

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) OVERVIEW¹

1. Since the previous Review of its trade policy in 2003, Chile has adopted several measures to modernize its customs regime and facilitate trade, including advance publication of customs regulations, introduction of an online public consultation process, computerization of procedures for the entry and exit of goods, and the creation of customs tribunals. In addition, in late 2003 a law was published giving effect to the application of the WTO Customs Valuation Agreement. Following unilateral tariff reduction, since 2003 Chile has applied a virtually uniform MFN tariff of 6 per cent. All tariff lines have been bound, the majority at an *ad valorem* rate of 25 per cent. Chile still has a price band system for certain agricultural products. The only tariff quota in effect applies to imports of sugar.

2. In addition to tariffs, there are other taxes on the import of goods, some of them on an *ad valorem* basis. Over the period under review, the customs clearance tax and the airport tax were abolished. Chile has no quantitative restrictions or import licences, even though it bans the import of used motor vehicles, used motorcycles and used tyres. Since 2003, contingency measures have been imposed on a few occasions, mostly on certain agricultural products. In general, technical regulations and sanitary measures are drawn up and implemented transparently and both types of measure are regularly notified to the WTO.

3. Chile has several export promotion programmes, which mainly consist of administrative facilities for payment and reimbursement of customs duties. During the period under review, some of these programmes were modified in order to bring them into line with the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). Chile also has several export financing and guarantee schemes, one of which requires compliance with national content requirements. There are a number of incentive programmes to promote regional development, micro, small- and medium-sized enterprises (MSMEs) and innovation, consisting of tax concessions, financing for investment and technological development, and support for business management.

4. Chile's government procurement regime has been the subject of legislative reform since 2003 to make it more transparent and efficient, *inter alia*, through use of electronic bidding procedures; foreign suppliers are given national treatment. The competition regime has also been revised, and in 2004 a tribunal to protect free competition was created; there have been many investigations into mergers and buy-outs in the transport, telecommunications, electricity and health sectors, *inter alia*. Chile has also introduced legislative reforms to strengthen its intellectual property regime; in some areas of copyright and industrial property, Chile's legislation goes further than the obligations laid down in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

¹ In Chapters III and IV, the figures in Chilean pesos have been converted into United States dollars at an exchange rate of Ch\$587.32/US\$1, which corresponds to the arithmetic average of the exchange rate for the United States dollar over the first six months of 2009. *Unidades de Fomento* - UF (Development Units) have been converted into United States dollars at a rate of US\$35.9/1 UF, which corresponds to the arithmetic average of the value of the UF over the first six months of 2009.

(2) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Procedures, documentation and registration

5. Since the previous Review, Chile has introduced several measures to streamline customs procedures, facilitate trade and make monitoring easier, and is still making further improvements.

6. Chile's customs regime is based on the Customs Ordinance (Decree with Force of Law No. 30 of the Ministry of Finance, published on 16 June 2005).² Other instruments which form part of the regime are the Organic Customs Law (Decree No. 329 of 20 June 1979), the Customs Tariff (Decree No. 1.019 of 31 December 2001 and amendments thereto), the Tax Code (Decree Law No. 830 of 31 December 1974), the Compendium of Customs Regulations (Resolution No. 1300 of 2006), Law No. 18.525 on the Import of Goods into Chile and amendments thereto, Law No. 19.912 of 2003, which brings Chile's legislation into line with the WTO Agreements, as well as several regulations and resolutions³ and the customs provisions in the trade agreements signed by Chile. Chile is a member of the World Customs Organization (WCO) and has customs cooperation agreements with eight countries.⁴

7. The *Servicio Nacional de Aduanas* - SNA (National Customs Service) (the Customs), is a government body with its own administration and is responsible for monitoring and supervising the passage of goods at Chile's ports, borders and airports, collecting foreign trade-related duties and taxes (including VAT and specific taxes), compiling statistics on Chile's trade, and carrying out any other tasks entrusted to it by the law. The strategic cornerstones of the Customs work are supervision, facilitation of foreign trade and the incorporation of information technology into both processes.⁵

8. A *declaración de ingreso* - DIN (declaration of entry) has to be submitted before bringing goods into Chile and it must be endorsed by the customs authorities. The declaration must contain the following information: the identity of the exporter, the carrier, the importer or consignee and, where applicable, the customs agent; the importer's tax identification number; a description of the goods (Harmonized System code, weight, quantity, unit price); and the customs value.

9. The following documents must be attached to the DIN: the bill of lading, waybill or airway bill; the original of the invoice; a sworn statement from the importer regarding the price of the goods for the purposes of customs valuation and, where applicable, the mandate given to the customs agent (consisting of endorsement of the original bill of lading). In addition, any permits, certificates or authorizations required for the goods must be submitted, together with a certificate of origin if the imports are covered by a preferential agreement.

10. The involvement of a customs agent (customs dispatcher) is mandatory for all imports whose f.o.b. value exceeds US\$1,000⁶, except for those going to free zones. The criteria for the profession of customs agent include Chilean nationality and accreditation by the National Director of Customs.

² Decree with Force of Law No. 30 of 2005 contains the revised, coordinated and consolidated text of Decree with Force of Law (DFL) No. 213 of 1953 on the Customs Ordinance.

³ Chile's legislation, regulations and case law on customs matters are available at: http://www.aduana.cl/prontus_aduana/site/edic/base/port/inf_leg_y_normativa.html

⁴ Online information from the National Customs Service. Viewed at: http://www.aduana.cl/prontus_aduana/

⁵ Online information from the National Customs Service. Viewed at: <http://www.aduana.cl>

⁶ Since the previous Review of Chile (2003), this value has been increased from US\$500 to US\$1,000. For exports, the services of customs agents are required for transactions exceeding US\$2,000.

By law, customs agents are government auxiliaries; at the same time, together with their clients, they are responsible for paying the import duties and taxes and incur civil and administrative liability for any action or omission affecting the interests of the State.⁷ In 2008, 236 customs agents were operating in Chile.

11. There are no registration requirements for importers. There is only a Register of Importers and Exporters of Ozone-Depleting Substances⁸, for which the SNA is responsible, in order to ensure compliance with the international commitments arising from the Montreal Protocol on the control of such substances.

12. The DINs are always sent electronically through a customs agent and include the calculation of the taxes payable. Since the end of 2007, it has also been possible to send cargo manifests (for maritime, land, air and courier transport) electronically to the Customs.⁹ After the DIN has been accepted, the import duties and taxes are paid either electronically or at authorized banks. There is a project for a single window for foreign trade to allow foreign trade operators to complete all the formalities electronically. According to information from the Customs, by the end of 2007 bilateral coordination of systems and procedures had been completed for ten government departments, which taken as a whole accounted for over 96 per cent of the volume of operations.¹⁰

13. Once a DIN has been accepted for processing, in order to verify the data declared the customs authorities may check the documents, conduct a physical inspection or assess the value of the goods, which involves simultaneous physical inspection and checking of documents.¹¹ According to information from the authorities, between 5 and 10 per cent of import (and export) transactions are subject to checking of documents and physical inspection.

14. The decision regarding which shipments to inspect is based on risk profiles, filtering and selectivity criteria; random checks are also carried out. In 2007, some 84 per cent of the DINs verified were chosen using a computerized system and the rest were chosen manually. The selection criteria are determined by the Customs Inspection Department and concern sensitive sectors and tax related aspects, especially undervaluation, but criteria relating to the companies' fiscal record are not utilized. The customs authorities may also carry out audits a posteriori and these concern some 15 to 20 per cent of import transactions, selected on the basis of risk profiles.

15. If there are no comments to be made after inspection, the customs authorities endorse the payment of the duties and other import levies. As a general rule, duty should be paid up to 15 days after acceptance of the DIN and before the goods are withdrawn from the Customs, unless they are subject to a different form of payment. The average time taken for clearance is two days.

16. Since the previous Review, Chile has adopted several measures to facilitate trade and make it more secure. From 2007 onwards, there has been "advance publication", which consists of publishing customs regulations on the Customs website before they come into force so that they are known and can be the subject of comments by all interested parties. In the same year, the Customs introduced an online procedure calling on trade operators to propose measures to improve customs regulations and procedures, called the "regulatory agenda". Besides enhancing transparency and promoting

⁷ Articles 196, 199 and 200 of the Customs Ordinance (DFL No. 30).

⁸ Exempt Resolution No. 5630 of 17 October 2007.

⁹ For bills of lading (B/L), only the heading is sent electronically.

¹⁰ Online information from the National Customs Service. Viewed at: http://www.aduana.cl/prontus_aduana/site/artic/20071210/pags/20071210131656.html

¹¹ Article 84 of the Customs Ordinance (DFL No. 30).

participation by the private sector, this mechanism helps to ensure better compliance with the regulations. Both the "advance publication" and the "regulatory agenda" have been considered as best international practices by the IMF.

17. Chile is working on implementing the WCO's Regulatory Framework for Trade Security and Facilitation and since 2005 has applied the WCO's Convention on Temporary Admission (ATA Carnets). Other trade facilitation measures include modernization of the physical infrastructure, the acquisition of non-invasive technology (container scanners), inter-operability between Customs and ports, the introduction of a pilot project for export clearance that allows information to be sent from the factory directly to the port and the Customs¹², lessening the time during which the cargo remains in the port and improving cooperation with border customs posts.

18. In October 2008, the Customs set up the Post-Clearance Audit Unit, part of the Inspection Subdirectorate, in order to conduct full post-clearance inspection of companies and by group of activity. In February 2009, a pilot project for the Authorized Economic Operator Scheme was implemented in order to facilitate legitimate trade and focus inspection on those operators who posed the greatest risk.

19. Under the Regional Trade Agreements (RTAs) signed by Chile, since 2009, the Chilean Customs have been issuing binding advance resolutions at the request of importers, or exporters or producers of goods to be imported, covering aspects such as customs valuation, tariff classification and the origin of the goods. The advance resolutions are issued for all imports irrespective of origin.

20. Pursuant to the Customs Ordinance, interested parties may lodge complaints against decisions and actions by the Customs within 60 working days. Complaints must be lodged with the competent Customs regional director or administrator, who takes a decision in the first instance. Appeals against their decisions may be lodged with the National Director of Customs within five working days, but there is no subsequent appeal against the latter's ruling and it applies in all the Customs posts in Chile.¹³ Chilean case law on customs matters can be viewed on the Customs website.¹⁴ The authorities indicate that, during the period 2003-2006 (the latest for which information is available), 6,422 complaints against valuations were made in the first or sole instance and 4,559 in the second instance.

21. In 2008, the National Congress approved the creation of Tax and Customs Tribunals as bodies independent of the inspection entities and responsible for deciding on disputes between taxpayers and the Customs regarding classification, valuation, origin, etc. It is hoped that these tribunals will start to function in stages between 2009 and 2013.

22. Chile has notified the WTO that it has no preshipment laws or regulations.¹⁵ The authorities have confirmed that this type of service is not used.

¹² Pilot project implemented in the port terminals at San Antonio and San Vicente.

¹³ The procedure for lodging complaints against decisions by the customs authorities is laid down in Title VI of the Customs Ordinance (DFL No. 30).

¹⁴ Online information from the SNA. Viewed at: http://www.aduana.cl/prontus_aduana/site/edic/base/port/inf_fallos.html

¹⁵ WTO document G/PSI/N/1 of 31 March 1995.

(ii) Customs valuation

23. In November 2003, Law No. 19.912 was published, giving effect to application of the WTO Customs Valuation Agreement, whose provisions had been applied by Chile since 2002 by means of Decree No. 1.134 of 20 June 2002. Law No. 19.912 brought Chile's legislation into line with the provisions of the Agreement, as well as making other amendments.¹⁶ These amendments have been notified to the WTO.¹⁷ At its meeting in March 2004, the WTO Customs Valuation Committee concluded its examination of Chile's notification.

24. Chile uses the transaction value as the initial basis for determining the customs value and defines this as the price actually paid or payable for the goods when these are sold for entry into Chile. The transaction value is applied on a c.i.f. basis both for imports covered by MFN treatment and for imports under preferential regimes. In 2008, the value of 99 per cent of imports was determined according to the transaction value.

25. If the customs value cannot be determined on the basis of the transaction value, it is determined using each of the methods laid down in the WTO Customs Valuation Agreement in sequence (Articles 2, 3, 5, 6 and 7) until the first method that allows it to be determined is reached. If it is necessary to postpone the definitive determination of the customs value at the time the value of the goods to be imported is determined, in those cases indicated by the Customs the importer may withdraw the goods from the Customs subject to lodging a sufficient guarantee.¹⁸

26. Verification of the declared value is based on the principle of reasonable doubt.¹⁹ If the Customs has grounds for doubting the accuracy or exactitude of the declared value, it may require the importer to submit other documents or proof attesting to the value. If doubt persists regarding the declared value even after receiving the additional elements, or in their absence, the value of the goods is determined using the methods in the WTO Customs Valuation Agreement. This procedure is without prejudice to the power of the Customs to carry out subsequent reviews, investigations or audits.

27. Chile's legislation gives the National Director of Customs the authority to issue regulations for valuing used goods, but also states that these regulations must be consistent with the WTO Customs Valuation Agreement.

(iii) Rules of origin

28. Chile applies preferential rules of origin under its various RTAs; no non-preferential rules of origin are envisaged in its legislation.²⁰ All the RTAs signed by Chile contain special provisions on rules of origin and certification procedures. Chile has notified the WTO Committee on Rules of Origin of the preferential rules of origin in some of its RTAs.²¹ Information on rules of origin in other agreements signed by Chile has been notified to the Committee on Regional Trade Agreements (see Table AII.3).

¹⁶ The laws amended include Law No. 18.525 on the import of goods into Chile and Law No. 18.483, known as the "Automotive Statute".

¹⁷ WTO document G/VAL/N/1/CHL/1 of 24 November 2003.

¹⁸ Article 5 of Law No. 18.525, amended by Decree No. 19.912.

¹⁹ Article 69 of the Customs Ordinance (DFL No. 30).

²⁰ WTO document G/RO/N/6 of 19 December 1995.

²¹ WTO document G/RO/N/38 of 7 October 2002.

29. Three kinds of rules of origin can be distinguished in the RTAs signed by Chile and they differ in terms of complexity, specificity and level of detail: (i) rules of origin in agreements which are similar to those in the North American Free Trade Agreement; (ii) rules in agreements negotiated with European countries; and (iii) rules of origin in Economic Complementarity Agreements (ECAs) concluded within the LAIA framework.

