

CHILE

In 1997, the U.S. trade surplus with Chile was \$2.1 billion, an increase of \$200 million from the U.S. trade surplus of \$1.9 billion in 1996. U.S. merchandise exports to Chile were more than \$4.4 billion in 1997, an increase of \$243 million (5.9 percent) from the level of U.S. exports to Chile in 1996. Chile was the United States' twenty-ninth largest export market in 1997. U.S. imports from Chile were \$2.3 billion in 1997, an increase of \$43 million (2.0 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in Chile in 1996 was \$6.7 billion, an increase of 14.7 percent from the level of U.S. FDI in 1995.

IMPORT POLICIES

Chile has a generally open trade regime. It applies a uniform ad valorem tariff of 11 percent on imports from all countries with which it has not already negotiated free trade agreements. Virtually all of Chile's tariffs are bound at 25 percent ad valorem, with the exception of tariffs for wheat, flour, vegetable oil, and sugar, which are bound at 31.5 percent. Despite Chile's relatively progressive trade regime, some significant barriers still exist.

For the above agricultural products, Chile maintains a price band system which applies the 11 percent duty plus a variable rate which may be positive or negative, to maintain domestic prices for these commodities within a predetermined range. The price band system delays the impact of changes in international market prices on Chilean producers and consumers. Chile has not applied duties on these products in excess of 31.5 percent since 1991.

Chilean law also permits the government to impose minimum customs value requirements for imports of agricultural products in response to low world prices. While Chile is not obligated to terminate this program until the year 2000 under its World Trade Organization (WTO) commitments, it has not applied the law since 1995. In addition, imports of used automobiles are prohibited.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Chile's strict animal health and phytosanitary requirements prevent the entry of some imports. In addition, announcement of proposed rule changes, notification of proposals to other members via the WTO Secretariat, and opportunity for public comment often fail to precede the actual promulgation of new requirements. Only after intense and persistent efforts by the U.S. Government on sanitary and phytosanitary issues has Chile begun to open its market to some trade in horticultural products. Chile recently granted export approval for California lemons, table grapes, kiwis, oranges, and grapefruit, but other U.S. fruits, such as apples, pears, and Florida and Texas citrus are still unable to penetrate the Chilean market due to phytosanitary barriers. U.S. exports of fresh poultry are effectively blocked from the Chilean market through a sanitary requirement that the United States considers unjustified and discriminatory. The U.S. Government has protested this requirement to the Chilean Government and has raised the issue in the WTO Sanitary and Phytosanitary Committee. U.S. beef exports have been restricted by Chilean labeling and grading regulations. Chile does not permit U.S. beef

Chile

in consumer cuts to enter the market without being graded to Chilean standards. Because Chilean meat grades originate from carcass grades at the time of slaughter, this requirement effectively blocks U.S.-produced beef from the market, although meat that will undergo further processing is not affected. The United States will continue to press Chile to implement and enforce WTO-consistent sanitary and phytosanitary requirements.

EXPORT SUBSIDIES

While Chile does not generally subsidize exports, it does employ a number of export promotion measures to help non-traditional exports. Chile provides a simplified duty drawback program for non-traditional exports which does not reflect actual duties paid on imported components.

Chile's export promotion measures are primarily intended to expedite and simplify the paperwork involved in the export process. The Government of Chile also provides exporters with quicker returns of value-added taxes than it provides to other producers. One such 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, in accordance with its WTO commitments, the drawback program will be phased out over time. Chile also has an active export promotion agency which has planned expenditures of up to \$10 million a year, half from government funds and half from industry contributions, for agricultural export promotion alone.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Patents

Chile implemented a patent, trademark, and industrial design law in 1991, which provides product patent protection for pharmaceuticals and a limited form of pipeline protection. While the law is generally strong, deficiencies do exist, including: a term of protection that is not consistent with the TRIPS term of 20 years from filing; lack of protection for plant and animal varieties; lack of provisions for restoring patent terms for delays in marketing due to regulatory approval processes; inadequate industrial design protection; and a lack of full "pipeline" protection for pharmaceutical products patented in other countries prior to the time product patent protection became available in Chile.

Another concern with Chile's intellectual property regime is the lack of adequate and effective protection of proprietary or test data. Article 39:3 of the TRIPS Agreement provides that if a WTO member mandates the submission of test data to obtain marketing approval for pharmaceutical or agricultural chemical products, it must protect such data against disclosure and unfair commercial use. Chile does not provide an adequate term of protection for test data that is consistent with international standards.

