

**ENHANCING MARKET OPENNESS,
INTELLECTUAL PROPERTY RIGHTS, AND COMPLIANCE
THROUGH REGULATORY REFORM IN**

CHILE



ABSTRACT

This report was prepared for the purposes of a review by the Trade Committee in the context of Chile's accession to the OECD. In light of the formal opinions of OECD Committees and other relevant information, the OECD Council decided to invite Chile to become a Member of the Organisation 15 December 2009. After completion of its internal procedures, Chile became an OECD Member on 7 May 2010.

The present report was finalised in October 2009 using information available at the time of preparation. It is published on the responsibility of the Secretary General.

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The Working Party of the OECD Trade Committee discussed this report and agreed to make the findings more widely available through declassification under its responsibility. The study is available on the OECD website in English: www.oecd.org/trade.

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LIST OF ABBREVIATIONS

A-B-C	Argentina-Brazil-Chile
AEO	Authorised Economic Operators based on the SAFE Framework
APEC	Asia-Pacific Economic Cooperation
ATA Convention	The Customs Convention on the ATA Carnet for the Temporary Admission of Goods
BRIICS	Brazil, Russia, India, Indonesia, China and South Africa
BCC	Banco Central de Chile
BIAC	Business and Industry Advisory Committee to the OECD
BIT	Bilateral investment treaty
CORFO	Chile's Development Promotion Agency
CIP	Committee on Intellectual Property
CU	Customs union
Direcon	General Directorate for International Economic Relations
DSB	Dispute Settlement Body (WTO legal body)
EFTA	European Free Trade Association
EU	European Union
FDI	Foreign direct investment
FIC	Foreign Investment Committee
FTA	Free trade agreement
GATT	General Agreement on Tariffs and Trade (a WTO agreement)
GATS	General Agreement on Trade in Services (a WTO agreement)
GDP	Gross domestic product
GPA	Agreement on Government Procurement (a WTO agreement)
HS	Harmonized System
IAAC	Inter American Accreditation Corporation
IAF	International Accreditation Forum
IIPA	International Intellectual Property Alliance
ILAC	International Laboratory Accreditation Corporation
INAPI	Industrial Property Office
INN	National Standardization Institute
IPR	Intellectual property rights
IRS	Internal Revenue Service
IT	Information Technology
MFN	Most favoured nation
MRA	Mutual recognition agreement
NAFTA	North American Free Trade Agreement
NT	National treatment
OECD	Organisation for Economic Co-operation and Development
OIE	World Organisation for Animal Health
PCT	Patent Cooperation Treaty
RIA	Regulatory impact assessment
RTA	Regional trading arrangement
SAC	Standardisation Administration of Chile
SAFE Framework	WCO Framework of Standards to Secure and Facilitate Global Trade

SAG	Agriculture Livestock Service (agency under the Ministry of Agriculture)
SBA	Software Business Alliance
SDoC	Suppliers' declaration of conformity assessment
SEC	Superintendency for Electricity and Fuels
Sernapesca	National Fisheries Service (Agency under the Ministry of Economy)
Sercotec	Government's Technical Cooperation Service
SME	Small and medium-sized enterprises
SPS Agreement	Agreement on the Application of Sanitary and Phytosanitary Measures (a WTO agreement)
SPS measures	Sanitary and phytosanitary measures
TBT Agreement	Agreement on Technical Barriers to Trade (a WTO agreement)
TRIPS	Trade-related intellectual property rights
TRIPS Agreement	Agreement on Trade in Intellectual Property Rights (a WTO agreement)
UNCTAD	United Nations Conference on Trade and Development
UPOV	Union for the Protection of New Varieties of Plant
VAT	Value added tax
WCO	World Customs Organisation
WEF	World Economic Forum
WCT	WIPO Copyright Treaty
WIPO	World Intellectual Property Organization
WPPT	WIPO Performances and Phonograms Treaty
WPTC	Working Party of the Trade Committee

Executive Summary

A small open economy, Chile relies heavily on trade for its economic growth. This review highlights Chile's well developed regulatory framework for trade, including a number of recent regulatory reforms which are considered here in light of market openness principles. More so than in many countries, the Political Constitution of Chile conditions the domestic regulatory framework for trade. The principle of direct application it incorporates means that the provisions of international treaties to which Chile is party are "self executing" and thus directly applicable at all levels of the domestic legal and regulatory system as if national legislation. As a result, the principle of non-arbitrary discrimination enshrined in the constitution is woven deeply into the fabric of laws, institutions and regulatory practices relating to trade, which are reviewed in this study. The principles contained within the Constitution in combination with a number of clear implementing laws, and well functioning inter-ministerial processes overseen by the General Directorate for International Economic Relations (Direcon), represent a framework for regulating trade policy highly supportive of market openness.

This review highlights that transparency is well supported in Chile's regulatory system. The constitutional guarantee of non-arbitrary discrimination when coupled with the direct application principle makes Chile's domestic legal and regulatory system one of the least discriminatory from a legal perspective. Although Chile does not apply regulatory assessments (RIAs) on a systematic basis, its regulatory framework for business rates highly against the average for its region and approaches OECD standards. Chile is an ardent supporter of harmonisation towards international standards domestically as well as internationally. Its National Customs Service, on a yearly basis, seeks public comments to streamline conformity assessment and establishes annual plans to implement reforms addressing them. Chile has implemented a system for protecting intellectual property rights which is generally coherent with international norms from a legal perspective, but might better support domestic innovation with more robust enforcement. With dynamic systems for inter-ministerial consultations including on international trade obligations, Chile has engaged trade compliance from the perspective of an initiator and well as respondent. Below are more detailed synopses of subjects addressed in this review and policy options for reforms where relevant.

Thematic synopses and policy options for consideration

In the area of **transparency**, Chile has a number of laws including Law 20.285 passed last year to further strengthen transparency by requiring government bodies to justify the restriction of information from public access, in comparison to the previous practice of requiring citizens to justify its release. Law 20.285 also takes a novel approach in establishing a Council on Transparency vested with significant regulatory duties and powers to promote transparency. Meetings with the business community as part of this exercise registered satisfaction with regulatory transparency even prior to the entry into force of this legislation.

Policy options

- Although a number of key government services related websites already have English versions, expanding the number of government websites and the amount of information available in English may further improve transparency.
- Mandatory and effective consultation procedures exist for, technical regulations, government procurement and areas covered by international agreements. Consideration should be given to making such mandatory consultation procedures a generally applicable law.

The comprehensive application of the **non-discrimination** principle throughout Chile's legal and regulatory framework for trade is an example of OECD best practice. Chile's openness to foreign participation in government procurement points represents an example that should be further studied as a possible contribution to rulemaking at the international level.

Policy options

- No recommendation.

Chile has made significant progress in **use of the least trade restrictive regulations** particularly *via* its longstanding programme of leveraging information technology (IT) to provide government services more efficiently and effectively. Although Chile does not have regulatory capacity to systematically apply RIAs, it already applies elements of RIAs under Decree 77/2004 relating to technical standards.

Policy options

- Improving the predictability and thus lessening the trade restrictiveness of regulations is as much about individual regulations as it is about consistency across the domestic regulatory framework. Expanding the coverage of regulatory principles in Decree 77/2004 beyond the area of mandatory technical regulations would serve to reduce the systemic restrictiveness of the domestic regulatory framework, by reducing divergences in regulatory approaches among differing subjects, levels and geographic areas of regulation.
- Consider adopting a pilot programme for RIAs that includes trade and investment impacts as key components of analysis. Seek to apply them as a means to reduce the uneven regulatory performance in the rural/urban and regional contexts, which often constitute a barrier to economic development in underperforming areas.

- Continue efforts to integrate the information systems of differing government ministries and agencies to set the stage for the implementation of true “single windows”, which would allow for the completion of procedures involving multiple government bodies at a single window such as at the National Customs Service.

Chile sets a high standard in terms of **international harmonisation of standards** with Decree 77/2004 requiring the adoption of existing international standards as national ones unless they would not be effective in the domestic context. Two inter-ministerial processes relating to technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) measures meet on a regular basis to support the harmonisation of draft and existing standards to international ones. The Inter-ministerial Committee on Sanitary and Phytosanitary Standards, in particular, seeks to support efforts by Direcon, in a number of international organisations including the WTO and the Codex, to initiate and to facilitate policy processes encouraging their memberships to harmonise their domestic standards towards international ones.

Policy options

- No recommendation.

Importers met as part of the Secretariat mission have indicated little difficulty in the area of **streamlining conformity assessment**. No bilateral mutual recognition agreements are in force between Chile and its trade partners despite the large number of trade agreements it has joined. Chile is actively seeking to conclude a multilateral recognition agreement with the International Accreditation Forum (IAF), and work towards a Mutual Recognition Agreement (MRA) on Food in the Asia-Pacific Economic Cooperation (APEC) context. 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.

Policy options

- Complete the process of joining the IAF and other international arrangements for MRAs on testing by conformity assessment bodies.
- Continue supporting APEC efforts to develop a sectoral MRA on food, and in other areas and fora. Consider further efforts to conclude government-to-government sectoral MRAs.
- Consider establishing a system of Suppliers Declarations of Conformity Assessment with attention to key trade partners.

Chile has a system of **intellectual property rights** that is well developed from a legal perspective. Significant amendments and modifications have been made in recent years to bring the system closer to the international norms of developed economies, but problems with enforcement remain.

Policy options

- Scope for progress remains with respect to administration and enforcement of intellectual property rights. One particularly important area is reducing the rate of piracy in copyrighted goods and counterfeiting of trademarks. Experience suggests that linking international cooperation with domestic measures can enhance effectiveness in this area.
- Consideration should also be directed towards enhancing the domestic economy's capacity both to produce and to employ intellectual property. This would require building human capital and a combination of training and economic incentives for the private sector.
- Consider reviewing the intellectual property rights regime for pharmaceutical and agrochemical products, with attention to the use of test data and the approach to granting commercial authorisations for generic products. Some OECD Members consider that these aspects may be enhanced in line with the objectives of multilateral and bilateral commitments.

To support **compliance** with international obligations, Chile relies on two regular inter-ministerial dialogues on TBT and SPS attended by Direcon. Well aware of complexity in international trade obligations, Chile has joined compliance processes within the Dispute Settlement Body (DSB) of the WTO both as an initiator and respondent. Chile is in the process of implementing one unfavourable decision from the WTO DSB and engaged in consultations on two issues under its trade agreements.

Policy options

- Continue to seek resolution on existing issues.

The approach taken by this review draws on Market Openness Chapters of the well-established Country Reviews of Regulatory Reform programme carried out by the Governance Directorate in co-operation with the Trade and Agriculture Directorate.¹ However, unlike the Market Openness Chapters, the reviews of market openness prepared for the accession process are stand-alone documents. In terms of format, they are dissimilar from traditional reviews of market openness in that they omit treatment of what is traditionally the sixth principle of market openness (i.e. competition policy), while covering two new areas (i.e. intellectual property rights and compliance).

Examining market openness is important because it assesses a country's ability to reap the benefits of globalisation and international competition by eliminating or minimising the trade distorting impact of border as well as behind-the-border measures. Improving a country's economic efficiency and competitiveness depends in part on its domestic capacity to integrate foreign trade and investment perspectives into regulations and regulatory practices. From a market openness perspective, regulatory reform is in the interest of the domestic economy, but yields significant benefits for national and foreign stakeholders alike.

High quality regulation can be achieved without compromising market openness, and open market policies can be enhanced through strong regulatory underpinnings. This review of market openness prepared as part of the Trade Committee's accession process thus examines to what extent domestic regulations directly or indirectly distort or facilitate international competition, and suggests policy options to improve the domestic regulatory framework for international trade and investment liberalisation.

1. The economic and policy environment

Chile pursues a macroeconomic policy with monetary policy settings designed to achieve inflation targets, exchange flexibility and prudent tax policy design.² These policies have underpinned recent years of robust expansion and the 4.8% GDP growth recorded in the third quarter of 2008.³ Economic activity in Chile has since moderated and the economic outlook for the coming months will be impacted by declining copper prices and falling exports. The slowing world economy, tighter financial conditions and lower investments in mining and energy will all reduce growth. Inflation is expected to decline as pressure from high commodity prices recedes.⁴ Loosening of the monetary policy, as occurred when the *Banco Central de Chile* (BCC) cut interest by 100 basis points to 7.25% in January,⁵ is likely to continue unless the recent depreciation of the Chilean peso revives inflationary pressures.⁶

The world's leading producer of copper, Chile's main engine of growth is an export sector dominated by such products as minerals, wood, fruit, seafood and wine. Authorities have pursued generally sound economic policies for nearly three decades.⁷ Chile's extreme north-south orientation produces seven different macro-regions distinguished by climate and geographical features, which allows it to stagger harvests and thus extend harvesting seasons.⁸ Chile's agricultural exports to its principal consumer markets, which are primarily located in the northern hemisphere, further enhance this "climate comparative advantage". Furthermore, forestry is Chile's second largest export sector trailing only the well-established copper mining industry, representing 13% of the country's total exports.

Chile's also pursues a policy of export diversification, and has developed the domestic salmon industry into one of its largest export sectors. Entering the global salmon market in 1974, Chile has already become the second largest producer of salmon in the world after Norway. In 2006, Norway and Chile were almost equal, accounting for 38.7% and 37.9% of the 2006 global market for salmon.⁹

1.1 Trade policy developments

As a relatively small economy that is highly dependent on foreign trade, Chile's trade policy focuses on improving and ensuring access for its goods and services to its most important markets and to stimulating domestic and foreign investment. A cornerstone of this "multidimensional" or "dual track" trade policy pursued by Chile is its strategy of applying a uniform overall tariff on essentially all imports. As Table 1 shows, the reduction of tariffs during the 1990s has left Chile as one of the most open developing countries based on the tariff structure. Between 1999 and 2003, Chile reduced its simple average most favoured nation (MFN) tariff rate from 11% to 6%. Several outliers in the application of the uniform tariff occur for wheat, wheat flour and sugar. The low and uniform applied tariff has nevertheless supported the efficient allocation of domestic economic resources, and buttressed Chile's capacity to negotiate trade agreements.¹⁰ At the end of the Tokyo Round (1973-79) of GATT trade negotiations, Chile earned a rare distinction as its first member to bind "its entire tariff universe".¹¹

Table 1. Chile's statutory and trade-weighted tariffs

		Chile						OECD Average					
		1995	2000	2005	2006	2007	2008	1995	2000	2005	2006	2007	2008
Total Trade	Simple Average	10.97	9.00	6.00	5.98	5.98	5.99	8.24	6.38	5.70	5.50	4.65	3.96
	Weighted Average	10.93	9.00	5.99	5.98	5.98	5.98	5.01	4.09	3.53	3.63	2.84	3.02
Capital goods	Simple Average	10.86	9.00	5.93	5.93	5.93	5.93	6.54	3.88	2.95	2.74	2.03	2.15
	Weighted Average	10.84	9.00	5.97	5.93	5.93	5.93	4.02	2.67	2.15	2.22	1.28	1.81
Consumer goods	Simple Average	10.98	9.00	5.99	5.99	5.99	5.99	10.29	9.56	8.31	7.75	6.50	6.67
	Weighted Average	10.95	9.00	5.99	5.99	5.99	5.99	6.72	5.79	5.06	5.03	4.02	4.58
Intermediate goods	Simple Average	11.00	9.00	6.00	6.00	6.00	6.00	7.74	5.45	4.57	4.33	3.56	2.90
	Weighted Average	11.00	9.00	6.00	6.00	6.00	6.00	4.51	3.61	2.77	2.74	2.01	2.18
Raw materials	Simple Average	11.00	9.00	6.13	5.96	5.96	6.09	7.35	5.44	7.17	8.16	8.00	3.63
	Weighted Average	11.00	9.00	6.02	5.99	5.99	6.02	4.17	4.28	3.67	4.76	4.70	2.47

Source: UN TRAINS.