30. Generally speaking, Chile's RTAs with countries on the American continent, Asian countries, the P-4²² and Australia define goods as originating if they are wholly obtained or produced in the territory of the parties; if they are wholly produced in the territory of the parties exclusively from originating inputs; if they are produced from non-originating inputs that undergo a change of tariff classification in the territory of the parties and comply with other requirements, or if they satisfy a regional content value requirement, calculated on the basis of detailed formulas.

31. In the agreements signed with the European Community and the European Free Trade Association, rules of origin are based on the concept of "sufficient working or processing". Although they differ from product to product, the criteria for defining whether a good has been sufficiently processed or worked may include a change in tariff classification, a regional content value requirement or production process rules.

32. The rules of origin in ECAs are based on Resolution No. 252 of 1999 of the LAIA Committee of Representatives. These are somewhat simpler rules of origin. In addition to products wholly obtained in the territory of the parties, goods which undergo a substantial transformation (i.e. a change in tariff classification) are also considered as originating. If there is no substantial transformation, a regional content value requirement applies calculated using a simple formula (c.i.f./f.o.b.). The rules of origin in the various ECAs signed by Chile were described in the Secretariat's Report for the 1997 Review of Chile.²³

33. Imports benefiting from preferential treatment under a trade agreement must be accompanied by a certificate of origin. The procedures for certifying and verifying origin differ according to the agreement. In some RTAs self-certification is allowed and there is a certificate of origin for this purpose, which in some cases may be issued and submitted electronically; verification of origin is initiated directly by the Customs of import and the procedures regarding the responsibilities and attributions of each entity participating tend to be very detailed. In agreements with European countries, origin is certified by the competent government authority (in Chile's case, the *Dirección General de Relaciones Económicas Internacionales* - DIRECON (Directorate-General of International Economic Relations)), which may not delegate this role; a special certificate of origin is required (with a particular watermark and colour) and verification procedures are conducted through the competent government authority. In ECAs, certification is the responsibility of the competent authority, which may delegate this task to other government or private bodies; the format for the certificate of origin is straightforward and the verification procedures are carried out through the certifying authority.²⁴

34. As part of the action taken to move towards convergence of the trade agreements to which Chile is party, the authorities are exploring the possibility of setting up mechanisms for the cumulation of origin with partners in various agreements; for example, in the "Pacific Rim" framework (see Chapter II(4)(iii)), where Chile chairs a working group on convergence.

²² The Trans-Pacific Strategic Economic Partnership Agreement (P-4) was signed by Chile, New Zealand, Singapore and Brunei Darussalam on 18 July 2005.

²³ WTO (1997).

²⁴ R. Contreras (undated).

(iv) Tariffs

35. Chile's average MFN tariff is 6 per cent. The tariff rate is virtually standard, although there are a few exceptions for some agricultural products, which are imposed at 12.5 per cent or are subject to a price band system, as well as some products that enter duty free (aircraft, boats and some capital goods). During the Uruguay Round, Chile bound all its tariffs at 25 per cent, except for some agricultural products, which were bound at 31.5 per cent at the end of the implementation period. Subsequently, in accordance with Article XXVIII of the GATT, Chile renegotiated the bound rate for sugar, raising it to 98 per cent and introducing a tariff quota.

(a) Structure and levels

36. Since January 2003, Chile has had a virtually uniform MFN tariff resulting from implementation of Law No. 19.589 (1998), which provided for a unilateral reduction in the general tariff by one percentage point each year, from 11 per cent down to 6 per cent in 2003 (January). Chile grants at least MFN treatment to all its trading partners.

37. Chile's customs tariff is based on the 2007 version of the Harmonized Commodity Description and Coding System (HS 2007). In January 2009, the tariff comprised 7,715 eight-digit lines (compared with 7,903 in 2003) (Table III.1). *Ad valorem* duty applied to all imports, with the exception of eight lines corresponding to agricultural products (wheat, wheat flour and sugar) to which compound duties applied under the price band system (see Chapter IV(2)(iv)). In January 2009, the *ad valorem* equivalent of the tariff applied under the price band system was 0 per cent for wheat and wheat flour and 6 per cent for sugar.²⁵ There were no seasonal tariffs.

38. In January 2009, there were three *ad valorem* rates: 0, 6 and 12.5 per cent. The most common rate was 6 per cent, which applied to 99.3 per cent of tariff lines, followed by 0 per cent (0.5 per cent of tariff lines) and 12.5 per cent (0.2 per cent of tariff lines).

Table III.1
MFN tariff structure, January 2009
(Percentage)

2009		
1.	Total number of tariff lines	7,715
2.	Non- <i>ad valorem</i> tariffs (% of all tariff lines)	0.1
3.	Non- <i>ad valorem</i> tariffs without AVEs (% of all tariff lines)	0.0
4.	Tariff quotas (% of all tariff lines)	0.1
5.	Duty-free tariff lines (% of all tariff lines)	0.5
6.	Average of lines exceeding zero (%)	6.0
7.	Domestic tariff peaks (% of all tariff lines) ^a	0.0
8.	International tariff peaks (% of all tariff lines) ^b	0.0
9.	Bound tariff lines (% of all tariff lines)	100.0

a Domestic tariff peaks are defined as rates exceeding three times the overall simple average applied rate.

b International tariff peaks are defined as rates above 15 per cent.

Source: WTO Secretariat estimates based on data provided by the Chilean authorities.

39. In January 2009, the average MFN tariff was 6 per cent (Table III.2). Agricultural products (WTO definition) were subject to an average rate of 6.1 per cent, while the tariff on non-agricultural

²⁵ Information provided by the Chilean authorities.

products was 6 per cent on average. The highest rate (12.5 per cent) applied to 12 tariff lines for certain agricultural products, mainly meat and edible poultry offal. In fact, following the conclusion of the RTA with the United States of America, in 2004 Chile increased its MFN tariff on these 12 lines from 6 to 25 per cent, which will gradually be brought back to 6 per cent²⁶; in January 2009, it was 12.5 per cent. In the same month, Chile applied a zero per cent tariff on 35 tariff lines for non-agricultural products, including books and printed matter, electrical machinery and appliances, fire-fighting vehicles, tanks, helicopters, aircraft, and cargo and passenger vessels, *inter alia*.

Table III.2
Breakdown of the MFN tariff, January 2009

Description	MFN			Coefficient of variation (CV)	Average bound tariff (%)
	Number of lines	Average (%) ^a	Range (%) ^a		
Total	7,715	6.0	0 - 12.5	0.1	25.1
HS 01-24	1,484	6.0	0 - 12.5	0.1	25.8
HS 25-97	6,231	6.0	0 - 6	0.1	25.0
By WTO category					
Agricultural products	1,045	6.1	0 - 12.5	0.1	26.1
- Animals and animal products	127	6.6	6 - 12.5	0.3	25.0
- Dairy products	51	6.0	6 - 6	0.0	29.8
- Coffee and tea, cocoa, sugar, etc.	172	6.0	0 - 6	0.1	27.6
- Cut flowers and plants	59	6.0	6 - 6	0.0	25.0
- Fruit, vegetables and garden produce	270	6.0	6 - 6	0.0	25.0
- Cereals	20	5.7	0 - 6	0.2	25.3
- Oilseeds, fats and oils and their products	103	6.0	6 - 6	0.0	29.4
- Alcoholic beverages and liquids	81	6.0	6 - 6	0.0	25.0
- Tobacco	14	6.0	6 - 6	0.0	25.0
- Other agricultural products n.e.s.	148	6.0	6 - 6	0.0	25.0
Non-agricultural products (including petroleum)	6,670	6.0	0 - 6	0.1	25.0
- Non-agricultural products (excluding petroleum)	6,641	6.0	0 - 6	0.1	25.0
- Fish and fish products	510	6.0	6 - 6	0.0	25.0
- Minerals, precious stones and metals	401	6.0	6 - 6	0.0	24.9
- Metals	659	6.0	6 - 6	0.0	25.0
- Chemicals and photographic products	1,342	6.0	6 - 6	0.0	25.0
- Leather, rubber, footwear, and travel articles	252	6.0	6 - 6	0.0	25.0
- Wood, wood pulp, paper and furniture	425	5.9	0 - 6	0.1	25.0
- Textiles and clothing	1,114	6.0	6 - 6	0.0	25.0
- Transport equipment	320	5.5	0 - 6	0.3	24.8
- Non-electrical machinery	711	6.0	0 - 6	0.0	25.0
- Electrical machinery	412	6.0	0 - 6	0.0	25.0
- Non-agricultural products n.e.s.	495	6.0	0 - 6	0.0	25.0
- Petroleum	29	6.0	6 - 6	0.0	25.0
By ISIC sector^b					
Agriculture and fishing	516	6.0	0 - 6	0.0	25.3
Mining	119	6.0	6 - 6	0.0	25.0
Manufacturing	7,079	6.0	0 - 12.5	0.1	25.1
By HS chapter					
01 Live animals and animal products	604	6.1	6 - 12.5	0.1	25.4

²⁶ Law No. 19.914 of 19 November 2003.

Description	MFN				Average bound tariff (%)
	Number of lines	Average (%) ^a	Range (%) ^a	Coefficient of variation (CV)	
02 Plant products	405	6.0	0 - 6	0.1	25.4
03 Fats and oils	60	6.0	6 - 6	0.0	28.2
04 Food preparations, etc.	415	6.0	6 - 6	0.0	26.3
05 Mineral products	196	6.0	6 - 6	0.0	24.9
06 Products of the chemical and related industries	1,232	6.0	6 - 6	0.0	25.0
07 Plastics and rubber	304	6.0	6 - 6	0.0	25.0
08 Hides and skins	81	6.0	6 - 6	0.0	25.0
09 Wood and articles of wood	158	6.0	6 - 6	0.0	25.0
10 Wood pulp, paper, etc.	209	5.9	0 - 6	0.1	25.0
11 Textiles and textile articles	1,093	6.0	6 - 6	0.0	25.0
12 Footwear, hats and other headgear	109	6.0	6 - 6	0.0	25.0
13 Articles of stone	187	6.0	6 - 6	0.0	25.0
14 Precious stones, etc.	60	6.0	6 - 6	0.0	25.0
15 Base metals and articles of base metal	637	6.0	6 - 6	0.0	25.0
16 Machinery and mechanical appliances	1,142	6.0	0 - 6	0.0	25.0
17 Transport material	333	5.5	0 - 6	0.3	24.8
18 Precision instruments	258	6.0	6 - 6	0.0	25.0
19 Arms and ammunition	23	6.0	6 - 6	0.0	25.0
20 Miscellaneous manufactured articles	202	6.0	6 - 6	0.0	25.0
21 Works of art, etc.	7	6.0	6 - 6	0.0	25.0
By stage of processing					
First stage of processing	1,111	6.0	0 - 6	0.0	25.1
Semi-processed products	2,281	6.0	0 - 6	0.0	25.2
Fully processed products	4,323	6.0	0 - 12.5	0.1	25.1

a The calculations include the *ad valorem* equivalents of products subject to the price band system (an *ad valorem* rate of 6 per cent plus a special rate or a tariff reduction, whichever applies).

b ISIC (Rev.2), excluding electricity (1 line).

Source: WTO Secretariat estimates based on data provided by the Chilean authorities.

40. There is no tariff escalation in Chile's tariff as the average tariff on fully processed and semi-processed products is the same as that on products at the first stage of processing, i.e. 6 per cent. There is little dispersion in the tariff structure. In fact, tariff dispersion, measured by the coefficient of variation, fell from 0.2 per cent in 2003 to 0.1 per cent in 2009.

41. Used goods are subject to a surcharge of 50 per cent on top of the general tariff or preferential tariff, whichever applies. Ambulances, armoured vehicles, highway cleansing vehicles, motor homes and other special vehicles do not have to pay this additional duty.

(b) Tariff bindings

42. Chile's tariff bindings are contained in Schedule VII annexed to the General Agreement on Tariffs and Trade 1994 and also in the Schedule compiled prior to the entry into force of the Marrakesh Agreement.²⁷ During the Uruguay Round, Chile bound all its tariffs (Chapters 1 to 97 of

²⁷ The Schedule prior to the entry into force of the Marrakesh Agreement is contained in document L/7195/Add.5 attached to the Geneva Protocol (1993).

the HS) at a rate of 25 per cent, with the exception of certain agricultural products and six tariff lines that had been bound at lower levels prior to the Round.

43. The agricultural products listed in Section I of Chile's Schedule VII were subject to a bound rate of 31.5 per cent at the end of the implementation period. These include wheat and wheat flour, various dairy products, oil seeds and oleaginous fruit, vegetable fats and oils, and cane or beet sugar. The rates bound at less than 25 per cent are: one bound line at zero per cent (bone ash), another line bound at 3 per cent (ships over 3,500 tonnes or 120 metres in length), another at 15 per cent (various worked carving materials) and three lines at 23 per cent (various types of turbine).

44. After the end of the Uruguay Round, Chile renegotiated the bound rate for sugar pursuant to Article XXVIII of the GATT 1994. In November 2001, it notified that it had completed the negotiations, which had resulted in an increase in the final bound rate for sugar from 31.5 per cent to 98 per cent, and the introduction of an annual tariff quota of 60,000 tonnes at a rate of zero per cent.²⁸ The amendments to Chile's Schedule of Concessions were certified and came into force on 30 January 2002.²⁹ Pursuant to Article XXVIII.5 of the GATT 1994, Chile reserved the right to amend its Schedule of Concessions on a number of occasions. The most recent notification in this respect concerns the three-year period beginning on 1 January 2006.³⁰ At the time of preparing this report, a new notification by Chile in this regard, covering the period 2009-2011, was being prepared.

45. Chile did not follow the procedures to introduce the 1996 HS changes into its Schedule of Concessions. The changes introduced into its Schedule in accordance with the 2002 HS were certified in document WT/Let/583 of 29 August 2007.

(c) Tariff quotas

46. Following the amendment of its Schedule of Concessions, Chile has had an MFN tariff quota for refined sugar since January 2002 (see Chapter IV(2)(iv)). Moreover, under its RTAs, Chile applies tariff quotas on imports of certain products such as vegetable oils, bovine meat, poultry meat, dairy produce and fish.

(d) Price band system

47. Chile has a price band system based on international reference prices for imports of wheat, wheat flour and sugar. In accordance with this system, amended in 2003, specific duties are added to the *ad valorem* tariff when the reference price falls below the lower threshold price in the price band; in exchange, a tariff reduction applies when the reference price exceeds the upper threshold of the band (see Chapter IV(2)(iv)).