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 TRIPS Agreement. While the copyright law, in general, provides protection that is nearly consistent with international standard in most areas, it could be improved. The Chilean law does not clearly protect computer software as a "literary work," does not provide clear rental and importation rights, allows for

inadequate penalties, has no provision for ex parte civil searches or “works for hire,” is uncertain as regards the availability of injunctions and temporary restraining orders, and places unnecessary constraints on contractual rights. Despite active and effective enforcement efforts, piracy of computer software remains significant, and, while relatively low, piracy of video tapes and sound recordings exists.

Trademarks

Chile's trademark law is largely consistent with international standards, but also contains deficiencies, including: no requirement of use to maintain trademark protection; a "novelty" requirement for trademark registrations; no provision for trademarking figurative marks, color or packaging or collective marks; and no provisions for protection of "well-known" marks.

Other Intellectual Property Issues

In addition, Chile does not provide protection for semiconductor mask works or for encrypted program-carrying satellite signals. Improvements also need to be made in the protection of trade secrets so that such protection is consistent with TRIPS.

SERVICES BARRIERS

Chile's relatively open services trade and investment regime stands in contrast to its relatively limited GATS commitments. In particular, Chile maintains a “horizontal” limitation (a restriction 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, the use of local inputs, and competition. This limitation appears to undermine the commercial value and predictability of Chile's GATS commitments.

Chile is overdue in providing to the WTO an acceptance of the Fourth Protocol to the General Agreement on Trade in Services, which is necessary to bring its commitments on basic telecommunications services into effect. The deadline for submission of acceptance has been extended to July 31, 1998. Nonetheless, Chile has already made WTO commitments on most basic telecom services, and it adopted the WTO reference paper on regulatory commitments. Chile has made no WTO commitment for local telecommunications services. Also, discriminatory access charges for incoming international calls to Chile have cost U.S. carriers over \$21 million annually, according to industry estimates.

While the Chilean financial services sector is generally quite open, the Government of Chile does not allow direct-branching into the market and instead requires foreign firms to set up local entities, “sociedades anonimas,” in order to provide financial services.

INVESTMENT BARRIERS

While Chile welcomes foreign investment, controls and restrictions do exist. Under the law that regulates nearly all foreign direct investment, profits may be repatriated immediately, but none of the original capital may be repatriated for one year. Foreign direct investment is also subject to pro forma screening by the Government of Chile. All other funds that enter Chile as ordinary foreign capital are subject to a non-interest bearing reserve

Chile

deposit requirement which significantly raises the financial cost of such capital flows. This reserve requirement applies to foreign capital introduced into Chile for most lending purposes, for investment in government securities, and for other so-called non-productive, or "speculative," purposes. There is no tax treaty between Chile and the United States, so the profits of U.S. companies are subject to taxation by the governments of both nations.

Royalty contracts must be approved by the Central Bank. Contracts may set fees and royalties only as a percentage of sales. Payments are usually limited to one percent of sales for the use of trademarks, three percent for the use of trade secrets and proprietary processes, and five percent for the use of patents. Remittances above these levels may be denied access to the inter-bank foreign exchange market and may be disallowed as expenses by the tax authorities. In the petroleum sector, oil and gas deposits are reserved for the state. However, private investors, whether foreign or Chilean, are allowed concessions in this area.

Chile has notified to the WTO measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMS). The measures deal with local content and trade balancing in the automotive industry. Proper notification allows developing-country WTO members to maintain such measures for a five-year transitional period after entry into force of the WTO. Chile therefore must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMS to ensure that WTO members meet these obligations.

OTHER BARRIERS

Distilled Spirits Tax

Chile's tax regime has historically imposed higher taxes on U.S. distilled spirits exports than on pisco, a spirit necessarily manufactured in Chile. The U.S. has repeatedly indicated its concern regarding the consistency of the taxes with Article III:2 of the General Agreement on Tariffs and Trade (GATT). In November 1997 the Chilean Congress passed a bill to modify the liquor tax system, which took effect December 1, 1997, with a three year phase-in period. The amended system still burdens U.S. exports. The U.S. Government has presented its concerns to the Government of Chile about both versions of the Chilean liquor tax regime, and in December 1997 requested Article XXII consultations to review the issue. The U.S. participated in these consultations together with the European Union (EU) in January 1998.

Luxury Tax

In addition to the 11 percent import tariff and the 18 percent value-added tax, automobile imports are subject to a "luxury" tax of 85 percent of C.I.F. value above roughly \$10,300. This tax discourages sales of larger, more expensive vehicles, including most U.S.-made automobiles, which incorporate expensive safety features. Despite these taxes, sales of U.S.-produced vehicles are rising.