

**CHILE-HONG KONG, CHINA  
JOINT STUDY GROUP ON THE  
FEASIBILITY OF A FREE TRADE  
AGREEMENT:  
FINAL REPORT BY CHILE**

**Hong Kong, July 14-15, 2009**



**Chile-Hong Kong, China Joint Study Group on  
the Feasibility of a Free Trade Agreement (FTA)**

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# **I. INTRODUCTION**

## I. INTRODUCTION

### I.1. Main Characteristics of the Chilean/Hong Kong, China Economy and institutional framework

#### I.1.A. Macroeconomic Features

A high and sustained economic growth and a marked improvement in social development have been the most distinctive characteristics of the Chilean economy since the 90s; noteworthy was the reduction of poverty. The governments since 1990 supplemented growth-oriented economic policies with focused social policies and an enhancement in investment in human capital, coupled with a liberalization of the economy. Although growth slowed down at the end of the 90's due to external factors<sup>1</sup> and the first years of the 2000s, a period of economic recovery was experienced since 2004 and in 2009 a slow down of the economy is expected, as the international economy has experienced a severe financial crisis since September, 2008. This has meant a GDP growth of 5.5% in the last 17 years and an expected growth in the region of 2-3% in 2009<sup>2</sup>, higher than the average of Latin America and the world<sup>3</sup>, based on the macroeconomic fundamentals that created the sustained growth since the 90's.

The national development strategy is based on a social market economy open to international trade, where the foreign trade sector is a main driving force of growth. At the same time, the core elements of the economic policy over the past 15 years have been based on macroeconomic stability, elimination of domestic market distortions and a gradual lowering of barriers to foreign trade. In the years of high copper prices and expansion of the world economy, the macroeconomic policy was able to save a large part of the additional incomes, which has meant that the country is better prepared for the international crisis of 2008/2009. Under such conditions, the Chilean economy has achieved a high level of competitiveness and opening to the world economy.

Chile's macroeconomic stability and its general socioeconomic performance have been acknowledged by the main international risk rating agencies. In 2008, the Economist Intelligence Unit rated the country-risk as one of the lowest in the world, lowest than Japan, the United States and other developed nations, and slightly higher than the risk of Germany or the United Kingdom<sup>4</sup>, and the less risky in the whole of Latin America and in an equal standing with many countries with high development levels. In 2008, IMD (Geneva) ranked Chile as the 26<sup>th</sup> more competitive nation (the most competitive in Latin America), and just below Belgium(24) and France(25)<sup>5</sup>. The sovereign risk of Chile is the lowest in Latin America, and compares

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<sup>1</sup> In the late 1990s, end of 1998 and early 1999, Chile's economy experienced an impact of the Asian crisis with adverse effects on its terms of trade and export volumes, "sharp fluctuations in domestic interest rates, exchange rate pressures, and a serious drought (attributable to the weather phenomenon La Niña)" in Aninat, Eduardo (2000) "Chile in the 1990s: Embracing Development Opportunities", Finance & Development March 2000, Vol. 37, Number 1, IMF, Washington, D.C

<sup>2</sup> The Chilean Central Bank estimates a 2%-3% growth of GDP in 2009. Banco Central de Chile (2008) "Actualización del escenario reciente de proyecciones". Banco Central de Chile, November 2008, page 5, and Banco Central de Chile(2009) "Informe de Política Monetaria", January 2009 in <http://www.bcentral.cl/publicaciones/politicas/pdf/ipm012009.pdf>

<sup>3</sup> IMF(2009) "World Economic Outlook-Update", January 2009 in <http://www.imf.org/external/index.htm>

<sup>4</sup> Economist Intelligence Unit, May 2008, quoted in Comité de Inversiones Extranjeras (Chile) CINVER in [http://www.cinver.cl/clima/competitividad\\_agencias\\_agencias\\_clasif.asp](http://www.cinver.cl/clima/competitividad_agencias_agencias_clasif.asp)

<sup>5</sup> IMD (2008) "World Competitiveness Yearbook 2008", Geneva in <http://www.imd.ch/research/publications/wcy/upload/scoreboard.pdf>

favorably with Asia and Europe: the EMBI reached 353 for Chile in November 2008, while it was 739 for Latin America, 619 for Asia and 707 for Europe<sup>6</sup>.

**a. Gross Domestic Product.**

The economic activity has shown high dynamism and sustained growth over the last two decades, and particularly after the recession that hit the country in the early 80s. According to the Central Bank of Chile, in the period 1990 – 2007, the economy grew at an annual rate of 5.5 percent<sup>7</sup>. In 2009, the growth rate of GDP is expected to reach between 2% and 3%, in the middle of the international financial crisis. As a result, these indexes basically doubled in the course of the 90s decade. At the end of the 90s, economic growth first slowed down (3.4 percent in 1998) and then dipped (-1.1 percent in 1999). In the year 2000, the Chilean economy began a reactivation process and is estimated that for current 2009, GDP will get a rate of growth in the region of 2-3%<sup>8</sup>, while for 2010 most forecasts suggest that it will further increase, according to the evolution of the international financial crisis.

The fastest growing sectors in the last years (2003 – 2007) have been communications, financial services, commerce, agriculture, construction and transport. During 2007 the share of services (financial, firms and personal) in the total economic activity represented 34.3 percent of GDP, commerce, hotel and restaurants 11.1 percent, manufacturing industry 17.1 percent; mining 7.7 percent and agriculture and fishing 5.2 percent. Among the rest of the economic sectors, transport and communications attained increasing importance over time, reaching 10.3 percent in 2007, and construction has recovered with the increase in investment reaching to 7.6 percent of GDP in 2007.

**b. Inflation**

The endemic problem of persistently high inflation rates that characterized the Chilean economy in the past has been reined in and is a priority target in the macroeconomic management. One of the most significant bases of the inflation control policy has been the independence of the Central Bank. In the early 90s, the Central Bank established a policy aimed at the gradual reduction of the inflation rate, announcing the inflation goal to be reached annually, which was strictly met ever since.

As from 1994 the inflation rate fell to a one-digit figure, reaching the levels exhibited by developed economies. While in 1990 inflation stood at 27.3 percent, in the period 1995-1999 it was less than 6 percent. Although in 2007 inflation showed an increase, reaching 7.8%, mostly because of the international inflation in commodities and food prices in that period, by the end of 2008 inflation had been reduced (7,1%), and the expectations for 2009 are that it will be reduced and be in the region of 3.1%<sup>9</sup>-3.5%<sup>10</sup>, keeping within the target range of the monetary policy. The

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<sup>6</sup> EMBI global spread from JP Morgan Chase in

<http://www.bcentral.cl/publicaciones/estadisticas/informacion-integrada/pdf/bm122008.pdf>

<sup>7</sup> GDP Series since 2003 at 2003 constant prices; earlier series at 1996 prices linked by Central Bank of Chile in Stanger V., Michael (2007) “Empalme del PIB y de los Componentes del Gasto: Series anuales y trimestrales 1986-2002, Base 2003”, N° 55, March, 2007, Santiago, Chile and GDP at 2003 prices series published in <http://www.bcentral.cl>

<sup>8</sup> Banco Central de Chile (2008) “Actualización del escenario reciente de proyecciones”. Banco Central de Chile, November 2008, page 5

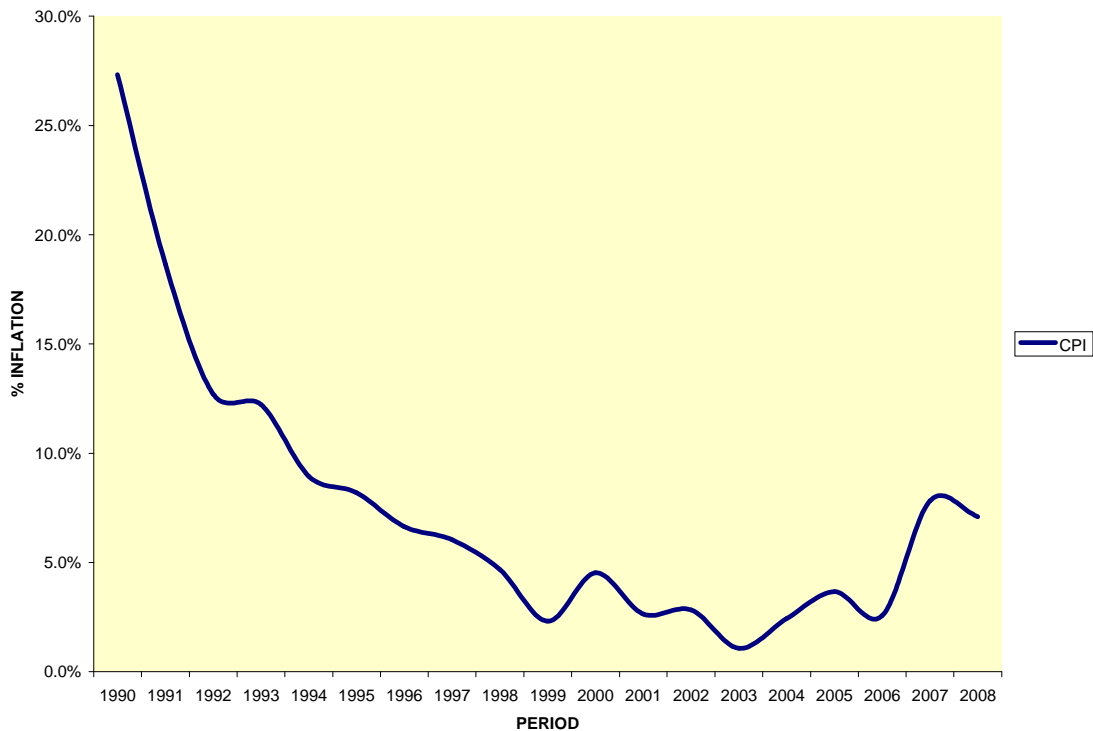
<sup>9</sup> Banco Central de Chile(2009) “Informe de Política Monetaria”, January 2009 in

<http://www.bcentral.cl/publicaciones/politicas/pdf/ipm012009.pdf> . The forecast of inflation for 2009 by the Central Bank is 3.1%.



inflation goal has been deemed to be the nominal anchor of the economy, becoming a determinant sign for private stakeholders. Until 2006, the inflation goal established by the Central Bank stood in the range 2 – 4 percent, in line with the experience in the last 5 years<sup>11</sup>, while since 2007 the target is to keep the rate of inflation in 3% (+-1%) most of the time<sup>12</sup>.

**Chile: Consumer Price Index 1990-2008**  
(Yearly % change, December)



Source: Calculated from Central Bank data

### c. Export Sector

A driving force behind economic growth has been the export sector. With growth rates well above GDP, exports multiplied by more than eight between 1990 and 2008<sup>13</sup>. Considering that there is a direct relation between economic growth and the development of foreign trade (exports plus imports), the rate of growth of foreign trade was around 9.4% percent per year, between 1990 and 2007, higher than the growth of the GDP which reached in average 5.5%. Total foreign trade represents in 2007, 86% of GDP.<sup>14</sup> The opening of the Chilean economy to international

<sup>10</sup> Banco Central de Chile “Encuesta mensual de expectativas económicas”, January 2009 in <http://www.bcentral.cl/estadisticas-economicas/series-indicadores/xls/expectativas/resultado.xls>

<sup>11</sup> Central Bank of Chile “Informe de Política Monetaria” 18 de enero de 2006, Santiago de Chile. “The Board ...keeps a projected inflation in the range of 2 to 4%, centered in 3% in the customary policy horizon of 12 to 24 months”.

<sup>12</sup> “El Consejo reafirma su compromiso de conducir la política monetaria de manera que la inflación proyectada se ubique en 3% en el horizonte de política”, Central Bank of Chile “Informe de Política Monetaria” 16 de mayo de 2007, Santiago de Chile, page 50

<sup>13</sup> In 1990 Chilean exports were US\$ 8.4 billion and reached in 2008 US\$ 67.8 billion

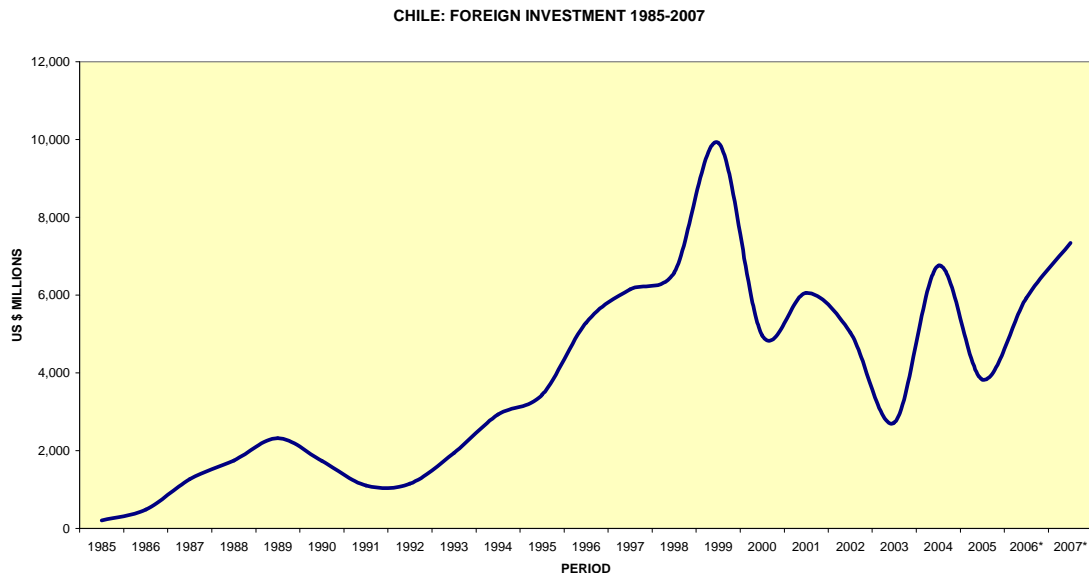
<sup>14</sup> Exports+imports of goods and services/GDP at constant 2003 prices, Chilean Central Bank in [http://si2.bcentral.cl/Basededatoseconomicos/951\\_excel.asp?c=CN\\_B03\\_27&i=E&f=A&l=29&crec=n&tm=n&dec=0&sep=punto](http://si2.bcentral.cl/Basededatoseconomicos/951_excel.asp?c=CN_B03_27&i=E&f=A&l=29&crec=n&tm=n&dec=0&sep=punto)

markets has been beneficial for the growth prospects. From 1996 to 2008, exports of goods grew at an annual average of 12%<sup>15</sup>; reaching a peak in 2008, with an amount that exceeds 67 billion dollars.

Between 1990 and 2008 Chile continued to open to international markets. The nominal foreign tariff was reduced from a flat 15 percent to an 11 percent rate in 1992, with unanimous Congress agreement. As from 1999, the flat tariff rate was scheduled to drop 1 percent each year until 2003, remaining at 6 percent. It should be noted that flat tariffs are a central aspect of the non-discriminatory market economy that characterizes Chile's economic policy.

#### d. Foreign Investment

As a result of the liberalization process, foreign direct investment has exhibited a significant growth. In the period 1990 – 2007 foreign direct investment totaled 82.9 billion dollars. This figure compares favorably with the 8.6 billion dollars of FDI recorded in the period 1974 – 1989<sup>16</sup>. Foreign direct investment in 1990 represented 5.7 percent of GDP and reached 7.6 percent in 2004<sup>17</sup>. In 2007, foreign investment reached a level of US \$ 7.340 millions.



Source: Foreign Investment Committee (CINVER)

The increasing flows of exports and foreign investment have been the two cornerstones of the Chilean economic globalization in the 1990 – 2008 period. Reserves reached 16,910 million dollars in 2007, an amount that represents more than 6 months of imports, while net foreign debt (foreign debt minus international reserves) in relation to Chilean exports dropped from a 3.13 ratio in the period 1984 – 1989 to 0.65 in the period 2004 – 2006. In 2007, the ratio of net foreign debt in relation to Chilean exports reached a 0.58 figure<sup>18</sup>.

#### e. Investment and Savings

<sup>15</sup> In current US \$

<sup>16</sup> Includes investment through the Foreign Investment Statute (D.L.600), Chapter XIV and Chapter XIX.

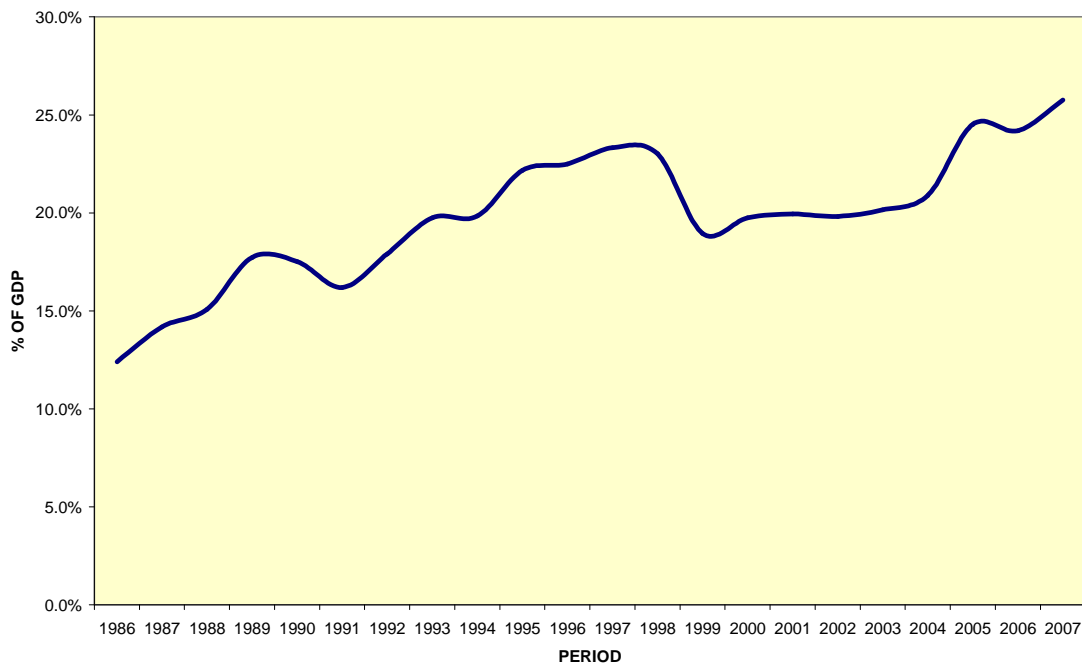
<sup>17</sup> Includes investment through the Foreign Investment Statute (D.L.600), Chapter XIV and Chapter XIX.

<sup>18</sup> Figures calculated from Central Bank data

The great dynamism of the Chilean economy in the 90's was spurred by the high investment rates recorded during the period, which also constitute the best guarantee of future growth, although at the end of that period there was a fall due to the economic slump as a result of the Asian crisis. While in the period 1986 – 1989 investment represented 14.8 percent of GDP, in 1990 – 2007 this rate reached an average 20.9 percent<sup>19</sup>. Very important indeed was also the high rate of domestic savings in the 90s and the first years of the new millennium, with an average of 21.6 percent over the GDP for the period 1996-2006, one of the highest in Latin America, and a record of 25.7 percent over the GDP in 2007<sup>20</sup>.

In 2005-2007, there was an increase in investment; mostly due to an improvement in expectations, a sound macroeconomic policy, a recovery in the prices of Chilean exports, and the firm expansion of the international economy. This was also supplemented with the growth of infrastructure investment in public transport (highways, underground metropolitan transport of Santiago, urban rail net in Viña – Valparaiso and other cities).

#### CHILE: INVESTMENT RATE AS % OF GDP 1986-2007 (CONSTANT 2003 PRICES)



Source: Calculated from Central Bank data.

#### f. Employment and Salaries

The reduction of inflation, high GDP growth rates and export increases went hand-in-hand with high investment and domestic savings rates, which favored a high employment creation. While in

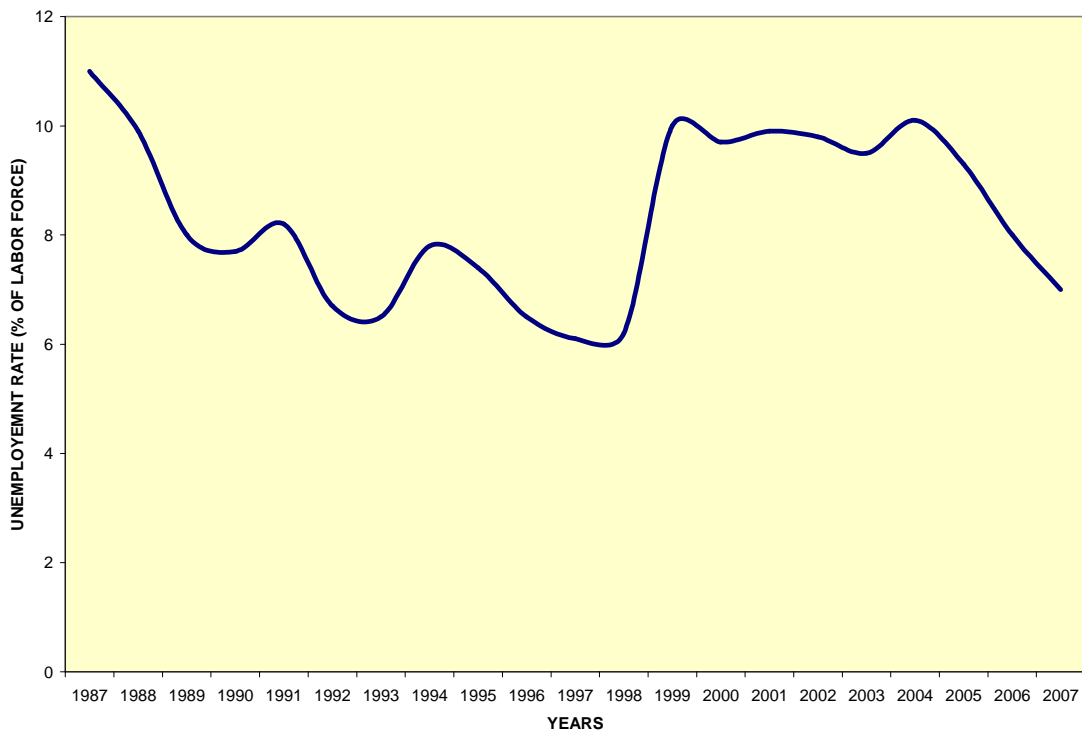
<sup>19</sup> Central Bank of Chile in Stanger V., Michael (2007) "Empalme del PIB y de los Componentes del Gasto: Series anuales y trimestrales 1986-2002, Base 2003", N° 55, March, 2007, Santiago, Chile and series

<sup>20</sup> Savings data in current pesos in Central Bank , [http://si2.bcentral.cl/Basededatoseconomicos/951\\_705.asp?f=A&s=PPIB7&idioma=E&sep=coma&a=0.7801773865312633&crec=n](http://si2.bcentral.cl/Basededatoseconomicos/951_705.asp?f=A&s=PPIB7&idioma=E&sep=coma&a=0.7801773865312633&crec=n)

the period 1986 – 1989 the average unemployment rate was 10.2 percent, in the period 1990 – 1998 it fell to 7.0 percent. However, as a result of the Asian crisis, unemployment climbed considerably in 1999, reaching its highest level in 1999 (10 percent). The unemployment rate has been reduced since 2004 and has continued to drop, standing at 7.0 percent for 2007, below the 8.0 percent of 2006. Preparing to the consequences of the international financial crisis in the Chilean economy, economic reactivation and pro-employment measures fostered by the government, together with interest rates cuts by the Central Bank since December 2008, unemployment increase is expected to be moderate during 2009. The rate of creation of new jobs had been of 148 thousand jobs each year on average, since 2000<sup>21</sup>.

Equally important has been the rise in real salaries, for these have grown at an average 2.3 percent in the period 1994 – 2006, which translates into a 32 percent increase for that period. It should be noted that from 1990 to 1997 real salaries rose at 3.1 percent annually. In 2006, real wages had increased by 2.0%.<sup>22</sup>

**Chile: Rate of unemployment 1987-2007**



Source: Calculated from Central Bank data.

On the other hand, average labor productivity also rose significantly since the 90s. In the period 1986 – 1989 it grew at only 2.5 percent annually; while in the period 1990 – 2007 the average annual growth rate was 3.3 percent, with a peak of 9.2 percent in 1995. Productivity growth has been a decisive factor in the competitiveness of national industries. As a result of this important

<sup>21</sup> Employment reached 6.45 million people in 2007, as compared to 5.41 million people in 2000 (Source of data is National Institute of Statistics-INE- published in website of Chilean Central Bank)

<sup>22</sup> Figures from National Institute of Statistics (INE) in [http://si2.bcentral.cl/Basededatoseconomicos/951\\_705.asp?f=A&s=REM\\_R\\_HORA&idioma=E&sep=coma&a=0.7508357498669635&crec=n](http://si2.bcentral.cl/Basededatoseconomicos/951_705.asp?f=A&s=REM_R_HORA&idioma=E&sep=coma&a=0.7508357498669635&crec=n)

productivity growth, the rise of real salaries has not affected the inflation goals set by economic authorities.

The evolution of employment and productivity are two of the most positive characteristics of recent economic performance, with an emphasis on social progress. These have been the main mechanisms whereby the benefits of economic growth have been transferred to the poorer sectors of the Chilean society. The population below the poverty line fell from 45 percent in 1987 to only 22 percent in 1998, a reduction that constitutes the most significant progress among all Latin American countries for this period. Moreover, the most recent available survey shows that this trend has been further established, as the population below the poverty line for 2006 was reduced to 13.7 percent<sup>23</sup>

### **I.1.B. Trade Policy Regime: Formulation and Implementation**

#### **I.1.B.i Legal and Institutional Framework**

The Constitution of 1980 defines Chile as a unitary and democratic republic. For administrative purposes, the country is divided into 15 regions. The regions consist of provinces, which are subdivided into communes (*comunas*), which are administrated by municipalities.

Executive power is exercised by the President of the Republic who is also the Head of State and is elected by universal suffrage for a term of four years. The President appoints cabinet ministers.

Legislative power is exercised by the National Congress, which comprises a House of Representatives and a Senate. The House of Representatives is composed of 120 members elected for a four-year term. The Senate is composed of 38 senators elected for an eight-year term. Members of both chambers may be re-elected. The next presidential and congressional elections are scheduled for December 2009.

Judicial power is vested in the Supreme Court of Justice, 17 regional courts of appeal, and other courts established by law. The 21 Supreme Court judges are appointed by the President and confirmed by a two-thirds majority in the Senate. The Supreme Court appoints members of the lower courts.

#### **I.1.B.ii Trade Policy Objectives and Formulation**

Chile's trade policy follows a number of objectives, the most important being: stimulating the efficiency and competitiveness of national producers; reducing the level of effective protection and any existing anti-export bias in the tariff structure; and fostering regional economic cooperation. The authorities consider secured and permanent access to foreign markets, together with the capacity to attract foreign investment, essential to Chile's economic growth. To this end, efforts towards the negotiation and administration of new preferential trade agreements have intensified in recent years.

Trade policy formulation is under the responsibility of the Executive, with the General Directorate of International Economic Affairs (DIRECON), in the Ministry of Foreign Affairs,

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<sup>23</sup> CASEN 2006 survey, performed by the Ministry of Planning MIDEPLAN in MIDEPLAN (2007) <http://www.mideplan.cl/final/noticia.php?idnot=1336>

taking the lead role in trade negotiations. Other Ministries involved in the formulation of trade policy include the Ministries of Finance, Economy, and Agriculture. Chile's mission to the WTO is under the competence of the Ministry of Foreign Affairs.

The Inter Ministerial Committee for International Economic Negotiations, advises the President in matters regarding international economic negotiations. The Minister of Foreign Affairs chairs the Committee; its members are the Minister of Finance, the Minister of the Presidency, the Minister of Economy and the Minister of Agriculture.

The government is in permanent dialogue with the private sector in various forums, being the most important the Export Council, which was created in April 2003. It brings together representatives of the private and public sectors and its main objective is to make recommendations on export policy formulation. The Council has several working groups: on trade facilitation, international integration, support of exporters, on promotion of exports and tourism and transport.

### I.1.B.iii Main Trade Laws and Regulations

**Table I.1  
Main Domestic Laws and Regulations Relating to Foreign Trade, January 2009**

<b>Name or description</b>	<b>Domestic statute</b>	<b>Date of issue</b>
<b>General legislation</b>		
Constitution of Chile	n.a.	8.8.1980
Incorporation of WTO Agreements into domestic law	Supreme Decree N° 16 of the Ministry of Foreign Affairs	17.5.1995
Law on the Importation of Goods	Law N° 18,525	30.6.1986
Reduction of MFN tariffs	Law N° 19,589	14.11.1998
<b>Preferential trade agreements</b>		
Free Trade Agreement between the Government of Canada and the Government of the Republic of Chile	Decree N° 1020	05.07.1997
Free Trade Agreement between the Republic of Chile and the United Mexican States	Decree N° 1.101	31.07.1999
Free Trade Agreement between Chile and Central America . Addendum to the Free Trade Agreement between Chile and Central America (Chile – Costa Rica) . Addendum to the Free Trade Agreement between Chile and Central America (Chile – El Salvador) . Addendum to the Free Trade Agreement between Chile and Central America (Chile – Honduras) . Addendum to the Free Trade Agreement between Chile and Central America (Chile – Guatemala) <sup>24</sup>	Decree N° 14	14.02.2002
Agreement Establishing an Association between the Republic of Chile and the European Community	Decree N° 28	01.02.2003
Chile- United States of America Free Trade Agreement	Decree N° 312	31.12.2003
Free Trade Agreement between the Republic of Chile and the Republic of Korea	Decree N° 48	01.04.2004

<sup>24</sup> Under domestic approval of the National Congress.

<b>Name or description</b>	<b>Domestic statute</b>	<b>Date of issue</b>
Free Trade Agreement between the Republic of Chile and the EFTA States	Decree N° 262	01.12.2004
Free Trade Agreement between the Republic of Chile and the People's Republic of China	Decree N° 317	23.09.2006
Trans-Pacific Strategic Economic Partnership	Decree N° 354	08.11.2006
Preferential Trade Agreement Between the Republic of Chile and the Republic of India	Decree N° 148	18.08.2007
Agreement Between the Republic of Chile and Japan for a Strategic Economic Partnership	Decree N° 143	03.09.2007
Free Trade Agreement between the Republic of Chile and the Republic of Panama	Decree N° 25	07.03.2008
Chile – Australia Free Trade Agreement	Decree N° 30	06.03.2009
<b>Tariff agreements under ALADI (Latin American Integration Association)</b>		
ACE 22 Chile-Bolivia	Decree N° 402	30.06.1993
ACE 23 Chile-Venezuela	Decree N° 321	30.06.1993
ACE 24 Chile-Colombia <sup>25</sup>	Decree N° 1535	27.04.1994
ACE 32 Chile-Ecuador <sup>26</sup>	Decree N° 1967	18.05.1995
ACE 35 Chile-Mercosur	Decree N° 1411	04.10.1996
ACE 38 Chile-Peru	Decree N° 12	01.03.2009
ACE 42 Chile-Cuba	Decree N° 171	28.08.2008
<b>Customs procedures</b>		
Customs Law	Decree with Force of Law N° 30/2004 of the Ministry of Finance	18.10.2004
Regulations on the Application of GATT Article VII	Decree N° 1134	20.6.2002
<b>Tax and tariff concessions</b>		
Simplified duty drawback system	Law N° 18,480	19.12.1985
Modification of export promotion programs	Law N° 19,589	14.11.1998
<b>Contingency measures</b>		
Law on the Importation of Goods	Law N° 18,525	30.6.1986
<b>Intellectual property</b>		
Intellectual Property Law	Law N° 17,336	2.10.1970
Law establishing Rules Applicable to Industrial Privileges and Protection of Industrial Property Rights	Law N° 19,039	25.1.1991
Law on the rights of breeders of new varieties of plants. This regulation incorporates UPOV (78) standards	Law N° 19,342	11.03.1994

n.a. Not applicable.

<sup>25</sup> FTA (addendum to ACE 24) has been approved by the National Congress but domestic legal procedures remain to be completed by Colombia.

<sup>26</sup> A new agreement has been negotiated with Ecuador which will enter into force once the necessary domestic legal procedures of each Party are completed.

Law N° 18,525 of 19 June 1986, establishing Rules on the Importation of Goods, is Chile's main trade law. The Law has been amended and modified a number of times since 1997 and contains regulations on customs valuation, customs duties, contingency measures, and a price band system for a limited number of agricultural products. Moreover, the Customs Law (Decree Law N° 2/97 of the Ministry of Finance) of 12 November 1997, which consolidates a number of former legal instruments, contains provisions on export and import procedures. Law No. 19.589 of 14 November 1998 provided for a reduction of Chile's MFN tariffs and revised some export promotion programs with a view to bring them into line with Chile's WTO commitments.

A law on miscellaneous WTO-related matters (Law 19.912) entered into force as of November 4, 2003 with the aim to bring various individual provisions of Chile's legislation in line with the WTO Agreements. It contains provisions on customs valuation, technical regulations, taxation, and intellectual property. The law provides for notification procedures for technical regulations and conformity assessments. It also eliminates the Dispatch Tax on goods imported duty-free, and some trade-related investment measures in the automotive sector. Furthermore, it amends Chile's intellectual property legislation by specifying protection for computer programs, data compilations, and textile designs.

Chile does not have any pending implementation of WTO Agreements.

### **Participation in the World Trade Organization**

Chile is a founding member of the GATT, and as such it has unwaveringly maintained its commitment to the multilateral trading system as represented by the WTO. Thus, it actively supported efforts to launch a new round of negotiations in the Ministerial Conferences in Seattle (1999) and Doha (2001). Chile welcomed the launching of the Doha Development Round, which represents an opportunity to settle problems in our trade relations, which have proven impossible to solve in the context of bilateral or regional agreements. This has been the case, specially, for agricultural subsidies and the abuse of anti-dumping measures.

In line with these objectives, Chile has submitted various negotiating proposals and has participated actively in formal and informal coalitions with other Members that share its interests. These coalitions include, in particular, the Cairns Group and the G20 in agriculture, and the Friends of the Anti-Dumping Negotiations (FANs). We have also been active in other areas of the Doha Development Round such as market access for non-agricultural products and the reform of the Dispute Settlement Understanding.

The importance that Chile attributes to the WTO is not limited to the gains to be achieved through negotiation. For Chile, the WTO also derives its importance from the ongoing work of its different technical bodies, above all the Dispute Settlement Body. This is the mechanism that ultimately ensures that multilateral trade rules are respected and that countries of extremely varied political and economic weight can solve their problems on the basis of commonly agreed rules, on an equal footing, and with the full opportunity to present their arguments, rather than being subjected to the decisions of the most powerful. Chile has in fact been active in using the DSB as complainant, respondent and third party.

#### **I.1.C. Structure and Features of the Market**



Chile has an open economy with low tariff levels and a liberal trade and investment environment. Domestically, competition is enforced through the application of the Chilean Competition Act, which is becoming increasingly important in maintaining market efficiency and reaping the benefits of an open economy.

Although the first Chilean Competition law was enacted in 1959, the proper legal basis of the Chilean Competition law is Decree Law N° 211 of 1973 of the Ministry of Economy, as amended by D.F.L. N° 1, 2004, published in the Chilean Official Gazette on the 7th March, 2005.

In 1999, law 19610 led to the institutional strengthening of the Competition enforcement agency, the National Economic Prosecutor's Office (FNE).

In 2003, law N° 19911 introduced important reforms to the original Decree Law N°211. It fulfilled the need for increased independence of the decision-making body and for a more technical assessment of cases. Law N° 19911 created a Competition Tribunal and clearly separated the functions of the enforcement agency, the FNE, and the decision-making body, the Court. The Tribunal is a special judicial body fully independent of the FNE. To ensure its independence, the Supreme Court of Justice may remove its members only on legally established grounds. The Tribunal has its own budget and staff (lawyers and economists) and its members are remunerated and have a fixed period in office. The Tribunal has the power to sanction and provide remedies (including interim measures) and is also responsible for merger decisions. Likewise, law N° 19911 strengthened the enforcement powers of the FNE.

Law 19911 explicitly sanctions abuse of dominant position such as resale price maintenance, tying or territorial distribution by dominant firms and predatory practices.<sup>27</sup> In addition, this law eliminated criminal sanctions with respect to anticompetitive practices but substantially increased the amount of the fines that can be imposed. This is to prevent competition cases being tried by criminal judges with no expertise in competition while providing sufficiently high fines that work as deterrents.

Chile is involved in international cooperation in the competition policy arena at various levels. In this respect, Chile has signed Cooperation Agreements with Canada, Mexico, Salvador and Costa Rica, and it has included Competition Policy Chapters in most of the Trade Agreements it has negotiated. Chile participates in OECD, APEC, UNCTAD and ICN activities, and in 2003, Chile was subject of a Peer Review by the Latin American Competition Forum organized by the OECD and the Inter American Development Bank.

#### **I.1.D. Banking System and Credit Policies**

##### **a. General Overview of the Banking System**

The modern Chilean banking system dates from 1925 and has been characterized by periods of substantial regulation and state intervention and by periods of deregulation. After the Chilean

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<sup>27</sup> It should be noted that even though there was no explicit prohibition, abuse of dominant position was already sanctioned by the Antitrust Commission prior to the reform that took place in 2003 on the basis of a generic reference in Article 6 of Law DL211.

financial crisis of 1982 and 1983, the Central Bank and the Superintendence of Banks and Financial Institutions (SBIF is its acronym in Spanish), established strict controls on the funding, lending and general business matters of the banking industry in Chile. The SBIF regulates the banking sector while the Central Bank, which is fully independent of the government, oversees exchange rate policy, regulates international capital movements and certain bank operations, and oversees the stability of the financial system.

A total of 25 banks were operating in Chile at end-2007; 13 were domestically-owned and 12 foreign-owned. In terms of the total assets of the banking system in December 2007, the former held 59.5% of the total and the latter 40.5%. There is only one State-owned bank, the BancoEstado, which is the third largest bank in the system. The regulator for BancoEstado is the Superintendent of Banks and Financial Institutions, which applies the same rules to all banks. As of December 2007, total outstanding loans in the Chilean banking system amounted to US\$ 58.2 billion.

Commercial banks in Chile face growing competition from several sources, which has led to consolidation in the banking industry. Competition in credit provision has come increasingly from department stores and foreign banks.

#### **b. Banking Regulation**

According to the Chilean Constitution, the main objectives of the Central Bank are to maintain the stability of the Chilean peso and the orderly functioning of Chile's internal and external payment systems. To this end the law gives the Central Bank the authority to set reserve requirements for banks, to regulate the amount of money and credit in circulation, to operate as a lender of last resort and to establish regulations and guidelines regarding financial institutions, the formal exchange market and bank deposit-taking activities. These attributes provide the Central Bank with a wide range of policy tools for controlling monetary and exchange rate policy.

The SBIF regulates and supervises Chile's banks. Additionally, the SBIF authorizes the licensing of new banks and has broad powers to issue, interpret and enforce banking regulations (both legal and regulatory). The SBIF must also approve any bank's merger, amendment to its bylaws, or capital increase, and any acquisition of 10% or more of the equity interest in a bank.

Chilean banks may conduct only those activities allowed by the General Banking Act. Banks may lend and accept deposits and, subject to limitations, invest and perform financial services. The General Banking Act limits investments by banks to real estate investments for their own use, gold, foreign exchange and debt securities. Directly or through subsidiaries, banks may also engage in certain specified activities, such as securities brokerage services, mutual fund management, factoring, financial leasing and insurance brokerage services (except for pension funds insurance).

Foreign banks can perform banking business activities as subsidiaries (Chilean corporations) or as branches of foreign corporations. In either case they can provide the same services as Chilean banks and their minimum capital requirements and other prudential regulations are the same as for Chilean-owned banks. Branches of foreign bank must effectively enter their capital into Chile and this capital is the basis upon which their activities are regulated (i.e. their world capital is not taken into consideration). Foreign banks can also open offices of representation.

#### **c. The Chilean Insurance System**

Insurance companies are Chile's second largest institutional investors, based on total assets. Although the total asset volume of insurance companies has grown consistently, its rate of increase has not been as large as that of the pension funds during the same period. As of December 31, 2007, the combined value of the portfolios of insurance companies stood at US\$ 29.36 billion.

The Insurance Companies Act of 1979 introduced a framework for the regulation of insurance companies. The basic principles established include market determination of rates and commissions, equal access for foreign insurance companies, minimum capital and solvency criteria and rules for setting up reserve funds. As a general rule, life insurance companies can have liabilities equal to a maximum of 15 times their capital and reserves, while non-life insurance companies are permitted to take on liabilities up to a maximum of five times their capital and reserves.

Under the Insurance Companies Act, any person or entity offering insurance, whether directly or indirectly, must first obtain authorization from the "Superintendencia de Valores y Seguros" (SVS, Superintendence of Securities and Insurance Institutions). Neither individuals nor legal entities may enter into insurance contracts in Chile with an insurer not licensed to operate in Chile.

Of the 28 life-insurance companies operating in Chile in December 2007, 12 were foreign-owned and held 56.7% of the insurance premia. Foreign-owned non-life insurance companies also dominate that market with 69.2% of the premia. There are 21 non-life insurers in Chile, of which 12 are foreign-owned. Branches have been allowed only since 2007 and as of end-2008 no foreign insurers had chosen this form of establishment.

As in the case of banks, foreign insurance companies can operate in Chile either as subsidiaries or as branches. In the latter case, their capital effectively entered into Chile is used for regulatory purposes. There are no differences in capital requirements between these forms of establishment and those of Chilean insurance companies and they can all provide the same type of insurance.

#### **d. Mutual Funds**

Mutual funds were first created in Chile in the 1960s and their legal framework was comprehensively reformed in 1976. The Chilean mutual fund system faced serious difficulties during the financial crisis of the early 1980s.

Currently, there are three types of mutual funds: mutual funds investing in short-term fixed-income securities, mutual funds investing in medium- and long-term fixed-income securities, and mutual funds investing in variable-income securities, including corporate stocks and similar investments. As of December 2008, 20 managers offered shares in 1,480 different mutual funds in Chile, with over one million shareholders and US\$ 17.9 billion in assets invested in Chile and abroad.

The most recent industry reform was introduced in 2001 and reduced the regulations on mutual funds, allowing them greater flexibility in investment policy while imposing higher standards of transparency and disclosure. Additionally, the legal structure for a general fund management firm was introduced, allowing mutual funds, investment funds and housing funds to be organized under a single management structure, making use of economies of scale in the fund management. The reform bill also provided tax benefits for retirement saving in mutual funds and exempted

highly traded stocks from capital gains tax. Naturally, this has led to rapid growth in the industry: assets under management grew by approximately 24.1% between 2000 and 2008.

**e. Investment Funds**

As of December 2008, a total of 60 investment funds were based in Chile, and total assets amounted to US\$ 5.1 billion, distributed mainly among funds specializing in real estate investment, venture capital, securities and international investment.

Investment funds, like mutual funds, have also benefited from the new legal structure created under the first capital markets reform law: the general fund management firm. This development notwithstanding, the second capital market reform law approved by Congress in 2007 provides this industry with more incentives to grow by extending the capital gains tax exemption to the venture capital industry.

**f. Foreign Capital Investment Funds and Foreign Investment Venture Capital Funds**

The Foreign Capital Investment Funds (Fices) are pools of assets funded by investors outside Chilean territory for the purpose of investment in publicly offered securities in Chile, and are managed by a Chilean corporation on behalf of and at the risk of the contributors. Most of the relevant regulation can be found in the Law 18657 and as a complementary in Decree Law 600. The capital contributed to a Fice may not be removed from the country in the five years following its initial entry into Chile. However, profits may be repatriated at any time, subject to a single tax at a flat rate of 10%.

As of July 2008, the 10 existing funds have combined assets amounting to US\$ 291.27 million<sup>28</sup>.

Another category of fund is the Foreign Investment Venture Capital Funds (Ficer), which allows investors outside Chile to make venture capital investments within Chile. In 2000, several changes to the laws regulating Fices and Ficers took effect, aimed at deregulating these investment vehicles.

As of 2001, Fices and Ficers are exempt from capital gains tax on the sale of highly traded equity and bonds effected in authorized stock exchanges in Chile, provided that the holders of shares in the respective funds are non-residents of Chile.

**g. The Chilean Pension System**

Chile began a comprehensive reform of its social security system in the early 1980s with the adoption of the Private Pensions Funds Act, which eliminated many of the problems associated with the former social security system. Under the Private Pensions Funds Act a privately administered system of individual pension accounts replaced the existing pay-as-you-go social security system. Under the latter system contributions from current workers were used to fund the pension payments of current retirees, although a weak relationship existed between the amount contributed and the amount received by each worker upon retirement.

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<sup>28</sup> This information was obtained from:

[http://www.svs.cl/sitio/estadisticas/valores\\_fondosinversionextranjero\\_evolucion.php](http://www.svs.cl/sitio/estadisticas/valores_fondosinversionextranjero_evolucion.php). The values are displayed in the website in pesos, the value in dollars was obtained using the average observed price of the dollar for each month.

The first capital market reform of 2001 created a new multi-fund system that allowed affiliates to choose to invest their individual pension accounts in one of 5 funds, each of which caters to a specific risk-appetite. Moreover, a tax benefit (mentioned earlier in connection to mutual funds) was created to stimulate retirement saving by those not obliged to participate in the system by law (free-lance workers) and to increase saving beyond mandatory levels by those already in the system (known as APV). This has also generated an increased flow of funds into the system.

The current pension system is based on individualized accounts with fully funded, vestable and portable benefits. As of November 2008, the pension funds had accumulated approximately US\$ 70 billion in assets.

#### **h. Financial Services in Chile's FTAs**

Chile's financial authorities have a strong preference for unilateral and gradual liberalization and deregulation of financial services. Such liberalization has gradually eliminated the major restrictions to foreign participation in Chile's financial services markets. Foreign investors generally receive national treatment and there are no quantitative restrictions such as limited number of licenses, limits to foreign participation in ownership of financial institutions or market-share quotas for foreigners.

Until the trade agreements with the US and the EU Chile did not include financial services in bilateral agreements. Its only international commitments were those scheduled in the Uruguay Round negotiations. The negotiations with the US and the EU established the basic precedents for Chile's approach in negotiating financial services. These have been maintained in the agreements with Japan and Australia.

*Firstly, financial services, when they are included in an agreement, are negotiated in a separate and self-contained chapter. Particularly, they are treated separately from and are subject to different disciplines than the rest of services. This allows for a more straightforward approach that addresses the specificities of the financial services industry and the fact that it is a heavy regulated industry because of the economic consequences of financial crises, the risk of moral hazard behavior and the existence implicit or explicit guarantees.*

*Secondly, in terms of specific provisions, great care is taken not to affect the powers of the regulatory authorities to apply prudential measures, in spite of the commitments taken. The emphasis is on establishment commitments rather than on cross-border trade. Transparency of regulation is also an important discipline that Chile supports. Finally, a separate dispute settlement for financial services is included, particularly when it comes to the members of the panels: they have to be experts in financial services.*

*Thirdly, Chile insists that the benefits of the agreement can only be granted to financial services providers of the other Party. This excludes, for example, extending the benefits to branches of banks or other financial service providers of third parties established in the other Party to the agreement.*

All of the above are among others and as a matter of policy, *sine qua non* conditions for negotiating financial services bilaterally.

In addition to the above, the decision to include financial services in a bilateral agreement is made on the basis of the overall balance of the agreement, but also on the characteristics of the

counterpart's level of liberalization and deregulation, the quality of its financial supervision and the interest of the private sector.

## I.2 Trade in goods

Chilean global trade, exports plus imports, reached 109,667 million dollars in 2007. This figure not only shows a record high in trade flows, but also is a clear sign that the Chilean external sector was able to benefit from the dynamism of the international economy of the 2000's and the high prices of export commodities, before the financial crisis (since September 2008). The figure exhibited by external trade in 2007 represent an increase of more than 3 times the trade flows since 1999 (+266%) and to an annual average growth of 17.6%.

**TABLE 1.2**  
**CHILE'S FOREIGN TRADE, 1999 - 2007**  
*(million of dollars and %)*

	1999	2000	2001	2002	2003	2004	2005	2006	2007
<b>Exports (FOB)</b>	15,914.6	18,425.0	17,668.1	17,676.3	20,627.2	31,460.1	39,251.9	57,756.6	66,718.6
<b>Imports (CIF)</b>	14,022.0	16,842.5	16,233.9	15,753.2	17,663.6	22,454.2	29,940.1	34,912.0	42,949.0
<b>Trade Balance</b>	1,892.6	1,582.5	1,434.1	1,923.2	2,963.5	9,006.0	9,311.7	22,844.5	23,769.5
<b>Trade Exchange</b>	29,936.6	35,267.5	33,902.0	33,429.5	38,290.8	53,914.3	69,192.0	92,668.6	109,667.6
<i>Growth rate %</i>									
<b>Exports</b>	7.9	15.8	-4.1	0.0	16.7	52.5	24.8	47.1	15.5
<b>Imports</b>	-17.9	20.1	-3.6	-3.0	12.1	27.1	33.3	16.6	23.0
<b>Trade Exchange</b>	-6.0	17.8	-3.9	-1.4	14.5	40.8	28.3	33.9	18.3

Source: Studies and Informations Department, DIRECON (January 2009), based on data from Central Bank of Chile

Exports in the past seven years have also thrived, showing an average annual growth rate above 19%. This allowed that in 2006 Chilean exports to exceed the fifty billion dollar barrier, thereof reaching a record high of 66,719 million dollars. In the past decade exports growth has been the norm, except for 1998 where exports suffered a drop of 13%, due to a massive fall in commodity prices as a result of the Asian crisis. Although exports recovered quickly – in 2000 exports had well recovered all the terrain lost in the 1998 crisis – in 2001 there was another fall in exports, this time as a result of the slump in the regional economic environment, mainly caused by the Argentinean crisis, and a slowdown in global demand in the wake of the September 11 events. Since 2003 the latter was reversed stimulated by the strong growth of demand from Asian markets, especially China, India and Japan that raised international commodity prices. By the end of 2008, commodity prices have been substantially reduced as a result of the world financial crisis. Thus, it is expected a fall in Chilean exports in value, even if the quantum of exports is increased<sup>29</sup>.

Imports in 2007 reached 42,949 million dollars, which meant an annual increase of 23.3%, marking a record high and reducing the growth of the record year 2005 (33%), similar to the

<sup>29</sup> The Central Bank of Chile released an outlook for the 2009 macroeconomic situation in the Monetary Policy Report IPoM, January 14, 2009, . According to the Report, the Chilean exports quantum would increase by 2.1% in 2009

record figure of 1987, when imports reached 18,111 million dollars, after high growth rates of Chilean GDP.

Chile's trade balance reached in 2007 a surplus of 23,770 million dollars, thereof becoming the ninth consecutive year that the trade balance has been positive. The latter is not only due to the important raise in exports but also in a picture that shows an upsurge in imports during 2005 (that had begun in 2004), after the huge fall in imports in 1999 and its weak recovery in the earlier years of the present decade.

## I.2.A. Composition of Trade in Goods

### a. Exports

Table I.3 shows the structure of exports according to International Standard of Industrial Classification (ISIC). At a first glance it is obvious that most of Chile's exports are highly concentrated in two sectors: Industry and Mining, which represent 94.5% of all exports in 2007.

**TABLE I.3**  
**CHILE'S EXPORT STRUCTURE ACCORDING TO ISIC, 1999 - 2007**  
(%)

	1999	2000	2001	2002	2003	2004	2005	2006	2007
<b>I. Agriculture, Fruit, Livestock Silviculture and Extractive Fishery</b>	<b>10.8</b>	<b>8.8</b>	<b>8.8</b>	<b>9.7</b>	<b>9.5</b>	<b>7.1</b>	<b>6.1</b>	<b>4.5</b>	<b>4.6</b>
Agriculture, Fruit and Livestock	10.3	8.4	8.4	9.4	9.2	6.8	5.9	4.4	4.5
Silviculture	0.4	0.3	0.2	0.2	0.1	0.1	0.1	0.0	0.0
Extractive Fishery	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
<b>II. Mining</b>	<b>42.9</b>	<b>45.7</b>	<b>43.1</b>	<b>41.5</b>	<b>42.4</b>	<b>53.5</b>	<b>56.7</b>	<b>64.9</b>	<b>64.0</b>
Copper	36.4	39.8	37.5	35.5	36.2	45.7	44.9	57.0	56.0
Other	6.5	5.9	5.6	6.0	6.1	7.8	11.8	7.9	8.0
<b>III. Industry</b>	<b>45.6</b>	<b>44.9</b>	<b>47.4</b>	<b>47.6</b>	<b>47.2</b>	<b>38.8</b>	<b>36.6</b>	<b>29.9</b>	<b>30.5</b>
Foodstuff and beverages	20.1	17.4	18.9	19.7	19.5	15.5	14.5	11.4	11.1
Textiles and apparel	1.0	1.0	1.0	0.8	0.7	0.6	0.5	0.3	0.4
Forestry and Furniture	5.8	5.1	5.7	6.6	6.2	5.5	4.6	3.5	3.0
Cellulose, paper and by-products	6.6	7.8	6.7	6.3	6.0	5.2	4.2	3.3	4.4
Processed and unprocessed chemicals	6.1	8.1	9.5	8.9	10.2	8.0	8.6	7.2	5.8
Glass, clay and porcelain products	0.3	0.3	0.3	0.3	0.3	0.2	0.2	0.2	0.2
Basic steel and iron industry	1.5	1.5	1.5	1.5	1.6	1.6	1.6	2.2	3.7
Metal products, machinery and equipment	4.2	3.6	3.7	3.4	2.6	2.1	2.2	1.9	2.0
Non specified manufactures	0.1	0.1	0.1	0.1	0.1	0.1	0.0	0.0	0.0
<b>IV. Others</b>	<b>0.6</b>	<b>0.6</b>	<b>0.8</b>	<b>1.2</b>	<b>1.0</b>	<b>0.7</b>	<b>0.7</b>	<b>0.6</b>	<b>0.8</b>
<b>V. Total Exports</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

Source: Studies and Informations Department, DIRECON (January 2009), based on data from Central Bank of Chile

### i. Agriculture, Forestry and Extractive Fishery

In 2007, 4.6% of Chilean exports came from this sector, scoring a currency inflow of 3,076 million dollars. Although this sector may appear to be relatively small compared to the industrial and mining sectors, it is of no lesser importance to Chile's economic activity. The average annual rate of growth over the last 7 years has been 7.5%, and has accelerated in the last years stimulated by an increase of Asian and European markets.

**TABLE 1.4**  
**AGRICULTURE, FRUIT AND LIVESTOCK EXPORTS, 1999 - 2007**

*(million of dollars FOB and %)*

	1999	2000	2001	2002	2003	2004	2005	2006	2007
<b>Agriculture, Fruit, Livestock Silviculture and Extractive Fishery</b>	<b>1,721.4</b>	<b>1,619.8</b>	<b>1,551.4</b>	<b>1,707.7</b>	<b>1,955.2</b>	<b>2,223.3</b>	<b>2,378.5</b>	<b>2,622.8</b>	<b>3,075.8</b>
Agriculture, Fruit and Livestock	1,633.5	1,541.6	1,485.2	1,655.9	1,901.2	2,153.4	2,311.5	2,566.9	3,014.8
Silviculture	57.7	51.7	39.9	28.0	26.8	39.0	30.5	21.9	19.0
Extractive Fishery	30.2	26.4	26.3	23.8	27.2	31.0	36.4	34.0	42.0
<i>Structure</i>									
<b>Agriculture, Fruit, Livestock Silviculture and Extractive Fishery</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
Agriculture, Fruit and Livestock	94.9	95.2	95.7	97.0	97.2	96.9	97.2	97.9	98.0
Silviculture	3.4	3.2	2.6	1.6	1.4	1.8	1.3	0.8	0.6
Extractive Fishery	1.8	1.6	1.7	1.4	1.4	1.4	1.5	1.3	1.4
<i>Growth</i>									
<b>Agriculture, Fruit, Livestock Silviculture and Extractive Fishery</b>	<b>2.3</b>	<b>-5.9</b>	<b>-4.2</b>	<b>10.1</b>	<b>14.5</b>	<b>13.7</b>	<b>7.0</b>	<b>10.3</b>	<b>17.3</b>
Agriculture, Fruit and Livestock	0.8	-5.6	-3.7	11.5	14.8	13.3	7.3	11.0	17.4
Silviculture	82.3	-10.4	-22.9	-29.7	-4.3	45.2	-21.7	-28.1	-13.3
Extractive Fishery	-0.5	-12.6	-0.6	-9.4	14.1	14.0	17.7	-6.6	23.5

Source: Studies and Informations Department, DIRECON (January 2009), based on data from Central Bank of Chile

Exports show a very high concentration in agricultural goods and it has grown in the last three years, representing 98% of all exports, given the reduction in exports in the other sub-sectors. This is not surprising, specially considering that around 88% of this sub sector is fruit exports.

