

CHILE

TRADE SUMMARY

The U.S. goods trade deficit with Chile was \$2.8 billion in 2006, an increase of \$1.3 billion from \$1.4 billion in 2005. U.S. goods exports in 2006 were \$6.8 billion, up 30.0 percent from the previous year. Corresponding U.S. imports from Chile were \$9.6 billion, up 43.5 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 \$1.3 billion in 2005 (latest data available), and U.S. imports were \$718 million. Sales of services in Chile by majority U.S.-owned affiliates were \$3.1 billion in 2004 (latest data available), while sales of services in the United States by majority Chile-owned firms were not available in 2004 (\$2 million in 2003).

The stock of U.S. foreign direct investment (FDI) in Chile in 2005 was \$9.8 billion (latest data available), up from \$9.7 billion in 2004. U.S. FDI in Chile is concentrated largely in the finance, manufacturing, banking and mining sectors.

IMPORT POLICIES

Tariffs

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 12 years. Approximately 75 percent of U.S. farm exports will enter Chile duty-free within four 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 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 with the World Trade Organization (WTO) its new consolidated sugar import tariff, 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.

Under the U.S.-Chile FTA, a 50 percent surcharge on used goods has been eliminated for goods originating in the United States. The importation of used passenger and cargo transport vehicles is prohibited with few exceptions. Many computer products and books enter Chile duty-free. Used clothing and other used textiles articles classified under Harmonized System (HS) heading 63.09 became duty-free upon entry into force of the agreement.

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Import Controls

Chile's trade regime provides for the free importation of goods, except for those goods that are prohibited under existing legislation. Sometimes a potential import to Chile, due to its nature, might be subject to special authorization or oversight by an enforcement agency such as the Agricultural and Livestock Service, National Health Service, General Directorate of National Mobilization or the Directorate for Borders and Limits.

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 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.

Non-Tariff Barriers

Chile maintains a complex price band system for wheat, wheat flour and sugar that 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 cost, insurance and freight (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 minimum floor level. Price bands effectively set a minimum import price that is normally higher than both international and Chilean domestic prices.

The WTO Dispute Settlement Body (DSB) 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 DSB to bring the price band 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 came into effect in November 2003 and will remain 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. On January 20, 2006, the DSB established a panel with regard to a claim by Argentina that Chile's 2003 modifications to the price band are also WTO inconsistent. On December 8, 2006 the WTO Dispute Settlement Body maintained their original finding that Chile's price band system is a border measure similar to a variable import levy and to a minimum import price and, thus, inconsistent with Article 4.2 of the Agreement on Agriculture. Chile appealed the ruling on February 5, 2007.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Prior to the U.S.-Chile FTA, many of Chile's trade-restrictive sanitary and phytosanitary requirements prevented the entry of a number of U.S. agricultural and food exports. However, during the FTA negotiations, an *ad hoc* SPS working group was established to address a limited number of issues of

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concern to both the United States and Chile. Through this working group, important progress was made, including obtaining new market access for U.S. beef and processed beef products. In December 2003, Chile closed market access due to the detection of a single case of Bovine Spongiform Encephalopathy in the United States. In July 2005, Chile agreed to re-open the market for U.S. boneless beef, but access for offal and other select bovine products remains closed, contrary to international standards set by the World Animal Health Organization (OIE).

According to the Chilean Ministry of Health, all pork slaughtered in Chile must be tested for trichinae. However, testing for trichinae is not a common practice in the United States making it extremely difficult, if not impossible for the U.S. industry to meet this requirement. In April 2006, Chile's Ministry of Health along with the agricultural and livestock service of the Ministry of Agriculture agreed to allow U.S. frozen pork entry into Chile, if it were cold treated after slaughter, a common practice in the United States, and also accepted by the OIE.

Currently, Chile has approved the planting of agricultural biotechnology products only for export seed propagation. A Presidential Commission 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, to date no biotechnology crops have been approved for commercialization domestically.

Under existing Chilean requirements, all imported food products must file a request for a "Certificate of Use and Disposal" and provide microbiological, dietetic, chemical and physical analyses and samples, regardless of whether the product has been reviewed and approved previously for another applicant. The requirement for repeated reviews and sampling of previously approved imported products does not achieve a good balance between cost and effectiveness. With 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

Individual government entities in Chile usually conduct their own procurement. 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 guaranteed 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) in March 2000. Through this site, anyone can offer products or services and register in the system as a potential supplier for government procurement, free of charge.

