

CHILE

TRADE SUMMARY

The 1999 U.S. trade surplus with Chile totaled roughly \$143 million, a \$1.4 billion decrease from 1998. U.S. imports from Chile in 1999 totaled \$2.9 billion, while U.S. exports to Chile in 1999 were \$3.1 billion. Despite the reduction in U.S. exports to Chile, due in part to an economic slowdown in 1999, Chile was the 32nd largest export market of the United States last year. In 1998, U.S. foreign direct investment (FDI) was \$9.1 billion.

IMPORT POLICIES

Chile has a generally open trade regime and unilaterally reduces its applied tariffs. On January 1, 2000, Chile's uniform *ad valorem* tariff decreased from ten percent to nine percent for virtually all imports from countries without free trade agreements (FTA) with Chile, including the United States. The uniform tariff is set to decline by one percentage point per year until it reaches six percent in 2003. Imports of used goods, however, are assessed a 16.5 percent tariff, while computer products enter Chile duty free. The importation of used automobiles is prohibited. 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 subject to a complex price band regime and bound at 31.5 percent.

Dairy products are also bound at 31.5 percent. A subsidies investigation is currently ongoing for U.S. milk powder exports to Chile. On December 29, 1999, Chile invoked provisional duties of an additional 21 percent on imports of powdered milk products from the European Union and the United States. Chilean officials are expected to announce a final ruling by early April.

Chile maintains a complex price band system for certain agricultural products that keeps domestic prices within a predetermined range. Due to low international wheat prices in 1998 and 1999, this system led to applied import duties as high as 90

percent, well above Chile's WTO bound rate. The methodology behind this system calls into question Chile's consistency with the WTO Customs Valuation Agreement (CVA), due to its use of minimum reference prices. Chile's obligations under the CVA took effect on January 1, 2000. In the case of wheat flour, the United States has a significant export interest.

The Government of Chile initiated a safeguards investigation on the 31 agricultural products governed by price bands in September 1999. This led to the imposition of provisional safeguard duties in November 1999, which mirror those already applied under the price-band system. In January 2000, the Chilean Government found a threat of serious injury to the products under evaluation in the safeguard investigation and decreed that the provisional duties be formalized and extended for one year.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Chile's strict animal health and phytosanitary requirements prevent the entry of numerous products, such as Northwest cherries and some citrus. As a result of efforts by the U.S. Government on sanitary and phytosanitary issues, Chile has begun to open its market to some trade in certain horticultural products, including citrus, table grapes, kiwis, apples, and pears from the U.S. west coast. However, U.S. exports of fresh and frozen poultry are effectively blocked from the Chilean market by salmonella inspection requirements that the United States considers unjustified. 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. 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 the U.S. grading and labeling system. Chile announced in October 1999 that all unprocessed livestock products entering the country must come from plants previously inspected by the Ministry of Agriculture. This temporarily halted trade in a wide range of meat and dairy products. The United States Government continues to press

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Chile to implement and enforce WTO-consistent sanitary and phytosanitary requirements.

EXPORT SUBSIDIES

Chile employs a number of export-promotion measures to help non-traditional exports, including through the Chilean Government's active export-promotion agency "ProChile." Chile provides a simplified duty drawback program for non-traditional exports, which does not reflect actual duties paid on imported components. In general, Chile's export promotion measures are 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; legislation to effect this change is expected to receive congressional approval in 2000. The Chilean forestation subsidy program was reinstated in 1998.

INTELLECTUAL PROPERTY RIGHTS 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 the TRIPS term of 20 years from filing; no provisions for restoring patent term in appropriate circumstances; 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. 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 most of Chile's TRIPS obligations came into effect.