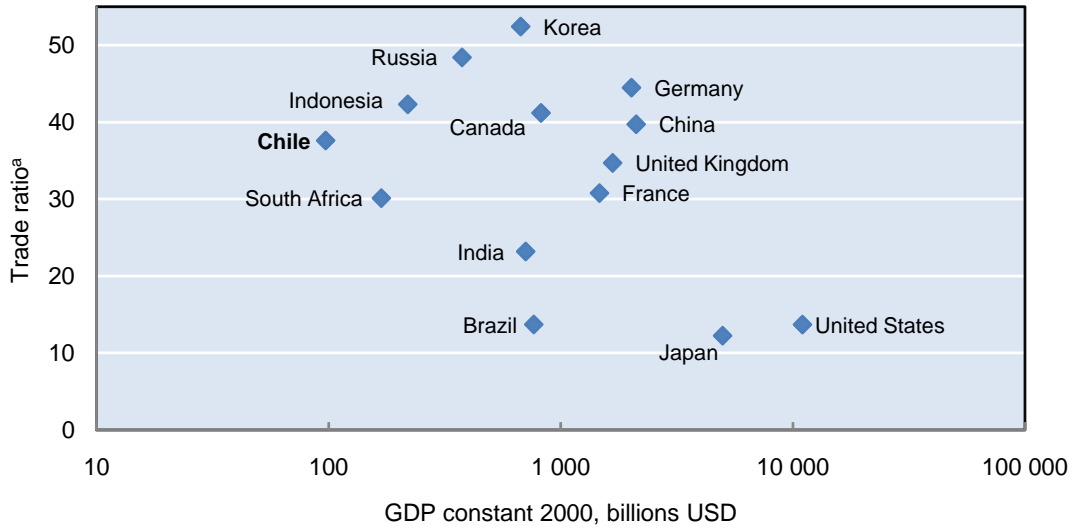
1.2 Trade openness

Chile's trade openness can be measured by the ratio of total exports and imports in GDP. This ratio is often used as an indicator to measure a country's "openness" or "integration" in the world economy but is influenced by various endogenous factors, such as the size of the economy, distance from major or dynamic markets and variations in economic growth. Chile's trade turnover/GDP ratio is relatively high in relation to the BRIICS (Brazil, Russia, India, Indonesia, China and South Africa) economy averages, and well in line with OECD averages (Figure 1).

The expansion of Chile's international trade has been the key for its rising prominence in the world economy. After a decade of impressive growth rates, Chile experienced a moderate economic downturn in 1999, due to unfavourable global economic conditions of the Asian financial crisis in 1997. The economy remained sluggish until 2003, when it began to show clear signs of recovery, achieving 3.3% real GDP growth. The Chilean

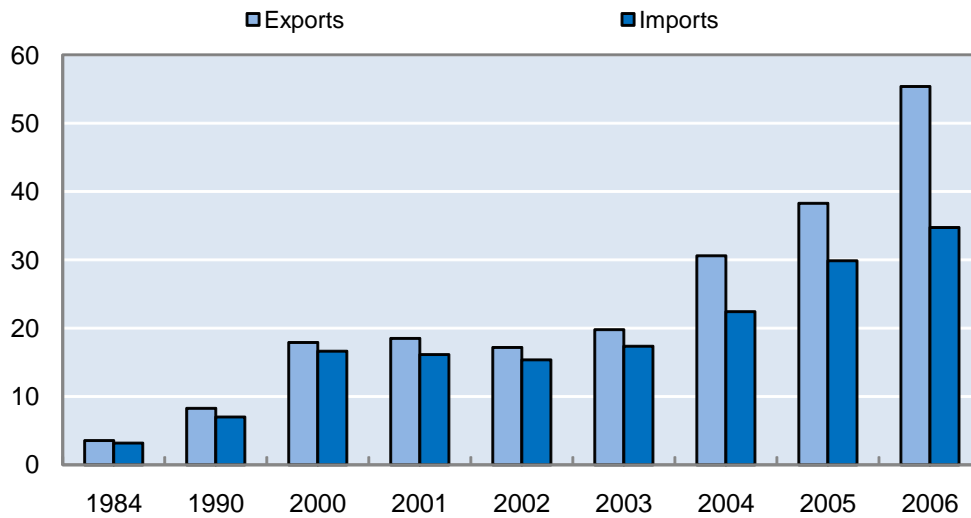
economy finished 2004 with growth of 6.1%. Real GDP growth reached 6.3% in 2005 before falling back to 4.0% growth in 2006. Although Chile’s trade performance generally traced these macroeconomic developments from 1984 through 2003, higher energy prices as well as declining consumer demand which restrained the economy in 2006,¹² failed to disrupt the dramatic surge recorded from 2003 through 2006 (Figure 2).

Figure 1. Trade ratios^{a, b} in BRIICS countries and selected OECD countries, 2006^c



- a) Average of exports and imports of goods and services as a share of GDP constant 2000 USD.
 - b) Logarithmic scale on the horizontal axis.
 - c) 2005 for Canada, Japan and the United States.
- Source: WTI.

Figure 2. Chile’s trends in foreign trade, selected years



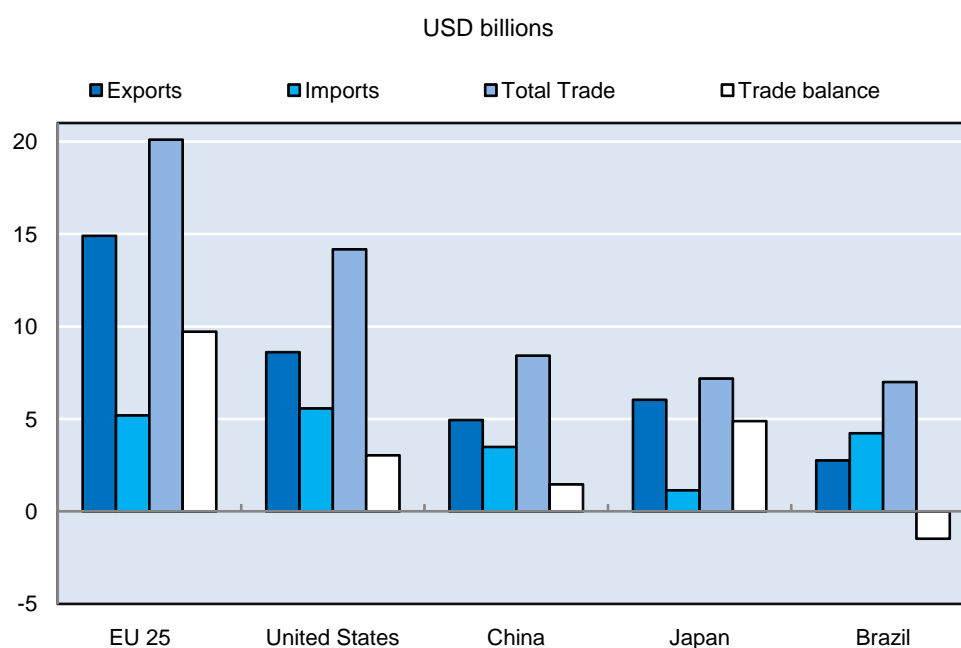
Source: UN ComTrade.

The policy of “open regionalism” pursued by Chile ensures that no trade agreement limits freedom to negotiate further agreements or creates obstacles to trade *vis-à-vis* other

trading partners.¹³ This policy has supported the wide diversification of Chile's trading partners (Figure 3). As proportions of Chile's total exports, Asian, EU, NAFTA and Latin American countries absorbed, respectively, 37%, 26%, 17% and 16% in 2008.¹⁴ Total imports from these same regional groupings were 20% for both Asian and NAFTA countries, while EU and Latin American countries represented 15% and 23%, respectively.¹⁵ China accounted for 24% of Chile's export earnings in 2008.¹⁶

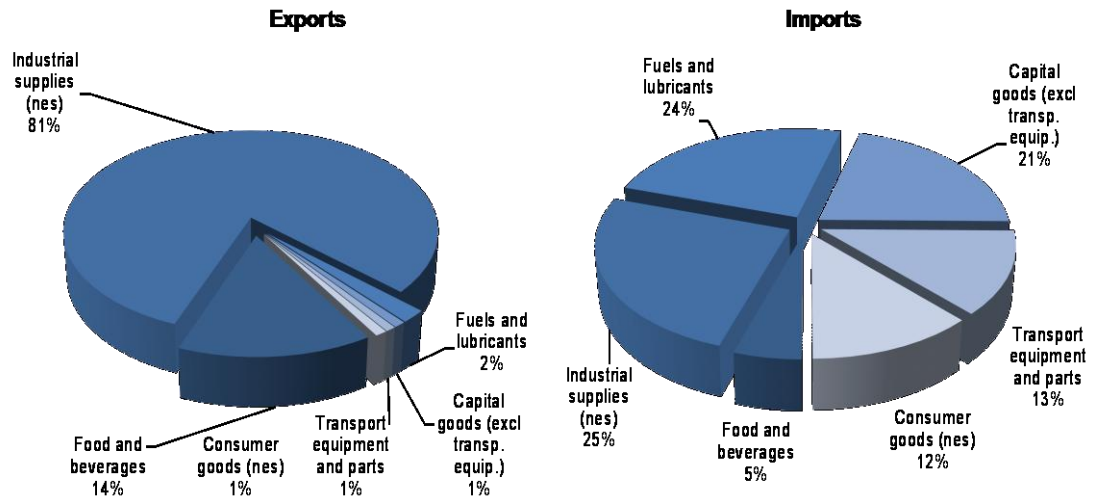
Chile is diversifying from natural resource based economic activities towards processing goods, and low technology goods. It is pursuing a goal of concentrating development efforts in sectors such as industrial goods and equipment to expand its range of exports. These efforts are yielding positive results (Figure 4). Total inward foreign direct investment (FDI) was USD 3.4 billion in 2006, up 52% from 2005. However, 80% of FDI continues to go to only four sectors: electricity, gas, water and mining. Much of the jump in FDI in 2006 resulted from acquisitions and mergers and has done little to create new employment.¹⁷ Chile's services trade composition indicates a concentration in sectors such as travel, transportation, banking, communications and information technology (IT) related services (Figure 5).

Figure 3. Chile's top trade partners, 2006



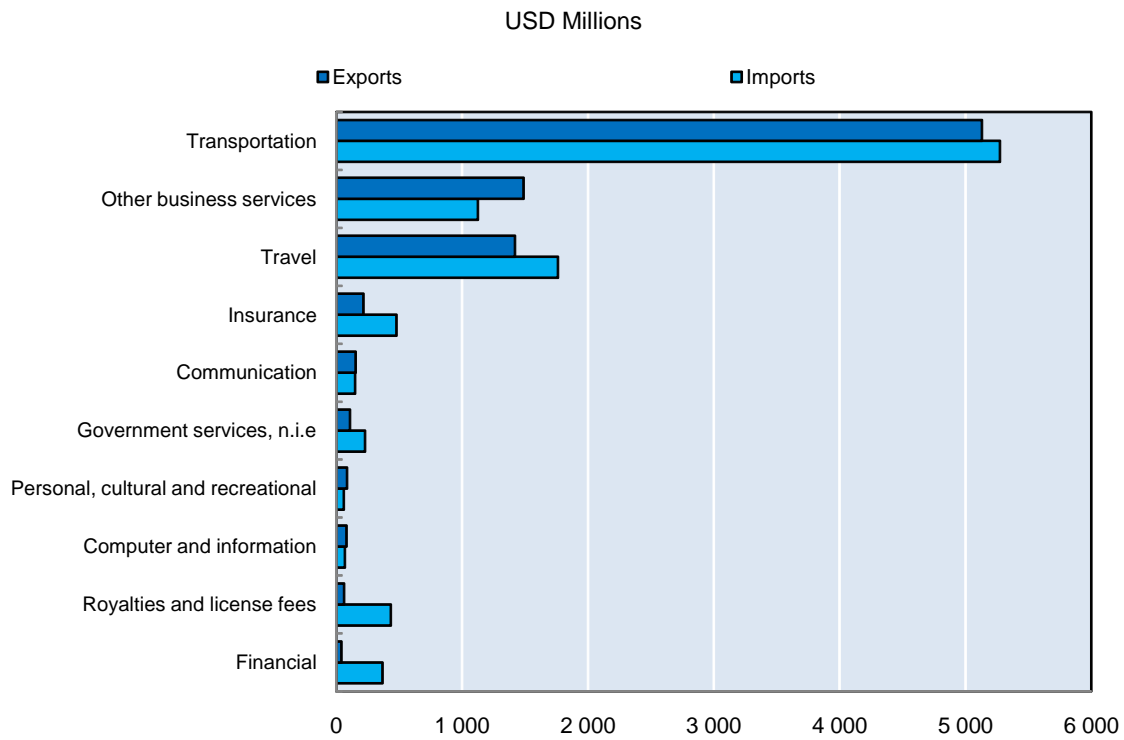
Source: UN ComTrade.

Figure 4. Chile's foreign trade product structure



Source: UN ComTrade.

Figure 5. Chile's services trade composition



Series shown on the chart are ordered by the value of exports in 2007.

Source: IMF (2008), IMF Balance of Payments.

2. The policy framework for market openness: The six efficient regulation principles, intellectual property rights and compliance

The expansion of economic globalisation and the fall of traditional barriers to trade have made the complementarities of market openness and regulatory reform increasingly important. Trade and investment liberalisation can be an important factor in successful regulatory reform, while regulatory reform can play a strong role in ensuring that liberalised conditions for trade and investment bring the expected benefits in terms of economic performance. When designed and implemented properly, regulatory reform establishes domestic regulatory environments that improve efficiency and increase the flow of international trade and investment. Good regulation encourages productivity gains, investment and innovation, job creation, and boosts growth and competitiveness. The prospect of these domestic benefits is the rationale behind regulatory reform.

An important step to ensure that regulations do not unnecessarily reduce market openness is by building efficient regulation principles into domestic regulatory processes for social and economic regulations, as well as for administrative practices. Trade policy makers have identified six principles as key to market-oriented, trade and investment friendly regulation. They reflect the basic principles underpinning the multilateral trading system. The OECD's six efficient regulatory principles for market openness are: (i) transparency and openness of decision-making processes; (ii) non-discrimination; (iii) avoidance of unnecessary trade restrictiveness; (iv) use of internationally harmonised measures; (v) streamlining conformity assessment procedures; and (vi) application of competition principles from a market openness perspective (Box 1). This report looks at Chile's market openness from the perspective of its regulatory framework under the first five of these principles and the subjects of intellectual property rights and compliance.