The system also allows all public agencies to publish information concerning their public bidding processes and requirements for public viewing 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 340 municipalities in Chile. The FTA includes provisions aimed at preventing discrimination against U.S. firms when they are bidding on government procurement opportunities that are covered by the FTA.

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EXPORT SUBSIDIES

Chile's Ministry of Foreign Affairs promotes the country's exports, including through grants to private companies or industries for export promotional activities. ProChile, the Export Promotion Bureau of Chile promotes specific products to targeted export 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 or internationally 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. Such imported capital equipment 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 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 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 small and medium enterprises. Through this fund, Chile guarantees access to credit provided by financial institutions and technical cooperation agencies to small and medium businesses. This Guarantee Fund benefits all those non-agricultural entrepreneurs whose annual gross sales do not exceed \$8.2 million, and agricultural producers with annual gross sales less than \$460,000. The U.S.-Chile 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 goods exported to the United States or Chile. Full drawback rights are allowed for the first eight years from entry into force. Beginning with year nine, the amount of drawback allowed is reduced until it reaches zero by year twelve.

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 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 value-added tax if re-exported.

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.

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INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Concerns about degradation in Chile's protection of intellectual property are reflected in a January 2007 decision to elevate Chile to the Special 301 Priority Watch List following an Out of Cycle Review (OCR) conducted in 2006.

Chile became the subject of the OCR, because of substantive deficiencies in IPR laws and regulations and overall inadequate IPR enforcement despite the fact that Chile made numerous commitments to upgrade its IPR regime as a FTA partner. The lack of adequate protection for intellectual property rights is the most glaring trade irritant in Chile's otherwise excellent business climate. The predominant concerns involve patent and test data protection in the pharmaceutical sector and copyright piracy of movies, music and software.

Patents, Data Protection and Trademarks

As part of the OCR conducted during 2006, the United States and Chile have continued their discussions on Chile's obligations to protect intellectual property, including in connection with Chile's obligations under the FTA.

Chile is reportedly not meeting its FTA commitments with respect to the protection of patents and pharmaceutical test data in two ways. With respect to the protection of data submitted in conjunction with the marketing approval of pharmaceutical products, Chile remains unwilling to address the concerns of patent holders, who report that Chile has authorized the marketing of patent-infringing pharmaceutical products and has failed to provide an appropriate and effective mechanism through which patent holders may seek to prevent marketing in such cases. The United States remains concerned, as well, by reports that Chile has relied inappropriately 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.

In December 2004, Chile's Congress approved legislation intended to bring the country into compliance with a number of its TRIPS commitments. The legislation provides for, among others things, expedited court proceedings and the authority to seize illegal copies of patented products. The legislation was also intended to implement certain FTA obligations, such as the extension of the patent term to compensate for unreasonable delays in the patent application process, and provision of stronger protection for pharmaceutical and agricultural chemical confidential test data submitted for marketing approval. Chile's implementing regulations for the data protection provisions entered into force on November 28, 2005. The regulations also contain exceptions and limitations that may undermine the effective protection of undisclosed safety and efficacy information.

Chile's Trademark Law is generally in line with international standards. However, legislation bringing Chile's law fully into compliance with its obligations under the FTA is still pending. Some U.S. trademark holders have complained of inadequate enforcement of trademark rights in Chile. In relation to Internet domain names, the United States and Chile have committed to creating a system to resolve problems of cyber-infringement of trademarks, following international standards. The FTA also requires Chile to respect the principle of "first in-time, first-in-right" with respect to trademarks and geographical indications.

Copyrights

The United States is concerned that Chile's commitment to the vigorous enforcement and prosecution of intellectual property theft of copyrighted goods appears to be diminishing significantly. Despite active

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enforcement efforts by the police, piracy of computer software and video and music recordings remains widespread in Chile. The incidence of Internet-based piracy also represents a growing challenge to the effective protection of intellectual property. Attempts to enforce copyrights in Chile have met with considerable delays in the courts and weak punishments when sentences were issued. According to the International Intellectual Property Alliance, estimated losses due to the piracy of copyrighted materials in Chile totaled \$78.7 million in 2005.