(e) Special tariff treatment

48. Section 0 of Chile's customs tariff provides for special tariff treatment consisting of total or partial exemption from duty for certain users or purposes. This applies, *inter alia*, to imports of certain goods by government bodies, foreign service officials, international organizations, educational and social welfare organizations, religious communities and air and maritime transport companies, as well as to donations, samples of goods of no commercial value and certain automobile parts. Chile also gives tariff concessions in connection with the free zones (see (4)(iii)).

²⁸ WTO document G/MA/TAR/RS/82 of 30 October 2001.

²⁹ WTO document WT/Let/415 of 4 March 2002.

³⁰ WTO document G/MA/173 of 5 December 2005.

49. In addition, under Law No. 20.269, which came into force on 27 June 2008, a zero per cent MFN tariff applies to imports of certain capital goods.³¹

(f) Preferential tariffs

50. The important role played by tariff preferences in Chile's foreign trade continued to grow during the period under review. Since 2003, Chile has signed RTAs with the Republic of Korea, the United States of America, EFTA (Iceland, Liechtenstein, Norway and Switzerland), China, Panama, Peru, Colombia, Australia, Japan and Turkey, as well as an economic partnership agreement with New Zealand, Singapore and Brunei Darussalam (P-4) and a partial scope agreement with India. Chile also has RTAs with Canada, Mexico and Central America³² and an economic association agreement with the EC. Chile grants tariff preferences to several countries under ECAs signed within the LAIA framework. In all, Chile has signed 20 trade agreements with 56 countries (see Chapter II(4)(ii)).

51. The WTO Secretariat has not been able to prepare a statistical breakdown of the preferential tariffs granted by Chile under the RTAs it has signed because there is no information on the rates actually applied in 2009 under these agreements at the tariff line level.³³

52. A study of the effective tariff imposed on Chile's imports, published by the Central Bank of Chile, found that because an increasingly large proportion of these imports come from countries which have tariff preferences, the effective tariff rate showed a downward trend over the period 2000-2005, falling to less than 2 per cent in 2005. The study also shows that capital goods were subject to the lowest effective tariff in 2005 (1.3 per cent), whereas higher rates applied to intermediate goods (1.7 per cent) and consumer goods (3.1 per cent).³⁴

(v) Other charges affecting imports

53. Other levies are imposed exclusively on imports of goods in addition to tariffs, some of them on an *ad valorem* basis. Since the previous Review, Chile has abolished import levies such as the customs clearance tax and the airport tax. Imported goods, in the same way as domestic goods, must pay the value added tax (VAT) and other additional taxes depending on the nature of the goods.

54. The Customs imposes a 1 per cent tax on the customs value for its verification service for "valuation examination" in connection with simultaneous payment import declarations.³⁵

55. There is a tax on goods entering under the temporary admission regime at a rate that is a percentage of the total customs duties and taxes on their import and varies depending on the time the goods are going to remain in Chile. If they remain from one to 15 days, the rate applicable is 2.5 per cent; it is 5 per cent for 16 to 30 days; 10 per cent for 31 to 60 days; 15 per cent for 61 to 90 days;

³¹ The zero per cent tariff is applied on an ad hoc basis to capital goods that meet the definitions laid down in Law No. 18.634.

³² As of May 2009, it was in force only for Costa Rica, El Salvador and Honduras.

³³ The WTO Secretariat had access to the tariff reduction timetables for each of the RTAs signed by Chile, but the majority of these are expressed in nomenclatures that preceded the HS, whereas the MFN tariff rates applied by Chile are based on HS2007. Consequently, it was not possible to calculate the reductions made or the preferential rates applied.

³⁴ Becerra (2005).

³⁵ Article 85 of the Customs Ordinance.

20 per cent for 91 to 120 days; and 100 per cent for over 121 days.³⁶ If the goods entering under the temporary admission regime are from an origin that is covered by a preferential agreement, the taxable base includes all the customs duties and taxes laid down in the general import regime.³⁷

56. In principle, a storage tax is payable when goods are deposited in the customs in-bond warehouse.³⁸ The authorities have indicated, however, that in practice the Customs does not provide warehousing and warehouses are operated by natural or legal persons authorized by the National Director of Customs or under a concession given following a public bidding procedure. Warehouse operators set their rates but may not allow arbitrary or discriminatory treatment.³⁹

57. VAT applies to the domestic sale and import of goods and services, with some exceptions specified by law.⁴⁰ In October 2003, the VAT rate was temporarily increased from 18 per cent to 19 per cent and this increase was made permanent in April 2006. VAT on imported goods is calculated on the customs value plus the import duty. The legislation defines the exceptions to VAT depending on the use or purpose of the goods imported, one of the most important being the concession for exports. In addition, imports of capital goods may be exempted from VAT if they are to be used for investment, in accordance with the Foreign Investment Statute (Decree Law No. 600, see also Chapter II(3)), or if local production is insufficient or not of high enough quality.⁴¹

58. Depending on their nature, some domestic and imported goods are subject to additional taxes; these include luxury articles, beverages, tobacco, pyrotechnical articles and fuels (Table III.3).

Table III.3
Taxes levied on imports and domestic goods, January 2009

Tax	Product	Rate (%)	Taxable base	
			Imports	Domestic goods
Value added tax (VAT)	All goods	19	Customs value plus import duty	Selling price at all transaction levels
Luxury tax	Articles made of gold, platinum and ivory; jewellery, natural or synthetic precious stones; fine furs; rugs and fine tapestries; motor homes; caviar; air or compressed gas guns	15	Customs value plus import duty	Selling price at all transaction levels
	Pyrotechnical articles (fireworks), except for industrial, mining or agricultural use	50	Customs value plus import duty	Selling price at all transaction levels
Tax on beverages	Non-alcoholic beverages (mineral waters, artificial beverages and syrups)	13	Customs value plus import duty	Selling price at all transaction levels, except for retail sale
	Alcoholic beverages, wines, champagne, cider and beer	15		
	Liqueurs, pisco, whiskies, spirits, eau de vie	27		

³⁶ Article 107 of the Customs Ordinance.

³⁷ National Customs Service, Office Circular No. 0017 of 17 January 2008.

³⁸ Article 110 of the Customs Ordinance.

³⁹ Finance Decree No. 1.114, published on 26 May 1998.

⁴⁰ Decree Law No. 825 of 1974 on the tax on sales and services, replaced by Decree Law No. 1.606, published on 3 December 1976 and updated on 5 June 2007 (hereinafter, Law on the Tax on Sales and Services).

⁴¹ Law on the Tax on Sales and Services, Article 12, B, 10.

Tax	Product	Rate (%)	Taxable base	
			Imports	Domestic goods
Tax on tobacco products	Cigars	51.0	Final consumer price	Final consumer price
	Cigarettes	60.4	Final consumer price	Final consumer price
	Manufactured tobacco	57.9	Final consumer price	Final consumer price
Tax on fuels	Gasoline	4.5 UTM/m ³ (1 UTM = US\$69.5) ^a	Customs value plus import duty plus VAT	Producer price, including VAT (first sale)
	Diesel	1.5 UTM/m ³ (1 UTM = US\$69.5) ^a	Customs value plus import duty plus VAT	Producer price, including VAT (first sale)

a *Unidad Tributaria Mensual* - UTM (monthly tax unit) is an economic unit used for taxation purposes and adjusted monthly according to the CPI. At 30 June 2009, it amounted to Ch\$36.792, some US\$69.5.

Source: Online information from the Internal Taxation Service. Viewed at: <http://www.sii.cl>.

59. During the period under review, Chile abolished the tax on the import of luxury vehicles which, at the end of 2003, amounted to 85 per cent of the part of the customs value exceeding US\$15,835 for imported vehicles. The same tax applied to domestic vehicles on a percentage of the value which exceeded that sum. This tax was gradually lowered and then abolished as of 1 January 2007 pursuant to Law No. 19.914 of 19 November 2003 and Chile's commitments under its RTA with the United States of America.

60. Law No. 19.912, published on 4 November 2003, repealed Article 190 of Law No. 16.464 establishing the customs clearance tax. This was a 5 per cent tax on the customs value of goods fully or partially exempt from customs duty. Preferential imports under trade agreements signed by Chile were exempt from this charge. In addition, Decree No. 30 of the Undersecretariat of Aviation, published on 5 April 2004, repealed the "airport tax" of 2 per cent on customs duty applicable to goods imported by air.

(vi) Import prohibitions, restrictions and licensing

61. Chile has no quantitative restrictions and no import licensing regime, but bans the import of used vehicles, used motorcycles and used and retreaded tyres. Furthermore, the entry of certain products is subject to administrative formalities.

(a) Import prohibitions

62. The Constitutional Organic Law of the Central Bank establishes freedom of importation, provided that there is compliance with the legislation in force and the goods are not specifically prohibited.⁴² Chile has some prohibitions on imports in order to protect the environment and human or animal health and to preserve plants, in accordance with its domestic legislation and international commitments. These prohibitions apply indiscriminately to all its trading partners.

63. The import of used vehicles⁴³, used motorcycles and used and retreaded tyres (with the exception of wheel-mounted tyres) is prohibited.⁴⁴ The origin of this prohibition on importing used vehicles is to be found in Law No. 18.483, known as the Automotive Statute of 1985, whose original objective was to assist Chile's automobile industry and promote its exports. According to the authorities, the reason for maintaining the prohibition is to ensure that there is a modern, safe and

⁴² Article 88 of the Constitutional Organic Law of the Central Bank of Chile (Law No. 18.840, published on 10 October 1989).

⁴³ Article 21 of Law No. 18.483 of 28 December 1985.

⁴⁴ Exempt Resolution No. 1.108 of the Ministry of Health.

environmentally friendly fleet of motor vehicles. This prohibition does not apply to ready-mix cement trucks, ambulances, fire-fighting vehicles, urban and highway cleansing vehicles, armoured vehicles, motor homes and penitentiary vehicles, *inter alia*, or to vehicles belonging to Chilean citizens who have resided abroad for one year or more and then returned to Chile, and vehicles intended for free zones. The reason for prohibiting used tyres is one of public health. It is to ensure that the mosquito *aedes albopictus*, which transmits epidemic diseases such as dengue and yellow fever, is not introduced into Chile by means of used tyres.

64. Other products that may not be imported include asbestos, pornography, dangerous goods such as certain pesticides for agricultural use, toys and articles for children which contain toluene, adhesives with a volatile solvent base and other goods prohibited by decree of the Ministry of Health or Agriculture or other government bodies. Pursuant to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), it is prohibited to import animals or plants in danger of extinction. Chile also prohibits the import of toxic and hazardous waste pursuant to the Basel Convention, as well as the import of ozone-depleting substances and products containing CFCs in accordance with the Montreal Protocol (Annexes A, B and Group II in Annex C).

65. The Ministry of Finance is empowered to prohibit, by means of a supreme decree, imports of goods coming from or originating in countries that have imposed trade restrictions on Chile.⁴⁵ The authorities have indicated that this provision has never been applied.

(b) Import restrictions and licensing

66. The Constitutional Organic Law of the Central Bank does not allow the establishment of quotas for imports (or exports).⁴⁶ Consequently, Chile does not apply quantitative restrictions on imports, and it has no import licensing regime.⁴⁷

67. Nevertheless, the import of certain products requires that endorsement, authorization or certification be obtained in advance from an official control body. The most important among these supervisory services are the *Servicio Agrícola y Ganadero* - SAG (Agriculture and Livestock Service), the Ministry of Health (MINSAL), through its Regional Ministerial Secretariats, the Directorate-General of Recruitment and Mobilization of the Armed Forces and the Directorate of Frontiers and Borders. Table III.4 shows goods the import of which is subject to some type of administrative formality, including sanitary or phytosanitary permits and compliance with technical regulations (see also (2)(viii) and (ix) below). These formalities apply indiscriminately to all Chile's trading partners and are automatically approved.

Table III.4
Goods subject to import formalities

Goods that require approval, certification or authorization	Supervisory body	Type of formality/legal basis
Firearms, ammunition, explosives and inflammable or asphyxiating chemical substances	Directorate-General of Recruitment and Mobilization of the Armed Forces	Law No. 17.798
Written or audiovisual material relating to martial arts for teaching purposes, irrespective of the person undertaking the transaction	Directorate-General of Recruitment and Mobilization of the Armed Forces	Law No. 18.536

⁴⁵ Article 88 of the Constitutional Organic Law of the Central Bank of Chile.

⁴⁶ *Idem*.

⁴⁷ WTO documents G/LIC/N/1/CHL/1 of 5 June 1996 and G/LIC/N/3/CHL/3 of 28 September 2007.

Goods that require approval, certification or authorization	Supervisory body	Type of formality/legal basis
Enriched fissile or radioactive elements or materials, radioactive substances, devices or tools that emit ionic radiation	Chilean Nuclear Energy Commission	Decree No. 323/1974 of the Ministry of the Economy
Alcohol, alcoholic beverages and vinegar	Agriculture and Livestock Service	Law No. 18.164/1982
Plant products and products that may be dangerous to plants	Agriculture and Livestock Service	Law No. 18.164/1982
Animals, animal products and by-products and waste of animal or plant origin	Agriculture and Livestock Service	Law No. 18.164/1982
Fertilizers and pesticides	Agriculture and Livestock Service	Law No. 18.164/1982
Food products or by-products of animal or plant origin	Agriculture and Livestock Service	Law No. 18.164/1982
Food products of any kind	MINSAL Regional Ministerial Secretariats	Law No. 18.164/1982
Toxic substances or substances that are dangerous to health	MINSAL Regional Ministerial Secretariats	Law No. 18.164/1982
Pharmaceutical or food products for medical and/or cosmetic use	MINSAL Regional Ministerial Secretariats	Law No. 18.164/1982
Narcotics and psychotropic substances that cause addiction	MINSAL Regional Ministerial Secretariats	Law No. 18.164/1982
Toxic substances or substances dangerous to health	MINSAL Regional Ministerial Secretariats	Sanitary Code (DFL No. 725/1968); Sanitary Regulations for Foodstuffs; MINSAL Decree No. 977
Hydrobiological resources in any state of growth, including ornamental species	Undersecretariat of Fisheries/National Fisheries Service	Law No. 18.892/1989, Decree No. 96/1996, Decree No. 730/1995, Decree No. 626/2001, Decree No. 175/1980 of the Ministry of the Economy
Fisheries products, including raw materials for processing and exporting, bait and food intended for hydrobiological species	National Fisheries Service	Law No. 18.892/1989, Decree with Force of Law No. 5/1983
Cinematographic films and video tapes, to be marketed or for commercial use	Film Classification Board	Decree Law No. 679/74, amended by Law No. 18.853
Wastage and waste of batteries and accumulators; waste of zinc, lead, antimony, beryllium, cadmium, chromium, pharmaceutical products or organic solvents	Ministry of Health	Sanitary Code (DFL No. 725/1968), MINSAL Exempt Resolution No. 714/2002
Human remains or ashes from their incineration	MINSAL Regional Ministerial Secretariats	Sanitary Code (DFL No. 725/1968), MINSAL Decree No. 357/1970
Species of wild fauna and flora protected by the CITES	Administrative authority as defined in Article IX of the Convention	Article IX of the CITES

Source: Online information from the National Customs Service. Viewed at: <http://www.aduana.cl/prontus aduana/>

(vii) Anti-dumping, countervailing and safeguard measures⁴⁸

68. During the period under review, Chile imposed anti-dumping, countervailing or safeguard measures on a few occasions. These measures have tended to be applied to certain agricultural products. In January 2009, only one anti-dumping duty was in force. In view of the exceptionally short periods during which contingency measures remain in effect, Chile's legislation has the potential to discourage their use for protectionist purposes and prevent the distortions this implies for the allocation of resources. Moreover, in certain of the RTAs it has signed, Chile has agreed that there

⁴⁸ For an analysis of the development and operation of Chile's contingency measures regime, see Sáez (2006), pp. 109-135.

should be no reciprocal application of such measures and, at the multilateral level, advocates stricter disciplines for their use. On the other hand, some contingency measures applied by Chile have been the subject of complaints under the WTO dispute settlement mechanism.