Box 1. The OECD efficient regulation principles for market openness

To ensure that regulations do not contradict and reduce market openness, "efficient regulation" principles should be built into the domestic regulatory process and practices. Trade policy makers have identified these six principles as key to market-oriented trade and investment-friendly regulations. They reflect the basic principles underpinning the multilateral trading system.

Transparency and openness of decision making: Foreign firms, individuals and investors seeking access to a market must have adequate information on new and revised regulations so that they can base their decisions on accurate assessment of potential costs, risks and market opportunities.

Non-discrimination: Non-discrimination means equality of competitive opportunities between like products and services irrespective of country of origin.

Avoidance of unnecessary trade restrictiveness: Governments should use regulations that are not more trade restrictive than necessary to fulfil legitimate objectives.

Use of internationally harmonised measures: Compliance with different standards and regulations for like products can burden firms engaged in international trade with significant costs. When appropriate and feasible, internationally harmonised measures should be used as the basis of domestic regulations.

Streamlining conformity assessment procedures: When internationally harmonised measures are not possible, necessary or desirable, recognising the equivalence of trading partners' regulatory measures or the results of conformity assessment performed in other countries can reduce the negative effects of cross-country disparities in regulations and duplicative conformity assessment systems.

Application of competition principles from a market openness perspective: Market access can be reduced by regulatory action ignoring anti-competitive conduct or by failure to correct anti-competitive practices, particularly by incumbent firms which are normally also domestic.

Source: OECD (2002), "Integrating Market Openness into the Regulatory Process: Emerging Patterns in OECD countries" [TD/TC/WP(2002)25/FINAL], 17 February 2003.

2.1 *Transparency and openness of decision making*

Transparency in domestic regulatory processes is a fundamental determinant of market openness for both domestic and foreign participants. It is important for market participants to fully understand the regulatory environment in which they are operating to have opportunities to contribute to regulatory decision-making processes, thus supporting the quality and effectiveness of market access. In order to ensure international market openness, the process of creating, enforcing, reviewing or reforming regulations needs to be transparent and open to foreign firms and individuals seeking access to a market, or expanding activities in that market.

From an economic point of view, transparency is essential for market participants in several respects. Transparency in the sense of information availability offers market participants a clear picture of the rules by which the market operates, enabling them to base their production and investment decisions on an accurate assessment of potential costs, risks and market opportunities. It is also a safeguard in favour of equality in competitive opportunities for market participants and thus enhances the security and predictability of the market. Such transparency can be achieved through a variety of means, including systematic publication of proposed rules prior to entry into force and use of electronic means to share information, such as *via* the internet.

Transparency of decision making further refers to dialogue between regulators and affected parties, which should offer well-timed opportunities for public comment, and rigorous mechanisms for ensuring that such comments are given due consideration prior to the adoption of a final regulation. Market participants wishing to seek clarifications about the application of existing regulations should have appropriate access to appeal procedures. Such dialogue allows market forces to become part of the regulatory process thus facilitating the avoidance of trade frictions.

In Chile, the Political Constitution establishes that actions and resolutions by state entities are public information. Only laws that could impair the functioning of state entities, individual rights and national security can be reserved from transparency requirements. At least three laws govern the subject of transparency in Chile. First, the 1999 Base Law on State Administration (*Ley de Bases de la Administración del Estado*) established the principle that that public work is carried out with transparency in terms of procedures, contents and rationales for decisions. Second, the Law on Administrative Procedures (*Ley de Procedimientos Administrativos*), dating from 2003, similarly establishes that administrative actions carried out by the government bodies and the documents constituting the basis of, or complementing, these actions are public.

The third and most recent law on transparency, Law 20.285, was published on 20 August 2008 and came into force during April 2009. It is far reaching legislation designed to consolidate “the principle of transparency of public work, the right of access to State Administration information, procedures to enforce the right and its injunction, and the exceptions of publication of the information”. Under this law, all information prepared under state budget or in possession of the state is public. Chile has furthermore signed a number of international economic agreements containing disciplines to enhance the transparency of the domestic regulatory environment for trade and investment at the international level.

Regulatory transparency, that is equal access to information on the legal and regulatory framework, is a prerequisite for effective competition. It is essential to all market participants, but particularly to foreign operators coping with additional obstacles such as

language barriers and country specific business practices. Regulatory transparency has three main aspects: (i) access to information on existing regulations, (ii) openness to the rulemaking process through public consultation prior to the adoption of final regulations, and (iii) the possibility of market participants to access appropriate appeal procedures. In addition, transparency is essential for ensuring international competition in two specific areas: (iv) technical regulations and (v) government procurement.

Information dissemination

The first aspect of transparency is easy and open access to information. Every firm operating in the market should have information about regulations, procedures, and other measures that affect its interests and indicate the conditions, constraints and risks that firms will encounter in the market. Having such information reduces uncertainties over applicable requirements, and helps companies to better foresee the costs and returns of their trading activities and investments. Access to information is particularly relevant for foreign firms and new market entrants as they are often unfamiliar with the local regulatory environment, and at times the economic, political, social and cultural environments.

The Constitution governs the creation of laws whereas implementing regulations for creating laws are contained in the Organic Law of the National Congress. These implementing regulations enshrine the principle of transparency by promoting the understanding of procedures, contents and the rationales for decisions adopted. Law 20.285 will require Congress to conduct its public functions under the principle of active transparency by continuously updating information about its structure, legal framework, and records and decisions that affect third parties on the internet. It also indicates that every government ministry or entity is responsible for the transparency of laws and regulations under its competence, and every department must act as a contact point for information dissemination. Thus, in addition to the *Official Gazette*, in which the vast majority of trade related laws and regulations appear, each government body must maintain full texts of the laws and regulations over which they are responsible on their websites. However, no single publication exists in which all laws and regulations that could impact trade and investment are consolidated.

In addition to requiring public bodies to make records and documents public (active transparency), Law 20.285 also provides the public with the right to request information from any public institution (passive transparency). This is a significant departure from previous transparency laws in that it requires the public administration to justify withholding information when requests are made in contrast to the practice of requiring the request for information to also justify its provision.

In keeping with overall progress in transparency within Chile, the government publishes and makes readily available all laws, regulations and other measures concerning trade in goods and services. Chile also complies with its obligations to publish or otherwise communicate such regulations to the public prior to entry into force, in a manner accessible at the international level. In keeping with its WTO commitments, Chile has established an enquiry point to provide WTO members, enterprises, individuals and the public with information related to trade in services and authoritative replies on the interpretation of Chilean laws and regulations relating to trade.¹⁸

Consultation mechanisms

A second fundamental aspect of transparency refers to the openness of the regulation-making process, in particular, providing an opportunity for all stakeholders to participate in formal or informal consultations. Consultations and the equality of access to them have important effects on the quality and enforceability of regulations in general, on the efficiency of economic activities, and on the level of market openness. Chile applies a number of consultation mechanisms both at the inter-ministerial level and with the private sector.¹⁹ Chile also applies consultation process at higher political levels by publishing draft laws, soliciting suggestions and conducting more extensive public hearings on bills of particular interest to the public. Provision of draft legislation with adequate time for meaningful consultations with all relevant stakeholders are the cornerstones of a predictable regulatory environment that is conducive to large and long term investments, which maximise overall welfare.

As the Constitution of Chile does not, as a basic principle, discriminate between domestic and foreign individuals, comments and consultation before the adoption of new or modified regulations often include foreign parties. All individuals whether Chilean or foreign have a basic right to petition to the authorities about any subject of public or private interest without precondition except that such petitions are initiated in a respectful manner. The limited exceptions to this basic rule include cases such as allowing the President of the Republic to request secrecy during Congressional deliberation over the approval of international agreements already signed by the Executive. It is too early to know how Law 20.285 will impact the practice of consultations, although positive implications are expected. The following reviews the practice of consultations at the time this review is being prepared.

No general laws or regulations in Chile prevent or explicitly condition foreign enterprises from commenting on draft legislation. Authorities retain significant discretion over the conduct of consultations because no general law or regulation exists which provides procedural guidelines or minimum standards for consultations. Thus, significant procedural leeway is accorded to authorities when implementing consultations in areas such as which parties are consulted, how long comment periods will be and whether consultations will be conducted based on full or partial texts of draft laws and regulations. In practice, however, it is possible to know the content of bills and to follow their progress *via* the website of the National Congress and its Chambers.

In a number of areas such as the elaboration of technical standards²⁰ and those covered under international agreements, specific rules and mandatory standards on consultations apply. Sectors covered by trade agreements with specific chapters addressing transparency disciplines thus condition the discretion of authorities when implementing consultations. As Chile's Constitution is of the type under which international agreements are "self executing" or directly applicable within the domestic legal system, consultation provisions in international agreements to which Chile is party are directly enforceable as national laws. Officials indicate that as Chile is a unitary state under the Constitution, the principle of market openness contained in international treaty obligations apply directly and across the entire country. There is no decentralisation in the regulation of trade and thus, regional governments have no autonomy in this regard.

Despite the absence of generally applicable mandatory laws or regulations governing consultation processes, the practice of consultations in Chile are regularly carried out in a manner that stakeholders affected by proposed laws and regulations legislations are

consulted with periods for comments allowing for meaningful consultations. Representatives from the business community including foreign enterprises indicate satisfaction with practice of regulatory transparency including the manner in which government bodies conduct consultations.

Box 2. Examples of foreign participation in domestic consultation processes

Two examples of cases where Chile received international comments on proposed technical regulations and took into account appear below.

The first example relating to labelling for footwear began when the Ministry of Economy specified a technical standard for labelling on footwear intended for general use in Decree 27/1984, which was based on the Chilean technical standard NCh 1808 of 1980. The INN (National Standardization Institute) updated that technical standard: Nch 1808.2004 on April 2004. Following that update, the Ministry of Economy together with the Consumer National Service decided to further improve this technical regulation. Accordingly, a working group was formed including the Ministry of Economy, the Consumer National Service, INN and the Custom Agency. The working group elaborated a draft standard in accordance with the procedural requirements of Decree 77/2004, which was then published domestically on 25 August for comments. By 31 August 2005, the WTO also published the Chilean notification of this draft technical standard on footwear labelling under Article 2.9.2 of the Agreement of Technical Barriers to Trade, with 60 days for comments.

Chile received comments of EU, the Chilean footwear producers, the Custom Agency and the Consumer National Service. Following analysis of the comments, the group provided public replies on them via its website: www.reglamentostecnicos.cl. After revising the standard in line with a selection of comments, the final standard was published on 27 April 2006 in the *Official Gazette*, as the final technical regulation of footwear labelling: Decree 17.

The second example relates to a technical standard for wiring. The process of elaborating the Chilean technical standard NCh2020 Electrical Conductors - Wire and insulated cable with thermoplastic began in 2002. The Committee of Thermoplastic Insulated Cables charged with elaborating the standard received international comments from Switzerland and France. The comments were taken into account in NCh 2020, which was the final standard approved by the Committee in 2003.

Source: Government of Chile.

Appeal procedures

A third important aspect of transparency is the openness of appeal procedures. It is important for enterprises with concerns regarding the application of existing regulations to have appropriate access to appeal procedures. Regulations are better accepted and work more efficiently if both domestic and foreign economic actors have access to remedies when they are confronted with overly burdensome or unclear regulatory requirements or unsatisfactory results. These remedies can be included in formal legislation, or they might be part of effective informal channels for lodging and advancing complaints that are open to domestic and foreign parties. In either case, there should be clearly defined time limits for appeals processes, and adequate explanations when requests are denied. Systematic and transparent procedures for appeals remain an important instrument of transparency as they allow misinterpretations of laws and regulations to be reviewed and corrected. A smoothly operating appeal system clarifies the meaning of laws by reducing the uncertainty created when instances of misinterpretations are left unchallenged.

As non-arbitrary discrimination is a principle established in the Constitution, any individual including foreign ones subject to treatment that conflicts with domestic laws and regulations may initiate a legal process under the Constitution. More generally, Law 19.880 “Law on Administrative Procedures” explicitly provides for the right of individuals to

challenge or appeal administrative acts by government bodies. This includes through implementing appeals in domestic courts of justice relating to regulatory actions. An avenue for initiating appeals for information is via the Council for Transparency constituted under that law Law 20.285 (Box 3).

Box 3. Council for Transparency

The Council for Transparency is a government body responsible for supervising the observance of transparency provisions and practices based on Law 20.285 in relation to the civil service and access to State Administration information. It is an autonomous and independent entity and its four members are counsellors appointed for six year terms by the President of the Republic with the Senate's approval. The purpose of the Council for Transparency is to promote transparency in the civil service, control compliance with legislation about transparency and publication of State Administration information, and guarantee the right to access information. The Council has a wide mandate to work on transparency related issues including, but going well beyond, trade and investment.

The Council has the following functions:

- Control compliance with the Transparency Law and sanction officials that violate it.
- Deal with complaints made by private persons because they have been denied access to information.
- Promote transparency in the civil service, the publication of State Administration information and the right of access to information, *via* any means of publication.
- Issue general instructions relating to compliance with legislation on transparency and access to State Administration information and to request alignment of procedures and public service institutions to conform to such legislation.
- Formulate recommendations for State Administration entities aimed at improving transparency in management.
- Provide suggestions to the President of the Republic and the National Congress on laws, instructions and other legislative improvements for guaranteeing transparency and access to information.
- Organize, directly or *via* third parties, training for public officials on transparency and access to information.
- Organize activities to disseminate information regarding transparency to the public.
- Produce statistics and reports on transparency and access to State Administration information in relation to compliance with Law 20.285.
- Ensure the confidentiality of information which the Constitution and the law protect from public disclosure.
- Collaborate with and receive support from public entities and corporate bodies or private persons, domestic or foreign, within their area of competence.

In addition, some of Chile's international trade agreements include dispute settlement mechanisms enabling individuals to resolve their differences relating to regulatory actions covered under that agreement. Chile similarly respects its commitments under the WTO and its various technical bodies, in particular the Dispute Settlement Body (DSB) of the WTO. This mechanism 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 full opportunity to

present their arguments. Chile has itself been an active client of the DSB as complainant, respondent and third party.²¹

*Transparency in the field of technical regulations and standards*²²

Transparency in the field of technical regulations and standards is essential for firms facing diverging national product regulations. Transparency reduces uncertainty over applicable requirements and thereby facilitates access to domestic markets. Best practice in transparent regulatory regimes entails not only access to information, but transparency in the standards setting process. The area of standards development is one in which the ability of all stakeholders, including foreign ones, to contribute to the process will lead to the adoption of standards that are both effective in attaining regulatory objectives and are efficient in the manner that they do so.

In Chile, Decree 77/2004 governs the elaboration of technical regulations and conformity assessment procedures. It sets out minimum standards in terms of publication of draft standards, the conduct of consultation procedures and the manner in which standards are implemented. The Decree requires ministries or agencies with regulatory powers to publish in mediums with national distribution or on the internet, draft technical regulations or conformity assessment procedures proposed for adoption. Notices must include abstracts or full texts of draft technical regulations or conformity assessment procedures. In cases where only abstracts appear, notices must indicate where complete texts can be consulted. Abstracts must indicate the purpose of draft regulations or procedures and the reasons for adopted approaches. Copies of abstracts and draft regulation must be also be submitted to the Ministry of Economy.