The U.S. Government has urged that the Government of Chile ensure that TRIPS-consistent intellectual property protection be provided as soon as possible. The Chilean Congress should address the draft bill soon after reconvening in March. In a preliminary review of the draft legislation, the United States saw with concern that protection for undisclosed data, including test data confidentiality, did not appear to be addressed. Chile does not currently provide a reasonable term of protection for test data. In addition, the Chilean patent office faces a significant backlog of patent applications, although the Government of Chile made some progress in this area in 1999.

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 registrations; 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.

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 clearly protect computer software as a "literary work," does not provide clear rental and importation rights, provides inadequate penalties, 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 active enforcement

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efforts, piracy of computer software and video recordings remains significant. Revision of the 1992 copyright law is also addressed in the Government of Chile's 1999 intellectual property rights bill.

Chile has not yet ratified the WIPO Treaties on Copyright and Performances & Phonograms.

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, 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 competition. 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. Access surcharges for incoming international calls were lowered dramatically in May 1999, decreasing complaints by U.S. and other international carriers. These charges are discriminatory, applying to incoming, but not outgoing, international calls.

During the 1997 WTO financial services negotiations, Chile made commitments in all 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. Providers of securities and asset management services, including pension fund and mutual fund management services, have been allowed to establish 100 percent owned subsidiaries in Chile.

INVESTMENT BARRIERS

While Chile welcomes foreign investment, controls and restrictions exist. Under a 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 subject to *pro forma* screening by the government of Chile. Until mid-1998, all funds entering Chile as ordinary foreign capital were subject to a non-interest-bearing reserve deposit requirement that significantly increased the cost of these capital flows. The reserve requirement, which applied to foreign capital introduced into Chile for most lending purposes, investment in government securities and other so-called "speculative" purposes, was reduced from 30 percent to 10 percent in June 1998 and to zero two months later. This reduction, made in response to declining capital inflows stemming from the global economic crisis, could be reversed at any time, although President Ricardo Lagos, who took office in March 2000, has promised to permanently eliminate the reserve requirement. Chile and the United States are negotiating a bilateral tax treaty and hope to agree on a final text in 2000. Until the agreement takes effect, profits of U.S. companies will continue to be subject to taxation by the governments of both nations.

Chile notified to the WTO measures inconsistent with its obligations under the WTO Agreement 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. Chile did not meet the January 1, 2000, deadline for eliminating these measures, and requested a

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five-month extension on its TRIMS transition period in December 1999. 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 commitments under the TRIMS agreement, which is anticipated prior to May 31, 2000.

ELECTRONIC COMMERCE

There is a growing recognition of the vast potential of electronic commerce in an economy characterized by an export and services orientation. Further, Chile has enjoyed rapid growth in the computer/telecommunications sector and in 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.

OTHER BARRIERS

Distilled Spirits Tax

Chile's tax regime historically has imposed higher taxes on distilled spirits imports than on *pisco*, a spirit manufactured in Chile. The United States has consistently expressed concern regarding the inconsistency of the taxes with Article III:2 of the General Agreement on Tariffs and Trade (GATT), which burden exports of U.S. vodka, whiskey, gin and other

spirits. In November 1997, the Chilean Congress passed a bill to modify the liquor tax system. The modification took effect December 1, 1997, with a three-year phase-in period. The amended system still burdens U.S. exports. In March 1998, the European Union initiated a WTO panel proceeding to review this discriminatory practice, in which the United States was a third-party participant. The panel and the WTO Appellate Body in July 1999 found Chile to be in violation of GATT Article III:2, due to the disparate and protectionist tax treatment of imports directly competitive or substitutable for *pisco*. At the January 2000 meeting of the WTO Dispute Settlement Body, the Government of Chile pledged to bring its tax regime on distilled spirits into compliance with its WTO obligations. Under WTO rules, the maximum time frame for such actions is 15 months. The U.S. Government has encouraged the Government of Chile to do so expeditiously.

Luxury tax

In addition to the nine percent import tariff and the 18 percent value-added tax, automobile imports are subject to additional taxation. A "luxury tax" of 85 percent is also 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 that often include expensive safety features.