## ii. Mining

In 2007, mining exports amounted to 42,730 million dollars representing 64% of all exports. It was also a sector that experienced a rate of growth in 2007 of 14,0%, favored in the last 3 years by a greater international demand for these products and higher copper prices.

**TABLE 1.5**  
**MINING EXPORTS, 1999 - 2007**

*(million of dollars FOB and %)*

	1999	2000	2001	2002	2003	2004	2005	2006	2007
<b>Mining</b>	<b>6,831.5</b>	<b>8,412.9</b>	<b>7,610.8</b>	<b>7,342.4</b>	<b>8,742.2</b>	<b>16,819.1</b>	<b>22,243.4</b>	<b>37,479.2</b>	<b>42,729.7</b>
Copper	5,793.0	7,332.2	6,621.4	6,281.7	7,474.7	14,374.6	17,621.2	32,903.9	37,377.3
Other	1,038.5	1,080.6	989.4	1,060.8	1,267.5	2,444.6	4,622.1	4,575.3	5,352.3
<i>Structure</i>									
<b>Mining</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
Copper	84.8	87.2	87.0	85.6	85.5	85.5	79.2	87.8	87.5
Other	15.2	12.8	13.0	14.4	14.5	14.5	20.8	12.2	12.5
<i>Growth</i>									
<b>Mining</b>	<b>12.1</b>	<b>23.1</b>	<b>-9.5</b>	<b>-3.5</b>	<b>19.1</b>	<b>92.4</b>	<b>32.3</b>	<b>68.5</b>	<b>14.0</b>
Copper	16.7	26.6	-9.7	-5.1	19.0	92.3	22.6	86.7	13.6
Other	-8.1	4.1	-8.4	7.2	19.5	92.9	89.1	-1.0	17.0

Source: Studies and Informations Department, DIRECON (January 2009), based on data from Central Bank of Chile

This sector has been one of the most dynamic Chilean export sectors, as well as the most volatile. This volatility is explained by the composition of this sector, which is made mostly of commodities, and thus very sensitive to international price fluctuations.

Copper based exports account for 88% of all mining exports - although 5.4 billion dollars worth of exports coming from the rest of the sector is all but minor. Although Chile has been a traditional copper exporter, given the abundant endowment of this mineral and its relatively low



extraction costs, its importance had grown smaller with time, especially considering that in 1960 copper represented almost 70% of all exports and in 2007 it represented 56% of total exports. Copper exports have grown by 540% in the last seven years, much higher than industrial exports (+180% in the same period).

### iii. Industry

In 2007 industrial exports reached 20,349 million dollars accounting for 30% of Chilean exports, as well as showing a second year of robust growth in sales (17.8%), figure that is above the average growth rate for the 1999 – 2006 period (13.2%).

The industrial sector has not only been a sector that has shown a rapid growth in the past 7 years (180%), but has experienced more stability, being the only one that has exports growing constantly for the past seven years. This can be explained partly because of the diversity that exists within the sector, where not one single sub-sector concentrates more than 40% of all exports, contrary to what happens in the agricultural and mining sector.

**TABLE 1.6**  
**INDUSTRIAL EXPORTS, 1999 - 2007**  
(million of dollars FOB and %)

	1999	2000	2001	2002	2003	2004	2005	2006	2007
<b>Industry</b>	<b>7,264.6</b>	<b>8,273.1</b>	<b>8,372.7</b>	<b>8,418.4</b>	<b>9,731.9</b>	<b>12,192.9</b>	<b>14,366.6</b>	<b>17,279.9</b>	<b>20,348.9</b>
Foodstuff and beverages	3,197.9	3,214.8	3,340.5	3,477.0	4,020.8	4,888.1	5,701.3	6,568.6	7,378.6
Textiles and apparel	163.6	180.7	175.5	142.5	149.9	186.4	192.7	200.6	266.6
Forestry and Furniture	917.8	935.0	1,013.0	1,164.6	1,272.7	1,734.5	1,811.0	2,005.4	2,034.1
Cellulose, paper and by-products	1,044.6	1,441.0	1,183.1	1,116.1	1,234.7	1,628.9	1,658.3	1,898.2	2,927.1
Processed and unprocessed chemicals	965.1	1,494.7	1,672.5	1,575.3	2,108.6	2,507.3	3,387.2	4,155.3	3,857.7
Glass, clay and porcelain products	54.5	49.4	52.4	50.7	63.6	68.1	77.6	89.3	108.9
Basic steel and iron industry	235.0	282.0	258.0	271.9	329.2	512.3	642.9	1,262.8	2,439.0
Metal products, machinery and equipme	662.9	660.1	653.0	593.9	535.4	650.4	877.5	1,078.4	1,312.9
Non specified manufactures	23.1	15.5	24.7	26.3	16.9	17.0	18.1	21.3	24.0
<i>Structure</i>									
<b>Industry</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
Foodstuff and beverages	44.0	38.9	39.9	41.3	41.3	40.1	39.7	38.0	36.3
Textiles and apparel	2.3	2.2	2.1	1.7	1.5	1.5	1.3	1.2	1.3
Forestry and Furniture	12.6	11.3	12.1	13.8	13.1	14.2	12.6	11.6	10.0
Cellulose, paper and by-products	14.4	17.4	14.1	13.3	12.7	13.4	11.5	11.0	14.4
Processed and unprocessed chemicals	13.3	18.1	20.0	18.7	21.7	20.6	23.6	24.0	19.0
Glass, clay and porcelain products	0.8	0.6	0.6	0.6	0.7	0.6	0.5	0.5	0.5
Basic steel and iron industry	3.2	3.4	3.1	3.2	3.4	4.2	4.5	7.3	12.0
Metal products, machinery and equipme	9.1	8.0	7.8	7.1	5.5	5.3	6.1	6.2	6.5
Non specified manufactures	0.3	0.2	0.3	0.3	0.2	0.1	0.1	0.1	0.1
<i>Growth</i>									
<b>Industry</b>	<b>5.3</b>	<b>13.9</b>	<b>1.2</b>	<b>0.5</b>	<b>15.6</b>	<b>25.3</b>	<b>17.8</b>	<b>20.3</b>	<b>17.8</b>
Foodstuff and beverages	2.8	0.5	3.9	4.1	15.6	21.6	16.6	15.2	12.3
Textiles and apparel	-11.8	10.5	-2.9	-18.8	5.2	24.3	3.4	4.1	32.9
Forestry and Furniture	25.5	1.9	8.3	15.0	9.3	36.3	4.4	10.7	1.4
Cellulose, paper and by-products	8.6	37.9	-17.9	-5.7	10.6	31.9	1.8	14.5	54.2
Processed and unprocessed chemicals	1.7	54.9	11.9	-5.8	33.9	18.9	35.1	22.7	-7.2
Glass, clay and porcelain products	11.1	-9.4	6.0	-3.2	25.5	7.0	14.0	15.0	22.0
Basic steel and iron industry	4.5	20.0	-8.5	5.4	21.1	55.6	25.5	96.4	93.1
Metal products, machinery and equipme	0.7	-0.4	-1.1	-9.1	-9.8	21.5	34.9	22.9	21.7
Non specified manufactures	-15.8	-32.8	59.2	6.4	-35.8	0.5	6.6	17.6	13.0

Source: Studies and Informations Department, DIRECON (January 2009), based on data from Central Bank of Chile

In terms of sub-sectors, foodstuffs represent 36.3% of all industrial exports, followed by processed chemicals (19.0%), cellulose and paper (14.4%) and basic steel and iron industry (12.0%). This structure differs to the 1999 structure where cellulose and paper came in second place, processed chemicals in third place and forestry in fourth place. The change in order is due

to differences in each sub-sectors growth rate, although none have diminished their exports some have grown faster than others, as is the case of the basic steel and iron industry sub-sector that grew in 938% compared to the 122% growth rate shown by the cellulose sub-sector in the same period.

Although all of the industrial export sub-sectors have expanded their sales, some sub-sectors have seen their exports reduced for some periods. The textile industry has been identified as one of the sectors that have weakened its foreign sales (growth of 63% in the last seven years). The main reason for the reduction in the growth of sales is the loss of foreign market share due to a greater competition, mainly from China and India.

#### **iv. Products**

In 2007 Chile exported 5,258 different types of goods from 7,915 different companies. This contrasts favorably with the 2000 scenario where only 3,749 products were exported through 5,666 companies.

Table 1.7 shows the top twenty five products that Chile exported to the world in 2007. These twenty five products, which represent only 0.2% of the total number of products that are actually exported, account for 75.2% of the total value of exports. This reveals that although exports are very diverse in number, there is still a high concentration in a small number of products. Thus, the Chilean export sector is still very vulnerable towards external shocks such as sharp changes in international commodity prices.

**TABLE 1.7**  
**CHILE'S PRINCIPAL EXPORT PRODUCTS**  
**2007**

*(Millions of dollars FOB and %)*

SACH	Description	FOB	%
74031100	Refined copper cathodes and sections of cathodes	19,785.3	29.7
26030000	Copper ores and its concentrates	13,764.3	20.6
74020010	Unrefined copper; copper anodes for electrolytic refi	2,884.4	4.3
26131010	Molybdenum ores and concentrates, roasted	1,707.7	2.6
26139010	Molybdenum ores and concentrates, unraostes	1,401.7	2.1
47032100	Chemical woodpulp, soda or sulfate, other than dissc	1,223.8	1.8
47032910	Chemical wood pulp,soda/sulphate,non-coniferous,s	932.1	1.4
160000	Docking and port services	872.3	1.3
74031900	Refined copper, unwrought articles nesoi	851.1	1.3
72027000	Ferromolybdenum	703.5	1.1
71081200	Gold, nonmonetary, bullion and dore	569.1	0.9
250000	Services considered as exports	563.4	0.8
44071012	Lumber, coniferous (softwood) 6 mm and thicker	532.5	0.8
3041942	Fresh or chilled fillets and other fish meat whether o	514.1	0.8
74040019	Waste and scrap, copper or copper alloy	471.2	0.7
29051100	Methanol (Methyl alcohol), other than imported only	470.1	0.7
74081110	Wire of refined copper, with a maximum cross-secti	463.8	0.7
71069120	Silver in unwrought forms	401.0	0.6
22042121	Grape wines nes,incl fort&grape must,unfermntd by	327.5	0.5
28012000	Iodine	323.9	0.5
27101129	Other gasoline's, except for aviation use	305.6	0.5
3042942	Frozen fish fillets (excl. swordfish and toothfish)	292.8	0.4
8061010	Fresh Grapes, Thomson seedless variety	280.2	0.4
3031920	Atlantic salmon and Danube salmon, frozen, exclud	268.7	0.4
2032930	Swine cuts, frozen nes	247.1	0.4
	<b>Total Principal Products</b>	<b>50,157.1</b>	<b>75.2</b>
	Others	16,561.4	24.8
	<b>Total Exports</b>	<b>66,718.6</b>	<b>100.0</b>

Source: Studies and Informations Department, DIRECON (January 2009), based on data from Central Bank of Chile

## b. Imports

Imports, according to types of goods, are basically concentrated in intermediate goods, in other words goods that serve as inputs in the production of final goods, be it for internal consumption or export markets. Although traditionally intermediate goods have accounted for more than half of all imports, in 2007 these types of imports reached a record high in value, and also in their concentration. This is not surprising if we consider that 40% of all intermediate imports are fossil fuels or fossil fuel based products, which in the past five years have experienced international

prices above average.

**TABLE 1.8**  
**CHILE'S IMPORTS ACCORDING TO TYPE OF GOOD, 1999 - 2007**  
(millions of dollars CIF)

	1999	2000	2001	2002	2003	2004	2005	2006	2007
<b>I. Consumer Goods</b>	2,630.8	3,118.0	3,016.8	2,946.8	3,230.7	3,956.4	4,810.0	5,861.2	9,301.3
<b>II. Intermediate Goods</b>	<b>8,254.9</b>	<b>10,186.1</b>	<b>9,732.1</b>	<b>9,421.0</b>	<b>10,849.1</b>	<b>14,048.1</b>	<b>18,158.3</b>	<b>21,776.0</b>	<b>26,456.0</b>
Petroleum	1,099.9	1,993.7	1,726.8	1,615.1	2,130.5	2,874.6	3,779.1	4,873.2	5,018.3
Other fuels and Lubricants	793.9	1,045.1	993.9	1,003.9	1,191.9	1,784.8	2,753.5	3,568.1	5,673.8
<b>III. Capital Goods</b>	<b>3,136.4</b>	<b>3,538.5</b>	<b>3,484.9</b>	<b>3,385.4</b>	<b>3,583.8</b>	<b>4,449.7</b>	<b>6,971.9</b>	<b>7,274.9</b>	<b>7,191.8</b>
<b>IV. Total Imports</b>	<b>14,022.0</b>	<b>16,842.5</b>	<b>16,233.9</b>	<b>15,753.2</b>	<b>17,663.6</b>	<b>22,454.2</b>	<b>29,940.1</b>	<b>34,912.0</b>	<b>42,949.0</b>

Source: Studies and Informations Department, DIRECON (January 2009), based on data from Central Bank of Chile

Consumer goods imports come in at a far second, representing a fifth of all imports (21.7%) in 2007, higher than the 16.8% it represented in 2006. In 2007 there was an increase of 59% in consumer goods imports, higher than the average increase in imports of 23%. Regarding capital goods purchases, this category was also impacted by the drop in internal demand in 1999 but has recovered satisfactorily, reaching in 2006 imports levels a record 7.3 billion dollars, higher than the earlier peaks of 7.0 billion dollars in 2005. The figure of 2007 is similar to the level reached in 2006.

**TABLE 1.9**  
**CHILE'S IMPORT STRUCTURE ACCORDING TO TYPE OF GOOD, 1999 - 2007**  
(%)

	1999	2000	2001	2002	2003	2004	2005	2006	2007
<b>I. Consumer Goods</b>	18.8	18.5	18.6	18.7	18.3	17.6	16.1	16.8	21.7
<b>II. Intermediate Goods</b>	<b>58.9</b>	<b>60.5</b>	<b>59.9</b>	<b>59.8</b>	<b>61.4</b>	<b>62.6</b>	<b>60.6</b>	<b>62.4</b>	<b>61.6</b>
Petroleum	7.8	11.8	10.6	10.3	12.1	12.8	12.6	14.0	11.7
Other fuels and Lubricants	5.7	6.2	6.1	6.4	6.7	7.9	9.2	10.2	13.2
<b>III. Capital Goods</b>	<b>22.4</b>	<b>21.0</b>	<b>21.5</b>	<b>21.5</b>	<b>20.3</b>	<b>19.8</b>	<b>23.3</b>	<b>20.8</b>	<b>16.7</b>
<b>IV. Total Imports</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

Source: Studies and Informations Department, DIRECON (January 2009), based on data from Central Bank of Chile

Contrary to exports, imports show a lesser degree of concentration in terms of products. Table 1.10 shows the top 25 products imported by Chile in 2007. These 25 products, which represent 0.2% of the total number of imported products, account for 39% of total import value.

**TABLE 1.10**  
**CHILE'S PRINCIPAL IMPORT PRODUCTS**

2007

*(Millions of dollars FOB and %)*

<b>SACH</b>	<b>Description</b>	<b>FOB</b>	<b>%</b>
27101940	Gas oils and diesel oils	3,489.7	8.1
27090020	Petroleum oils and oils from bituminous minerals, c	3,205.7	7.5
27090010	Petroleum oils and oils from bituminous minerals, c	1,812.6	4.2
87032391	Mtr cars & o/mtr. vehicles for transport of persons, v	870.3	2.0
26139010	Molybdenum ores and concentrates, unraostes	858.9	2.0
85171200	Telephones for cellular networks mobile telephones	694.5	1.6
27101123	Gasoline for terrestrial vehicles, without Pb, of 97 oc	495.2	1.2
27112100	Natural Gas	493.5	1.1
27111200	Liquiefied propane	423.7	1.0
87042121	Mtr. vehicles for transport of goods, w/compress.-ig	408.9	1.0
87032291	Automobiles for tourism with cylinder >1000cc =<1	374.8	0.9
84713000	Digital computers, portable, weighing <= 10 kg, con	355.3	0.8
10059000	Other Maize (excl. seed)	353.2	0.8
2013000	Bovine cuts boneless, fresh or chilled	345.2	0.8
87041090	Others Dumpers designed for off-highway use	329.3	0.8
30049010	Others medicines (except the ones classified as 30.0	302.9	0.7
27011220	Bituminous coal "ECSC" for thermal use, whether o	289.0	0.7
10019000	Others Wheat and meslin (excl. durum wheat)	260.0	0.6
87021091	Motor vehicles, w/diesel engine, for transport of 10	247.7	0.6
27101930	Light petroleum distillates nes	218.7	0.5
39012000	Polyethylene with a specific gravity of >= 0,94, in p	215.7	0.5
87012020	Road tractors for semi-trailers, with diesel engine po	183.8	0.4
87032491	Automobiles with reciprocating piston engine displa	182.0	0.4
26030000	Copper ors and its concentrates	174.7	0.4
87043121	Gas powered trucks with a GVW not exceeding five	172.5	0.4
	<b>Total Principal Products</b>	<b>16,757.9</b>	<b>39.0</b>
	Others	26,191.1	61.0
	<b>Total Imports</b>	<b>42,949.0</b>	<b>100.0</b>

Source: Studies and Informations Department, DIRECON (January 2009), based on data from Central Bank of Chile

## **I.2.B. Origin and Destination of Trade in Goods**

### **a. Exports**

In 2007, Chile exported products to 189 different markets. Although this might seem as very diverse spectrum of export markets, in 2007 only 15 of these markets concentrate 79.9% of total

exports. In the same year, China, the United States and Japan were the main export markets for Chilean goods, accounting for 39% of all exports.

**TABLE 1.11**  
**CHILEAN EXPORTS ACCORDING TO MARKET DESTINATION, 1999 - 2007**  
*(millions of dollars FOB and %)*

	1999	2000	2001	2002	2003	2004	2005	2006	2007
P.R. China	359.1	907.2	1,021.8	1,240.1	1,865.4	3,227.5	4,445.7	5,104.4	10,120.9
United States	3,087.5	3,183.7	3,351.7	3,664.7	3,705.7	4,834.5	6,531.6	9,290.5	8,744.7
Japan	2,276.3	2,548.5	2,144.1	1,946.7	2,287.3	3,732.9	4,592.1	6,374.1	7,234.6
Holland	511.1	452.7	545.1	543.2	811.7	1,712.5	2,341.4	3,953.8	3,972.3
South Korea	683.7	806.3	563.2	710.5	1,023.4	1,821.3	2,230.9	3,546.2	3,837.8
Italy	636.7	825.5	812.5	862.8	924.2	1,362.7	1,679.6	2,927.8	3,484.4
Brazil	687.6	961.6	852.6	686.2	839.6	1,422.8	1,736.6	2,831.1	3,376.2
France	495.4	633.1	610.9	640.2	743.4	1,292.9	1,402.0	2,478.7	2,397.6
Mexico	622.8	818.1	830.6	912.4	926.9	1,314.3	1,584.4	2,293.0	2,361.5
China Taipei	509.6	610.7	356.8	531.3	594.2	971.9	1,303.7	1,596.4	1,774.2
Germany	557.0	457.8	528.2	428.7	601.9	912.3	937.8	1,828.1	1,669.1
Spain	328.1	386.2	345.2	398.2	491.6	747.8	986.6	1,416.3	1,374.5
Canada	173.5	243.7	265.6	263.7	415.0	780.3	1,071.1	1,291.7	1,203.2
Peru	354.1	439.2	479.1	465.2	426.5	524.0	726.8	931.9	1,035.3
England	1,085.2	1,075.9	1,232.0	808.7	714.9	898.8	658.8	697.9	722.6
<b>I. Sub-Total</b>	<b>12,367.5</b>	<b>14,350.4</b>	<b>13,939.2</b>	<b>14,102.8</b>	<b>16,371.8</b>	<b>25,556.6</b>	<b>32,229.1</b>	<b>46,561.8</b>	<b>53,308.7</b>
Others	3,547.1	4,074.6	3,728.8	3,573.5	4,255.4	5,903.5	7,022.8	11,194.8	13,409.9
<b>II. Total Exports</b>	<b>15,914.6</b>	<b>18,425.0</b>	<b>17,668.1</b>	<b>17,676.3</b>	<b>20,627.2</b>	<b>31,460.1</b>	<b>39,251.9</b>	<b>57,756.6</b>	<b>66,718.6</b>
<b>I. Over II.</b>	<b>77.7%</b>	<b>77.9%</b>	<b>78.9%</b>	<b>79.8%</b>	<b>79.4%</b>	<b>81.2%</b>	<b>82.1%</b>	<b>80.6%</b>	<b>79.9%</b>

Source: Studies and Informations Department, DIRECON (January 2009), based on data from Central Bank of Chile

China was during the 90's, on average, in the bottom half of the top ten destinations; furthermore, in 1999 China was the twelfth largest buyer of Chilean products, behind France. The huge expansion of exports to the Chinese market has made China the third destination market of Chilean exports since 2002, and the first one in 2007.

In terms of geography, Asia has traditionally occupied the second place among export markets; shipments in 2001, however, declined due to falls in demand and commodity prices, seeing a recovery in 2002 and a defiant rebound since 2003, fueled by higher demands from China, Japan, South Korea and India, and in 2007 it replaced the Americas as the first destination of Chilean exports.

The Americas was the most important destination for Chilean goods, and a very stable one, showing a constant annual growth rate except for 2002, when the negative regional impact of the regional economic turbulence in Argentina and Brazil, that the growth of exports to North America failed to compensate.

**TABLE 1.12**  
**CHILEAN EXPORTS ACCORDING TO GEOGRAPHIC ZONE, 1999 - 2007**

*(millions of dollars FOB)*

	1999	2000	2001	2002	2003	2004	2005	2006	2007
Africa	51.2	77.4	81.2	71.6	101.2	101.1	125.6	165.7	218.2
America	6,585.7	7,324.4	7,519.5	7,383.6	7,942.2	11,023.0	14,161.5	20,032.5	20,807.1
Asia	4,473.0	5,426.3	4,509.5	5,016.5	6,447.7	10,972.7	13,883.1	19,475.7	26,651.1
Europe	4,349.8	4,887.9	4,963.1	4,577.0	5,360.3	8,504.0	9,964.7	16,657.5	17,298.0
Oceania	56.9	64.2	57.3	75.9	128.4	122.5	129.6	164.3	321.7
Others	398.1	644.8	537.4	551.7	647.4	736.7	987.4	1,260.9	1,422.5
<b>Total</b>	<b>15,914.6</b>	<b>18,425.0</b>	<b>17,668.1</b>	<b>17,676.3</b>	<b>20,627.2</b>	<b>31,460.1</b>	<b>39,251.9</b>	<b>57,756.6</b>	<b>66,718.6</b>

Source: Studies and Informations Department, DIRECON (January 2009), based on data from Central Bank of Chile

Exports destined for Europe, although with moderate highs and lows, like America, show a greater degree of stability in their performance. Exports are directed mainly to Western Europe; mostly concentrated in the Netherlands, Italy, France, Spain, Germany and Great Britain.

Table 1.13 shows Chilean exports to all destinations with which Chile has negotiated some form of trade agreement. This is of great importance considering that in 2007, nearly 90% of Chilean exports receive some form of tariff preferences.

In terms of the results that Chile's trade agreements have had, it can be said that the performances of the Mexico and Canada FTAs, without a doubt, have been outstanding, thus being perceived by the Chilean exporters as two of the most successful agreements that Chile has signed. Also exports to the European Union have shown important growth within the period that the agreement has been in force (since 2003), an increase of 210%, similar to the increase of 221% (including the European Union) of the countries with which Chile has agreements and for the same period (2006 compared to 2003).

In the case of Mercosur and the Andean Community – the agreements that have been in force for a longer period- although these have not shown a clear positive trend in past years, due to the economic turbulence that has affected the whole region, there are signs of recovery since 2003, reaching to an increase of 206% in the period 2003-2007. The importance of these agreements cannot be diminished, especially if it is taken into account that around 60% of exports to Latin America are manufactured exports.

**TABLE 1.13**  
**CHILEAN EXPORTS ACCORDING TO TRADE AGREEMENTS, 1999 - 2007**

*(millions of dollars FOB and %)*

	1999	2000	2001	2002	2003	2004	2005	2006	2007
China	359.1	907.2	1,021.8	1,240.1	1,865.4	3,227.5	4,445.7	5,104.4	10,120.9
Canada	173.5	243.7	265.6	263.7	415.0	780.3	1,071.1	1,291.7	1,203.2
Central America	94.8	107.0	149.0	181.2	272.9	385.2	391.3	511.4	582.7
Japan	2,276.3	2,548.5	2,144.1	1,946.7	2,287.3	3,732.9	4,592.1	6,374.1	7,234.6
India	99.3	124.9	115.0	184.5	225.4	413.1	495.5	1,604.9	2,248.9
Andean Community	1,059.8	1,227.9	1,381.6	1,339.5	1,293.2	1,569.2	1,986.6	2,134.7	2,418.4
South Korea	683.7	806.3	563.2	710.5	1,023.4	1,821.3	2,230.9	3,546.2	3,837.8
United Satates	3,087.5	3,183.7	3,351.7	3,664.7	3,705.7	4,834.5	6,531.6	9,290.5	8,744.7
Mercosur	1,520.2	1,709.0	1,517.4	984.3	1,227.3	1,971.7	2,475.9	4,243.2	5,283.4
Mexico	622.8	818.1	830.6	912.4	926.9	1,314.3	1,584.4	2,293.0	2,361.5
European Union 15	4,121.6	4,540.9	4,594.1	4,286.0	4,990.4	7,838.1	9,177.6	15,202.9	15,636.0
<b>I. Sub-Total</b>	<b>14,098.6</b>	<b>16,217.2</b>	<b>15,934.1</b>	<b>15,713.8</b>	<b>18,232.8</b>	<b>27,888.1</b>	<b>34,982.7</b>	<b>51,596.9</b>	<b>59,671.9</b>
Others	1,816.0	2,207.8	1,733.9	1,962.5	2,394.4	3,572.1	4,269.2	6,159.7	7,046.7
<b>II. Total Exports</b>	<b>15,914.6</b>	<b>18,425.0</b>	<b>17,668.1</b>	<b>17,676.3</b>	<b>20,627.2</b>	<b>31,460.1</b>	<b>39,251.9</b>	<b>57,756.6</b>	<b>66,718.6</b>
<b>I. Over II.</b>	<b>88.6%</b>	<b>88.0%</b>	<b>90.2%</b>	<b>88.9%</b>	<b>88.4%</b>	<b>88.6%</b>	<b>89.1%</b>	<b>89.3%</b>	<b>89.4%</b>

Source: Studies and Informations Department, DIRECON (January 2009), based on data from Central Bank of Chile

## b. Imports

Traditionally and until the nineties, the United States was by far the main supplier of imports to the Chilean economy. This started to change in 2000 when Argentinean goods started to catch up with US imports, overtaking them in 2001 and in the following years has extended the gap between them, but in 2006 the United States recovered the top position as Chile largest supplier, and China became the 2<sup>nd</sup>. Supplier of imports.

**TABLE 1.14**  
**CHILEAN IMPORTS ACCORDING TO MARKET ORIGIN, 1999 - 2007**

*(millions of dollars CIF and %)*

	1999	2000	2001	2002	2003	2004	2005	2006	2007
United States	3,022.5	3,338.4	2,888.6	2,568.6	2,576.5	3,402.2	4,722.6	5,592.1	7,290.8
P.R. China	660.1	951.4	1,013.7	1,102.4	1,290.2	1,847.6	2,542.7	3,491.4	4,886.0
Brazil	968.3	1,335.2	1,495.3	1,619.4	2,028.4	2,781.7	3,780.7	4,243.5	4,501.0
Argentina	2,021.5	2,876.4	3,063.9	3,064.3	3,776.8	4,152.1	4,811.3	4,508.9	4,346.9
South Korea	405.7	535.2	540.0	438.8	540.8	699.7	1,077.3	1,641.9	3,114.5
Peru	169.2	265.8	285.6	255.9	421.1	695.2	1,108.5	1,427.2	1,686.5
Japan	635.4	710.1	560.6	546.3	636.8	803.2	1,021.1	1,150.0	1,613.9
Germany	626.6	622.1	692.2	738.8	716.9	832.3	1,198.2	1,259.1	1,573.8
Mexico	578.8	615.6	532.8	475.4	480.6	620.6	764.2	1,003.2	1,349.5
Angola	-	95.1	-	-	64.5	430.8	1,197.1	1,317.2	962.5
Spain	406.8	428.0	466.1	417.3	452.9	516.1	622.5	710.0	846.5
France	417.4	447.8	575.3	623.3	595.8	510.3	682.4	706.5	792.8
Italy	514.8	419.0	436.5	356.1	387.6	445.6	524.8	630.3	737.2
Sweden	270.7	284.4	182.3	152.4	202.1	264.7	451.4	353.8	391.9
Finland	71.1	88.2	84.3	106.8	252.7	197.0	514.4	263.2	250.5
<b>I. Sub-Total</b>	<b>10,768.6</b>	<b>13,012.7</b>	<b>12,817.1</b>	<b>12,465.9</b>	<b>14,423.7</b>	<b>18,199.2</b>	<b>25,019.3</b>	<b>28,298.2</b>	<b>34,344.4</b>
Others	3,253.4	3,829.8	3,416.8	3,287.3	3,240.0	4,255.0	4,920.9	6,613.9	8,604.6
<b>II. Total Imports</b>	<b>14,022.0</b>	<b>16,842.5</b>	<b>16,233.9</b>	<b>15,753.2</b>	<b>17,663.6</b>	<b>22,454.2</b>	<b>29,940.1</b>	<b>34,912.0</b>	<b>42,949.0</b>
<b>I. Over II.</b>	<b>76.8%</b>	<b>77.3%</b>	<b>79.0%</b>	<b>79.1%</b>	<b>81.7%</b>	<b>81.1%</b>	<b>83.6%</b>	<b>81.1%</b>	<b>80.0%</b>

Source: Studies and Informations Department, DIRECON (January 2009), based on data from Central Bank of Chile



**TABLE 1.15**  
**CHILEAN IMPORTS ACCORDING TO KEY SUPPLIERS, 1999 - 2007**

*(millions of dollars CIF and %)*

	1999	2000	2001	2002	2003	2004	2005	2006	2007
East Asia	2,330.0	2,886.3	2,786.2	2,707.6	3,141.8	4,213.4	5,691.9	7,647.6	7,647.6
Latin America	3,921.1	5,350.3	5,524.4	5,577.1	6,819.9	8,485.8	10,736.1	11,788.3	12,855.9
North America	4,009.0	4,466.0	3,848.6	3,365.4	3,390.2	4,371.3	5,893.3	7,078.2	6,711.6
European Union 15	2,848.5	2,880.0	3,064.1	3,023.4	3,260.5	3,530.0	4,948.7	5,105.2	5,876.0
<b>I. Sub-Total</b>	<b>13,108.6</b>	<b>15,582.6</b>	<b>15,223.2</b>	<b>14,673.5</b>	<b>16,612.4</b>	<b>20,600.5</b>	<b>27,269.9</b>	<b>31,619.3</b>	<b>33,091.2</b>
Others	913.4	1,259.9	1,010.7	1,079.6	1,051.3	1,853.7	2,670.2	3,292.8	9,857.8
<b>II. Total Imports</b>	<b>14,022.0</b>	<b>16,842.5</b>	<b>16,233.9</b>	<b>15,753.2</b>	<b>17,663.6</b>	<b>22,454.2</b>	<b>29,940.1</b>	<b>34,912.0</b>	<b>42,949.0</b>
<b>I. Over II.</b>	<b>93.5%</b>	<b>92.5%</b>	<b>93.8%</b>	<b>93.1%</b>	<b>94.0%</b>	<b>91.7%</b>	<b>91.1%</b>	<b>90.6%</b>	<b>77.0%</b>

Source: Studies and Informations Department, DIRECON (January 2009), based on data from Central Bank of Chile

In a lesser degree than export destinations, imports show some concentration especially if we consider that the top four suppliers (Argentina, United States, Brazil and China) account for half of all imports (49%) and the top fifteen account for 80%.

**TABLE 1.16**  
**CHILEAN IMPORTS ACCORDING TO TRADE AGREEMENTS, 1999 - 2007**

*(millions of dollars CIF and %)*

	1999	2000	2001	2002	2003	2004	2005	2006	2007
China	660.1	951.4	1,013.7	1,102.4	1,290.2	1,847.6	2,542.7	3,491.4	4,346.9
Canada	407.7	511.9	427.3	321.5	333.1	348.5	406.4	482.9	979.1
Central America	33.4	19.3	10.6	14.2	20.7	25.7	26.5	17.8	70.8
Japan	635.4	710.1	560.6	546.3	636.8	803.2	1,021.1	1,150.0	1,613.9
India	55.1	70.1	75.2	82.1	70.5	100.8	134.8	164.5	207.8
Andean Community	795.3	993.4	808.5	736.2	868.2	1,355.0	1,899.2	2,457.3	3,384.1
South Korea	405.7	535.2	540.0	438.8	540.8	699.7	1,077.3	1,641.9	1,573.8
United States	3,022.5	3,338.4	2,888.6	2,568.6	2,576.5	3,402.2	4,722.6	5,592.1	4,886.0
Mercosur	3,092.4	4,337.6	4,705.3	4,826.6	5,931.0	7,105.2	8,810.4	9,313.2	9,401.0
Mexico	578.8	615.6	532.8	475.4	480.6	620.6	764.2	1,003.2	846.5
European Union 15	2,848.4	2,880.0	3,064.1	3,023.4	3,260.5	3,530.0	4,948.7	5,105.2	5,876.0
<b>I. Sub-Total</b>	<b>12,534.8</b>	<b>14,963.1</b>	<b>14,626.6</b>	<b>14,135.6</b>	<b>16,008.9</b>	<b>19,838.5</b>	<b>26,353.9</b>	<b>30,419.4</b>	<b>33,186.1</b>
Others	1,487.2	1,879.4	1,607.3	1,617.6	1,654.7	2,615.7	3,586.2	4,492.6	9,762.9
<b>II. Total Imports</b>	<b>14,022.0</b>	<b>16,842.5</b>	<b>16,233.9</b>	<b>15,753.2</b>	<b>17,663.6</b>	<b>22,454.2</b>	<b>29,940.1</b>	<b>34,912.0</b>	<b>42,949.0</b>
<b>I. Over II.</b>	<b>89.4%</b>	<b>88.8%</b>	<b>90.1%</b>	<b>89.7%</b>	<b>90.6%</b>	<b>88.4%</b>	<b>88.0%</b>	<b>87.1%</b>	<b>77.3%</b>

Source: Studies and Informations Department, DIRECON (January 2009), based on data from Central Bank of Chile

It is also interesting to point out that since 2004 almost 80% of all import value has faced preferential tariff treatment, meaning that they will pay from zero tariffs to less than the actual 6% across the board. Table 1.16 shows imports from all countries or group of countries that Chile has signed trade agreements with, that includes tariff elimination.

### **I.3 Trade in Services**

In 2007, the services sector contributed 59.9% to GDP, up from 58.5% in 2003.<sup>30</sup> Employment

<sup>30</sup> Following the UN System of National Accounts, the construction, electricity, and water industries are part of the industrial sector.

in the sector grew faster than in other industries. In 2006, 63.7% of the economically active population worked in the services sector, up from 58.1% in 1996. In 2007, Chile's services exports amounted to US\$ 8,786 millions and imports amounted to US\$ 9,947 millions. According to figures provided by the Foreign Investment Committee, the annual inflows of foreign direct investment in the services sector averaged US\$ 1,182 millions between 1996 and 2007, 29% of total foreign investment.

As a consequence of Chile's long running privatization policy, state involvement in services is limited. The State retains ownership of BancoEstado, the postal and railway services, and a public television corporation. The State also owns major seaports and airports; however, these have been increasingly given in concession to private operators. Involvement of the State in any of the sectors mentioned does not in any way preclude private participation.

Chile has implemented a profound economic reform over the last twenty years. Key aspects of such reform are the significant changes introduced to the laws and regulations that govern the service sector. As a result, transformations have taken place in its economic structure, in the dynamism achieved by productive sectors and in the mechanisms of insertion in the global economy.

The increasing presence of foreign service providers, operating in Chile both in terms of commercial presence in the national market or through other forms of service marketing, have characterized Chilean recent development in telecommunications, road services and administration, transport, data processing, information technology and several other industries.

The four principles that regulate service liberalization are the most-favored nation treatment, absence of the requirement of local presence, national treatment and progressive elimination of quantitative non-discriminatory restrictions. These four principles have guided the liberalization of cross-border services in Chile in recent years.

The exchange of commercial services has expanded in the last 7 years, increasing from US\$ 8,475 millions in 2000 to a total of US\$ 18,733 millions in the year 2007, with a growth rate of 11.2% per annum, while trade of goods increased by 17.4% per year in the same period. (See table 1.17)

Table 1.17  
**Chile: Trends of exports and imports of goods and services, 1999-2007**  
Million dollars and percents

	1999	2000	2001	2002	2003	2004	2005	2006	2007
Exports of goods (FOB)	17,162	19,210	18,272	18,180	21,664	32,520	41,267	58,486	67,644
Exports of commercial services	3,869	4,083	4,138	4,386	5,070	6,034	7,134	7,824	8,786
% Export Ss/Export goods	23%	21%	23%	24%	23%	19%	17%	13%	13%
% Export Ss/Export goods and services	18%	18%	18%	19%	19%	16%	15%	12%	11%
Imports of goods (FOB)	14,735	17,091	16,428	15,794	17,941	22,935	30,492	35,899	43,991
Imports of commercial services	4,606	4,802	4,983	5,087	5,688	6,780	7,656	8,452	9,947
% Import Ss/Import goods	31%	28%	30%	32%	32%	30%	25%	24%	23%
% Import Ss/Import goods and services	24%	22%	23%	24%	24%	23%	20%	19%	18%
Total commerce of goods (FOB)	31,897	36,302	34,700	33,974	39,605	55,456	71,759	94,384	111,635
Total commerce of commercial services	8,475	8,885	9,121	9,473	10,757	12,813	14,790	16,277	18,733
Total commerce of goods and services	40,373	45,186	43,821	43,447	50,362	68,269	86,549	110,661	130,367
% Commerce Ss/Commerce goods	27%	24%	26%	28%	27%	23%	21%	17%	17%
% Commerce Ss/Commerce goods and servic	21%	20%	21%	22%	21%	19%	17%	15%	14%

Source: Studies Department, DIRECON, based on data of the Central Bank, Monthly Bulletin, May 2008, page 163.

The composition of this trade in services reflects the importance that the flow of services has in total trade: in 2007 it reached a share of 14% in the total Chilean foreign trade in goods and services. The evolution and composition in the last 8 years may be appreciated in Table 1.18. The share of trade services has declined in the last few years due to the large increase in the trade of goods that increased by 250% in 2007 with respect to 1999.

Table 1.18  
**Chile: Exports and Imports of Commercial Services 1999-2007**  
 Million dollars

Exports of commercial services									
	1999	2000	2001	2002	2003	2004	2005	2006	2007
Exports of commercial services									
<b>I. Transports</b>	<b>2,038.9</b>	<b>2,187.6</b>	<b>2,294.0</b>	<b>2,205.4</b>	<b>2,770.7</b>	<b>3,456.8</b>	<b>4,301.2</b>	<b>4,674.8</b>	<b>5,131.1</b>
Sea transport services	1,230.3	1,274.7	1,346.3	1,336.5	1,624.7	2,100.0	2,751.4	2,883.7	3,203.8
Other transports	808.7	912.9	947.7	868.9	1,146.0	1,356.9	1,549.7	1,791.1	1,927.2
<b>II. Travel</b>	<b>910.8</b>	<b>819.4</b>	<b>798.5</b>	<b>897.6</b>	<b>883.4</b>	<b>1,095.0</b>	<b>1,109.1</b>	<b>1,222.3</b>	<b>1,419.3</b>
- Business travellers	85.9	78.7	98.2	256.5	205.8	166.6	150.7	172.8	251.6
- Personal travellers	824.9	740.7	700.3	641.1	677.7	928.4	958.4	1,049.5	1,167.7
<b>III. Other commercial services</b>	<b>919.2</b>	<b>1,075.9</b>	<b>1,045.9</b>	<b>1,282.5</b>	<b>1,415.4</b>	<b>1,481.9</b>	<b>1,723.8</b>	<b>1,927.3</b>	<b>2,235.1</b>
- Communication services	182.6	207.3	124.7	161.8	158.1	162.7	147.8	142.9	154.3
- Construction services	-	-	-	-	-	-	-	-	-
- Insurance services	76.5	76.0	70.5	137.9	124.1	136.2	163.1	189.4	216.5
- Financial services	42.3	37.5	34.2	24.6	29.6	31.4	34.0	37.4	40.3
- Computer and information services	30.3	33.4	42.8	62.9	81.4	70.5	74.2	78.4	82.0
- Royalties and licence fees	6.0	10.0	24.9	41.1	45.5	48.5	54.0	55.2	61.3
- Other business services	469.6	601.6	652.0	745.3	829.9	889.8	1,087.4	1,241.4	1,487.5
- Personal, cultural and recreational services	23.0	21.7	29.0	38.6	67.6	58.3	69.2	78.4	84.5
- Government services, n.i.e.	88.9	88.4	67.7	70.3	79.3	84.5	94.2	104.2	108.8
<b>Total exports of commercial services</b>	<b>3,868.9</b>	<b>4,082.9</b>	<b>4,138.4</b>	<b>4,385.5</b>	<b>5,069.5</b>	<b>6,033.7</b>	<b>7,134.0</b>	<b>7,824.3</b>	<b>8,785.5</b>
<b>Annual rate of growth</b>		<b>6%</b>	<b>1%</b>	<b>6%</b>	<b>16%</b>	<b>19%</b>	<b>18%</b>	<b>10%</b>	<b>12%</b>
Imports of commercial services									
	1999	2000	2001	2002	2003	2004	2005	2006	2007
Imports of commercial services									
<b>I. Transports</b>	<b>2,059.6</b>	<b>2,191.2</b>	<b>2,259.8</b>	<b>2,299.9</b>	<b>2,585.3</b>	<b>3,353.7</b>	<b>4,135.0</b>	<b>4,571.2</b>	<b>5,274.8</b>
Sea transport services	1,281.9	1,385.0	1,497.9	1,455.9	1,603.1	2,213.8	2,914.8	3,202.6	3,788.7
Other transports	777.7	806.1	761.9	844.0	982.2	1,139.9	1,220.2	1,368.6	1,486.1
<b>II. Travel</b>	<b>752.2</b>	<b>619.8</b>	<b>708.2</b>	<b>672.8</b>	<b>850.3</b>	<b>977.1</b>	<b>1,050.5</b>	<b>1,239.3</b>	<b>1,761.7</b>
- Business travellers	47.7	40.9	168.0	226.6	541.0	618.4	379.2	444.8	536.8
- Personal travellers	704.5	578.9	540.2	446.2	309.3	358.7	671.3	794.5	1,225.0
<b>III. Other commercial services</b>	<b>1,794.4</b>	<b>1,990.7</b>	<b>2,014.5</b>	<b>2,114.3</b>	<b>2,251.9</b>	<b>2,448.8</b>	<b>2,570.0</b>	<b>2,641.9</b>	<b>2,910.6</b>
- Communication services	129.7	110.0	95.1	137.2	155.6	159.9	158.3	137.4	149.5
- Construction services	-	-	-	-	-	-	-	-	-
- Insurance services	153.1	192.3	210.6	353.1	435.1	451.3	462.8	431.2	479.0
- Financial services	241.5	221.7	203.4	230.4	213.9	282.9	256.2	318.8	367.7
- Computer and information services	49.8	78.3	46.5	40.7	75.4	73.7	71.2	73.3	67.5
- Royalties and licence fees	324.2	297.5	268.6	250.6	257.1	307.3	347.5	383.7	434.2
- Other business services	721.5	909.4	1,019.5	924.5	935.4	998.5	1,037.2	1,030.7	1,124.6
- Personal, cultural and recreational services	42.1	43.8	36.3	44.0	47.2	48.4	52.7	55.0	59.2
- Government services, n.i.e.	132.5	137.8	134.5	133.8	132.1	126.7	184.0	211.9	228.9
<b>Total imports of commercial services</b>	<b>4,606.1</b>	<b>4,801.7</b>	<b>4,982.6</b>	<b>5,087.0</b>	<b>5,687.5</b>	<b>6,779.6</b>	<b>7,755.5</b>	<b>8,452.4</b>	<b>9,947.1</b>
<b>Annual rate of growth</b>		<b>4%</b>	<b>4%</b>	<b>2%</b>	<b>12%</b>	<b>19%</b>	<b>14%</b>	<b>9%</b>	<b>18%</b>

Source: Studies Department, DIRECON, based on data of the Central Bank, <http://www.bcentral.cl/publicaciones/estadisticas/sector-externo/ext01>

## I.4 Investment

### Foreign Investment in Chile

Chile has achieved widespread recognition for its strong track record in attracting FDI. Between 1974 and 2007, materialized foreign investment totaled US\$ 91.4 billion, of which 90% entered the country after 1990. The stock of FDI in Chile reached almost 55% of GDP by 2007, up from just 30% in 1995.

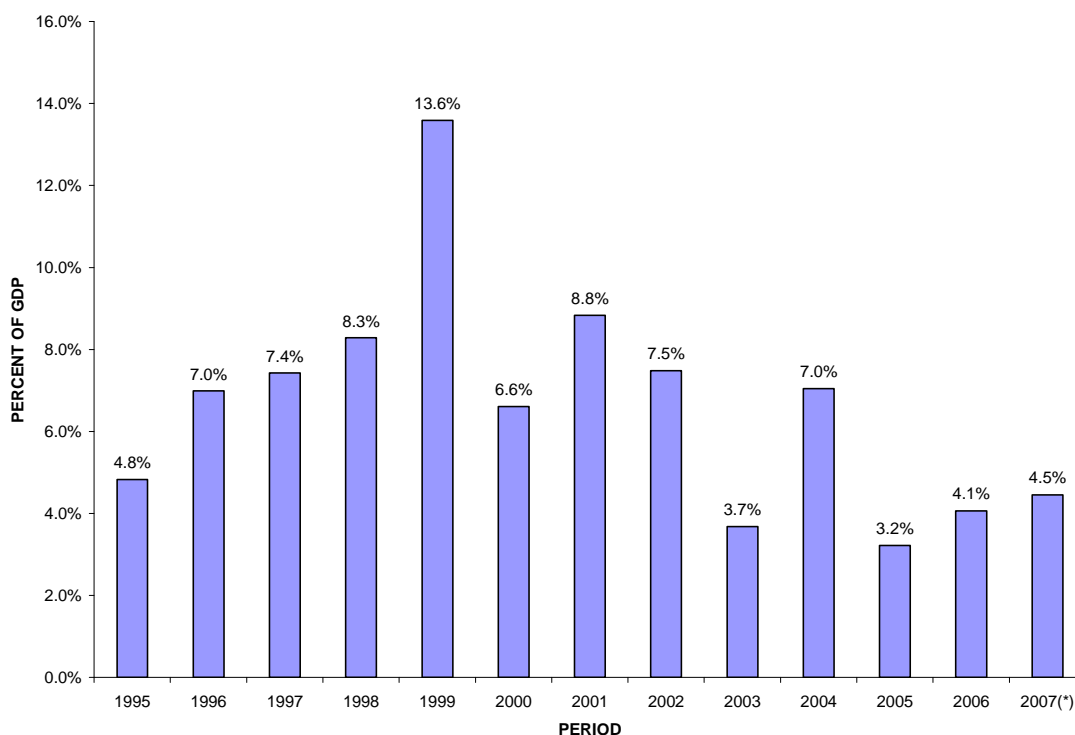
During the 1990's, FDI inflows represented an annual average 6.1% of Chile's GDP, rising to 9.1% between 1996 and 1999. After the surge of FDI in the 1990's, and after reaching a US\$ 9.9 billion record-high in 1999, foreign investment inflows have been dropping, falling to an average of 5.7% between 2000 and 2007. These results are the consequence of a downturn in international economic conditions, which has affected FDI in almost all countries.

As from 2001, the mergers and acquisitions market -previously the driving force of FDI around the world and in Chile- collapsed in the face of global economic uncertainty, a drop in share prices, and weaker corporate earnings, while multinational companies cut back their expansion budgets. To some extent, this trend represented a return to more sustainable and realistic levels of FDI, after the so-called "investment bubble" of the 1990's during which global capital flows reached record levels.

Moreover, FDI flows into Latin America have also been affected by instability in some of the region's countries, and the heavy losses sustained by a number of investors. As a result, risk aversion -accentuated by shareholder pressure in firms that have experienced difficulties- also helps to explain weaker FDI in the region. While there has been no scale withdrawal from Latin America, investment is being delayed and some investors, specifically foreign banks, have left the region.

In the case of Chile, FDI figures have also been distorted in recent years by a trend towards greater use of the local capital market by foreign investors. Encouraged by the high liquidity and dynamism of the country's financial sector and its historically low interest rates, an increasing number of overseas companies are sidestepping exchange rate risk by raising finance locally, either borrowing from local banks or placing bonds on the local market. This trend, although very positive for Chile's financial market, is reflected negatively in the figures for incoming FDI.

**Foreign Direct Investment in Chile\***  
**as % of GDP: 1995 – 2007**



\*Includes investment through Foreign Investment Statute (D.L. 600), Chapter XIV and Chapter XIX.  
Sources: Central Bank of Chile, Foreign Investment Committee.

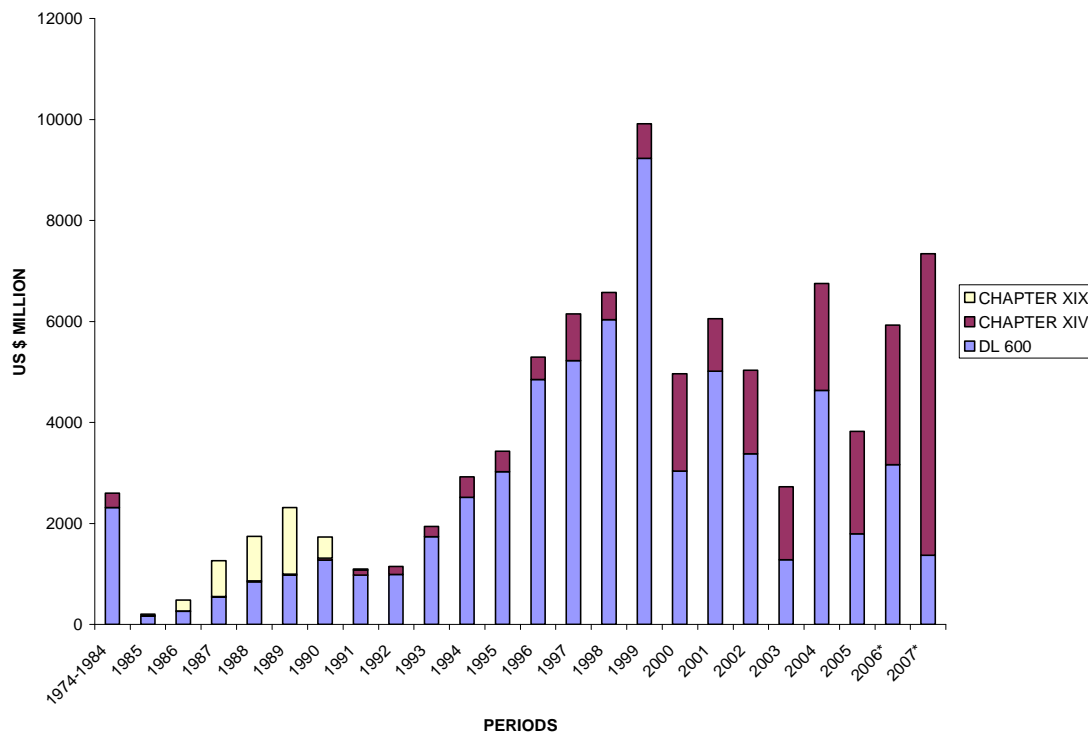
### Investment Mechanism

Since 1974, when the Foreign Investment Statute (D.L. 600) came into force, the vast majority of foreign investors have chosen to use this mechanism, under which an investor signs a legally binding contract with the State for the implementation of an individual project and, in return, receives a number of specific guarantees and rights<sup>31</sup>. Between 1974 and 2007, investments worth US\$ 64.7 billion, representing 71.1% of the total FDI inflow, used this mechanism.

However, a simpler investment mechanism, Chapter XIV of the Central Bank's Compendium of Foreign Exchange Regulations (CFER), also exists. Under this mechanism, foreign investors need only comply with registration procedures.

A third mechanism, Chapter XIX of the CFER played an important role between 1985 and 1991, when it was used for investments totaling US\$ 3.6 billion, mainly in the manufacturing and services sectors. However, this debt conversion mechanism is no longer in operation.

**Foreign Direct Investment in Chile, 1974 - 2007  
(US\$ Million)**



Sources: Central Bank of Chile, Foreign Investment Committee

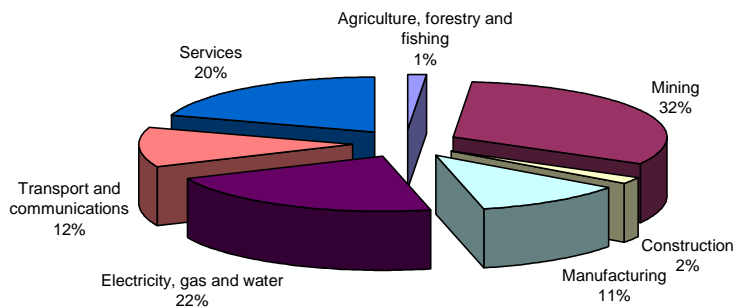
### Investment By Sector

Between 1990 and 2007, Mining accounted for 32% of foreign investment materialized via D.L. 600, followed by the Electricity, Gas and Water industries (22%); Services (20%); Transport and communications (12%); Manufacturing (11%); Construction (2%); and Agriculture, Forestry and

<sup>31</sup> (set out in the Policies, Regulations and Procedures section of the [www.cinver.cl](http://www.cinver.cl) website )

Fishing (1%). In the Services sector, the most important segments were Financial Services (49%), Insurance (17%), and the Wholesale and Retail Trade (12%).

### Foreign Investment Statute (D.L.600), 1990-2007 Breakdown by Sector



Source: Foreign Investment Committee

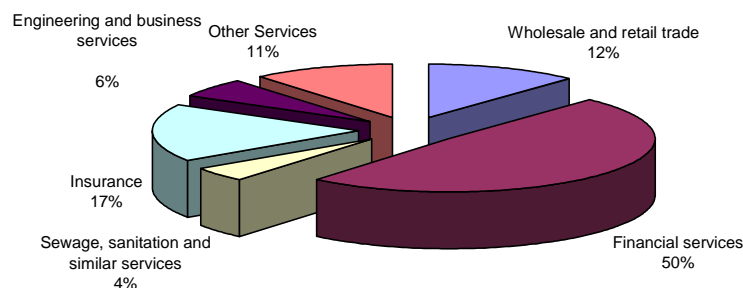
Until 1990, mining projects represented 47% of D.L. 600 investment, boosted by the government's decision to lift restrictions on private investment in the exploration and exploitation of mineral deposits. Similarly, investment in financial services was encouraged by the deregulation of the financial sector.

Since 1990, however, other sectors have gained in importance and the mining's share of D.L. 600 investment gradually diminished to an average 15% in 1999-2001. However, in 2002, it was again the largest recipient sector with 59% of materialized FDI -due mainly to the US\$ 1.1 billion acquisition of Exxon's La Disputada mine by UK-based Anglo-American. In 2003, represented 30% of the total FDI, and in 2004, the mining received FDI worth US\$ 350 million, and this figure increased in 2005 to US\$ 822 million due to the new copper and gold projects. In 2006, the mining sector represented 36.1% of total investment. The relative decrease in the preeminence of mining investments was counterbalanced mainly by higher investment in the Transport and

Communications industries (including telecommunications) and in the Electricity, Gas and Water sectors.

This was mainly the result of privatizations in the energy and telecommunications sectors and of the intense competition that followed the deregulation of mobile and long-distance telephone services. In addition, an infrastructure concessions program, launched in 1995, opened the way for the participation of private capital, mostly from abroad, in the construction and operation of roads and airports. Water privatizations and a concessions program for water treatment services have also captured important inflows of FDI in recent years.