From the time notices of draft regulations are published, competent authorities must prepare and make available to interested parties, reports containing explanations of the purpose of proposed measures and their contents; alternatives that had been considered and the reasons for rejecting them; a description of the advantages and disadvantages and technical feasibility of verifying compliance with the measures; and the existence of applicable international standards on the subject. The Decree also requires that notices be published sufficiently in advance of their date of intended adoption (no less than 60 days), so that individuals can submit written comments together with relevant background material.

The Decree also articulates that ministries or agencies preparing standards must analyse and take written comments into account. Further ensuring transparency in the comment process is a requirement that ministries or agencies preparing standards must make available to the public, responses to any significant comments received at the time final technical regulations or conformity assessment procedures are published. In terms of periods between the date of adoption and the application of technical regulations and conformity assessment procedures, a reasonable time of at least six months must be provided, except when such a period would undermine the achievement of legitimate objectives. The text also provides a caveat in that competent authorities retain discretion to withhold confidential information in cases where disclosure could impede compliance with laws, could be otherwise contrary to the public interest, or could damage the legitimate commercial interests of public or private companies.

The obligations Chile assumed as a member of the WTO, as reflected in domestic legislation, similarly require that certain regulations such as sanitary and phytosanitary (SPS) measures and technical regulations should be published at the international level. Under this heading, information dissemination includes a WTO notification process.

Most trade agreements to which Chile is member include provisions mandating that parties be informed in advance of any regulation that affects or may affect their commercial relationship, such as: safeguard measures, customs measures, sanitary measures, etc. But, there are also cases where free trade agreements establish such a requirement, even if this is not absolute. Such provisions are usually incorporated in transparency chapters, or sometimes in financial services chapters. In this context, Chile has also established a WTO/TBT National Notification and Authority and Enquiry Point both to notify new Chilean technical regulations and conformity assessment procedures to the WTO and to receive comments from WTO members under the Agreement on Technical Barriers to Trade (TBT Agreement) (Box 4). Chile has also established a WTO/SPS National Notification Authority and Enquiry Point both to notify new Chilean SPS related standards to the WTO and to receive comments from WTO members under the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement).

Box 4. WTO/TBT National Notification and Authority and Enquiry Point

Technical Regulations (Article 10.1)

Ministerio de Relaciones Exteriores
Dirección General de Relaciones Económicas
Internacionales
Departamento de Acceso a Mercados
Bombero Salas 1345, piso 11
Santiago - Chile

Tel: +(56 2) 827 5100
Fax: +(56 2) 380 9494
E-mail: caramirez@direcon.cl

Contact Person: Carolina Ramírez

Source: WTO (2008b).

Standards (Article 10.3)

Instituto Nacional de Normalización
Matías Cousiño 64, piso 6
Santiago — Chile

Tel: +(56 2) 445 8000
Fax: +(56 2) 441 0427
E-mail: inn@inn.cl

Transparency in government procurement

Transparency of procedures and practices relating to government procurement is another critical determinant of market openness. Government procurement is an area not covered by WTO rules except for those members that join the WTO Government Procurement Agreement (GPA). WTO members joining the agreement are bound under the GPA to provide enterprises from other members of the GPA non-discriminatory access when bidding on government contracts above pre-specified thresholds. Possibly more important than opening domestic procurement markets to foreign bidders are the transparency provisions that must be applied once a WTO member becomes party to the GPA. Chile is not a signatory to the WTO Agreement on Government Procurement, but it is an observer to the WTO Committee on Government Procurement.

In 2006, its domestic procurements amounted to USD 4000 million of which services, goods and public works represented, respectively, 44%, 35% and 21%.²³ Although not a party to the GPA, Chile's domestic system of government procurement is highly transparent. Chile's system for government procurement also reflects standards of non-discrimination surpassing that established under the GPA. Due to the principle of non-discrimination embedded in the Constitution, foreign suppliers, bidders and contractors are

accorded treatment no less favourable than domestic counterparts when competing for government procurement contracts. This general practice goes beyond the disciplines of the GPA in two ways. First, MFN and national treatment (NT) in government procurement is *a priori* provided to all foreign suppliers and not limited to those from countries have joined the GPA. Second, this non-discriminatory treatment is not limited to procurements specified in a schedule of concessions or above certain thresholds as is the practice under the GPA, but is *a priori* granted across all government bodies and without reservation based on the size of procurement.

Government procurement in Chile is subject to the Chilean Procurement Law (Law N°19.886) and its subsequent regulations, which establish procedures for disseminating information and holding consultations on government procurement regulations, tenders and awards. Government procurements in Chile are normally conducted independently by government bodies that make procurement information available to all interested parties through the internet. Government entities are required to publish all the procurement procedures (open tendering, selective tendering, limited tendering, tenders, awards and contracts) in an electronic information system: www.chilecompra.cl, in accordance with Articles 18 to 20 of Law 19.886. This website enables registration by any supplier, electronically and without cost, to receive automatic procurement notifications *via* email for specific areas of procurement relating to goods or services which they designate at the time of registration.

Ensuring that suppliers can engage procurement processes on equal footing in terms of access to information, the domestic law on government procurement establishes clear procedures governing both the alteration procurements and requesting additional information or clarifications regarding specific procurements. Public entities are required to define procurements in detail including: the conditions of tender and circumstances in which they may modify or change information; the conditions under which requests for clarification on bidding information can be made; the criteria for defining how to disclose additional information; the manner and procedures under which suppliers may make enquiries; and other information. The objective of these rules is to ensure that the all suppliers can understand the conditions and requirements at the beginning of the process. Article 27 of Supreme Decree 250 also provides bidders with the possibility to request information within a specified period in electronic form, unless otherwise stated in the bidding specifications. Accordingly, procuring agencies are to provide responses from the procuring agency before the deadline established in the bidding specifications.

2.2 Measures to ensure non-discrimination

The application of the non-discrimination principles, MFN and NT, in drafting and implementing regulations aims at providing equality of competitive opportunities between like goods and services irrespective of country of origin and thus at maximising efficient competition in the market. The application of the MFN principle means that all foreign producers and service providers seeking entry to the national market are given equal opportunities. The national treatment principle means that foreign producers and service providers are treated no less favourably than domestic producers and service providers. The extent to which these two core principles of the multilateral trading system are actively promoted when developing and applying regulations is a helpful gauge of a country's overall efforts to promote a trade and investment-friendly regulatory system.

To derive maximum benefit from market openness, however, OECD best practice supports applying these principles to all trade partners independent of WTO membership.

Yet, integrating these two basic principles into relevant legislative acts is often insufficient. For the regulatory principle of non-discrimination to provide equal competitive opportunities for like-goods and services from all sources, both domestic and foreign, the regulators themselves must support them. This is the case with Chile, a country that promotes the MFN and NT principles throughout the regulatory decision-making process.

WTO disciplines have played a key role in removing discriminatory policies and supporting reform of discriminatory regulatory behaviour. While some discriminatory measures (e.g. certain kinds of subsidies, some preferences in government procurement, restrictions affecting foreign investors and service providers, and preferential trade agreements) are permitted, they remain subject to WTO rules on transparency, non-discrimination and some other specific obligations, in particular under the General Agreement on Trade in Services (GATS).

The Constitution establishes the general principle of non-arbitrary discrimination in the treatment granted by the State to all persons whether national or foreign.²⁴ Consequently, the principle of MFN is applied to all regulations and all foreign individuals receive NT. Although the General Comptroller's Office is charged with overseeing the legality of government actions, no specific government authority is charged with ensuring a policy that safeguards the principle of non-discrimination. Whenever a law or regulation is approved, however, each government entity linked to the regulation of market access is – in accordance with its functions – responsible for ensuring compliance and enforcement. For example, the General Directorate for International Economic Relations (Direcon) is responsible for negotiating and enforcing international trade agreements containing national treatment provisions. Since non-arbitrary discrimination – including respect for NT – is a principle established in the Constitution, all government entities are obliged to ensure its enforcement.²⁵ And because non-arbitrary discrimination is a principle established in the Constitution, any individual considering a regulatory action to have departed from this principle may initiate an appeal in domestic courts of justice.

The following sections review progress in non-discrimination by examining two areas of the regulatory system. The first looks at investment and restrictions on entry and operations of foreign firms and the second reviews preferential trading agreements.

Restrictions on entry and operations of foreign firms

FDI plays an important role in integrating Chile within the global economy. Inward FDI flows have led to a tripling in Chile's stock of foreign direct investment over the past decade. Chile has been among the top ten non-OECD destinations for FDI in recent years and a new record for FDI inflows was reached in 2007. In recent years, Chile, like other emerging economies, has begun recording significant FDI outflows (Table 2).

During the period 1990-2007, the main sources of inward FDI were the United States (24%), Spain (22%), Canada (17%) and the United Kingdom (9%). In the period from 2000 to 2007, the share of total FDI inflows from Spain reached 23% and those from Canada 19%, outstripping those from the United States (18% of the total).²⁶ Chile's liberal approach to foreign participation in the economy can be found in the absence of a specific law concerning foreign investment. Specific regulatory measures are available to foreign investors for mitigating risks relating to tax treatment and repatriation of capital.²⁷ The latter were important in the period during which Chile maintained exchange controls, and are less relevant today. Investment agreements signed by Chile reaffirm the commitment expressed in its domestic law to provide a non-discriminatory, predictable and transparent framework for FDI.

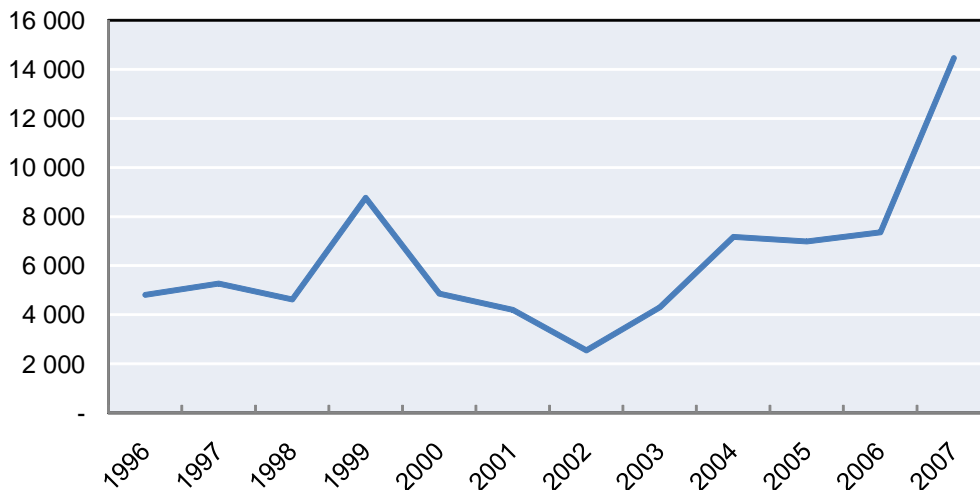
Table 2. Foreign direct investment in Chile

		Million USD					
		1996	1997	1998	1999	2000	2001
Inflows		4 184.6	5 271.4	4 627.8	8 761.0	4 860.0	4 199.8
Outflows		1 133.5	1 462.7	1 483.5	2 557.9	3 986.6	1 609.7
		2002	2003	2004	2005	2006	2007
Inflows		2 549.9	4 307.4	7 172.7	6 983.8	7 357.7	14 457.3
Outflows		343.1	1 606.4	1 563.1	2 182.7	2 875.6	3 830.3

Source: Bank of Chile and the Foreign Investment Committee.

Figure 6. Chile's inward FDI flows

Growth of FDI inflows, 1996-2007 (millions of USD)



Source: OECD (2008a), p 7.

Foreign investors, once established in the country, benefit from legal protection for property rights. Private property rights are protected under the Constitution and may only be expropriated under limited constitutional provisions. Chile has also pursued international investment agreements to enhance the attractiveness of its domestic investment environment by providing certainty over investor rights and obligations. Bilateral investment treaties (BITs) and specific investment chapters in regional trading arrangements (RTAs) signed by Chile contain clauses on fair and equitable treatment, national treatment and most favoured nation status.²⁸

Chile has additionally included investor-State dispute settlement mechanisms in these international agreements. Chile has an active history of negotiating BITs, and has in recent years followed the trend of replacing BITs originally negotiated between the parties with investment provisions contained in RTAs (Table 3). Chile has signed twenty RTAs; eight of which include investment provisions in self-contained chapters.²⁹

Table 3. Chile's active history of negotiating BITs

Agreement/Partner(s)	Date of Signature	Entry into Force
Argentina	2 August 1991	27 February 1995
Australia	9 July 1996	17 November 2000
Austria	8 September 1997	18 June 2000
Belgium	15 July 1992	5 August 1999
Bolivia	22 September 1994	21 July 1999
Brazil	22 March 1994	n.a.
China	23 March 1994	14 October 1995
Colombia	22 January 2000	n.a.
Costa Rica	11 July 1996	8 July 2000
Croatia	28 November 1994	31 July 1996
Cuba	10 January 1996	30 September 2000
Czech Republic	24 April 1995	2 December 1996
Denmark	28 May 1993	30 November 1995
Dominican Republic	28 November 2000	n.a.
Ecuador	20 December 1994	21 February 1996
Egypt	5 August 1999	n.a.
El Salvador	8 November 1996	18 November 1991
Finland	27 May 1993	14 June 1996
France	14 July 1992	5 December 1994
Germany	14 April 1997	18 June 1999
Greece	10 July 1996	7 March 2003
Guatemala	8 November 1996	10 December 2001
Honduras	11 November 1996	10 January 2002
Hungary	10 March 1997	n.a.
Iceland	26 June 2003	12 August 2006
Indonesia	7 April 1999	n.a.
Italy	8 March 1993	23 June 1995
Korea	6 September 1996	18 November 1999
Lebanon	13 October 1999	n.a.
Malaysia	11 November 1992	4 August 1995
Netherlands	30 November 1998	n.a.
New Zealand	22 July 1999	n.a.
Nicaragua	8 November 1996	10 December 2001
Norway	1 June 1993	4 November 1994
Panama	8 November 1996	21 December 1999
Paraguay	7 August 1995	21 December 1999
Philippines	20 November 1995	6 November 1997
Peru	2 February 2000	11 August 2001
Poland	5 July 1995	22 September 2000
Portugal	28 April 1995	22 September 2000
Romania	4 July 1995	27 August 1997
South Africa	12 November 1998	n.a.
Spain	2 October 1991	27 April 1994
Sweden	24 May 1993	13 February 1996
Switzerland	24 September 1999	22 August 2002
Tunisia	23 October 1998	n.a.
Turkey	21 August 1998	n.a.
Ukraine	30 October 1995	29 August 1997
United Kingdom	24 April 1995	23 June 1997
Uruguay	26 October 1995	22 April 1999
Venezuela	1 April 1993	17 May 1994
Vietnam	16 September 1999	n.a.

Source: SICE, Foreign trade information systems: www.sice.oas.org/cty/index/CHL/CHLBits_e.asp, accessed 6 March 2009.

Foreign and domestic firms and individuals are legally entitled to conduct foreign trade business in Chile. Foreign traders are able to conduct business without intermediaries thus providing easy access to global markets and reducing transaction costs. Legally registered foreign trade operators are also able to import and export goods and technology without obtaining administrative approval.