(a) Anti-dumping and countervailing measures

69. Chile's legal framework for anti-dumping and countervailing measures comprises Law No. 18.525 of 30 June 1986 and amendments thereto⁴⁹, Ministry of Finance Decree No. 575 of 17 June 1993 establishing the implementing Regulations for Article 11 of Law No. 18.525, the Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement) and the SCM Agreement. Both these Agreements have force of law pursuant to Supreme Decree No. 16 of the Ministry of Foreign Affairs of 17 May 1995. Should there be any discrepancy between these Agreements and Law No. 18.525, the former prevail.

70. Chile's legislation in this respect has been notified to the WTO and examined by the Committees on Anti-Dumping Practices and on Subsidies and Countervailing Measures.⁵⁰ In these Committees, Chile provided replies to the questions raised by Brazil and Argentina.⁵¹ There have not been any changes to Chile's relevant legislation since 2003.

71. Chile has notified the WTO that the *Comisión Nacional Encargada de Investigar la Existencia de Distorsiones en el Precio de las Mercaderías Importadas* - CNDP (National Commission responsible for investigating distortions in the price of imported goods) is the competent authority for anti-dumping and subsidization investigations.⁵² The CNDP was set up by Article 9 of Law No. 18.525 and is composed of the National Economic Prosecutor, who chairs the Commission, two representatives of the Central Bank of Chile, a representative each from the Ministries of Finance, Agriculture, the Economy, and Foreign Affairs, and by the National Director of Customs. The Central Bank is responsible for the CNDP's Technical Secretariat. The Commission's decisions are adopted by a majority of votes.

72. The President of the Republic has the power to determine which goods are to be subject to such duties, their amount and duration, following a report from the CNDP.⁵³ It is the task of the CNDP to examine complaints of distortion in the prices of imported goods. The complaints may be submitted by any domestic industry, or on its behalf, and must contain information substantiating the existence of the distortion, the way in which it is causing actual or imminent serious injury to domestic production and the causal relationship between the imports at distorted prices and the alleged injury or threat of injury. The CNDP may also initiate investigations ex officio if it has the background information justifying this and it then follows the same procedures as those for investigations following a complaint; the authorities have indicated that in ex officio investigations the provisions laid down in the WTO Anti-Dumping Agreement and SCM Agreement, as applicable, are followed.

⁴⁹ Law No. 19.155 of 13 August 1992; Law No. 19.383 of 5 May 1995; and Law No. 19.612 of 31 May 1999.

⁵⁰ WTO documents G/ADP/N/1/CHL/1 and G/SCM/N/1/CHL/1 of 7 April 1995 and G/ADP/N/1/CHL/2 and G/SCM/N/1/CHL/2 of 14 March 2000.

⁵¹ WTO documents G/ADP/Q1/CHL/3 and G/SCM/Q1/CHL/3 of 5 December 2000 and G/ADP/Q1/CHL/4 and G/SCM/Q1/CHL/4 of 30 April 2001.

⁵² WTO document G/ADP/N/14/Add.25 of 29 April 2008.

⁵³ Article 8 of Law No. 18.525.

73. Investigations into dumping or subsidization must be concluded within one year and at the latest by 18 months after the date of publication of the notice of initiation. Within 60 days from the initiation of the investigation, the CNDP may recommend to the President of the Republic that provisional duties, which must not remain in force for more than four months or six months in special cases, be applied. If after carrying out the investigation, the CNDP finds that there are price distortions which are causing serious actual or imminent injury to domestic production, it issues a resolution recommending to the President that definitive anti-dumping or countervailing duties be applied. The duties must not exceed the margin of the distortion and may not be imposed for more than one year because they are considered to be a temporary solution.⁵⁴ The duties may not be renewed and may only be extended if the CNDP carries out a new investigation and finds it necessary to recommend the application of new duties.

74. The President of the Republic may decide not to follow the CNDP's recommendation and refrain from imposing anti-dumping or countervailing duties. Nevertheless, if it is decided to impose duties, these may not exceed the level recommended by the CNDP. There is no provision in Chile's legislation for applying anti-circumvention measures or for retroactive application of measures. All preliminary or definitive determinations are published, together with the initiation and end of the investigation, by means of the relevant notifications in the Official Journal and in reports on the CNDP's sessions which, once approved, are published and may be viewed on the CNDP's website⁵⁵; the foregoing is without prejudice to the protection of confidential information.

75. Between January 2003 and December 2008, Chile initiated three anti-dumping investigations (compared to nine over the period 1997-2002), one of which was initiated ex officio by the CNDP and concerned imports of wheat flour from Argentina. Two of the investigations gave rise to provisional duties, which were subsequently confirmed by the final determination.⁵⁶ The third case ended without the imposition of measures because no dumping or injury was found.⁵⁷ In June 2009, Chile did not have any anti-dumping investigations under way and applied one definitive anti dumping duty of 30.3 per cent on imports of wheat flour from Argentina. In May 2009, Argentina requested consultations pursuant to the WTO Dispute Settlement Understanding regarding this measure.⁵⁸

76. Between January 2003 and December 2008, Chile initiated two anti-subsidy investigations (compared to four between 1997 and 2002). Both investigations ended without the imposition of measures; in one case, because no injury was found and in the other because the investigation was terminated as there was a simultaneous anti-dumping investigation into the same product from the same origin. The products in question were wheat flour and chicken meat from Argentina, respectively. In January 2009, there were no countervailing duties in effect and no investigations into subsidization under way.

77. In connection with its negotiations on RTAs, Chile has sought commitments that no anti-dumping measures would be applied between parties. This is the case, for example, in the agreements signed with Canada and EFTA. Other trade agreements signed by Chile simply reaffirm

⁵⁴ As a general rule, the WTO Anti-Dumping Agreement allows the application of definitive anti-dumping duties for up to five years (Article 11).

⁵⁵ The CNDP's website can be viewed at: <http://www.cndp.cl>

⁵⁶ The two cases both referred to the same product (wheat flour) from Argentina. This is because Chile's legislation requires that anti-dumping duties only remain in effect for one year and their renewal requires initiation of a new investigation.

⁵⁷ This case concerned imports of chicken meat from Argentina.

⁵⁸ WTO document WT/DS393/1 of 14 May 2009.

the provisions of the WTO Anti-Dumping Agreement (such as those with the P-4, the United States and China) or do not include any relevant provisions (the agreement with Japan).

78. In the Doha Round negotiations Chile has submitted, either individually or together with other Members, many proposals to clarify and improve the provisions of the Anti-Dumping Agreement and make them stricter in order to prevent the use of anti-dumping measures as a means of protection. Among the issues covered in the proposals are disciplines for initiation of investigations, the practice of "zeroing", concepts of "lesser duty" and "public interest", substantive rules relating to the determination of dumping and injury, the duration and reviews of anti-dumping measures, as well as due process and transparency.⁵⁹

(b) Safeguard measures

79. Chile's legal framework for safeguards includes Law No. 19.612 of 31 May 1999 (which amended Law No. 18.525), the Regulations on the application of safeguard measures, published by means of Ministry of Finance Decree No. 909 of 17 June 1999, Article XIX of the GATT 1994 and the WTO Agreement on Safeguards. Chile has notified Law No. 19.612 to the WTO Committee on Safeguards.⁶⁰

80. Law No. 19.612 for the first time incorporated provisions on safeguards in Chilean legislation and empowered the CNDP to undertake investigations and recommend the adoption of such measures. The President of the Republic may, by means of a supreme decree, impose safeguard measures subject to a favourable report from the CNDP.⁶¹ There have been no changes to the safeguards legislation since 2003.

81. At the written request of a domestic industry, or on its own initiative, the CNDP may initiate an investigation to determine whether or not there is serious injury or threat of injury to the domestic industry in question. The authorities have indicated that in ex officio investigations the procedures and requirements laid down in the WTO Agreement on Safeguards are followed. Serious injury means a significant impairment in the position of a domestic industry. When determining injury or threat of injury, the CNDP must evaluate all relevant factors of an objective and quantifiable nature.⁶²

82. Within 90 days of the initiation of the investigation, the CNDP must decide whether, in the light of the information available, it can be concluded that a product has been imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products. If this is the case, it has to issue a resolution recommending the imposition of tariff surcharges and forward this, together with information on the case and its findings, to the President of the Republic, who adopts a final decision by means of a Ministry of Finance decree.⁶³

83. In emergencies where any delay would cause damage which it would be difficult to repair, and within 30 days of the initiation of an investigation, the CNDP may request the President of the Republic to apply provisional tariff surcharges. The CNDP's decision must be based on a preliminary

⁵⁹ For an overview of Chile's position in the anti-dumping negotiations, see WTO document TN/RL/W/171 of 15 December 2005.

⁶⁰ WTO document G/SG/N/1/CHL/2 of 24 August 1999.

⁶¹ Article 7 of Law No. 18.525, as amended by Law No. 19.612.

⁶² Articles 11 and 12 of the Regulations on the application of safeguard measures (Decree No. 909).

⁶³ Articles 16 and 17 of Decree No. 909.

determination of clear evidence that increased imports have caused or are threatening to cause serious injury.⁶⁴

84. Safeguard measures may only be adopted in the form of *ad valorem* tariff surcharges; Chile's legislation does not allow the imposition of quotas or specific tariffs. If the proposed surcharge, added to the tariff in effect, exceeds the tariff bound in the WTO, the approval of three quarters of the members of the CNDP is required. Safeguard measures may not be applied for more than one year, including the period during which the provisional measure was in effect. The measures may be extended by the President for a period not exceeding one year, subject to a favourable report from the CNDP.⁶⁵ If they are extended, a timetable for their gradual dismantling must be drawn up. Provisional measures may not remain in effect for more than 200 days. The CNDP may at any time recommend that the tariff surcharges be modified or abolished prior to their expiry. It should be noted that the periods of duration and extension of safeguard measures in Chile's legislation are much shorter than those laid down in the WTO Agreement on Safeguards.

85. Chile initiated three safeguards investigations between January 2003 and December 2008 (compared to 11 over the period 1997-2002). In all three cases, the investigation led to the imposition of a definitive measure in the form of an *ad valorem* tariff surcharge. Two of the investigations concerned the same product (wheat flour); one of them was initiated by the CNDP ex officio. The third investigation concerned dairy products (powdered milk, liquid milk and Gouda cheese); the definitive measure was eliminated before it expired. In June 2009, there were no safeguard measures in effect and no investigations under way.

86. During the period under review, there were two cases before the WTO dispute settlement mechanism concerning a safeguard measure, initially provisional⁶⁶ and subsequently definitive⁶⁷, imposed by Chile on imports of certain Argentine dairy products. After consultations had been held with Chile in March 2007, Argentina requested the establishment of a Panel to address both disputes.⁶⁸ The DSB set up the Panel, but shortly afterwards it suspended its work at the request of Argentina. In August 2008, the decision to establish a Panel lapsed without the latter having resumed work.⁶⁹ Among the complaints raised by Argentina were the lack of an adequate definition of like or directly competitive products, the absence of evidence proving an increase in imports, the significant overall impairment of the domestic industry and the causal link between them. Argentina also claimed that the measure discriminated between its products and products from other WTO Members.⁷⁰

87. When imposing safeguard measures, Chile also complies with the provisions in its RTAs, which include various types of safeguards. Bilateral safeguards strictly apply to trade between the parties and are normally imposed only during the tariff reduction period. Other types of safeguards apply to "sensitive" sectors (for example, agriculture and textiles); in such cases, their use is subject to special procedures and to limits on the type of measure that may be utilized (generally speaking, only tariffs).

⁶⁴ Article 14 of Decree No. 909.

⁶⁵ Article 21 of Decree No. 909.

⁶⁶ WTO document WT/DS351/1 of 30 October 2006.

⁶⁷ WTO document WT/DS356/1 of 9 January 2007.

⁶⁸ WTO document WT/DS351/2 and WT/DS356/2 of 9 March 2007.

⁶⁹ WTO document WT/DS351/4 and WT/DS356/4 of 1 August 2008.

⁷⁰ WTO document WT/DS351/2 and WT/DS356/2 of 9 March 2007.

88. Some of the RTAs signed by Chile also contain provisions exempting one or more parties from the imposition of the global safeguard measures adopted within the WTO framework.⁷¹ In some instances, Chile has invoked these provisions in order to refrain from applying safeguards on imports from its preferential partners.⁷² Nevertheless, in the most recent RTAs signed by Chile there are no exceptions to global safeguards, and the parties merely reaffirm their rights and obligations under Article XIX of the GATT and the WTO Agreement on Safeguards.⁷³ A study has shown that the fact of exempting preferential partners may lessen the effectiveness of a global safeguard by creating incentives to divert trade towards trading partners that are not affected by the measure.⁷⁴

(viii) Technical regulations and standards

89. There have been no major changes to Chile's legal and institutional framework for the preparation and application of technical regulations, standards and conformity assessment procedures since 2003. The rules require that such measures should be drafted on the basis of the principles of non-discrimination and transparency and, whenever possible, international standards. Between January 2003 and January 2009, Chile submitted 53 notifications to the WTO on technical regulations and over the same period adopted 169 new regulations.