**Foreign Investment Statute (D.L. 600)**  
**Services Sector: Breakdown by Sub-sector (1990-2007)**  
**(Total Services: US\$ 11.9 billion)**



Source: Foreign Investment Committee

From 1997 to 2001, in line with a worldwide trend, Chile saw a dramatic surge in M&A (mergers and acquisitions) activity, mainly in electricity and telecommunications sectors. In 1999, for example, Spain's Endesa paid US\$ 3.2 billion for local electricity company Enersis, while other large M&A operations included the acquisition between 2000 and 2001 of the Gener power producer by US-based AES Corp. and, in 2001, Telecom Italia's acquisition of the Entel telecommunications company.



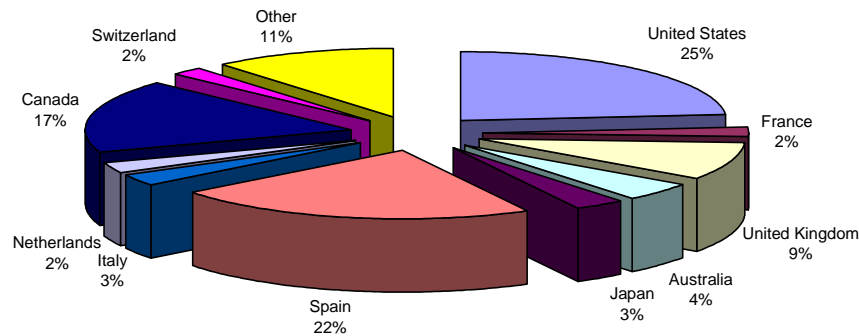
Since 2001, the trend has again changed, shifting towards projects that require smaller amounts of capital but have a high impact in terms of job creation and the transfer of technology. In addition, projects of this type have reinforced Chile's position as a regional business center from which to export goods, or provide services, to other countries. This has, in turn, attracted new investment in service sectors, such as the hotel and office property markets.

These smaller, high-impact projects are numerous and diverse, ranging from software development initiatives, call centers and shared services centers to new investment in the manufacturing and agribusiness sectors. Examples of the latter include a US\$ 25 million breakfast cereal plant in Santiago, launched in April 2004, from which Switzerland's Nestlé supplies regional and international markets, and a new salmon feed plant, also representing an investment of US\$ 25 million, inaugurated in southern Chile by Netherlands-based Nutreco.

### Origin of Investment

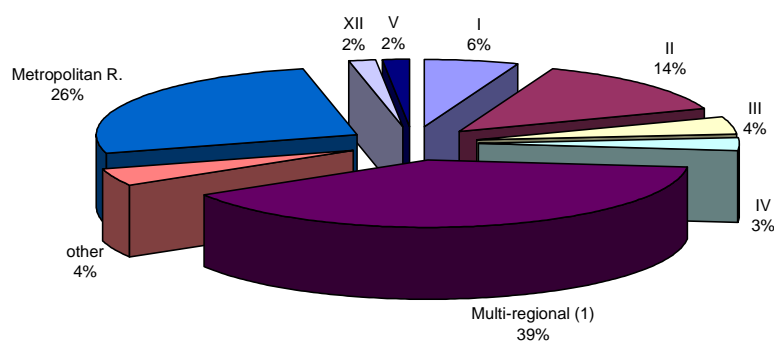
Between 1990 and 2007, 25% of D.L. 600 investments in Chile originated in the United States, followed by Spain (22%), Canada (17%), the United Kingdom (9%), Australia (4%), and Japan (3%). During that period, the 15 pre-enlargement European Union member states accounted for 41.6% of total FDI materialized through D.L. 600, while, as a group, the OECD countries accounted for 92.4% of the total.

**Foreign Investment Statute (D.L. 600)  
Breakdown by Country of Origin (1990-2007)**



Source: Foreign Investment Committee

**Foreign Investment Statute (D.L. 600)  
Breakdown by Chilean Regions (1990-2007)**



Source: Foreign Investment Committee

As regards the geographic destination of FDI within Chile, 39% of materialized FDI between 1990 and 2007 was invested in multi-regional projects, while 26% went to Metropolitan region, followed by Region II and Region I in the north of the country, which accounted for 14% and 6% of total inflows, respectively.

## **I.5 Introduction of FTAs signed by each party**

### **I.5.A Modalities of Negotiation**

#### **a. Asia Pacific**

For years, Chile has been expanding its trade in the Asia Pacific region. For example, China is Chile's second trading partner<sup>32</sup>, while Japan and Korea are among Chile's five main destination markets. The FTA concluded with South Korea in February 2003 and entered in force in April 2004, is the first trans-Pacific agreement of its kind, and places Chile in a privileged position to strengthen its economic ties with Pacific Asia and act as a bridge between Asia and South

<sup>32</sup> Trade=(exports+imports). China is Chile's first market for its exports (2008 figures).

America.

Chile has continued to expand its commercial presence in Pacific Asia. It finished negotiations in 2005 of a Transpacific Strategic Economic Partnership Agreement with New Zealand, Singapore and Brunei Darussalam; signed a Free Trade Agreement with China that began to operate in 2006; a Preferential Trade Agreement with India that came in force in 2007, and a Free Trade Agreement with Japan that is operational since September 2007. The negotiation with Australia ended in July 2008. Chile is currently in negotiations with Malaysia and beginning a process of negotiations with Vietnam

#### **b. The Americas**

During the first half of the 1990's, Chile developed a network of agreements for economic complementation with all the South American countries (Argentina, Brazil, Bolivia, Colombia, Ecuador, Paraguay, Peru, Uruguay and Venezuela), following the Latin American Integration Association (LAIA). These are agreements negotiated under the Enabling Clause, which regulate only trade in goods and contain limited disciplines. Later Chile negotiated free trade agreements (FTA) with Canada, Mexico, Panama and with Central American countries: Costa Rica, El Salvador and Honduras. These agreements have common disciplines, but market access was negotiated bilaterally.

Chile's most ambitious trade agreement in the Americas is the FTA with the United States, which was concluded in June 2003 and entered into force in January 2004. The US is Chile's main trading partner and largest foreign direct investor. The FTA has facilitated the increase of the value-added content of Chilean exports, establishes clear and transparent rules for settling trade disputes, and it is expected to encourage investment and to strengthen the capital market. The results of this FTA show that a developing country can reach a mutually satisfactory and comprehensive agreement with a developed country; i.e. an agreement, which does not focus exclusively on market access, but also includes institutional matters that enhance transparency and competition which, over time, will benefit all countries that trade with Chile.

#### **c. Europe**

Chile has consolidated its relations with Europe. Thus, 1 February 2003 saw the entry into force of the FTA between Chile and the European Union, an agreement which covers not only trade issues, but political and cooperation areas as well. In the political area, the agreement seeks to promote, disseminate and defend democratic values, while in the area of cooperation, it seeks to contribute to the application of the objectives and principles of the Agreement, including, in particular, the following areas: science, technology and information society; culture, education and audiovisual media; and social cooperation. In the economic and trade area, the Agreement seeks progressive and reciprocal liberalization of market access for goods, services and government procurement. At the same time, as in the case of the FTA with the United States, it establishes disciplines in areas such as intellectual property, technical standards, sanitary and phytosanitary measures, competition policy and customs procedures to encourage the development of trade. It also introduces a dispute settlement mechanism.

Alongside this deepening of its relations with the EU, in March 2003 Chile signed an FTA with the European Free Trade Association (EFTA) and entered in force in December 2004. It regulates trade in goods and services, government procurement, and various trade disciplines, including the

reciprocal elimination of anti-dumping duties and a dispute settlement mechanism to resolve any disagreements between the parties.

Concerning the Main Contents of the FTAs in the Chapters on Trade in Goods is included:

- Standstill in customs duties.
- Acceleration of customs duties elimination.
- Binding the benefits of Generalized Systems of Preferences (GSP), when the partner has this system.
- Elimination of non-tariff measures.
- Elimination of bilateral export subsidies.
- Elimination of exports taxes.

**II. ECONOMIC RELATIONS  
BETWEEN CHILE AND HONG-KONG,  
CHINA**

## II. ECONOMIC RELATIONS BETWEEN CHILE AND HONG KONG, CHINA

### II.1. Bilateral Trade in Goods

In 2007, bilateral trade between Chile and Hong Kong, China reached a level of 165.9 million dollars. This places Hong Kong as Chile's 0.15% global trading partner. This figure is well below what was recorded a few years ago, when bilateral trade flows reached 0.31% of Chile's total (2000). The growth in trade between Chile and Hong Kong is the result of a lower than average evolution in exports and imports, thus generating an increase in bilateral exchange around 146 % only since 2003, less than the growth of Chile's global trade in the same period (228 %)

**TABLE 2.1**  
**TRADE BETWEEN CHILE AND HONG KONG, 1999 - 2007**  
*(million of dollars and %)*

	1999	2000	2001	2002	2003	2004	2005	2006	2007
<b>I. Hong Kong</b>									
Exports (FOB)	192.7	60.5	51.7	26.6	78.6	143.6	100.6	112.9	112.5
Imports (CIF)	49.6	48.5	39.2	40.9	69.3	72.7	89.2	111.5	53.4
Trade Balance	143.1	12.0	12.5	-14.3	9.2	70.9	11.4	1.4	59.1
Trade Exchange	242.2	108.9	90.9	67.5	147.9	216.3	189.8	224.4	165.9
<b>II. Global</b>									
Exports (FOB)	15,914.6	18,425.0	17,668.1	17,676.3	20,627.2	31,460.1	39,251.9	57,756.6	66,718.6
Imports (CIF)	14,022.0	16,842.5	16,233.9	15,753.2	17,663.6	22,454.2	29,940.1	34,912.0	42,949.0
Trade Balance	1,892.6	1,582.5	1,434.1	1,923.2	2,963.5	9,006.0	9,311.7	22,844.5	23,769.5
Trade Exchange	29,936.6	35,267.5	33,902.0	33,429.5	38,290.8	53,914.3	69,192.0	92,668.6	109,667.6
<b>III. Participation</b>									
Exports	1.21%	0.33%	0.29%	0.15%	0.38%	0.46%	0.26%	0.20%	0.17%
Imports	0.35%	0.29%	0.24%	0.26%	0.39%	0.32%	0.30%	0.32%	0.12%
Trade Exchange	0.81%	0.31%	0.27%	0.20%	0.39%	0.40%	0.27%	0.24%	0.15%

Source: Studies and Informations Department, DIRECON (January 2009), based on data from Central Bank of Chile

The trade balance, exports minus imports, in 2007, marked a surplus of 59.1 million dollars that is far from the -14.3 million-dollar deficit of 2002. The traditional even or small surplus in favor of Chile during the 1999-2006 period was replaced by a robust surplus in 2007

As in total trade exchanges, in 2007, the Hong Kong economy has reduced its share in Chilean exports, accounting for 112.5 million dollars.

Imports coming from Hong-Kong in 2007 reached 53.4 million dollars, placing Hong-Kong supplies with 0.12% of imported goods to Chile. Imports from Hong-Kong have increased at a lower pace than exports, reaching between 2002 and 2007 a growth of 31%, much less than total imports, which increased 173% in the same period.

#### II.1.A. Exports

In 2002, Hong-Kong accounted for 0.15% of Chile's exports. In 2007, given that in the past five years Hong Kong has increased its importance as a market destination of Chilean exports, it

provides 0.17% of all exports, thus marginally increasing its share in exports. This figure has not been stable and in the period has fluctuated between 1.21% (1999) and 0.15% (2002).

**TABLE 2.2**  
**CHILE'S EXPORTS TO HONG KONG, 1999 - 2007**  
(million of dollars FOB and %)

	1999	2000	2001	2002	2003	2004	2005	2006	2007
<b>I. Exports to Hong Kong</b>	192.7	60.5	51.7	26.6	78.6	143.6	100.6	112.9	112.5
<b>II. Global Exports</b>	15,914.6	18,425.0	17,668.1	17,676.3	20,627.2	31,460.1	39,251.9	57,756.6	66,718.6
<b>I. Over II.</b>	1.21%	0.33%	0.29%	0.15%	0.38%	0.46%	0.26%	0.20%	0.17%
				<i>Rate of growth (%)</i>					
<b>Exports to Hong Kong</b>	-	-68.6%	-14.5%	-48.6%	195.3%	82.8%	-29.9%	12.2%	-0.4%
<b>Global Exports</b>	-	15.8%	-4.1%	0.0%	16.7%	52.5%	24.8%	47.1%	15.5%

Source: Studies and Informations Department, DIRECON (January 2009), based on data from Central Bank of Chile

Hong Kong has increased its standing as a buyer measured in export share, between 2002 and 2007 exports increased in a record 323%, averaging annually a rate of growth of 33%, which compares to the 277% growth in global exports in the same period (an average of 30% annually). On the other hand, it is interesting to point out that this increase in exports has not been continuous in the whole period (1999-2007) - with 5 years with a reduction in exports and 3 years with a positive growth- without a clear trend to increase exports.

Hong Kong represents an expanding and high-income market of 7.1 million people and imports for US \$ 366 billion, rapidly expanding.

**TABLE 2.3**  
**CHILE'S EXPORT TO HONG KONG ACCORDING TO ISIC, 1999 - 2007**  
(million of dollars FOB)

	1999	2000	2001	2002	2003	2004	2005	2006	2007
<b>I. Agriculture, Fruit, Livestock Silviculture and Extractive Fishery</b>	<b>33.1</b>	<b>30.9</b>	<b>26.1</b>	<b>10.1</b>	<b>28.2</b>	<b>43.7</b>	<b>39.6</b>	<b>49.8</b>	<b>46.1</b>
Agriculture, Fruit and Livestock	33.0	30.7	26.0	9.8	27.4	41.7	39.1	49.7	45.8
Silviculture	0.0	0.0	-	-	0.0	0.0	0.0	-	0.2
Extractive Fishery	0.1	0.1	0.1	0.3	0.8	2.0	0.6	0.0	0.0
<b>II. Mining</b>	<b>33.7</b>	<b>19.6</b>	<b>17.3</b>	<b>11.9</b>	<b>37.2</b>	<b>83.3</b>	<b>35.1</b>	<b>26.2</b>	<b>7.8</b>
Copper	27.8	19.6	17.3	11.9	37.2	83.3	35.1	26.2	7.8
Other	5.8	-	-	-	-	-	-	0.0	0.0
<b>III. Industry</b>	<b>125.6</b>	<b>9.7</b>	<b>8.2</b>	<b>4.6</b>	<b>13.2</b>	<b>16.6</b>	<b>24.3</b>	<b>36.2</b>	<b>53.7</b>
Foodstuff and beverages	2.8	7.6	6.3	3.2	11.8	14.9	19.1	29.5	38.7
Textiles and apparel	0.2	0.2	0.7	0.1	0.3	0.7	2.5	3.7	8.4
Forestry and Furniture	0.2	0.2	0.3	0.6	0.1	0.2	0.3	0.3	0.1
Cellulose, paper and by-products	116.3	1.3	-	0.0	0.0	0.0	0.2	0.1	2.5
Processed and unprocessed chemicals	5.9	0.1	0.5	0.3	0.6	0.6	1.2	2.5	2.7
Glass, clay and porcelain products	-	-	0.0	-	0.0	-	0.0	0.0	0.0
Basic steel and iron industry	0.1	0.3	0.3	0.1	0.0	0.0	0.5	-	0.7
Metal products, machinery and equipment	-	0.0	0.0	0.3	0.4	0.1	0.5	0.1	0.7
Non specified manufactures	0.1	-	-	0.0	-	0.0	0.0	0.0	0.0
<b>IV. Others</b>	<b>0.2</b>	<b>0.3</b>	<b>0.2</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>1.6</b>	<b>0.7</b>	<b>4.9</b>
<b>V. Total Exports</b>	<b>192.7</b>	<b>60.5</b>	<b>51.7</b>	<b>26.6</b>	<b>78.6</b>	<b>143.6</b>	<b>100.6</b>	<b>112.9</b>	<b>112.5</b>

Source: Studies and Informations Department, DIRECON (January 2009), based on data from Central Bank of Chile

A sample of the dynamic success of the Hong Kong economy are the economic results of 2007,

where exports reached<sup>33</sup> a record high of US \$ 349.4 billion and GDP growth reached 5.0% in the period 1989-2006. Imports have also increased and have reached about US \$ 370.1 billion in 2007. Although Hong Kong imports are diversified, China is the largest supplier with 46% of total imports. Hong Kong (2007 figures) imports US \$ 52,127 per person, but imports from Chile only reached to 0.03% of total imports, i.e. about US \$ 16 per person come from Chile.

## i. Export Sectors

Table 2.4 allows appreciating that Chilean exports towards Hong Kong are concentrated mainly within two sectors (agriculture and industry), which account for 88.7% of total exports to Hong Kong. Although the mining sector had been a dominant sector, its importance has been reduced, due to the lesser copper exports to Hong Kong, and in 2007 it represented 7.0% of total exports.

**TABLE 2.4**  
**STRUCTURE OF CHILE'S EXPORTS TO HONG KONG ACCORDING TO ISIC, 1999 - 20**  
(%)

	1999	2000	2001	2002	2003	2004	2005	2006	2007
<b>I. Agriculture, Fruit, Livestock Silviculture and Extractive Fishery</b>	<b>17.2</b>	<b>51.0</b>	<b>50.5</b>	<b>38.1</b>	<b>35.9</b>	<b>30.4</b>	<b>39.4</b>	<b>44.1</b>	<b>41.0</b>
Agriculture, Fruit and Livestock	17.1	50.8	50.3	36.8	34.8	29.0	38.8	44.0	40.8
Silviculture	0.0	0.0	-	-	0.0	0.0	0.0	-	0.2
Extractive Fishery	0.1	0.2	0.2	1.3	1.1	1.4	0.6	0.0	0.0
<b>II. Mining</b>	<b>17.5</b>	<b>32.4</b>	<b>33.4</b>	<b>44.8</b>	<b>47.4</b>	<b>58.0</b>	<b>34.9</b>	<b>23.2</b>	<b>7.0</b>
Copper	14.5	32.4	33.4	44.8	47.4	58.0	34.9	23.2	7.0
Other	3.0	-	-	-	-	-	-	0.0	0.0
<b>III. Industry</b>	<b>65.2</b>	<b>16.1</b>	<b>15.8</b>	<b>17.1</b>	<b>16.7</b>	<b>11.6</b>	<b>24.1</b>	<b>32.1</b>	<b>47.7</b>
Foodstuff and beverages	1.4	12.6	12.1	11.9	15.0	10.4	19.0	26.1	34.4
Textiles and apparel	0.1	0.3	1.4	0.5	0.4	0.5	2.5	3.3	7.5
Forestry and Furniture	0.1	0.4	0.6	2.3	0.2	0.2	0.3	0.3	0.1
Cellulose, paper and by-products	60.3	2.2	-	0.0	0.0	0.0	0.2	0.1	2.2
Processed and unprocessed chemicals	3.1	0.2	0.9	1.0	0.7	0.4	1.2	2.2	2.4
Glass, clay and porcelain products	-	-	0.0	-	0.0	-	0.0	0.0	0.0
Basic steel and iron industry	0.1	0.4	0.7	0.2	0.0	0.0	0.5	-	0.6
Metal products, machinery and equipment	-	0.0	0.1	1.2	0.4	0.0	0.5	0.1	0.6
Non specified manufactures	0.0	-	-	0.1	-	0.0	0.0	0.0	0.0
<b>IV. Others</b>	<b>0.1</b>	<b>0.5</b>	<b>0.4</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>1.6</b>	<b>0.6</b>	<b>4.3</b>
<b>V. Total Exports</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

Source: Studies and Informations Department, DIRECON (January 2009), based on data from Central Bank of Chile

It is worthwhile to highlight that the industrial sector has also shown growth (industrial exports increased by 48% in 2007), where cellulose, paper and by-products have reduced its importance in total exports (2% of exports in 2007), the large increase has come from the foodstuff and beverages industry (34.4% of total exports), and textiles and apparel (7% of total exports in 2007). The latter is a clear example of how the growth in the demand of the non-traditional Chilean exports has been able to reach a market size that is more important than the copper industry in those markets.

Within the industrial sector, the main exports are food products (34.4% of total exports), followed by textiles and apparel (7.5%) and processed and unprocessed chemical products (2.4%)

The 25 main products concentrate 82.2% of all of Chilean exports to Hong Kong (in 2007), and agricultural and fruit products have a large participation in total exports: cherries, table grapes

<sup>33</sup> Including re-exports



and fresh plums can explain 25% of total exports.

**TABLE 2.5**  
**CHILE'S MAIN EXPORTS TO HONG KONG, 2007**  
*(millions of dollars FOB and %)*

HS	Description	FOB	%
8092000	Cherries fresh.	11,259,503	10.0
8061030	Grapes of the variety Red Globe	10,538,086	9.4
74031100	Copper Cathodes and sections of cathodes	6,401,281	5.7
8094010	Plums fresh	5,831,068	5.2
2071430	offal cuts and offal frozen	5,293,607	4.7
250000	Services considered as exports	4,885,113	4.3
16059080	Limpet (Fissurella spp.)	4,385,506	3.9
2071424	wings cuts and offal frozen	4,303,519	3.8
8081020	Apples, fresh of the variety Royal Gala	4,167,958	3.7
5119190	Other; products of fish or crustacenas moll	3,330,709	3.0
41044100	Full grains leather, unsplit and grain splits	3,203,043	2.8
22042121	Wines of fresh grapes,cabernet sauvignon	3,025,721	2.7
8105000	Kiwis fresh	2,930,152	2.6
8061090	Fresh grapes, other varieties	2,640,292	2.3
41079200	Grain splits	2,514,115	2.2
48010010	Newsprint, in rolls	2,466,458	2.2
3042942	Frozen fish fillets Atlantic Salmon and Dar	2,247,429	2.0
39202010	Other plates, sheets , film, foil and strip Of	2,090,873	1.9
3079931	Frozen chilean abalone (Concholepas conc	1,834,895	1.6
8081060	Apples, fresh of the variety Granny Smith	1,719,526	1.5
41041100	Full grains leather, unsplit and grain splits	1,622,729	1.4
8081040	Apples, fresh of the variety Fuji	1,601,335	1.4
74031900	Refined copper, unwrought articles nesoi	1,416,919	1.3
8061050	Grapes, fresh, of the variety crimson seedle	1,392,683	1.2
16059040	Chilean abalones prepared or preserved.	1,294,332	1.2
	<b>Total Principal Products</b>	<b>92,396,852</b>	<b>82.2</b>
	Others	20,066,266	17.8
	<b>Total Exports</b>	<b>112,463,118</b>	<b>#####</b>

Source: Studies and Informations Department, DIRECON (January 2009), based on data from Central Bank of Chile

**ii. Export products**

Chile, in 2007 exported 178 products to the Hong Kong market. This figure only represents 3.3% of the total number of products that Chile exported to the world in the same year<sup>34</sup>. Table 2.5 shows the twenty five main export products sold to Hong Kong. These twenty five products account for 12% of the total number of products sold to Hong Kong and explain 82.2% of all sales to Hong Kong.

Also it can be seen that out of the twenty five products, 9 are related to the industrial sector (including food industry) and account for 37.2% of all exports to Hong Kong. Twelve agricultural and fishing products are responsible for 20.3% of Chilean exports to Hong Kong.

## II.1.B Imports

As it has been said before, Hong Kong is the supplier of 0.12% of the imported goods to Chile, registering in 2007 imports of 53.4 million dollars. This represents a reduction of -52.1% in comparison with the previous year and, at the same time, represents a record low level, and an increase over the earlier imports in 2002 of 30.6%.

**TABLE 2.6**  
**CHILE'S IMPORTS FROM HONG KONG, 1999 - 2007**  
(million of dollars CIF and %)

	1999	2000	2001	2002	2003	2004	2005	2006	2007
<b>I. Imports from Hong Kong</b>	49.6	48.5	39.2	40.9	69.3	72.7	89.2	111.5	53.4
<b>II. Global Imports</b>	14,022.0	16,842.5	16,233.9	15,753.2	17,663.6	22,454.2	29,940.1	34,912.0	42,949.0
<b>I. Over II.</b>	0.35%	0.29%	0.24%	0.26%	0.39%	0.32%	0.30%	0.32%	0.12%
	<i>Rate of growth(%)</i>								
<b>Imports from Hong Kong</b>	-	-2.3%	-19.1%	4.3%	69.6%	4.8%	22.7%	25.1%	-52.1%
<b>Global Imports</b>	-	20.1%	-3.6%	-3.0%	12.1%	27.1%	33.3%	16.6%	23.0%

Source: Studies and Informations Department, DIRECON (January 2009), based on data from Central Bank of Chile

In terms of the behavior of imports coming from Hong Kong between 1999 and 2007, these have experienced irregular rates of growth along the whole period, with a reduction in 3 years (2000, 2001 and 2007).

**TABLE 2.7**  
**STRUCTURE OF CHILE'S IMPORTS FROM HONG KONG ACCORDING TO TYPE OF GOOD, 1999**  
(%)

	1999	2000	2001	2002	2003	2004	2005	2006	2007
<b>I. Consumer Goods</b>	81.9	84.9	82.5	80.3	74.2	66.8	56.6	57.8	40.8
<b>II. Intermediate Goods</b>	13.9	12.5	13.5	14.1	19.5	21.0	22.9	25.9	30.7
Petroleum	-	-	-	-	-	-	-	-	-
Other fuels and Lubricants	0.1	0.0	-	0.0	0.2	-	0.1	-	0.0
<b>III. Capital Goods</b>	4.2	2.6	4.0	5.6	6.3	12.0	20.3	16.3	28.6
<b>IV. Total Imports</b>	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: Studies and Informations Department, DIRECON (January 2009), based on data from Central Bank of Chile

Table 2.7 shows the type of goods that are imported from Hong Kong. It is apparent that the majority of imports are concentrated in consumer goods and in intermediate goods that account respectively for 40.8% and 30.7% of total imports originating from Hong Kong in 2007. It's important to note that in this type of product, Hong Kong accounts for a small fraction of our

<sup>34</sup> Chile exported 5.258 products in 2007

capital goods and of intermediate goods.

**TABLE 2.8**  
**CHILE'S IMPORTS FROM HONG KONG ACCORDING TO TYPE OF GOOD, 1999 - 2007**  
*(millions of dollars CIF)*

	1999	2000	2001	2002	2003	2004	2005	2006	2007
<b>I. Consumer Goods</b>	40.6	41.2	32.3	32.8	51.5	48.5	50.5	64.4	21.8
<b>II. Intermediate Goods</b>	6.9	6.0	5.3	5.8	13.5	15.3	20.4	28.9	16.4
Petroleum	-	-	-	-	-	-	-	-	-
Other fuels and Lubricants	0.0	0.0	-	0.0	0.1	-	0.1	-	0.0
<b>III. Capital Goods</b>	2.1	1.2	1.6	2.3	4.3	8.7	18.1	18.2	15.3
<b>IV. Total Imports</b>	49.6	48.5	39.2	40.9	69.3	72.7	89.2	111.5	53.4

Source: Studies and Informations Department, DIRECON (January 2009), based on data from Central Bank of Chile

The latter, together with the fact that global imports in consumer goods have been increasing over the years, imply that there has been a deviation in imports where the Chilean economy prefers to buy goods consumer goods from other traditional suppliers instead of Hong Kong.

Capital goods imports are a smaller portion of imports from Hong Kong, but have increased in the last 3 years, reaching to 28.6% of total imports from that country in 2007.

In terms of how the import mix has evolved over the 1999 – 2007 period, it can be said that there has been a certain amount of shuffling within the types of goods, showing an increase in the share of capital goods and in intermediate goods imports. Since 2003, capital goods have increased their presence in total imports from a 6.3% of imports coming from Hong Kong to the 29% reached in 2007.

Table 2.9 shows imports according to productive sectors according to ISIC. As it can be seen 100% of all imports come from the industrial sector and are mainly metal products, machinery and equipment and basic steel and processed and unprocessed chemicals.

**TABLE 2.9**  
**IMPORTS FROM HONG KONG ACCORDING TO ISIC, 1999 - 2007**  
*(million of dollars CIF)*

	1999	2000	2001	2002	2003	2004	2005	2006	2007
<b>I. Agriculture, Fruit, Livestock Silviculture and Extractive Fishery</b>	<b>0.0</b>	<b>-</b>	<b>0.0</b>	<b>0.0</b>	<b>-</b>	<b>0.0</b>	<b>0.0</b>	<b>0.2</b>	<b>-</b>
Agriculture, Fruit and Livestock	0.0	-	0.0	0.0	-	0.0	0.0	0.1	-
Silviculture	-	-	-	0.0	0.0	0.0	0.0	-	-
Extractive Fishery	-	-	-	-	-	0.0	-	0.2	-
<b>II. Mining</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>-</b>	<b>-</b>
Copper	-	-	-	-	-	-	-	-	-
Other	-	-	-	0.0	0.0	0.0	0.0	-	-
<b>III. Industry</b>	<b>49.5</b>	<b>48.4</b>	<b>39.2</b>	<b>40.9</b>	<b>69.3</b>	<b>72.5</b>	<b>89.0</b>	<b>111.3</b>	<b>53.4</b>
Foodstuff and beverages	0.0	0.0	0.0	0.3	0.0	0.0	0.0	0.0	0.1
Textiles and apparel	21.0	26.1	20.9	19.4	24.3	18.4	24.4	29.1	9.5
Forestry and Furniture	0.3	0.2	0.3	0.5	0.4	0.6	0.9	0.6	0.7
Cellulose, paper and by-products	0.3	0.2	0.3	0.2	0.2	0.3	0.4	0.9	0.6
Processed and unprocessed chemicals	10.2	4.8	6.1	6.7	8.7	9.4	11.0	13.5	4.1
Glass, clay and porcelain products	0.5	0.2	0.2	0.2	0.6	0.7	0.9	1.0	0.5
Basic steel and iron industry	0.0	0.0	0.0	0.1	0.0	0.1	0.1	0.6	0.1
Metal products, machinery and equipment	12.7	12.7	7.5	9.9	28.6	38.1	46.5	59.5	35.9
Non specified manufactures	4.6	4.2	3.9	3.7	6.5	4.9	4.8	6.1	2.1
<b>IV. Others</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>-</b>	<b>0.0</b>	<b>0.2</b>	<b>0.1</b>	<b>0.0</b>	<b>0.0</b>
<b>V. Total Imports</b>	<b>49.6</b>	<b>48.5</b>	<b>39.2</b>	<b>40.9</b>	<b>69.3</b>	<b>72.7</b>	<b>89.2</b>	<b>111.5</b>	<b>53.4</b>

Source: Studies and Informations Department, DIRECON (January 2009), based on data from Central Bank of Chile

Contrarily to exports, imports show a higher degree of diversification given that in 2007, Chile imported from Hong Kong 968 different products, which accounts for 15% of the number of products that Chile imports from the world<sup>35</sup>. Table 2.10 shows the top twenty five products that Chile imports from Hong Kong, which represent on aggregate 58.1% of total imports that are of Hong Kong origin, thereof giving an example of how more diversified imports are than exports. It can also be seen that the majority of the products belonging to the top twenty five are metal products, machinery and equipment products.

<sup>35</sup> Chile imported 6,581 different products from the world in 2007

**TABLE 2.10**  
**CHILE'S MAIN IMPORTS FROM HONG KONG, 2007**  
*(millions of dollars CIF and %)*

HS	Description	FOB	%
85176210	«switching and routing apparatus»	4,841,202	9.1
84733000	Data processing machine parts	4,431,682	8.3
85287290	Other Not designed to incorporate a video	3,784,922	7.1
85285111	Liquid crystal displays	3,454,522	6.5
85177000	Parts of apparatus for the transmission or r	3,343,708	6.3
85176290	Other apparatus for the transmission or rec	1,587,925	3.0
82055100	Other hand tools (including glaziers' diamo	762,518	1.4
95030090	Other toys	701,443	1.3
85365019	Other Electrical switching for a voltage no	635,965	1.2
64039992	Other shoes, for men, with in-soles of a len	610,947	1.1
85271300	Reception apparatus for radio combined w	603,411	1.1
62046291	Trousers	582,292	1.1
62052010	Cotton mens shirts	519,737	1.0
40151930	For household use ( gloves, mittens and mi	488,463	0.9
39241000	Tableware and kitchenware	470,201	0.9
94033090	Workstations	467,437	0.9
61102000	Sweaters pullovers sweatshirts and similar	462,121	0.9
85182100	Single loudspeakers mounted in their encl	439,295	0.8
61091011	«t-shirts»	428,973	0.8
84145900	Other fans	426,760	0.8
39269090	Other articles of plastics and articles of othe	419,850	0.8
84716010	--Combined input/output units	413,644	0.8
62034210	Men's or boys' trousers denim of cotton	405,540	0.8
85423200	--Memories	384,986	0.7
42029210	Other with outer surface of plastic sheeting	357,120	0.7
	<b>Total Principal Products</b>	<b>31,024,661</b>	<b>58.1</b>
	Others	22,384,468	41.9
	<b>Total Imports</b>	<b>53,409,129</b>	<b>#####</b>

Source: Studies and Informations Department, DIRECON (January 2009), based on data from Central Bank of Chile

## II.2. Bilateral Trade in Services

Unfortunately, in this area of the bilateral relation there is no reliable data accounting the bilateral flow of services between Hong Kong and Chile. Even though there is no record of Hong Kong trade in services to Chile, we have detected some minor activity of Chilean services in Hong Kong, as maritime transport services.

## **II.3 Bilateral Investments**

### **II.3.A Chilean Investment in Hong Kong**

There are no official statistics on Chilean investment in Hong Kong, given that there is not yet any official methodology for accounting for this type of investment in Chile, and no investments by Chilean companies were identified for this study. In 2007, the stock of Hong Kong inward investment stood at US \$ 1,184.0 billion<sup>36</sup>, of which 41% came from mainland China, and the portion coming from South America is included in the category “Other”, with less than 9% of total inward investment in 2007.

### **II.3.B Hong Kong, China Investment in Chile**

An increasing level of transactions in goods, basically products, has marked economic relations between Chile and Hong Kong although some services can be detected, while, in comparison, direct investment levels have not been identified. As an example, we may indicate that there is no registered Hong Kong investment for the period 1974-2007 received by Chile.

This performance pattern reflects, however, the general pattern of other Asian investments both worldwide and in Latin American and the Caribbean, characterized by a strong asymmetry between Asian presence in international trade, on the one hand, and the low profile of direct foreign investment, on the other.

Asian investors in South America have traditionally developed projects aimed at ensuring the quality, continuity and stability of raw material prices. In Chile, there are registered investments from 63 countries in the period 1974-2007, and there are no records of Hong Kong investments in Chile<sup>37</sup>.

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<sup>36</sup> In

[http://www.censtatd.gov.hk/freedownload.jsp?file=publication/stat\\_report/national\\_income\\_bop/B10400032007AN07B0300.pdf&title=External+Direct+Investment+Statistics+of+Hong+Kong&issue=2007+Edition&lang=1&c=1](http://www.censtatd.gov.hk/freedownload.jsp?file=publication/stat_report/national_income_bop/B10400032007AN07B0300.pdf&title=External+Direct+Investment+Statistics+of+Hong+Kong&issue=2007+Edition&lang=1&c=1)

<sup>37</sup> Information from the Chilean Foreign Investment Committee in <http://www.cinver.cl/archivos/estadisticas/NT2.xls>

### **III. TRADE AND INVESTMENT POLICIES AND SYSTEMS**

### **III. TRADE AND INVESTMENT POLICIES AND SYSTEMS**

#### **III.1. Introduction**

The basic features of the trade policy of Chile and its institutions were presented in preceding chapter; a detailed presentation of its policies and instruments are further developed in this chapter and its sections.

#### **III.2. Measures affecting Trade in Goods**

##### **III.2.A. Tariffs**

###### **III.2.A.1. General Tariffs**

As a result of the Uruguay Round, Chile lowered its bound tariffs from 35 to 25 percent, save for those applicable to dairy products, wheat, wheat flour, sugar and vegetable oils, which were reduced to 31.5 percent. Today, tariffs in Chile stand at 6 percent (from 1 January 2003), the result of a five-year reduction schedule established by Law No. 19589, which was enacted on 14 November 1998. Chile has a flat MFN custom tariff of 6% for most products, which makes up over 98% of tariff lines. However, there are some exceptions for sugar, wheat and wheat flour, which are subject to a *price band system* (and thus to a specific duty), plus some measures specific to poultry (from heading 0207), which has a tariff of 25%<sup>38</sup>. On the other hand, some products are duty free, including fire-fighting vehicles, helicopters, aircraft, and cargo and fishing vessels.

Chile has lowered its effectively applied tariff rate<sup>39</sup> to 1.5 percent (the 2007 average), as compared to 3.2 percent<sup>40</sup> in 2003 through the implementation of additional FTAs and other former trade agreements. In accordance with Chile's approach, in every FTA most products have been included in immediate or short run tariff reduction lists. The products subject to special treatment (included in long term lists or not subject to tariff elimination) are few in number and generally the same between FTAs, reflecting the political importance of those products to Chile. However, certain additional products are also protected in some FTAs on the request of our counterpart. Products that have received special treatment in all agreements are sugar, wheat and wheat flour and to a lesser extent dairy products, rice and others.

Imported second-hand goods are subject to tariffs applicable to new goods plus a 50 percent surcharge, except for capital goods and goods subject to the exemptions established in section 0 of the Chilean Customs Tariffs (diplomats, armed forces, charities, and others). The second type of goods can have total or partial tariff exemptions. Most goods included in this Section are duty-free, but others are subject to ad valorem duties of 6 percent, which apply only when they

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<sup>38</sup> The only measure to which poultry is subjected is a MFN tariff of 12,5% (Since January 1 of 2009), higher than the general 6% MFN. Law No. 19914 of January 1, 2006 establishes that the tariff will be reduced gradually each year from 25% until it reaches 6% on 1 January 2012.

<sup>39</sup> That is, including preferential tariffs granted in FTAs

<sup>40</sup> Source: Cámara Nacional de Comercio (Chilean National Chamber of Commerce)



are less than the duties established in customs tariffs for the same goods<sup>41</sup>. In addition, these goods will have their delivery facilitated.

Additionally, imports of goods that classify as capital goods are subject to 0% tariff established in Law No. 20269 taken into force in June 27, 2008.

A 10 percent tariff on added value applies to repairs or work done to domestic products that temporarily are abroad for these purposes. This tax is established in article 116 of decree No. 175 of the Finance Ministry published on February 5, 1974.

Chile applies the MFN tariff treatment to WTO member States and also to non-WTO countries (subject to such treatment under bilateral agreements, i.e. Russia and Lebanon). Preferential treatment is only accorded to countries with which Chile has trade agreements. The purpose of such bilateral trade agreements is to reduce tariffs to 0 percent.

Chile does not apply tariff quotas, except in cases of reciprocity (Article 88 of the Central Bank Law) or in the framework of free trade agreements.

### **III.2.A.2 Specific Tariffs**

Chile imposes specific duties as a result of the application of price bands, which are mechanisms established with the aim of stabilizing domestic prices. Such specific duties apply to sugar, wheat, and wheat flour. Thus, the administrative authority is allowed to apply, at regular intervals, a specific duty (expressed in US dollars) or a reduction of the applied MFN tariff (currently 6 percent), according to the evolution of international prices.

### **III.2.B. Non-Tariff Measures**

#### **III.2.B.1. Taxes and Duties**

Most imports are subject to the 19 percent Value-Added Tax (VAT), which is also applicable to domestic products. VAT is calculated on CIF value plus import duty. Capital goods imported for investment purposes may be VAT exempt when imported under the Chilean Foreign Investment Statute (Decree Law No. 600 of 1974), as long as the capital goods are included in a list established by the Ministry of Economy<sup>42</sup>. For domestic investment projects, the exemption of the VAT, applies when the goods are included in the above mentioned list, there is no local production of the capital goods to be imported, together with other requirements that have to be complied all together.

Several products, including different luxury items, alcoholic beverages, gasoline and vehicles are subject to other local taxes.

#### **III.2.B.2 Prohibited Imports**

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<sup>41</sup> Some second hand goods have a tariff higher than 6%, being thus benefited with the 6% treatment in this case.

<sup>42</sup> The updated list is in Decree 370/2006. Since the list is very exhaustive, it has only had two modifications to include two capital goods. To be in the list, the product must be a machinery or equipment

The Central Bank Law provides for the free importation of goods<sup>43</sup>. Nonetheless, there still are some import prohibitions. For example, importation of second-hand vehicles is prohibited on sanitary and environmental grounds, i.e. pursuant to measures established by the authorities to combat air pollution in the main cities. However, such prohibition does not apply to second-hand vehicles imported under section 0 of the Customs Tariffs or to those who may be imported under total or partial duty exemptions.

Import prohibitions also apply to goods that may offend public morals or affect sanitary and phytosanitary safety. For instance, the importation of fruit infected with fruit fly is prohibited. Pursuant to the Convention on International Trade in Endangered Species, ratified by Chile, the importation of endangered plants and animals is prohibited. However, these species may be imported with a special permit issued by the National Commission for Scientific and Technological Research.

The following items cannot be imported<sup>44</sup>

- Used vehicles (unless covered by exceptions established within the existing rules)
- Used motor cycles
- Used tires
- Asbestos in any of its forms
- Pornography items
- Industrial toxic wastes
- Dangerous merchandises for animal use, agriculture or human health (as examples; some plague control materials for agricultural use, toys and children´s items that may contain toxic components, other items), which are prohibited by the Ministry of Health, Ministry of Agriculture or other Chilean public organizations.
- Other merchandises that according to Chilean current laws are with a prohibition to be imported.

### **III.2.B.3 Quantitative Restrictions-Import Licences, Quotas, etc.**

Chile applies a duty free quota of 60,000 tons for sugar within the framework of WTO, as a result of the renegotiation of its bound rate of tariff. Additionally there is a quota of 45,000 tons of sugar that are given to specific countries due to FTAs. Quotas in the case of sugar are as follows:

#### **Contingents:**

A. Sugar HS code 1701.99.00	60,000 ton (Argentina 21,000 ton, Guatemala 21,000 ton, Brazil 9,000 ton and any other origin 12,600)
B. Sugar HS code 1701.91.00	30,000 ton (Colombia 15,000 and any other origin 15,000)
C. Sugar HS code 1701.91 and 1701.99	15,000 ton (Bolivia 6,000, Colombia 6,000,

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<sup>43</sup> Law 18525 is the main law that regulates international trade and the Central Bank has no role in it. In the past the Central Bank could establish limitations on imports and that is why there is that provision in the Central Bank Act, but that is not related to Law 18525

<sup>44</sup> Original text is in Spanish. Further details in Spanish in [www.aduana.cl](http://www.aduana.cl)

Honduras 1,000 and any other origin 2,000)

### **Duty out of quota for sugar:**

The applied duty when imports exceed the sugar quota is established 12 times a year as a specific duty or rebate, mechanism established by Law 19897 and Finance Ministry Decree 831. The other products that are under a quota system are in the framework of specific concessions in trade agreements.

On the other hand, preferential duty free quotas to several products are being applied within the framework of the FTAs.

### **Price Band System**

This system was modified in 2003, in conformance with the recommendations of the WTO. A new legislative piece introduced reforms for a more predictable, transparent and non-discretionary system. Moreover, the new law eliminates edible oils from its application, establishes new upper and lower borders of the band, and the way these borders should decrease until 2014.

Article 1 of Law N° 19897, that replaced Article 12 of Law N° 18525 on the Rules on Importation of Goods, establishes specific duties in dollars of the United States of America per tariff unit and rebates on the amounts payable as *ad valorem* duties established in the Customs Tariff, which could affect the importation of wheat, flour of wheat and sugar, for the period between December of 2003 and December of 2014. In this last year the President of the Republic will evaluate the modalities and conditions of application of the mechanism, considering the conditions of the international markets, the necessities of the industrial and productive sectors and the consumers, as well as our commercial obligations at that date, which could result in its elimination or in its modification.

The amount of such duties and rebates is established six times for wheat by every annual period between the 16 of December and the 15 of December of the following year, and twelve times for sugar by every annual period between the 1 of December and the 30 of November of the following year, depending on the relationship between the average price in relevant markets and the values established in law 19897. In some cases a specific duty may be applied, in others a rebate and finally in others there may be no specific duty in addition to the 6% *ad valorem* rate. The mechanism grants all exporters of the goods covered by this system an instrument that does not affect international trade in anyway.

### **III.2.C Import Customs Procedures**

Until 2002 all imports valued at over US\$ 3,000 required that the Central Bank approve an import report prior to the shipment of and payment for goods. This is no longer the case.

Imports received via inland freight require the International Waybill/Customs Transit Declaration, which allows goods to be cleared at border customs houses. Otherwise, goods must be transferred to regional customs houses.

Goods imported on a temporary basis are subject to a *bona fide* self-valuation and some customs administrative functions have been transferred to customs agents.

For imports and exports originating in Tax Free Zones there is a "remote clearance" system. Customs procedures are completed electronically through the Information Technology Center, where all information is recorded either directly from the free zone or from a special transmission center. The information required is basically the same as that required for other types of imports.

### **III.2.D Measures Affecting Exports**

#### **III.2.D.1 Export Subsidies**

Chile does not provide and does not have plans to provide any export subsidies. Chile notified the WTO of three mechanisms containing export subsidy components: i) the simplified system of customs duty refund; ii) the deferred payment system for customs duties, fiscal credits and other tax-related benefits; and iii) the automobile law. Regarding the first two, the subsidy component was eliminated by January 2003 and December 1998, respectively. The third one was eliminated by November 2003.

#### **III.2.D.2 Duties, local taxes and duty neutralization measures**

##### **Customs and Fiscal Allowances**

- Duty drawbacks

A general drawback system operates under Law No. 18878 of May 13, 1988. This system is available to all exporters who have used imported inputs. Exporters are reimbursed for import duties paid on all imports incorporated or consumed during the production process.

A "simplified" duty drawback system operates under law 18480, of 19 December 1985, which benefits small exports. The drawback rate is 3% of FOB value of exports and products must have at least 50% of imported inputs to apply for this drawback. Another requirement is that the product (8 digit- tariff code) must not be in the list of excluded goods. This list is updated annually with the products that exceed the maximum export limit the previous year, at present it is US\$ 26,244,299 and corresponds to Decree 13 of the Ministry of Economy that took into force on July, 18, 2008.

Any exporter that has incorporated or consumed imported inputs in exportation may apply to the general drawback system. There is no minimum export value required (for efficiency reasons, applications must cover at least a drawback of US \$ 100).

The general drawback and the simplified duty drawback system are self-excluded. This means that they cannot be used simultaneously for the same exportation.

- Deferred payment of customs duties

Under law 18634, of 5 August 1987, the deferred payment of customs duties on imports of capital goods is allowed for up to seven years, payable in three installments. Also, purchasers of Chilean made-capital goods are entitled to a tax credit equivalent to 73% of the customs duty on

the net invoice value of the goods. In both cases, the debt is subject to a market-based interest rate established by the Central Bank. Additionally, and according to Law 20269, that entered into force in June, 27, 2008, those goods that qualify as capital goods according to Law 18634, are subject to 0% import duty.

- Value Added Tax

Exports are exempt from this tax and there is a system through which exporters may recover the tax paid by the inputs.

- Interest rates for exporters

Export activities have no access to prime rates. However, the Chilean Economic Development Agency (CORFO), through Chilean and foreign commercial banks, has two lines of financing available for this sector: One, offers financing of long term to foreign buyers of goods (Capital Goods, Durable Consumption Goods and Engineering and Consulting Services) of Chilean origin, and the other one provides financing to exporters enterprises, for the provision of inputs or the establishment of a commercial infrastructure abroad.

CORFO provides the necessary funds for those credit lines through private financial institutions and does not compete against the private sector in connection with fund provisions

### **III.2.E Technical Barriers to Trade**

#### **STANDARDS, TECHNICAL REGULATIONS AND CONFORMITY ASSESSMENT PROCEDURES IN CHILE**

##### **1) DESCRIPTION**

###### **Basic Principles**

Consistent with Chile's international trade policy, the elaboration, adoption and application of standards, technical regulations and conformity assessment procedures are based on non-interference with the free operation of markets, non discriminatory treatment between domestic and foreign products and the use of international standards as a basis for standards and technical regulations.

###### **Standards**

The Chilean institution in charge of the development of standards is the National Standardization Institute (Instituto Nacional de Normalización, INN). The INN is a Private non profit Foundation and affiliate of the Chilean Economic Development Agency (Corporación de Fomento de la Producción, CORFO).

In September of 1995, the INN accepted the Code of Good Practice for the Preparation, Adoption and Application of Standards of the Agreement on Technical Barriers to Trade of the World Trade Organization (WTO). The Chilean Standard base (NCh1) establishes that in all the cases that is possible, standards must be based in the international standards and keep them as similar as possible (ISO, IEC, Codex Alimentarius, etc.), and if this is not possible, in regional standards (COPANT, CEN, etc.) trying that modifications be minimal.

Chile is member of the International Standardization Organization (ISO) through the INN. Also, INN is member of The Inter-American Metrology System (SIM), International Organization of Legal Metrology (OIML), the Inter-American Accreditation Cooperation (IACC), the Pan-American Standards Commission (COPANT), International Accreditation Forum (IAF), the International Laboratory Accreditation Cooperation (ILAC) and Asociación Mercosur de Normalización (AMN). Moreover, Chile participates in the CODEX Alimentarius Commission. In 1997, the National Committee of the Codex Alimentarius was institutionalized, with the participation of the Ministries of Health, Agriculture, Economy and Foreign Affairs, as well as representatives of the food industry, academic sector and consumers. The INN in the General Conference of Weights and Measures, International Committee of Weights and Measures, and the International Bureau of Weights and Measures, in which the official representative is the Ministry of Foreign Affairs, also technically represents Chile.

Standards are adopted through a process of consensus building among the interested parties from both the public and private sectors. The public consultation process (for 60 days) is announced on the web page ([www.inn.cl](http://www.inn.cl)) and also in a nationwide newspaper; the text of draft standards is available to anyone requesting them. Once the INN Council has approved a standard, it is given official status by the relevant Ministry, yet they keep being voluntary standards.

It exists a Documentation Center that depends of the Information and Diffusion Division from INN. This Center keeps all Chilean standards (both officials and yet in study) and is available to the public through two media: Documentation Center Library, and the web page [www.inn.cl](http://www.inn.cl) (the information published on the internet includes the standard code, title, value, scope and application field).

Currently, there are about 3,250 standards with a non-mandatory compliance. The process of study of such standards is conducted according to widely accepted international criteria. An important number of the standards developed in recent years, are equivalent to international standards or present minor deviations from international standards in aspects that do not affect the technical content. However, in some cases the international standards have not been taken into account for the development of national standards, because they have been considered as inadequate for national application. Such is the case of seismic designs and structures because of local seismic conditions.

The “stock” of national standards is subject to alignment with international standards whenever standards go through a revision process or when an obstacle to trade has been detected.

Accordingly, Chile is making important efforts in order to meet its commitments on the APEC’s Voluntary Action Plan, through the alignment of national standards with international standards in those products identified as “priority” by the APEC’s Sub-Committee on Standards and Conformance. This program began in 1996 and it will continue as long as new priority areas are defined.

### **Technical Regulations**

Technical regulations are those which compliance is mandatory. They are developed by the Ministries, and other governmental Agencies with competence in the specific area to be regulated. Each Ministry develops its own regulations –most of them refer to international standards–, which are approved by either a decree or a resolution. They are published on the “Diario Oficial de la República de Chile” (Official Gazette).

Among the main institutions with competence to adopt technical regulations, is worth to mention:

The Ministries of Economy, Agriculture, Health, Transportation and Telecommunications, Housing and Urban Development.

Chile notifies to the WTO the draft technical regulations, pursuant to the obligations established in the Agreement on Technical Barriers to Trade. This information is public and available on the web site [www.reglamentostecnicos.cl](http://www.reglamentostecnicos.cl).

### **Conformity Assessment**

In Chile, the conformity assessment process is conformed in one hand by mandatory mechanisms under the supervision of the Ministries with competence in health, hygiene, and safety matters, and in the other hand by non-mandatory mechanisms such as the one administrated by the INN.

### **Voluntary**

The INN administrates the conformity assessment with voluntary standards. For this purpose, the Institute has developed a National Accreditation System that includes the accreditation of: Products and Quality System Certification Bodies; Auditors of Quality Systems; Quality System Certification Bodies; Inspection Bodies and Calibration and Testing Laboratories. Since 2004 the INN has a Regulation (INN - R401) for the accreditation of Conformity Assessment Bodies. The objective of this regulation is to establish the procedure and requirements applied in the National Accreditation System. This regulation is available in the web site: [www.inn.cl](http://www.inn.cl).

This system operates under international criteria (ISO/IEC guides). The accreditation is given for a certain period of time, during which there is a continuing evaluation of the competence of the conformity assessment bodies.

Both domestic and foreign conformity assessment bodies participate in the process. They include: Universities and private institutions as well as transnational subsidiaries (*Bureau Veritas, Societ  General de Surveillance, Lloyd Register, etc.*).

Finally, consistently with the Chilean foreign trade policy, the INN is seeking to increase its international credibility through the international recognition of its accreditation system. The aim behind this policy is to achieve the recognition of the Chilean conformity assessment results by those markets to which Chile exports its products.

For this objective, INN is in process of being signatory of the Multilateral Recognition Agreements (MLA) of ILAC and IAF, by being signatory of the mutual recognition agreements of IAAC. IAAC's MRAs have been recognized by ILAC and IAF in 2006, and since then, the condition of signatory of the MLAs must be obtained regionally.

INN has made important progress in obtaining these recognitions for testing and calibration laboratories and certification bodies of quality and environmental management systems. Once completed this process of recognition, INN will request a peer evaluation for the MRA on product certification bodies.

### **Mandatory**

In this case, the conformity assessment process is under governmental control. The assessment of conformity in some cases is carried out directly by the competent Agency through its own

infrastructure, and in other cases is carried out by conformity assessment bodies, which are authorized by the Agency for that purpose.

As a way to facilitate the mutual recognition of the conformity assessment results, the authorities are working on the standardization of the criteria to approve conformity assessment bodies, as well as on the criteria for certification in specific regulated areas. To facilitate this process, INN has developed arrangements with some Agencies in order that its accreditation of those conformity assessment bodies is accepted by the Agencies. The regulatory authority sets the requirements, test methods or specific procedures and, generally it participates in the accreditation process itself. This has happened in the areas such as electrical and fuel products; fishing products; fire extinguishers; certification of meat grading; testing laboratories for residues in meat; testing laboratories for testing water; testing laboratories for construction materials; certification of steel for construction purposes.

Chile is committed to facilitate the international trade through the participation in several recognition arrangements, both in the APEC context and with a group of economies that includes APEC economies; all those arrangements are for a particular area. The priority areas are Electricity, Food and Toys.

Chile participates in the Part I of the APEC EEMRA (Mutual Recognition Arrangement on Conformity Assessment of Electrical & Electronic Equipment). Chile is assessing legislative requirements with regard to participating in Parts II and III of EEMRA.

Chile subscribed the APEC Arrangement for Exchange of Information in Toys Safety.

In addition, Chile is evaluating its participation in the Sectoral Food MRA of APEC.

The Superintendence of Electricity and Fuels (SEC) recognizes test results and certification from a specific list of organizations from the United States, Germany, France, Italy, the Netherlands, Austria, Switzerland, England, Canada, Japan, Denmark, Sweden, Norway and Belgium. The organizations interested in having this recognition may request to SEC to be included in that list after compliance with some requirements.

## **Metrology**

Between the years 1995 through 1997, Chile started the development of a National Metrology System, which was implemented through a National Metrology Network coordinated by INN. The Network operates as a virtual NMI, using the preexistent capabilities in the country, endowing them with the necessary technological support to achieve their international technical recognition. In order to disseminate the information from the network, there is a web page [www.metrologia.cl](http://www.metrologia.cl), it is administered by the same servers as the network. The INN as part of the the National Metrology Network has signed several agreements (5 MOU, 2 MRA, 4 Adhesion Acts and 2 Contracts/Other; 4 of them aren't binding and 9 are binding, as for example the Convention du Metre).

The system's main characteristic is a "decentralized structure " in which most of the recognized laboratories coming from Universities, private and public sectors perform the metrological execution. This situation substantially differs from what happens in other countries, in which the entire operation is centralized in a single NMI.

Currently, the network is working under the recognition of "national laboratories" in the physical



area for the magnitude of Mass, Temperature, Force, Length, Pressure, and Electrical Magnitudes, and in the chemical area for chemical residues in food. These “national laboratories” are already providing services and give trace ability to the “Calibration Laboratories” and “Designated Laboratories”. These laboratories have to disseminate the units to the national industry. The process is expected to expand and include as many magnitudes as possible, in order to reach a certain degree of coherency among them, so they can have a real economic impact.