Preferential agreements

Regional trading arrangements (RTAs) are necessarily discriminatory as they normally involve trade and investment liberalisations to parties joining the agreements that are not equally applied to non-parties. Thus, RTAs represent a departure from the principles of MFN and NT. Growth in the numbers of RTAs over recent years has reached a level where some countries no longer view negotiating RTAs as strategy to gain preferential access to the markets. Negotiating RTAs is now considered a means to remove discrimination against domestic firms competing in foreign markets. Information contained in these agreements has been notified to the WTO Committee on Regional Trade Agreements in accordance with Chile's multilateral commitments under the WTO.

All RTAs in force are also published on Direcon's website including the texts of the agreements, schedules of tariff reductions and other relevant commitments. All the agreements' texts can be found in English, except those with the Latin American countries. Chile's RTAs are diverse in terms of their geography, architecture, level of completion and their underlying rationale. A small country, Chile has a limited capacity to exert influence in the resolution of problems arising from tough negotiations and conflicting interests, with a view to ensuring coherence in the various obligations entered into. Bilateral initiatives are considered a supplementary means of achieving substantial results more rapidly than would be possible at the multilateral level.

In line with the policy of "open regionalism" which seeks to ensure that trade agreements do not create obstacles *vis-à-vis* other trading partners, Chile has signed free trade agreements (FTAs) with a large network of countries. The FTA with the United States was signed in 2003 and came into force in January 2004. Over the last several years, Chile has signed FTAs with the European Union, European Free Trade Association (EFTA), South Korea, New Zealand, Singapore, Brunei, China, Japan, Australia and Turkey among others. It reached a partial trade agreement with India in 2005 and began negotiations for a full-fledged FTA with India in 2006. Chile is conducting negotiations with Malaysia, as well as with China to expand an existing agreement beyond trade in goods. Chile sought to conclude the expanded agreement with China in 2008. Negotiations with Malaysia are expected continue throughout 2009.

As one of the so-called "A-B-C" countries (Argentina-Brazil-Chile), Chile has been successful in attracting substantial FDI. However, inward foreign investment has mainly targeted primary sectors in which these countries already have competitive advantages. They have also targeted specific segments of the non-tradable sector (largely in infrastructure and banking sectors). These investment flows originate mainly from Spain and the United States, and some public-private partnerships have helped to reduce Chile's "infrastructure deficit" in areas like roads and ports.³⁰ Table 4 provides an outline of Chile's RTAs.

Table 3. Chile's free trade agreements

Country or group of countries	Type of agreement	Signature date	Date of entry into force
European Union (a)	Association Agreement	18 November 2002	1 February 2003
P4 (b)	Trans-Pacific Strategic Economic Partnership Agreement	18 July 2005	8 November 2006
Canada	Free Trade Agreement	5 December 1996	5 July 1997
EFTA (c)	Free Trade Agreement	26 June 2003	1 December 2004
Central America	Free Trade Agreement	18 October 1999	
Costa Rica (Chile-Central American FTA)	Free Trade Agreement	18 October 1999	14 February 2002 (Bilateral Protocol)
Nicaragua (Chile-Central American FTA)	Free Trade Agreement	18 October 1999	Bilateral under negotiation
El Salvador (Chile-Central American FTA)	Free Trade Agreement	18 October 1999	1 June 2002
Guatemala (Chile-Central American FTA)	Free Trade Agreement	18 October 1999	Parliamentary proceeding pending
Honduras (Chile-Central American FTA)	Free Trade Agreement	18 October 1999	19 July 2008
China	Free Trade Agreement	18 November 2005	1 October 2006
Colombia	Free Trade Agreement	27 November 2006	8 May 2009
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
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 Complementation Agreement N° 22	6 April 1993	6 April 1993
Ecuador	Economic Complementation Agreement N° 32	20 December 1994	20 December 1994
Ecuador	Economic Complementation Agreement (new)	10 March 2008	Parliamentary proceeding pending
Mercosur (d)	Economic Complementation Agreement N° 35	25 June 1996	1 October 1996
Venezuela	Economic Complementation Agreement N° 23	2 April 1993	2 April 1993
India	Partial Scope Agreement	8 March 2006	17 August 2007
Cuba	Partial Scope Agreement	20 December 1999	27 June 2008
Australia	Free Trade Agreement	30 July 2008	6 March 2009
Turkey	Free Trade Agreement	14 July 2009	Parliamentary proceeding pending

(a) 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 1 May 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: Romania and Bulgaria.

(b) P 4 is formed by Brunei Darussalam, Chile, New Zealand, and Singapore.

(c) The European Free Trade Association (EFTA) is formed by: Iceland, Liechtenstein, Norway and Switzerland.

(d) Mercosur is formed by Argentina, Brazil, Paraguay and Uruguay. Chile participates as an associated member.

Source: Government of Chile.

Authorities in Chile consider bilateral negotiations an effective approach particularly when they are conducted with the country's main export markets including the world's two leading trading powers. As a result, Chilean products face significantly fewer instances of tariff escalation and tariff peaks, will be produced with cheaper and more modern inputs, and will be transported to their destinations with lower transport and insurance costs. All of these factors will boost the value added of Chile's exports.³¹ Through Chile's trade agreements, its agricultural products have gained access to a market controlling 77% of the world's GDP and by approximately 2012, 74% of Chilean agribusiness exports will be duty free.³²

2.3 *Measures to avoid unnecessary trade restrictiveness*

Even when regulations are applied in a non-discriminatory manner, market openness can still deviate from its optimal level if regulatory measures are more restrictive *vis-à-vis* trade and investment than is necessary to achieve their intended policy goals. In these cases the objectives, design or implementation of regulations may be set in a way that creates unnecessary impediments to the free flow of goods, services or investment. These negative effects originate from poor regulatory quality and the absence of regulatory mechanisms to assess the impact that regulations have on market openness. Unnecessary restrictions on trade may be reduced if regulators examine the trade effects of proposed and existing regulations and give preference to regulatory measures and solutions that lead to the achievement of economic and societal objectives, but at the same time minimise disturbances on the flow of trade and investment.

OECD governments most commonly employ several tools and mechanisms to ensure that regulations effectively avoid unnecessary trade restrictiveness. Examples include the use of management- or performance-based regulation rather than design standards regulations. Enterprises generally find it easier and less costly to comply with regulations that specify product requirements in terms of performance rather than design or descriptive characteristics. Another tool is to conduct regulatory impact assessments (RIAs). At a conceptual level, RIA requires regulators to ask whether regulation is the most appropriate means to achieve the desired policy outcome. RIA also is a systematic process of identification and quantification of important benefits and costs likely to flow from the adoption of a proposed regulation or a non-regulatory policy option under consideration. It may be based on benefit/cost analysis, cost effectiveness analysis, or business impact analysis. A third tool is administrative simplification. The simplification initiatives that aim to reduce administrative burdens on enterprises are also important ways for governments to minimise the trade restrictiveness of regulations.

Chile does not have capacity to systematically conduct full RIAs for all significant draft regulations, but does apply important elements of RIAs in specific areas. For instance, Decree 77/2004 requires that in the development of technical rules and standards certain elements of RIAs are applied including: use of performance rather than design based regulations; conducting meaningful consultations with adequate time periods for taking comments into account; providing public explanations of why comments are (or are not) taken aboard; and assessing alternative approaches to achieving regulatory objectives when designing new regulations. The Decree also clearly supports that regulation be non-restrictive on trade, however, formal assessments of the impact that new regulations are likely to have on inward and outward trade and investment are conducted only in limited cases. Although the extent to which elements of RIAs are employed outside the field of technical rules and standards is unclear, interviews with the private sector suggest no major

shortcomings. In terms of reducing administrative burdens imposed by government on enterprises and individuals, Chile has made significant strides in recent years.

Assessing the impact of regulations on trade

Unnecessarily burdensome regulations disproportionately impact market openness. Although such regulations and administrative practices or “red tape” may affect domestic and foreign enterprises without distinction when viewed from the perspective of the regulator, they normally impact foreign trade and investment more significantly. This is because local enterprises generally have an advantage due to their knowledge of local customs and circumstances. While large foreign firms are often able to overcome unnecessarily restrictive rules and regulations due to their more substantial resource base, small and medium-sized enterprises (SMEs) are particularly disadvantaged due to limited resources and administrative capacities. The impact of red tape on foreign SMEs is compounded not only by size, but also by lack of familiarity with local business and regulatory culture. For this reason, the input of foreign SMEs should, to the extent possible, be elicited to support the development of domestic rules and regulations.

Concerning the regulatory environment for business, Chile has been positively assessed in several recent reviews. According to the 2005-2006 Global Competitiveness Report³³, Chile is the most competitive country in Latin America with a ranking of 23 among the 102 economies surveyed. Santiago was also rated the best city from which to do business in Latin America by the Latin Business Chronicle in 2007.³⁴ Out of 181 countries tracked in 2008 under the World Bank’s overall Doing Business index, Chile performed well in comparison to its regional peers and the BRIICS, but behind the OECD average (Table 5). In terms of the World Bank’s Starting a Business index, Chile’s results are well ahead of its region and the BRIICS. Very close to the OECD average by all measures, Chile even surpassed the OECD average in minimum capital necessary to start a business as a proportion of per capita income (Figure 7).

Table 4. Doing Business, 2008

Ranking of 181 countries

	Chile	Latin America and the Caribbean	BRIICS	OECD
Ranking	40	91.7	101.8	27.3

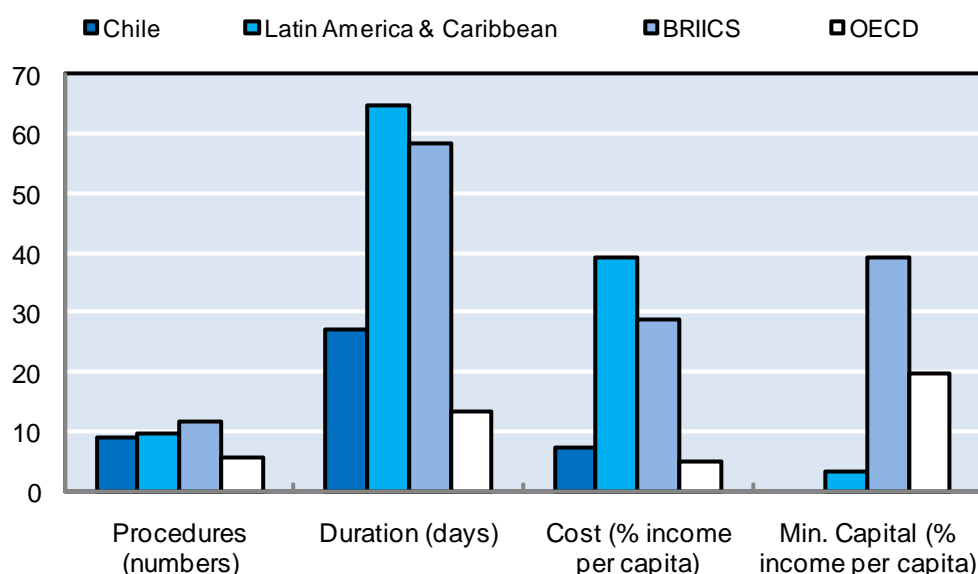
Source: World Bank (2009), Doing Business.

Chile’s favourable regulatory environment results in part from its efforts to minimise conflicting or inconsistent regulations between the central government and sub-central government administrations that may hinder the free circulation of goods and services within the country. All regulations regarding international trade and the domestic circulation of goods and services within the country are applied equally throughout the national territory with the following exceptions (i) sanitary measures, regarding the movement and transfer of certain vegetable species between different geographic zones; and (ii) the measures applied to release goods from duty free zones. In the absence of systematically applied RIAs, progress has been made at the central government level in streamlining the necessary procedures for business registration and closures. Recent measures are making it easier for small enterprises to register electronically as taxpayers, to

file and pay taxes and to obtain general information on how to close a business, among others. But the municipal governments, which have regulatory purview over several aspects of business activity, are underperforming. Coordination between the central government and the municipalities, and between them and health, safety and other agencies could be improved.³⁵

Although Chile does not implement RIAs systematically when creating new regulations, it already applies elements of RIAs particularly in the area of technical rules and standards. OECD countries apply RIAs *ex ante* to assess the impact of proposed laws and regulations. They also apply RIAs *ex post* and to systematically assess the quality of existing regulations. The utility of a well functioning RIA process in creating efficient regulation is underscored by a significant body of OECD work on regulatory reform, endorsed in the *1995 Recommendations of the Council of the OECD on Improving the Quality of Government Regulation* and re-affirmed in the *2005 Guiding Principles for Regulatory Quality and Performance*. OECD experience with reviews of regulatory reform in OECD countries find that integrating the potential impact of proposed and existing regulations on foreign trade and investment *via* co-ordination between trade and regulatory agencies, is an important way to improve an economy's entire regulatory framework *vis-à-vis* foreign trade and investment. Systematically applying RIAs across an economy can help to ameliorate uneven regulatory quality among regions within economies, which is a key obstacle to reducing geographic and rural-urban economic inequalities.

OECD experience conducting reviews of regulatory reform also suggest that involving the trade ministry in the regulatory reform process contributes significantly to the quality of market openness throughout domestic regulatory systems. The ministry responsible for maintaining economic relationships with the WTO and trading partners is often the most cognisant of the manner in which domestic regulations impact international trade and investment. The Ministry of the Economy has in this light implemented numerous initiatives and programmes aimed at reducing the monetary and non-monetary costs imposed by the public entities on companies and citizens as well as tackling issues such as: improving the availability of information and streamlining processes and procedures. These efforts are motivated at least in part by provisions set forth in the “Administrative Procedure Law” which explicitly protects individual rights under the principles of transparency and openness, and the negative impacts of administrative silence. To address administrative silence, this provision indicates that under certain circumstances in which the government has not provided a decision regarding a request for administrative approval within 30 days, the procedure can be considered approved.

Figure 1. Starting a Business, 2008

Source: World Bank (2009), Doing Business.

Chile has implemented various programmes to reduce red tape for over a decade and has even set quantitative targets in a number of areas. The programmes employ differing permutations of the following strategies depending on subject including: new technologies for regulatory administration such as e-Government; streamlining of government process requirements; reallocating powers and responsibilities between government departments and between levels of government. One of the earliest programmes to be initiated was by the Internal Revenue Service (IRS). This programme seeks to harmonise electronic procedures it provides over the internet with the business cycle including: initiation of commercial activities; identification on-line; filing of account and tax operations in electronic format; declaration and payment of taxes; as well as operations related to ending business activity. The Government of Chile set an objective of facilitating the registration of 3600 new micro-, small- and medium-sized companies for electronic invoicing in 2008.

The Ministerial Committee for Digital Development recently drafted a “Digital Action Plan 2008-2010” which serves as an umbrella for e-Government related initiatives and projects, and promotes efforts in strategic areas to reduce the monetary and non-monetary costs imposed by government on the private sector. The Digital Action Plan also supports a website serving as the gateway to the business community containing near comprehensive information on procedures, processes and incentives available to companies at different stages of their life cycle, from establishment to closure.³⁶ The portal’s objective is to contribute to the development of an entrepreneurial culture in Chile *via* the integration of virtual services both from public and private entities, all based on the logic of simplifying existing contents, enhancing consistency and ensuring quality.

