefits all those nonagricultural entrepreneurs whose annual gross sales do not exceed \$8.2 million, and agricultural producers with annual gross sales less than \$460,000.

Chile's Development Promotion Agency (CORFO) provides access to medium- and long-term financial credit for exporting companies. It also provides credit to their export clients abroad. The maximum loan for Chilean exporters is \$3 million. The credits for foreign clients are granted through commercial banks in the destination country. The program has been designed for Chilean companies with annual sales of up to \$30 million that export goods and services. Through the Coverage of Bank Loans to Exporter program (COBEX), CORFO provides loan default risk coverage to the banks that give loans to SMEs. Coverage can be up to 50 percent of the balance of unpaid capital on loans made to eligible exporters. This benefit is only available for exporting companies with annual sales (domestic and international) of up to \$20 million.

### **Export Controls**

Chilean customs authorities 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 Chilean 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.

### **Nontariff Barriers**

Chile maintains a complex price band system for wheat, wheat flour, and sugar that will be phased out by 2016 under the FTA for imports from the United States. The price band system was created in 1985 and is intended to guarantee a minimum and maximum price for the covered commodities. When certain cost, insurance, and freight (CIF) prices (as calculated by Chilean authorities) fall below the set minimum price, a special tax is added to the tariff rate to raise the price to the minimum price. The government sets a minimum import price that is normally higher than both international and Chilean domestic prices. Beginning in 2008, the minimum price 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 prior to the 2016

FTA obligation. Mixtures (*e.g.*, high fructose corn syrup) containing more than 65 percent sugar content are now subject to the sugar price band system.

The export/import process requires contracting the services of a specialized professional called a Customs Agent. The Customs Agent is the link between the exporter/importer and the National Customs Service. The Agent's mission is to facilitate foreign trade operations and to act as the official representative of the exporter/importer in the country. Agent fees are not standardized.

## **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 created a SPS committee between the parties that meets annually to discuss issues and to attempt to resolve trade concerns.

In December 2003, Chile closed its market to all U.S. beef and beef products due to the detection of a case of Bovine Spongiform Encephalopathy (BSE) in Washington State. In July 2005, Chile agreed to partially re-open the market for U.S. deboned beef from animals under 30 months of age. World Organization for Animal Health (OIE) guidelines provide for scientifically-based conditions under which all beef and beef products from animals of any age can be safely traded. In May 2007, the OIE classified the United States as controlled risk for BSE. The United States will continue to work with Chile to achieve a full re-opening of Chile's market to beef and beef products from the United States, in line with OIE guidelines and the OIE's classification of the United States as controlled risk status for BSE through the use of established fora.

According to the Chilean Ministry of Health, all pork slaughtered in Chile must be tested for trichinae or cold treated. Pork meat for export to Chile from the United States is usually cold treated for destruction of trichinae, since testing for trichinae is not cost effective nor a common practice in the United States. In October 2007, Chile carried out an audit of the U.S. poultry system. On November 8, 2007, Chile published a resolution that allows U.S. exports of day-old chicks and hatching eggs into its market. In December 2007, Chile announced that the U.S. poultry system was recognized as equivalent, which will allow for the importation of U.S. poultry and poultry products into Chile. Final arrangements are being negotiated by the parties to finalize terms of the agreement.

Importers of all food products must file a request for a "Certificate of Use and Disposal," and the government collects microbiological, dietetic, chemical, and physical analyses and samples. The requirement for repeated reviews and sampling of previously approved imported products does not achieve a good balance between cost and effectiveness. With a risk-based testing system, or even random testing, it would be possible to achieve nearly the same level of public health protection at a reduced cost.

## **GOVERNMENT PROCUREMENT**

Each government entity in Chile generally conducts its own procurement. Chile's law requires public bids for large purchases, although procurement by negotiation is permitted in certain cases. Foreign and local bidders in government tenders must register with the Chilean Bureau of Government Procurement. They must also post a bank or guaranteed bond, usually equivalent to 10 percent of the total bid, to ensure compliance with specifications and delivery dates. Through the Information System for Procurements and Public Contracts for the Public Sector (<http://www.chilecompras.cl>), any interested supplier may offer products or services and register as a potential supplier in government procurement, free of charge.

The FTA requires procuring entities to use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures for procurement covered by

the Agreement. It also includes nondiscriminatory provisions that require Chilean entities covered by the FTA to allow U.S. suppliers to participate in their procurement on the same basis as Chilean suppliers. The FTA covers the procurement of most Chilean central government entities, 13 regional governments, 11 ports and airports, and more than 340 municipalities.

Chile is not a signatory to the WTO Agreement on Government Procurement, but it is an observer to the WTO Committee on Government Procurement.