## **2) MAIN FEATURES OF STANDARDS AND TECHNICAL REGULATIONS.**

### **Objectives**

The authority has basic legitimate objectives to accomplish on issues related to the protection of human health or safety, animal or plant life or health, or the environment. Then the official policy is that what does not fall under a legitimate objective has to be left to the market to decide on what standards a product must comply with, if any, and they are of a voluntary nature. This is the reason why the number of technical regulations is fairly limited.

Chilean technical regulations do not constitute a barrier to trade. The reduced number of complaints made by our commercial partners, either during bilateral meetings or through international publications, confirms the situation.

Indeed, the findings on technical barriers to trade examined by the United States (*National Trade Estimate*), and the European Union (*Market Access Database*) do not show an important number of claims regarding the Chilean standards and regulations. In fact, they only make reference to the strictness of some sanitary and phytosanitary measures, or to the differences between the international standards and the Chilean regulations in the building sector. However, this situation has been explained before in the present document.

### **Alignment with International Standards**

A great number of national standards and technical regulations are aligned with international standards.

Given that a substantial portion of the domestic technical regulations are based on domestic technical standards, most recent technical regulations are already aligned with international standards. However, this does not necessarily occur with old technical regulations, since there is no official updating procedure.

Chile, as a small and export-oriented economy, has not supported the idea of developing neither national or regional standards (there are justified exceptions). Chile’s official policy is to focus on international standards. This policy is consistent with Chile’s open, multi-targeted, and export oriented economy.

### **Market Surveillance**

Another characteristic of the Chilean system is that, as a general rule (excepting food, drugs and a few others), the verification of compliance with mandatory requirements for products (national or imported) is made effective once products have entered the market. This policy was adopted a long time ago and seeks to facilitate the flow of trade

### **Fulfilling the Obligations under Agreement on Technical Barriers to Trade**

The responsibility for implementing and administering the Agreement on Technical Barriers to Trade lies on the General Directorate of International Economic Affairs, Ministry of Foreign Affairs.

For technical regulations (Article 10.1 of TBT Agreement), the Enquiry Point is the General Directorate of International Economic Affairs, Ministry of Foreign Affairs. The Enquiry Point information is the following:

Teatinos 180, piso 11,  
Santiago, Chile  
Telephone: (+56 2) 8275447  
Fax: (+56 2) 3809494  
E-mail: caramirez@direcon.cl

For technical standards (Article 10.3 of TBT Agreement), the Enquiry Point is the National Institute of Standardization. The Enquiry Point information is the following:

Matías Cousiño 64, piso 6  
Santiago-Chile  
Telephone: (+56 2) 4458000  
Fax: (+56 2) 4410427  
E-mail: inn@inn.cl

### **Bilateral and Multilateral Agreements**

Chile signed the Agreement on Technical Barriers to Trade of the Tokyo Round in 1980. The Agreement on Technical Barriers to Trade of the Uruguay Round came into force as a Law in Chile on May 1995.

Most of Chile's bilateral agreements include a chapter on technical barriers to trade. This fact, together with the commitments assumed under the WTO, have generated a need for "interdisciplinary team-work" between the Parties involved in the area of technical barriers to trade. The agreements make reference to the creation of "Commissions" which develop working programs and constitute an instance to solve problems concerning the impact of a specific measure on the trade relations between the Parties. In all of these cases, the compromises include disciplines that extend beyond the TBT Agreement provisions in areas such as transparency, equivalence, mutual recognition, and risk assessment. In addition, the Mexico-Chile FTA includes provisions on this area in the telecommunication sector.

### **Legal Framework**

In 1997 the National Commission on Technical Barriers to Trade was created. The Commission is headed now by the General Directorate of International Economic Affairs, Ministry of Foreign Affairs, and has played a fundamental role on dealing with the coordination between the different Government Agencies. By centralizing the process, and dealing with all the agents involved in the development of technical regulations, the Commission provides all the parties involved, with a common forum to express their concerns and expectations related to the nation's standardization agenda.

Another measure oriented to improve the implementation of the Agreement on Technical Barriers to Trade is law 19.912, published in November 2003.

To implement the above mentioned law, a regulation was jointly developed with the different Government Agencies, which establishes basic criteria for the development, adoption and application of technical regulations and conformity assessment procedures, including the notification process (Decree 77), it's a Decree of Good Regulatory Practices. This Decree is available in the web site: [www.reglamentostecnicos.cl](http://www.reglamentostecnicos.cl) (there is an English version).

Finally, since 2006 it is available a web site (with the cooperation of the EU) which contains all the Chilean technical regulations and conformity assessment procedures: [www.reglamentostecnicos.cl](http://www.reglamentostecnicos.cl).

All things combined will improve Chile's capacity to meet its current international commitments, including those assumed under the WTO, and other international organizations, as well as the specific compromises arising from the negotiation of commercial agreements.

### **III.2.F Sanitary and Phytosanitary Measures**

#### **Local Corresponding Entities**

In their respective fields of competence, the Ministries of Agriculture, Health and Economy are responsible for complying with the obligations assumed by Chile under the WTO Agreement on Application of Sanitary and Phytosanitary Measures, and for exercising its rights there under.

The Ministry of Health is the competent sanitary authority responsible for approving and controlling the installation and operation of establishments dedicated to the production, process, package, store, distribution and sale of food for internal market. In addition, the Ministry of Health has the authority over the import and marketing of all food intended for human consumption.

To enforce compliance with the laws and regulations on food safety, the Ministry of Health inspects facilities and monitors the sanitary quality of the products. These inspection and monitoring activities are performed throughout the country based on specific surveillance programs.

The legal powers of the Ministry of Health are established in the Sanitary Code, which is the main statute ruling all matters related to the promotion, protection and recovery of the health of the people. With regards to food safety, from the Sanitary Code derives the Food Health Regulation. This is the standard that establishes the sanitary conditions applicable to the production, import, process, package, store and sale of food for human consumption.

In order to comply with its legal obligations, the Ministry of Health has a network consisting of 15 Regional Ministerial Secretaries, which act as the sanitary authority in the jurisdiction where each of them must manage and implement the food safety programs.

The Agriculture and Livestock Service (SAG), under the authority of the Ministry of Agriculture, is the competent authority responsible for regulating and enforcing regulations on sanitary

(animal health) and phytosanitary (plant health) matters applied to the import and export of animals, plants and by-products. It is responsible for the sanitary and phytosanitary measures applied to reduce the risk of introducing animal-borne diseases and plant pests, and to prevent their dissemination; It is also responsible for issuing the sanitary and phytosanitary export certificates for animal and plant products, including the certification of fitness for human consumption for primary products.

The fisheries and aquaculture sector is under the authority of the Ministry of Economy. This sector is regulated by the National Fisheries Service (SERNAPESCA) and the Under-Secretary for Fisheries (SUBPESCA). SERNAPESCA is the agency in charge of enforcing the Fishing Law and related regulations. While SUBPESCA is in charge of the legislation and policies of the sector.

SERNAPESCA is the agency responsible for implementing national fishery policies and for the sanitary control and certification of all hydrobiological products for export. It is also responsible for establishing epidemiological surveillance systems aimed at preventing, controlling and eradicating diseases among aquatic animals.

The Ministry of Foreign Affairs, through its General Directorate for International Economic Affairs (DIRECON), is the agency in charge of coordinating the different regulatory agencies responsible for supervising compliance with SPS measures. It determines national positions regarding these matters in the WTO Sanitary and Phytosanitary Committee. In addition, it supervises compliance with the commitments assumed under the Agreement on the Application of Sanitary and Phytosanitary Measures of the WTO, and other trade agreements both bilateral and multilateral.

An Inter-Ministerial National Commission on Sanitary and Phytosanitary Matters was established in March 2001, headed by DIRECON. Its objectives are: to assess the SPS chapters of the different trade agreements; analyze trade concerns, follow - up Action Plans derived from the SPS Committees of the FTAs and other agreements; discuss national positions with regards to the Codex Alimentarius, International Plant Protection Convention (IPPC) and the World Organization for Animal Health (OIE).

The regulatory framework, drafting procedures, and adoption of the Sanitary and Phytosanitary Measures by Chile were reported to the Secretariat of the SPS Agreement in December 1995<sup>45</sup>.

Closely coinciding with the provisions established in the SPS Agreement of the WTO, drafting of new standards in Chile is based on scientific grounds, following the principles established in the WTO Agreement, avoiding measures that may pose hidden barriers to trade, and promoting a balance between sanitary and phytosanitary protection and trade.

To apply this policy, Chile has an active participation in the multilateral fora for guidelines (WTO) and regulations or standards (OIE, IPPC, Codex Alimentarius Committee). At the bilateral level, Chile is constantly looking forward to achieve a better implementation of the SPS Agreement.

A chapter on SPS measures has been included in the preferential trade agreements subscribed by Chile in the Free Trade Agreements (FTA) signed with Mexico, Central America, the United States of America, Canada, Australia, European Free Trade Association (EFTA), India, South Korea, P.R of China, Panama, Peru, Colombia, and Japan, and in the Association Agreements

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<sup>45</sup> Distributed as document G/SPS/W/39.

with the European Union and P4 (New Zealand, Singapore, Brunei Darussalam). On the other hand, the agreement signed with MERCOSUR confirms the rights and obligations of the parties under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

With the purpose of adequately implementing the WTO SPS Agreement, efficiently solving trade problems and facilitating trade activities, SPS Committees have been established in the agreements with Mexico, United States of America, Canada, South Korea, European Union, Central America, P.R. China, P4, Panama, Peru, Colombia and Japan.

- **Import Policies**

All animal imports and products thereof, must be accompanied by a sanitary certificate issued by a competent authority from the country of origin. The certificate confirms compliance with the zoo sanitary requirements that are mandatory in Chile, which are based on the Zoo sanitary Code of the OIE. A phytosanitary certificate issued by the competent authority of the exporting country is required for plant products, whether processed or in their natural state, that may constitute or transmit pests, and for articles that may represent a hazard to plants (including plant by-products, living organisms, containers, agricultural materials and soil).

Irrespective of their country of origin, animals are placed in quarantine. Plants and seeds are placed in quarantine based on the phytosanitary conditions of their country of origin. The decision is based on a risk analysis, which is performed in accordance with the procedures established in the International Plant Protection Convention (IPPC).

With regard to food imports, the Regional Health Offices of the Ministry of Health authorize food imports for human consumption based on the regulations in force. The import process includes sanitary controls and laboratory analyses if necessary. Risk criteria and historical data on food safety are applied in the analyses, in order to define the recurrence and impact thereof.

The Ministries of Agriculture and Health accept certificates issued by the official sanitary agencies of countries that comply with Chilean regulations, which are based on the guidelines established by international scientific organizations, such as Codex Alimentarius, International Plant Protection Convention (IPPC) and the World Organization for Animal Health (OIE).

A sanitary certificate indicating strict compliance with the requirements established must accompany imports of live aquatic resources. Sanitary regulations are in agreement with the Aquatic Animals Health Code of the OIE.

From May 1996 to December 2008, Chile has submitted 289 notifications on sanitary and phytosanitary regulations and emergency measures to the Sanitary and Phytosanitary Committee (SPS Committee) of the WTO<sup>46 47</sup>.

- **Export Policies**

With regards to exports, it is essential to guarantee the safety of the products and comply with all the sanitary regulations. Chilean institutions are dedicated to certifying in compliance with the requirements set by the destination markets.

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<sup>46</sup> WTO Documents series G/SPS/N/CHL/.

<sup>47</sup> Documents of the WTO series G/SPS/N/CHL/.

The Regional Health Agencies of Chile (15 Regional Health Ministerial Secretariats<sup>48</sup>), are responsible for certifying the products' compliance with local sanitary regulations, they approve and control the installation and operation of the food producing establishments. The Ministry of Health issues certificates for Authorized Industry and Free Sale Product.

The inspection and certification of the sanitary and phytosanitary condition of all animal and plant products and by-products for export, and the verification of compliance with the sanitary and phytosanitary requirements of the destination country is enforced by the Agriculture and Livestock Service, for animal and plant primary products and the National Fisheries Service, for fish and aquaculture products.

- **Compliance with the Principles Established in the SPS Agreement**

Chile follows all the principles established in the SPS Agreement by the WTO in its bilateral trade relations. In the multilateral area (SPS Committee of the WTO) Chile has actively participated to develop the appropriate measures.

### **III.2.G Rules of Origin**

Rules of origin regulations do not apply to imports made under the MFN treatment. In Chile, a certificate of origin is only required when goods are imported under preferential systems.

### **III.3 Trade in Services**

#### **III.3.A. Measures Affecting Trade in Services**

There are a few measures that discriminate between national and foreign services providers, which affect the principle of national treatment, and a few minor exceptions to the MFN. Chile has some quantitative non-discriminatory restriction, mainly related to technical considerations, while in certain sectors local presence is required to better protect consumer interests or domestic market stability.

The Chilean legislation does not foresee any special treatment to the foreign or local enterprises, whether they are SME's or Trans National Companies (for further details on the Chilean investment regimes, refers to section 3 (d) of this Joint Study). Furthermore, applicable measures related to domestic regulation requirements (zoning, environmental impact studies and construction permits, among others) are generally non-discriminatory.

#### **a. -Telecommunications<sup>49</sup>**

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<sup>48</sup> "Secretaría Regional Ministerial de Salud" in Spanish

<sup>49</sup> **References:**

-Law 18.168, *Official Gazette*, October 2, 1982, *General Telecommunications Law, Titles I, II and III (Ley 18.168, Diario Oficial, octubre 2, 1982, Ley General de Telecomunicaciones, Títulos I, II y III)*

-Law 18.838, *Official Gazette*, September 30, 1989, *National Television Council, Titles I, II and III (Ley 18.838, Diario Oficial, septiembre 30, 1989, Consejo Nacional de Televisión, Títulos I, II y III)*

-Law 19.733, *Official Gazette*, June 4, 2001, *Law on Liberties of Opinion and Information and the Exercise*

The Chilean telecommunications industry has expanded rapidly in recent years. The contribution of the communications sub sector to Chile's GDP increased from 1.9% in 1996 to 3.2% in 2004<sup>50</sup>.

There are 12 fixed-net service providers, five providers of mobile services, and 18 companies providing international telecommunications services. Telefónica CTC has a dominant market position as a fixed-net provider in 10 of Chile's 13 regions. Since the early 1990s, Chile's telecommunication sector has been fully privatized; the State is not involved in the provision of telecommunications services.

The telecommunication sector is regulated by the Sub-secretary of Telecommunications (Subtel). Subtel is in charge of implementing and overseeing the application of the Telecommunication Law (Law No. 18,168 of 2 October 1982).

From the legal and constitutional standpoint, there is no discrimination between nationals and foreign investors, being there no restrictions for their participation in Chilean companies.

Domestically, the Chilean regulatory framework allows ample room for market development and only controls possible abuses arising from a dominant market position. This is achieved through the so-called "tariff-setting decree", which establishes for a five-year period the maximum rate to be charged for long-distance, local and Internet services. This type of regulation, in addition to the implementation of the "calling party pays" system (charges for calls made from cellular phones are paid by the calling party and under no circumstances by the receiver of the call), has been highly effective in fostering competition in all services provided by this sector.

- Telecommunications services licensing:

A concession granted by Supreme Decree issued by the *Ministry of Transportation and Telecommunications (Ministerio de Transportes y Telecomunicaciones)* shall be required for the installation, operation, and exploitation of the following telecommunications services: public telecommunication services; intermediate telecommunication services; and radio broadcasting telecommunications services.

A concession granted by a Resolution issued by the National Council of Television (Consejo Nacional de Televisión) shall be required for television broadcasting telecommunications services.

A permit issued by the Undersecretariat of Telecommunications (*Subsecretaría de Telecomunicaciones*) shall be required for the installation, operation, and development of limited telecommunications services.

An official decision referred to compliance with the technical standards and non-alteration of the essential technical features of networks issued by the Undersecretariat of Telecommunications shall be required to render Complementary Telecommunications Services (value added services).

- Juridical requirements

Only juridical persons duly constituted in Chile with domicile in the country may be the titleholders,

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of Journalism, Titles I and III (Ley 19.733, Diario Oficial, junio 4, 2001, Ley sobre las Libertades de Opinión e Información y Ejercicio del Periodismo, Títulos I y III)

<sup>50</sup> Information from SUBTEL (Undersecretary of Telecommunications)

or make use of concessions, for public telecommunications services, intermediate telecommunication services, and radio broadcasting telecommunications services.

Only juridical persons duly constituted in Chile with domicile in the country may be the titleholders or make use of concessions for television broadcasting telecommunications services.

Natural persons and juridical persons duly constituted in Chile with domicile in the country, may be the titleholders, or make use of permits, for limited telecommunications services.

Only juridical persons duly constituted in Chile with domicile in the country may be the titleholders or make use of permits for limited television services.

- Nationality requirements

For radio broadcasting concessions, only Chilean natural persons may be presidents, managers, administrators, or legal representatives of the juridical persons at stake. Also, the majority of the members of the Board of Directors must be Chilean natural persons.

For limited television services permits and for television broadcasting telecommunications services concessions, only Chilean nationals may be presidents, directors, managers, administrators, and legal representatives of the juridical person.

Requests for radio broadcasting concessions, submitted by a juridical person in which foreigners hold an interest exceeding 10 percent of the capital, shall be granted only if proof is previously provided verifying that similar rights and obligations as those that an applicant will enjoy in Chile are granted to Chilean nationals in the applicant's country of origin.

The National Council on Television (*Consejo Nacional de Televisión*) may establish, as a general requirement, that programs broadcast through public (open) television channels include up to 40 percent of Chilean production.

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Market liberalization, facilitating the entry of new national and foreign competitors, together with an attractive technological progress, has situated Chile in a privileged position at world level in the area of telecommunications, and also provides an important basis for future business expansion into Latin America and other business partners countries.

**b. - Printed Media and News Agencies**

Ownership of printed media and national news agencies is open to foreigners, who must, nevertheless, fulfil domicile requirements and be incorporated in Chile. There are also nationality and residency requirements for presidents, administrators, legal representatives and managers that apply to Chilean and foreign owned enterprises alike.



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**b. Transportation**

**i. Maritime Transportation and Port Infrastructure**

For Chile, building an efficient, modern and geographically extended port infrastructure has been a priority task in recent years, taking into account that more than 84% of trade is carried out by maritime transport.

More than 50% of State ports are handled by private sector through concessions. Port Companies, successors to the now extinct EMPORCHI, manage state-owned ports. This was provided for in Law No. 19,542, which amended the administration system of State-owned ports and established the decentralization of port asset management, the creation of the above-mentioned independent companies, and the concession of docks. The State continues to exercise the regulatory function.

The government has given in concession the auxiliary services provided at State-owned ports. Authorities have stated that no more public investment is to be made in new port assets, in order to promote private investment. Some port services, such as loading, unloading and storage, are entrusted to private companies. The main idea is to provide ports the necessary tools for them to improve their efficiency and performance, as the conviction exists that the private sector will be able to carry out this function better than anyone else.

As regards international trade, no discriminatory measures are applied to foreign vessels in connection with access to ports and port installations or their use.

- International commercial maritime transport to and from Chile imposes no restrictions upon foreign commercial vessels, except for the provisions contained in the Maritime Transport Agreement between Chile and Brazil (1974) and the cargo reservation measure established through the application of the reciprocity principle detailed in article 3 of Decree Law No. 3059 (1979) which regulates the National Merchant Marine.

**ii. Air Transportation**

Because of its geographical situation, Chile requires expeditious, low-cost routes, both within and outside its borders. The development of a foreign-trade-based economy renders it necessary to have means of transportation suitable for the country's exportable bases; thus, the airfreight sector grew hand in hand with the development of exports, particularly export products such as seeds, fresh fish, fruit, vegetables and, in general, products that require to be rapidly delivered to consumer markets.

The Commercial Aviation Law recognizes Chilean and foreign companies alike the freedom to offer both national and international air transport services. In other words, any foreign or Chilean company may offer such services without any restriction, save for those related to technical and safety considerations.

At international level, this absolute freedom has one exception: reciprocity, established in

bilateral agreements or practice. Thus, foreign companies may operate in Chile insofar as their governments grant similar rights to Chilean airlines in their respective territories.

Under this legal system, domestic traffic grew 1,000 percent over the period 1979-1999, with more than 3.2 million passengers carried yearly. In the 90s alone, domestic air traffic grew at average annual rates of 18 percent.

This has not only permitted to develop productive centers in remote regions of the country, but has also allowed to shorten distances in a country more than 4,000 km long, and with fares that make air transport increasingly affordable.

On the other hand, the consolidation of two private airlines, plus several regional airlines, reflects the dynamism of this sector.

The Chilean experience and the development of its industry have shown that the greater the opening to foreign competition, and the fewer the barriers or restrictions, the quicker the growth of traffic in the sector. For this reason, Chile has an open skies policy that is reflected in its air transport services agreements.

International cargo traffic has grown more than 8,000 percent since 1979, according to data provided by the Santiago Chamber of Commerce. Eight percent of Chilean exports leave the country via air, a figure that in the case of trade with the United States climbs to 16 percent, and to 20 percent in the case of the United Kingdom.

### **III.3.B. International Commitments Related to Services**

Among the main objective of our country at international level is the establishment of clear regulations for services and investment, with a view to create a wider and stable market for our services and goods abroad. In this sense, we seek to progressively open up our markets for service providers and to strengthen the integration processes that may contribute to the expansion of trade and foster the creation of joint ventures to penetrate different markets.

As a result of the Uruguay Round, commercial disciplines extended beyond those related to trade in goods to cover areas such as services, investment and intellectual property. In recent years, our country has continued to participate in WTO working groups on services, and in service negotiations in the framework of the Doha Round.

At bilateral level, some concrete results have been achieved through the subscription of legal instruments that cover issues and disciplines additional and complementary to trade in goods, as a means to achieve a better and more profound liberalization of trade.

In this context, we should note that the Free-Trade Agreements with Canada, Mexico, Central America, Korea, European Communities, United States, Japan, Peru, Colombia and Australia include specific chapters governing cross-border trade in services. Some of these Agreements also contain chapters and annexes that regulate and supplement these disciplines, such as those dealing with telecommunications, professional services and temporary entry of business people.

The above-mentioned Agreements are based on principles such as non-discrimination and transparency, which are applied to trade in services and investments; they set forth the restrictions that both investors and service providers from both countries may face when entering the different markets; and establish the mechanisms for the progressive removal of such restrictions

(negative list approach).

On the other hand, in pursuing its objectives, our country has assumed different obligations or undertaken different initiatives that involve future negotiations aimed at further liberalizing services and investments with other countries or groups of countries. In this context, during 2008 Chile finalized negotiations with Mercosur and China (positive list approach).

Even though Chile has negotiated Services Chapters with a positive and negative list approach, the Chilean policy is to aim for Service chapters with negative list approach.

### **III.4 Foreign Investment Regimes**

#### **III.4.A. Treatment of Foreign Investment**

Chilean economic policy has reflected the importance given to foreign investment, which, once established in the country, receives a treatment equally favourable than the one accorded to comparable Chilean companies. Chile's Constitution guarantees to all individuals, Chilean and foreigners, the right to develop any economic activity, provided applicable legislation is observed and such activities are not contrary to public morals and order, or to national security interests. There are no economic activities reserved for the State, notwithstanding the special provision established under constitutional regulations regarding mineral resources (mineral resources including hydrocarbon deposits and other fossil substances). Private property rights are fully protected under the Constitution. Property may only be expropriated pursuant to specific constitutional provisions: expropriations may only be executed by law (i.e. requires legislative approval) on grounds of public benefit or national interest and the expropriated parties have the right to compensation for patrimonial harm caused.

Accordingly, one of the main objectives of Chile has been to ensure the establishment of clear investment rules, with a view to creating a wider and safer environment for investors. Furthermore, Chile has taken international commitments in order to gradually liberalise market access, as well as to strengthen the protection afforded to investors.

In Chile, the foreign investment regime is one of free entry of capitals. Thus, subject to domestic regulations, investors can materialize their investment freely.

The Central Bank of Chile has as its purposes to provide for the stability of the currency and the normal functioning of external and internal payments. In that regard, the Bank Act confers to it broad legal powers to, among other, exclusively issue regulatory provisions regarding foreign exchange matters. Therefore, the Bank is the exclusive entity empowered to establish and to amend the foreign exchange regime's components in force in Chile. Chapter XIV of the Central Bank's Compendium of Foreign Exchange Regulations establishes rules for foreign investment, capital contributions, and credit. Those operations shall be conducted through banking entities and be informed to the Central Bank. Currently, there are no restrictions (i.e. prior authorisation, reserve requirement) applicable to transfers in or transfers out related to those operations.

Chile does not apply screening mechanisms of any sort to foreign direct investment in any sector of the economy; they are subject to the same domestic regulations and procedures for approval of investments as national investors (i.e. environmental impact studies when

required).

However, Chile has in place special investment regimes that provide foreign investors better treatment than their domestic counterparts.

### **III. 4.B. Special Investment Regimes and/or zones**

#### **i) Decree Law 600**

When investing in Chile, foreign investors have the option to do it through the special and voluntary regime of DL 600. Under DL 600 investors enter into a legally binding contract with the Chilean State, which cannot be modified unilaterally by the State or by subsequent changes in the law. However, investors may, at any time, request the amendment of the contract to increase the amount of the investment, change its purpose or assign its rights to another foreign investor. The Foreign Investment Committee is the Government's agency responsible for administering this regime. The DL 600 regime does not provide special access to sectors where foreign investment is restricted.

DL 600 guarantees investors the right to repatriate capital one year after its entry and to remit profits at any time. In practice, the one-year capital lock-in has not represented a restraint since most productive projects -in areas such as mining, forestry, fishing and infrastructure-require more than a one-year start-up period. Once all relevant taxes have been paid, investors are assured access to freely convertible foreign currency without any limits on the amount, for both capital and profit remittances. In addition, they are guaranteed the right of access to the formal exchange market. The repatriation of all capital invested is devoid of any tax, duty or charge up to the amount of the originally materialized investment. Only capital gains over that amount are subject to the general regulations contained in the income tax law.

It should be noted that although there are no foreign exchange restrictions currently in place, the Central Bank has the authority to impose restrictions to foreign exchange transactions, in order to preserve the stability of the currency or the financing of the balance of payments. However, DL 600 investors are exempt from these restrictions and their right to access the market in order to repatriate profits or capital is not affected. Notwithstanding the foregoing, DL 600 provides a specific regulation regarding capitals brought into the country consisting of credits associated with foreign investment. In such case, the general rules, terms, interests and other aspects involved in the negotiation of foreign loans, as well as the surcharges on the total cost to be borne by the borrower for the use of foreign credits, including commissions, taxes and all expenses shall be those currently authorized or authorized in the future by the Central Bank.

The DL 600 contract acknowledges as foreign investment:

- Freely convertible currency that can be exchanged at the most favourable rate that foreign investors can obtain from an entity authorized to operate in the Formal Exchange Market.
- Tangible assets, in any form or condition brought into the country according to general import regulations, without exchange coverage. The value of these goods will be determined using general procedures applied to imports. These tangible assets include, among others, machinery or equipment used in productive processes.

- Technology, in any form susceptible to be capitalized, which will be appraised by the Foreign Investment Committee according to its real international market value, within 120 days after the foreign investment application is submitted. If the appraisal is not carried out, the value assigned shall be that estimated by the investor in an affidavit. In previous cases, independent consultants have performed this task.

- Credits associated to foreign investment: The general regulations, terms, interest and other modalities of foreign credit contracts, as well as surcharges related to total costs to be paid by the debtor, including commissions, taxes and expenses, shall be those authorized by the Central Bank of Chile.

- Capitalization of foreign loans and debts, in freely convertible currency, whose contract has been duly authorized by the Central Bank. Under DL 600, investors can increase the capital of the company which received the investment through both the capitalization of credits made under Chapter XIV and the credits derived from current imports and pending payments.

- Capitalization of profits transferable abroad: D.L. 600 allows capital increases of the company receiving the investment through the capitalization of transferable profits.

Foreign investors may request a maximum time limit of three years to materialize their contributions. Under article 11 bis of DL 600, investments of not less than US\$ 50 million for industrial or non-mining extractive projects can request a time limit of up to eight years. In the case of mining projects, the time-limit is eight years but, if previous exploration is required, the Foreign Investment Committee may extend it to up to twelve years. Although Chile's Constitution is based on the principle of non-discrimination, DL 600 offers some tax advantages for foreign investors. These are not "tax breaks" or "tax holidays", but are intended to provide a stable tax horizon, acting as a form of "tax insurance". DL 600 offers several different tax options, but basically allows the investor to lock into the tax regime prevailing at the time an investment is made.

The tax provisions of DL 600 are the following:

- Invariability of Income Tax Regime. All Chilean companies have to pay a First- Category Tax (or Corporate tax) equivalent to 17%. Under Chile's General Income Tax Regime, a 35% tax is currently levied on distributed or remitted profits. Interest paid to non-residents is also subject to a 35% additional withholding tax, however, interest on loans granted by foreign banking or other financial institutions is subject to a lower rate of 4%, provided that excess indebtedness provisions do not apply.

Under DL 600, a foreign investor can choose to lock into an effective fixed overall tax rate of 42% on taxable income for up to ten years, or -under article 11 bis- for up to twenty years in the case of industrial and extractive investments of US\$ 50 million or more. The investor, thereby, acquires immunity from any tax increases in the General Income Tax Regime that may occur during that period. The lock-in can be waived at any time, but an investor cannot subsequently revert to the guaranteed 42% rate. The First-Category payment of 17% can be set against tax returns under both the General Tax and Invariable Tax Regimes.

- Invariability of Indirect Taxes: D.L. 600 states that foreign investments brought into the country in the form of tangible assets are subject to the general VAT taxation regime and customs regulations. However, foreign investors are entitled to include a clause in their contracts giving them access to a regime that freezes Value Added Tax (currently at 19%), as well as import tariffs on capital goods for the project, at their rate at the date of the investment. This special regime applies throughout the period authorized for carrying out the investment. Additionally, imports of some of these capital goods such as machinery or equipment are exempt from VAT, they are on a list compiled, prepared and published by the

Ministry of Economy's Foreign Trade Department. The current list was approved by Decree 307 of the Ministry of Economy, published in the Official Gazette ("Diario Oficial") on May 9, 2007, and is available at:

[http://www.aduana.cl/prontus\\_aduana/site/artic/20070214/asocfile/20070214173208/asocfile320070903160521\\_1.xls](http://www.aduana.cl/prontus_aduana/site/artic/20070214/asocfile/20070214173208/asocfile320070903160521_1.xls).

In addition, foreign investors who sign a D.L. 600 contract are exempted from VAT on other technology imports, provided they appear on this list compiled by the Foreign Trade Department. The products currently listed include accounting and data processing machines, TV cameras, lasers and magnetic resonance Imaging diagnostic equipment (MRI), among several others.

- Special Regime for Large Projects: Under article 11 bis of D.L. 600, investments in new industrial or extractive activities, including mining, are entitled to additional tax benefits, provided they have a value of at least US\$ 50 million. Currently, the Foreign Investment Committee is revising its policy regarding article 11 bis, and new contracts under this regime are not being approved at this time. This policy is subject to change in the future.

- Tax on mining projects. On 16 June 2005, Law 20026 was published in the Official Gazette. It establishes a specific tax on mining activities, which came into force on 1 January 2006. The Law amends Decree Law 600 by adding a new Article 11 ter. The article establishes a regime of invariability for the aforementioned tax, for those investors that sign a new foreign investment contract related to projects with a value of no less than US\$ 50 million. In order to opt into this special regime, investors with existing foreign investment contracts must not have made use of the special invariability regimes set out in articles 7 and 11 bis of DL 600, or they must renounce those regimes at the time of opting into the rights under article 11 ter. The deadline for submitting a request to opt into the regime under 11 ter for investors with existing foreign investment contracts was November 30, 2005. More information may be found at:

[http://www.cinver.cl/index/plantilla2.asp?id\\_seccion=1&id\\_subsecciones=140](http://www.cinver.cl/index/plantilla2.asp?id_seccion=1&id_subsecciones=140)

A foreign investor who wishes to invest through the DL 600 regime must submit an application to the Executive Vice-Presidency of the Foreign Investment Committee. Since June 6 of 2003, the minimum investment amount for a new project is US\$ 5,000,000 (five million dollars) when investments consist of foreign currency and associated credits. The minimum amount is US\$ 2,500,000 (two and a half million dollars) when the investment is in the form of tangible assets, technology, and capitalization of profits or capitalization of credits. The Foreign Investment Committee retains the right to modify both figures. Projects submitted to the Committee's consideration must involve a ratio between equity and associated credits of up to 25/75.

In the case of foreign currency, investors can execute their foreign exchange operation only when the contract has been duly signed. However, when submitting the application, they can request a special authorization to exchange their currency immediately. Any other type of capital contribution requires the Foreign Investment Contract to be duly signed.

## **ii) Foreign Investment Capital Funds (FICES in Spanish)**

The investment regime of Law 18657 on Foreign Investment Capital Funds (FCIFs or FICES in Spanish) is a regime created to gain access to Chilean securities when capital controls

where in place in Chile. Today, foreign investors who wish to invest in Chilean securities issued in Chile are not required to do it through this regime. The regime establishes a preferential tax treatment for foreign capital investment funds. FCIFs are required to obtain a favorable report issued by the Chilean Superintendence of Securities and Insurance (Superintendencia de Valores y Seguros, SVS) in order to conduct business in Chile. FCIFs may not remit capital for five years following the investment of such capital, although earnings may be remitted at any time. A FCIF may hold a maximum of 5% of a given company's shares, although this can be increased to a maximum of 10% if the shares are first-issue shares. Furthermore, no more than 10% of a FCIF's assets may be invested in a given company's stock, unless the security is issued or guaranteed by the Republic of Chile or the Central Bank. All together, no more than 25% of the outstanding shares of any listed company may be owned by FCIFs.

### **III.4.C. Investment Agreements**

#### *Chile's approach to investment protection agreements*

Chile has pursued international investment agreements as a means to strengthen the investment environment by providing certainty regarding rights and obligations of investors. Bilateral investment treaties (BITs) and specific investment chapters in free trade agreements (FTAs) signed by Chile contain clauses regarding fair and equitable treatment, national treatment and most favoured nation status. In addition, Chile has included investor-State dispute settlement mechanisms in these international agreements.

Chile initiated negotiations of BITs in the 1990's after adhering in 1991 to the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States. Through BITs, Chile guarantees offers protection to investors and guarantees the free transfer of capital, of profits or interest generated by foreign investments, and, in general any transfer of funds related to investments, without affecting the regulatory powers of the Central Bank regarding foreign exchange transactions. These agreements establish investor-State dispute settlement mechanisms in case of disputes, to ensure that disputes will be settled through friendly consultations. If no agreement is reached, investors are entitled to opt for international arbitration, rather than submit the case before the Chilean tribunals. In most BITs, this jurisdictional option is final; once the investor has chosen one of the options, it cannot turn to the other.

Chile's current policy is to include specific investment chapters in FTAs and to have these replace existing BITs. Even though some FTAs have maintained in force previously signed BITs, it has been Chile's preference to have a self-contained investment chapter which regulates both investment in goods and in services in a negative list approach. Additionally most of the FTAs cover investment from the pre-establishment phase. These investment chapters provide the protection offered by the BITs and include additional provisions that increase the level of protection of investors, such as more developed rules on minimum standard of treatment and expropriation, as well as prohibition of certain performance requirements and of the imposition of nationality requirements on senior management and board members. As for investor-State dispute settlement, many of the FTAs have, compared to BITs, additional provisions that cover consolidation, amicus curiae, transparency, preliminary objections and the treatment of frivolous claims.

Finally, Chile's investment chapters contain, usually in an annex which modifies the obligation of free transfers in and out of the country, provisions that reserve the right of the Central Bank to impose restrictions on transfers and payments, in accordance with the provisions of the Constitutional Organic Law of the Central Bank, if and when such measures were needed in order to maintain the stability of the currency and the normal functioning of internal and external payments.

### *Agreements in force*

Chile has thirty-nine BIT's currently in force.<sup>51</sup> In addition, it has signed nine FTAs and two association agreements.<sup>52</sup> In total, Chile has FTAs and association agreements in force with 47 countries. Eight of these treaties have investment agreements, six of which have a self-contained chapter and two maintain in force previously signed BITs.<sup>53</sup> Furthermore, Chile recently has concluded negotiations of FTAs including self-contained investment chapters with Peru and Colombia, but they are still in process for Congressional approval. Once these FTAs come into force, the respective BITs will cease to apply.

Chile's association agreement with the EC, which entered into force on 1 March 2005, is one of the EC's most far-reaching trade agreements with a non-EC country. It includes separate chapter for the provisions regarding investment for delivery of goods and of services. The chapter covering establishment for production of goods provides national treatment for a list of sectors.

## **III.5. Trade Defense Measures**

### **III.5.A. Safeguards**

Chile's legal framework for safeguard measures comprises: Article XIX of GATT 1994, the WTO Agreement on Safeguards, Law No. 18,525 (amended in May 31, 1999, by Law 19,612), and the Regulations on the Application of Safeguard Measures issued by the Ministry of Finance in Decree No. 909 of 17 June 1999. Law No. 19,612, Chile's first law on safeguard measures, established the National Commission In charge of Investigating Price Distortions in Imports, the Commission (mentioned in Law No. 18,525) as the authority to initiate and conduct investigations relating to safeguard measures and to recommend the imposition of safeguard measures.<sup>54</sup> Recently, the text of Law 18.525 was restructured, keeping the substance of its provisions in Decree N° 31/2005 of the Ministry of Finance.

Pursuant to this Law, the President of the Republic may apply *ad valorem* tariff surcharges

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<sup>51</sup> BITs are in force between Chile and Argentina, Australia, Austria, Belgium and Luxembourg, Bolivia, China, Costa Rica, Croatia, Cuba, the Czech Republic, Denmark, Ecuador, El Salvador, Finland, France, Germany, Greece, Guatemala, Honduras, Israel, Italy, Korea, Malaysia, Nicaragua, Norway, Panama, Paraguay, Peru, the Philippines, Poland, Portugal, Romania, Spain, Sweden, Switzerland, Ukraine, the United Kingdom, Uruguay, and Venezuela.

<sup>52</sup> FTAs have been signed between Chile and Canada, China, Japan, Korea, Mexico, Panama, United States, the countries of Central America and the members of EFTA. Chile signed an association agreement with the European Community and the Trans Pacific Strategic Economic Partnership (P4) agreement with New Zealand, Singapore and Brunei Darussalam. In consequence, Chile has FTAs or association agreements in force with the following OECD countries: Japan, United States of America, Canada, Mexico, Korea, New Zealand (P4), EFTA (Switzerland, Iceland and Norway), the European Union members of OECD and Australia (recently negotiated).

<sup>53</sup> In addition, negotiations are underway with P4 members to add a specific chapter on investment to the existing agreement.

<sup>54</sup> Chile's notification is available in WTO document G/SG/N/1/CHL/2, 24 August 1999.



through a Supreme Decree of the Ministry of Finance, subject to a favourable report by the National Commission. At the written request of the domestic industry or on its own initiative, the National Commission may initiate investigations to determine serious injury to the domestic industry or the threat thereof, due to a surge of imports.

As established by the Regulations on the Application of Safeguard Measures, serious injury is understood to mean a significant impairment in the position of a domestic industry. In determining the existence of injury or threat thereof, the Commission must evaluate all relevant objective and quantifiable factors.

Within ninety days from the initiation of the investigation, the Commission must decide whether, the available information leads to the conclusion that imports of a product have increased in such volume and under such conditions as to cause or threaten to cause serious injury to domestic producers of like or directly competitive products. If this is the case, it must adopt a Resolution recommending the application of tariff surcharges: the Resolution, together with the background information and conclusions of the investigation, are conveyed to the President of the Republic, who makes a final decision through a Decree of the Ministry of Finance. Where, the available information does not permit the establishment of a safeguard measure, the Commission must dictate a resolution to end the investigation and transmit the decision to the Minister of Finance to be summarized and published in the *Official Gazette*.

In critical circumstances where delay would cause damage that would be difficult to repair, the Commission may recommend to the President of the Republic to apply provisional tariff surcharges within a period of sixty days from the initiation of the investigation. The Commission's recommendation must be based on a preliminary determination of the existence of clear evidence that the increase in imports has caused or threatens to cause serious injury.

The surcharges may not be applied for more than one year, including the period of provisional application of the measure. This period may be extended for one further period not exceeding one year, subject to a favourable report by the Commission. The Commission may at any time recommend that the application of the tariff surcharges in effect should be modified or abolished before their expiry date. The Law does not provide for the imposition of quotas. Commission decisions are by majority of the votes cast. The approval of three quarters of the members of the Commission is required if the application of a surcharge increases the tariff in place above the WTO bound tariff rate.

Since the Safeguard Legislation has been in force, Chile has imposed seven definitive safeguard measures, out of eleven investigations.

### **III.5.B Antidumping Measures and Countervailing Duties**

The Agreement on Implementation of Article VI of the GATT 1994, the Agreement on Subsidies and Countervailing Duties, Article VI of GATT 1994, and the WTO Agriculture Agreement, all apply with the force of law in Chile since the enactment of the Marrakech Agreement by Supreme Decree No. 16 of the Ministry of Foreign Affairs of 5 January 1995 (Chapter II), the Decree N° 31/2005 of the Ministry of Finance, Decree No. 575 of the Ministry of Finance containing the Regulations on Article 11 of Law No. 18,525. With respect to bilateral agreements, in the Chile-Canada Free-Trade Agreement and in the Chile – EFTA FTA, the Parties agreed not to

apply antidumping measures to their reciprocal trade, respectively.<sup>55</sup>

The various definitions contained in the WTO Agreements on Anti-Dumping and on Subsidies and Countervailing Duties apply fully, as these Agreements are an integral part of the Chilean legislation.

The National Commission In charge of Investigating Price Distortions in Imports, created by Article 11 of Law No. 18,525, carries out investigations related to all aspects of anti-dumping and countervailing measures. The Commission is composed of: the National Economic Prosecutor's Office, who chairs it; two representatives of the Central Bank of Chile, one representative respectively of the Ministries of Finance, Agriculture, Foreign Affairs, and Economy; and the National Director of Customs. The Central Bank provides the Technical Secretariat for the Commission.

The Commission conducts an investigation if the complainant can provide evidence of a distortion (dumping or the existence of a subsidy) and the manner in which it causes or threatens material injury to the Chilean industry. Complaints can be submitted by any industry group or in the name of any industry group. The Commission may also conduct investigations on its own initiative when it has access to information that justifies doing so. This was the case of the dumping investigation of the Argentinean imports of wheat flour initiated in October 2006 and that subsequently resulted in the application of an antidumping measure.

After a complaint has been lodged the Commission must publish a notice of the initiation of the investigation with information related to the subject of the investigation in the *Official Gazette*. Within thirty days from the date of this publication, the Commission shall receive all information interested parties wish to submit, and request any information it considers necessary. Before reaching a decision, the Commission must conduct public hearings. If the Commission considers that, on the basis of available information, it is possible to establish the existence of price distortions and that these distortions cause or threaten to cause material injury to the affected domestic industry, these findings must be stated in the Commission's decision recommending the application of anti-dumping or countervailing duties.

Any anti-dumping and countervailing duty proposed by the Commission must not exceed the margin of distortion, which is calculated by comparing dumped with non-dumped imports. The Commission may also recommend to the President of the Republic the application of provisional duties. Anti dumping and countervailing duties can be imposed for a maximum of one year. However, a new investigation can be initiated if the Commission considers that there is evidence for the duty to be maintained.

Against the background of increased worldwide use of anti-dumping measures, Chile has contributed to the WTO Negotiating Group with a view to clarify and improve various provisions of the Anti-Dumping Agreement at the multilateral level. . They cover, *inter alia*: duration of anti-dumping measures, facts available, constructed value, zeroing, assessment of injury, price-undertakings, lesser duty, and review of anti-dumping orders.

The latest anti-dumping measure to be adopted affects the imports of Wheat Flour from Argentina and was imposed on January 2009. The latest countervailing duty, applied in 2000, affected imports of powder milk from United States and the European Union

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<sup>55</sup> See Chile's notification in WTO document G/ADP/N/1/CHL/2.

### **III.5.C. Institutional Arrangements in Place for the Implementation of Trade Defense Measures**

Included in III.5.A and in III.5.B

## **III.6 Government Procurement**

### **Legal Framework:**

a) For goods and services:

- Law on Terms and Conditions for Administrative Supply and Service Contracts N° 19.886. (*Ley N° 19.886, Ley de Bases sobre Contratos Administrativos de Suministro y Prestación de Servicios*).
- Regulations for Law N° 19.886 on Terms and Conditions for Administrative Supply and Service Contracts (*Aprueba Reglamento de la Ley N°19.886 de Bases sobre Contratos Administrativos de Suministro y Prestación de Servicios*).

Links: [English: http://www.chilecompra.cl/english/publications.html](http://www.chilecompra.cl/english/publications.html)

Spanish: [http://www.chilecompra.cl/normativa\\_legal.html](http://www.chilecompra.cl/normativa_legal.html)

b) For construction services:

- *Ley Orgánica del Ministerio de Obras Públicas, DFL N° 850.* (Public Works Law).
- *Reglamento para Contratos de Obras Públicas, D.S. MOP N° 75.* (Public Works Regulation).
- *Reglamento para Contratación de Trabajos de Consultoría, Decreto MOP N°48.* (Consultancy Regulation).
- *Ley de Concesiones de Obras Públicas, (Decreto Supremo N° 900.* (Concessions Law)
- *Reglamento de la Ley de Concesiones, D.S. N° 956.* (Concessions Regulation)
- Procurement Law N° 19.886 applies for additional provisions not considered by the laws and regulations mentioned above.

Link: <http://www.mop.cl/documentacion.htm>

### **Main objectives of the System:**

Chile's Public Procurement System is regulated by the Law N°19.886, enacted on July 2003. The Procurement Law provides the contractual framework for the purchase of goods and services and establishes "ChileCompra", the electronic procurement platform, that seeks to build a more friendly and flexible State, oriented to serving people, businesses and public institutions. The procurement of public works and concessions are ruled by independent regulations.

The strategic principles of the public procurement system in Chile, which have allowed it to grow and expand, are Free Access, Universality and Non-discrimination. The government procurement measures are applied:

- To achieve maximum transparency and efficiency in the Government Procurement market;
- To create an institutional framework to ensure those objectives;
- To preserve principles regarding equality before the law, competition, non discrimination and due process;
- To cover a substantial proportion of buying entities, such as Central Government, Regional Governments (*Intendencias* and *Gobernaciones*), Local Governments (*Municipalidades*), some public enterprises, etc.;
- To establish open tendering as the general rule; and
- To use the electronic system for all public entities and procurement procedures.

### **Government Procurement Court**

The Chilean System on government procurement contemplates a judicial authority in order to settle legal disputes in this area named *Tribunal de la Contratación Pública* (Government Procurement Court). This court does not depend from the Government or the administrative agencies. It began to work on September 27 of 2005 and it is composed of three lawyers (judges) and their corresponding alternates. This court has jurisdiction to try challenge actions against illegal or arbitrary acts or omissions occurred in the procurement administrative procedures with public agencies governed by the Government Procurement Act.

### **International Agreements regarding Government Procurement**

Chile has negotiated Government Procurement chapters in its Free Trade Agreements with:

1. Central America: Costa Rica, El Salvador and Guatemala. (With the latter country, although the negotiation is concluded the agreement is not yet in force).
2. United States
3. South Korea
4. European Union
5. European Free Trade Association (EFTA)
6. P4 (New Zealand, Brunei, Singapore and Chile)
7. Japan
8. Canada
9. Mexico
10. Colombia (not yet in force)
11. Australia (not yet in force)
12. Uruguay (This is an Agreement and is not yet in force)

At the multilateral level Chile is an active participant in APEC's GPEG and an observer (not signatory) of WTO's GPA.

### **Main elements to be considered in a GP Chapter**

For Chile, the main elements to be considered in a GP Chapter are:

- To ensure non discriminatory market access
- Transparency
- Procedural simplicity with open tendering as the default mechanism.
- Due process
- Wide scope on procurement, with significant coverage in terms of entities, and thresholds

- Challenge procedures

### **III.7 Transparency**

Transparency is one of the basic principles in Chilean administrative law and under Free Trade Agreements signed by Chile.

#### **III.7.A Transparency in the Administrative Law**

The general principle in the Chilean Constitution (Article 8, Paragraph 2) establishes that acts and resolutions of the State's agencies are public, and also their rationale and the procedures that are followed. However, a quorum-qualified law may establish the secrecy or confidentiality if the publicity affects the tasks of the State's agencies, fundamental rights, security of the nation or national interest.

Law N° 19,880, "Basis of Administrative Proceedings", published in the Official Gazette in 2003, sets the basis of the administrative proceedings that rule the acts of the agencies of the Administration of the State. This law establishes the general rules that govern the administrative proceedings. However, in case that any special law establishes another special proceeding, the latter shall prevail.

This law recognizes that Publicity and Transparency are the principles of the administrative proceedings. This means that the administrative proceedings shall allow and promote public knowledge, content and basis of the decisions adopted by agencies. Therefore, unless the law or regulations establishes a special rule, the administrative acts of agencies are public, as well as the documents that sustain or complement them.

Moreover, the Law N°19,880 establishes other principles of the administrative proceedings, such as: writing; gratuitousness; procedural economy; impartiality and refutability. One of the most important goals of these principles is to protect the rights of the citizen in relation to agency's acts.

Furthermore, this law establishes a group of specific citizen rights that reinforce the performance of the law: the right, in any time of the proceeding, to know about the stage of the act; to obtain a legal copy of the documents that are part of the proceeding; to know the officials any offices of the Administration that are in charge of the proceedings; to have access to the administrative acts (hearings or written orders or decisions) according with the law.

From another perspective, the Law N°19,653, published in the Official Gazette in 1999, establish the right to any person to require any information to agencies of the government. Article 11 of this law develops the right to know of the citizen in public affairs.

Finally, on August 20, 2008 Law N° 20285 on Access to Public Information was enacted. This Law regulates the principle of transparency of the functions of the State, the right to access information dictated by the State's Organs, and the procedures used in their dictation; as well as exceptions to the publicity of this information. This law will enter into force on April 20, 2009.

#### **III.7.B Transparency in Free Trade Agreements**

The main purpose of the transparency rules in the free trade agreements is to facilitate communication between the Parties and to make available any information to the citizens about

measures concerning to any issue covered in the Agreement. From this perspective, transparency involves that Governments should provide the necessary means for individuals to become acquainted with the rules and thus allow compliance with them.

The transparency rules of the free trade agreements establish that the governments have to publish laws, regulations, procedures and administrative rules of general application without delay and give the opportunity to another Party to make observations about the regulations. Additionally, transparency seeks that, to the greatest extent possible, one Government notifies the other Government and citizens of any actual or proposed measure that may affect the functioning of the Agreement or the interests of any Party there under.

Furthermore, these rules include provisions on both due process in matters concerning administrative procedures, which may affect aspects covered in the Agreement and the creation of information centers with a view to facilitating communication between the Parties in matters concerning the Agreement.

Finally, free trade agreements signed by Chile with Canada, Mexico, Central America, Korea, the United States, the European Union, EFTA, P4 (New Zealand, Singapore and Brunei Darussalam), China, Japan, Colombia, Ecuador, Panamá, Peru and Australia contain regulations concerning transparency.

### **III.8 Movement of Business Persons**

**Regulations:** The general “Entry” regime can be considered as highly convenient for foreigners. Legislation such as Decree Law N° 1094 of 1975 on “foreign citizens”, and Supreme Decree N° 597 of 1984, facilitate the “entry and stay” of foreigners in Chile, either for commercial or touristical purposes. Additionally, international legislation including international bilateral agreements should be considered as regulations currently enforced in Chile.

**Agreements:** Chile has included a specific Chapter on Temporary Entry of Business Persons (TEBP) in Free Trade Agreements with the U.S., Canada, Mexico, Korea, Japan, Colombia and Australia. With the E.U., China and Mercosur the TEBP commitments are reflected on the positive list as Mode four concessions.

Chile has negotiated comprehensive Chapters on this issue, which effectively facilitates bilateral trade on a mutually advantageous basis. Accordingly, Chile has included different categories of businesspersons, such as:

- Business visitors
- Traders and Investors
- Intra - Company Transferees
- Professionals

Having these categories included, automatically links the TEBP Chapter to those regulating Cross Border Services, Financial Services, Investment, and National Treatment and Market Access for Goods, as it facilitates the supply of a services or allows *in situ* contact between the investor and his investment; the developments of business opportunities; the personal supply of a service, and the free flow of human resources within a company with commercial presence in the territory of the Parties.

Regarding specific disciplines, they are aimed to achieve greater transparency and increase the

exchange of relevant information between the Parties. Particularly important is the Temporary Entry Committee, which, as a general rule, sessions once a year with the purpose of reviewing existing measures, and develop new measures aimed to facilitate the temporary entry of businesspersons.

Notwithstanding the fore coming, the benefits associated to Chapters on TEBP do not intent to affect “sensitive issues” of domestic policy, such as the access to the labor market or migration issues. In sum, the TEBP Chapter should not affect the Parties right to regulate on the different aspects of their immigration policy, as specifically provided in the “Relation with Other Chapters” article.

**i) Regimes for entry and work**

Chilean migration laws are contained in Decree Law No. 1,094 of 1975, on foreign citizens, and regulations there under established in D.S. No. 597 of 1984. Furthermore, this matter is governed by provisions contained in international treaties and agreements subscribed by our Government.

These legal texts vest the power to issue visas and resident permits for foreigners in the Ministry of Interior and Foreign Affairs.

The Ministry of Interior exercises these powers through the Department of Migration and Alien Affairs at central level, and through interior government offices at regional and provincial levels. In turn, the Department of Consular Affairs and Immigration of the Ministry of Foreign Affairs is responsible for foreign citizens affairs and issues consular authorizations and residence visas through Chilean Consulates abroad.

The migration legislation contains the following migration categories:

**Tourists**

Tourist is any individual entering the country for a period not exceeding 90 days, for recreation, sports, health, study, business, family, religious and other similar reasons, but not for purposes of immigration, residence or development of remunerated activities.

In some cases, for reasons of national interest or based on the principle of international reciprocity, individuals should obtain a consular authorization (visa) from the concerned Chilean Consulate abroad prior to their entry to Chile. However, holders of the APEC Business Travel Card do not require consular authorization.

**Residence**

- Residence Subject to a Labor Contract permit is granted to foreigners who enter the country under a work contract. This type of residence visa is subject to the performance of the activities agreed with the employer (who must be domiciled in Chile) and is issued for a maximum period of two years, and may be extended for similar periods while the contract duration.
- Student Residence permits are granted to foreigners who enter the country in the capacity of registered students in State or State-recognized educational institutions or a private institution recognized by a latter, or in a higher or specialized educational centers or institutions provided they can substantiate their corresponding enrollment. This permit only allows

doing the relevant studies and is issued for a maximum period of one year, and may be renewed until completion of the relevant study program. In the case of scholarships, the permit is issued for the duration of the scholarship.

- Temporary Residence permit is granted to foreigners with proven family ties or interests in the country whose residence is deemed useful or convenient.

Generally, this type of visa allows its holder to carry out any activity in Chile, to the extent that the laws permit such activities. It is issued for a maximum period of one year, and may be renewed for like period.

### **III.9 Intellectual Property Rights**

#### **III.9.A Chilean policy regarding the main Intellectual Property Rights Treaties under the auspices of the WTO**

Maintaining an adequate and balanced intellectual property system is a key issue for the Chilean economy. The Chilean legal and institutional framework for IPRs grants protection to all categories of intellectual property included in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) of the World Trade Organization (WTO), namely: copyright and related rights, trademarks, geographical indications, patents, industrial designs, layout designs (topographies) of Integrated Circuits and Protection of Undisclosed Information. Chile also confers protection to new plant varieties. In addition to the standards in the TRIPS Agreement and those in the major WIPO treaties, Chile has committed to even higher standards through bilateral trade agreements.

Chile has been a member of the World Intellectual Property Organization (WIPO) since June 1975, and has signed a number of IPR conventions.. In addition, Chile has been a WTO member since 1 January 1995 and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) came into force in 2000.