The Digital Action Plan is related to a pre-existing “Business Window Project” which is itself derived from an earlier government programme titled the “Pro-Growth Agenda”. The final programme sought to facilitate the ability of companies to manage obligations and procedures with the government through the use of IT. The Business Window Project

sought to modernise and put on-line 80 procedures relating to the creation, development and closing of companies between 2001 and 2007. Not all programmes and initiatives included quantitative success indicators, but at least 71 procedures were modernized and nine remained under development. Finally, the “Easy Procedure Portal” was also improved to increase its capacity to meet demand for information by individuals and companies, and to facilitate access to procedures and information available in public institutions.³⁷ A “Guide to information and procedures of the State” was also prepared to make information on government services more accessible to the public.

Overall, efforts by Chile to reduce administrative burdens and their associated trade and investment impacts have been numerous, effective and impressive. Much of the progress has relied on increasing the role of IT in the provision of government services that has been pursued independently by individual ministries and government agencies. Presently, Chile is undertaking a new generation of reforms to reduce administrative burdens based on integrating the IT systems of various government bodies to promote intra-ministerial IT connectivity. Such progress may enable the creation of “single windows”. For instance, approval for importing pharmaceutical products in Chile currently requires a multi-day series of visits for approvals to various government bodies before the final visit customs necessary to complete the import process. The next generation of IT based reforms to reduce red tape hold out the possibility of completing such a procedure in one visit to a single window at customs.

Example of customs procedures

More clearly than in other areas, declining tariffs worldwide have made arbitrary or excessively burdensome administrative requirements in the area of customs a focus of attention in international trade negotiations. Increased customs efficiency serves to reduce costs related to border fees and often more importantly reduces delays at borders that create costs inefficiencies that have gained importance as product cycles have shortened. Chile’s efforts to continue improving the regulatory environment implemented by its customs administration especially in terms of consistency in the application of the new rules would yield important gains for market openness.

In terms of the World Bank’s Trading Across Borders index, documents and time necessary to complete procedures for exports and imports in Chile is on par with its regional and BRIICS averages. Chile is however clearly behind the OECD average in requiring roughly twice the number of documents for import and export at 21, and between one to two additional days to complete customs formalities in either direction (Table 6). It is in terms of cost per container to export and import that Chile’s advantage *vis-à-vis* its regional, BRIICS and OECD averages is most dramatic. With rates to export at USD 745 and to import at USD 765 per container, Chile’s costs by this measure are between three-quarters to one-half that of the three averages in this comparison.

Chile has one of the most open trade regimes in the world. Beyond tariffs, importers must also pay a 19% value added tax (VAT) calculated on the customs value plus import tariff. Duty free imports have the VAT calculated on the customs value alone. Virtually no restrictions exist on the types or amounts of goods that can be imported into Chile.

Table 5. Trading across borders

	Chile	Latin America and the Caribbean	BRIICS	OECD
Documents for export (number)	6.0	6.9	7.0	4.5
Time for export (days)	21.0	19.7	21.5	10.7
Cost to export (USD per container)	745.0	1 229.8	1 095.7	1 069.1
Documents for import (number)	7.0	7.4	8.2	5.1
Time for import (days)	21.0	22.3	24.5	11.4
Cost to import (USD per container)	795.0	1 384.3	1 120.0	1 132.7

Source: World Bank (2009), *Doing Business*.

The approach of Chile's National Customs Service includes adoption of IT to improve efficiency, employment of international standards in customs facilitation and annual reviews incorporating public comment to improve customs processes. At present, nearly 100% of customs declarations are filed electronically and documents that can be filed electronically include: import and export declarations, air cargo manifests, courier manifests, land cargo manifests and sea cargo manifests. Chile is also a member of the World Customs Organisation (WCO) and a signatory to the WTO Agreement on Custom Valuation. International standards on customs applied by Chile include the SAFE Framework of Standards to Secure and Facilitate Global Trade.

Chile also implements an annual regulatory process designed to improve the user friendliness of the customs process. Every year, the National Customs Service implements a "Public Regulations Account" inviting traders to submit proposals to improve the efficiency and effectiveness of import and export processes. Comments received are reported back to specific teams responsible for consideration and development of policy responses, in particular *via* the elaboration of new draft regulations designed to facilitate trade. As part of the process, the Director General of Customs establishes commitments to be implemented the following year. The entire process takes place transparently on the official website of the customs service thus promoting collaborative effort among traders, including foreign ones, to improve customs processes.³⁸

Examples of progress in customs facilitation resulting from Public Annual Account process and other efforts include the Advance Publication policy implemented in 2007, under which all proposed regulations are published on the internet with adequate time for comments in advance of coming into force. Additional recent improvements include implementing the Customs Convention on the A.T.A. carnet for the temporary admission of goods (ATA Convention) and the domestic implementation of the 2007 Harmonized System (HS). A new set of Courier Rules was also recently implemented to simplify the customs system, implement provisions in trade agreements, improve enforcement activities, reduce operating costs and obtain more reliable information on imported goods and transaction costs.

In 2008, the National Customs Service developed a blueprint for certifying Authorized Economic Operators (AEO) based on the WCO Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework) recommendations. Following the WCO recommendations, a pilot program (*Resolución Exenta N°849*, dated 05.02.2009) will be developed to implement the system during 2009. The National Customs Service is also in the process of elaborating a new regulation for issuing Advance Rulings on origin, classification and valuation.

2.4 Encouraging the use of internationally harmonised measures

The application of different standards and regulations for like products in different countries – often explained by natural and historical reasons relating to climate, geography, natural resources or production traditions – confronts firms wishing to engage in international trade with significant and sometimes prohibitive costs. There have been strong and persistent calls from the international business community for reform to reduce the costs created by regulatory divergence. One way to achieve this is to rely on internationally harmonised measures, such as international standards, as the basis of domestic regulations, when they offer an appropriate answer to public concerns at the national level.

The use of internationally harmonised standards has gained prominence in the world trading system with the entry into force of the WTO Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures, which encourages countries to base their technical requirements on international standards and to avoid conformity assessment procedures that are stricter than necessary to attain regulatory objectives.

The concept of internationally harmonised measures refers to two distinct scenarios: reliance on international standards as the basis of domestic regulations (where this is feasible and appropriate) and acceptance of foreign measures as equivalent to domestic measures, even where these may differ, provided that such measures meet the underlying regulatory objective. Standard setting can be a benign exercise in regulatory oversight, but in some circumstances may also be conducted in a manner that favours domestic firms over foreign enterprises. Such divergent standards have the potential to create significant barriers to trade and increase the cost of compliance for foreign firms, thus reducing the market openness of the economy to the trade and investment that it seeks to promote. International standards bodies insufficiently reflect the interests of developing economies, but they also fail to recognise the difficulties developing countries face in adopting international standards.

Chile's trade policy reflects both a domestic and international pursuit of harmonisation towards international standards. Domestically, all government bodies are under legal mandate to favour the use of international as national standards. Article 2 of Decree 77/2004 requires that "When technical regulations and/or conformity assessment procedures are needed and relevant international standards already exist...Ministries or agencies...shall use those international standards...". The only exception provided in that article is when "those international standards ... are not an effective ... means for achieving legitimate objectives pursued." Authorities estimate that roughly 95% of mandatory technical and SPS standards applied by Chile are aligned to international ones. Harmonisation towards international standards is grounded in a general requirement for domestic regulatory bodies to adopt international as domestic standards where feasible. Chile has also established two separate inter-ministerial processes relating to TBT and SPS

which meet regularly to review and support the development of domestic regulations in line with this theme.

In areas covered by the TBT Agreement, relevant ministries or their representative agencies together with Direcon, representing the Ministry of Foreign Affairs, meet regularly as part of an inter-ministerial process to oversee the preparation, adoption and application of all technical regulations and conformity assessment procedures. These series of meetings are also the *fora* in which Direcon organises capacity building activities on TBT Agreement principles and obligations for ministries and agencies.

In October 2008, an additional public-private process titled the National Public-Private Group of Work on Technical Barriers to Trade this process was initiated. Under this process, the main interlocutors are Direcon representing the public sector and the Federation of Chilean Industry (Sofofa) representing the private sector. The objective of this process is to establish a two way dialogue between the private sector and public sectors in support of efficient solutions to trade barriers.

In areas covered by the SPS Agreement, the Inter-Ministerial Committee on Sanitary and Phytosanitary Measures and the National Committee of the Codex Alimentarius similarly oversees the preparation, adoption and application of all SPS regulations and conformity assessment procedures. Chile pursues an international as well as a domestic policy relating to harmonisation towards international standards in the area of SPS. In a number of international organisations, Chile has actively initiated and supported policy processes to facilitate harmonisation towards international SPS standards by their memberships. In the WTO, Chile advocates work towards harmonisation and transparency in line with the SPS Agreement. Supplementing efforts in the WTO, Chile also works through international organisations referenced by the SPS Agreement, including the Codex Alimentarius Commission, the World Organisation for Animal Health (OIE) and the International Plant Protection Convention (IPPC), to advance harmonisation towards international standards among their respective memberships.

In the area of voluntary technical standards, the National Standardization Institute (INN) retains governance functions as well as responsibilities for their elaboration and implementation. In line with practices regarding mandatory standards, INN implements a stated policy of adopting internationally harmonised standards where possible and implements an inclusive public private process for their development.

2.5 Streamlining conformity assessment procedures

Conformity assessment refers to measures taken to assess the conformity of products, processes and services to specific requirements or standards. These procedures may have the effect of facilitating trade, or they may create a technical barrier to trade. Public policy objectives like health, safety and the environment often require rigorous and careful conformity assessment procedures. When designed in a manner that considers the costs and time burdens born by producers, these procedures facilitate market openness by increasing consumer confidence in imported products. Likewise, firms are likely to regain the invested costs, as their ability to demonstrate that their products and services meet these strict requirements can lead to high consumer confidence and increased sales.

Although reliance on internationally agreed standards has been increasing, many internationally traded goods continue to be subject to specific testing and certification procedures in importing countries. Reducing multiple assessment procedures can considerably cut down trade transaction costs. Different procedures and mechanisms have

been developed in OECD countries to facilitate acceptance of conformity assessments conducted by foreign conformity assessment bodies as equivalent to those conducted by domestic ones. Such mechanisms include mutual recognition agreements (MRAs) and suppliers' declaration of conformity (SDoCs). By concluding sectoral MRAs, trading partners agree to mutually accept conformity assessments carried out by accredited conformity assessment bodies located in partner countries for a sub-set of products or services.

SDoCs are a more flexible approach leaving the producers to choose the modalities of conformity assessment with technical requirements. These suppliers' declarations of conformity are usually based on in-house procedures or implemented by private organisations and are normally limited to low risk products. SDoC regimes are regularly supported by post-market surveillance and robust penalties for non-compliance. In general, SDoCs require a high level of mutual trust between all parties concerned, including the end-users. The EU "Global Approach" is an example of mutual recognition and accreditation procedures enabling the products recognised in conformity to be freely marketed throughout the EU Single Market. It relies heavily on the SDoC approach for its efficacy.

Recognising the results of conformity assessment based on accreditation is strongly supported by OECD best practices. Doing so requires the existence of adequate domestic capacities for accreditation, in particular, the establishment of efficient accreditation mechanism and accreditation institutions. National accreditation bodies, which usually operate under the supervision of the public authorities, are responsible for inspecting and acknowledging the competence and reliability of conformity assessment and share inspection results through international networks, such as the International Accreditation Forum (IAF).

In Chile, a private foundation affiliated with CORFO (the Development Promotion Agency), INN oversees voluntary accreditation for laboratories, certification bodies and certification auditors. Depending on the subject of the standard, other institutions such as the Ministry of Health, the Superintendency for Electricity and Fuels (SEC), the Agriculture and Livestock Service (SAG) under the Ministry of Agriculture and the National Fisheries Service (Sernapesca) under the Ministry of Economy, may also carry out work related to certification.

Although Chile has not yet completed any bilateral MRAs, it participates actively in Asia-Pacific Economic Cooperation (APEC) efforts to develop a sectoral MRA for food products. Chile also participates in a number of mutual 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. Chile is a signatory of the multilateral recognition agreements of the Inter American Accreditation Cooperation (IAAC), and is currently in the process of becoming a signatory of the multilateral recognition agreements of International Laboratory Accreditation Cooperation (ILAC) and IAF. A precondition for becoming a signatory to multilateral recognition agreements has been the attainment of a regional MRA. This practice began in 2006; the date that ILAC and IAF began recognising IAAC MRAs. INN requested a peer evaluation for the MRA on product certification bodies and has made significant strides in obtaining recognition for domestic testing and calibration laboratories and certification bodies of quality and environmental management systems. In June 2009, INN requested a second peer evaluation for the MRA on product certification bodies, with very good results. This request included applications for certification bodies of quality,

environmental management systems and calibration and test laboratories. In 2010 INN will apply for areas like certification bodies of products and inspection. In terms of SDoCs, authorities in Chile have explored the possibility, but not moved beyond that.

3. Intellectual property rights

Chile has experienced an extended period of economic growth, whereby macroeconomic stability and international openness have contributed to significant increases in GDP per capita. This progress has not fully translated into corresponding economy-wide development, as the economy remains reliant on primary products. Innovation can play an important role in boosting economic performance in sectors with higher levels of value addition. In this regard, an appropriate regime for intellectual property rights is one important factor in the establishment of market incentives for innovators and other rights holders to create or make available additional technology and products. This section provides a brief overview of domestic innovation policy in Chile and then reviews the intellectual property rights regime.

3.1 Domestic innovation policy

The OECD *Review of Innovation Policy in Chile* (2007) showed that Chile was well behind OECD countries in terms of capacity for innovation. This finding is consistent with evidence from the Global Competitiveness Report 2008-2009 which ranked Chile 14 out of 134 countries in macroeconomic stability, but only 56 out of 134 countries in terms of innovation. The level of research expenditure in Chile is low and its composition unbalanced. Most domestic research is dependent on public sponsorship. Gross expenditure on research and development is a modest 0.67% of the gross domestic product, while business and enterprise expenditure on research and development amount to just 0.31% of GDP. In part, this may reflect Chile's current advantages in sectors that are not research intensive, but it also suggests limited engagement by domestic enterprises in innovation activities. Research in Chile is still primarily conducted in public institutions for higher education.

In Chile, the relatively limited availability of highly skilled human resources may be an important constraint on research and development. Only 13.16% of the population aged 25-64 holds tertiary degrees. Of these, approximately one in five hold degrees in science or engineering. Research output in Chile is also relatively low. For example, there is an average of 1.62 scientific publications per million in the population. The number of patent families protected by patents in United States, EU and Japan (so called triadic patents) is only 0.20 per million in the population. A large share of patents in Chile (31.6%), involve foreign co-inventors. In other words, compared to the OECD average, Chile has a lower level of research expenditure as a percentage of GDP, proportionally fewer scientific publications and triadic patent families, and a lower fraction of the population holding tertiary degrees. However, Chile has a higher share than the OECD average of research financed from foreign sources and a larger share of patents with foreign co-inventors.

Improving the innovative capacity of Chile is a multidimensional challenge. The OECD *Review of Innovation Policy in Chile* (2007) recommended reforms including incentives to stimulate investment in research and development (particularly by the private sector), and measures to develop the human resource base through improving the system of higher education. Other complementary measures may include improvements to the intellectual property rights regime and increased implementation of information technology.