(a) Transparency

90. The Agreement on Technical Barriers to Trade (TBT Agreement) came into force in Chile in May 1995.⁷⁵ Law No. 19.912 of 4 November 2003 provides for a mechanism for compliance with the notification commitments required by the TBT Agreement. In addition, Ministry of the Economy Decree No. 77 of 14 June 2004 determined the requirements to be met by institutions responsible for drawing up, adopting and implementing technical regulations and conformity assessment procedures (see below). The Decree also lays down principles to be observed in standardization activities such as using international standards as a basis, not creating unnecessary barriers to trade, national and MFN treatment, and wherever possible technical regulations should be drafted on the basis of operational criteria. Chile's most recent communication on the implementation and administration of the TBT Agreement dates from March 2006.⁷⁶

91. Up until April 2008, the Ministry of the Economy, through the *Departamento de Comercio Exterior* - DECOEX (Foreign Trade Department), was responsible for administering the TBT Agreement, acting as the enquiry point for technical regulations and conformity assessment procedures, and making notifications to the WTO.⁷⁷ Since May 2008, these tasks have become the responsibility of the DIRECON, which belongs to the Ministry of Foreign Affairs. Technical regulations are voluntary and the *Instituto Nacional de Normalización* - INN (National Standardization Institute) is the service in charge (see (c) below).

⁷¹ For example, the agreements signed with Canada, Mexico, Peru and Central America.

⁷² This is the case for the safeguard measures applied to socks made from synthetic fibres (2001), fructose and fructose syrup (2002), hot-rolled coils and sheets (2002), and wheat flour (2005 with an extension in 2006), from which imports from Canada, Mexico and Peru were excluded.

⁷³ See, for example, the agreements with Panama, China, EFTA, the P-4 and the Republic of Korea. The agreement with Japan does not contain any provision on global safeguards.

⁷⁴ Sáez (2006), p. 127.

⁷⁵ Ministry of Foreign Affairs Decree No. 16.1995 of 17 May 1995.

⁷⁶ WTO document G/TBT/2/Add.16/Rev.1.

⁷⁷ Ibid.

92. The DIRECON also chairs the National Commission on Technical Barriers to Trade, which coordinates the work of the various government entities involved in standardization activities.⁷⁸ The purpose of the Commission is to ensure compliance with obligations under the TBT Agreement, coordinate Chile's position in the relevant trade negotiations and promote standardization as a tool in support of Chile's technological modernization process. In October 2008, a government/private sector working group on technical barriers to trade was set up, in which the DIRECON and the production sector work together to overcome the technical barriers faced by Chilean exports in foreign markets. During the period under review, no concerns or complaints relating to the technical regulations implemented by Chile were submitted to the WTO Committee on Technical Barriers to Trade.

93. Chile is a member of the International Organization for Standardization (ISO), the International Organization of Legal Metrology (OIML), the Inter-American Metrology System (SIM), the Panamerican Standards Commission (COPANT), the International Accreditation Forum (IAF), the International Laboratory Accreditation Cooperation (ILAC), the InterAmerican Accreditation Cooperation (IAAC), the *Asociación MERCOSUR de Normalización* - AMN (MERCOSUR Standardization Association)⁷⁹, the *Bureau International des Poids et Mesures* - EIPN (International Bureau of Weights and Measures) and the Codex Alimentarius.

94. Most of the RTAs signed by Chile contain a chapter on technical regulations and standards that includes rules on transparency, equivalence, mutual recognition and risk assessment.

(b) Technical regulations

95. Mandatory technical regulations are prepared by the government entities responsible for regulating their respective areas of competence, for example, the Ministries of the Economy, Health, Agriculture, Transport and Telecommunications, Housing and Urban Planning, and the *Superintendencia de Electricidad y Combustibles* - SEC (Supervisory Authority for Electricity and Fuel). These regulations are in the form of laws, decrees or resolutions. As Chile is a unitary State, technical regulations and conformity assessment procedures are drafted by the Central Government.

96. Pursuant to the aforementioned Decree No. 77, the drafting and adoption of technical regulations and conformity assessment procedures is initiated by the regulatory authority or by stakeholders that propose the measure. The procedure then goes through the following stages: the competent government entity publishes the proposed technical regulation and/or conformity assessment procedure by means of a notice in a nationwide medium or on its website, giving an excerpt of the draft, its aim and the reasons for the approach adopted, at the same time forwarding a copy to the DIRECON for the purposes of notification to the WTO. A minimum period of 60 days is given as of publication of the notice for the submission of comments in writing, although this may be extended, except in emergency situations involving safety, health, environmental protection or national security. Decree No. 77 also provides that, except in cases of emergency, the technical regulations and conformity assessment procedures notified to the WTO may only be issued by the competent entities at the end of a period of at least 60 days following their notification to the WTO.

⁷⁸ The National Commission on Technical Barriers to Trade is composed of the Ministries of Foreign Affairs, the Economy, Housing and Urban Planning, Transport and Telecommunications, National Defence, Health, Agriculture, Public Works, the Supervisory Authority for Health Services, the National Environmental Commission and the National Energy Commission. The Ministry of the Economy is represented by the Undersecretariat of the Economy, the National Consumer Service, the Undersecretariat of Fisheries, the National Fisheries Service and the Supervisory Authority for Electricity and Fuel.

⁷⁹ Chile participates in the AMN as an associate member and has no voting rights.

97. After they have been approved, technical regulations and conformity assessment procedures are published in the Official Journal. A period of at least six months must elapse between their publication and their implementation, unless such a period would mean that the legitimate objectives of the measure could not be achieved. Once the measure has been published, replies are given to the most important comments received. There is no special mechanism for reviewing or abolishing technical regulations. Nevertheless, the authorities have indicated that the competent agencies review technical regulations and conformity assessment procedures on a regular basis in order to repeal those that have become obsolete.

98. According to the authorities, the vast majority of technical regulations are based on international standards, but the authorities do not have any information on the exact proportion. As an example, they indicated that, in the electricity sector, all the technical regulations applied by the Supervisory Authority for Electricity and Fuel are identical to international standards. The authorities point out that the fact that the majority of technical regulations are based on international standards and have no significant impact on trade explains why not all the measures adopted have been notified to the WTO.

99. Chile keeps an inventory of all technical regulations, conformity assessment procedures and public consultation procedures, which can be viewed at: www.reglamentostecnicos.cl. In December 2008, Chile had a total of 689 technical regulations and conformity assessment procedures in effect, of which 169 had been adopted since January 2003.⁸⁰

100. Between January 2003 and January 2009, Chile submitted 53 notifications to the WTO Committee on Technical Barriers to Trade, of which 36 concerned technical regulations and 17 conformity assessment procedures.⁸¹ With the exception of three notifications concerning emergency situations, in all the other cases the technical regulations were notified at the drafting stage and a period of 60 days was given for submitting comments on the proposed measure or amendment. The purpose of most of the measures notified is to protect human safety and health, and they concern mainly foodstuffs, toys, household electrical appliances, building materials, vehicles, pharmaceuticals and cosmetics. Seven government bodies took part in preparing the measures notified, including the Ministries of Health, the Economy, Housing and Urban Planning, Transport and Telecommunications, and the National Environmental Commission.

(c) Standards

101. Chilean technical standards (NCh) are voluntary and are drawn up and disseminated by the INN. This is a private-law, non-profit-making foundation, set up by the *Corporación de Fomento de la Producción* - CORFO (Chilean Economic Development Agency), with the aim of promoting the use of metrology and technical standards. In 1995, the INN adopted the Code of Good Practice for the Preparation, Adoption and Application of Standards, annexed to the TBT Agreement.⁸² The internal procedure for drafting Chilean standards is set out in Chilean Standards NCh 1.Of 2004. The

⁸⁰ The inventory of technical regulations also contains sanitary and phytosanitary measures as some decrees and regulations cover both types of measure in the same instrument.

⁸¹ The measures notified can be consulted in WTO documents G/TBT/N/CHL/35 to 87 (of various dates).

⁸² WTO documents G/TBT/CS/N/15 of 16 October 1995 and G/TBT/CS/2/Rev.14 of 20 February 2008.

authorities have indicated that this procedure is consistent with the criteria internationally accepted by the ISO and the International Electrotechnical Commission (IEC).⁸³

102. The process of preparing a standard is initiated by the INN or at the request of any interested government or private entity. If the necessary financing is available, a technical committee is established to draw up a provisional draft standard, taking into account the relevant international or regional standards. The private sector (producers, importers, traders and consumers), the competent authorities and representatives of academia take part in this committee. Once the standard has been drawn up, the draft is put up for public consultation for a period of 60 days on the INN website and its text is made available to any person who so requests. The comments received in the course of the public consultation are forwarded to the technical committee, which decides whether or not they are relevant. Once there is a consensual text, the technical committee submits it to the INN Council for approval. After the Chilean standard has been approved, it is sent to the competent ministry for endorsement and publication in the Official Journal. Unless any legal provision makes it mandatory, the "endorsed" standard is voluntary.

103. The INN keeps a catalogue of Chilean standards, together with information on standards under consideration, which can be viewed on its website.⁸⁴ By December 2008, there were 3,250 Chilean standards, compared with the 2,600 in effect in 2003. According to the authorities, a large number of Chilean standards are equivalent or similar to international standards. Nevertheless, Chile does not consider it appropriate to apply certain international standards at the national level, for example those on seismic standards for designs and buildings, because of local seismic conditions.

(d) Conformity assessment

104. In Chile, conformity assessment includes, on the one hand, mandatory mechanisms under the responsibility of the competent government entities in the case of technical regulations and, on the other, a voluntary system administered by the INN in the case of standards.

105. All Chilean and imported products must comply with the corresponding technical regulations. As a general rule, compliance with technical regulations is verified after the products have been placed on the market; the exceptions mainly concern food products, beverages, medicines, weapons and radioactive substances which, in the case of imports, are inspected at the border. In some cases, the ministry or government entity that issued the technical regulation performs the inspection using its own infrastructure; in most cases, however, the government authorities call on the conformity assessment bodies accredited by the INN. The government bodies which recognize INN accreditation include the Ministries of Agriculture, the Economy, Housing and Urban Planning, the *Servicio Nacional de Pesca* - SERNAPESCA (National Fisheries Service), and the SEC. The drafting and implementation of conformity assessment procedures follows the same stages and time-limits as technical regulations (see (b) above).

106. The INN is responsible for conformity assessment procedures for voluntary technical standards. For this purpose, the INN has a National Accreditation Scheme, which accredits certification, verification and inspection bodies and clinical, testing and calibration laboratories. This scheme is governed by the procedures laid down in the Regulations for the accreditation of conformity assessment bodies (INN-R401) and by the international guidelines of the ISO and the IEC. Accreditation is given for a renewable period of three years, during which the INN carries out inspections in order to ensure that the accredited body continues to comply with the requirements.

⁸³ WTO document G/TBT/2/Add.16/Rev.1 of 16 March 2006.

⁸⁴ The INN's website is at: <http://www.inn.cl>

Both Chilean and foreign conformity assessment bodies participate in the scheme and they include universities, government and private institutions and subsidiaries of multinationals. The INN keeps a directory of accredited conformity assessment bodies, and this can be consulted on its website.

107. In Chile, conformity assessment is generally carried out by a third party, that is to say an accredited body that is independent of the supplier and the buyer. There is no supplier's declaration of conformity (SDoC).

108. Chile has no mutual recognition agreements (MRAs) on technical regulations with its trading partners. Nevertheless, in the APEC context, it is a participant in Part I of the MRA on electrical and electronic equipment (EEMRA) and envisages participating in Part II in the future. Chile is also considering participating in the APEC sectoral Food MRA. The SEC recognizes the results of tests and certification from organizations on a list that includes 14 countries (Austria, Belgium, Canada, Denmark, France, Germany, Italy, Japan, the Netherlands, Norway, Sweden, Switzerland, the United Kingdom and the United States).

109. The *Red Nacional de Metrología* - RNM (National Metrology Network) is a government private body whose purpose is to guarantee and disseminate the traceability of measurements made in Chile and obtain their international recognition. The RNM is composed of the Ministry of the Economy, as the national authority, the INN as the coordinating and supervisory unit, the laboratories that safeguard the national measurement standards, responsible for administering the measurements of seven internationally recognized measurements, and calibration or testing laboratories. The INN provides the RNM with support, accrediting the laboratories keeping the national measurement standards as well as calibration laboratories, so as to be able to show that they are in a position to guarantee traceability. Work is going ahead on drawing up a National Metrology Plan to further build up Chile's metrological system in order to respond to the present and future needs of international trade.

(ix) Sanitary and phytosanitary measures

110. There have been no fundamental changes to Chile's regulations on animal and plant health since 2003. There are no general regulations on drafting and notifying sanitary and phytosanitary (SPS) measures; each competent body follows its own internal procedures. During the period under review, Chile actively supported improvements to implementation of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) in areas such as regionalization and transparency. It has also submitted a large number of notifications to the WTO Committee on Sanitary and Phytosanitary Measures (SPS Committee); in a small number of cases, the deadline for submitting comments expired before the date of the notification while, in others, the period given for comments was slightly less than 60 days.

(a) Transparency

111. Since 2003, there have been no fundamental changes to Chile's regulations on animal and plant health. In addition to the SPS Agreement, the main instruments governing this area are the Organic Law on the Agriculture and Livestock Service (No. 18.755 of 1989), the Animal Health Law (DFL No. 16 of 1963), Decree-Law No. 3.557 of 1982 laying down provisions on agricultural protection, the General Law on Fisheries and Aquaculture (No. 18.892 of 1989), the Regulations on procedures for importing hydrobiological species (DS (Supreme Decree) No. 96-96 of the Ministry of the Economy), the Regulations on certification and other sanitary requirements for the import of hydrobiological species (Exempt Decree No. 626/2001), the Regulations on the first import of species

(Decree No. 730/1995), the Sanitary Code (DFL No. 725) and the Sanitary Regulations for foodstuffs (DS No. 977 of 1996).