#### **Chile's participation in international IPR agreements**

<b>Agreement, convention or treaty (latest Act in which Chile participates)</b>	<b>Date on which Chile became party (date it became party to the latest Act)</b>
Berne Convention for the Protection of Literary and Artistic Works (Paris Act)	June 1970 (July 1975)
Convention Establishing the World Intellectual Property Organization	June 1975
WIPO Copyright Treaty	March 2002
WIPO Performances and Phonograms Treaty	May 2002
Paris Convention for the Protection of Industrial Property (Stockholm Act)	June 1991
Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations	September 1974
International Convention for the Protection of New Varieties of Plants (UPOV 1978)	January 1996

The Chilean IPR regime has evolved significantly in recent times as a result of the incorporation of TRIPS commitments into national law. Also, several amendments have been made to comply with international obligations derived from bilateral agreements (mainly with the EU, the US,



EFTA, Central America, Canada, Mexico and Korea). New amendments will be incorporated into the Chilean IPR legislation because of the ratification of the WIPO Internet Treaties and the implementation of other bilateral IPR commitments.

In late 2003, two sets of amendments were made to the Copyright Law to implement TRIPS and the Free Trade Agreements, and in late 2005 and early 2007 two amendments to the industrial property law were enacted.

The main domestic statutes for the protection of IPR in Chile are the Intellectual Property Law (Copyright Law), Law No. 17.336 of 2 October 1970 with its Regulation and the Industrial Property Law, Law No. 19.039, 25 January 1991, with amendments introduced by Law 19.996, of 1 December 2005, and Law 20.160, of 26 January 2007, and its Regulation.. The protection of new varieties of plants is regulated through the New Plant Varieties Law, Law No. 19.342 of 3 November 1994. These statutes cover the major IP areas referred to in the TRIPS Agreement and also by main WIPO treaties.

### **Industrial Property Rights**

Historically, the Department of Industrial Property of the Ministry of Economy was in charge of granting industrial property rights (trademarks, patents, utility models, layout design of integrated circuits, industrial design), including the registry of geographical indications and appellations of origin. The Seeds Department of the Agriculture and Cattle Service is in charge of administrating the Chilean registry of new plant varieties.

However, a new institutional framework for the industrial property administration was recently enacted and entered into force in January 2009 (Law n° 20.254). The reformed Industrial Property Office (INAPI, by its Spanish acronym) replaced the existing Chilean registry in order to improve registration services for trade marks, geographical indications, patents, utility models, industrial designs and layout designs of integrated circuits, by granting more human and financial resources. Moreover, the referred amendment provided INAPI with authority to apply such human and financial resources to conduct new capacity building activities in order to promote the use of industrial property rights.

Also, as mentioned above, during 2005, the widest and most significant reform to the Industrial Property Act was conducted since its enactment in 1991 (Law n° 19.996). This reform implemented pending commitments of the WTO TRIPS Agreement and incorporated provisions to protect undisclosed information related to pharmaceutical and agrochemical products for 5 and 10 years, respectively. Additionally, it established a special registry for geographical indications and appellations of origin, rules for assesment of damages for infringement of industrial property rights; and new civil actions and precautionary measures that provide the right holders with a wider range of tools to address judicial enforcement of their rights.

In 2007, the Industrial Property Act was amended (Law n° 20.160) in order to incorporate and protect sound, collective and certification trademarks. Additionally, it provided for a patent term extension to compensate for unjustified delays in the administrative process to obtain registration.

Thereof, currently Chilean national law provides protection for 10 years to trademarks right holders, but they may be renewed indefinitely. There are no requirements of use for registration or renewal of trademarks. Industrial designs that are novel are protected by 10 years from the date of filling. This period is non-extendable. Textiles designs and stampings may be protected at the same time under Copyright Law.

In the case of patents, they patents are protected in Chile for 20 years from filing. Economic models and business plans, discoveries, scientific theories and mathematical methods, surgical, therapeutic or diagnostic methods, plant varieties, animals and software are not protected by patents or utility models. Patent system includes compulsory licenses in cases of (i) monopoly abuse, (ii) national security, public health, and national emergencies, (iii) non-commercial public use, or (iv) cross licensing in relation with patented subject matters.

In regards to Plant Varieties, Chilean legislation is homologated to UPOV 1978 Act. Nevertheless, Chile is committed to adhere to UPOV 1991 and currently, a bill that permits the latter is being presented to Congress for its approval and will is expected to come into force by the year 2009. Rights related to New Varieties of Plants must be pursued before civil courts.

Industrial property right holders have both civil and criminal remedies and can collect costs and damages. Courts have, among others, the faculty to order the destruction of tools and implements used to produce the falsification or copy. The Customs Service may also enforce some industrial property rights at the border.

In addition, Law 19.039 establishes for international exhaustion of these rights. Consequently, parallel importations are allowed.

### **Copyrights and Related Rights**

The Copyright Department of the Library, Archives and Museums Directorate is in charge of the Copyright Register. The main Copyright statutes are the Intellectual Property (Copyright) Law, Law No. 17,336 of 2 October 1970 with its Regulation (Supreme Decree No. 4,764 of 8 January 1985).

The term of protection for copyrights and related rights is 70 years. In conformity with the Berne Convention, protection is automatically recognized once works are created, but a register is available for publicity measures. Additionally, register constitutes a legal presumption of ownership in favor of the person who is registered as right holder.

According to the Copyright Law right holders have both civil and criminal remedies against infringers of rights. Once convicted, infringers may be forced to pay damages and fines, and also be imprisoned. The Customs Service may also enforce some intellectual property rights at the border.

A new bill was introduced in Congress in 2 of May 2007 to amend the Copyright Law. The main objectives of this new bill is to improve enforcement of copyright and related rights through new civil and criminal procedures, to introduce a new regime of exceptions and limitations to copyright and to regulate the responsibility of internet service providers for eventual copyright infractions, in accordance with international standards. This bill is currently being discussed at the Chilean Senate (Upper House).

### **Enforcement of Intellectual Property Rights**

The Department of Industrial Property, the Court of Appeal for Industrial Property (reformed

under the Law No. 19.996) and the Agriculture and Livestock Service for issues related to plant varieties are responsible for administrative actions related to opposition or annulment of applications or granted registries.

Criminal and Civil remedies provided for infractions in the Industrial Property and Intellectual Property Laws must be pursued before Civil and Criminal Courts.

Persons convicted for offences against right holders of intellectual or industrial property rights may be required to pay costs and damages to right holders and also fines. In cases of intellectual property violations infringers can also be imprisoned.

In the year 2000 Congress passed new legislation for an overall modification of Chilean criminal system. This reform, which has been implemented in every Chilean Region (in Santiago has been implemented on June 2005), has shown to increase efficiency both in criminal courts and in action of police agencies against IPR infringers.

Additionally in early 2008, the Chilean Civil Police incorporated a new specialized unit – BRIDEPI – devoted to investigate and prosecute crimes specifically related to IPR. The unit extends its authorities over all issues related to offenses related to industrial and intellectual property rights. One of the purposes of BRIDEPI is to identify and disarticulate criminal organizations dealing with piracy, counterfeit and related offenses through intelligence investigations. This specialized unit is expected to become a cornerstone of the Chilean national system for IPR enforcement that came to couple a number of other initiatives in the same direction, carried out by other Chilean agencies, such as the Chilean National Customs Service and the Chilean National Prosecutor's Office.

## **Others issues**

### **Undisclosed Information**

A whole new chapter for undisclosed information was introduced to the Industrial Property Act (Law 19.039) in 2005 to protect both trade secrets and undisclosed data of new chemical entities submitted to government agencies for approval of pharmaceutical and agricultural chemical products. Regarding the latter, the protection of pharmaceutical products extends for a 5-year term, while agricultural chemical products are subject to a 10-year term.

Protection of undisclosed data of pharmaceutical products is under the jurisdiction of the Institute of Public Health, while protection of undisclosed data of agro-chemical products is under the control of the Agriculture and Livestock Service. These government agencies are obliged to protect undisclosed information submitted to them in the process of sanitary registration against disclosure and, additionally, are not entitled during the term of protection to grant sanitary registrations based on the protected data.

In addition to substantive provisions of the Industrial Property Act, Decree 153 of the Ministry of Health regulates the procedure to obtain protection for undisclosed information of pharmaceutical products that are new chemical entities.

Other administrative measures, such as publication in the Institute of Public Health's web site of all applications for new pharmaceutical products, are maintained to ensure that interested parties have the opportunity to promptly assert their rights in Court.

### **III.9.B Geographical Indications**

Geographical indications of Chilean wines and spirits are regulated through the Law No. 18.455 and its Regulations. As mentioned earlier, the last amendment of the Industrial Property Law creates a registry for Chilean and foreign geographical indications available for any kind of product.

Most of Chile's preferential agreements contain provisions for the explicit recognition of GIs. For instance, the Chilean geographical indication "Pisco" has been recognized in agreements with Mexico, Australia, New Zealand, Singapore, Japan, Canada, the United States, Mexico, China and the European Union.

### **Evaluation of an agreement in Intellectual Property Rights**

Considering that almost every single FTA negotiated by Chile<sup>56</sup> includes provisions on IPRs, we envisage having IPR provisions in an eventual agreement, through which both countries reaffirm its mutual international commitments on IPRs, and state for commitments in areas of particular interest of both parties.

The overall objective of comprehensive initiatives in this field should be to facilitate and encourage Chilean and Hong Kong, China partnership in the pursuit of increased competitiveness, fostering innovation and creating new opportunities for trade and joint ventures, including mutual consultation on common IPR interest issues.

### **III.10 Environment and International Trade**

Chile's environmental policy is based on the concept of sustainable development, which serves as the fulcrum of a strategy aimed at reconciling environmental protection with economic development in the context of social equity and transparency in the public sector.

This policy is based on seven principles that lend coherence to and permeate the legal, institutional and instrumental aspects used in the government's environmental management activities: 1) The principle of gradualness which acknowledges that environmental management should be implemented progressively, given that reverting the course of environmental deterioration and reconciling development with the protection of the environmental heritage requires structural reforms that go beyond short-term measures; 2) The principle of realism, which establishes that the objectives should be reachable, given the magnitude of current environmental problems, and the resources available to do so; 3) The preventive principle which implies avoiding situations of deterioration before they are produced; 4) The "the polluter pays" principle; 5) The principle of responsibility, which holds that the party responsible for environmental damage should pay reparations to the victim and restore the deteriorated component; 6) The principle of efficiency that holds that measures adopted to confront

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<sup>56</sup> Free Trade Agreement with: Canada, United States of America, Japan, Korea, Mexico, China, Central America, European Free Trade Area-EFTA, as well as the Association Agreement between the European Union and the Trans Pacific Strategic Economic Partnership (Chile-New Zealand, Singapore, Brunei Darussalam).

environmental deterioration should involve the lowest social cost and privilege instruments that allow for optimal allocation of resources; and 7) The principle of citizen participation.

### **The Environmental Agenda.**

A set of coherent approaches guide the management of renewable natural resources, pollution control programs and actions, and the protection of the urban environment. They can be summarized as follows: Prioritizing tasks; Assigning real costs to the use of public goods; Minimizing social costs; Using market instruments; Maintaining the State's role in the conservation of the environmental heritage; Respecting the right to property; Envisioning environmental quality as a comparative advantage; and Promoting cooperation between the public and private sectors.

These points support the establishment of environmental priorities that could be summarized in five areas: public health; defining limits to sustainable resource use; equality for all people in relation to the objective of environmental quality ("environmental equity"); State intervention when environmental quality diminishes in an extreme manner; and protection of nature and biodiversity.

### **Legal Context**

The Chilean Constitution of 1980 grants all Chileans the right to live in a pollution-free environment, and notes that it is the State's responsibility to ensure that this right is not threatened and to guarantee the preservation of nature. It also identifies the conservation of the environmental heritage as one of its social functions.

Law 19,300 on the General Environmental Framework was approved in 1994. This normative body established a structured environmental management system. The law regulates a series of conflicting interests, beginning with the premise that no activity, however legitimate it may be, can be carried out at the expense of the environment. Specifically, the law establishes a set of legal regulations and definitions, environmental management instruments, areas of responsibility, enforcement mechanisms, the environmental protection fund, and government institutions in charge of addressing issues that are related to the environment. The Principal Environmental Management Instruments are: Instruments for Establishing Environmental Quality Standards, Prevention Instruments, Corrective Instruments, Compliance Instruments, Economic Instruments, Education and Research Instruments, Citizen Participation Instruments, and Instruments for Generating Information

Another issue to be considered is that Chile has applied to become a member of the OECD and the application process contemplates reviewing the environmental legal and institutional frame of the applicant. In this context, new legislation is being proposed as explained in the last paragraph of the following part.

### **Institutional Framework.**

In 1994, Law 19,300 officially created the Comisión Nacional del Medio Ambiente \*CONAMA- (National Commission for the Environment) a public service, functionally decentralized with legal status and own patrimony.

The General Environmental Framework Law did not significantly alter the institutional framework neither within the central government nor in decentralized government levels.

However, the law imposes certain tasks and responsibilities on municipalities and confers on them some new authority mainly related to the Environmental Impact Assessment System (SEIA).

After more than a decade of application of Law 19.300 and considering the need of strengthening the environmental institutions, Law 20.173 was issued (March 2007), creating the post of Minister President of CONAMA<sup>57</sup>.

During 2008, the Minister proposed to Congress a Bill of Law to create the Ministry of Environment and a Superintendence for Compliance. It is expected that this bill will be enacted during 2009.

### **International Cooperation.**

Over the last fifteen years Chile has increased its profile in the international environmental debate, in particular in the scientific verification of "global environmental problems," becoming a signatory of several environmental conventions (for example, Montreal Protocol, Kyoto Protocol, Biodiversity Convention, Biosafety Protocol, the Stockholm Convention on Persistent Organic Pollutants, and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals)

### **Trade and the Environment.**

Chile considers that a good comprehension of the ties between trade and environment optimizes the benefits of free trade and mitigates possible negative impacts on sustainability of the natural resources. It also considers that a country can ensure growth rates that help to improve the quality of life for its people, and, at the same time, protect the environment.

Chile has negotiated FTAs with most of its trade partners, acknowledging the importance of incorporating the environmental dimension in this process of economic internationalization.

Chile considers that FTAs which incorporate environment provisions are an appropriate tool to promote high levels of environmental protection, together with securing an open and fair international trading system, by presenting adequate incentives for better environmental management and minimizing the risk of disguised environment barriers to trade.

This approach could optimize the benefits derived from free trade and, at the same time, could enhance potential positive effects and mitigate potential negative impacts on environmental sustainability.

Not only is protecting the environment an important aspect of sustainable development, it is an element of competitiveness. Markets are driven not only around the traditional demands of price and quality, but also according to respect for the environment and other social issues.

Canada - Chile Agreement on Environmental Cooperation (CCAEC): This Agreement was signed, along with the FTA, in 1997, with the aim of generating the conditions necessary for making the economic development of both countries compatible with the protection and improvement of environmental conditions. These Agreements are the firsts of this kind that

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<sup>57</sup> On 27<sup>th</sup> March 2007, Ms. Ana Lya Uriarte Rodriguez was appointed as the first Minister President of CONAMA.

Chile has signed with a developed nation. The agreement privileges cooperation and emphasizes the importance of the exchange of experience, knowledge and technology in this area. It allows for ample citizen participation. Likewise, it reaffirms the right of each Party to establish its own level of environmental protection, policies, and priorities, and, at the same time, incorporates the commitment to maintain high levels of environmental protection.

Association Agreement between Chile and the European Union (2003): The Preamble states that the Agreement should be implemented consistently with environmental protection and conservation; to promote sustainable development; and, to conserve, protect, and improve the environment by efficient environmental management and an adequate participation in the multilateral environmental agreements. The Chapter on Cooperation emphasizes the need for carrying out social development, economic growth, and environmental protection, and states that the purpose of environmental cooperation (article 28) is, inter alia, to promote conservation and improvement of the environment, to prevent pollution and the degradation of natural resources and ecosystems.

FTA Chile-USA.-Chapter 19 “Environment” (2004) and Environmental Cooperation Agreement (2004): In this case environmental provisions were incorporated into the FTA, with the aim to minimize the risk that environment laws, regulations, policies and practices could be used for trade protectionist purposes, but with the rigorous commitment to comply with the legislation of these matters, with a spirit of cooperation and with methods to solve controversies according to their specific nature. For the first time, the FTA includes a clause that will help to promote good environmental behavior from the productive sector, hence the Parties agreed to encourage corporations that operate in their territory to voluntarily include principles of corporate responsibility in their policies.

Chapter 19, acknowledges the right of each Party to establish its own levels of environmental protection, policies, and priorities in environmental development, as well as, consequently, adopting and modifying, its environmental legislation, and taking into consideration ample citizen participation in the implementation of the agreement.

Along with the FTA, an Environment Cooperation Agreement was signed that regulates this type of activities between the Parties.

Trans-Pacific Strategic Economic Partnership Agreement (P4)-Agreement on Environmental Cooperation (ACA-P4) (2006):

Chile, Brunei Darussalam, New Zealand and Singapore have signed up to the Trans-Pacific Strategic Economic Partnership Agreement in 2005. Alongside the Trans-Pacific SEP, the parties signed a side Agreement on Environment Cooperation.

This Agreement has 2 main aspects: It establishes principles for environmentally sustainable trade between the Parties and encourages environmental cooperation.

Chile-PRChina FTA (2006): In the Preamble of the Agreement, the Parties recognize the importance of pursuing sustainable development and environmental protection. And, its article 108 states that “*the Parties shall enhance their communication and cooperation on labour, social security and environment through both the Memorandum of Understanding on Labour and Social Security Cooperation, and the Environmental Cooperation Agreement between the Parties*”. Based on that, on September 20, 2007, the National Commission on the Environment of Chile (CONAMA) and the State Environmental Protection Administration of China (SEPA), signed a Memorandum of Understanding on Environmental Cooperation that seeks to promote cooperation

in the field of Environment protection, on the basis of equality and mutual benefit.

Japan- Chile Agreement for Strategic Economic Partnership - Joint Statement (signed 2007): The environmental provisions were included in the Joint Statement, subscribed by the respective Ministers of Foreign Affairs on the occasion of the signing on the Agreement for a Strategic Economic Partnership.

Chile- Australia FTA (signed 2008, not yet in force): Environmental provisions were included in Chapter 18 “Cooperation”. Article 18.2 states that “*cooperation on environment will reflect the commitment of both Parties to strengthening environmental protection and the promotion of sustainable development, in the context of strengthening trade and investment relations between them*”. And, “*Areas of cooperation may be developed through existing agreements and through appropriate implementing arrangements including the designation of national contact points to facilitate activities on environment and labour cooperation*”.

In Latin America, Chile has signed agreements incorporating environmental provisions, inter alia, with Panamá and Colombia. The FTA with Panama incorporates them in an Environmental Cooperation Agreement negotiated and signed together with the FTA, that entered into force on 2008. It has close similarities to the Trans-Pacific SEP Agreement on Environmental Cooperation. The Chile–Colombia FTA incorporates a specific Chapter on Environment (#18), with similar provisions. (Signed 2006, not yet in force).

## **APEC**

Chile presented at the January 2007 meeting of the Committee on Trade and Investment (CTI) of APEC, in Canberra, a Draft Chapter on the Environment for RTAs/FTAs, that was adopted by the Ministers Responsible for Trade, in Arequipa-Peru, in 2008.

The Model Measures respond to the instruction of the Leaders. They built on the Best Practices for RTAs/FTAs adopted by APEC members in 2004, where sustainable development and the environment are important elements. They are intended for economies to use as a reference tool in the process of negotiating RTAs and FTAs, in order to improve their quality and transparency.

## **Mercosur – Sub-Group #6: Environment:**

Chile participates, as observer, in the Sub-Group #6 on the Environment.

## **OECD**

Chile has adhered to the Guidelines for Multinational Enterprises, which include a Chapter V on the Environment.

## **III.11 Labor and International Trade**

### **a. Employment Policies**

Labor policies have emphasized in latest years, modernization in order to respond to the challenges of a more open economy and a more active society.



In particular, the major governmental goals have been:

- Firstly, to enhance the build-up of “social capital” in order to stimulate significant progress in the relationship between employers and employees, resulting in better productivity, innovation and quality.
- Secondly, to create a new labor relationship, responding to the challenges of globalization and accelerated technological changes. It is essential in Chile’s view to have powerful bilateral labor relations, and a counterpart of employers able to respond to the challenge of a pact on employability where Trade Unions and Employer Organizations could be major players.

**b. Laws**

**i. Constitutional Guarantees**

The Chilean Constitution guarantees the fundamental right for freedom of association. This consists of the right to establish unions without prior authorization and the right to engage in collective bargaining. The Constitution states that law will regulate the exercise of these rights, but that under no circumstances can legislation establish requirements, which, in practice, render the exercise of these fundamental rights null and void.

**ii. Trade union organization**

There are different types of unions and the so-called *sindicato de empresa* [company union] predominates. This is a union made up of workers from the same company. In addition to the unions known as base unions, there are higher levels of organization, which bring together several base unions, so called *federations* and *confederations*, which are structured based on the association of unions from the same sector of the economy or unions from the same territorial zone. There are also the *centrales sindicales* [nation wide labor unions]. Legislation recognizes the freedom to form or join a union and, conversely, the freedom to withdraw from a union.

The employment of no individual may be conditional upon belonging or not to a union.

When workers decide to form a union, they must simply hold a meeting attended by a minimum number of people as established by law. They acquire legal status by the sole act of submitting their articles of incorporation and the minutes of the meeting to the compliance agency. In other words, they do not require prior authorization to be recognized as a union. Two or more unions are allowed to exist in a company, and this does in fact occur.

It is important to note that union leaders enjoy protection under the so-called "*fuero*". This is in fact a protection measure under which a union leader cannot be fired without prior authorization from a Labor Court Judge, and such authorization can only be given where there is serious non-compliance with the leader's labor obligations. This protection is in effect during the leader's term and for up to six months following the end of his or her term as leader. This protection covers also workers during the collective bargaining process.

**iii. Collective Bargaining**

Collective bargaining is totally decentralized and is conducted by each company, and even by establishments within the same company. There is no bargaining at the sector or branch level. Although the law allows collective bargaining to include various companies, employers resist this mechanism.

With respect to collective bargaining procedure, the Labor Code provides for two modalities: the first, so called “*regulated bargaining*” is established in the code itself, with stages and formalities and in which the employer is forced to take part in the bargaining process. This bargaining concludes in a collective agreement, which is called a *collective contract*.

The other modality is a mechanism, called “*non-regulated bargaining*” with minimum formal requirements. The parties bargain when they wish but neither party can force the other neither to bargain nor to arrive at an agreement. There are no deadlines, nor right to strike; however, if the agreement is signed, compliance is fully mandatory and this modality does not avoid the other procedures, if there is no agreement.

The latest modality has been important in businesses, with more mature and cooperation based labor relations. However, the first type of bargaining predominates, which is characterized by a high degree of regulation.

Collective agreements only apply to workers who participate in the bargaining, and the employer has the unilateral authority to extend this contract or agreement to other workers, although this is not automatic.

#### **iv. Particularities of the Public Sector**

Public sector employees, i.e., those who work for government in ministries, municipalities and other public agencies are not included in labor regulations. Exceptionally they are applied to workers in State-owned companies, who are abiding by the standards of the Labor Code for the private sector. Government or public sector employees did not have the right to take part in a union organization until 1994. In March 1994, law No. 19,296 was passed recognizing their right to establish union-type organizations known as "associations of officials".

It should be noted that in the past, government workers had their own organization and bargained with respect to rights exercised on the margins of the Labor Code. During the military regime, this practice was fully restricted. With the return of democracy, a process was initiated for definitive recognition of the rights derived from freedom of association.

As already indicated, public servants were granted the right to organize and the ILO Convention 151, in regard to this topic, has also been ratified by Chile. Each year, government and organizations of these workers meet to negotiate matters on wages and working conditions, which afterward become the basis for draft legislation.

#### **v. The Right to Strike**

Strikes are legally limited to the extent that they can only take place during the collective bargaining process regulated in the Labor Code. Strikes cannot be used in bargaining, which we have referred to as "voluntary" or "non-regulated". During the strike, the employer may hire replacement workers as of the fifteenth day of the strike, but the law allows the employer to hire replacement workers as of the first day of the strike provided that the last offer made to the workers gives them the same benefits they had at the time of bargaining, adjusted for inflation and if he gives workers a special bonus of “replacement”, distributed between strikers once the conflict comes to an end. The purpose of this mechanism is to encourage a minimum acceptable offer for workers and to avoid a misuse of the replacement system. The replacement workers are temporary, for as long as the strike lasts.

#### **vi. Penalties for Practices that Violate the Exercise of the Rights of Freedom of Association and Collective Bargaining**

Since 1991, Law 19,069 in the Labor Code included a set of standards, which penalize any action, particularly by employers, which violates the right to freedom of association or which affects collective bargaining. A most recent Law, in 2001, N° 19,759 has strengthened this legislation through more severe penalties and controls. According to these laws, now incorporated in the Labor Code, any worker or organization which feels that these rights are being violated through bad faith actions of the employer (for example, offering better benefits to workers who withdraw from the union or refusing to bargain with representatives of the workers, or other actions--the Law lists many) may appeal to the Labor Court Judge. Courts, by means of brief and simple proceedings, must request a report from the compliance agency (Labor Directorate, "Dirección del Trabajo"), institution that is also entitled to act. Courts may determine whether there are unfair practices on the part of the employer and, if so, order those practices be terminated. A fine will also be applied.

#### **vii. Role of Government**

The role of government through the Ministry of Labor is centered mainly on labor policies and regulations. Besides the Ministry, a special agency is in charge of compliance legislation, *Dirección del Trabajo (Labor Directorate)*, which has Labor Inspection Offices distributed throughout the national territory.

The Labor Directorate has three major responsibilities:

- The first is monitoring compliance with labor standards, which includes health and safety aspects in the workplace. To fulfill this task, the Directorate sends officials (labor inspectors) to workplaces to ensure compliance with the standards. If these officials detect violations, they apply the fines set out in the law. These actions known as monitoring are done on the initiative of the Labor Directorate or at the request of the worker or union affected, but the tendency is to carry out preventive monitoring.
- The other major area of action is promoting freedom of association. To this end, a set of policies and actions has been established to promote union organization, enhance collective bargaining and help in the development of labor relations. To this end, the Directorate has programs aimed at raising awareness of labor rights, carries out training activities and develops materials such as guides and books.
- Technical assistance is also provided to labor leaders and to business owners, particularly from the small - and medium-sized business sector. Guidance is given prior to collective bargaining and statistical information is provided on previous bargaining. During collective bargaining and in particular during a strike, assistance is offered to the parties to re-establish the bargaining, which has been interrupted.
- Legislation gives to the Labor Director the power to interpret social legislation and regulations. This legal delegation allows the administrative labor authority to specify the meaning and scope of labor standards, which constitutes an important source of interpretation of law in Chile and a permanent reference both for workers and employers, and even for the courts of justice themselves.

#### **c. Salaries**

Employers and employees determine and regulate salaries on individual or collective basis. The state regulates minimum wages only, normally once a year through legislation, and after

consultations with national labor and employer organizations.

**d. Trade and Labor**

Chile has ratified all the fundamental ILO Conventions concerning freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labor, the effective abolition of child labor and the elimination of discrimination in respect of employment and occupation and respects the principles enshrined in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, 1998.

Chilean government has addressed labor issues in several agreements with its trade partners according to its different realities. The latter has been reflected with different modalities and instruments with Canada, the EU, MERCOSUR, OECD and the USA, with Brunei Darussalam, New Zealand and Singapore, with The People's Republic of China, Peru, Panama, Japan and Australia. Chile sees this issue as an important competitiveness factor.

Constituencies and political world ask strongly for the inclusion of a social dimension in FTAs, thinking on the need to respond to their worries about globalization and their impact on labor, so this issue is a need for the approval by Congress, once negotiations are over.

Accordingly, provisions about labor have been addressed in our trade agreements containing different mechanisms, such as aside agreements, labor chapters or independent agreements, with accent in cooperation. Through these provisions guarantees have been given about the enforcement of our own legislation, and about the respect of fundamental labor principles and decent work including also acceptable labor conditions, especially in minimum wages, safety and health and work hours.

More than ten years after our first agreement on these issues, with Canada, and more than five with the US, and also after the entry into force of the MOU with New Zealand, Brunei Darussalam and Singapore (P4), no procedure of consultation processes have been initiated under these agreements with Chile and, on the contrary, these areas have been covered very successfully in cooperation activities, earlier with Canada, later with the US and more recently with our P4 partners. In this vision, free trade agreements partners are not supposed to harmonize their legislation, but to reiterate their common commitments made within the ILO Declaration on Fundamental Principles and Rights at Work (1998).

## **IV TRADE AGREEMENTS SIGNED BY CHILE/HONG KONG, CHINA**

#### IV.1 Bilateral/Regional or Group of Countries<sup>58</sup>

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<sup>58</sup> In [www.direcon.cl](http://www.direcon.cl), SUMMARY CHART

<b>FREE TRADE AGREEMENTS</b>			
<b>COUNTRY OR GROUP OF COUNTRIES</b>	<b>TYPE OF AGREEMENT</b>	<b>SIGNATURE DATE</b>	<b>EFFECTIVE DATE</b>
European Union (2)	Association Agreement	18 November 2002	1 February 2003
P4 (1)	Strategic Economic Partnership	18 July 2005	8 November 2006
Canada	Free Trade Agreement	5 December 1996	5 July 1997
Australia	Free Trade Agreement	30 July 2008	6 March 2009
China	Free Trade Agreement	18 November 2005	1 October 2006
Colombia	Free Trade Agreement	27 November 2006	Pending internal legal procedures in Colombia
Costa Rica (Chile-Central American FTA)	Free Trade Agreement	18 October 1999	14 February 2002 (Bilateral Protocol)
EFTA (3)	Free Trade Agreement	26 June 2003	1 December 2004
El Salvador (Chile-Central American FTA)	Free Trade Agreement	18 October 1999	3 June 2002 (Bilateral Protocol)
Guatemala (Chile-Central American FTA)	Free Trade Agreement	18 October 1999	Parliamentary pending
Honduras (Chile-Central American FTA)	Free Trade Agreement	18 October 1999	28 August 2008
Japan	Free Trade Agreement	27 March 2007	1 September 2007
Korea	Free Trade Agreement	15 February 2003	1 April 2004
Mexico	Free Trade Agreement	17 April 1998	1 August 1999
Nicaragua (Chile-Central American FTA)	Free Trade Agreement	18 October 1999	Bilateral Protocol under negotiation
Panama	Free Trade Agreement	27 June 2006	7 March 2008
Peru	Free Trade Agreement	22 August 2006	1 March 2009
United States	Free Trade Agreement	6 June 2003	1 January 2004
Bolivia	Economic Agreement N° 22 Complementation	6 April 1993	7 July 1993
Ecuador	Economic Agreement N° 32 Complementation	20 December 1994	1 January 1995
Mercosur (4)	Economic Agreement N° 35 Complementation	25 June 1996	1 October 1996
Venezuela	Economic Agreement N° 23 Complementation	2 April 1993	1 July 1993
Cuba	Economic Agreement N° 42 Complementation	20 December 1999	28 August 2008
India	Preferential Trade Agreement	8 March 2006	17 August 2007
.			
(1) Pacific 4 is formed by Brunei Darussalam, Chile, New Zealand, and Singapore.			
(2) The countries that participate as members of the European Union are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain, Sweden, the Netherlands, and the United Kingdom. As from May 1, 2004, the new member countries are: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia. The new members as from January 2007 are: Rumania and Bulgaria.			
(3) The European Free Trade Association (EFTA) is formed by: Iceland, Liechtenstein, Norway and Switzerland.			
(4) Mercosur is formed by Argentina, Brazil, Paraguay and Uruguay. Chile participates as an associated country to the Agreement.			

**IV.2. Major issues covered in the trade agreements signed (including but not limited to tariff reduction, rules of origin)**

**IV.2.A Tariff Reduction in the FTAs**

**Immediate Tariff elimination in the FTAs**

**Chile-United States**

<p><b><u>Imports</u></b>                  In products: 89%                  In trade:71,2%                  Excl. None</p>	<p><b><u>Exports</u></b>                  In products: 95,2%                  In trade:75,2%                  Excl. None</p>
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**Chile-EU**

<p><b><u>Imports</u></b>                  In products: 92.8%                  In trade:91.6%                  Excl. in products: 1.4%                  Excl. in trade: 0.2%</p>	<p><b><u>Exports</u></b>                  In products: 75.7%                  In trade:85.1%                  Excl. in products: 6%                  Excl. in trade: 0.3%</p>
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**Chile-EFTA**

<p><b><u>Imports</u></b>                  In products: 85.6%                  In trade:82%                  Excl. in products: 12.8%                  Excl. in trade: 11.3%</p>	<p><b><u>Exports</u></b>                  In products:85%                  In trade:93%                  Excl. in products: 8.5%                  Excl. in trade: 11.4%</p>
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**Chile-China**

<p><b><u>Imports</u></b>                  In products: 75%                  In trade:50%                  Excl. in products: 2%                  Excl. in trade: 3%</p>	<p><b><u>Exports</u></b>                  In products: 37%                  In trade:92%                  Excl. in products: 3%                  Excl. in trade: 1%</p>
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**Chile-Japan**

<p><b><u>Imports</u></b>                  In products: 78.1%                  In trade:94.8%                  Excl. in products: 5.9%                  Excl. in trade: 0.1%</p>	<p><b><u>Exports</u></b>                  In products:80%                  In trade:58.8%                  Excl. in products: 9.2%                  Excl. in trade: 0.4%</p>
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## IV.2.B Rules of Origin

Rules of origin regulations do not apply to imports made under the MFN treatment. In Chile, a certificate of origin is only required when goods are imported under preferential systems.

The general criteria for the qualification of goods as originating are the following:

1. Goods wholly obtained or produced.
2. Goods incorporating non-originating materials that have been sufficiently transformed.

Three main methods (which may also be combined) are used to establish whether such substantial transformation occurred:

- **Change in tariff classification method**  
When a rule of origin is based on a change in tariff classification, each of the non-originating materials used in the production of the goods must undergo the applicable change as a result of production occurring entirely in the RTA region. This means that the non-originating materials are classified less than one tariff provision prior to processing and classified under another upon completion of processing.
- **Regional value content**  
The rule of origin requires that a good have a minimum regional value content, meaning that a certain percentage of the value of the goods must be from the countries participating in the Agreement. There are different formulas for calculating the regional value content.
- **The *technical test method*** is based on manufacturing or processing operations. It prescribes certain production or sourcing requirements that may (positive test) or may not (negative test) confer originating status.

3. Goods incorporating exclusively originating materials.

**V. ANALYSIS OF THE EFFECTS OF  
TARIFF REDUCTION ON  
CHILE/HONG KONG, CHINA  
IMPORTS, EXPORTS AND  
INVESTMENT**

## V.1 Introduction

### Potential Trade

When the basket of goods that a country exports to another is small relative to the potential trade that can be set, like it is the case of Chile and Hong Kong, and one plans to negotiate an agreement which can provide new possibilities of trade, questions arise respect to the group of goods which before the enforcement of the agreement are not traded. These questions can be for example, what new products can be exported to the trade counterpart? and which method will be the most appropriate to value those new products?.

To answer those questions there isn't formal modeling; therefore different techniques can be designed for such target. However, whichever it is, they will only be useful as indicator of expansion of the exports, since many of the criterions that should necessarily be used are somehow arbitrary.

For the case that concerns us, two scenarios are established, resulting in a range where the estimated total of the potential Chilean exports to Hong Kong could be located. The first of them, defines the group of goods that simultaneously Hong Kong buys while Chile sells from and to the rest of the world, but not to each other. The second scenario uses like destination of the Chilean sales only to those markets that could be classified as "analogous" or "similar" to Hong Kong. For this case, the market chosen is Asia<sup>59</sup>. In this way, while in the first case one you could obtain a wide basket of products, in the second one this universe will be more limited.

Once defined the potential basket of the products exportable by Chile and, being known the demand by Hong Kong imports, it should be defined what fraction of that demand would be able to be satisfied by Chile. A conservative measure is to suppose that the relative participation of the Hong Kong imports from Chile respect of the Hong Kong total demand for those goods during the year 2007 stays constant. This rate is equivalent to 0.045% for 2007.

## V. 2. Bilateral Liberalization of Trade in Goods

### V.2. A Analysis

#### Model

Be two countries, *A* and *B*. Country *A* needs to know the basket of exportable potentially products (trade non-trade goods) to country *B*. For that purpose, it requires to identify those products that country *B* imports but not from country *A*, and that country *A* sells to the rest of the world but not to country *B*.

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<sup>59</sup> South Korea, Taiwan, China ,Japan, India, New Zealand, Australia, Singapur, Malaysia, Indonesia, Philipines.

The country *A* exports to the world the goods *a*, *b*, *c* and *d* and to the country *B* the goods *a* and *b*. While country *B* imports from the world the goods *a*, *b*, *d* and *f*. Therefore, the potentially exportable basket from *A* to *B* is composed by good *d*, since products *a* and *b* are already traded among the partners.

The following interesting step is to face these potentially traded products with the tariffs charged by country *B* to imports from country *A*. If they are located in a “high tariff” level, then one could infer that country *A* doesn’t export the identified products as potentially exportable because it faces in the country *B* an inhibiting tariff.

Then, for country *A* is important to know the size of the total demand by country *B* for the products that compose the potential basket. That is, the imported total value of good *d* by *B*. The above-mentioned is important because the economic value of the potential basket from *A* to *B* will be minor or equal to the imported total value by *B* of the good *d*.

Clearly, it arises the question about what fraction of the exportable potentially basket will country *A* be able to capture. The answer is completely discretionary. Perhaps the experience with other countries can be an useful indicator.

In spite of this restriction, this methodology provides an interesting support when the number of traded products between two countries is small, a situation that means that any evaluation of the trade impact restricted only to that group of traded goods is not sufficient to capture the potential expansion of trade.

## **V.2.B Conclusions**

The use of the model and of the above mentioned assumptions indicate that the potential Chilean exports to Hong Kong would be found in a range between US\$ 122 millions (Table 5.1) and US\$ 160 millions FOB (*ceteris paribus*) of the Hong Kong demand for imports of these products.

A higher diversification is achieved, arriving as a maximum to 3,200 approximate sub-headings at a 6-digits level of the Harmonized System classification. The above-mentioned represents an increase between 24 times higher and 27 times higher than the number of sub-headings to 6-digits exported to Hong Kong in the base year<sup>60</sup>.

When we match using the Chilean export to Asia, we find that the potential basket reduces to 592 products (Table 5.2) , since this methodology imposes a bigger restriction to the non traded goods. The value of this basket is US\$ 29.3 millions FOB.

For the other hand, this second basket is concentrated in the industrial sector by ISIC classification (Table 5.3) , which has a participation of the 99% of the basket, and represents 92% of the products at a 6 level classification. This is encouraging for Chile, a country that seeks to diversify its export basket.

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<sup>60</sup> The base year is 2007.

**TABLE 5.1.** Export potential from Chile to Hong-Kong. Scenario: Matching between Hong-Kong imports from Rest of the World and Chilean Exports to the Rest of the World –2007<sup>61</sup>.

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<sup>61</sup> The FOB value of imports is obtained by multiplying the CIF value of imports by 0,93. This number has been chosen in order to represent the value of the exports from Chile to Hong Kong.

SACH	Description	Number of subheading at 6-level	Hong Kong Imports		Value Potential Chilean Exports to Hong Kong	Relative Weight (%)
			US\$ CIF	US\$ FOB	US\$ FOB (0,04%)	
<b>Total</b>		<b>3.281</b>	<b>297.795.614.067</b>	<b>276.949.921.082</b>	<b>122.207.046</b>	<b>100</b>
1	Live animals.	9	250.061.694,00	232.557.375,42	102.618,37	0,08
2	Meat and edible meat offal.	26	897.413.567,00	834.594.617,31	368.273,60	0,30
3	Fish and crustaceans, molluscs .	39	717.782.247,00	667.537.489,71	294.557,89	0,24
4	Dairy produce; birds' eggs; natu	20	469.807.156,00	436.920.655,08	192.795,80	0,16
5	Products of animal origin, not e	7	60.729.804,00	56.478.717,72	24.921,82	0,02
6	Live trees and other plants; bull	9	24.036.664,00	22.354.097,52	9.863,98	0,01
7	Edible vegetables and certain rc	49	260.027.330,00	241.825.416,90	106.707,99	0,09
8	Edible fruit and nuts; peel of cit	34	686.401.686,00	638.353.567,98	281.680,18	0,23
9	Coffee, tea, maté and spices.	25	58.262.631,00	54.184.246,83	23.909,37	0,02
10	Cereals.	10	202.312.005,00	188.150.164,65	83.023,23	0,07
11	Products of the milling industry	18	117.335.301,00	109.121.829,93	48.151,15	0,04
12	Oil seeds and oleaginous fruits;	17	89.961.227,00	83.663.941,11	36.917,59	0,03
13	Lac; gums, resins and other veg	6	17.046.249,00	15.853.011,57	6.995,31	0,01
14	Vegetable plaiting materials; ve	3	8.983.211,00	8.354.386,23	3.686,46	0,00
15	Animal or vegetable fats and oi	19	223.186.545,00	207.563.486,85	91.589,56	0,07
16	Preparations of meat, of fish or	15	279.840.404,00	260.251.575,72	114.838,73	0,09
17	Sugars and sugar confectionery.	12	246.395.479,00	229.147.795,47	101.113,86	0,08
18	Cocoa and cocoa preparations.	8	130.441.803,00	121.310.876,79	53.529,69	0,04
19	Preparations of cereals, flour, st	17	387.052.041,00	359.958.398,13	158.835,40	0,13
20	Preparations of vegetables, fruit	49	215.482.867,00	200.399.066,31	88.428,18	0,07
21	Miscellaneous edible preparatio	16	454.626.761,00	422.802.887,73	186.566,19	0,15
22	Beverages, spirits and vinegar.	16	834.829.666,00	776.391.589,38	342.590,90	0,28
23	Residues and waste from the fo	6	56.846.323,00	52.867.080,39	23.328,15	0,02
24	Tobacco and manufactured toba	6	514.675.131,00	478.647.871,83	211.208,37	0,17
25	Salt; sulphur; earths and stone; §	29	130.676.138,00	121.528.808,34	53.625,86	0,04
26	Ores, slag and ash.	11	6.047.151,00	5.623.850,43	2.481,58	0,00
27	Mineral fuels, mineral oils and §	13	10.284.589.371,00	9.564.668.115,03	4.220.509,74	3,45
28	Inorganic chemicals; organic or	92	250.964.723,00	233.397.192,39	102.988,95	0,08
29	Organic chemicals.	161	2.055.491.192,00	1.911.606.808,56	843.516,48	0,69
30	Pharmaceutical products.	24	1.281.223.544,00	1.191.537.895,92	525.778,55	0,43
31	Fertilisers.	12	3.263.600,00	3.035.148,00	1.339,29	0,00
32	Tanning or dyeing extracts; tan	36	1.222.368.761,00	1.136.802.947,73	501.626,18	0,41
33	Essential oils and resinoids; per	26	768.788.849,00	714.973.629,57	315.489,58	0,26
34	Soap, organic surface-active ag	22	407.534.592,00	379.007.170,56	167.240,87	0,14
35	Albuminoidal substances; modi	12	274.942.424,00	255.696.454,32	112.828,73	0,09
36	Explosives; pyrotechnic produc	5	8.609.696,00	8.007.017,28	3.533,18	0,00
37	Photographic or cinematograph	20	395.546.150,00	367.857.919,50	162.321,15	0,13
38	Miscellaneous chemical produc	40	1.222.389.036,00	1.136.821.803,48	501.634,50	0,41
39	Plastics and articles thereof.	100	10.751.974.719,00	9.999.336.488,67	4.412.311,70	3,61
40	Rubber and articles thereof.	69	929.823.986,00	864.736.306,98	381.573,93	0,31
41	Raw hides and skins (other than	14	1.529.212.132,00	1.422.167.282,76	627.546,17	0,51
42	Articles of leather; saddlery and	19	4.821.826.209,00	4.484.298.374,37	1.978.743,51	1,62
43	Furskins and artificial fur; manu	5	356.405.889,00	331.457.476,77	146.259,07	0,12
44	Wood and articles of wood; wo	44	421.396.047,00	391.898.323,71	172.929,23	0,14
45	Cork and articles of cork.	4	3.431.844,00	3.191.614,92	1.408,33	0,00
46	Manufactures of straw, of espar	8	15.356.807,00	14.281.830,51	6.302,01	0,01
47	Pulp of wood or of other fibrou	7	9.326.444,00	8.673.592,92	3.827,31	0,00
48	Paper and paperboard; articles c	82	2.066.825.207,00	1.922.147.442,51	848.167,64	0,69
49	Printed books, newspapers, pict	16	1.164.361.160,00	1.082.855.878,80	477.821,47	0,39
50	Silk.	3	206.109.371,00	191.681.715,03	84.581,56	0,07
51	Wool, fine or coarse animal hai	20	504.222.284,00	468.926.724,12	206.918,82	0,17
52	Cotton.	41	2.489.261.765,00	2.315.013.441,45	1.021.523,87	0,84
53	Other vegetable textile fibres; p	9	195.283.077,00	181.613.261,61	80.138,75	0,07
54	Man-made filaments.	26	1.182.194.664,00	1.099.441.037,52	485.139,85	0,40
55	Man-made staple fibres.	46	691.705.901,00	643.286.487,93	283.856,88	0,23
56	Wadding, felt and nonwovens; ;	25	276.903.007,00	257.519.796,51	113.633,30	0,09
57	Carpets and other textile floor c	11	41.336.349,00	38.442.804,57	16.963,29	0,01
58	Special woven fabrics; tufted te	17	522.779.278,00	486.184.728,54	214.534,09	0,18
59	Impregnated, coated, covered or	16	648.302.286,00	602.921.125,98	266.045,25	0,22
60	Knitted or crocheted fabrics.	16	2.501.119.317,00	2.326.040.964,81	1.026.389,88	0,84

Source: DIRECON, based on official data of Hong Kong and Chile.

**TABLE 5.1(continuation).** Export potential from Chile to Hong-Kong. Scenario: Matching between Hong-Kong imports from Rest of the World and Chilean Exports to the Rest of the World –2007.

SACH	Description	Number of subheading at 6-level	Hong Kong Imports		Value Potential Chilean Exports to Hong Kong	Relative Weight (%)
			US\$ CIF	US\$ FOB	US\$ FOB (0,04%)	
Continuation						
61	Articles of apparel and clothing	93	9.598.223.163,00	8.926.347.541,59	3.938.844,12	3,22
62	Articles of apparel and clothing	104	8.206.280.110,00	7.631.840.502,30	3.367.629,36	2,76
63	Other made up textile articles; s	44	346.092.559,00	321.866.079,87	142.026,77	0,12
64	Footwear, gaiters and the like; f	22	4.966.457.859,00	4.618.805.808,87	2.038.096,32	1,67
65	Headgear and parts thereof.	6	234.147.680,00	217.757.342,40	96.087,70	0,08
66	Umbrellas, sun umbrellas, walk	4	144.791.529,00	134.656.121,97	59.418,42	0,05
67	Prepared feathers and down and	5	360.935.849,00	335.670.339,57	148.118,04	0,12
68	Articles of stone, plaster, cemer	31	297.526.234,00	276.699.397,62	122.096,50	0,10
69	Ceramic products.	24	308.108.729,00	286.541.117,97	126.439,26	0,10
70	Glass and glassware.	47	1.310.569.002,00	1.218.829.171,86	537.821,11	0,44
71	Natural or cultured pearls, preci	27	17.393.875.373,00	16.176.304.096,89	7.137.963,20	5,84
72	Iron and steel.	87	3.336.561.460,00	3.103.002.157,80	1.369.232,12	1,12
73	Articles of iron or steel.	107	1.481.599.402,00	1.377.887.443,86	608.007,23	0,50
74	Copper and articles thereof.	31	2.209.502.395,00	2.054.837.227,35	906.718,40	0,74
75	Nickel and articles thereof.	4	745.530.766,00	693.343.612,38	305.945,11	0,25
76	Aluminium and articles thereof.	27	794.097.953,00	738.511.096,29	325.875,74	0,27
78	Lead and articles thereof.	7	59.065.136,00	54.930.576,48	24.238,69	0,02
79	Zinc and articles thereof.	8	618.513.944,00	575.217.967,92	253.820,94	0,21
80	Tin and articles thereof.	3	53.467.604,00	49.724.871,72	21.941,62	0,02
81	Other base metals; cermets; arti	9	137.732.267,00	128.091.008,31	56.521,50	0,05
82	Tools, implements, cutlery, spo	63	793.049.450,00	737.535.988,50	325.445,46	0,27
83	Miscellaneous articles of base m	35	1.089.585.125,00	1.013.314.166,25	447.135,46	0,37
84	Nuclear reactors, boilers, machi	389	41.415.314.438,00	38.516.242.427,34	16.995.694,41	13,91
85	Electrical machinery and equipr	222	115.550.729.071,00	107.462.178.036,03	47.418.808,87	38,80
86	Railway or tramway locomotive	7	34.995.842,00	32.546.133,06	14.361,32	0,01
87	Vehicles other than railway or t	56	2.969.958.934,00	2.762.061.808,62	1.218.788,63	1,00
88	Aircraft, spacecraft, and parts th	6	246.048.095,00	228.824.728,35	100.971,30	0,08
89	Ships, boats and floating structu	10	142.349.564,00	132.385.094,52	58.416,31	0,05
90	Optical, photographic, cinemat	118	9.831.756.646,00	9.143.533.680,78	4.034.679,77	3,30
91	Clocks and watches and parts th	28	4.150.350.557,00	3.859.826.018,01	1.703.188,56	1,39
92	Musical instruments; parts and i	7	54.010.377,00	50.229.650,61	22.164,36	0,02
93	Arms and ammunition; parts an	4	1.427.550,00	1.327.621,50	585,83	0,00
94	Furniture; bedding, mattresses,	39	1.332.060.393,00	1.238.816.165,49	546.640,58	0,45
95	Toys, games and sports requisit	24	9.116.814.465,00	8.478.637.452,45	3.741.287,36	3,06
96	Miscellaneous manufactured arti	41	930.995.545,00	865.825.856,85	382.054,71	0,31
97	Works of art, collectors' pieces	5	687.958.239,00	639.801.162,27	282.318,95	0,23

Source: DIRECON, based on official data of Hong Kong and Chile.

**TABLE 5.2** Potentially Exportable Products by Chile to Hong Kong. Scenario: Matching between Hong Kong Imports from Rest of the World and Chilean Exports to Asia -**2007**.



SACH	Description	Number of subheading at 6-level	Hong Kong Imports		Value Potential Chilean Exports to Hong Kong	Relative Weight (%)
			US\$ CIF	US\$ FOB	US\$ FOB (0,04%)	
	<b>Total</b>	<b>592</b>	<b>71.503.780.092</b>	<b>66.498.515.486</b>	<b>29.343.165</b>	<b>100</b>
1	Live animals.	3	63.826.462	59.358.610	26.193	0,09
2	Meat and edible meat offal.	12	556.312.833	517.370.935	228.295	0,78
3	Fish and crustaceans, molluscs and ot	13	359.890.300	334.697.979	147.689	0,50
4	Dairy produce; birds' eggs; natural ho	3	269.078.759	250.243.246	110.422	0,38
5	Products of animal origin, not elsewh	3	11.225.178	10.439.416	4.607	0,02
6	Live trees and other plants; bulbs, roc	6	41.691.410	38.773.011	17.109	0,06
7	Edible vegetables and certain roots ar	8	20.724.419	19.273.710	8.505	0,03
8	Edible fruit and nuts; peel of citrus fr	16	212.812.720	197.915.830	87.332	0,30
9	Coffee, tea, maté and spices.	4	16.438.720	15.288.010	6.746	0,02
10	Cereals.	2	2.127.384	1.978.467	873	0,00
12	Oil seeds and oleaginous fruits; misce	7	68.518.563	63.722.264	28.118	0,10
13	Lac; gums, resins and other vegetable	2	9.130.065	8.490.960	3.747	0,01
15	Animal or vegetable fats and oils and	2	4.893.964	4.551.387	2.008	0,01
16	Preparations of meat, of fish or of cru	10	275.314.165	256.042.173	112.981	0,39
17	Sugars and sugar confectionery.	4	87.209.766	81.105.082	35.788	0,12
18	Cocoa and cocoa preparations.	2	16.486.151	15.332.120	6.765	0,02
19	Preparations of cereals, flour, starch c	3	56.627.248	52.663.341	23.238	0,08
20	Preparations of vegetables, fruit, nuts	19	94.599.120	87.977.182	38.821	0,13
21	Miscellaneous edible preparations.	6	188.627.151	175.423.250	77.407	0,26
22	Beverages, spirits and vinegar.	7	289.342.891	269.088.889	118.738	0,40
25	Salt; sulphur; earths and stone; plaster	2	431.660	401.444	177	0,00
26	Ores, slag and ash.	3	1.014.587	943.566	416	0,00
28	Inorganic chemicals; organic or inorg;	14	21.860.372	20.330.146	8.971	0,03
29	Organic chemicals.	11	13.397.642	12.459.807	5.498	0,02
30	Pharmaceutical products.	3	19.183.428	17.840.588	7.872	0,03
31	Fertilisers.	3	388.668	361.461	159	0,00
32	Tanning or dyeing extracts; tannins ar	4	376.157.645	349.826.610	154.365	0,53
33	Essential oils and resinoids; perfumer	9	1.137.694.628	1.058.056.004	466.878	1,59
34	Soap, organic surface-active agents, w	3	173.281.001	161.151.331	71.110	0,24
35	Albuminoidal substances; modified st	4	106.071.218	98.646.233	43.529	0,15
36	Explosives; pyrotechnic products; ma	2	273.674	254.517	112	0,00
37	Photographic or cinematographic goc	1	40.812.655	37.955.769	16.748	0,06
38	Miscellaneous chemical products.	4	262.389.825	244.022.537	107.677	0,37
39	Plastics and articles thereof.	21	1.695.073.128	1.576.418.009	695.611	2,37
40	Rubber and articles thereof.	12	274.821.915	255.584.381	112.779	0,38
41	Raw hides and skins (other than fursk	3	247.529.363	230.202.308	101.579	0,35
42	Articles of leather; saddlery and harn	6	3.346.611.276	3.112.348.487	1.373.356	4,68
44	Wood and articles of wood; wood chr	20	254.073.593	236.288.441	104.265	0,36
47	Pulp of wood or of other fibrous cell	1	3.770.025	3.506.123	1.547	0,01
48	Paper and paperboard; articles of pap	14	422.033.654	392.491.298	173.191	0,59
49	Printed books, newspapers, pictures a	5	1.026.970.372	955.082.446	421.440	1,44
51	Wool, fine or coarse animal hair; hors	2	19.168.166	17.826.394	7.866	0,03
55	Man-made staple fibres.	1	9.182.029	8.539.287	3.768	0,01
56	Wadding, felt and nonwovens; special	3	21.504.806	19.999.470	8.825	0,03
57	Carpets and other textile floor coverir	1	2.225.760	2.069.957	913	0,00
58	Special woven fabrics; tufted textile f	1	38.047	35.384	16	0,00
59	Impregnated, coated, covered or lami	1	468.789	435.974	192	0,00
61	Articles of apparel and clothing acces	11	2.373.919.838	2.207.745.449	974.191	3,32
62	Articles of apparel and clothing acces	19	3.171.346.903	2.949.352.620	1.301.433	4,44
63	Other made up textile articles; sets; w	4	144.112.763	134.024.870	59.140	0,20

Source: DIRECON, based on official data of Hong Kong and Chile.

**TABLE 5.2 (continuation).** Potentially Exportable Products by Chile to Hong Kong. Scenario: Matching between Hong Kong Imports from Rest of the World and Chilean Exports to Asia -2007.