Recognising the room for progress in these latter areas, Chile has implemented a “Digital Development Strategy for 2007”, which acknowledges that increased adoption of IT can raise total factor productivity by creating networks that facilitate the development of knowledge and social capital. The Digital Development Strategy addresses IPRs in its proposals concerning “technological policy for digital development”. The strategy identifies a legal framework for technological change addressing issues related to intellectual property³⁹, network neutrality, personal data protection, cybercrime and internet consumer rights.

3.2 *Basic premises for the review of intellectual property rights*

Under the current framework for international trade, respect for intellectual property rights constitutes both an international commitment and a policy in favour of economic development. Respect for these rights is related to market openness in that it provides rights holders with the opportunity to enter markets – particularly for intellectual-property-intensive products and services – with the assurance that property conforming to the requirements of the system will be duly recognised and hence made more easily tradable. At the same time, it provides rights holders a means to defend such property from abuse. Moreover, an effective system of intellectual property rights can stimulate innovation, whereby innovators and other stakeholders are able to benefit from investment in successful research initiatives. Such a system can promote dissemination of knowledge through required disclosure and facilitates access to intellectual property *via* technology markets and licensing. It can provide, in addition, a relatively general incentive system that is consistent with specialization in those sectors that offer the greatest scope for productivity improvement relative to research cost.⁴⁰ Such factors, among others, suggest that enhancements to the system of intellectual property rights can be an important element of a national strategy for economic development.

The Secretariat employed a few key premises in conducting the review. In the absence of an OECD instrument covering the full scope of trade-related intellectual property rights, the assessment makes reference to the accords that underpin the international framework for intellectual property rights, in particular the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and key treaties administered by the World Intellectual Property Organisation (WIPO) as well as illustrative regional, bilateral and unilateral institutions. Bilateral and regional trade agreements permit the signatory parties to adjust and extend the commitments made in multilateral treaties. The European Union and United States both make extensive use of this option. Voluntary and unilateral adaptation to best practices constitutes a further option.

The international harmonisation of intellectual property rights has a number of benefits. For example, harmonisation of standards facilitates cross-border trade and investment by reducing the transaction costs associated with multinational business activities. At the same time, the review aims to take into account that an effective intellectual property policy is a set of institutions and political instruments and that the various international and bilateral accords permit a degree of institutional flexibility and adaptation to national interests. Experience from OECD countries shows that an effective policy should be balanced and leverage multiple instruments to foster innovation and knowledge accumulation. One advantage of this allowable institutional flexibility is that standards or practices can be adjusted within limits to meet local needs and interests. For example, a country that has a comparative advantage in intellectual-property dependent sectors may wish to capitalise on this by extending a comparatively high level of protection.⁴¹

3.3 *The intellectual property rights regime*⁴²

Chile's regime of intellectual property rights is similar in terms of legal standards to most OECD countries. It grants protection to copyrights and related rights, trademarks, geographical indications, patents, industrial designs, topographies of integrated circuits, plant varieties and undisclosed business secrets. The regulatory framework for intellectual property rights has undergone a number of important changes in recent years, including a number undertaken to strengthen its administration and enforcement.

In free trade agreements signed with different trade partners (such as Australia, Japan, EFTA, the United States and the European Union) Chile committed to ratify or to comply before 2007 with the following Agreements: Nice Agreement Concerning the International Classification of Goods and Services for Purposes of Registration of Marks, the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty (WIPO Internet Treaties), the Strasbourg Agreement concerning the international classification of patents, the Patent Cooperation Treaty (PCT); and before 2009 with the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, the Locarno Arrangement, the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure, the Trademark Law Treaty (1994), the International Convention for the Protection of New Varieties of Plants (UPOV 91) and the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite.⁴³ Chile has to date ratified and implemented a number of multilateral agreements, including the Berne Convention, the Rome Convention, the Convention establishing WIPO, the Paris Convention, the TRIPS Agreement, International Convention for the Protection of New Varieties of Plants (UPOV 78), as well as the WIPO Internet Treaties (Table 7).

In the FTA with the United States, Chile committed to extending the notion of trademarks to include collective, certification and sound marks. The parties also committed to implement legal means to protect geographical indications. There should also be an extended period of patent protection for pharmaceuticals if there is an unjustified reduction of the patent period due to the marketing approval process. Civil and criminal procedures incorporating effective measures and remedies should be introduced. Remedies should include damages, seizure of suspected infringing goods and destruction of goods determined to be infringing. Criminal sanctions should exist at least in cases of wilful counterfeiting or piracy. Rights holders should be entitled to initiate procedures for customs authorities to suspend the release of suspected counterfeited or pirated goods into free circulation.

In terms of legal reforms to the domestic intellectual property rights regime, Chile incorporated new provisions in the Industrial Property Act in 2005 to enhance compliance with TRIPS. It extended patent protection to 20 years from the filing date instead of 15 years from the registration date. It also introduced civil proceedings, including the right to sue for damages, due to infringements of intellectual property rights. A grace period for publication of inventions prior to their filing date was introduced. In 2005, Chile also incorporated provisions to protect undisclosed information related to pharmaceuticals and agrochemical products. The provisions on protection of undisclosed test data however provide at least one exception limiting their effectiveness in protecting IPR.⁴⁴ Chile is currently drafting a bill to provide legal protection against circumvention of digital rights management systems, i.e. technological protection measures used by copyright holders.

Table 7. An overview of Chile's IPR policies

Are intellectual property rights (IPRs) included as an explicit element in the national economic strategy of your country?	Yes
Has your country taken any recent economic policy initiatives in relation to trade and IPRs?	Yes
i) Unilateral initiatives to strengthen IPRs in order to attract high technology trade or foreign direct investment	Yes
ii) Participation in regional trade agreements with IPRs provisions that go beyond the requirements of the WTO TRIPS Agreement.	Yes
iii) Special public campaigns to ensure compliance with the WTO TRIPS Agreement or raise awareness of IPRs issues such as counterfeiting and piracy.	Yes
Are there policy objectives to ensure an adequate and effective enforcement of IPRs and to combat infringements thereof?	Yes
Does your country have a national, inter-ministerial strategy or plan for coordinating a response to piracy and counterfeiting through law enforcement and other public policy tools?	Yes
Has your country acceded to any international IPR related Agreements/Conventions, and particularly those administered by the World Intellectual Property Rights Organisation (WIPO)?	Yes
Has your country ratified the WIPO Internet Treaties?	Yes
Does your country have legally established limitations on patentable subject matter?	Yes

Please name these Agreements/Conventions and mention if their implementation by domestic regulations (if required) has been finalized.

- Berne Convention for the Protection of Literary and Artistic Works (Paris Act).
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.
- Convention Establishing the World Intellectual Property Organization.
- Paris Convention for the Protection of Industrial Property (Stockholm Act).
- Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) of the World Trade Organization.
- International Convention for the Protection of New Varieties of Plants (UPOV 1978).
- WIPO Copyright Treaty.
- WIPO Performances and Phonograms Treaty.
- Nairobi Treaty on the Protection of the Olympic Symbol.
- Treaty on the International Registration of Audiovisual Works.
- Patent Cooperation Treaty
- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms.

What is the term of copyright protection in your country?

Copyright protection extends during the entire life of the author, plus a 70-year term since the date of the author's death. For performers and phonogram producers the 70-year term is counted from the end of the calendar year of the first authorized publication; and for broadcasts entities a 50-year term is provided from the end of the calendar year of the first broadcasting.

What is the average pendency period for patent and trademark applications in your country?

In the case of trademarks, the average pendency period is 6 months. If oppositions are filed this term may extend up to one year. In the case of patents, the average pendency period is between 4 and 5 years from filing, if no oppositions are filed.

* One source indicates that it takes approximately 7-7.5 years to complete a patent application in practice. Chile's new National Institute of Industrial Property is trying to halve this time to 3.5-4 years.

Source: Government of Chile (correspondence with OECD Secretariat).

In 2007, Chile extended trademark protection for sounds, collective and certification trademarks. A bill to provide deterrent civil and criminal penalties for copyright infringement was also submitted to Congress. New legislation entering into force in 2007 allows for civil actions against unfair competition, including the misappropriation of intellectual property rights. The Unfair Competition Act (Law 20.169) seeks to complement the existing competition regime governed under the Antitrust Law, which addresses only unfair competition relating to economic damage arising from monopolies or market dominance. The Act in contrast addresses practices which unfairly divert consumers from market actors – including legitimate intellectual property rights holders – by establishing that conduct regulated under the Industrial Property and the Copyright and Related Rights Acts are also subject to this statute. The Unfair Competition Act provides a general definition of the “unfair competition” it governs and sets out an illustrative list of such conduct.⁴⁵ As of the time of this review, no intellectual property related cases have been taken before court based on infringements to the Act. Recently, the Chilean Congress also approved the Patent Cooperation Treaty and its associated regulations, which entered into force in June 2009.

In terms of measures undertaken to strengthen the enforcement and administration of intellectual property rights, the domestic police force established a special unit devoted to investigating and prosecuting IPR related crimes in 2008. To strengthen its intellectual property rights administration, Chile overhauled its Industrial Property Office (INAPI) in 2008 as part of a major reform envisaged under Law 20.254. The reforms were designed to improve the efficiency of registration processes, to promote the use of the intellectual property system and to enhance the availability of technological information *vis-à-vis* the public. Key components of the reform included providing INAPI with sufficient financial and administrative resources for it to be autonomous. The pool of specialized employees was also augmented to improve the registration of trademarks, geographical indications, patents, utility models, industrial designs and topographies of integrated circuits.

INAPI’s responsibilities henceforth included registering industrial property rights; serving as an advising body to H.E. the President of the Republic on issues related to industrial property, including accession to multilateral intellectual property treaties; and disseminating information including by promoting new initiatives and activities to increase public knowledge about the system of industrial property, and by collecting statistics and publishing research. To support these responsibilities, INAPI now has specialized bodies to register patents and trademarks, to prepare studies, to manage technology information platforms and to engage legal and international relationships. An additional new function of INAPI is to promote technology transfer and innovation by facilitating public access to information relating to patents and high technology.

This brief summary of the intellectual property regime in Chile provides evidence that the framework of intellectual property rights in that nation is extensive and is being implemented with reference to international standards. Although commitments under certain bilateral trade agreements to ratify further intellectual property related international agreements remain in process,⁴⁶ it is also clear that Chile has taken important steps to strengthen its intellectual property regime and comply with international obligations. This is also consistent with other indicators. For example, the Ginarte-Park index of patent protection indicates that the strength of patent protection in Chile (based on laws on the books) was below the average of 122 countries in 1990, while Chile was close to the highest level in 2005.⁴⁷ At the same time, there is also evidence that shortfalls remain including with respect to implementation, as discussed in the next section.

3.4 *Intellectual property rights challenges*

Despite the progress in the regulatory framework for intellectual property rights in Chile, there remain areas for improvement. A general indication is that business executives tend to view intellectual property protection in Chile as less effective than in most OECD countries. For example, Chile was ranked 63 out of 134 countries in the Global Competitiveness report 2008-2009.⁴⁸ This could be considered a decline in standing from a previous ranking of 33 out of 75 countries in the *Global Competitiveness* report 2001-2002.⁴⁹

One notable area for progress is the level of piracy in Chile. According to the Fifth Annual Business Software Alliance (BSA) and IDC Global Software Piracy Study (2007), the piracy rate was 66% in 2007, as compared to 21% in North America and 33% in Western Europe. Based on data from industry sources, it appears that the estimated level of piracy has not declined over the last five years. According to data from International Intellectual Property Alliance (IIPA), the piracy rate for recorded music was 44% in 2006 and 2007.⁵⁰ The piracy rate for motion pictures was 34% in 2005.⁵¹ The Business and Industry Advisory Committee (BIAC) to the OECD reports that the sale of pirated DVDs by street vendors is a substantial problem and also that Chile continues to be a port of entry for optical disc media allegedly utilised in connection with intellectual property rights abuse.⁵²

The relatively high levels of piracy in relation to copyrighted goods and counterfeiting of trademarked products indicate that the enforcement of intellectual property rights has not been sufficient and that penalties for infringement may be insufficient for deterrence in Chile. Authorities in Chile are well aware of this challenge and a bill to amend the *Copyright and Related Rights Act* by increasing monetary fines and prison sentences is currently under review by the Chilean Congress. Further capacity building and adoption of international best practices could be practical avenues for authorities in Chile to explore.

Rights holders have identified the protection of innovations in the pharmaceutical and agrochemical sectors as an area for improvement. These issues relate specifically to commercial authorisations for generic products that allegedly infringe patented pharmaceutical products and protection of the exclusivity of test data for the purpose of obtaining marketing approval. For example, BIAC (2008) alleges that 233 different copies of 64 patented pharmaceutical products have been granted marketing approval in violation of the rights of the patent holders. Chile is obliged under the US-Chile Free Trade Agreement to establish a mechanism to prevent the granting of marketing approvals before the expiration of the patent terms, unless explicit consent or acquiescence is secured from the patent holder to do otherwise.

Moreover, trade partners remain concerned about alleged inadequate protection against unfair commercial use of undisclosed test data generated to obtain marketing approval for pharmaceutical products.⁵³ A similar problem exists with pesticides and other agrochemical products requiring registration and marketing approval. Chile is obligated under the TRIPS Agreement to establish protection against unfair commercial use of undisclosed test data and has accordingly enacted a law establishing data exclusivity in 2005. However, effective implementation appears to remain elusive as several examples exist of test data allegedly being used without due authorisation to obtain marketing approvals, even after the law was established.

To address challenges related to implementation of intellectual property rights protection, a Committee on Intellectual Property (CIP), established in 2005, meets at a

technical level on a monthly basis; if technical officials from the different government agencies are unable to come to an agreement on a specific issue, the CIP convenes at a higher level (Secretary or Undersecretary). The mission of the CIP is to support the implementation of intellectual property commitments contained in Chile's bilateral trade agreements, and to facilitate exchanges of information. It coordinates work among government agencies to develop intellectual property related public policies. More recently CIP has adopted a capacity building role by organising seminars and workshops to improve the general knowledge among civil servants and judges over intellectual property matters. The CIP now also facilitate the development of national positions relating to intellectual property in international negotiations.

In terms of outcomes, the CIP has drafted six IPR related bills and assisted in the process supporting domestic implementation of the Patent Cooperation Treaty.⁵⁴ At the request of domestic government bodies, the CIP also provides technical support for modifications to administrative regulations with IPR implications. Such work has included that on the regulation for protection of confidential information submitted to the sanitary authority, as required for registering pharmaceutical products.

4. Compliance

Active effort to reform domestic legislation in support of a more liberal trade regime characterises Chile's trade policy of negotiating RTAs which are incorporated in the national legislation upon their entry into force. Authorities in Chile view these changes as geared towards greater openness through negotiations and not an alteration of the trading system but a deepening. This policy underpins current negotiations with Turkey and Malaysia and the recently completed agreement with Australia.

Chile's experience with trade negotiations has led it to form various inter-ministerial committees to address regulatory issues that impact trade. Officials at Direcon engage inter-ministerial meetings to ensure regular interaction between the regulators and officials responsible for trade issues. This inter-agency work has enabled regulatory agencies to be aware of their potential impacts on trade and thus to maintain compliance in terms of international commitments and domestic regulation. Direcon participates in regular inter-ministerial meetings relating to SPS, TBT and intellectual property. They can be consulted about regulations implemented in accordance with the international commitments that Chile has signed.