112. The main bodies involved in drafting and implementing SPS measures are the Ministries of Agriculture, Health, the Economy and Foreign Affairs. The Ministry of Agriculture, through the SAG, is responsible for everything concerning animal health (with the exception of aquatic animals) and for the protection of plants, including the application of measures for the import and export of animals, plants, and animal and plant products. The SAG acts as the national notification and enquiry service for the purposes of the SPS Agreement.⁸⁵

113. The Ministry of Health, through its MINSAL Regional Ministerial Secretariats, is responsible for approving and inspecting the establishment and operation of facilities that produce, process, package, store, distribute and sell foodstuffs, and for authorizing or rejecting the import and marketing of food and beverages intended for human consumption. The Ministry is also responsible for setting the levels of tolerance and verifying residues of agricultural chemicals in domestically produced or imported foodstuffs.

114. The Ministry of the Economy, acting through SERNAPESCA, is responsible for aspects connected with health checks on aquatic animals, including the adoption and implementation of measures to prevent the entry of diseases that affect hydrobiological resources.

115. The Ministry of Foreign Affairs, acting through the DIRECON, chairs the National Commission on the Coordination of Sanitary and Phytosanitary Measures, whose task it is to follow up commitments and action plans relating to SPS measures arising from the trade agreements signed by Chile, examine related trade concerns, and review Chile's position in the relevant international forums.

116. Chile is a member of the three international organizations mentioned in the SPS Agreement, namely, the Codex Alimentarius Commission, the World Organisation for Animal Health (OIE) and the International Plant Protection Convention (IPPC).

117. During the period under review, four measures taken by Chile were the subject of discussion in the WTO SPS Committee.⁸⁶ Three of these measures (restrictions on imports of wheat and fruit, restrictions concerning foot-and-mouth disease, and pet food import requirements) were resolved during the period under review.⁸⁷ A fourth measure, which came before the Committee for the first time in 2007, concerns the quarantine treatment (fumigation) of aircraft which, according to Argentina, affects the export of live bees from Argentina to Chile.⁸⁸ After initiating bilateral talks with Chile, at the SPS Committee meeting in June 2009 Argentina announced that the problem had been resolved.

118. The authorities have indicated that, in order to enhance and complement implementation of the SPS Agreement, Chile has concluded bilateral agreements of different kinds, some as chapters of or annexes to its RTAs (see Chapter II(4)(ii)) and others at the institutional level through the agencies or services in charge of animal and plant health matters.⁸⁹ The SAG has institutional cooperation

⁸⁵ WTO document G/SPS/ENQ/24 of 1 October 2008.

⁸⁶ WTO document G/SPS/GEN/204/Rev.8 and Adds 1-3 of 27 March 2008.

⁸⁷ WTO document G/SPS/GEN/204/Rev.8/Add.3 of 27 March 2008.

⁸⁸ WTO document G/SPS/R/46, paragraphs 16 and 17, of 2 January 2008.

⁸⁹ WTO document G/SPS/GEN/863 of 7 July 2008.

agreements with services and laboratories in 25 countries.⁹⁰ Chile does not have any recognition agreements on the equivalence of SPS measures, although these are covered in its regional trade agreements to a varying degree.⁹¹

(b) Implementation

119. The drafting and implementation of SPS measures in Chile is the responsibility of the government services empowered for this purpose (Ministries of Agriculture, Health and the Economy) and is governed by procedures which ensure that the objective of SPS measures is to protect the sanitary and phytosanitary status of products, on a scientific basis, and ensure a balance between sanitary and phytosanitary protection and the development of trade flows. SPS measures are drafted by the Central Government.

120. There are no general regulations on the preparation and notification of SPS measures; each competent body follows its own internal procedures. The preparation process starts with the need to update a measure, a request from any particular country or the existence of a particular sanitary occurrence. Drafts of SPS measures are drawn up by technical committees, which look at the background information, and take into account the relevant international standards. The drafts are open for public consultation on the website of the corresponding agency and are simultaneously notified to the WTO through the SAG. The consultation period lasts for 60 days, unless there is a request to extend this period or in cases of emergency or trade facilitation. The comments received are examined and taken into account if there is a good reason. SPS measures appear in the form of resolutions from the competent agencies, which are published in the Official Journal; there is no overall rule laying down a minimum period between publication of an SPS measure and its entry into force.

121. The authorities have indicated that Chilean SPS measures are to a large extent based on the international standards or guidelines of the IPPC, the OIE and the Codex Alimentarius, unless special circumstances warrant a risk analysis and it is decided to impose special conditions or more stringent requirements than the international standards.

122. Chile does not have an inventory of SPS measures, although all the measures in force can be found on the Internet sites of the agencies that adopted them.⁹² Between January 2003 and January 2009, Chile submitted 185 notifications on sanitary and phytosanitary regulations to the WTO SPS Committee; of these 11 concerned emergency measures and the remainder draft measures.⁹³ Around one half concerned the protection of plants and the remainder animal health and food safety, although some notifications related to more than one measure. The SAG was the body responsible for the large majority of the measures, followed by the Ministry of Health and SERNAPESCA. It was noted that in six cases the deadline for submitting comments expired before the date of the notification, while in others the period given for comments was slightly less than 60 days.

⁹⁰ Argentina, Australia, Bolivia, Brazil, Canada, China, Colombia, Cuba, the Dominican Republic, Ecuador, France, India, Israel, Italy, New Zealand, Nicaragua, Norway, Paraguay, Peru, Philippines, the Russian Federation, Spain, the United Kingdom, the United States and Venezuela. Online information from the SAG, viewed at: <http://www.sag.gov.cl>

⁹¹ The agreements with the EU and the P-4 deal with the question of the equivalence of SPS measures in greater detail.

⁹² Online information from the SAG, viewed at: <http://www.sag.gov.cl>; Ministry of Health, viewed at: <http://www.minsal.cl>; National Fisheries Service, viewed at: <http://www.sernapesca.cl>

⁹³ WTO documents G/SPS/N/CHL/118/Add.1 to G/SPS/N/CHL/290 (various dates).

123. Compliance with general and specific "sanitary requirements" is necessary for the import of livestock products. These requirements can be viewed on the SAG website.⁹⁴ The general requirements lay down the procedures for importing animals and poultry⁹⁵ and for recognition of countries and zones free of disease⁹⁶, measures for preventing bovine spongiform encephalitis (BSE)⁹⁷, procedures for approving facilities where the products originate⁹⁸, and regulations on the transit of animals, animal products and by products. The specific requirements are determined by species and by product and define the sanitary status applicable to the country or zone of origin, the facility of provenance, the animal or the product, as well as preshipment handling measures. If there is no specific requirement for the product it is sought to import, an import application must be submitted to the Livestock Protection Division of the SAG; if the latter considers necessary, a risk analysis is undertaken.

124. Livestock products imported must come from a facility approved in accordance with the relevant regulations⁹⁹; the list of facilities approved for exports to Chile is available on the SAG website. Facilities that produce manufactured products of animal origin and inputs for animal feed are exempt from the approval requirements, but must submit descriptions of their production processes.

125. All imports of animals and animal products must be accompanied by an official sanitary certificate issued by the competent sanitary authority in the country of origin, attesting that the product meets the relevant requirements. All imported animals, irrespective of their origin, must be put in quarantine.

126. Imports of plants and plant products must comply with the phytosanitary requirements determined by the SAG in specific regulations published in the Official Journal by means of resolutions. These specific rules concern plant products for consumption, processing or manufacturing, for plant propagation or reproduction, wood, packaging and like products. Plant products must be free of pests that are not present in Chile.¹⁰⁰ The regulations on the import of regulated articles or goods that are dangerous to plants are set out in Resolutions No. 350 of 1981, No. 3.185 of 2003 and No. 2.781 of 2006.¹⁰¹

127. A phytosanitary certificate issued by the competent authorities of the exporting country is required for plants or parts of plants, whether in their natural state or processed, if they can transmit pests or themselves constitute a pest, as well as for articles that may be dangerous to plants (including plant by-products, live organisms, plant pots, agricultural materials and soil).

128. If there are no phytosanitary requirements determined for a product, the party concerned must submit an application to the Agricultural Protection Department of the SAG for an import permit for regulated articles. The latter examines the application and undertakes a pest risk analysis (PRA) in

⁹⁴ Online information from the SAG, viewed at: <http://www.sag.gov.cl>. To see this information, select "Importaciones" and then "pecuarias".

⁹⁵ Resolution No. 1.254/1991.

⁹⁶ Resolution No. 1.150/2000.

⁹⁷ Resolution No. 5.277/2004.

⁹⁸ Resolution No. 3.138/1999 and amendments thereto (Resolutions No. 1.995/2000 and No. 2.567/2003).

⁹⁹ As established in Resolution No. 3.138 of 1999 and amendments thereto.

¹⁰⁰ Resolutions No. 3.080 of 2003 and No. 792 of 2007.

¹⁰¹ Online information from the SAG. See: <http://www.sag.gov.cl>. To view them, select "Importaciones" and then "agrícolas" and "forestale".

order to determine the requirements for importing the product. The PRA may have one of two outcomes: (i) issue of an import permit, laying down the phytosanitary requirements and conditions for entry, which are put up for public consultation for a period of 60 days, notified to the WTO and then published in the Official Journal; or (ii) rejection of the import application because there is a high or very high risk associated with the product. The PRA's procedures are based on International Standard for Phytosanitary Measures (ISPM) No. 11 of the IPPC.

129. The time required to carry out a PRA depends on the complexity of the case. For plant health applications, it may take between three months to one year; in the case of livestock, the period varies from seven months to two years. The State pays the cost of PRAs initiated on the basis of applications to import new products. If inspection visits to the exporting country are required, however, the costs are borne by the interested party. According to the authorities, 968 agriculture related PRAs were conducted between 2003 and 2008, of which 953 resulted in an SPS measure, and this large number is attributable to the fact that the regulations adopted include numerous species. In the fisheries subsector, at the end of 2008 three PRAs were being conducted by SERNAPESCA. For foodstuffs, risk analyses are the responsibility of the Ministry of Health.

130. The quarantine applicable to plants and seeds depends on the phytosanitary status in their country of origin and is based on a risk analysis in accordance with the IPPC guidelines. Plant products may only enter Chile through the ports authorized for this purpose.¹⁰²

131. The import of food for human consumption requires approval by the Ministry of Health or its regional offices. Import procedures provide for sanitary controls and laboratory analyses. The analyses are based on risk criteria and statistical data concerning the safety of the food. Imports of pharmaceuticals, cosmetics and biochemical preparations must be registered and approved by the Ministry of Health's Public Health Institute.¹⁰³

132. SERNAPESCA is responsible for sanitary checks on imports of hydrobiological resources, for which the national regulations are based on the OIE's Aquatic Animal Health Code. Imports of such products must be accompanied by a sanitary certificate issued by the country of export.¹⁰⁴ SERNAPESCA recognizes the test results and certificates issued by Australia (Tasmania), Canada (New Brunswick), Denmark, Scotland, the United States (Washington and Maine), Finland, Iceland, Norway and the Republic of Ireland; imports from other countries must be placed in quarantine.

133. Compliance with sanitary and phytosanitary regulations is verified at the border. The SAG has 32 permanent sanitary and phytosanitary inspection points at border crossings. The authorities utilize private entities to assess conformity, including veterinary surgeons, certification bodies and analytical and testing laboratories duly accredited by the SAG. The requirements and criteria for accreditation, together with lists of accredited third parties, appear on the SAG's website. The State pays the cost of inspection unless it is a question of mechanisms to ensure quality and safety, good practices and certification for export or fumigation, in which case the private sector has to bear the cost.

134. Resolution No. 1.150 of 2000 lays down the procedure by which Chile recognizes that a country or zone is free of disease. This status has to be consistent with the recommendations of the OIE's International Animal Health Code and notified to the OIE prior to the request for recognition by

¹⁰² Defined in Decrees No. 156 of 1998 and No. 92 of 1999.

¹⁰³ Article 94 of the Sanitary Code (DFL No. 725).

¹⁰⁴ Article 11 of the General Law on Fisheries and Aquaculture (No. 18.892 of 1989) and Article 11 of the Regulations on procedures for importing hydrobiological species (DS Minecon No. 96-96).

Chile. Recognition is based on an assessment of the public veterinary services in the country of export, the available health information and the inspection and monitoring measures, which must be verified on the spot. Chile has actively promoted the principle of regionalization at the WTO. At the SPS Committee meeting in June 2008, Chile announced that it had recognized the entire territory of the United States (with the exception of Arkansas) as free of avian influenza. Chile also stated that it had recognized the Brazilian states of Paraná, Santa Catarina and São Paulo as free of Newcastle disease.¹⁰⁵

135. The SAG is responsible for determining rules and procedures for the import and release of genetically modified organisms (GMOs), subject to special criteria. The Technical Committee on GMOs, created in 2005¹⁰⁶ has the task of advising the National Director of the SAG in this respect. Resolution No. 1.523 of 2001 lays down the rules for importing and releasing modified live plant organisms for propagation into the environment. Transgenic seeds may be imported for the purposes of multiplication and subsequent exportation, but their import for marketing purposes, industrial use or consumption on the domestic market is not authorized. An import application has to be submitted to the SAG before importing any transgenic material. The authorization is granted after a risk analysis has been conducted and a favourable report has been received from the competent authority in the country of origin stating that introduction of the material into the environment in the said country has had no negative effects.¹⁰⁷

136. In addition, Resolution No. 3.970 of 1997 authorizes the use of transgenic maize grain for consumption in animal feed. Authorization is only given for biotechnological events that have received approval for animal and human consumption in the country of origin and/or another country. Regulations on processed products containing GMOs are currently under discussion.

137. In accordance with the sanitary regulations on food (Article 279), it is not allowed to market meat, entrails and animal by-products containing non-endogenous hormone residues or substances with a hormonal effect if they exceed the limits set by the Ministry of Health on the basis of the corresponding Codex technical standard.

(3) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Procedures, documentation and registration

138. The formalities and documents required for export transactions are specified in the Customs Ordinance (Decree with Force of Law No. 30 of 2004) and are regulated in Chapter IV of the Compendium of Customs Regulations (Resolution No. 1.300 of 2006).

139. Exporters of goods must submit to the National Customs Service, through a customs agent, the *Documento Único de Salida - Aceptación a Trámite* - DUS-AT (single export document - acceptance for processing), which must contain all the information required.¹⁰⁸ In addition to the DUS-AT, the mandate given to the customs agent must be submitted, together with the shipping note or instructions, the transport and freight documents, a copy of the commercial invoice issued (except

¹⁰⁵ WTO document G/SPS/R/51 of 27 August 2008.