SACH	Description	Number of subheading at 6-level	Hong Kong Imports		Value Potential Chilean Exports to Hong Kong	Relative Weight (%)
			US\$ CIF	US\$ FOB	US\$ FOB (0,04%)	
<b>Continuation</b>						
64	Footwear, gaiters and the like; parts o	3	450.464.673	418.932.146	184.858	0,63
65	Headgear and parts thereof.	2	198.075.760	184.210.457	81.285	0,28
68	Articles of stone, plaster, cement, asb	9	52.182.757	48.529.964	21.414	0,07
69	Ceramic products.	4	61.656.863	57.340.883	25.302	0,09
70	Glass and glassware.	5	82.794.032	76.998.450	33.976	0,12
71	Natural or cultured pearls, precious o	9	4.185.363.055	3.892.387.641	1.717.557	5,85
72	Iron and steel.	6	651.807.378	606.180.862	267.484	0,91
73	Articles of iron or steel.	18	276.801.272	257.425.183	113.592	0,39
74	Copper and articles thereof.	8	533.392.287	496.054.827	218.889	0,75
76	Aluminium and articles thereof.	5	248.316.862	230.934.682	101.902	0,35
78	Lead and articles thereof.	2	55.874.177	51.962.985	22.929	0,08
79	Zinc and articles thereof.	1	542.595.303	504.613.632	222.666	0,76
81	Other base metals; cermets; articles th	1	61.038.211	56.765.536	25.048	0,09
82	Tools, implements, cutlery, spoons an	15	290.198.076	269.884.211	119.089	0,41
83	Miscellaneous articles of base metal.	3	67.238.371	62.531.685	27.593	0,09
84	Nuclear reactors, boilers, machinery a	78	7.481.873.407	6.958.142.269	3.070.353	10,46
85	Electrical machinery and equipment a	37	27.892.589.786	25.940.108.501	11.446.344	39,01
86	Railway or tramway locomotives, rolli	1	22.748.180	21.155.807	9.335	0,03
87	Vehicles other than railway or tramwz	7	172.055.528	160.011.641	70.607	0,24
90	Optical, photographic, cinematograph	30	1.678.805.624	1.561.289.230	688.935	2,35
91	Clocks and watches and parts thereof	1	1.263.094	1.174.677	518	0,00
92	Musical instruments; parts and access	3	20.704.058	19.254.774	8.496	0,03
94	Furniture; bedding, mattresses, mattr	13	604.935.422	562.589.942	248.249	0,85
95	Toys, games and sports requisites; pa	3	7.573.677.993	7.043.520.533	3.108.027	10,59
96	Miscellaneous manufactured articles.	6	197.104.105	183.306.818	80.886	0,28
97	Works of art, collectors' pieces and ar	2	289.539.119	269.271.381	118.819	0,40

Source: DIRECON, based on official data of Hong Kong and Chile.

**TABLE 5.3** Potentially Exportable Products by Chile to Hong Kong. Scenario: Matching between Hong Kong Imports from Rest of the World and Chilean Exports to Asia -2007. Grouping by ISIC classification system.

	Number of Products	Hong Kong Imports Values in US\$ FOB	
		Total	Potential trade
<b>I. Agriculture, Fruit, Livestock, Silviculture and Extractive Fishery</b>	<b>37</b>	<b>689.579.874</b>	<b>304.284</b>
<b>Agriculture, fruit and livestock</b>	<b>33</b>	<b>546.811.594</b>	<b>241.286</b>
Agriculture	18	112.151.934	49.488
Fruit	10	179.100.070	79.030
Livestock	5	296.717.452	130.930
<b>Silviculture</b>	<b>2</b>	<b>4.023.122</b>	<b>1.775</b>
<b>Extractive fishing</b>	<b>2</b>	<b>138.745.158</b>	<b>61.223</b>
<b>II. Mining</b>	<b>5</b>	<b>1.270.745</b>	<b>561</b>
Copper	0	0	0
Rest of mining	5	1.270.745	561
<b>III. Manufacture Industry</b>	<b>548</b>	<b>65.497.235.624</b>	<b>28.901.340</b>
<b>Manufacture of food, beverages and tobacco</b>	<b>96</b>	<b>1.853.443.280</b>	<b>817.851</b>
Food Manufacturing	89	1.584.354.391	699.113
Beverage industries and tobacco	7	269.088.889	118.738
<b>Textile, wearing apparel and leather industries</b>	<b>56</b>	<b>9.156.809.807</b>	<b>4.040.538</b>
Textile products, wearing apparel	45	5.524.239.861	2.437.629
Leather and leather products	11	3.632.569.947	1.602.909
<b>Manufacture of wood and wood products, including furniture</b>	<b>25</b>	<b>620.160.823</b>	<b>273.652</b>
<b>Cellulose, paper and printing</b>	<b>20</b>	<b>1.351.079.867</b>	<b>596.178</b>
<b>Manufacture of chemicals, chemical, petroleum, coal, rubber and plastic</b>	<b>92</b>	<b>4.337.120.949</b>	<b>1.913.800</b>
<b>Manufacture of non-metallic mineral products, coal, rubber and plastic</b>	<b>20</b>	<b>280.712.996</b>	<b>123.868</b>
<b>Basic metal industries</b>	<b>20</b>	<b>1.708.388.445</b>	<b>753.844</b>
<b>Manufacture of fabricated metal products, machinery and equipment</b>	<b>198</b>	<b>35.051.049.690</b>	<b>15.466.642</b>
Metal products, machinery	188	34.768.605.057	15.342.010
Transport equipment	10	282.444.633	124.632
<b>Other manufacturing industries</b>	<b>21</b>	<b>11.138.469.766</b>	<b>4.914.966</b>
<b>IV. Other</b>	<b>2</b>	<b>269.271.381</b>	<b>118.819</b>
<b>Total</b>	<b>592</b>	<b>66.457.357.624</b>	<b>29.325.003</b>

Source: DIRECON, based on official Data for Hong Kong and Chile.

## V.3 Bilateral Liberalization of Trade in Services

### V.3.A Analysis

In 2008, services in the Chilean economy represented 61.1 % of total GDP<sup>62</sup>, and it has increased its share from 58.3% in 2003; and also its share in employment that comprises 64.6% of total employment in 2008<sup>63</sup>, up from 62.3% in 1996. This sector has been very dynamic as has

<sup>62</sup> Computed from Banco Central de Chile, National Accounts at 2003 constant prices. According to the UN methodology the water, construction, electricity and gas sectors are considered as part of industry.

<sup>63</sup> Source: Instituto Nacional de Estadísticas INE, employment figures for the January-March period of each year by industries. According to the UN methodology the water, construction, electricity and gas sectors are considered as part of industry

experienced a higher than average rate of growth of its activity, measured in GDP, employment and investment.

Between 1974 and 2004, Services accounted by 32% of direct foreign investment, concentrated in Transport and Communications (12% of the total) and other Services (20%). In the Other Services sector, the most important segments were Financial Services, Insurance (17%), and the Wholesale and Retail Trade (12%).

The importance of the services sector may be clearly seen as a source of employment creation in the last years (2001 – 2008). In the Chilean economy since January 2001, as may be appreciated from the following Table, some 1,173.5 thousand jobs have been created; of which 874 thousand were provided by the services sector, that is a 75% of the total jobs created in the last seven years.

**Table 5.4**  
**Chile: Employment creation by industries, 2001-2008**  
(Thousand jobs and %)

	Total	Non-services Industries*	Commerce	Transport& Telecommu- nications	Finance	Social and Communal Services	Services
Jobs created (thousands)	1,173.5	299.63	261.56	134.54	178.81	298.96	873.87
% share	100.0%	25.5%	22.3%	11.5%	15.2%	25.5%	74.5%

Source: Instituto Nacional de Estadísticas INE, Chile

\* Agriculture, manufacturing industry, construction, mining and electricity, gas and water

As a consequence of Chile’s long running privatization policies, state involvement in services is limited. The state retains ownership of Banco Estado, the postal and railway services, and public television. The state also owns seaports and major airports; however, these have been increasingly given in concession to private operators. The authorities indicate that involvement of the State in any of the sectors mentioned does not in any way preclude private participation.

As is stated in other part of this document, “there are a few measures that discriminate between national and foreign services providers, which affect the principle of national treatment, and a few minor exceptions to the MFN. Chile has some quantitative non-discriminatory restriction, mainly related to technical considerations, while in certain sectors local presence is required to better protect consumer interests or domestic market stability”<sup>64</sup>.

### V.3.B. Conclusions

In terms of assessing the likely impacts that a bilateral FTA would have on services, unfortunately the absence of reliable data on bilateral trade in cross border services only allows to undertake a qualitative analysis.

There are some data that is useful to look at related to the maritime transport and tourism. The DIRECTEMAR- Dirección General del Territorio Marítimo y Marina Mercante (General Directorate of Maritime Transport and Merchant Vessels, Chile)<sup>65</sup> information concerning Chilean maritime transport does not include Hong Kong in its classifications. On the other hand,

<sup>64</sup> A detailed description of the services regulations and policies is found in Chapter III.3 “Services” of this Study.

<sup>65</sup> In [www.directemar.cl](http://www.directemar.cl)

in the Hong Kong port data<sup>66</sup>, it was not found a figure of maritime transport to Chilean ports, only to South America. Concerning tourists, as registered by Servicio Nacional de Turismo (National Tourism Service)<sup>67</sup>, tourist arrivals from Hong Kong are registered for 2 of the last five years, and Hong Kong as a destination is not declared by the Chilean tourists.

**Table 5.5**  
**Chile: Tourist Arrivals from Hong Kong, China and World, 2005-2008**  
**(Number of arrivals)**

	2005	2006	2007	2008
HONG KONG			75	352
CHINA	6,397	7,707	8,516	6,738
TOTAL	2,027,082	2,252,952	2,506,756	2,698,659
% HONG KONG	0.000%	0.000%	0.003%	0.013%
% CHINA	0.32%	0.34%	0.34%	0.25%

Source: Servicio Nacional de Turismo (National Tourism Service of Chile)

**Table 5.6**  
**Chilean tourists departures to Hong Kong, China, China and world, 2005-2008**  
**(Number of departures)**

	2005	2006	2007	2008
HONG KONG				
CHINA	7	47	347	595
TOTAL	2,651,135	3,005,273	3,234,426	3,060,925
% HONG KONG	0.000%	0.000%	0.000%	0.000%
% CHINA	0.000%	0.002%	0.011%	0.019%

Source: Servicio Nacional de Turismo (National Tourism Service of Chile)

On the other hand, data on services and trade reflects that there is a positive correlation between services and trade: in the case of Chile, in the period 1999 to 2008, total trade in goods increased from US\$ 31.9 billions to US\$ 123.2 billions; and correspondingly trade in services surged from US\$ 8.5 billions to US\$ 22.2 billions in the same period. This is found in general, so if trade increases, it will also experience a corresponding surge in services.

Two general conclusions may be drawn from a further liberalization in the services sector between Chile and Hong Kong, China:

- The participation of Hong Kong, China in Chile's trade services is small; and has, most likely been reduced, because of the reduction of Hong Kong, China in trade in goods. In 2000, Hong Kong accounted for 0.31% of Chile's trade; while in 2007, it was 0.15% of the total. With further liberalization of restrictive practices in the services sector between the 2 countries, the share of services might certainly increase.
- As was calculated in the goods sector, there might be an increase in Chilean exports of around US \$ 29.3 millions with respect to the figure of 2007, approximately 26.0% of the

<sup>66</sup> In [http://www.mardep.gov.hk/en/publication/pdf/portstat\\_ast\\_2008.pdf](http://www.mardep.gov.hk/en/publication/pdf/portstat_ast_2008.pdf)

<sup>67</sup> The registration in the exit cards filled for boarding purposes puts an intermediate destiny as final destiny as there are not direct flights from Chile to Hong Kong, China

exports to Hong Kong, China. As there are no reliable sources concerning trade in services, it is not feasible to have an accurate estimate. But a rough indication may be calculated taking into account the average figure of services in the Chilean balance of payments accounts, which might mean a figure of US \$ 5.2<sup>68</sup> millions in the year 2007 of additional services because of the trade liberalization between the two countries. The services liberalization would mean additional points of increase in trade services between the two countries, beyond those estimates.

#### V.4. Bilateral Liberalization of Investment

##### V.4.A Analysis

Both the Hong Kong, China and the Chilean economies have experienced a dynamic economic growth, experiencing periods of stable and lastly expansion in the last 20 years. This, coupled with consistent liberalization of their economies, is conducive to increase investments and create new opportunities. In the case of Chile, the rate of investment has surged, recovering from the reduction of the late nineties due to the Asian crisis effect in the Chilean economy.

Foreign direct investment has been part of the strategy to enhance further growth in the Chilean economy (Chapter 1). This trend has continued, and the competitiveness of the Chilean economy and the low country risk has improved the attractiveness of investments in Chile. The Emerging markets bond index is at low levels for Chile, reaching 213 base points in 2008, while the average for the world was 406; and for emerging countries in Asia reached 356 and in Europe is 370 (see following table)

**Table 5.7**  
**Emerging Markets Bond Index Global Spread**  
**2004-2008**

	Gobal	Chile	Latin America	Asia	Europe
2004	243	83	527	265	275
2005	306	65	364	265	185
2006	198	80	213	180	149
2007	197	101	208	162	158
2008	406	213	427	356	370

Source: JP Morgan Chase  
In Banco Central de Chile, Monthly Bulletin  
(Boletín Mensual), April 2006, page 28

##### V.4.B Conclusions

Concerning the consequences for investment in the Chilean economy, given the process of an FTA with Hong Kong, China, it is possible to distinguish two main impacts: better information and an improvement of the legal certainty between both countries. The enhancement of the judicial certainty for investors from both countries and their investments in the other party's country would be a result of the consideration of the investment aspect in the FTA.

<sup>68</sup> In 2008, Chilean traded services accounted for 17.9% of trade in goods

With the improved market access as result of the FTA and the necessary examination of the juridical aspects of foreign and Chilean investment in Hong Kong would mean additional investments by Chile in Hong Kong, China, in order to facilitate trade in goods and services.

The needs of the development of the Hong Kong, China economy and its reliance on imported inputs and raw materials, as is the case of other emerging economies, might induce additional Hong Kong, China investments in Chile.

#### **V.5. Effects and Influence on Specific Sectors and Products (as appropriate) (Qualitative Analysis)**

For the matrix of analysis of the main impact of a prospective FTA Chile – Hong Kong, China in Chile by industries, it is possible to have a broad picture of which sectors would be influenced by the trade increase (potential exports) starting from the quantitative data calculated in Chapter V.2 and V.3. In this section are presented the highlights in key sectors:

##### **V.5.i. Agriculture (including fruits and food industries)**

- It is a sector that represents a 5.2% of the GDP in 2008<sup>69</sup>, it has a larger share of the GDP in Regions VII, VIII, IX, XIV and X; and is the basis of important exporting industries as fruits, wines, juices, canned foods, meat, pork, poultry, dairy products and other export products that have expanded and evolved in the last 20 years. Chile is (2006 data) the 17<sup>th</sup> exporter in the world food market, with exports in the region of US\$ 7 billions<sup>70</sup> in that year and currently US \$ 10 billions.
- The potential impact in this case is of a modest US \$ 241,000 in additional exports, which is less than 1% of the current US \$ 45.8 millions in agricultural exports, because of the signing the FTAs with other countries<sup>71</sup>.
- In this sector Hong Kong, China products would increase its presence in the domestic Chilean market, but imports are minimal.

##### **V.5.ii. Forestry**

- The forest industry represents a 3% of Chilean GDP, and with exports of US \$ 5,461.5 millions in 2008, 8.2% of Chilean exports
- Chilean exports of forest products might increase because of a new potential market as a result of the FTA with Hong Kong, China by 173% over the level of 2007 exports.

##### **V.5.iii Mining**

- This is a sector in which Chile has the largest competitive and natural advantages, mostly in the copper sector, being the largest exporter of copper in the world. In 2008, the mining sector comprised 7.1% of Chilean GDP, and mining exports are 57.5% of total

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<sup>69</sup> See Chapter 1

<sup>70</sup> Calculated from FAO figures by Chile Alimentos, includes several industries as food and beverages and fish and fish foods. (2004 figures).

<sup>71</sup> Cases of Mexico, Canada and other experiences

Chilean exports, both as a result of increases in the quantum and prices of copper and other mining products. This sector, however, represents a small Chilean export to the Hong Kong market (7.0% of Chilean exports in 2007).

- The mining exports that Chile exports to Hong Kong correspond mostly to copper products, which currently face a zero tariff. As these products are already sold to Hong Kong there will not be potential additional exports because of the prospective agreement.

#### **V.5.iv Manufacturing industry**

- The manufacturing sector represents a 16.7% of Chilean GDP<sup>72</sup>, and 31.9% of Chilean exports, reaching US\$ 21.2 billions in 2008. The exports of this sub-sector are led by the food and beverages industries (39.9% of total manufacturing exports), followed by the forest industry (forestry and furniture and cellulose, paper and by-products) reaching 26.6% of Chilean manufacturing exports processed and unprocessed chemicals (26.4% of manufacturing exports). In a 3<sup>rd</sup> place are the processed and unprocessed chemicals (18.0% of manufacturing exports) is the forest industry, in the 4<sup>th</sup> place the metal products, machinery and equipment (9.4% of total manufacturing exports) and lastly, basic metal industries (7.0% of total manufacturing exports).
- Concerning the gains from the FTA for Chile, the manufacturing industry might increase its exports by US\$ 28.9 million, which would mean an increase of 53.8% of current industrial exports to Hong Kong, China. The potentially most benefited sector would be the manufacture of fabricated metal products (US\$ 15.5 millions of additional exports).

#### **V.5.v Chemical and petrochemical products**

- The chemical and petrochemical products are in a 3<sup>rd</sup>. place among the manufacturing exports of Chile (processed and unprocessed chemicals with 18.0% of manufacturing exports), with a figure of US \$ 3.8 billion in exports in 2008.
- The chemical and petrochemical products might increase its exports to Hong Kong, China by US\$ 1.9 millions, which would mean an increase of 70.3% of current exports to that market.

#### **V.5.vi Textiles, clothing and leather products**

- This sector represents 0.7% of Chilean GDP; with Chilean exports to the world of US\$ 266.6 millions in 2007.
- Exports to Hong Kong were US \$ 8.4 million in 2007, and would increase by US \$ 4.0 millions, 47.6% over the level of 2007, because of potential additional exports.

#### **V.5.vii. Fabricated metal products, machinery and equipment**

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<sup>72</sup> GDP at constant prices, Banco Central de Chile



- This sector represents 2% of Chilean GDP; with Chilean exports to the world of US\$ 1,312.9 millions in 2007.
- Exports to Hong Kong would increase by US \$ 15.5 million, 22 times over the level of US \$ 0.7 millions in 2007.

### Services

- Additional trade in services between Chile and Hong Kong would be approximately of US\$ 5.2 millions, because of the expansion in potential trade
- The transport services have been pointed out as a “natural barrier to trade” with Hong Kong, but as transport is a derived demand, if there are opportunities to further expand trade to Hong Kong, the additional services will be supplied by the navigation companies that already operate to China and Hong Kong, China.

### V.6 Effects and Influences for the Respective Regions

There is a growing relationship between Chile and the Latin American countries. There are trade agreements with Mercosur (Brazil, Argentina, Uruguay and Paraguay), the Andean Community (Venezuela, Peru, Bolivia, Colombia, Ecuador), Central America (Costa Rica, El Salvador, Nicaragua, Honduras, Guatemala) and Mexico. In 2007, Chilean exports to those markets reached US\$ 10.6 billion, having experienced a 15.8% yearly growth between 1999 and 2007 (following table). Latin America has a share of 16.0% of Chilean total exports. As has been noted earlier, 60% of exports to Latin America are of manufactured goods.

Table 5. 8  
Chile 2007: Access to Latin American markets

Country	MFN	Tariff	Tariff
		Chile	reduction
<b>Argentina</b>	<b>10.1%</b>	<b>0,2%</b>	<b>98,0%</b>
<b>Brazil</b>	<b>10.1%</b>	<b>0,9%</b>	<b>91,1%</b>
<b>Paraguay</b>	<b>13.0%</b>	<b>1,4%</b>	<b>89,2%</b>
<b>Uruguay</b>	<b>13.2%</b>	<b>3,0%</b>	<b>77,3%</b>
<b>Bolivia</b>	<b>7.9%</b>	<b>5,1%</b>	<b>35,4%</b>
<b>Colombia</b>	<b>14.8%</b>	<b>0,2%</b>	<b>98,6%</b>
<b>Ecuador</b>	<b>12.4%</b>	<b>0,1%</b>	<b>99,2%</b>
<b>Peru</b>	<b>8.8%</b>	<b>1,8%</b>	<b>79,5%</b>
<b>Venezuela</b>	<b>19.6%</b>	<b>0,4%</b>	<b>98,0%</b>
<b>Mexico</b>	<b>25.8%</b>	<b>0,1%</b>	<b>99,6%</b>

Source: DIRECON

There is an opportunity for Hong Kong, China firms to establish distribution and/or manufacturing centers for the Latin American region, given the advantages of Chile as a reliable and well connected regional center.

**Table 5.9**  
**Chilean exports to Latin America: 1999 and 2007**

Chilean exports to Latin America, 1999 and 2007			
	1999	2007	Annual rate
	(US \$ millions)		of growth (%)
Central America	94.8	582.7	25.5%
Mercosur	1,520.2	5,283.4	16.8%
Andean Community	1,059.8	2,418.4	10.9%
Mexico	622.8	2,361.5	18.1%
Total exports	15,914.6	66,718.6	19.6%
Latin America	3,297.6	10,646.0	15.8%

Source: Studies and Information Department, DIRECON, based on data from Central Bank of Chile

Another aspect of the relationship is that Chile is an important investor in several Latin American countries. The stock of Chilean investment abroad for the period 1990 - 2008 is estimated at 47,462 million dollars<sup>73</sup>. Nearly 90% of it is located in Latin American countries, being Argentina the main recipient of Chilean investment, capturing around 33%, followed by Brazil (18%), Peru (14%) and Colombia (13%).

<sup>73</sup> Data produced by the Department of Foreign Investments of DIRECON, in <http://www.direcon.cl>

**VI. COOPERATION AND  
INFORMATION EXCHANGE ON  
OTHER ISSUES**

## **VI.1 Science and Technology**

In the area of Science and Technology, Chile's experience on different Free Trade Agreements (FTA) already signed shows that opening opportunities for cooperation and collaboration connected with development issues, gives a strategic perspective to the relationship and creates long-term opportunities for mutual benefit.

The Chilean Government has already signed a FTA with the European Union, New Zealand, Singapore, Brunei Darussalam, Canada, Mexico, China and Australia. In all these free trade agreements we have special sections on Science and Technology collaboration, and mechanisms for identifying possible joint ventures, industry cooperation, educational and cultural projects.

For example, that is the case of Canada, the first FTA signed by Chile, where, based on the new commercial opportunities opened by the agreement, Fundación Chile (a private – public development organization) signed agreements to acquire licenses for the application of biotechnology to Radiata pine.

Finally in the case of the FTA with Australia, the parties agreed on a special chapter of cooperation to create new opportunities in the areas of trade and investment and promote competitiveness, innovation and incentives for research and development. The following areas of cooperation have been identified: science, agriculture, wine industry, food industry, mining industry, energy, environmental issues, small and medium enterprises, tourism, education, labor, human capital development and cultural development.

At present the Chile – Hong Kong relationship is in a development stage and shows promising areas for cooperation in science and technology

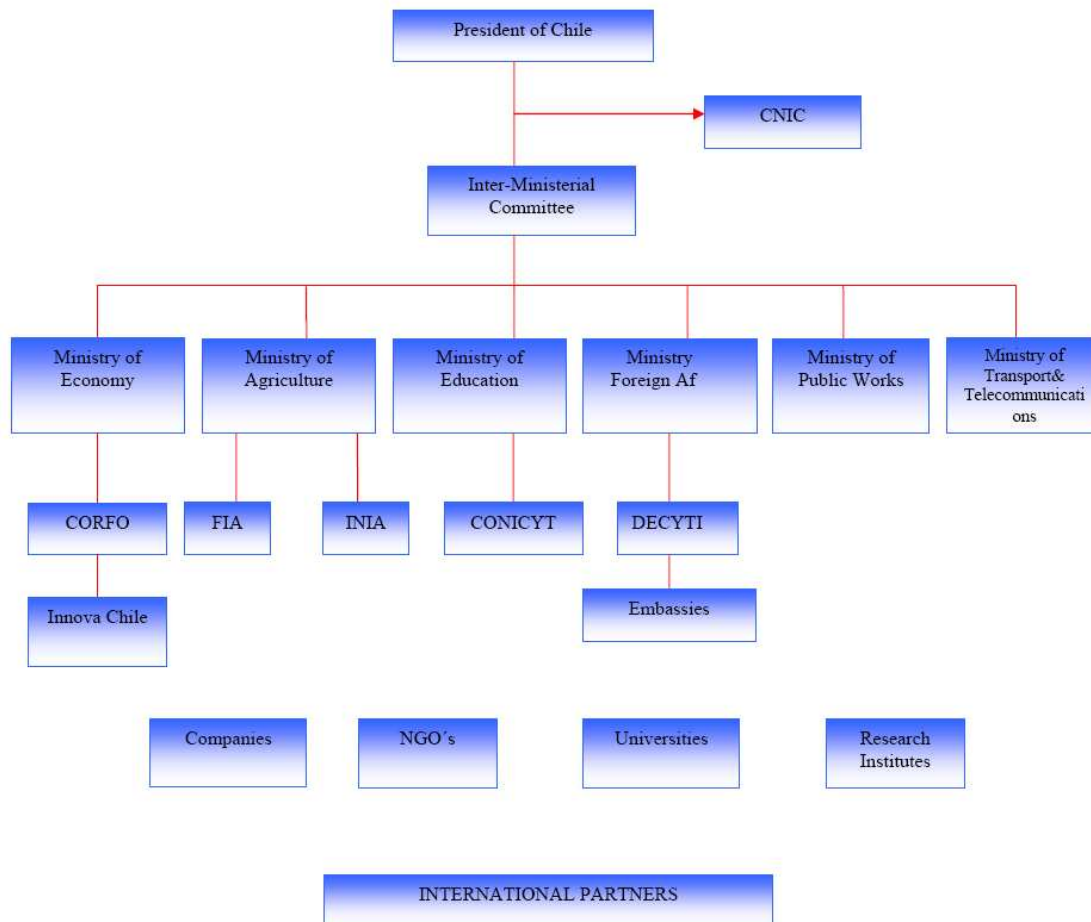
The interest of the Chilean government, in the context of a broad and comprehensive set of strategic initiatives, is to reinforce partnerships on the above-mentioned issues, recognizing that both Parties, being with important bio-diversities, should promote collaboration for mutual benefit.

The Government of Chile is increasing Chile's growth potential, know how, capabilities and products that will create the difference, these are only possible through technological developments. For this object in May 2005 the Chilean government created the National Innovation Council & Competitiveness (CNIC), the Council is in charge of advising the President on the National Strategy of Innovation.

The CNIC combines the multiples visions of the different components of the system of innovation, facilitates the coordination, promotion, and development of this, and organizes this in line with the national priorities. The role of this council is to make consensus of the policies in this area.

The Inter-ministerial Committee implement the strategy of innovation & competitiveness presides over the Ministry of Economy, Ministry of Foreign Affairs, Ministry Agriculture, Ministry of Education, Ministry of Transport and telecommunication, Ministry of Finance.

Institutional map of the National Strategy of Innovation



There are two main government agencies in Chile related with Science, Technology and Innovation. The National Commission of Investigation Science & Technology (CONICYT), this agency which is part of the Ministry of Education, is in charge of promoting, strengthening and expanding research in the areas of science and technology in Chile. CONICYT is responsible for national policy in the area of supporting universities and national research centres, The other institution is the government's Economic Development Agency (CORFO), which is in charge of innovation policies and support for industries to help them develop competitive advantage in the area of research and development. In 2005 Innova Chile was created. This helps with promoting and facilitating private innovation in four areas (general purpose technology, business innovation, technology transfer, and business star-up) with a focus on Biotechnology, ICT and agribusiness.

The Ministry of Agriculture implements its strategy for promoting innovation to boost competitiveness in agriculture through FIA, which was created in 1981 (reactivated in 1994). And the Institute of Agricultural Research (INIA), the mission of INIA is the creation, adaptation and transfer of technologies to ensure that the agricultural sector will contribute to the safety and quality

of food produce in Chile, in addition to provide a competitive and sustainable response to the challenges of rural development.

Both CONICYT and CORFO focus on innovation in the following areas:

- Outsourcing,
- Processed food industries
- Aquaculture
- Financing services
- Fresh fruit production
- Communications
- Logistic services
- Hog poultry breeding
- Construction
- Tourism
- Copper and derivatives.

The Ministry of Foreign Affairs plays a key role in connecting international opportunities and possible joint ventures with local partners, through the Coordination of Science & Technology. We foresee that one of the most attractive agencies in Hong Kong for identifying possible joint projects is through the National Science and Technology Development Agency especially in areas of common interest.

We propose collaboration with a vision that encompasses four main elements:

1. Identifying projects, institutions and professionals for developing a Partnership on Innovation, Research and Development (I+R+D), for mutual benefit and with a concrete long-term vision to develop joint capacities in international markets. These initiatives would require the involvement of governmental R&D entities, private companies, social organizations, or could combine them.
2. Technology transfer and trade in selected industry sectors, as food industry and selected manufacturing areas.
3. Collaboration in Human Capital Development, through institutional agreements for initiatives aimed at training human resources, developing professional and technical consultancy and fostering the exchange of experiences in selected areas: biotechnology, mining, energy, aquaculture, information technology, tourism, agriculture, food industry, education, and other areas of common interest of the Parties.
4. Common actions undertaken in order to implement a long term forward looking Partnership.

## VI. 2 Others Areas of Cooperation

### VI.2. 1 Small and Medium Enterprises

The small and medium enterprises are at the heart of the Chilean economy<sup>74</sup>: some 700.000 firms, that is 99% of Chilean firms are micro, small and medium enterprises, employing 75% of the labor

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<sup>74</sup> Universidad de Santiago de Chile (2008) “Desarrollo Productivo en Economías Globales y las Instituciones de Garantía Recíproca” in Informe Final Propuesta “Estudio de factibilidad para favorecer las instancias de profundización del mercado de garantías recíprocas”, pages 117-147 in [http://www.dipres.cl/572/articles-38731\\_doc\\_pdf1.pdf](http://www.dipres.cl/572/articles-38731_doc_pdf1.pdf)

force and responsible by 22% of total sales in the Chilean economy<sup>75</sup>. The SME are at the top of priorities in public policies. Thus, the SME are included<sup>76</sup>

- in the Productive Development Agencies, created in all the Chilean Regions
- in the initiative to enhance the credit for the SME and other actors, through the program “Pro Credito”, meant to mobilize more than US \$ 3.6 billion in additional credits and financing to this sector
- as beneficiaries of the fiscal stimulus plan announced in January 2009, for a total of US \$ 4 billions in additional resources to generate more activity and employment
- US \$ 700 millions are included in the fiscal stimulus plan in additional infrastructure that will create new jobs and improve productivity, specially in the SME
- A reduction of 15% of the provisional monthly tax payments by the SME announced for 2009

The SME are also part of the export enhancement schemes through Pro Chile, which aim to support the export development of Chilean firms (See [www.prochile.cl](http://www.prochile.cl)). ProChile attends 4,500 SME in all of the Chilean Regions<sup>77</sup>, has promoted business meetings in its more than 60 commercial offices in the world, and has carried out joint export development projects with other public agencies as CORFO and Innova.

## VI.2. 2 Gender Issues

“The Government Program is concerned about the construction of a more fair society, which includes the dimension of gender equity. The Gender Agenda, which contains commitments that are expected as the administration ends in 2010 is the guiding instrument for the implementation of these public policies.

To make progress in this Agenda, the National Women Service SERNAM mission is to design, propose and coordinate policies, plans, measures and legal reforms conducive to equal rights and opportunities between women and men, and diminishing discriminatory practices in the process of political, social, economic and cultural aspects in the country.

The strategic objectives that are operational are:

- a. Incorporate the gender perspective in policies and programs in the public sector, through the coordination, technical assistance and training to public officials.
- b. Promote equal rights and opportunities between women and men, through the development and promotion of bills or other regulatory changes.
- c. Reduce the main discrimination that affect women through the design, implementation, validation and transfer of models integrated program.
- d. Promoting a culture of equality through the implementation of communication campaigns to make visible gender issues and provide priority positive images of women in the media.
- e. Promote the position of the Government of Chile, through the dissemination of the international agenda in gender and the implementation and monitoring of horizontal cooperation agreements, bilateral and multilateral.

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<sup>75</sup> In SERCOTEC(2006) “La situación de la micro y pequeña empresa en Chile” in <http://www.redsercotec.cl/archivos/periodico/200711/Libro.pdf>

<sup>76</sup> These are the measures included in the last Presidential Address to the Congress, May, 21, 2009., quoted in <http://www.comerciointernacional.cl/2009/05/%C2%BFy-que-fue-de-las-pyme/>

<sup>77</sup> In [www.prochile.cl](http://www.prochile.cl)

f. Contribute to the definition of public policies aimed at gender equity through the generation and dissemination of knowledge about the discrimination that affects women and gender gaps”<sup>78</sup>

#### VI.2. 3 Other Areas of Cooperation

Education and Culture are strategic and long-term areas that facilitate the building of a long-standing and stable relationship between countries at an international level. Education and culture facilitates the mutual knowledge and respect and enhance the human potential of international partnerships.

##### Education

Cooperation in Education can focus, among other topics, on education quality assurance processes, on-line and distance education at all levels, primary and secondary education systems, higher education, technical education and vocational training, industry collaboration for technical and vocational training and teacher training and development.

Some instruments for educational cooperation could be the exchange of information such as teaching and curriculum materials, teaching aids, and demonstration materials, as well as the organization of relevant specialized exhibitions and seminars, the joint planning and implementation of programs and projects, the development of collaborative training, joint research and development, across graduate and postgraduate studies and the exchange of teaching staff, administrators, researchers and students in relation to programs that will be of mutual benefit.

Other area of collaboration is to gain understanding of each Parties’ education systems and policies including information relevant to the interpretation and evaluation of qualifications, potentially leading to discussions between institutions of higher learning on academic credit transfer and the possibility of mutual recognition of qualifications.

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<sup>78</sup> Taken from SERNAM program for the current Government period (2006-2010) in Mensaje de la Presidenta de la República Señora Michelle Bachelet Jeria en el Inicio de la Legislatura Ordinaria del Congreso Nacional 21 de mayo de 2009, Servicio Nacional de la Mujer SERNAM, pages 485-491 (informal translation)



## **VII. CONCLUSIONS**

## VII. CONCLUSIONS (BY CHILE)

### VII.1. Why Hong Kong, China? \_

Today, Hong Kong, China, a market comprised of a population of 7.1 millions, with a per capita income (PPP) of US \$ 43,800 (2008), has consolidated its position as a leading player in the international economy (12<sup>th</sup> largest economy in international trade in 2007)<sup>79</sup>, and is becoming an increasingly important market for other economies through commerce, achieved under trade and investment facilitation, liberalization and an increasing relationship with Mainland China. Hong Kong is also a large re-exporter in the Asian Region at large and is a leading partner in the financial services sector, becoming in this way an active agent of productive and financial integration. Exports were US \$ 362.1 billion in 2008, that is, an export of US \$ 51,000 per capita. Economic and financial partnership is becoming a valuable tool to build closer economic relations with its main business partners. Hong Kong, China is among the more open and freest economies in the world, according to the international classifications<sup>80</sup>.

Hong Kong has become a stable market for Chilean exports (US \$ 112.5 millions in 2007), reaching 0.17% of Chilean exports, after a low of 0.15% in the year 2002. This share has fluctuated between a high 1.21% in 1999 and a low 0.15% in 2002. Chilean imports from HKC have reduced its share in total imports from the 0.35% in 1999 to 0.12% in 2007.

Chile and Hong Kong, China are building new capacities as hubs for their respective regions.

Both countries-Chile and Hong Kong, China- have been active members in several international organizations and initiatives, as the WTO, APEC and other instances, in which have shared similar points of view and tasks.

### VII.2. Strategic Framework

An on-going goal of Chilean governments since the 90s has been to expand and enhance trade. The Chilean trade policy has used three instruments to simultaneously achieve greater opening to and better integration into the world economy: 1) unilateral liberalization and facilitation of trade and investments, 2) active participation in the multilateral system and negotiations, and 3) bilateral negotiations through FTAs and other trade agreements. By implementing policies conducive to unilateral opening, Chile has sought to improve the allocation of productive resources, making domestic economic activities more efficient and competitive. At the multilateral level, Chile has actively participated in discussions and decisions in the WTO, and has modernized its economy to comply with the WTO's obligations.

Bilateral agreements have enabled Chile to address and move forward in key globalization issues, namely services, investment, trade remedies, intellectual property, government procurement and competition policies, and also to address new strategic issues such as labor standards, environment, and economic, technological and development partnership. In this sense, trade exchanges have been expanded and diversified, creating conditions to improve competitiveness, attract new investment and technology, and generate new jobs.

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<sup>79</sup> WTO data, quoted in the Report by Hong Kong, China, February 2009, page 13

<sup>80</sup> According to the Heritage Foundation & Wall Street Journal, HKC is classified in the first place of the ranking of economic freedom in the world among 143 nations for 2009. It also ranks as the top economy in trade freedom (an index of 95, compared to 90 for Singapore, 86.8 for the US and 85.8 for the UK, all for 2009).

## Recent FTAs

Chile has followed an active policy of bilateral economic agreements, and today these agreements cover 61% of World population and 84% of world GDP. More than 90% of Chilean exports go to countries with which Chile has trade agreements

This trend has been enhanced in the last two years, as has been the closing of negotiations and the actual enforcement of new trade agreements with Japan in 2007, India in 2007 and Australia in 2009. Also in 2008 it began negotiations with Turkey, which is in its final stage for approval.

In 2006 Chile and Thailand finished a Joint Study Group on the Feasibility of an FTA, with positive conclusions. In the same year, another JSG was concluded with Malaysia and in 2007 was finished the study with Turkey (2008), and currently are being carried out a Joint Study with Indonesia, Hong Kong, China and Israel; and several studies to enhance the trade relationship between Chile and the Russian Federation.

Chile is determined to follow new steps to further enhance its policy of opening new preferential relationships including through plurilateral commercial agreements, as with P4.

### **VII.3. Effects of a Free-Trade Agreement Chile/Hong Kong, China**

#### **VII.3.A. General Effects**

- In the case of Chile, trade with Hong Kong has increased from US \$ 108.9 millions in 2000 to a figure of US \$ 165.9 millions in 2007, which has meant a growth of 52.3% between 2000 and 2007, well below the growth of Chilean foreign trade in the same period (211%). In 2007, Hong Kong, China accounted for 0.15% of Chile's foreign trade. Direct investment levels have not been significant and there are no registered Hong Kong investments (through the DL 600) in the period 1979-2008
- An FTA between Chile and Hong Kong, China would have a positive impact on bilateral trade and economic welfare. It has been calculated that the trade effects would increase Chilean exports by at least US \$ 29.3 millions considered to have an impact because of potential trade gains, and this would represent an increase of 26.1% over the figure of 2007 (US \$ 112.5 millions)
- This estimate takes into account the effect that might be created because of the several goods that Hong Kong imports from the rest of the world and does not import from Chile. This is also true in the other way round. Hong Kong imports from the rest of the world goods that are not imported from Chile (2007) a total of US \$ 276.9 billions (FOB values). Chile already sells those same items to other countries. Because of the better information, development of new commercial channels and the improvement in administrative procedures with an FTA, it is estimated that this "trade of non traded goods" would provide the additional exports presented in this Study.
- Other benefit which is the reduction in the "transactions costs" associated with the operation of foreign trade, because of facing better administrative and organizational structures and procedures after the FTA. It may also facilitate trade with Mainland China because of the wide use of the English language in HKC.

- The dynamic effects because of a better resource allocation in Chile and Hong Kong, China would create additional positive impacts on both countries
- Another important benefit would be the improvement in market access “certainty”, as 55% of the tariff lines are not bound in the WTO, and only the remaining 45% have the limit of 0% according to the WTO commitments by HKC. With the FTA, Chile would be able to negotiate the current 0% for products that are not listed in the WTO commitments by HKC. For instance, a product that is not listed might –theoretically- increase its tariff to, say a 10%. Thus, the Chilean exporter would be benefited vis-à-vis other trade partner because that 10% tariff for the Chilean exporter would be 0%, and thus enjoy an advantage to offer a lower final price for the HKC buyer, thus being able to displace other competitors and to increase a market for that particular export good.
- Exports from Hong Kong, China to Chile are facing competition in the Chilean market of other suppliers that have already obtained FTA status –as is the case of goods from China and Korea- or that are already negotiating with Chile as is the case of Australia. In order not to lose competitiveness in the Chilean market it would be needed, from the Hong Kong, China point of view to have a better access in order to equalize conditions of market access compared to its competitors in Chile. There would also be a cost reduction for Chilean producers as equipments and inputs that are currently imported from HKC would reduce its cost as the 6% general rate in tariffs would not be applied would to those products.
- Chile and HKC have Trade Agreements with the People’s Republic of China, and thus, may explore new joint cooperation schemes
- Chile and HKC are both members of APEC and thus may enhance or develop new trade schemes as the one already developed by the P4

### **VII.3.B Effects on Trade and Investment by main economic sectors.**

- The industries that could be mostly benefited because of the FTA with Hong Kong, China could be the manufacture of fabricated metal products, machinery and equipment; other manufacturing products; textile, wearing apparel and leather industries, agricultural products and potential services.
- Foreign direct investment would increase as having a better investment climate due to better and more stable rules for investment promotion and protection would be conducive to higher levels of Chilean and Hong Kong investments in both economies.
- This would also be facilitated because of the respective areas of influence in the case of Hong Kong, China in Asia, and in the case of Chile in Latin America.
- An FTA would enhance cooperation in areas of mutual interest between Chile and Hong Kong, as have been analyzed in this document, in science, innovation and technology, gender issues, tourism, education, small and medium enterprises and other issues

### **Chile as a springboard**

- Chile has the potential to act as a springboard for foreign companies that, after carrying out a productive process of transformation of their goods in Chile, could export the final product to the markets where Chile has tariff preferences, due to the wide network of Free Trade Agreements signed during the last years. With a total of 20 FTAs with 56 countries.
- The process involves three stages. The first one is the one that involves the import by Chile of the foreign parts or inputs, that will pay a 0% tariff in the majority of cases (depending on the Agreement between the foreign country and Chile), or at the most the MFN of 6%, with the only exception of the products in band prices. Once in Chile, these inputs should go through the necessary transformation process to meet the rules of origin to apply for the tariff preference in the destination market. At the end, the third stage is the export of the final good that meets the respective rule of origin to the final market destination.
- Following this criteria, the General Directorate of International Economics Affairs (Ministry of Foreign Affairs of Chile) conducted a study to identify potential products of some South American countries that could use Chile as a springboard to the following markets: China, South Korea, United States and Mexico. The results of this study are in the website of DIRECON<sup>81</sup>: [www.direcon.cl](http://www.direcon.cl)
- Among the products identified are: products of the food industry, fabrics, manufactures of plastic, parts of vehicles, etc.
- There are a large number of foreign companies that are carrying out projects involving Chile as a springboard. They do it in two ways. On one side, through strategic alliances between the foreign firm and the Chilean one. Or, on the other side, through foreign investment in Chile.

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<sup>81</sup> Gobierno de Chile. Dirección General de Relaciones Económicas Internacionales. “Encadenamientos productivos”. Santiago, Septiembre 2008. Programa DIRECON-BID

## **VIII. RECOMMENDATIONS (Joint)**

**Common Conclusions and Recommendations of the Joint Study Group on the Feasibility of a Free Trade Agreement between Chile and Hong Kong, China**

**Hong Kong, China, July 15, 2009**

1. In the framework of the bilateral relations, authorities of the Republic of Chile headed by Ambassador Carlos Furche, Vice Minister for International Economic Affairs and of Hong Kong, China (HKC) headed by Mrs. Rita Lau, Secretary for Commerce and Economic Development agreed on the need to intensify the Chile-HKC trade and economic relationship by commencing together a feasibility study to examine a potential Chile-HKC Free Trade Agreement (FTA). A Joint Feasibility Study Group was formed by the two economies on November 24, 2008.
2. Both economies have conducted three meetings of the Joint Study Group alternately in Santiago and Hong Kong, reaching a successful conclusion of the work.
3. The Joint Study's main conclusions on the feasibility of an FTA indicate that enhancement of the trade and economic relationships between Chile and HKC would have a positive impact on the economic relationship between the two partners:
  - Chile and HKC would, as a result of tariff elimination or reduction by Chile and of the binding of the tariff lines that HKC has not bound in the WTO, benefit because of the trade increase between the two economies.
  - An agreement with disciplines that provide legal certainty would improve the investment environment and would have a positive impact in the export of services including those associated to the increase of trade in goods.
  - An agreement between both partners would induce a reduction in the transaction costs between them, due to the inclusion of trade facilitation measures.
  - Both Chile and HKC, are members of APEC and World Trade Organisation and work together to liberalize trade in the Asia Pacific Rim and multilaterally. They have a strong network of economic relations in their respective regions. Chile has commercial and economic agreements with

all Latin American countries, with the US and Canada. HKC has a Closer Economic Partnership Arrangement with the People's Republic of China, and is a major trade partner with most economies in East Asia.

4. HKC and Chile are open on the form and content of the trade agreement, such as FTA-type of agreement, as well as the structure of negotiation.
5. Both delegations agree to advise their respective Governments on the promising results obtained in the "Chile-Hong Kong, China Joint Study Group on the Feasibility of a Free Trade Agreement", so that appropriate decisions concerning future negotiations between Chile and HKC can be taken.



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# **APPENDIX**

## **APPENDIX 1 Chilean answers to HKC questions**

### **Chile-Hong Kong, China Joint Study Group on The Feasibility of an Free Trade Agreement**

#### **ANSWERS by Chile to Questions from Hong Kong, China**

### **Chapter I**

#### ***I.1.A Macroeconomic Features***

1. On page 8 of the Chilean report, it is mentioned that “The governments since 1990 supplemented growth-oriented economic policies with focused social policies and an enhancement in investment in human capital, coupled with a liberalization of the economy.” We would like to know more about what “focused social policies” refer to and their implications, if any, on Chile’s trade policy, particularly with regard to the policy on FTA negotiations. ANSWER: Social policies in health services, housing, education and others are focused so as to provide a better coverage of the poorer population with those programmes and resources. A description of social policies may be found on the website of the Ministry of Planning (Mideplan), [www.mideplan.cl](http://www.mideplan.cl), the Health Ministry, [www.minsal.cl](http://www.minsal.cl), the Housing Ministry, [www.minvu.cl](http://www.minvu.cl) and other specialized programmes. These policies do not have implications for the FTA negotiations.
  
2. It is also mentioned on page 8 of the Chilean report that “... The core elements of the economic policy over the past 15 years have been based on macroeconomic stability, elimination of domestic market distortions and a gradual lowering of barriers to foreign trade.” Please elaborate on the major domestic market distortions and barriers to foreign trade that have been eliminated and/or lowered. Please also advise the sectors in which such trade restrictive measures were originally maintained. In what specific ways that the Chilean government has been doing to eliminate these market distortions and barriers. ANSWER: Several reforms have been carried out in the Chilean economy, concerning prices liberalisations, enhancement of competition policies, tax reforms and market

developments and liberalisation in the areas of ports, electricity, telecommunications, air transport, public works concessions, water distribution and other areas. In the case of foreign trade, part of the reforms have been to reduce to a minimum the administrative approvals, to eliminate prohibitions, to up-date the Customs procedures and a progressive reduction of tariffs (since 2003 a 6% flat tariff rate for most tariff lines) and a policy of trade agreements with trade partners.

3. On page 9 of the Chilean report, it is mentioned that “During 2007, the share of services (financial, firms and personal) in the total economic activity represented 34.3 percent of GDP, ...” Please explain the definition and coverage of “services (financial, firms and personal). ANSWER: The definition of the reported services is the one used by the Chilean Central Bank in the classification of national accounts. The sector classification includes: financial services, banking, insurance and services to firms; real estate and property ownership; education, health and other personal services. A full description is found at Central Bank website: [www.bcentral.cl](http://www.bcentral.cl)

### ***1.1.B Trade Policy Regime: Formulation and Implementation***

4. Page 14 of the Chilean report says that one of the objectives of Chile’s trade policy is to reduce the level of effective protection and any existing anti-export bias in the tariff structure. Please elaborate on the existing effective protection and the key features of the existing anti-export bias in the tariff structure that are still in place. ANSWER. With the tariff reductions applied (a flat tariff rate of 6%) and the trade agreements in force (more than 90% of Chile’s trade), the level of effective protection is very limited, as any anti-export bias in the tariff structure.
5. Please advise on the priority of the Chilean government as far as trade and industrial policy is concerned in respect of development in trade in goods (industrial, mining and agriculture) and trade in services. ANSWER: Chile does not apply a preferential policy to pick-up “winner” or “chosen” industries, it rather applies “horizontal” policy tools to enhance development of all sectors, by which the private sector may use these tools in different activities.
6. Page 15 of the Chilean report mentions that the main objective of the Export Council, which brings together

representatives of the private and public sectors, is to make recommendations on export policy formulation. We would like to know if the Export Council has any role to play in matters regarding Chile's international economic negotiations (including FTA negotiations). If so, how the Chilean government would involve the Export Council in the formulation of trade negotiations policy. ANSWER: The Export Council has been an open mechanism by which the private sector can advise in international economic negotiations. Through this mechanism, the Government aims to improve the participation process of the private sector in international trade relationships, including negotiations, export promotion, trade facilitation, transport and logistics issues and other subjects that may arise so as to enhance Chilean international positioning

7. It seems that the Export Council advises on matters relating to "export" only. Is there any other bodies or institutions in Chile that advises the Government on general trade policies, e.g. trade negotiations, regional cooperation, etc.? If yes, what are their roles? ANSWER: Yes, there are other bodies or institutions that advise the Government on general trade policies. Examples: the APEC Business Advisory Council (Chilean Representatives), the Chilean Pacific Foundation (Fundación Chilena del Pacífico) and several academic and industry organizations as the National Farmers Association (SNA), the Confederation of Production and Commerce (CPC) and other instances do advise the Government on trade policies (Some of them are part of the Export Council). Their roles are to share information, to advise on the negotiating priorities and issues and in specific subjects
8. Page 17 of the Chilean report sets out a number of Chile's domestic laws on trade-related matters. Are they the full list of current laws that concern trade-related matters? If not, could you please provide us with a full list or a hyperlink to these laws? ANSWER: The list contained on page 17 contains a list of the current laws that concern trade related matters.
9. We note from page 17 of the Chilean report that the Customs Law of Chile is Decree Law No. 2/97 of 12 November 1997. However, we also note in Table I.1 on page 16 that the Customs Law is Decree Law No. 30/2004 of 18 October 2004. Would like to clarify whether both Customs Law are applicable to foreign trade.

ANSWER: Chile's Customs Law is Decree with Force Law N° 30/2004 of the Ministry of Finance, which consolidates previous legal instruments (including Decree with Force of Law N° 2/97) is applicable to foreign trade

10. What is the definition of small and medium enterprises (SMEs) in Chile? Are there any special trade policies to support SMEs in Chile? ANSWER: The most widely used definition of SME in Chile is according to the sales level, by which, the micro enterprise has annual sales between UF<sup>82</sup> 0.1 and 2,400, the small enterprise between UF 2,400.1 and 25,000, the medium enterprise between UF 25,000.1 and 100,000 (roughly the micro enterprise has annual sales between US\$ 0.1 and 86,538, the small enterprise between US\$ 86,539 and 901,439, the medium enterprise between US\$ 901,440 and 3,605,758). There are special programmes (WTO compatible) to foster exports of SME through CORFO<sup>83</sup> and ProChile<sup>84</sup>, but not special trade policies.

### *1.1.C Structure and Features of the Market*

11. Page 18 of the Chilean report says that in Chile, competition is enforced through the application of the Chilean Competition Act. We would like to know more about this Act, such as the scope of application and the key requirements/obligations under this Act.

ANSWER: The Chilean Competition Act establishes in its first article the goal: "to promote and defend free competition in the markets", and in subsequent articles it defines that "the anticompetitive illicit are any deed, act or contract that prevents, restrict or obstruct free competition, or that tends to produce these effects".

Article 3° is an illustrative list of anticompetitive arrangements. It sets out 3 specific categories of actions or agreements. The list is not exhaustive; there may be other actions with the purpose of eliminating, restraining or

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<sup>82</sup> UF=unidad de fomento=Development unit, changes daily with past inflation. 1 UF= Chilean \$ 20,935.39 at 9/March/2009

<sup>83</sup> See [www.corfo.cl](http://www.corfo.cl)

<sup>84</sup> See [www.prochile.cl](http://www.prochile.cl)

hampering competition:

- a) explicit or implicit agreements or collusive practices whose object is to fix resale or buying prices, limit production or allocate zones or quotas.
- b) the abuse of a dominant position by an enterprise or group of enterprises with a common owner by fixing buying or selling prices, tying arrangements, allocation of markets or quotas, or other similar conduct.
- c) predatory practices to gain or increase a dominant position.

Concentration in markets is not considered as anticompetitive *per se*, and hence the law does not make pre-merger notifications mandatory nor does it set limits to market power.

The Law's norms also apply to anticompetitive behaviour that takes place outside of Chile which has domestic repercussions.

There are non statutory, judicial exemptions or exclusions for the Law. It applies to all individuals, to all enterprises (regardless of state ownership), and in some circumstances to government ministries or other agencies. An important feature of the Law is that it can be applied to sectoral regulators or other parts of Government. On the national level the law has been applied to the Ministry of Transportation, the Telecommunication Undersecretary Office, the Electricity and Fuels Superintendence, the General Waters Directorate, and the State Procurement Directorate. It also applies to municipalities.

While statutory monopolies do exist, and some laws do create exclusive rights, abuse of these rights is still subject to the Competition Law.

The Competition Act also defines the administrative nature of sanctions to punish anticompetitive conducts: fines, corrective measures and injunctions.

A bill to reform the Competition Act is currently being discussed in the Congress. If approved, this would represent an important change in that it would permit the granting of immunity or leniency to members of cartels who have effectively collaborated in the investigation of hard core cartels. This reform would also provide the *Fiscalía Nacional Económica*, FNE (National Economic Prosecution Service), the Chilean agency for investigating matters relating to free competition, with important new powers such as that to intercept communications and search premises with police help. It would, moreover, increase the maximum fine that can be levied from US\$15 million to approximately US\$22.5 million.

The Chilean Competition laws, regulations, procedures, administrative rulings and judicial decisions of general and specific application are currently published via both the National Economic Prosecutor's Office's Website ([www.fne.cl](http://www.fne.cl) includes an English version of the Competition Law) and the Competition Tribunal's website ([www.tdlc.cl](http://www.tdlc.cl)).

12. Page 18 of the Chilean report mentions that Chile has included Competition Policy chapters in most of the trade agreements it has negotiated. And in some cases, cooperation agreements are signed. We are interested to know the key features of the Competition chapters in the relevant bilateral agreements and those of the cooperation agreements. We are also interested to know Chile's main considerations for choosing between a Competition chapter and a cooperation agreement on competition.

ANSWER: Chile has signed Free Trade Agreements containing chapters on competition policy with MERCOSUR, Canada, México, Central America, European Union, USA, EFTA, Korea, P4 (New Zealand, Singapore, Brunei) Japan and Australia.

Some of these Agreements have served as the framework for the subsequent signing of co-operation agreements or memoranda of understanding between the competition agencies of Chile and its trading partners. The FNE has to date signed inter-agency co-operation agreements with Canada, Costa Rica, Mexico and El Salvador, and is currently evaluating the launch of negotiations with a number of other agencies. As a regular institutional practice, the FNE maintains permanent contact with overseas agencies when this is required for the investigation of a particular case.

Competition chapters are an important element in ensuring that the potential benefits of a Free Trade Agreement can be fully realised. In particular, competition provisions help to ensure that the benefits likely to flow from the reduction of barriers to trade are not unduly undermined by anticompetitive conduct.

Generally the provisions contained within the chapters dealing with competition can be organized around the following topics: objectives, principles and institutionality, scope and coverage, monopolies and State enterprises, cooperation and coordination, and dispute settlement.

Regarding the objectives the aim is, on one hand, to establish that anti-competitive practices do not undermine the benefits of a Treaty or to help obtain its objectives, on the other hand, to promote cooperation and coordination. In very few cases is it made explicit the need to search for efficiency and consumer welfare, such as it is the case of the agreement between Chile – Mercosur, which proposes to establish rules regarding consumer defense.

In general the principles incorporated relate to non-discrimination, transparency and due process.

Regarding specific institutions in the realm of competition policy, some agreements establish prerequisites for autonomy or impartiality for establishing or maintaining competition authorities, such as the case of Chile-USA.

With respect to the scope of application, the agreements contain substantial general rules against anti-competitive practices. Among these practices are: collusion, abuse of dominant position, mergers and acquisitions.

The majority of the agreements contain rules regarding monopolies and State enterprises. It allows the countries, in accordance to their laws, to designate monopolies or establish State enterprises, but they have to notify the establishment of these entities when they could affect the welfare of the other Party. The aim is that their functioning does not hinder the objectives of the agreement, that they act in accordance to commercial considerations and do not use their monopolistic position to carry out anti-competitive practices.

There is diversity regarding the detail or level of commitments on cooperation and coordination. Among the main elements are: i) notification of the activities on the application of laws; ii) exchange of information to facilitate the effective application; iii) consultations –and prevention of conflicts- when important interest of a country are affected in the other territory; and iv) mutual technical cooperation.