The inter-ministerial committee on SPS is, for instance, composed of representatives from the Ministry of Health, the Ministry of Agriculture, through the Agriculture and Livestock Service and the Bureau for Agricultural Studies and Policies, the Ministry of Economy, through the National Fisheries Service and the Ministry of Foreign Affairs, through Direcon. It meets bi-monthly and addresses issues relating to: compliance with multilateral commitments; developing national positions in WTO SPS negotiations, participating in relevant international *fora* (e.g. OIE, IPPC and Codex); negotiating trade agreements: and preparing SPS chapters in trade agreements. An important function of the committee is to support bilateral consultations at the technical level on trade issues between specialised agencies in Chile and their counterparts in partner countries. Trade issues can range from supporting solutions to disagreements on trade matters to implementing and administering trade agreements. Such bilateral consultations also provide a channel through committees created by trade agreements to ensure that trade measures do not become disguised forms of protection.

Similarly, the inter-ministerial committee on TBT, the National Commission on Technical Barriers to Trade, is headed by Direcon and is composed of representatives from Ministries and Public Agencies that develop, adopt and apply technical regulations and conformity assessment procedures including: the Ministry of Transport and Telecommunications; the General Direction of Public Work; the Ministry of Housing Planning, Urban Development and National Goods; the Ministry of Agriculture; the Environment National Commission; the Superintendence of Electricity and Fuel; the National Fisheries Service; the Undersecretary of Fishing; the Ministry of Health and the Public Health Institute; the Consumer National Service; the Ministry of Economy; the Superintendence of Sanitary Services; the Ministry of Defence; and the National Standardization Institute. It meets four times a year and its mission is to coordinate and provide consistency to the work of the institutions involved with technical regulations and conformity assessment procedures. Work streams it has identified in carrying out this mission include:

- Strengthening market surveillance by reviewing and analysing systems of standardization, regulation and conformity assessment within Chile.
- Identifying and analysing TBT related issues in the WTO context and other fora requiring national positions.
- Analysing and following up on current negotiations for trade agreements and supporting the administration of existing agreements, mainly through the provision of technical information on particular sectors.

As part of the inter-ministerial processes relating to various trade subjects, Direcon is regularly informed of proposed changes in domestic regulations which could affect trade and investment or might contravene international trade obligations. Moreover, Direcon is able to request that regulatory authorities provide additional information in instances where there are changes in domestic regulations. Private trade policy bodies are also able to recommend amendments to the regulations on the basis of their restrictiveness to trade and investment. While the extent to which such suggestions are fully taken on board in the drafting of regulations is remains under the discretion of the implementing authority, the implementing authority remains under the oversight of Direcon. The implementing authority must also adhere to the requirements of Decree 77/2004 requiring that regulations not be more trade restrictive than necessary to achieve a legitimate regulatory objective, and must be harmonised internationally unless doing so would jeopardise attainment of the intended regulatory objective.

In addition, the General Comptroller of the Republic is able to intervene and correct departures from international trade obligations, which are self executing or directly applicable under the Constitution as if they were national legislation. Where any or all of the mechanisms indicated above fail, individuals whether nationals or foreign retain the right under the Constitution to file a “protection action” for violations of constitutional guaranties, for instance equal treatment (non discrimination).

Chile is currently in the process of addressing three trade compliance related issues in relation to the WTO, the Chile-MERCOSUR and the Chile-Central America trade agreements. Changes to domestic legislation on “price bands” applied to wheat imports are underway to bring Chile into conformity with a WTO DSB ruling. The solution considered most viable is to raise the tariff on wheat to the 31.5%, which is the MFN rate at which Chile has bound wheat under the WTO. Second, consultations are being conducted under the Chile-MERCOSUR Agreement on the validity of an additional protocol relating to

preference for wheat, wheat flour and oils. Finally, consultations on the treatment accorded by Costa Rica to the Chilean appellation of origin “Pisco” under the FTA between Chile and Central America are in process. The complex consultations is over the use of the term Pisco in marketing alcoholic beverages produced in Chile and Peru, which are sold in Costa Rica.

5. Conclusions and policy options

A small open economy, Chile relies heavily on trade for its economic growth. This review highlights Chile’s well developed regulatory framework for trade, including a number of recent regulatory reforms which are considered here in light of market openness principles. More so than in many countries, the Political Constitution of Chile conditions the domestic regulatory framework for trade. The principle of direct application it incorporates means that the provisions of international treaties to which Chile is party are “self executing” and thus directly applicable at all levels of the domestic legal and regulatory system as if national legislation. As a result, the principle of non-arbitrary discrimination enshrined in the constitution is woven deeply into the fabric of laws, institutions and regulatory practices relating to trade, which are reviewed in this study. The principles contained within the Constitution in combination with a number of clear implementing laws, and well functioning inter-ministerial processes overseen by the General Directorate for International Economic Relations (Direcon), represent a framework for regulating trade policy highly supportive of market openness.

5.1 *General assessment and main challenges*

In the area of **transparency**, Chile has a number of laws including Law 20.285 passed last year to further strengthen transparency by requiring government bodies to justify the restriction of information from public access, in comparison to the previous practice of requiring citizens to justify its release. Law 20.285 also takes a novel approach in establishing a Council on Transparency vested with significant regulatory duties and powers to promote transparency. Meetings with the business community as part of this exercise registered satisfaction with regulatory transparency even prior to the entry into force of this legislation.

Policy options

- Although a number of key government services related websites already have English versions, expanding the number of government websites and the amount of information available in English may further improve transparency.
- Mandatory and effective consultation procedures exist for, technical regulations, government procurement and areas covered by international agreements. Consideration should be given to making such mandatory consultation procedures a generally applicable law.

The comprehensive application of the **non-discrimination** principle throughout Chile’s legal and regulatory framework for trade is an example of OECD best practice. Chile’s openness to foreign participation in government procurement points represents an example that should be further studied as a possible contribution to rulemaking at the international level.

Policy options

- No recommendation.

Chile has made significant progress in **use of the least trade restrictive regulations** particularly *via* its longstanding programme of leveraging information technology (IT) to provide government services more efficiently and effectively. Although Chile does not have regulatory capacity to systematically apply RIAs, it already applies elements of RIAs under Decree 77/2004 relating to technical standards.

Policy options

- Improving the predictability and thus lessening the trade restrictiveness of regulations is as much about individual regulations as it is about consistency across the domestic regulatory framework. Expanding the coverage of regulatory principles in Decree 77/2004 beyond the area of mandatory technical regulations would serve to reduce the systemic restrictiveness of the domestic regulatory framework, by reducing divergences in regulatory approaches among differing subjects, levels and geographic areas of regulation.
- Consider adopting a pilot programme for RIAs that includes trade and investment impacts as key components of analysis. Seek to apply them as a means to reduce the uneven regulatory performance in the rural/urban and regional contexts, which often constitute a barrier to economic development in underperforming areas.
- Continue efforts to integrate the information systems of differing government ministries and agencies to set the stage for the implementation of true “single windows”, which would allow for the completion of procedures involving multiple government bodies at a single window such as at the National Customs Service.

Chile sets a high standard in terms of **international harmonisation of standards** with Decree 77/2004 requiring the adoption of existing international standards as national ones unless they would not be effective in the domestic context. Two inter-ministerial processes relating to technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) measures meet on a regular basis to support the harmonisation of draft and existing standards to international ones. The Inter-ministerial Committee on Sanitary and Phytosanitary Standards, in particular, seeks to support efforts by Direcon, in a number of international organisations including the WTO and the Codex, to initiate and to facilitate policy processes encouraging their memberships to harmonise their domestic standards towards international ones.

Policy options

- No recommendation.

Importers met as part of the Secretariat mission have indicated little difficulty in the area of **streamlining conformity assessment**. No bilateral mutual recognition agreements are in force between Chile and its trade partners despite the large number of trade agreements it has joined. Chile is actively seeking to conclude a multilateral recognition agreement with the International Accreditation Forum (IAF), and work towards a Mutual Recognition Agreement (MRA) on Food in the Asia-Pacific Economic Cooperation (APEC) context. 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.

Policy options

- Complete the process of joining the IAF and other international arrangements for MRAs on testing by conformity assessment bodies.
- Continue supporting APEC efforts to develop a sectoral MRA on food, and in other areas and fora. Consider further efforts to conclude government-to-government sectoral MRAs.
- Consider establishing a system of Suppliers Declarations of Conformity Assessment with attention to key trade partners.

Chile has a system of **intellectual property rights** that is well developed from a legal perspective. Significant amendments and modifications have been made in recent years to bring the system closer to the international norms of developed economies, but problems with enforcement remain.

Policy options

- Scope for progress remains with respect to administration and enforcement of intellectual property rights. One particularly important area is reducing the rate of piracy in copyrighted goods and counterfeiting of trademarks. Experience suggests that linking international cooperation with domestic measures can enhance effectiveness in this area.
- Consideration should also be directed towards enhancing the domestic economy's capacity both to produce and to employ intellectual property. This would require building human capital and a combination of training and economic incentives for the private sector.
- Consider reviewing the intellectual property rights regime for pharmaceutical and agrochemical products, with attention to the use of test data and the approach to granting commercial authorisations for generic products. Some OECD Members consider that these aspects may be enhanced in line with the objectives of multilateral and bilateral commitments.

To support **compliance** with international obligations, Chile relies on two regular inter-ministerial dialogues on TBT and SPS attended by Direcon. Well aware of complexity in international trade obligations, Chile has joined compliance processes within the Dispute Settlement Body (DSB) of the WTO both as an initiator and respondent. Chile is in the process of implementing one unfavourable decision from the WTO DSB and engaged in consultations on two issues under its trade agreements.

Policy options

- Continue to seek resolution on existing issues.

Notes

1. Country reviews of regulatory reform normally contain chapters on regulatory quality, market openness and competition. Their objective is to assess domestic regulatory frameworks and suggest policy options for enhancing economic performance in countries under review. To date, the OECD has played a key role in promoting regulatory reform by carrying out assessments of the policies and practices of more than 20 member countries, Brazil, China and the Russian Federation.
2. WTO (2004c), p 4.
3. ISA (2009), p 6.
4. EIU (2008), p 5.
5. ISA (2009), p 6.
6. *Ibid.*
7. Herreros (2007), p 1.
8. AmCham (2009d).
9. AmCham (2009e).
10. WTO (2004c), pp. 9-10.
11. Herreros (2007), p 4.
12. AmCham (2009c).
13. Herreros (2007), pp. 12-13.
14. AmCham (2009c).
15. AmCham (2009c).
16. EIU (2008), p 4-5.
17. Herreros (2007), p 11.
18. Chile WTO enquiry and contact point
Departamento de Servicios e Inversiones
Dirección General de Relaciones Económicas Internacionales
Teatinos 180 Piso 11
Santiago, Chile
Telephone: +56 2 827 5100
Fax: +56 2 827 5466
E-mail: anovik@direcon.cl
Source: WTO (2008a), p. 5.
19. Government of Chile (2009).
20. See section 2.1.4 Transparency in the field of technical regulations and standards.
21. WTO (2004c), p 12.
22. In accordance with established terminology in the WTO TBT Agreement, technical regulations are documents with which compliance is mandatory, while standards provide rules and guidelines for common and repeated use but compliance with them is not mandatory.

23. Government of Chile.
24. The Political Constitution explicitly require or indirectly ensure that regulations incorporate the MFN and the national treatment principles, in Article 19, and especially in its numbers 2, 3, 16, 20, 21, 22, 23, 24 and 26.
25. Direcon (2009).
26. Estimates based on gross inflows of FDI under the DL600 provisions, as measured by the Foreign Investment Committee.
27. These protections are provided under a special and voluntary investment regime (DL 600).
28. The term RTA is used here as a generic term which includes free trade agreements (FTAs), customs unions (CUs) and preferential trading areas (PTAs) which are not necessarily limited to regional groupings.
29. Australia, Canada, Colombia, Japan, Korea, Mexico, United States and Peru.
30. OECD (2004a).
31. WTO (2004a), p 9.
32. AmCham (2009d).
33. Global Competitiveness Report (2009).
34. Latin Business Chronicle (2007).
35. OECD (2007d).
36. Web Portal for the development of an entrepreneurial culture in Chile (2009).
37. Easy Procedure Portal (2009).
38. National Customs Service of Chile (2009).
39. Changes to the intellectual property regime pursued under the Digital Development Strategy include seeking amendments to the Copyright Act allowing for better regulation of internet service providers, and new exceptions and limitations to copyrights seeking a better balance of interests between the general public and right holders.
40. WEF (2008).
41. From a systemic perspective, it can also be argued that some experimentation with local and national designs of intellectual property rights in combination with international trade and investment generate institutional competition and may lead to improved efficiency in the global system of intellectual property rights over the long run. Limited experimentation and competition, particularly in new sectors and in times of significant technological change, may contribute to evolving best practices and improving market institutions.
42. The Chilean authorities note that “the present report was finalised in October 2009 using information available at the time of preparation and it does not reflect that during 2010, Chile enacted the most important reform to its Copyright Act in the last 40 years. The amendment brought about the modernization of the Chilean copyright system by incorporating important international standards, such as higher sanctions, new civil and criminal causes of action, and a system of liability for Internet Service Providers.”
43. At the time the review is being prepared, Chile had not yet ratified the UPOV 91, however, the bill that seeks its ratification is currently under revision by Congress. The Trademark Law Treaty had been approved in the Chamber and was under revision in the Senate.

44. Article 91 (e) of Law No. 19,039 on Industrial Property provides an exception to the protection of test data. Under this Article, test data protection cannot be granted for pharmaceutical or agricultural chemical products that have received health registration or authorisation abroad which have been in force for more than 12 months. One Member views that this exception is not in compliance with Chile's obligations under the EFTA-Chile FTA, which provides for a minimum term of protection for test data of 5 years.
45. The illustrative list includes: misappropriation of intellectual or industrial property rights by competitors with the objective of abusing or affecting the good reputation of its competitors; the use of signs or to divulge facts or affirmations, incorrect or false, that lead to error regarding the nature, origin, components, characterises, price, means of production, brand, quality or quantity and, in general, the real benefits of the goods or services offered, one's own or that of another; all comparison of the goods, services, activities or one's own or that of another establishments with a third parties, that are based on information that are false or not provable; and the abusive exercise of IPR in judicial actions whose sole purpose is to obstruct competitiveness within the market.
46. See footnote 46.
47. Park (2005). The Ginarte-Park index of patent protection for Chile increased from 2.26 in 1990 to 4.28 in 2005. The maximum score increased from 4.35 to 4.87 during the same period.
48. WEF (2008).
49. WEF (2001).
50. IIPA (2008).
51. IIPA (2007).
52. BIAC (2008).
53. USTR (2009).
54. The bills include: one related to amendments to the Industrial Property Acts that is already enacted (Law 20.160); the bill to ratify the Patent Cooperation Treaty and four that are being discussed by Congress: a bill to amend the Copyright and Related Rights Act; a bill to adhere to UPOV 1991, a bill to amend the Plant Varieties Act, and a bill to adhere the Trademark Law Treaty.

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