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

Concerns about the weakening of protection and enforcement of intellectual property in Chile were reflected in the January 2007 decision to place Chile on the Special 301 Priority Watch List. There are substantive deficiencies in Chile's IPR laws and regulations, as well as overall inadequate IPR enforcement. The predominant concerns involve patent and test data protection in the pharmaceutical sector and copyright piracy of movies, music, and software.

The United States will continue to work with Chile to improve enforcement and ensure full implementation of the FTA.

### **Patents, Data Protection, and Trademarks**

Chile's protection of pharmaceutical patents and clinical test data continues to suffer from important deficiencies. Chile has yet to establish a consistently effective and transparent system to address the concerns of patent holders, who report that Chile has authorized the marketing of patent-infringing pharmaceutical products. The United States remains concerned as well about reports that Chile has inappropriately relied on undisclosed test and other data submitted in connection with the approval of innovative drug products in order to approve generic versions of these drugs.

Chile's Trademark Law is generally in line with international standards. However, legislation bringing Chile's law fully into compliance with its FTA obligations is still pending. Some U.S. trademark holders have complained of inadequate enforcement of trademark rights in Chile.

### **Copyrights**

The United States is concerned by an apparent lack of commitment to enforcement and prosecution of intellectual property theft of copyrighted goods. Despite active enforcement efforts by the police, piracy of computer software and video and music recordings remains widespread. Attempts to enforce copyrights in Chile have met with considerable delays in the courts and lenient punishments. According to the International Intellectual Property Alliance, estimated losses due to the piracy of copyrighted materials in Chile totaled \$127.6 million in 2007.

Chile made two sets of amendments to its copyright law in 2003, one to implement the WTO Agreement on Trade-Related Aspects of Intellectual Property obligations and one to implement its FTA obligations. Additional draft amendments are pending in the Chilean Congress.

## **SERVICES BARRIERS**

Chile's relatively open services trade and investment regime stands in contrast to its moderately limited commitments under the GATS. In particular, Chile maintains a "horizontal" limitation, applying to all sectors in its GATS schedule, under which authorization for foreign investment in services industries may be contingent upon 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 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.

## **Financial Services**

During its WTO financial services negotiations, Chile made commitments in banking services and in most securities and other financial services. However, Chile's WTO Commitment Schedule in the securities sector did not include asset fund management (mutual funds, investment funds, foreign capital investment funds, and pension funds). Foreign insurance companies already established in Chile operate with unlimited access to the Chilean market. Foreign-based insurance companies cannot offer or contract insurance policies in Chile directly or through intermediaries.

Under the FTA, banking, insurance, securities, and related services operate in a more open, competitive, and transparent market than previously. U.S. insurance firms have the right to establish subsidiaries, branches, or joint ventures in all insurance sectors with only limited exceptions. U.S. banks and securities firms are allowed to establish branches and subsidiaries, provide the same range of services as domestic banks, and may invest in local firms without restriction, except under very limited circumstances. U.S. financial institutions can offer financial services to citizens participating in Chile's privatized voluntary social saving plans. Chile now allows U.S.-based firms to offer cross-border services to Chileans in areas such as financial information, data processing, and financial advisory services, with limited exceptions.

## **INVESTMENT BARRIERS**

Foreign direct investment is subject to *pro forma* screening by the government. The Foreign Investment Committee (FIC) of the Ministry of Economy reviews all foreign investment and sets the terms and conditions for all contracts involving foreign direct investment. FIC approval is required for investment projects: with a value over \$5 million; in sectors or activities normally developed by the government and/or supplied by public services; involving the mass media; and/or by foreign governments or foreign public entities.

Foreign investment projects worth more than \$5 million are entitled to the benefits and guarantees of Decree Law (D.L.) 600, under which the FIC signs a separate contract with each investor. That contract stipulates the time period of the investment's implementation. Under D.L. 600, profits from an investment may be repatriated immediately, but no original capital may be repatriated for 1 year.

Foreign investors in Chile may own up to 100 percent of an enterprise and there is no time limit on ownership. Foreign investors have access to all sectors of the economy with 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 reciprocally permits Chilean nationals to invest in that sector. Investors domiciled abroad may bring foreign currency into Chile under Chapter 14 of the Foreign Exchange Regulations of the Central Bank. This allows the investor to sell foreign currency freely through the formal or informal exchange market.

The 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 instruments, concessions, contracts, and intellectual property. The FTA also explicitly prohibits certain restrictions on investors, such as the requirement to buy domestic rather than imported inputs.

The United States and Chile allow transfers both into and out of their territories related with an investment to be carried out freely and without delay. These transfers should be made in a currency of wide usage and at the exchange rate observed in the market at the time of the transfer. However, under the FTA, Chile may establish restrictions on payments or transfers associated with speculative or short-term investments in the event of a financial or economic crisis, for a period of up to 1 year. During this time, the investor would not be able to invoke the conflict resolution system in force under the FTA for dealing with investor-state disputes.

There is no bilateral double taxation treaty in force between the United States and Chile.