¹⁰⁶ Resolution No. 6.966 of 2005.

¹⁰⁷ Article 4 of Resolution No. 1.523.

¹⁰⁸ Name of the shipping agent or exporter, address, municipality, customs post, port of loading, type of cargo, means of transport, code of the region of origin, port of unloading, country of destination, name of the transport company, name of the issuer, name of the ship, number of the voyage, authorizations, volume of the goods, f.o.b. value, gross weight, type and quantity of containers, *inter alia*.

for goods whose f.o.b. value does not exceed US\$2,000), as well as the necessary signatures and/or authorizations.

140. The services of a customs agent are required for all exports whose f.o.b. value exceeds US\$2,000, except if they are leaving free zones and in the special cases laid down in the Compendium of Customs Regulations.¹⁰⁹

141. The customs agent completes and forwards the DUS electronically to the National Customs Service. Once the DUS is accepted for processing, this means that the goods have been submitted to Customs; they are authorized to enter the customs area (first zone) and be shipped abroad. After Customs has accepted the DUS, the goods must be loaded within 25 calendar days from the date on which the DUS was accepted for processing. The customs agent must certify that the goods have been shipped if they are being transported by sea or by air and Customs at the border certifies this in the case of land or rail transport.

142. Exports may be subject to physical inspection or verification of documents. In 2007, 31 per cent of the DUS were selected using filters, 33 per cent manually, and the remainder were selected at random.

143. There is no register of exporters, although exporters that have exported goods for an f.o.b. value of US\$50 million or more annually must inform the Central Bank, as required by the provisions in Chapter IV of the Compendium of Foreign Exchange Regulations of the Central Bank of Chile.

(ii) Export taxes and duties

144. Pursuant to the Customs Ordinance (Article 112), the export of goods from Chile is not subject to duties.

(iii) Export prohibitions and restrictions and licensing regimes

145. The Constitutional Organic Law on the Central Bank of Chile provides that all goods may be freely exported provided that they comply with the legal and regulatory provisions in force.¹¹⁰ This Law also prohibits the use of quotas for exports. Consequently, Chile has no export quotas and no export licensing regime.

146. In conformity with its domestic legislation or international agreements, Chile does prohibit or control the export of certain products. Among the products which may not be exported are anthropological, archaeological, ethnic, historical and palaeontological items and articles; *pehuen* or Chilean pine (*araucaria araucana*); and psychotropic substances. There is also a ban on exports of ozone-depleting substances and new or used products containing substances controlled under the Montreal Protocol (Annexes A, B and Group II of Annex C) to countries that are not parties to that Protocol.¹¹¹

147. The export of goods for which trade is regulated by CITES is also prohibited or requires an export permit. An export permit is necessary for products listed in CITES Appendices I, II and III,

¹⁰⁹ Compendium of Customs Regulations, Chapter IV, paragraph 2.1.2.

¹¹⁰ Law No. 18.840 published on 10 October 1989.

¹¹¹ Law No. 20.096 establishing control mechanisms for ozone-depleting substances and Decree No. 37, published on 23 March 2006 and 11 September 2007, respectively.

and in the case of forest flora this is granted by the *Corporación Nacional Forestal* - CONAF (National Forest Corporation), while for non-forest species and fauna, it is issued by SAG, and for marine species (hydrobiological fauna) by SERNAPESCA.

148. Endorsements and authorizations are required for the export of some products such as firearms, ammunition, explosives, inflammable and asphyxiating chemical substances, radioactive substances, plant products, wild fauna specimens, fisheries and seafood products (crabs, prawns and abalone), alga gracilaria, certified bean seeds and works by Chilean and foreign artists.¹¹²

(iv) Tariff and tax concessions

149. Chile has several export promotion programmes which currently consist essentially of administrative facilities for the payment and reimbursement of customs duties and VAT. During the period under review, Chile phased out those elements of some of these programmes that constituted export subsidies according to the SCM Agreement.

150. Chile's incentive programmes to promote exports are as follows: (a) a general scheme for the reimbursement of customs duties; (b) a simplified scheme of reimbursement for minor exports; (c) deferred payment of customs duties and tax credits for capital goods; (d) a system of temporary admission for inward processing; and (e) recovery of VAT. Programmes (b) and (c) were notified to the WTO as providing subsidies¹¹³ and were subsequently amended to bring them into conformity with Chile's multilateral commitments. Consequently, neither programme now appears in the notifications of subsidies submitted by Chile.¹¹⁴

151. Other programmes notified by Chile under the SCM Agreement consist of tax credits for investment in certain provinces; tax exemptions in free zones; a regional promotion and development fund; and tax and tariff concessions under the Motor Vehicle Statute.¹¹⁵ The basic objective of the first three programmes is regional development and they are described in section 4(iii) of this chapter. In addition, Law No. 19.912 of 4 November 2003 formally ended the tariff and tax concessions under the Motor Vehicle Statute, which had been granted subject to local content and trade balance requirements. In fact, some of these concessions were abolished in December 1998 and others in February 2003.¹¹⁶

(a) General reimbursement of customs duties

152. On the basis of Law No. 18.708, published on 13 May 1988, Chile has a general scheme for the reimbursement of customs duties paid on the import of raw materials, semi-processed products and parts and components incorporated or consumed in the production of goods exported. This concession is also available for imported inputs incorporated or consumed in the manufacture of domestic goods sold to free zones, provided that their c.i.f. value is 10 per cent or more of the value of the sale. The inputs may have been imported either directly by the exporter or through third parties. Tariff surcharges or countervailing duties on imported inputs are not reimbursed. According to data

¹¹² The list of products which require endorsement or authorization before they can be exported can be found in Annex 40 to the Compendium of Customs Regulations.

¹¹³ WTO documents G/SCM/N/2/CHL of 2 May 1995 and G/SCM/N/2/CHL/Suppl.1 of 16 October 1995.

¹¹⁴ WTO document G/SCM/N/125/CHL of 24 November 2008.

¹¹⁵ WTO document G/SCM/95/CHL of 24 March 2004.

¹¹⁶ For a description of the concessions granted under the Motor Vehicle Statute, see WTO (2003), Chapter III(3)(vii).

provided by the authorities, between January 2003 and March 2009, refunds paid out under this scheme amounted to US\$324.4 million.

(b) Simplified scheme of reimbursement for non-traditional minor exports

153. Law No. 18.480 of 19 December 1985 established a simplified scheme of reimbursement for minor exports of non-traditional goods. Originally, the rate of reimbursement was determined as a percentage of the f.o.b. value of the goods exported (with a ceiling of 10 per cent), so it might exceed the duty effectively paid, and in addition a minimum 50 per cent content of Chilean inputs was required. The maximum value of exports eligible for the reimbursement scheme was updated annually and goods exported in the previous calendar year that exceeded the amounts determined were included in a list of items excluded. Law No. 19.589, published on 14 November 1998, amended Law No. 18.480 to bring it into line with the provisions of the SCM Agreement, by gradually lowering the percentage of the reimbursement and amending the requirements for eligibility.

154. As a result, since 1 January 2003, exporters have been given a flat rate reimbursement of 3 per cent of the f.o.b. value of the goods exported. Furthermore, the reimbursement is only granted for exports of non-traditional products (i.e. those that do not appear on the list of excluded items published annually by the Ministry of the Economy) which contain at least 50 per cent of imported inputs in value terms. In order to qualify for reimbursement, the maximum amount exported by tariff heading must be equal to or less than the ceiling published yearly by the Ministry of the Economy; in 2009, this was US\$29.47 million. Bearing in mind that the general tariff is 6 per cent for almost all imports and that the reimbursement is only granted for exports of goods with at least 50 per cent of imported inputs, this flat rate of 3 per cent would in fact correspond to customs duties on the inputs imported.

155. The authorities have indicated that the amendments to the simplified reimbursement scheme have enabled the amounts paid out by the tax authorities to be reduced from US\$199 million in 1998 to US\$23.1 million in 2003 and US\$2.1 million in 2008.

(c) Deferred payment of customs levies and tax credits for capital goods

156. Law No. 18.634 of 5 August 1987 and its implementing Regulations created three mechanisms to promote technological modernization and investment in capital goods. The first allowed the deferred payment of customs duties on imports of capital goods for up to a maximum of seven years, payable in three instalments. Under the second mechanism, purchasers of Chilean-manufactured capital goods were entitled to a tax credit equivalent to 73 per cent of the customs duty on the net invoice value of the goods, which had to be repaid to the tax authorities within a maximum of seven years. In both cases, the debt owing to the tax authorities was subject to a market interest rate established by the Central Bank. Under the third mechanism, all or some of the amount owing as a result of deferred payment of tariffs or tax credits when the exporter used capital goods to produce goods for export was cancelled. The reduction or cancellation of the debt depended on the percentage exported in comparison with the company's total sales.¹¹⁷

157. Law No. 19.589 (November 1998) abolished cancellation of the debt dependent on exports, providing for a transitional regime that ended on 1 January 2003. Since then, the import of capital goods or the purchase of Chilean-manufactured capital goods only gives entitlement to deferred payment or a tax credit, whichever applies.

¹¹⁷ For further information, see WTO (2003), Chapter III(3)(iv).

158. The capital goods eligible are those to be found on a list drawn up annually by the Ministry of Finance and are subject to a minimum value determined by law and updated yearly. In December 2008, this minimum value was US\$5,525.26 (c.i.f. in the case of imported goods and net invoice value for Chilean goods). In the case of vehicles, the minimum value was US\$6,998.65.

159. According to the authorities, the reduction or cancellation of debts as a result of deferred payment of customs duties fell from US\$211 million in 2003 to US\$398,000 in 2007, and ceased altogether in 2008. The benefits consisting of tax credits amounted to US\$18.5 million in 2003, falling to US\$981,000 in 2006, and also ceased in 2007.

160. In addition, Law No. 20.269, published on 27 June 2008, fixed customs duties on imports of capital goods classified in Law No. 18.634 at 0 per cent, which means that the benefits provided for under the Law have for the most part been eliminated and replaced by the zero rate tariff, the only benefit remaining being the tax credit for the purchase of Chilean-manufactured capital goods.¹¹⁸

(d) Temporary admission for inward processing

161. Another mechanism intended to facilitate exporting is the *Admisión Temporal para el Perfeccionamiento Activo* - DATPA (temporary admission for inward processing) regime, established by Ministry of Finance Decree No. 473 of 28 August 2003. The DATPA consists of a special form of warehousing that allows companies producing goods for export to enter raw materials, semi-processed products and parts and components from abroad without paying the import duties and other levies or VAT. The beneficiaries have 180 days in which to carry out the authorized processing, working or other finishing processes and export the final goods obtained, a duration which may be extended by the National Director of Customs, where justified. The authorities have indicated that in 2008, 21 companies took advantage of the DATPA and registered 1,158 operations for a c.i.f. value of US\$225.8 million.

(e) Recovery of VAT

162. Pursuant to Decree Law No. 825 (31 December 1974) and Supreme Decree No. 348 of the Ministry of the Economy (31 December 1975), exporters of products and services may recover the VAT paid on the purchase of goods, inputs or services required for their exports. They also have the right to recover the VAT paid on the import of goods for these purposes. Exporters of services may only be entitled to this benefit if they provide services to persons without any domicile or residence in Chile, provided that the service is deemed to be an export according to the resolution issued by the National Customs Service.¹¹⁹

(v) Export financing and guarantees

163. Chile has several financing and guarantee programmes to assist exporters in obtaining credit. For the most part, these are intended for MSMEs; one of them is subject to compliance with national content requirements.

¹¹⁸ For further information, see: http://www.portalcomercioexterior.cl/files/LEY_20269.pdf

¹¹⁹ The services deemed to be exports are listed in Exempt Resolution No. 002511 of 16 May 2007. A request may be made to include other services in the list following a procedure carried out with the National Customs Service.

164. CORFO, which is a State agency, provides Chilean companies with support and runs two export credit programmes: "Financing for Chilean exporters" and "Financing for foreign buyers".¹²⁰ In both of these programmes, CORFO acts as a second-tier bank, channelling funds through commercial banks, which evaluate the projects and lay down specific terms for the credit. The authorities consider that the interest rates applied in these programmes are not on preferential terms. CORFO is fully liable for the risk of failure to reimburse the credit.

165. The "Financing for Chilean exporters" programme (known as B22) is a credit intended for companies established in Chile with annual sales of up to US\$30 million (excluding VAT) that are direct or indirect exporters of non-traditional goods and services (all goods except cellulose, copper, fishmeal, fruit and iron). It finances the purchase of inputs for production, investment, working capital, the cost of creating infrastructures for marketing abroad, as well as pre- and post-shipment loans. The credit is for a maximum of US\$3 million and may be expressed in dollars or in Development Units (UF)¹²¹, at a fixed or variable interest rate and for a period not exceeding eight years, including grace periods of up to 18 months for repaying the capital (see Table III.4).

166. The "Financing for foreign buyers" programme (B21) provides long-term financing for purchasing Chilean goods or services abroad. In order to be entitled to this credit, Chilean companies exporting capital goods, durable consumer goods and engineering and consulting services with sales exceeding US\$30 million, irrespective of their size, require prior approval from CORFO. One criterion for eligibility is that the goods exported by the Chilean company must have national content of no less than 40 per cent, including labour and components. Exports of services must be confirmed by the National Customs Service. The credits are granted for a maximum amount of US\$3 million, for terms ranging from one to 10 years, including grace periods of up to 30 months for repayment of the capital, and are expressed in United States dollars with fixed or variable interest rates (Table III.5).

167. According to data provided by the authorities, in 2008 the amount of credit approved under the Financing for Chilean exporters programme amounted to US\$2 million, while under the Financing for foreign buyers programme it was US\$2.2 million.

168. CORFO also has a programme to cover or guarantee bank loans granted to exporters (COBEX) against the risk of non-payment. Exporting companies with annual sales of up to US\$30 million are eligible for this guarantee, together with those companies which, within this sales limit and even if they have not exported goods, are able to show that they have firm orders from foreign buyers. The guarantee covers 50 per cent of the outstanding capital of the loan with a maximum ceiling of US\$5 million.