Chile made two sets of amendments to its copyright law in 2003, one to implement TRIPS obligations and one to implement its FTA obligations. Amendments related to the FTA's provisions increased the period of protection for copyrights and related rights to "life of the author plus 70 years," established strong prohibitions against the circumvention of encryption technology attached to digital works, performances and phonograms; and established a legal framework to combat on-line piracy. The U.S.-Chile FTA also requires Chile to criminalize end-user piracy, mandate reimbursement for actual damages for IPR violations and penalize 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 ratified 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 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 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.

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 have complained of regulatory delays and a lack of transparency in regulatory decisions.

Financial Services

During its WTO financial services negotiations, Chile made commitments in banking services and in most securities and other financial services. However, the Chilean WTO Commitment Schedule in the securities sector did 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 service suppliers. In practice, Chile has allowed foreign banks to establish branches and to provide the same range of services as domestic banks. Foreign insurance companies established in Chile operate with unlimited access to the Chilean market, as long as their legal incorporations meet requirements established in the Chilean Corporate Law Code. Foreign-based

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insurance companies cannot offer or contract insurance policies in Chile directly or through intermediaries.

Under the U.S.-Chile FTA, banks, insurance, securities and related services operate in a more open, competitive and transparent market than previously. The financial services chapter of the FTA included core obligations concerning non-discrimination and most favored nation status, as well as additional market access obligations. U.S. insurance firms now have the right to establish subsidiaries or joint ventures in all insurance sectors with only limited exceptions. Chile also committed to phase in insurance branching rights and to modify its legislation to open up its market to key insurance sectors such as marine, aviation and transport insurance and the insurance brokerage of reinsurance. U.S. banks and securities firms are now also 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 social saving plans. They have also gained increased market access through Chile's mandatory social security system. 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. Chilean mutual funds are permitted to use foreign-based portfolio managers.

INVESTMENT BARRIERS

Chile welcomes foreign investment, but maintains some controls and restrictions. 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 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 and/or supplied by public services; those involving the mass media; and those made 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 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 and there is no limit on the period during which they may own property. In the mining sector, a foreign investor might, for example, hold mining rights for an unlimited period but not own the land/mine itself 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 reciprocally 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 sell foreign currency freely through the formal or informal exchange market. In 2001, the Central Bank suspended its prior controls on capital flows, including the "*encaje*," a domestic deposit requirement that applied to short-term capital

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flows. The Central Bank also eliminated the one-year holding period for indirect investment. Outflows associated with capital returns, dividends, and other investments no longer require government approval. Restrictions on the issuance of American Depositary Receipts 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 instruments, concessions, contracts and intellectual property. The FTA also prohibits certain restrictions on investors, such as the requirement to buy domestic rather than imported inputs. However, the obligations of “national treatment” and “most favored nation” will not be applied to measures that are an exception or waiver of the specific obligations on intellectual property. As per the FTA, the United States and Chile allow both transfers 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 current exchange rate observed in the market at the time of the transfer.

However, 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 up to a period of one year. During this time, the investor would not be able to invoke the conflict resolution system in force for dealing with investor-state controversies.

The U.S. and Chilean governments have been discussing a bilateral tax treaty (a double taxation treaty), but were unable to conclude negotiations in 2006. Until such a treaty takes effect, profits of U.S. companies operating in Chile will continue to be subject to taxation by both governments.

OTHER BARRIERS

Luxury Tax

A luxury tax was applied to automobiles that exceeded an established CIF value. Under the terms of the FTA, the luxury tax on automobiles was phased out over four years by raising the threshold value and lowering the rate each year. Starting from January 1, 2007, the luxury tax will be eliminated completely.

Distilled Spirit Tax and Other Taxes

Chile collects an *ad valorem* tax of 27 percent on all liquor. Beer and wine are subject to a 15 percent *ad valorem* tax, while mineral water, soft drinks and syrups face a 13 percent tax. Other merchandise subject to additional taxes are: gold articles, platinum, ivory, jewelry, natural and synthetic precious stones (15 percent); compressed air arms, their accessories and bullets (15 percent); caviar preserves and its substitutes (1 percent). Imports of tobacco are also subject to an *ad valorem* tax – 51 percent for cigars, 60.4 percent for cigarettes and 57.9 percent for elaborated tobacco.

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