Almost all agreements contain references to the notification of enforcement activities if they could affect the interest of the other Party, or of the designation of a monopoly or State enterprise.



The agreements establish commitments regarding exchange of information, mostly non-confidential, to facilitate the effective application of competition laws. In a number of agreements there are rules that set out the need of conditioning the information to national rules on confidentiality. Few cases foresee, subject to prerequisites, confidential information to be made available to judicial bodies of the respective country.

The mechanism for consultations is included in a large number of agreements. In some cases, the consultations are directed to the evaluation of the chapter application or to the enforcement cases where important interests of a country might be affected in the territory of another. Some have also foreseen consultations regarding investigations and effectiveness of the measures of anti-competitive practices, of operation, execution, application and interpretation of the chapter. Through the consultation mechanism some agreements come close to the principles of positive and negative comity.

The coordination in the application of the law for specific cases appears in some relatively recent agreements, which are those of Chile with the UE, EFTA and Korea. This, on the other hand, is the main cooperation objective between competition agencies, which is established through independent agreements or as a complement to free trade agreements. Other coordination areas, especially those which go beyond the exchange of information, also correspond to a great extent to components of inter-agencies agreements.

The majority of the agreements point out that the chapter on competition or the policies or laws on competition will not be subject to the dispute settlement mechanisms of the Agreement. In some agreements, only rules regarding to monopolies and State Trading Enterprises are subject to such procedures.

### ***1.1.D Banking System and Credit Policies***

13. Page 19 of the Chilean report mentions that at end-2007, a total of 13 domestically-owned and 12 foreign-owned banks were operating in Chile. Page 20 of the Chilean report also mentions that the minimum capital requirements and other prudential regulations for

foreign banks are the same as for Chilean-owned banks. We would like to know what are the specific conditions/requirements for setting up a foreign bank in Chile. ANSWER: As stated in page 20 of the Chilean report there are no specific requirements for foreign banks. The procedures for registration and authorization are in the General Banking act from article 27 to 39.

14. As set out in pages 19 and 22 of the Chilean report, the Superintendence of Banks and Financial Institutions (SBIF) authorises the licensing of new banks. Besides, any bank's merger, capital increase, and any acquisition of 10% or more of the equity interest in a bank are subject to SBIF's approval. As it is also separately stated in the Chilean report that, in terms of financial services, foreign investors generally receive national treatment and there are no quantitative restrictions, does it imply that those specific criteria that the SBIF would take into account in deciding whether to grant the above authorisation / approval do not constitute any quantitative or discriminatory limitations? Should there be any specific criteria that would constitute quantitative or discriminatory limitations, please give an account of those criteria. ANSWER: Chile does not apply any quantitative or discriminative restrictions for the approval of financial institutions.
15. Page 20 of the Chilean report sets out that in December 2007, there were 12 foreign-owned life-insurance companies and 21 foreign-owned non-life insurers operating in Chile, and that there are no differences in capital requirements between foreign-owned and Chilean insurance companies. Please advise what are the specific conditions/requirements for setting up a foreign-owned insurance company in Chile. ANSWER: As stated in page 20 of the Chilean report there are no specific requirements for foreign-owned life-insurance and foreign non-life insurance companies. The requirements are established in paragraph 2 of Title I of the Law of Insurances, article 4 and following ones.
16. While it is stated in page 22 of the Chilean report that in terms of financial services, foreign investors generally receive national treatment and there are no quantitative restrictions, we note from Chile's existing schedule of specific commitments under the GATS that a supplier of financial services operating through a

commercial presence may be subject to an economic needs test (ENT) and that foreign investors who participate in the financial services sector may only transfer their capital abroad two years from the date of its entry. We would like to know whether these market access and national treatment restrictions as stipulated in Chile's GATS schedule are actually in place in Chile. In respect of the ENT requirement, if it is being implemented in practice, we would be grateful if Chile would elaborate on the following elements of the ENT:

- (a) the triggering of the ENT, specifically whether the ENT is a standing test, or would be invoked only upon certain conditions being met;
- (b) the criteria of the ENT, specifically the criteria for assessing "economic needs" and arriving at any quantitative limitation to be imposed; and
- (c) type of quantitative limitation(s) that may be applied as a result of the application of the ENT. ANSWER: Nowadays there are no economic needs test (ENT) applied to foreign investments that participate in the financial services sector in Chile.

17. It is explained in page 22 of the Chilean report that Chile did not include financial services in bilateral agreements until the trade agreements with the US and EU, and its only international commitments were those scheduled in the Uruguay Round negotiations. Please advise whether Chile has, in its bilateral agreements with the US and EU, undertaken specific market access and / or national treatment commitments in the financial service sector that go beyond its commitments undertaken under the GATS. If yes, please give an account of those GATS-plus commitments for financial services. ANSWER: Chile's commitments regarding financial services in bilateral agreements can be found in the respective chapters which are publicly available, as are its commitments under the GATS. Any comparison between them can be done by the interested party.

18. Pages 22-23 of the Chilean report says that as a matter of policy, there are certain *sine qua non* conditions for Chile in negotiating financial services bilaterally (including negotiated in a separate and self-contained chapter and subject to different disciplines than the rest

of services, a separate dispute settlement for financial services, and no extension of MFN treatment to non-Party). Would like to know Chile's main considerations for including or not including financial services in its FTAs and how are the above mentioned areas different from the corresponding provisions governing the services chapter in FTAs of Chile. ANSWER: The inclusion or non inclusion of a chapter in financial services depends on a case-by-case analysis which includes, among other things, Chile's interest in including financial services with another Party, on an evaluation of whether the benefits of doing so exceed the costs of departing from Chile's basic policy of preferring unilateral openness over trade-distorting trade agreements and on previous consultations regarding acceptance of Chile's sine qua non conditions.

With respect to the provisions in financial services chapters, they can be found in the respective agreements which are publicly available.

### ***1.3 Trade in Services***

19. Page 35 of the Chilean report sets out that major seaports in Chile are owned by the State but concessions have increasingly given to private operators. Further, involvement of the State in the sea ports does not in any way preclude private participation. In this regard, we would like to know -

- (a) what is the current policy in granting concession to private operators in the operation of sea port and port-related services; and
- (b) whether local and foreign services providers enjoy the same treatment in applying for / obtaining / exercising the concession?

ANSWER: To answer both questions, we quote the corresponding articles of Law N° 19,542, concerning the modernisation of the state ports sector, that rules the process of state owned docks concessions (additional comments are in brackets []). Legal texts are in Spanish only).

Art. 5. La prestación de los servicios de estiba, desestiba, transferencia de la carga desde el puerto a la nave y viceversa, y el porteo en los recintos portuarios, comprendidos dentro del objeto de las empresas [se refiere a las empresas portuarias estatales], deberá ser realizada por particulares debidamente habilitados.

Las labores de almacenamiento y acopio que se realicen en los puertos que administren las empresas, podrán ser realizadas con la participación de éstas o por particulares. La condición de almacenista se adquirirá de conformidad a las normas que regulan esta actividad.

No obstante lo señalado en el inciso primero, las empresas [portuarias estatales] estarán facultadas para prestar por sí mismas, en subsidio de los particulares y sólo cuando éstos no estén interesados en realizar tales funciones, los servicios de transferencia y porteo.

Adicionalmente, estarán facultadas para realizar la función de porteo, cuando les sea requerida expresamente por el Estado en virtud de obligaciones contraídas por éste en convenios o tratados internacionales.

Art. 7. Las empresas [portuarias estatales] podrán realizar su objeto directamente o a través de terceros. En este último caso, lo harán por medio del otorgamiento de concesiones portuarias, la celebración de contratos de arrendamiento o mediante la constitución con personas naturales o jurídicas, chilenas o extranjeras, de sociedades anónimas. Estas sociedades no podrán tener por objeto la administración o explotación de frentes de atraque, y, para todos los efectos legales posteriores a su constitución, se regirán por las normas aplicables a las sociedades anónimas abiertas.

La participación de terceros en las sociedades que formen las empresas, la celebración de contratos de arrendamiento y el otorgamiento de concesiones portuarias deberán realizarse mediante licitación pública, en cuyas bases se establecerán clara y precisamente los elementos de la esencia del pacto social, del contrato o de la respectiva concesión portuaria, en conformidad al artículo 50. Durante la vigencia de la concesión, los derechos del concesionario sólo podrán afectarse o limitarse en la forma y condiciones que se hayan establecido en las bases respectivas. Dichas bases deberán establecer, además, las causales de caducidad de la concesión y determinar la forma en que ella se administrará en el evento que se incurra en alguna, y hasta que se llame a una nueva licitación.

Para el establecimiento del monto mínimo de la renta o canon del respectivo arriendo o concesión portuaria, servirá de referencia el valor económico del activo objeto de los actos señalados en el inciso anterior.

Art. 14. Las empresas [portuarias estatales] podrán dar en arrendamiento u otorgar concesiones portuarias de sus bienes hasta por treinta años. Sin embargo, cuando la finalidad del arrendamiento o de la concesión sea ajena a la actividad portuaria, su duración no podrá exceder de diez años.

Tratándose de frentes de atraque, la participación de terceros sólo se efectuará a través de concesiones portuarias. Para que proceda otorgarlas, en los puertos o terminales estatales de la Región [Región: cada una de las unidades administrativas en las que se subdivide el territorio] deberá existir otro frente de atraque capaz de atender la nave de diseño de aquel frente objeto de la concesión portuaria; de lo contrario, el directorio deberá contar con un informe del [Tribunal de Defensa de la Libre Competencia]. En este caso, las concesiones deberán realizarse en los términos que establezca el citado informe.

Para efectos de lo señalado en el inciso anterior, los concesionarios:

1. Deberán constituirse, dentro de los noventa días siguientes a la fecha de adjudicación de la concesión como sociedad anónima, cualquiera que sea el número de sus accionistas, de giro exclusivo, y se regirán por las normas de las sociedades anónimas abiertas. Su objeto será el desarrollo, mantención y explotación del frente de atraque respectivo, y

2. Sólo podrán relacionarse en los términos que señala el Título XV de la ley No. 18.045, sobre Mercado de Valores, con otros concesionarios que desarrollen, conserven o exploten frentes de atraque dentro del mismo puerto o terminal, así como con aquellos concesionarios de una misma región que desarrollen, conserven o exploten un frente de atraque en que pueda operar la máxima nave de diseño en los puertos estatales de esa región, de conformidad y con estricta sujeción a las condiciones que para dicho efecto hayan sido previamente fijadas por el [Tribunal de Defensa de la Libre Competencia].

El concesionario, por el solo ministerio de la ley, quedará obligado a destinar los bienes concesionados a la atención de naves y movilización de carga, mantenerlos adecuadamente, dar servicio y establecer tarifas públicas en condiciones no discriminatorias.

Art. 15. Establécese una prenda especial de concesión portuaria, la cual será sin desplazamiento de los bienes o derechos prendados. La prenda podrá recaer sobre el derecho de concesión portuaria, los bienes muebles de la

sociedad concesionaria y los ingresos de ésta que provengan de la explotación de la concesión y tendrá por objeto garantizar las obligaciones financieras que la sociedad concesionaria contraiga para financiar el ejercicio, equipamiento y explotación de la concesión portuaria.

Art. 16. El remate del derecho de concesión portuaria comprende todos los derechos y obligaciones propios de la concesión y únicamente podrá adjudicarse al que reuniera las condiciones que la presente ley requiere para ser concesionario de una concesión portuaria.

La adjudicación hecha en contravención a esta norma es nula de pleno derecho, nulidad que deberá ser declarada, por la vía incidental, por el mismo juez que esté conociendo del juicio ejecutivo.

Art. 17. El derecho de concesión portuaria es transferible como un solo todo y únicamente al que reuniera los requisitos que la presente ley establece para ser concesionario de una concesión portuaria. La transferencia hecha en contravención a esta norma es nula de pleno derecho y será juez competente para declarar la nulidad en el domicilio de la empresa concesionante.

Concluida la vigencia de una concesión portuaria, la empresa [portuaria estatal] respectiva deberá proceder a licitar una nueva, pudiendo mantener, disminuir o aumentar los bienes y derechos que incluya. La correspondiente licitación deberá efectuarse con la anticipación necesaria para que no exista interrupción en la prestación de servicios entre ambas concesiones.

Art. 18. Terminada la concesión portuaria, el concesionario tendrá derecho a retirar las mejoras que hubiese introducido en los bienes concesionados de dominio de la empresa, siempre que puedan separarse sin detrimento de éstos.

Ello no obstante, la empresa [portuaria estatal] concesionante podrá optar por quedarse con dichas mejoras, pagando su justo precio. Este derecho deberá ejercerse con 30 días de anticipación a la fecha en que deban restituirse los bienes concesionados y, de no haber acuerdo entre las partes en cuanto a su precio, éste será determinado por un árbitro designado por las partes o, en su defecto, por el juez letrado en lo civil del domicilio de la empresa concesionante.

Las mejoras introducidas a los bienes inmuebles concesionados y que no puedan separarse sin detrimento de éstos, incluidas las concesiones

marítimas, pertenecerán a la empresa concesionante desde el momento mismo de su ejecución o materialización sin obligación alguna de reembolso o indemnización para ésta o el fisco, salvo que las bases de licitación expresamente contemplen una situación distinta

20. We note that there are four principles that regulate the service liberalisation, including MFN treatment, absence of local presence requirement, NT and progressive elimination of quantitative non-discriminatory restrictions as listed out on page 35. Please advise which are the sectors with quantitative restrictions currently in place, and in what forms are such quantitative restriction being implemented (e.g. setting a ceiling on the number of licences granted)?

ANSWER:

In regards to the market access and specifically quantitative restrictions Chile has undertaken commitments for transparency reasons (example FTA with Mexico) or on a positive list basis (example the FTA with the USA). Some of those quantitative restrictions that are listed are:

- Postal services: the decree law 10 of the Ministry of Transport and Telecommunication, 1982, indicates that one enterprise can supply the postal services: “Correos de Chile”.
- Communications services; Radio: the number of concessions is limited because the radio electric spectrum is limited.
- Legal services: the number of Auxiliary Services in the Administration of Justice; Public defenders (*defensores públicos*), public notaries (*notarios públicos*), and custodians (*conservadores*), Archivists (*archiveros*), process servers (*receptores judiciales*) and superior court attorneys (*procuradores del número*), auctioneers (*martilleros públicos*)

21. Page 35 of the Chilean report states that Chile has implemented a profound economic reform over the last twenty years. Key aspects of such reform are the significant changes introduced to the laws and regulations that govern the service sector. Please advise whether such key laws and regulations are specific to certain services sectors (and if so, what are the relevant sectors) or are applied



horizontally to all services sectors. We would also be grateful for information on the major features of such laws and regulations which have an impact on foreign supply of services on the four modes of supply of services.

ANSWER: In the late 80's and early 90's Chile's policy shifted from a close and protectionist economy to a liberal and open market. This was reflected in the service sectors and specific actions were taken by the Chilean government. Relevant sectors of the economy were privatized and most of the monopolies were finished (Sanitary companies, Telecom companies, etc...), and open to national and foreign capitals. In other hand, the regulations affecting all the services sectors, since that date, are changing simplifying rules and procedures, being an example of this the regulations in the telecommunications and financial services

22. Page 37 of the Chilean report shows that transport services, in particular sea transport services, are the largest contributor to Chile's exports and imports of commercial services, and hence are important services sector to the Chilean economy. Yet, we understand Chile has not undertaken any WTO services commitments in the transport services sector, except on air transport services. We would like to know the specific difficulty for Chile to undertake commitments in transportation services, in particular maritime transport services.

ANSWER: There is a lack of commitments in Maritime transport in the Chilean schedule in the WTO. However, in bilateral negotiations, Chile has made commitment in this sector.

### ***1.5 Introduction of FTAs Signed by Each Party***

23. Page 32 of the Chilean report states that "in terms of the results that Chile's trade agreements have had, it can be said that the performances of the Mexico and Canada FTAs, without a doubt, have been outstanding". Please elaborate on the factors/reasons that make these two FTAs the most understanding ones?

ANSWER: The examples were given as an illustration of how the trade agreements have improved Chile's foreign trade. In the above mentioned cases, the export base was very limited before the trade agreements, and

both are among the oldest agreements-and thus- have been more time in execution, and have been very dynamic, in terms of having been up-dated and improved over time. A description of both cases may be found in the website of DIRECON ([www.direcon.cl](http://www.direcon.cl))<sup>85</sup>

24. Page 45 of the Chilean report sets out the main contents of Chile's FTAs with regard to the Chapters on Trade in Goods. Please provide information on the main elements of Chile's FTAs with regard to the Chapters on Trade in Services.

ANSWER: Chile has negotiated services Chapters both in a positive and a negative list approach. Most of the services agreements negotiated have been in a negative list approach and it is Chile's preference to negotiate with this approach. In this regards, the Chapters regulate modes 1), 2) and 4) (mode 3) is part of the investment Chapter) and includes the disciplines of National Treatment, Most Favoured Treatment, Local Presence. If there is a non conforming measure with any of these commitments then the Parties have the right to list them. Finally, there are also rules regarding domestic regulations and mutual recognition among others

25. After the conclusion of the FTA negotiations, what are the necessary domestic procedures required in Chile before the actual signing the FTA (e.g. any need to seek approval from the Congress, enactment of local legislation)?

ANSWER: In Chile no domestic legal procedures need to be followed before the signature of an FTA. However, once the FTA has been signed it is subject to the completion of necessary domestic legal procedures for it to enter into force. In this respect, in most cases, it is necessary to seek Congress approval and once approved, enactment of local legislation is needed as well as its publication in our Official Gazette.

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<sup>85</sup> "Evaluación de las relaciones comerciales entre Chile y México" and "Evaluación de las relaciones comerciales entre Chile y Canadá a once años de entrada en vigencia del TLC" (In Spanish only)

## **Chapter III**

### ***III.2 Measures Affecting Trade in Goods***

26. Page 57 of the Chilean report mentions that Chile has a flat MFN custom tariff of 6% for most products, which makes up over 98% of tariff lines. Are we correct to say that for those products listed out in Table 2.10 (i.e. Chile's main imports from Hong Kong), they are currently subject to the import duty of 6%? If not, what is the applicable tariff rate for these products?

ANSWER: Yes, it is correct.

27. It is mentioned in page 58 of the Chilean report that several products, including different luxury items, alcoholic beverages, gasoline and vehicles, are subject to other local taxes. Please provide a full list of products that are subject to other local taxes and please elaborate what "other local taxes" are?

ANSWER: The list of taxes applicable to these products is the following:

- i) An additional tax with a rate of 15% applied over:

Gold articles, platinum and ivory;

Jewelry, precious natural and synthetic stones

Fine fur, manufactured or not;

Fine carpets; fine [tapestry](#) and any other article of that nature;

Motorhome vehicules self propelled;

Caviar and surrogates pot-tin;

Air or compressed gas guns, their accessories and projectiles, with the exception of submarine hunting;

The rate of this tax is 50% in case of [pyrotechnics](#) articles, as fire fights, petards and similar ones, except when using for industry, mining or agriculture or light signaling.

- ii) An additional tax to the alcoholic and non alcoholic and similar products with the rate indicated in each case:

Liquors, piscos, whisky, and distilled, including liquors or aromatic wines similar to vermouth, 27% rate;

Wines designated to consumption, including the gasified wines, champaign,

other types of wine (generosos o asoleados, chichas y sidras) designated for consumption, independent of the container, beers and other alcoholic beverages., any type, quality or denomination, 15% rate;  
Non alcoholic natural or artificial beverages, syrups and in general any other product that substitutes or that can be used to prepare similar beverages, 13% rate;  
Mineral or thermal waters to which color, flavor or sweetener has been added, 13% rate;

iii) An additional tax to vehicles whose normal destiny is passenger or load transport, that is determined applying to the respective customs value the percentage that results from the multiplication of the motors cilindrage, expressed in cubical centimeters, times a factor of 0.03 and subtracting to the result of that multiplication 45. The value resulting from that operation is a tax that can not exceed US\$ 7.503,55.

In the case of trucks from 500 to 2000 kilos of useful load capacity, the tax will be determined by lowering in a 75% the corresponding rate. In every case the applied percentage can not be higher than 15%. The vehicles destined to passenger transport, with capacity from 10 to 15 seats, including the driver, will pay a tax reduced in a 75% and with a minimum rate of 5%.

This tax does not apply to the importation of motorized vehicles designed to transport passengers, with a capacity of more than 15 seats including the driver, nor the importation of trucks, vans and auto vans with a useful capacity of more than 2000 kilos.

iv) A specific tax to the use of car fuel that actually is 6 UTM<sup>86</sup>/m<sup>3</sup> plus/less a variable factor established according to the regulations of law 20259 of year 2008.

v) A specific tax applied to manufactured tobaccos, that changes depending on the type of product, allowing the establishment of an over rate with a maximum additional 10%:

The cigars pay a tax of 51% over the consumer's sales price, including taxes. The cigarettes pay a tax of 50.4% over the consumer's sales price, including taxes.

Elaborated tobacco pays a tax of 47.9% over the consumer sales price,

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<sup>86</sup> Unidades Tributarias Mensuales (UTM), an inflation-linked currency but only used for tax purposes.

including taxes

28. We note from page 60 of the Chilean report that a Price Band System was modified in 2003. It is also mentioned that a mechanism grants all exporters of the goods covered by this System an instrument that does not affect international trade in anyway. Please provide supplementary information on the System, in particular its relationship with international trade.

ANSWER: Law 19897 modifies Article 12 of Law 18525 on the Rules on the Importation of Goods. It was published in Chile's Official Journal on September 25 of 2003. The amendments entered into force on December 16 of 2003. Chile's PBS is regulated by Article 12 of Law 18525 as amended by Law 19897.

In its version amended through Law 19897, Article 12 of Law 18525 specifically provides for the issuance of a Supreme Decree in order to determine: (a) the periods in which specific duties and tariff rebates are to be established and applied; (b) the most relevant markets for each product; (c) the procedures for calculating the reference prices; (d) the dates for calculating the reference prices; and (e) other necessary methodological factors to implement the provisions in Article 12 of the Law.

Decree 831 of the Ministry of Finance of 26 September 2003 contains the implementing regulations for Article 12 of Law 18525, as replaced by Article 1 of Law 19897.

Regarding the relationship with international trade, Chile has bound its tariff rates for the Price Band System (PBS). However, in practice, Chile's applied tariff rates are significantly below its bound rate.

Under the PBS, the total amount of duties imposed on imports may vary, through the imposition of additional specific duties or through the concession of rebates on the amounts payable. The total amount of duty applied to imports of wheat and wheat flour therefore consists of two components: the *ad valorem* MFN tariff and the applicable specific duty, if any.

In other words, the total amount of duties resulting from the application

of the PBS may vary between: (a) less than 6 per cent *ad valorem*, when a rebate is granted; (b) 6 per cent *ad valorem*, when there is no rebate granted and no additional specific duty imposed; and (c) more than 6 per cent *ad valorem*, when an additional specific duty is imposed.

The sum of the applied *ad valorem* tariff and the specific duty resulting from the amended PBS, if any, is capped at the *ad valorem* rate bound at the WTO, each import transaction being considered individually and using the CIF value of the goods concerned in the transaction in question as a basis for calculation. Likewise, the rebates on the amounts payable as Customs Tariff *ad valorem* duties determined for each import transaction, if any, may not exceed the amount corresponding to the applicable *ad valorem* duty.

For the determination of the specific applicable duty, if any, the amended PBS, like the original, consists of two elements: a lower and upper threshold (the band's "floor" and "ceiling") and a reference price.

The lower and upper thresholds of the band have been determined for the period extending from December 16 of 2003 to December 15 of 2014. The PBS also involves the use of a "reference price". This reference price is not the transaction price, but a price determined by the Chilean authorities six (wheat) an Twelve (sugar) times in the course of each twelve-month period extending from December 16 to December 15 of the following year.

According to Law 19897, the reference prices are to be based on "the average of the daily international prices ... recorded in the most relevant markets". The most relevant markets are defined by Decree 831.

Under the PBS, a specific duty is triggered when the reference price is below the lower threshold of the band. The additional duty (which cannot bring the total duty to a level higher than the *ad valorem* rate bound at the WTO) is equivalent to the difference between the lower threshold of the band and the reference price, multiplied by a factor of one (1) plus the general *ad valorem* tariff (6 per cent). Conversely, a tariff rebate is triggered when the reference price is higher than the upper threshold of the band. The rebate (which cannot be greater than the applied *ad valorem* rate) is equivalent to the difference between the

upper threshold of the band and the reference price, multiplied by a factor of one (1) plus the general *ad valorem* tariff (6 per cent).

29. Pages 64 to 65 of the Chilean report set out that conformity assessment with technical regulations in some cases is carried out directly by the competent Agency through its own infrastructure, and in other cases is carried out by conformity assessment bodies, which are authorized by the Agency for that purpose. For the latter, please advise whether Chile would accept test reports/results carried out by conformity assessment bodies located outside Chile and if so, what these conformity assessment bodies are.

ANSWER: Chile has no mutual recognition arrangements in the area of mandatory technical regulations, but in some cases, for example in electrical products, the Superintendence of Electricity and Fuel for any electrical product that has certificate of origin, it exists a special system of certification (Decree 298 of the Ministry of Economy, Article 5 special system number 6), with minimum tests. To access at this special system of certification (Chapter VII, Articles 21 and 22 of the Decree 298) must comply with some requirements, between others, the conformity assessment body in origin that emit the certificate of conformity must be accredited by a recognized body by IAF.

Chile participates in a number of recognition arrangements, including Part I of the APEC MRA on Conformity Assessment of Electrical and Electronic Equipment (EEMRA) and the Arrangement for Exchange of Information in Toys Safety. Chile is assessing legislative requirements with regard to participating in Parts II and III of EEMRA.

Moreover Chile is open to analyze the possibility to establish MRA.

30. It is mentioned in page 67 of the Chilean report that disciplines that extend beyond the TBT Agreement provisions are included in all Chile's bilateral agreements. Please elaborate on the key features of such TBT-plus provisions.

ANSWER: As Chile mentioned in the last report, the disciplines that extend beyond the TBT Agreement provisions in Chile's bilateral agreements, are related to transparency, equivalence, trade facilitation, etc.

In transparency, Chile has established compromises based on the progress of discussions in the TBT Committee and others, for example, transmit the proposal electronically to the other Party through the inquiry point established under Article 10 of the TBT Agreement at the same time as it notifies WTO Members of the proposal pursuant to the TBT Agreement; each Party should allow at least 60 days from the transmission of the notification for persons and the other Party to make comments in writing on the proposal; publish or make available its responses to significant comments at the same time as the publication of the final technical regulation or conformity assessment procedure<sup>87</sup>.

Allow persons of the other Party to participate in the development of standards, technical regulations, and conformity assessment procedures. Participate in the development of such measures on terms no less favourable than those accorded to its own persons.

In trade facilitation, intensify the joint work in the field of standards, technical regulations, and conformity assessment procedures. The idea is to identify bilateral initiatives that are appropriate for particular issues or sectors. Such initiatives may include cooperation on regulatory issues, such as convergence or equivalence of technical regulations and standards, alignment with international standards, etc.

Analyse the possibility to accept foreign technical regulation as equivalent to a particular technical regulation.

Establish a bilateral TBT Committee and technical cooperation in the field of TBT.

31. Pages 68 to 69 of the Chilean report set out that the Agriculture and Livestock Service is responsible, among other things, for issuing the sanitary and phytosanitary export certificates for animal and plant products while the National Fisheries Service is responsible, among other things, for sanitary control and certification of all hydrobiological products for export. Noting that Chile's major exports to Hong Kong are agricultural and fruit products and foodstuff (Table 2.5), we would like to have more information on the existing sanitary control for the exports of these products.

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<sup>87</sup> We suggest analyzing Chile TBT Agreements.



ANSWER: The Agriculture and Livestock Service (SAG), through the Agriculture Protection Division guarantees that all agricultural export products comply with the phytosanitary requirements of the country of destination, according with the obligations established by international trade. SAG is the government agency in charge of supervising compliance with these requirements, issuing the Phytosanitary certificate for export.

SAG performs a phytosanitary inspection in search of quarantine pests or applies fumigation, or cold treatment. This is done at the port, at the cold storage facility or at the warehouse where the product is stored. Fumigation treatments may only be done at authorized facilities.

Finally, the Phytosanitary certificate is issued, addressed to the Phytosanitary protection agency of the importing country according to what is established in the instruction manual Directives for issuance of the Phytosanitary certificate for export of vegetable products.

The Livestock Protection Division of SAG ensures that all livestock products for export (human consumption, animal consumption and non consumable), comply with the National Regulation and with the destination country's regulations.

For human consumption products, the Official Integrated Inspection System holds programs for controlling health, safety and good practices in animal facilities and in production and transformation establishments.

Animal facilities: PABCO is a tool for certifying farms. It guarantees that animal farms comply with sanitary requirements and good farming practices demanded by the official services of the destination countries.

In order to be certified, exporting establishments, slaughter houses, processors, cold storage, warehouses, must be inscribed, authorized and submitted to inspections and verifications from SAG.

Through the certificate, SAG guarantees that the livestock products for human consumption exported by Chile comply with the zoosanitary requirements and national regulations.

### ***III.3 Trade in Services***

32. Page 71 of the Chilean report sets out that “There are a few measures that discriminate between national and foreign services providers, which affect the principle of national treatment, and a few minor exceptions to the MFN”. Please elaborate what these measures are and what kind of discrimination is currently in place? In which specific services sectors are these measures being applied? Are there any plans to eliminate such restrictions?

ANSWER:

In Services there are few restrictions in national treatment and MFN. Some of these restrictions are:

- All sectors: nationality requirement (80% of local employers) for enterprises with more than 25 employees.
- Communications: nationality requirement; possibility to requirement to include Chilean programs (40%) on public TV channels.
- Transport sectors: nationality requirement for the registration on vessels, aircrafts or motor vehicles.
- Legal services: nationality requirements.

Chile has generally listed its non conforming measures to national treatment in conformity to its current legislation.

33. With regard to telecommunications sector, page 72 of the Chilean report says that there exists a “tariff-setting decree”, which establishes for a five-year period the maximum rate to be charged for long-distance, local and Internet services. Please provide further information on this decree and advise whether it is applied in the same manner to both local and foreign services providers.

ANSWER:

The “tariff-setting” decree sets the interconnection tariffs, the dominant tariffs and the leasing tariffs, for all the telecommunication services (long-distance, local and internet services). This decree is valid for all the telecommunications operators in the Chilean territory, without distinguish between nationals or foreign operators. The idea of this decree is to fix the

maximum tariff that one operator can demand to another operator, in the activities explained before. In the case of the dominant operator, the Free Competition Defense Court (Tribunal de Defensa de la Libre Competencia) defines a dominant operator in cases where one operator acts against free competition.

34. As set out in page 72 of the Chilean report, the provision of the following telecommunications services in Chile is subject to the issue of concession / permit / official decision by the responsible authorities:

- the installation, operation, and exploitation of public telecommunication services, intermediate telecommunication services, and radio broadcasting telecommunications services;
- television broadcasting telecommunications services;
- the installation, operation and development of limited telecommunications services; and
- complementary telecommunications services (value added services).

For each of the above services, we would like to know the specific criteria that the relevant authorities would take into account when considering applications for their provision, and whether any of the criteria would constitute limitations in terms of market access and national treatment.

ANSWER:

The procedure to grant a concession may be:

- *Direct:* In case there is no limitation for the entrance of new operators, through a simple and administrative procedure, which is initiated by a formal request (and its legal, technical and financial annexes), followed by a period of eventual objections by third interested parties, and finalised with the issuance of a Supreme Decree by the Ministry of Transportation and Telecommunications.

- *By a public “beauty contest”*: Exceptionally, in case of spectrum scarcity, when it is not feasible to allow an unlimited number of concessions or permits, the Ministry of Transports and Telecommunications will publish in the official gazette a technical norm to establish the need to limit the number of new operators based on scarcity of spectrum. This is the general case for radio broadcasting services. In this case, the Undersecretariat of Telecommunications (Subtel) prepares for every contest a set of terms of reference. This document defines the type of service, number of operators able to get the concession, criteria to evaluate the best proponent and all the relevant information to participate in it. Selecting criteria are based only on coverage and timeline for the rollout of the proposed project. In case two or more proponents achieve equal score, then a one round bid decides who will be awarded the concession. In the case of a technical tie, if an application had been presented prior to publication of the technical standard, this applicant will have a preference to be awarded the concession.

**Table A. Telecommunications: summary of licenses and procedures**

	Type of Services	Type & length of license	Issued by
Public Telecommunications Service	- Fixed Telephony - Rural Telephony - Mobile Telephony - Data transmission	Concession 30 years	Ministry of Transportation and Telecommunications (MTT)
Intermediate Service	- Long distance telephony - Transmission and switching	Concession 30 years	MTT
Limited Telecommunications Services	- Radio-communications - Background music - Cable television - Satellite television - Experimental use - Others	Permit from 10 years or indefinite	SUBTEL
TV Broadcasting Services	- Broadcasting television services	Concession 25 years	National Council of Television
Radio Broadcasting Services	- Frequency modulated sound broadcasting service - Amplitude modulated (AM)	Concession 3 - 25 years	MTT

	sound broadcasting service - Short wave - Low power FM sound broadcasting service		
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35. We would be grateful for information on the general development and the existing regulatory regime of the following services sectors, in particular on measures that would have impact on foreign supply of services in these sectors -

- Maritime transport services;
- Logistics and related services; and
- Audiovisual services, in respect of motion picture and video tape production, distribution and projection services.

ANSWER:

In general there's no discrimination in national treatment and most favoured treatment, but in the below sectors there is current legislation that discriminates between nationals and foreigners:

- Maritime Transport: nationality requirement to register a vessel, for shipping agents, owner and captains.
- Communications: nationality requirements; possible requirement to include Chilean programs (40%) on public TV channels.
- Audiovisual services: Chile has some coproduction agreements.

Unfortunately we do not have English versions of these laws but a describing of the aspects of these laws that have an impact for foreign supply may be found in Chile's Annex I of its negative list approach FTA's. At the end of this answer we attach an English version of these reservations.

**RESERVATIONS IN ANNEX 1 OF NEGATIVE LIST APPROACH FTA'S**

**Sector:** Transportation

## Shipping

<b>Obligations Concerned:</b>	National Treatment (Articles 10.2, 11.2) Most-Favored-Nation Treatment (Articles 10.3, 11.3) Local Presence (Article 11.5) Senior Management and Boards of Directors (Article 10.6)
<b>Measures:</b>	<i>Decreto Ley 3.059</i> , Diario Oficial, diciembre 22, 1979, <i>Ley de Fomento a la Marina Mercante</i> , Títulos I y II  <i>Decreto Supremo 24</i> , Diario Oficial, marzo 10, 1986, <i>Reglamento del Decreto Ley 3.059</i> , Títulos I y II  <i>Decreto Ley 2.222</i> , Diario Oficial, mayo 31, 1978, <i>Ley de Navegación</i> , Títulos I, II, III, IV, y V  <i>Decreto Supremo 153</i> , Diario Oficial, marzo 11, 1966, <i>Aprueba el Reglamento General de Matrícula del Personal de Gente de Mar, Fluvial y Lacustre</i>  <i>Código de Comercio</i> , Libro III, Títulos I, IV, y V  <i>Ley 19.420</i> , Diario Oficial, octubre 23, 1995, <i>Establece incentivos para el desarrollo económico de las provincias de Arica y Parinacota y modifica cuerpos legales que indica</i> , Título Disposiciones varias
<b>Description:</b>	<u>Investment and Cross-Border Services</u>

Only a Chilean natural or juridical person may register a vessel in Chile. A juridical person must be constituted with principal domicile and real and effective seat in Chile. Its president, manager, and majority of the directors or administrators must be Chilean natural persons. In addition, more than 50 percent of its capital must be held by Chilean natural or juridical persons. For these purposes, a juridical person with ownership participation in another juridical person that owns a vessel has to comply with all the aforementioned requisites.

A joint ownership (*comunidad*) may register a vessel if (1) the majority of the joint ownership is Chilean with domicile and residency in Chile; (2) the administrators are Chileans; and (3) the majority of the rights of the joint ownership belong to a Chilean natural or juridical person. For these purposes, a juridical person with ownership participation in a joint ownership (*comunidad*) that owns a vessel has to comply with all the aforementioned

requisites to be considered Chilean.

Special vessels owned by foreign natural or juridical persons domiciled in Chile may under certain conditions be registered in the country. For these purposes, a special vessel does not include a fishing vessel. Foreign natural or juridical persons must meet the following conditions: (1) domicile in Chile; (2) principal head office in the country; or (3) undertaking a profession or commercial activity in a permanent way in Chile. The maritime authority may, for reasons of national security, impose certain special restrictions on the operation of these vessels.

*The maritime authority  
may provide better  
treatment based on the  
principle of reciprocity.*

Foreign vessels shall be required to use pilotage, anchoring, and harbor pilotage services when the maritime authorities so require it. In tugging activities or other maneuvers performed in Chilean ports, only tugboats flying the Chilean flag shall be used.

Captains shall be required to be Chilean nationals and to be acknowledged as such by the pertinent authorities. Officers on Chilean vessels must be Chilean natural persons registered in the Officers' Registry (*Registro de oficiales*). Crewmembers of a Chilean vessel must be Chilean, have the permit granted by the Maritime Authority, and be registered in the respective Registry. Professional titles and licenses granted by a foreign country shall be considered valid for the discharge of officers' duties on national vessels pursuant to a substantiated resolution (*resolución fundada*) issued by the Director.

Ship captains (*patrón de nave*) shall be Chilean nationals. The ship captain is the natural person who, pursuant to the corresponding title awarded by the Director, is empowered to exercise command on smaller vessels and on certain special larger vessels.

Only Chilean nationals, or foreigners with domicile in Chile, shall be authorized to act as fishing boat captains (*patrones de Pesca*), machinists (*mecánicos-motoristas*), machine operators (*motoristas*), sea-faring fishermen (*marineros pescadores*), small-scale fishermen (*pescadores*), industrial or maritime trade technical employees or workers, and industrial and general ship service crews on fishing factories or fishing boats when so

requested by ship operators (*armadores*) in order to initiate such work.

In order to fly the national flag, the ship captain (*patrón de nave*), its officers, and crew must be Chilean nationals. Nevertheless, the *Dirección General del Territorio Marítimo y de Marina Mercantea*, on the basis of a substantiated resolution (*resolución fundada*), may authorize the hiring of foreign personnel, on a temporary basis if essential, with the exception of the captain, who, at all times, must be a Chilean national.

Only a Chilean natural or juridical person shall be authorized to work in Chile as a multimodal operator.

Cabotage shall be reserved for Chilean vessels. Cabotage shall include the ocean, river, or lake shipping of passengers and cargo between different points of the national territory and between such points and naval artifacts installed in territorial waters or in the exclusive economic zone.

Foreign merchant vessels may be able to participate in cabotage when cargo volumes exceed 900 tons, following a public tender called by the user with due anticipation. When the cargo volumes involved are equal to or less than 900 tons, and no vessels flying the Chilean flag are available, the Maritime Authority shall authorize embarking such cargo on foreign merchant vessels. The reservation of coastal trade to Chilean vessels shall not apply in the event of cargo coming from or destined for ports located in the Province of Arica.

In the event that Chile should adopt, for reasons of reciprocity, a cargo reservation measure applicable to international cargo transportation between Chile and a non-Party, the reserved cargo shall be transported in Chilean-flag vessels or in vessels considered as such.

<b>Sector:</b>	Transportation Shipping
<b>Obligations Concerned:</b>	National Treatment (Articles 10.2, 11.2) Local Presence (Article 11.5) Senior Management and Boards of Directors (Article 10.6)
<b>Measures:</b>	<i>Código de Comercio</i> , Libro III, Títulos I, IV y V



*Decreto Ley 2.222, Diario Oficial, mayo 31, 1978, Ley de Navegación, Títulos I, II, y IV*

*Decreto 90 del Ministerio del Trabajo y Seguridad Social, Diario Oficial, enero 21, 2000*

*Decreto 49 del Ministerio del Trabajo y Seguridad Social, Diario Oficial, julio 16, 1999*

*Código del Trabajo, Libro I, Título II, Capítulo III, párrafo 2°*

Description:

*Investment and Cross-Border Services*

*Shipping agents or representatives of ship operators, owners, or captains, whether they are natural or juridical persons, shall be required to be Chilean nationals.*

*Work of stowage and dockage performed by natural persons is reserved to Chileans who are duly accredited by the corresponding authority to carry out such work and have an office established in Chile.*

*Whenever these activities are carried out by juridical persons, they must be legally constituted in the country and have their principal domicile in Chile. The chairman, administrators, managers, or directors must be Chilean. At least 50 percent of the corporate capital must be held by Chilean natural or juridical persons. Such enterprises shall designate one or more empowered agents, who will act in their representation and who shall be Chilean nationals.*

*Harbor workers shall pass a basic course on harbor security in a Organismo Técnico de Ejecución authorized by the National Service of Training and Employment, according to the norms established in the respective regulation.*

*Anyone unloading, transshipping, and, generally, using continental or insular Chilean ports, particularly for landing fish catches or processing fish catches on board, shall also be required to be a Chilean natural or juridical person.*

36. Chile has inscribed in its GATS schedule of commitments horizontal national treatment (NT) limitation that for services under ‘professional services’ included in Chile’s schedule, at least 85% of the staff employed by a services supplier established in Chile must be Chilean. The same requirement applies to all other

services listed in Chile's GATS schedule except in the case of enterprises with fewer than 15 persons. Please advise whether the above limitations reflect the de facto regime. If not, what is the actual regime being implemented in practice?

ANSWER: The legal regime is for more than 25 persons, excluding specialist. There is no statistics of what the de facto regime is.

37. There are also various horizontal market access and NT limitations in Chile's schedule of commitments / offers under GATS. Please advise whether such limitations reflect Chile's de facto regime and if not, what the de facto regime is.

ANSWER: Please clarify if you are referring to the actual commitment in WTO or for the revised offer. Notwithstanding Chile general approach when listing with limitation, is to establish existing restrictions on the law on market access or national treatment

#### ***III.4 Foreign Investment Regimes***

38. Is there any agency in Chile responsible for attracting Foreign Direct Investment (FDI)? What are its major roles and services being provided?

ANSWER: Not specifically, but nevertheless there are a few agencies that execute that role. In particular, FDI attraction policies are conducted by the Foreign Investment Committee ([www.cinver.cl](http://www.cinver.cl)), CORFO ([www.investchile.cl](http://www.investchile.cl)) and also through the Chilean commercial missions abroad ([www.prochile.cl](http://www.prochile.cl)).

39. Page 76 of the draft report states that Chile accords national treatment (NT) to foreign investment once they are established in the country. It further guarantees NT to all individuals the right to develop economy activity, provided applicable legislation is observed and such activities are not contrary to public morals and order or to national security interests. This implies that NT is granted in the post-establishment phase and conditioned to domestic laws and regulations. However, page 80 of the draft report on "Investment Agreements" states that most of the FTAs concluded by Chile cover

investment from the “pre-establishment phase”. We would like to know what is the de facto policy/standard with regard to NT accorded by Chile to foreign investment in their bilateral FTAs.

ANSWER: Starting at the beginning of the 1990’s, Chile negotiated a series of Bilateral Investment Treaties which granted National Treatment to the foreign investor only in the post-establishment phase. However, in 2002 Chile changed its policy by ceasing the negotiation of BIT’s and starting to include investment chapters in the scope of its Free Trade Agreements; in that regard, our general policy has been to include the pre-establishment phase on National Treatment in our FTA’s investment chapters, such as the ones with the U.S., Japan and Peru

40. Page 76 of the draft report mentions that there are no economic activities reserved for the State, except the special provision regarding mineral resources. Does it imply that Chile impose no horizontal restriction on investment? If not, what are the restrictions currently exist? In addition, is there any restriction on investment at the industry or sector levels?

ANSWER: Chile does impose very few horizontal restrictions on investments, generally one in Annex I (i.e. [http://www.ustr.gov/assets/Trade\\_Agreements/Bilateral/Chile\\_FTA/Final\\_Texts/asset\\_upload\\_file458\\_4022.pdf](http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Chile_FTA/Final_Texts/asset_upload_file458_4022.pdf) , page 1) and three in Annex II (i.e. [http://www.ustr.gov/assets/Trade\\_Agreements/Bilateral/Chile\\_FTA/Final\\_Texts/asset\\_upload\\_file635\\_4025.pdf](http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Chile_FTA/Final_Texts/asset_upload_file635_4025.pdf) , pages 1, 2 and 3); also, Chile includes some sectorial non-conforming measures in Annex I and II of its FTA’s investment chapters. Their texts can be found at <http://www.direcon.cl/index.php?lang=en&accion=> (right side of the page: “FTA”, click on the agreement you want to review and then on “text of the agreement” – “disaggregate versions” – “annex I or II”)

41. Under the Special Investment Regimes (page 77 of the Chilean report), Decree Law (DL) 600 guarantees investors the right to repatriate capital one year after its entry and to remit profit at any time; and DL investors are exempt from foreign exchange restrictions. Please provide information on the investment regime accorded to investment falling outside DL 600.

ANSWER: Chapter XIV of the Central Bank's Compendium of Foreign Exchange Regulations establishes rules for foreign investment, capital contributions, and credit. Those operations shall be conducted through banking entities and be informed to the Central Bank. Currently, there are no restrictions (i.e. prior authorisation, reserve requirement) applicable to transfers in or transfers outrelated to those operations. Chile does not apply screening mechanisms of any sort to foreign direct investment in any sector of the economy; they are subject to the same domestic regulations and procedures for approval of investments as national investors (<http://www.bcentral.cl/eng/norms-regulations/foreign-exchange/compendium.htm>)

42. Page 80 of the Chilean report says that Chile initiated negotiations of Bilateral Investment Treaties (BITs) after adhering to the 1965 Washington Convention (i.e. ICSID) governing investor-State dispute settlement mechanism. We would like to know whether the United Nations Commission on International Trade Law will be considered as an option of international arbitration for dispute settlement, in addition to the ICSID.

ANSWER: It is certainly an option. As a matter of fact, we have included UNCITRAL rules in the ISDS sections of all of our FTA's investment chapters (generally in our FTA's, the investor has the choice of submitting a claim according to the UNCITRAL, ICSID, ICSID Additional Facility or Ad-Hoc rules)

### ***III.5.B Anti-dumping Measures and Countervailing Duties***

43. Page 82 of the Chilean report sets out that under the Chile-Canada FTA and the Chile-EFTA FTA, the Parties agreed not to apply antidumping measures to their reciprocal trade respectively. Does it mean that for other bilateral FTAs concluded by Chile, the Parties are allowed to apply anti-dumping measures under the respective agreements? If so, what is Chile's main consideration for deciding whether or not anti-dumping measures could be used under the bilateral FTAs?

ANSWER: Except for the Chile-Canada and the Chile-EFTA FTA's, the Parties of the FTA's concluded by Chile are allowed to apply

anti-dumping measures. This has been the result of independent negotiation undertaken in each agreement and the overall equilibrium aimed at within each of them.

### ***III.6 Government Procurement***

44. Page 85 of the Chilean report mentions that Chile has negotiated Government Procurement chapters in a number of its FTAs. Does it mean that some bilateral FTAs concluded by Chile do not include a Government Procurement Chapter?

ANSWER: Yes, some bilateral FTAs do not include a GP Chapter.

If so, what is Chile's main consideration for deciding whether or not to include Government Procurement chapter in its FTAs?

ANSWER: The main reason to include a GP Chapter in our FTAs is given by the will of the Parties. The process of a JSG includes the discussion of the terms of reference where the Parties decide what is going to be negotiated.

45. On page 85 of the Chilean report, Chile sets out the main elements it would like to include in a GP chapter of a FTA, which includes amongst others, significant coverage in terms of entities, and thresholds. We would like to know more about the coverage in terms of entities (whether negative or positive listings are used) and the thresholds setting in Chile's FTAs with other economies. Specifically on thresholds, whether there is a difference in the thresholds between its FTAs concluded with WTO GPA parties (e.g. the US, South Korea, EU, Japan, Canada) and non-GPA parties (e.g. Australia, Mexico, Colombia, Uruguay).

ANSWER: Chile is interested in negotiating comprehensive Government Procurement Chapters that cover most of the procurements made by Central, Regional and Local Government Entities on the basis of reciprocity. Regarding the Annexes, Chile favours positive lists of entities and negative lists of goods, services and construction services, as well as relatively low thresholds. Some of the thresholds negotiated by Chile follow the WTO GPA approach, as in the cases of the EU, Japan, South Korea, and EFTA. On other occasions Chile has negotiated lower thresholds with USA, Canada, Uruguay, Mexico, Colombia, Australia and P4.

46. We note that Chile is now an observer of the WTO GPA. Is there any plan for Chile to accede to the GPA?

ANSWER: Chile has no plan during the year 2009 to accede to the WTO GPA, since Chile has signed a bilateral agreement with 37 countries from 40 that subscribed the GPA. The exceptions are Israel, Aruba, and Hong Kong, China

### ***III.7 Transparency***

47. We note from page 87 of the Chilean report that the transparency rules of Chile's FTAs establish that the governments have to give the opportunity to another Party to make observations about government regulations. Please advise whether there is any mechanism built in to cater for exceptional circumstances, e.g. in cases of urgent need to make regulations, and if so, what is the mechanism.

ANSWER: In general, under the transparency rules of Chile's FTAs, the publication obligation establishes that regulations, procedures and administrative rulings of general application respecting any matter covered by an Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

However, most of our FTA's establish that each Party shall, to the extent possible, publish in advance any measures of the one's described above, that it proposes to adopt and to provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures

Therefore, under the scope of the transparency obligations contained in FTAs as described above, we see no need to introduce a mechanism built in to cater for exceptional circumstance

### ***III.7 Transparency***

### ***III.9 Intellectual Property Right (IPR)s***

48. Page 93 of the Chilean report that Chile envisages having IPR provisions in an eventual agreement with Hong Kong. Please provide information on the key features of the chapter on IPR in FTAs concluded by Chile.
49. Page 93 of the Chilean report mentions that provisions on Geographic Indications (GIs) are included in most of Chile's preferential agreements. We would like to know the interface between different FTAs on their different interpretation/ recognition on GIs.

#### **ANSWERS TO QUESTIONS 48 AND 49**

### **Intellectual Property Rights**

#### **1. Chilean policy regarding the main Intellectual Property Rights / Relevant treaties subscribed**

Maintaining an adequate and balanced intellectual property system is a key issue for the Chilean economy. The Chilean legal and institutional framework for IPRs grants protection to all categories of intellectual property included in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) of the World Trade Organization (WTO), namely: copyright and related rights, trademarks, geographical indications, patents, industrial designs, layout designs (topographies) of Integrated Circuits and Protection of Undisclosed Information. Chile also confers protection to new plant varieties. In addition to the standards in the TRIPS Agreement and those in the major WIPO treaties, Chile has committed to even higher standards through bilateral trade agreements.

Chile has been a member of the World Intellectual Property Organization (WIPO) since June 1975, and has signed a number of IPR conventions.. In addition, Chile has been a WTO member since 1 January 1995 and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) came into force in 2000.

### Chile's participation in international IPR agreements

Agreement, convention or treaty (latest Act in which Chile participates)	Date on which Chile became party (date it became party to the latest Act)
Berne Convention for the Protection of Literary and Artistic Works (Paris Act)	June 1970 (July 1975)
Convention Establishing the World Intellectual Property Organization	June 1975
WIPO Copyright Treaty	March 2002
WIPO Performances and Phonograms Treaty	May 2002
Paris Convention for the Protection of Industrial Property (Stockholm Act)	June 1991
Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations	September 1974
International Convention for the Protection of New Varieties of Plants (UPOV 1978)	January 1996

The Chilean IPR regime has evolved significantly in recent times as a result of the incorporation of TRIPS commitments into national law. Also, several amendments have been made to comply with international obligations derived from bilateral agreements (mainly with the EU, the US, EFTA, Central America, Canada, Mexico and Korea). New amendments will be incorporated into the Chilean IPR legislation because of the ratification of the WIPO Internet Treaties and the implementation of other bilateral IPR commitments.

In late 2003, two sets of amendments were made to the Copyright Law to implement TRIPS and the Free Trade Agreements, and in late 2005 and early 2007 two amendments to the industrial property law were enacted.

The main domestic statutes for the protection of IPR in Chile are the Intellectual Property Act (Copyright Act), Law No. 17.336 of 2 October 1970 with its Regulation and the Industrial Property Act, Law No. 19.039, 25 January 1991, with amendments introduced by Law 19.996, of 1 December 2005, and Law 20.160, of 26 January 2007, and its Regulation.. The protection of new varieties of plants is regulated through the New Plant Varieties Act, Law No. 19.342 of 3 November 1994. These statutes cover the major IP areas referred to in the TRIPS Agreement and also by main WIPO treaties.

## 2. Industrial Property Rights

Historically, the Department of Industrial Property of the Ministry of Economy was in charge of granting industrial property rights (trademarks, patents, utility models, layout design of integrated circuits, industrial



design), including the registry of geographical indications and appellations of origin. The Seeds Department of the Agriculture and Cattle Service is in charge of administrating the Chilean registry of new plant varieties.

However, a new institutional framework for the industrial property administration was recently enacted and entered into force in January 2009 (Law n° 20.254). The reformed Industrial Property Office (INAPI, by its Spanish acronym) replaced the existing Chilean registry in order to improve registration services for trade marks, geographical indications, patents, utility models, industrial designs and layout designs of integrated circuits, by granting more human and financial resources. Moreover, the referred amendment provided INAPI with authority to apply such human and financial resources to conduct new capacity building activities in order to promote the use of industrial property rights.

Also, as mentioned above, during 2005, the widest and most significant reform to the Industrial Property Act was conducted since its enactment in 1991 (Law n° 19.996). This reform implemented pending commitments of the WTO TRIPS Agreement and incorporated provisions to protect undisclosed information related to pharmaceutical and agrochemical products for 5 and 10 years, respectively. Additionally, it established a special registry for geographical indications and appellations of origin, rules for assesment of damages for infringement of industrial property rights; and new civil actions and precautionary measures that provide the right holders with a wider range of tools to address judicial enforcement of their rights.

In 2007, the Industrial Property Act was amended (Law n° 20.160) in order to incorporate and protect sound, collective and certification trademarks. Additionally, it provided for a patent term extension to compensate for unjustified delays in the administrative process to obtain registration.

Thereof, currently Chilean national law provides protection for 10 years to trademarks right holders, but they may be renewed indefinitely. There are no requirements of use for registration or renewal of trademarks. Industrial designs that are novel are protected by 10 years from the date of filling. This period is non-extendable. Textil designs and stampings may be protected at the same time under Copyright Law.

In the case of patents, they patents are protected in Chile for 20 years from filing. Economic models and business plans, discoveries, scientific theories

and mathematical methods, surgical, therapeutic or diagnostic methods, plant varieties, animals and software are not protected by patents or utility models. Patent system includes compulsory licenses in cases of (i) monopoly abuse, (ii) national security, public health, and national emergencies, (iii) non-commercial public use, or (iv) cross licensing in relation with patented subject matters.

In regards to Plant Varieties, Chilean legislation is homologated to UPOV 1978 Act. Nevertheless, Chile is committed to adhere to UPOV 1991 and currently, a bill that permits the latter is being presented to Congress for its approval and will is expected to come into force by the year 2009. Rights related to New Varieties of Plants must be pursued before civil courts.

Industrial property right holders have both civil and criminal remedies and can collect costs and damages. Courts have, among others, the faculty to order the destruction of tools and implements used to produce the falsification or copy. The Customs Service may also enforce some industrial property rights at the border.

In addition, Law 19.039 establishes for international exhaustion of these rights. Consequently, parallel importations are allowed.

### **3. Copyrights and Related Rights**

The Copyright Department of the Library, Archives and Museums Directorate is in charge of the Copyright Register. The main Copyright statutes are the Intellectual Property (Copyright) Act (Copyright Act), Law No. 17,336 of 2 October 1970 and its Regulation (Supreme Decree No. 4,764 of 8 January 1985).

The term of protection for copyrights and related rights is 70 years. In conformity with the Berne Convention, protection is automatically recognized once works are created, but a register is available for publicity measures. Additionally, register constitutes a legal presumption of ownership in favor of the person who is registered as right holder.

According to the Copyright Law right holders have both civil and criminal remedies against infringers of rights. Once convicted, infringers may be forced to pay damages and fines, and also be imprisoned. The Customs Service may also enforce some intellectual property rights at the border.

A new bill was introduced in Congress in 2 of May 2007 to amend the Copyright Law. The main objectives of this new bill is to improve enforcement of copyright and related rights through new civil and criminal procedures, to introduce a new regime of exceptions and limitations to copyright and to regulate the responsibility of internet service providers for eventual copyright infractions, in accordance with international standards. This bill is currently being discussed at the Chilean Senate (Upper House).

#### **4. Enforcement of Intellectual Property Rights**

The Department of Industrial Property, the Court of Appeal for Industrial Property (reformed under the Law No. 19.996) and the Agriculture and Livestock Service for issues related to plant varieties are responsible for administrative actions related to opposition or annulment of applications or granted registries.

Criminal and Civil remedies provided for infractions in the Industrial Property and Intellectual Property Laws must be pursued before Civil and Criminal Courts.

Persons convicted for offences against right holders of intellectual or industrial property rights may be required to pay costs and damages to right holders and also fines. In cases of intellectual property violations infringers can also be imprisoned.

In the year 2000 Congress passed new legislation for an overall modification of Chilean criminal system. This reform, which has been implemented in every Chilean Region (in Santiago has been implemented on June 2005), has shown to increase efficiency both in criminal courts and in action of police agencies against IPR infringers.

Additionally in early 2008, the Chilean Civil Police Force incorporated a new specialized unit – BRIDEPI – devoted to investigate and prosecute crimes specifically related to IPR. The unit extends its authorities over all issues related to offenses related to industrial and intellectual property rights. One of the purposes of BRIDEPI is to identify and disarticulate criminal organizations dealing with piracy, counterfeit and related offenses through intelligence investigations. This specialized unit is expected to become a cornerstone of the Chilean national system for IPR enforcement that came to

couple a number of other initiatives in the same direction, carried out by other Chilean agencies, such as the Chilean National Customs Service and the Chilean National Prosecutor's Office.

## **5. Others issues**

### **Undisclosed Information**

A whole new chapter for undisclosed information was introduced to the Industrial Property Act (Law 19.039) in 2005 to protect both trade secrets and undisclosed data of new chemical entities submitted to government agencies for approval of pharmaceutical and agricultural chemical products. Regarding the latter, the protection of pharmaceutical products extends for a 5-year term, while agricultural chemical products are subject to a 10-year term.

Protection of undisclosed data of pharmaceutical products is under the jurisdiction of the Institute of Public Health, while protection of undisclosed data of agro-chemical products is under the control of the Agriculture and Livestock Service. These government agencies are obliged to protect undisclosed information submitted to them in the process of sanitary registration against disclosure and, additionally, are not entitled during the term of protection to grant sanitary registrations based on the protected data.

In addition to substantive provisions of the Industrial Property Act, Decree 153 of the Ministry of Health regulates the procedure to obtain protection for undisclosed information of pharmaceutical products that are new chemical entities.

Other administrative measures, such as publication in the Institute of Public Health's web site of all applications for new pharmaceutical products, are maintained to ensure that interested parties have the opportunity to promptly assert their rights in Court.

### **Geographical Indications**

Geographical indications of Chilean wines and spirits are regulated through the Law No. 18.455 and its Regulations. As mentioned earlier, the last amendment of the Industrial Property Law creates a registry for Chilean and foreign geographical indications available for any kind of product.

Most of Chile's preferential agreements contain provisions for the explicit recognition of GIs. For instance, the Chilean geographical indication “Pisco” has been recognized in agreements with Australia, Canada, China, Japan, Mexico, New Zealand, Singapore, the United States and the European Union.

## **6. Evaluation of an agreement in Intellectual Property Rights**

Considering that almost every single FTA negotiated by Chile<sup>88</sup> includes provisions on IPRs, we envisage having IPR provisions in an eventual agreement, through which both countries reaffirm its mutual international commitments on IPRs, and state for commitments in areas of particular interest of both parties.

The overall objective of comprehensive initiatives in this field should be to facilitate and encourage Chilean and Hong Kong, China partnership in the pursuit of increased competitiveness, fostering innovation and creating new opportunities for trade and joint ventures, including mutual consultation on common IPR interest issues.

### ***III.10 Trade and Environment***

50. We note from page 95 of the Chilean report that Chile considers that FTAs which incorporate environment provisions are an appropriate tool to promote high levels of environmental protection. We would like to know the format of these environmental provisions, e.g. whether forming a chapter of the FTA or as a side agreement to the FTA. Please also advise on the key features of the environment provisions or the cooperation agreements on environment.

ANSWER: Chile has addressed environment issues in trade negotiations in a very flexible way and with an approach based on dialogue, exchanges of experiences and cooperation. The main format to incorporate environmental provisions in these agreements has been an Environment Chapter in the main text of the Free Trade Agreement (FTA); a separate agreement on

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<sup>88</sup> Free Trade Agreement with: Australia, Canada, United States of America, Japan, Korea, Mexico, China, Central America, European Free Trade Area–EFTA, as well as the Association Agreement between the European Union and the Trans Pacific Strategic Economic Partnership (Chile–New Zealand, Singapore, Brunei Darussalam).

environment cooperation negotiated and signed along with the FTA; or, in a few cases, both.

Chile's preferred approach would be, in the case of the Chile-HKC negotiations, to incorporate the environment provisions in a chapter of the FTA. We would propose a simple scheme including general principles and commitments, and based on dialogue, exchanges of experiences, and cooperation and capacity building efforts on mutually agreed areas. There would be no role for sanctions –neither financial nor trade ones-, in relation to environmental issues. Should any issue arise over the application of the chapter, they should be resolved amicably through dialogue and consultations. Therefore, there would be no place for the application of general dispute settlement procedures. Finally, regarding the institutional framework, contact points should be sets out to facilitate communications.

Examples of key environment provisions:

***“Preamble***

*Some general statements making reference to the idea of improving, protecting, enhancing, enforcing, promoting, and otherwise committing to addressing or acting on environmental and sustainable development issues*

***Objectives***

*Some general statements regarding the promotion of mutual supportiveness of trade and environment, to encourage sound environment policies and practices and improve the capacities and capabilities of the Parties, including non-government sectors, to address environmental matters*

***Principles and Commitments:***

*Some general principles and commitments that are common elements already accepted by the Parties in other instances: recognition of each Party's sovereign right over its natural resources and of the sovereign right of each of them to set, administer and enforce their own environmental laws, regulations and policies according to their priorities; recognition of the importance of each Party effectively enforcing its environmental laws and regulations; not to set or use environmental laws, regulations, policies and practices for trade protectionist purposes, and not to relax, or fail to enforce or administer environment laws and regulations to encourage trade and investment; procedural guarantees; promotion of public awareness of*

*environmental laws and promotion of environmental consciousness and education.*

***Cooperation:***

*General provisions to set out a framework to support the Parties' co-operation and capacity building efforts on mutually agreed environmental issues of common global or domestic concern; while taking into account national priorities and available human and financial resources.*

***Institutional Arrangements:***

*Designation of contact point to facilitate communications; public participation, where necessary; and consultations."*

The above scheme has close similarities, even though it is much simpler, to the Agreement on Environmental Cooperation (ACA-P4) of the Trans-Pacific Strategic Economic Partnership Agreement (P4), signed with Brunei-Darussalam, New Zealand and Singapore; and is also reflected in APEC Model Measure on Environment, adopted by Ministers Responsible for Trade, in Peru, in 2008, in the framework of the Regional Integration Program.

***III.11 Trade and labour***

51. Page 101 of the Chilean report mentions that provisions about labour have been addressed in Chile's FTAs with different mechanisms, such as a side agreement, labour chapter or independent agreement, with accent in cooperation. Please advise on the key features of the labour provisions or the cooperation agreements on labour. ?

ANSWER: Chile has addressed labor issues in trade negotiations in a very flexible way, with a tailor-made style, and with a non trade-sanctions approach and instead, a cooperative one, based on dialogue and exchanges of best experiences. The principal modalities to do so have been Labor Chapters and separate agreement on Labor, signed along the FTA.

In the case of our specific negotiation Chile Hong-Kong, our preference would be a Labor Chapter, with specific institutions and cooperative mechanisms (consultation process) and no application of the general dispute settlement procedures. Regarding the commitments we see those that Parties

have already accepted in ILO, such as the 1998 ILO Declaration and to strive to achieve decent work, and some instruments to show seriousness such some institutional mechanisms to allow consultations between Parties.

Accordingly we think that provisions could contain:

- Some general statements in the preamble;
- General objectives;
- General commitments related to those Parties have already accepted in ILO; recognition of the principle of sovereignty; not to diminish labor protections to encourage trade or investment; procedural guarantees; and promotion of public awareness of labor laws;

Regarding the Institutional Mechanisms, we see to establish Contacts Points; participation of the public and/or worker and employer representatives; and consultations between Parties.

## **Chapter IV**

### ***IV.2.B Rules of Origin***

52. Regarding preferential rules of origin, please advise whether different sets of preferential rules are being adopted under Chile's individual FTAs or a common set of preferential rules is applied to all Chile's FTAs. What are the rules of origin most commonly adopted in Chile's FTAs?

ANSWER: Chile has different preferential rules of origin depending on Chile's partners and their economic characteristics.

In general, the most commonly adopted rules of origin schedule are "the change in tariff classification" or /and "regional value content".



## **APPENDIX 2 Chilean questions to HKC Report**

### **Chile-Hong Kong, China Joint Study Group on The Feasibility of a Free Trade Agreement**

#### **Questions by Chile on the Report by Hong Kong, China**

##### **Chapter I**

###### ***1.1.A Macroeconomic Features***

1. On page 6 of the Hong Kong, China report, it is mentioned that "...at the fixed exchange rate of HK\$ 7.80 to US\$ 1". We would like to know more about the fixed exchange rate policy, and how does it impact the HK\$ quotation and the real exchange rates with other currencies, say ¥ and €, yuan? Have you taken any measures to use the yuan instead of the HK\$ for the border trade with Mainland China?

###### ***1.1.B Structure of Trade Policy Formulation***

2. It is also mentioned on page 8 of the Hong Kong, China report that "... it may issue its own certificates of origin...". Is Hong Kong, China currently issuing certificates of origin?

3. Understanding that Hong Kong, China is entitled to negotiate trade agreements, we would like to know if there are any subjects that are not included under the concept of trade.

###### ***1.1.D Trade Laws and Regulations***

4. On page 10 of the Hong Kong, China report, it is mentioned that "the cornerstone of .....commercial policy is the rules-based multilateral trading system under the WTO." Could you elaborate on the consequences for the Hong Kong, China trade policy?

5. Could Hong Kong, China please provide the text of the Banking Ordinance referred in page 11, and of the Securities and Futures Ordinance and the Insurance Companies Ordinance referred in page 12?

## ***1.2 Trade in Goods***

6. Page 13 of the Hong Kong report says that “ Re-exports remained the key driver in overall trade with the vibrant trade flows of the mainland of China”. How have these re-exports been impacted by the current financial and international crisis?

## ***1.3 Trade in Services***

7. Please elaborate on the priority of the Hong Kong, China government as far as the services industry is concerned in respect of trade.

### ***1.5 Introduction of FTAs negotiated by each party***

8. Regarding the Hong Kong / NZ Closer Economic Partnership Agreement (HK / NZ CEP), could Hong Kong, China please provide more detailed information about the coverage intended in the negotiation of services and investment within the HK / NZ CEP (please refer to page 20, (d) liberalization and promotion of bilateral investment; and (e) liberalization of trade in services)

9. Could Hong Kong, China please provide a hard copy of the trade in services, investment and movement of natural persons provisions of the Closer Economic Partnership Arrangement (CEPA) signed with the mainland of China, and of its annexes and its supplements referred to the same matters, referred in page 20?

10. Could Hong Kong, China please provide further information about CEPA's regulations on mutual recognition of professional qualifications and exchange of professional talents, referred in page 20?

## ***2.3 Bilateral Investments***

11. Page 27 of the Hong Kong, China report mentions the bilateral investments. Do you have more information concerning Hong Kong, China investments in South America and in Chile?

### ***3.2.5 Technical Barriers to Trade***

12. Does Hong Kong, China have a mechanism of coordination with the different Government Agencies related to TBT issues like a National Commission on TBT?

13. Does Hong Kong, China have some kind of mechanism of coordination with the industry related to TBT issues?

14. Has Hong Kong, China carried out some training courses or capacity building activities to the industry and/or to Government Agencies related to TBT issues?

15. How is the experience of Hong Kong, China regarding to MRAs? Are the MRAs costly to implement them? How does Hong Kong, China implement the “non-compliance”?

16. How is the process of notification and analysis of received comments regarding to technical regulations are established under Laws and, for this reason, with the direct participation of the Congress?

17. Is there any web site where you can find all information about technical regulation and conformity assessment procedures?

### **3.3 Services**

#### **3.3.1 Measures Affecting Trade in Services**

18. Could Hong Kong, China please provide the text of the Telecommunications (Amendment) Ordinance 2003, as referred in page 45?

19. Could Hong Kong, China please provide the text of the Legal Practitioners Ordinance, as referred in page 46?

#### **3.3.2 International Commitments Related to Services**

20. Could Hong Kong, China please specify the commitments that it has undertaken with mainland China in the CEPA that go beyond Hong Kong’s services commitments under the GATS, as stated in page 47?

### **3.4 Foreign Investment Regimes**

21. If applicable, could Hong Kong, China please provide a hard copy of the foreign investor manual or catalog edited by Invest Hong Kong or an analogue institution, if such an instrument exists?

22. Could Hong Kong, China please provide further information about the Innovation and Technology Fund and the DesignSmart Initiative, as referred in page 49?

23. If applicable, could Hong Kong, China please provide the list of the countries with which is currently negotiating a Bilateral Investment Treaty / Investment Promotion and Protection Agreement.?

24. With respect to investment, are there any matters which Chile normally includes in its FTAs which Hong Kong, China could not include in a future FTA negotiation with Chile? If so, please indicate them as well as the reasons for its exclusion.

### ***3.6 Government Procurement***

25. What is the size and structure of the GP market in Hong Kong, China?

26. Does Hong Kong, China have special access to Mainland China's GP market?

27. What is the Hong Kong, China evaluation of the GPA so far? Have they made use of it?

28. What is the Hong Kong, China opinion of the revised text of the GPA currently under discussion at the WTO?

### ***3.7 Transparency***

29. What is your mechanism to ensure an adequate level of transparency regarding laws and regulations related to trade? If it is ensured through a web site, how often is it updated?

### ***3.8 Movement of Business Persons***

30. Could Hong Kong, China please provide further information about the Passenger E-Channels and its facilities, as referred in page 53?

31. Could Hong Kong, China please provide a deeper explanation of the Capital Investment Entrant Scheme, as referred in page 53?

32. Regarding the “Entry For Employment” paragraph of page 53, could Hong Kong, China please provide further information about general restrictions on employment of foreign nationals in its territory?

### ***3.9 Intellectual Property Rights***

33. With respect to intellectual property, considering that Hong Kong, China is a member of the WTO but not an independent member of WIPO, are there any matters that Chile normally includes in its FTAs which Hong Kong, China could not include in a future FTA negotiation with Chile? If so, please indicate them as well as the reasons for its exclusion.

### ***4.2 Major Issues Covered in the Trade Agreements Signed***

34. Could Hong Kong, China please specify the extent of the enhanced co-operation accorded with China in Trade and Investment Promotion in the CEPA, as referred in page 61.

### ***Other aspects: Cooperation***

35. How do the Parties implement the cooperation aspects of CEPA on different trade areas? What kind of cooperative activities do you use to carry out?

## **APPENDIX 3 Certification rule 298 (in English)**

REPUBLIC OF CHILE MINISTRY  
OF ECONOMY, DEVELOPMENT  
AND RECONSTRUCTION

APPROVES REGULATION FOR THE CERTIFICATION OF  
ELECTRICAL PRODUCTS AND FUELS, AND REVOKES  
THE DECREE THAT MENTIONS.

SANTIAGO, D.S.

Nº PURSUANT

TO:

1° What has been informed by the  
Superintendence of Electricity and Fuels in Official  
Letter No. 3290, of 2005.

2° What is stated in Decree No. 77, of 2004 of the  
Ministry of Economy, Development and  
Reconstruction.

3° What is stated in Law No 18,410 of 1985 of  
the Ministry of Economy, Development and  
Reconstruction.

4° What is mentioned in article 60, of Law No.  
18,681, of 1987, and

5° What is stated in article 32 No.8 of the Political  
Constitution of the Republic of Chile.

**WHEREAS:**

1° There is the need to unify, improve and update  
the current certification procedures in the country  
for electrical products and fuels, taking into  
consideration the international experience and the  
experience that has been acquired by the

Superintendence of Electricity and Fuels on these matters

2°It is likewise necessary to set the requirements and obligations of the different actors related with the marketing and certification of these products.

## I DECREE:

**FIRST ARTICLE :** The following regulation has been approved for the certification of electrical products and fuels:

### CHAPTER I

#### SCOPE AND OBJECTIVES

**Article 1.** The objective of the present regulation is to establish the procedures for the safety and quality certification of the electric products and fuels, hereon “products”, prior to its commercialization within the country, and likewise to regulate the authorization of the Certification Bodies, Inspection Bodies and Testing Laboratories.

**Article 2nd.** The dispositions in this regulation will apply to all fuel products that are commercialized in the country and to those electric products that in accordance with the current regulation must be submitted to a certification, prior to its commercialization, whichever its use or field of application, likewise, to the importers, manufacturers and traders of them as well as for the Certification Bodies, Inspection Bodies and Testing Laboratories.

**Article 3<sup>rd</sup>.** The Superintendence of Electricity and Fuels, from now on, will be the institution in charge of controlling and supervising the correct and timely fulfillment of the present regulation.

### CHAPTER II

#### TERMINOLOGY

**Article 4<sup>th</sup>** For the purposes of the present regulation, the following terms have the meaning that is indicated below:

- 4.1 Accreditation:** Formal recognition of the technical competence of a Certification body, Inspection Body or Testing Laboratory, to carry out specific tasks in the scope of the present regulation. The accreditation is granted as the result of a satisfactory evaluation and it is followed by a regular surveillance.
- 4.2 Auditing:** Systematic and independent documented process to obtain records, fact declarations or any other information that is pertinent to verify the fulfillment of the policies, procedures or legal requirements, within the scope of the product certification.
- 4.3 Quality:** Degree up to which a set of inherent characteristics of a product fulfills the requirements that are established in a standard.
- 4.4 Certification:** Procedure by which a third party gives written assurance that a product fulfills the requirements that are specified in a standard or any other regulatory document.
- 4.5 Accreditation Certificate:** Document granted by an accreditation body that establishes that the certifying body, the inspection body or the testing laboratory is accredited.
- 4.6 Certificate of Approval or Conformity:** Document issued in accordance with the rules of a certification system, in which it is declared that a product properly identified is in



accordance to a specific standard or any other regulatory document.

- 4.7 Follow-up Certificate:** Document granted by a Certification Body, which assesses that the production or batch of a product keeps ongoing conformity with the approved type.
- 4.8 Type Certification:** Document granted by a Certification Body, that assesses that a product that has been presented for testing complies with the Analysis/Testing Protocols assigned by the Superintendence for that product.
- 4.9 Production Control: Exam** based on the tests performed on samples taken at the factory in the finished product stage, in order to verify that the production keeps ongoing conformity with the approved Type.
- 4.10 Distinctive:** Acronym or mark of a Certifying Body that is used to show that a product has been certified by this organization.
- 4.11 Type Testing:** Conformity Testing based in one or more samples of a representative product of the production.
- 4.12 Technical Specification:** Document issued by the manufacturer that indicated the characteristics of the product.
- 4.13 Label:** Any wording, mark, image or other element, descriptive or graphics sign, written, printed, stamped, lithograph, marked, embossed graving, photogravure, stick on or placed in the packaging or on the product.
- 4.14 Manufacturer:** Natural or Juridical Person that elaborates or manufactures products.
- 4.15 Family of Products:** Set of products of the same manufacturer, that have similar characteristics of design, material, manufacturing, functioning, use, type of energy, that is stored, transported, transformed or used for its functioning.
- 4.16 Importer:** Natural or Juridical Person that introduces foreign goods into the country.
- 4.17 In situ:** In the place, in the site.
- 4.18 Tests Report:** Document issued by a Testing Laboratory that registers the results of the tests to which a product has been exposed to.
- 4.19 Inspection Report:** Document issued by an Inspection Body that records the results of the tests, measurements and verifications to which the product or family of products has been submitted to.
- 4.20 Rejection Report:** Document issued by a Certifying Body that establishes the non-conformity of a product or family of products.
- 4.21 Inspection:** Set of measurement procedures, verification and testing performed by the Inspection Bodies with the purpose of corroborating that a product fulfills the specifications that have been determined by the competent authority.
- 4.22 Commerce Inspection:** Control performed to those that market the products, in order to verify the fulfillment of the legal, regulatory and technical dispositions.
- 4.23 Testing Laboratories:** Juridical person authorized by the competent authority to measure, examine and test products in the facilities that have been authorized for this purpose.
- 4.24 Lot or Batch:** Determined quantity of units of a product.
- 4.25 Conformity Mark:** Protected mark, applied or issued in accordance with the rules of a certification system, indicating confidence that a product at stake is in conformance with a standard or any other regulatory document.
- 4.26 Sample:** Set of one or more products extracted randomly from a lot or batch, in accordance with technical standards and current protocols.
- 4.27 Technical Standard:** Document approved by a recognized body, that provides, for common and repeated use, rules, guidelines, or characteristics for activities or its

results, in order to achieve an optimal degree or order in a given context.

- 4.28 Accreditation Body:** Organization that manages an Accreditation System.
- 4.29 Certification Body:** Juridical person that issues the corresponding approval or rejection certificates, applying the third party certification systems established in the present regulation.
- 4.30 Inspection Body:** Juridical person, that performs verification activities, measurements, tests and inspection of products, in site, in accordance with the procedures that are established by the Superintendence.
- 4.31 Standardization Body:** Organization with national or international recognition and whose main duty is the preparation and publishing of technical standards.
- 4.32 Fuel Products:** Generic term that is used when referring indistinctively to artifacts, accessories, cylinders, devices, tanks, materials, equipment, instruments and pipes, that are used to free energy or to store, transport, expend and measure liquid or gas fuel, or elements that are part of them. Are excluded products of aeronautics use, aerospace, automotive, naval and equipments of electric generation over 500 KWatts.
- 4.33 Combined Products:** Generic term used when referring to an artifact, device or equipment that operates alternatively or simultaneously with electricity, gas or liquid fuel.
- 4.34 Electrical Products:** Generic term used when referring to apparatus, artifacts, accessories, equipment, instruments, devices, materials or machinery that use, store, transport or isolate electrical energy, or elements that are part of them.
- 4.35 Protocol:** Technical document, through which the analysis and/or tests for products are established, in order to verify that products comply with the minimum safety and quality requirements, based totally or partially, in technical specifications or in international, regional or national standards.
- 4.36 Recognition:** Administrative act by which the Superintendence recognizes foreign documents in the scope of product certification.
- 4.37 Mutual Recognition:** Bilateral or multilateral agreement between Countries, in which the certificates, reports and in general all documents that are part of a product certification system are recognized.
- 4.38 Technical Regulation:** Is the provision through which the competent authority, through an administrative act, lays down the characteristics of a product or the processes and production methods related with them, including the administrative provisions that are applicable and which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packing, marking or labeling requirements as they apply to a product, process or production method. Its elaboration, adoption and application is responsibility of the corresponding Ministries or institutions duly authorized for this purpose..
- 4.39 Technical Service:** Natural or Juridical person recognized by the manufacturer, importer or traders, in order to perform maintenance and repair of the products.
- 4.40 Quality Control System:** Techniques and activities of an operational character used to satisfy the requirements related to the quality of the products.
- 4.41 Certification System:** Set of established and recognized procedures, through which the conformity of the products with the applicable standards or technical specifications is determined..
- 4.42 Third Party Certification System:** System administered by a Certification Body independent from the manufacturer, user, seller or purchaser.
- 4.43 Certification Request:** Document through which a national manufacturer or an importer requests the certification of a product to an organization that has been authorized for this purpose.

**4.44 Type o prototype:** The basic unit manufactured in compliance with a standard or other regulatory documents assigned by the Superintendence.

**4.45 Traceability:** Capacity to follow the history, the application or the localization of everything that is under consideration.

### CHAPTER III

#### CERTIFICATION SYSTEMS

**5<sup>TH</sup> ARTICLE** The certification of the products must be performed applying one of the Systems layed out in the following Table I, based in the ISO/CASCO Guide "Assessment and verification of conformity to standards and technical specifications".

**TABLE I –CERTIFICATION SYSTEM.**

<b>Systems</b>	<b>Denomination</b>	<b>Description</b>	<b>Code</b>
<b>1</b>	<b>TYPE TESTING FOLLWED BY THE REGULAR CONTROL OF THE PRODUCTS</b>	System based in the type testing but with a certain follow-up action, so as to assess the ongoing conformity of the subsequent production.. The testing of the factory samples implies a regular control of the sample models submitted to the type testing, selected from the production of the manufacturer, before it is delivered to the client. The following cases may be distinguished:	
		a) ISO/CASCO N°3 System for products manufactured and tested in Chile.	011
		b) ISO/CASCO N°3 System for products manufacturer abroad, its type testing is performed in Chile, and the subsequent testing of the samples are performed abroad	012
		c) For products elaborated abroad and that the type testing and the testing of samples of the subsequent batches Are performed in Chile.	013
<b>2</b>	<b>TYPE TESTING AND ASSESSMENT OF THE QUALITY CONTROL OF THE PLANT AND ITS ACCEPTANCE, FOLLOWED BY THE SURVEILLANCE THAT TAKES INTO CONSIDERATION THE AUDITING OF THE QUALITY CONTROL OF THE</b>	System bases in the type testing, with evaluation an approval of the quality control measures of the manufacturer, followed by a regular surveillance through the inspection of the quality control of the plant and the testing of samples at the point of production and at the market..	

	<b>PLANT AND THE TESTING OF SAMPLES AT THE POINT OF PRODUCTION AND AT THE MARKET.</b>	The following cases can be distinguished:	
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		a) ISO/CASCO N°5 System for products manufactured and tested in Chile	021
		b) ISO/CASCO N°5 System for products manufactured abroad, and in which the type testing is performed in Chile and the testing of the subsequent plant samples are performed for Chile abroad	022
<b>3</b>	<b>LOT TESTING</b>	The lot testing is a system by which a lot of products or of a family of products is submitted to a sample testing as a result of which a verdict is issued regarding the compliance to the specification (ISO/CASCO N°7 System).	031
<b>4</b>	<b>100% TESTING</b>	The 100% testing is a system in which each and every one of the products are tested, according to the requirements established by the Superintendence through the analysis and or testing Protocols The following cases may be distinguished:	
		a) ISO/CASCO N°8 system for products with testing in Chile	041
		b) ISO/CASCO N°8 System for products tested "in situ" in Chile.	042
		c) ISO/CASCO N°8 System for products manufactured and tested abroad	043
<b>5</b>	<b>TYPE TESTING, FOLLOWED BY AUDITS OF THE QUALITY SYSTEM OF THE MANUFACTURER</b>	System based on the type testing, followed by annual audits of the quality control system used by the manufacturer. The following cases are distinguished:	
		a) ISO/CASCO N° 1 System (Type testing) followed by annual audits of the quality control system used by the manufacturer, in Chile.	051
		b) ISO/CASCO N°1 System (Type testing) in Chile, followed by annual audits of the quality control system, abroad.	052
<b>6</b>	<b>SPECIAL</b>	System based in the recognition of the type	061



		certificate, approval certificates, quality seals and conformity marks, issued by certifying bodies with domicile abroad, followed by a sample extraction of the lot or batch, which is submitted to the analysis and/or tests established in the corresponding Protocols	
7	<b>MUTUAL RECOGNITION</b>	System based in the mutual recognition regarding certification matters of electrical and fuel products between the State of Chile and one country or a group of countries, and it will be governed following the technical standards and regulations accepted by the Parties.	071

In the systems 1 case b), 2 case b), 4 case c) and 5 case b), the analysis and/or tests performed abroad, must be carried out by authorized Testing Laboratories, following what is laid out in article 18 of the present regulation, in accordance to the respective protocols.

In system 1, the products may be commercialized, only if they have the corresponding Type testing and Follow-up Certificate, issued by an authorized Certifying Body.

In system 2, an evaluation and approval of the quality control system of the manufacturer must be performed at least once a year, the result of which must be reported in writing to the Superintendence, in a term that must not exceed thirty days from when it was carried out.

System 4, case b), may only be used to certify products of a sole type, in accordance to the testing protocols.

Those manufacturers that have previously certified their products through Certification System 2 of the previous table, for a period not less than 5 sequential years, may use system 5. The certification body must perform at least 2 audits per year of the quality control system of the manufacturer and the results must be informed in writing to the Superintendence, in a period of no more than thirty days from when the audit was performed.

System 6 must follow what is stated in Articles 21 and 22 of these regulations.

## Chapter IV

### GENERAL PROCEDURE FOR THE CERTIFICATION OF PRODUCTS

**Article 6** Whatever the origin of the products, these must be certified prior to their marketing in the country, through one of the certification systems indicated in Article 5 of the present regulation, in accordance with the testing protocols established by the Superintendence.

**Article 7-** The testing protocols will be established by the Superintendence through resolutions and will be based on standards or technical specifications, either national or foreign.

**Article 8** -The Certificate of Approval will only be granted by an authorized Certification Body or by one recognized by the Superintendence, for a product or for a specific family of products.

**Article 9-** In case that it is not feasible for a product to be certified in accordance with any the certification systems indicated in Article 5 preceding, due to the absence of a Certification Body authorized for such purposes, the Superintendence may authorize, by means of a founded resolution, the marketing of such product, in which case the interested party must specifically request it from the Superintendence, and comply with the following requirements.

#### I.- Foreign Product\_

- a) Identification of the petitioner: Full name or corporate name, Rut and address in Chile. In the case of a juridical person, a certificate of validity of the partnership, name and Rut (tax Id Code) of the legal representative and the document in which the legal capacity is proven as part of the identification.
- b) Individualization of the product
- c) Entry Declaration to the country presented at the National Customs Service
- d) A copy of the foreign certificate of approval, duly legalized by the Consulate of Chile in the country in which the certificate was issued.
- e) The document granted by an Accreditation Body, which accredits that the certification body issuing the certificate indicated in letter d) preceding, is accredited in the corresponding scope.

The Accreditation Body must be a signatory of the multilateral agreement of recognition of the IAF: International Accreditation Forum.

- f) A copy of the standard(s) or foreign technical specification (s) used for the certification of the products.
- g) User, maintenance and installation manual, whichever one applies, in Spanish,
- h) In the case of presenting a Type Certificate only, the background information indicating that it has undergone a process of quality control in its manufacturing stage must be submitted, this quality control of the process must be done by a quality certification body that has already been accredited.

Once the background information has been evaluated and whenever it is required, the Superintendence will enact a resolution by which the marketing of the foreign product requested is authorized. For the effects of controlling the authorization that has been issued, the importers must on a monthly basis remit to the Superintendence the information regarding the new batches of the imported product, as long as there have been entries during the period.,enclosing all information requested in letters b and c of this Article.

The authorization to market referred to in the in the preceding Article will have a validity of eighteen months without detriment to a request for its extension. This will be granted for a period no longer than twelve months, in regards to the merit of its background information.

II) National Product

- a) Identification of the petitioner: Full name or legal name, Rut and address. In the case of a juridical person, validity certificate of the partnership, name and RUT of the legal representative and document that proves the legal capacities.
- b) Individualization of the product.
- c) Standards or technical specifications used in the elaboration of the products
- d) User, maintenance and installation manual, whichever one applies.
- e) Background that demonstrates the existence of quality control in the manufacturing process, which should be performed by an accredited quality control systems certification body

Once the background information has been evaluated and whenever it is required, the Superintendence will enact a resolution by which the marketing of the national product requested is authorized. For the effects of controlling the authorization that has been issued, the national manufacturers must on a monthly basis remit to the Superintendence the information regarding the production, as long as there have been movements during the period indicating amount, brand and model of the product

The authorization to market referred to in the in the preceding Article will have a validity of eighteen months without detriment to a request for its extension. This will be granted for a period no longer than twelve months, in regards to the merit of its background information.

**Article 10** -The minimum content of the request forms, certificates and other documents referred to in the present regulation will be established upon by the Superintendence.

**Article 11**-The products certified in accordance with the present regulation must contain labeling, which will be determined by the Superintendence.

## Chapter V

### ABOUT THE IMPORTERS, NATIONAL MANUFACTURERS AND TRADERS

Article 12- The importers and national manufacturers will have the responsibility and obligation to comply with the following:

- a) To certify the products before their marketing in the country, through a Certification body authorized by the Superintendence, in accordance to one of the Certification Systems indicated in Article 5 of the present regulation as appropriate, except in those cases mentioned in Article 9 of the present regulation.
- b). In the case of importers who opt to certify their products according to the Certification Systems 1, case b), 2 case b) and 5 case b) or of national manufacturers who opt to certify their products according to the Certification Systems 1 case a). 2 case a) and 5 case a), all of them mentioned in Article 5, must bear the type approved by the Certification Body, for a period no less than two years, counting this from the date of the last sale billing of the corresponding product. The type approved must remain sealed and in optimal maintenance condition.

Notwithstanding the previous point, for well-founded reasons, the interested party may request the authorization from this Superintendence to maintain the type approved for a period that is less than that previously mentioned.

c). To provide its clients and users in general, along with the product and in accordance with the current regulation and in Spanish, the following information:

- I. Installation Instructions
- II. Maintenance instructions.
- III. Instructions for a safe use.
- IV. Label
- V. Certificate of approval of the product.

d). For those products that, due to their use, require maintenance, the national manufacturers and importers must have Technical Services to provide for this service.

e). Inform the Superintendence in writing of the final destination of the products included in the rejection reports issued by the respective certification body, in a period that must not exceed ten working days starting from the issue date of the mentioned report.

**Article 13-**It will be the responsibility of the final traders to comply with the following:

- a). To verify that the products they are going to sell contain all that is mentioned in letter c) of the preceding Article.
- b). To guarantee that, previous to their marketing, the products are kept in good condition.
- c). To maintain to disposition of the general public, notwithstanding the sale system to be used, the following information:

- Certificate of Approval of the product or Resolution of authorization issued by the Superintendence.
- Identification of the Technical Service Authorized if, pertinent.

It will be understood as traders those importers and national manufacturers who carry out sales to the end customer, client, user, in which case they must also comply with all that is specified in the present/current Article.

## Chapter VI

### **OF THE AUTHORIZATION AND OBLIGATIONS OF THE CERTIFICATION BODIES, THE INSPECTION BODIES AND TESTING LABORATORIES.**

**Article 14.** Those parties interested in developing activities as Certification Body/Organizations, Inspection Body or Testing Laboratory, or in widening their scope of action, must comply with the following requirements:

- a). To have a juridical capacity
- b). To have a valid Accreditation Certificate, for the corresponding scope.
- c). To have the infrastructure, equipment, instruments, devices and technical standards which guarantee that the activity that is being requested to be developed is in accordance with the procedures established by the Superintendence.
- d). To have the skilled personnel, in accordance with the requirements established by the Superintendence.
- e). To have the valid authorization from the Superintendence, in the case of requesting extensions of the products.

- f). That the requesting party has not been sanctioned, prior to its petition, with the revocation of its authorization to certify, inspect or test products.

The request for authorization must be submitted in writing to the Superintendence and must at least, have the following:

- Identification of the petitioner
- A certificate of validity of the company, if pertinent.
- Accreditation certificate.
- Legal capacity of the legal representative of the company.
- Experience in matters involved in the present regulation.
- Definition of the activity requested to be performed.
- Detail description of the equipments and instruments to be used, either owned or the property of a third party, if pertinent.
- Detailed competence of all personnel and especially of those whom will act as technically responsible before the Superintendence.
- Detail description of the infrastructure that will be used, in accordance with the activity requested to be performed.
- In general, all the background information, which will prove that it complies with the requirements established in the first paragraph of this article .

**Article 15.** Once the background information is evaluated and whenever pertinent, the Superintendence will enact a resolution by which the interested party is authorized to act as a Certification Body, Inspection Body or Testing Laboratory, if appropriate and for the products indicated in it.

**Article 16.** Notwithstanding what has been established in other dispositions, are duties of the Certification Body, Inspection Body or Testing Laboratories authorized by the Superintendence the following:

- a). To issue the certificates of approval, rejection reports, inspection or test reports, if pertinent and in accordance with the present regulation and the complementary resolutions generated by this.
- b) To inform the Superintendence of the revocation of its Certificate of Accreditation, within a time period of no more than 10 working days from the date in which the fact was acknowledged.
- c) To let the Superintendence know of the expiration of the validity of the mentioned Certificate, thirty days before its expiration.
- d) To have a permanent file of the certificates of approval, rejection reports, inspection reports or test reports issued by them. These documents must remain in custody during a term no less than five years from the date of their issuing.
- e) Request from the Superintendence the enabling or change of competent professional, individuals whom will sign certificates, rejection reports, inspection reports or test reports.
- f). Maintain the necessary conditions for the adequate development of the activities for which it was authorized.
- g). Inform to the Superintendence, within a period not over ten working days, of any change in the background information that served as a basis for the granting of the authorization.
- h). Remit to the Superintendence, in the manner and time period it determines, the information related to the requests for certification; certificates of approval, Inspection or Test Reports , and rejection reports, if pertinent.
- i). Inform to the Superintendence in writing of any situation which might prevent it from developing its activities totally or partially, within the time period of 15 working days, counted from the moment in which it was unable to develop the activities for which it was authorized by the Superintendence.

- j). Have a program of verifications and calibration of the equipment and instruments and keep to this effect a log of the compliance.
- k). The Certification Bodies must also send a copy of the Rejection report to the Superintendence within a time period not over to five working days from the date of the issue of the report.

**Article 17-**The Certification body, besides from what has been established in the previous Article, must also comply with the following obligations:

- a) To abstain themselves from certifying a product in which there was an involvement in the design process.
- b). To abstain themselves from certifying products manufactured or imported by natural or juridical persons who have bonds with any one of the partners or administrators of the organization, their spouses and relatives (up to the second degree of affiliation, who keeps bonds as, manager, director, representative, administrator or main holder of at least 10% of any type of rights of the partnership. Likewise, the certification service will not be lent to corporations with which there is a relationship with the main partnership, affiliate or similar within the terms of law No. 18,046.

**Article 18.** The Superintendence may authorize that Certification Bodies that have their address in the country, to issue certificates of approval and rejection reports, using the reports of the Inspection Bodies or Testing Laboratories with address abroad, through the celebration of agreements or rendering of services, for products specifically indicated in the resolution that authorizes them to do so. The interested party must accompany its request with a Certificate granted by an Accreditation Body that will clearly specify that the Inspection Body and/or the Testing Laboratory is accredited.

The Accreditation Body must be signatory of the ILAC: multilateral agreement of the International Laboratory Accreditation Corporation.

**Article 19** The Inspection Bodies and Testing Laboratories interested in making use of the infrastructure, equipment and instrumentes of third parties must submit a request to the Superintendence, along with at least the following:

- a) The data and background information indicated in Article 16 of the present regulation..
- b) A duly legalized copy of the contract among parties.

**Article 20** The authorization to make use of the infrastructure, equipment and instrumentes owned by third parties will be granted by resolution of the Superintendence.

## **CHAPTER VII RECOGNITION OF FOREIGN CERTIFICATES**

**Article 21-** Those parties interested in trading products having certificates issued abroad may opt for the Special System of Certification, submitting to the Superintendence at least the following background information:

- a) Identification of the petitioner: Name and Legal Name, Rut and address. In the case of a juridical person, a certificate of the validity of the company, name and Rut of the Legal Representative and the document accrediting its legal capacity.
- b) List of the products whose certification is requested to be acknowledged.
- c). Individualization of the certification body that issues the foreign certificate.
- d). Document issued by an accreditation body which proves that the mentioned body issuing the certificates has the competence required to certify the products.

The accreditation body must be signatory of the multilateral agreement of the IAF: International Accreditation Forum

- e). A copy of the standard or foreign technical specification used to certify each product in particular.

Once the background information has been evaluated and having determined that the technical standards or specifications submitted comply with those established in national protocols, the Superintendence will issue a Resolution by which the identification of the issuing body of foreign certificates is specified, the listing of products authorized for certification and the standards and technical specifications applicable to each product. This resolution will be an essential requirement for the later issuing of the certificate that establishes the conformity of the lot by the certification body.

**Article 22-** In order to issue the certificate of approval, the national certification body must validate that the importer provides it at least with the following background information:

- a). A copy of the resolution issued by the Superintendence indicated in the previous Article.  
b). A copy of the certificate of the product duly authenticated by the Consulate of Chile in the country in which the certificate was issued.  
c). Instructions manual, maintenance and installation of the product, if necessary, in Spanish.

Once the request has been submitted by the importer in the terms previously mentioned, the certification body will verify that the certificate is valid and that it is within the scope of the resolution issued by the Superintendence. It must also confirm that the issuing institution of the certificate maintains the accreditation referred to in letter d) of Article 23.

Once the compliance of previous conditions has been verified, the tests of the products will be carried out in accordance with the protocol applicable to them.

## **CHAPTER VIII TESTS**

**Article 23-** Tests established by the Superintendence will be performed to the products. These tests will be carried out in accordance to protocols of tests duly enforced, which must at least contain the following:

- Reference standards
- Applicable legal dispositions.
- Scope of the protocol.
- Tests according to the reference standards.
- The samples and tests for each one of the certification systems applied to the product.
- Marking
- Label, if it appropriate.

**Article 24-** The tests established by the Superintendence can only be performed by authorized Inspection or Testing Laboratories.

**Article 25-** The regularity and size of the sample will be those established in the Testing Protocols.

**Article 26-** If a product were to be rejected by an Authorized Certification Body and the petitioner of the certification requires a new certification to another certification body, the petitioner will be obliged to inform in its new Certification request of the previous rejection, attaching a copy of the rejection report to the new request.



## CHAPTER IX

### PENALTIES AND FINES

**Article 27-** When referring to national manufacturers, importers and traders of electric products and fuels, and notwithstanding whatever is established in other resolutions, the following behaviors are considered to be subject to fines:

- a). Market products without their respective Certificate of Approval.

- b). Market a product with a Certificate of Approval that does not belong to the product.
- c). Forge or alter a Certificate of Approval.
  - d). Market a product without the respective mark, label or safety warning, in accordance to current technical regulations..
  - e). Market a product without its respective Instructions Manual, written in Spanish, for all those products which, by their use and characteristics may require it, in accordance with the current technical regulations..
  - f). Forge or alter the marking, labeling or safety warning of the Certification Organization.

**Article 28**-When referring to Certification Bodies, Inspection Bodies or Testing Laboratories and notwithstanding what is established in other resolutions, the following behaviors are subject to sanctions:

- a) To certify products based on the reports of inspection bodies and/or testing laboratories not authorized by this Superintendence
- b) To certify products respect of which there has been participation in its design.
- c) Issue Approval Certificates with incomplete or erroneous information.
- c) Inspect, test or certify products for which no authorization has been granted according to current regulations.
- e) To not comply with the verification and calibration programs of the measurement instruments and reference patterns.

**Article 29**-The infringements to the current regulations will be punished in accordance with what establishes Law 18,410 and in the Supreme Decree No.119 of 1989 of the Ministry of Economy, Development and Reconstruction

**SECOND ARTICLE:** The Executive Order No. 399 of 1995, of the Ministry of Economy, Development and Reconstruction and its amendments, as well as with all other resolutions clashing with what is established in current regulations is revoked..

#### **TRANSITORY DISPOSITIONS**

**UNIQUE ARTICLE**-The present regulation and the revocation ordered in the Article Second will become effective one year after this decree has been published in the Official Gazette.

TO BE NOTED, RECORDED AND PUBLISHED IN THE OFFICIAL GAZETTE

**RICARDO LAGOS ESCOBAR**  
President of the Republic

**JORGE RODRIGUEZ GROSSI**  
Minister of Economy , Development and  
Reconstruction

## **APPENDIX 4 Decree 77 (in English)**

[seal -- Chief,  
For. Trade Dept.]

### **REGULATIONS IMPLEMENTING TITLE I OF LAW 19,912 AND REQUIREMENTS FOR THE PREPARATION, ADOPTION AND APPLICATION OF TECHNICAL REGULATIONS AND CONFORMITY ASSESSMENT PROCEDURES**

[seal – Legal Counsel]

**SANTIAGO, February 25, 2004**

No. 77 /

**PURSUANT TO:** Article 32(8) of the Political Constitution of the Republic of Chile; the Agreement on Technical Barriers to Trade of the World Trade Organization, which resulted from the Uruguay Round of Multilateral Trade Negotiations ratified by the Chilean Congress and promulgated through Supreme Decree No. 16 of 1995 of the Ministry of Foreign Relations; and Article 5 of Law No. 19,912 bringing said legislation into compliance with the World Trade Organization Agreements signed by Chile; and

#### **WHEREAS:**

The Ministry of Economy, Development and Reconstruction is the Chilean entity responsible for administering the World Trade Organization Agreement on Technical Barriers to Trade (“TBT Agreement” of Annex IA of the WTO Agreement), hereinafter the TBT Agreement, and the Point of Contact on bilateral or regional agreements relating to these subjects;

It is necessary to ensure fulfillment of the obligations derived from this Agreement and related bilateral or regional agreements on the preparation, adoption and application of technical regulations and the respective conformity assessment procedures;

It is necessary to establish criteria for preparing, adopting and applying the technical regulations and conformity assessment procedures relating to those regulations in order to ensure that they do not become unnecessary technical barriers to trade.  
T/R 03.06.04

[seal – REGISTRY  
UNDERSECRETARIAT OF  
ECONOMY, DEVELOPMENT  
AND RECONSTRUCTION  
08 JUN 2004  
PROCESSING DESK

[seal – REGISTRY  
OFFICER w/  
initials]

[seal – Undersecretary  
of Economy  
w/ initials]

## DECREE

### SCOPE

**Article 1.** These regulations shall be applied in the preparation, adoption and application of technical regulations and conformity assessment procedures in a manner consistent with the provisions of the TBT Agreement.

The term “adoption” is used to refer to the point in time at which the legal processing of technical regulations and/or conformity assessment procedures has been completed and they are published in the Official Gazette.

The word “application” is used to refer to the point in time as of which compliance with a technical regulation or conformity assessment procedure may be required.

In the event that laws establish special procedures, this decree shall be applied on a supplemental basis.

The following definitions shall apply for the purposes of this decree:

**Technical regulation:** A directive, compliance with which is mandatory, whereby the competent authority, through an administrative action, establishes the characteristics of a product or the production processes or methods relating to the product, including applicable administrative provisions. It may also include, or exclusively address, requirements in the areas of terminology, symbols, packaging, branding or labeling applicable to a product, production process or method. Preparation, adoption and application shall be the responsibility of the respective Ministries or agencies duly authorized for this purpose.

**Conformity assessment procedure:** Any procedure used, directly or indirectly, to determine that relevant requirements for technical regulations are fulfilled. Conformity assessment procedures include procedures for sampling, testing and inspection; evaluation, verification, and assurance of conformity; and registration, accreditation and approval, whether separately or in different combinations.

### PRINCIPLES

**Article 2.** When technical regulations and/or conformity assessment procedures are needed and relevant international standards already exist or their final formulation is imminent, the Ministries or agencies duly authorized to adopt them shall use those international standards or the relevant parts of them as the basis for their technical regulations or procedures except in the case where such institutions believe that those international standards or the relevant parts thereof are not an effective or appropriate means for achieving legitimate objectives pursued. It shall be understood that the adoption of international standards as national fulfills the requirements of this article.

**Article 3.** Technical regulations and/or conformity assessment procedures shall not restrict trade more than is necessary to achieve legitimate objectives, taking into account the risks that not achieving them would create. Such objectives include national security requirements, protection of human health or safety, protection of animal or plant life or health, or protection of the environment or the prevention of potentially deceptive practices. Relevant elements to be considered when evaluating these risks include, *inter alia*, available scientific and technical information, related processing technology or the intended end uses of products.

**Article 4.** Technical regulations shall be prepared, adopted and applied so that imported products are accorded treatment no less favorable than that accorded to like products of national origin and to like products originating in any other country. In addition, conformity assessment procedures shall be prepared, adopted and applied so as to grant access to suppliers of like products originating in other countries under conditions that are no less favorable than those accorded to the suppliers of like products of national origin or like products originating in any other country, under comparable circumstances.

**Article 5.** Whenever appropriate, technical regulations based on product requirements shall be defined on the basis of properties in terms of product performance rather than on the basis of product design or descriptive characteristics.

## PROCEDURES

**Article 6.** The preparation, adoption and application of technical regulations and/or conformity assessment procedures, as well as amendments thereto, shall be subject to the following provisions:

- (a) Except as provided in Article 7, the Ministry or agency with regulatory powers shall publish, through a notice placed in a communications medium with national distribution or on its web site, the draft technical regulation or conformity assessment procedure it is proposing to adopt.
- (b) The above-mentioned notice must include, at the least, an abstract of the draft technical regulation or conformity assessment procedure and in such case must indicate the place where the complete text can be consulted. The abstract must indicate the purpose of the draft regulation or procedure and the reasons for the approach adopted. Copies of the abstract and the draft regulation must at the same time be submitted to the Ministry of Economy, Development and Reconstruction for the purposes established in Article 9.
- (c) As of the date the notice indicated in (a) above is published, the competent authority must keep on file for access by interested parties a report which must contain a succinct explanation of the purpose of the measure that it wants to implement and its content; of the alternatives considered and the reasons for rejecting them; a description of the advantages and disadvantages and technical feasibility of verifying compliance with

the measure; and the existence of applicable international standards on the subject.

(d) The notice indicated in (a) above must be published sufficiently in advance of the date the measure is adopted so that anyone can submit written comments within a period of no less than 60 days, attaching any background material he or she deems necessary.

The Ministry or agency with regulatory powers shall analyze and take into account said written comments. In addition, it must make available to the public the responses to any significant comments it received, at the same time as the final technical regulation or conformity assessment procedure is published.

Notwithstanding the provisions of the preceding paragraph, the competent authority shall in no way be required to provide confidential information whose disclosure could constitute an obstacle to compliance with laws, could be otherwise contrary to the public interest, or could damage the legitimate commercial interests of public or private companies.

(e) Technical regulations and/or conformity assessment procedures must allow a reasonable time between the date of their adoption and their application. A reasonable time shall be understood to mean a period of no less than six months, except when this would be an ineffective means for achieving legitimate objectives.

**Article 7.** In the event that duly substantiated urgent problems relating to safety, health, environmental protection or national security arise or threaten to arise, the Ministry or agency with regulatory powers may omit the steps provided for in the preceding article and must inform the Ministry of Economy, Development and Reconstruction that the regulations are being put into effect.

**Article 8.** Notwithstanding the provisions of the preceding article, once technical regulations and/or conformity assessment procedures have been adopted in the cases indicated in that article, the competent authority must provide sufficient opportunities for anyone to submit written comments, attaching the background material he or she deems necessary.

The Ministry or agency with regulatory powers shall analyze the comments received and take said written comments into account. In addition, it must make available to the public responses to any significant comments it received.

**Article 9.** The Ministry of Economy, Development and Reconstruction must comply with the relevant measures for notifying other members of the World Trade Organization of draft regulations and/or conformity assessment procedures and for receiving comments from them, as established in Article 2, paragraph 9; Article 3, paragraphs 2 and 3; Article 5, paragraph 6; and Article 7, paragraphs 2 and 3 of the TBT Agreement, as applicable.

Except in the cases indicated in Article 7, those technical regulations and/or conformity

assessment procedures that are reported to the World Trade Organization in accordance with the above-mentioned provisions may be issued by the authorized agencies only after at least 60 days have elapsed since they were reported to the WTO by the Ministry of Economy, Development and Reconstruction, which event shall be reported on a timely basis by that Ministry.

Under the situations described in Article 7, the Ministry of Economy, Development and Reconstruction must comply with the measures for reporting regulations and/or conformity assessment procedures and receiving comments, as established in Article 2, paragraph 10; Article 3, paragraphs 2 and 3; Article 5, paragraph 7; and Article 7, paragraphs 2 and 3 of the TBT Agreement, as applicable.

**Article 10.** Technical regulations and/or conformity assessment procedures must include the following information, as applicable:

- (a) Identification of the product, including its classification according to the Harmonized Commodity Description and Coding System (HS), and the purpose of the measure;
- (b) Specifications and characteristics relating to the product, method or process established in the regulations in accordance with its purpose;
- (c) Conformity assessment methods;
- (d) Data and other information products must display, or if not applicable, then packaging or packing and labeling requirements, as well as the size and characteristics of the various labels, as appropriate;
- (e) The degree of conformity with international standards and guidelines used as the basis for preparing them;
- (f) Designation of the institution or institutions that will monitor compliance with the regulations, with the understanding that this requirement is also considered satisfied when the technical regulation makes reference to some legal provision in which the supervisory institution is identified; and
- (g) Other information deemed necessary for the proper understanding and scope of the regulation.

The requirement of including one or more of the items of information identified above shall be considered to have been met when they are contained in one or more of the standards to which the technical regulation or conformity assessment procedure makes reference..

**Article 11.** Technical regulations and/or conformity assessment procedures that are adopted must have the following supporting documentation, which shall be available to anyone who requests them:

- (a) Technical bases for the authority's decision, including the targeted policy objectives and a description of how the technical regulation will contribute to their achievement;
- (b) Description of the options analyzed by the responsible authority and their advantages and disadvantages, including background information relating to the most relevant international practices, as well as reasons explaining the decision that was made;
- (c) Process for receiving comments, including a description of the stages in the process starting with the published notice that initiated the process, [and] a list of institutions that participated in the preparation of the technical regulation;
- (d) A description of changes made to the original draft as a result of the comments process;
- (e) A description, at least in qualitative terms, of the potential impact on the domestic market, costs of implementation, and compliance-monitoring costs;
- (f) A description, at least in qualitative terms, of the impact on small and medium-sized enterprises, as applicable; and
- (g) The responses to the comments received during the period for commenting, in accordance with the provisions of Article 6(d) and Article 8 of this Decree.

**TO BE NOTED, RECORDED AND PUBLISHED IN THE OFFICIAL GAZETTE.**

[seal –  
Undersecretary  
of Economy]

[seal – Ministry of Economy,  
and Energy]

/s/

RICARDO LAGOS ESCOBAR  
PRESIDENT OF THE REPUBLIC

/s/

JORGE RODRIGUEZ GROSSI  
MINISTER OF ECONOMY & ENERGY

Transcribed for your information.  
Respectfully,

[seal – Ministry of Economy,  
Development and Reconstruction  
Undersecretary]

/s/

ALVARO DIAZ PEREZ  
Undersecretary of Economy,  
Development and Reconstruction



## **APPENDIX 5 Answer concerning maritime transport**

### ***1.3 Trade in Services***

Page 35 of the Chilean report sets out that major seaports in Chile are owned by the State but concessions have increasingly given to private operators. Further, involvement of the State in the sea ports does not in any way preclude private participation. In this regard, we would like to know -

- (a) what is the current policy in granting concession to private operators in the operation of sea port and port-related services; and
- (b) whether local and foreign services providers enjoy the same treatment in applying for / obtaining / exercising the concession?

**ANSWER:**

(a) The process of concessions is done through a public tendering with specific terms of references. For granting concessions to private operators, the acting Law requires for natural or juridical persons to be established in Chile. A specific juridical person is needed to obtain a concession. The concession will be granted for 20 years with the possibility of extending to 30 year under certain conditions.

(b) For applying for /obtaining/exercising the concession, there is no discrimination between Chilean or Foreign.

## **APPENDIX 6 Chilean interpretation of the administrative separation of HKC**

### **Chile's Interpretation regarding Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China**

The Basic Law is the main constitutional document governing the HKSAR of the People's Republic of China.

In this respect, the Basic Law establishes the principle of "one country, two systems" which considers that HKSAR is a local administrative region which comes directly under the Central People's Government of China, and it allows it to enjoy a high degree of autonomy.

Consequently, the Basic Law provides that the HKSAR may on its own maintain and develop relations and conclude and implement agreements with foreign states, regions and relevant international organizations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, tourism, cultural and sport fields.

However, while HKSAR enjoys a high degree of autonomy to negotiate and conclude FTA's on its own using the name Hong Kong, China, the fact that Hong Kong is not a sovereign state needs to be recognized. Therefore, in view of its non-sovereign status, there are areas that could not be included in a possible Chile – Hong Kong China FTA which may carry sovereignty implications and would require a separate and formal authorization from the Central People's Government of China. In this respect we have identified the following areas: any reference to territory; with respect to investment, any reference to expropriation and compensation provisions; regarding intellectual property, any none trade related matter.