Table III.5
Interest rates: lines of financing for exports - CORFO

Term (years)	Financing for Chilean exporters (B22) ^a				Financing for foreign buyers (B21) ^b	
	Interest rates in UF		Interest rates in US\$		Interest rates in US\$	
	Fixed	Floating	Fixed	Floating	Fixed	Floating
1	1.70	n.a.	3.40	Lib +1.90	4.15	Lib +2.30
2	1.80	n.a.	3.60	Lib +1.95	4.15	Lib +2.35

¹²⁰ Details of the credits and guarantees offered by CORFO, as well as other programmes, can be viewed at: http://www.corfo.cl/lineas_de_apoyo

¹²¹ The UF is a unit of measure expressed in Chilean pesos and readjusted daily on the basis of variations in the Consumer Price Index. In the first half of 2009, the average value of the UF was Ch\$21,078, or US\$35.9.

Term (years)	Financing for Chilean exporters (B22) ^a				Financing for foreign buyers (B21) ^b	
	Interest rates in UF		Interest rates in US\$		Interest rates in US\$	
	Fixed	Floating	Fixed	Floating	Fixed	Floating
3	1.90	n.a.	3.90	Lib +2.00	4.20	Lib +2.40
4	1.95	n.a.	3.90	Lib +2.00	4.20	Lib +2.40
5	2.00	n.a.	3.95	Lib +2.05	4.25	Lib +4.25
6	2.05	n.a.	3.95	Lib +2.05	4.25	Lib +4.25
7	2.10	n.a.	4.00	Lib +2.10	4.30	Lib +4.30
8	2.15	n.a.	4.00	Lib +2.10	4.30	Lib +4.30
9	2.20	n.a.	4.04	n.a.	4.35	Lib +4.35
10	2.25	n.a.	4.05	n.a.	4.35	Lib +4.35

n.a. Not applicable.

a Lines of financing through local banks; rates applicable from 15 April 2009 to 15 July 2009.

b Direct agreements with foreign banks; rates applicable from 15 April 2009 to 15 July 2009.

Source: Chilean Economic Development Agency (CORFO).

169. At the request of banks, CORFO approves a line of cover for each exporter; approval is subject to payment by the bank of an annual commission of 0.75 per cent on the amount of the line of cover. The minimum period of cover is 30 days with a maximum of one year, which may be extended for one further year. In June 2009, moneys placed under the COBEX Fund amounted to US\$92 million. According to the legal provisions in force, the amount of cover may reach ten times the size of the Fund. The authorities have indicated that, by lessening the risks for banks, the COBEX cover allows access to financing by small enterprises and exporters without experience, which would otherwise find it difficult to obtain financing.

170. The *Fondo de Garantía para Pequeños Empresarios* - FOGAPE (Small Business Credit Guarantee Fund), which is administered by BancoEstado, gives credit guarantees to micro and small entrepreneurs and exporters that do not have sufficient guarantees to submit financing applications to banks. The types of financing offered by FOGAPE include credit, leasing transactions and other financing mechanisms granted by financial institutions. BancoEstado auctions guarantee rights among eligible institutions, which may bid for these rights and use them to grant financing to micro/small businesses and exporters. Under the amendments introduced in 2007 by the Decree Law on FOGAPE¹²², agricultural and non-agricultural enterprises with annual net sales of up to 25,000 UF (US\$897,500) and exporters with annual sales abroad averaging up to US\$16,700,000 f.o.b. value, over the two previous calendar years, may have access to the Fund.

171. FOGAPE covers up to 80 per cent of the debit balance of companies for loans of less than 3,000 UF (approximately US\$107,700 in November 2008) and up to 50 per cent for credits of 3,000 UF to 5,000 UF (US\$107,700 to US\$179,500). The maximum term of the guarantee is ten years. Beneficiaries have to pay commission, which may not exceed 2 per cent per year of the amount guaranteed.¹²³ According to data from FOGAPE, in 2007 17 financial institutions participated in the Fund, carrying out 24,000 operations involving credit guarantees in excess of 13 million UF

¹²² Law No. 20.202 of 3 August 2007, which amended Decree Law No. 3.472 of 1980.

¹²³ For further details, view the FOGAPE website at: [http://www.fogape.cl/portal/ contenido.asp](http://www.fogape.cl/portal/contenido.asp)

(approximately US\$466.7 million). In terms of the total financing granted, the most common sector was trade (33.6 per cent), followed by services (26.3 per cent).¹²⁴

(vi) Export promotion

172. The government body responsible for promoting exports is the *Dirección de Promoción de las Exportaciones* - ProChile (Directorate of Export Promotion) of the Ministry of Foreign Affairs. Its task is to boost the number of exporting enterprises and of products exported, as well as market diversification. ProChile's activities focus on three basic areas: helping small- and medium-sized enterprises to gain an international dimension, taking advantage of the opportunities afforded by the trade agreements concluded by Chile, and government-private sector cooperation. ProChile has 56 trade offices in the major international markets and 15 offices throughout Chile responsible for identifying and promoting the development of Chile's export offer.

173. ProChile has several export promotion programmes, financed jointly with the private sector. These include the Fund to Promote Non-Forestry or Agricultural Exports (industry, products from the sea and services), Forestry and Agricultural Cooperation, Cooperation for Internationalizing Small-Scale Family Farming, the Business Coaching Programme and PyMEXPORTA.

174. In 2008, the budget allocated to ProChile was US\$33 million, broken down by programme as follows: Fund to Promote Non-Forestry or Agricultural Exports (27.4 per cent), international dissemination (24.2 per cent), Forestry and Agricultural Cooperation (44.2 per cent) and PyMEXPORTA (4 per cent).

175. ProChile also makes advisory services, trade promotion activities and information technology available to exporters. Its activities include helping and training exporters, organizing seminars on exports, support for participation by Chilean exporters in international fairs and missions, as well as information on tariffs and regulations in the destination markets, and the conduct of market surveys and profiles on request.¹²⁵

176. CORFO also has a foreign market survey and research programme under which it finances the implementation of projects that enable exporting companies to improve the diversification of their products and integrate into external marketing chains, as well as to identify innovation opportunities and needs as a result of market surveys.¹²⁶ The support consists of a subsidy for up to 60 per cent of the total amount of the project. The resources are allocated through a competition and in 2008 12 projects were approved for a total amount of US\$802,316. In addition, CORFO offers services to help Chilean companies make contact with potential foreign buyers, and provides information on prices and assistance with packaging, financing and promotion.

177. The private sector also plays a role in export promotion activities through organizations such as the *Asociación de Exportadores de Manufacturas* - ASEXMA (Association of Manufacturing Exporters) and the *Asociación de Exportadores de Chile* - ASOEX (Association of Chilean Exporters) and Chilean Wines. ASEXMA is an association that brings together manufacturing exporters in various sectors, providing support for their management and trade diversification through courses and seminars, business trips, government lobbying and access to CORFO resources. The ASOEX brings

¹²⁴ FOGAPE online information. Viewed at: <http://www.fogape.cl/portal/Contenido.asp?CodCanal=177&TipoCanal=A>

¹²⁵ For further information, view the ProChile website at: <http://www.prochile.cl>

¹²⁶ Further details can be obtained from the CORFO website at: <http://www.corfo.cl>

together exporters of fresh fruit and vegetables; its tasks include support for opening up new markets for these products, training its members and disseminating technical and trade information, *inter alia*.

(4) OTHER MEASURES AFFECTING PRODUCTION AND TRADE

(i) Establishment and taxation of enterprises

178. A trading enterprise can be set up in Chile in several legal forms: a public limited company; a limited liability company; a general partnership; a limited partnership; a joint stock company; an individual limited liability company; an individual business and an association or joint venture. The most common forms for a trading company are a public limited company or a limited liability company.

179. Law No. 18.046 of 1981 (amended in 1999) provides that a public limited company is a legal person composed of shareholders who pool their capital and whose liability is limited to the amount of their individual contributions. There are two types of public limited company: open and closed. The former are companies that meet one of the following criteria: their shares are offered for sale to the public and quoted on the stock exchange; they have 500 or more shareholders or at least 10 per cent of the paid-up capital belongs to over 100 shareholders. All other public limited companies are deemed to be closed. Open public limited companies are subject to inspection by the *Superintendencia de Valores y Seguros* (Supervisory Authority for Securities and Insurance) and must be registered in the National Securities Register.¹²⁷ In the case of a limited liability company, the liability of each partner is limited to the amount of capital it has paid in or to a larger amount if this is specified in the company's articles of incorporation. There is no minimum capital requirement for setting up such a company; it may have two to 50 partners, but if this amount is exceeded it becomes a general partnership.

180. Foreign companies can operate in Chile through a representative, agency or subsidiary, or set up in Chile in one of the aforementioned legal forms.

181. Companies are set up by means of public articles of incorporation. An extract from these must be registered in the Commercial Register for the place where the company is domiciled and must be published in Chile's Official Journal. Both the registration and the publication must take place within 60 days from the date of incorporation. Notarial and registration fees depend on the company's level of taxation, but normally represent some 2 per cent of the capital.

182. Following registration in the Commercial Register, the company set up must complete the following formalities: register in the *Registro Rol Único Tributario* - RUT (Taxpayers' Register) at the *Unidad del Servicio de Impuestos Internos* - SII (Internal Taxation Service Unit) of the place where the person concerned has his domicile and notify this Unit of the commencement of activities; await verification of the domicile by the SII in order to obtain authorization for the taxation documentation and the books of account, or, in the case of electronic documentation, obtain authorization from the SII; obtain a business licence from the competent municipal authorities; register for social security against occupational accidents and diseases; and, where applicable, obtain sanitary authorization from the competent health service. Depending on the type of activity, other authorizations may be required from the competent government services.

183. A World Bank study of competitiveness indicators shows that, in 2008, an average of 27 days was required to set up a company or business in Chile, at an average cost equivalent to 7.5 per cent of

¹²⁷ Article 2 of Law No. 18.046.

per capita gross national income.¹²⁸ Although Chile is still the leading country in Latin America as regards the competitiveness of its regulatory business framework, its position in the international ranking drawn up by the World Bank has fallen in recent years, putting it in 40th place (out of a total of 181 countries) in 2008.¹²⁹

184. In Chile, tax is levied at the national level and there are no significant municipal, provincial or regional taxes, except for the business licence. The main taxes on companies are income tax (which includes a tax on dividends), the tax on royalty payments, the tax on interest, and property tax. The income of companies set up in Chile is subject to income tax, irrespective of the source of the income. Subsidiaries of foreign companies only pay income tax on their income from Chilean sources. Services supplied abroad to a Chilean resident are taxed.

185. Pursuant to the Income Tax Law¹³⁰, "capital income" (as distinct from "earned income") is subject to first category tax, which is imposed on companies whose income comes from industry, trade, mining, property or other activities that involve the use of capital. Since 2004, the first category tax has been levied at a flat rate of 17 per cent. This tax is chargeable against the supplementary overall tax or the additional tax, as applicable. The supplementary overall tax is a graduated tax (ranging from 0 to 40 per cent) applied to all income of natural persons resident in Chile. The additional tax, whose general rate is 35 per cent, is imposed on the capital income from Chilean sources of natural or legal persons not resident in Chile. This tax applies to the profits earned by companies which have non-resident shareholders or partners when these profits are withdrawn, distributed as dividends or remitted abroad.

186. In general terms, foreign companies operating in Chile are subject to the first category tax (17 per cent) and the additional tax (35 per cent) on the amount of the profits distributed or remitted abroad, but they are entitled to a credit of 17 per cent against the additional tax. Alternatively, foreign companies which invest under DL No. 600 may opt for a clause that allows them to pay a flat tax rate of 42 per cent for a period of 10 years (which may be extended up to 20 years for projects exceeding US\$50 million, see also Chapter II(3)). Since January 2006, there has been a special tax on mining ("mining royalty") which is added to income tax (see Chapter IV(4)).

187. Pursuant to tax legislation, all royalties paid abroad are subject to a withholding tax of 30 per cent, except for payments to persons residing in countries with which Chile has signed agreements to avoid double taxation (see Chapter II(3)(ii)). Since January 2007, some royalties have benefited from a reduced rate of 15 per cent, for example, royalties related to the use of patents, utility models, industrial designs, layout designs of integrated circuits, new plant varieties and computer programs. In general, interest on loans taken out abroad is subject to a withholding tax of 35 per cent; however, if the interest is paid to foreign banks or financial institutions, the rate is 4 per cent.

188. There is a 1.2 per cent land tax on non-agricultural real estate based on valuation of the property and the amount collected goes to the municipal authorities. A surcharge of 100 per cent on the rate in effect applies if the property is located in urban areas on non-built-up sites or has been abandoned. A number of transactions and documents are subject to a stamp tax. These include cheques, transfers or payments connected with payment orders, charges or transfers from current accounts in banks, as well as loans of money and documents covering loan transactions such as bills of exchange and issue of bonds. The stamp tax was temporarily discontinued in 2009 for all loan

¹²⁸ World Bank (2008).

¹²⁹ Ibid.

¹³⁰ Decree Law No. 824 of 1974.

transactions and its reduction to 0.6 per cent of the capital has been announced for the first half of 2010.¹³¹

(ii) Competition policy and price control

189. During the period under review, Chile revised its regulatory and institutional framework for competition with the aim of promoting efficient markets. One of the most important changes has been the creation of the *Tribunal de Defensa de la Libre Competencia* - TDLC (Competition Tribunal), intended to give the system greater autonomy. Additional amendments to the regulations are foreseen, particularly to strengthen the powers of the investigating authority. The main objective of Chile's competition policy is to prevent abuse of a dominant market position, but not concentration as such.

190. Decree Law No. 211 is the principal legal instrument dealing exclusively with competition in Chile. It was published in 1973 but has been significantly amended over the years¹³², the most important amendment having been introduced by Law No. 19.911 of November 2003. Its current text was revised, coordinated and consolidated by Decree with Force of Law No. 1 of 2005 of the Ministry of the Economy¹³³, hereinafter the Competition Law.

191. The aim of this Law is to promote and protect free competition in the market. It defines as an anti-competitive offence "... any act or contract that prevents, restricts or hinders free competition, or tends to produce such effects", including practices such as price fixing, limiting production, assigning market quotas or zones, abuse of a dominant position and predatory or unfair competition practices whose object is to attain, maintain or increase a dominant position.¹³⁴

192. Market concentration is not considered an anti-competitive practice in itself, so mergers do not require prior notification and no limits are set on market share. In connection with the present Review, the authorities have indicated that since the entry into force of the Competition Law, parties wishing to merge have always consulted the TDLC in advance, even though there is no notification obligation in this regard.

193. The Law applies to all Chilean or foreign individuals or companies, and to the State itself. There is no exclusion whatsoever as to the branch of economic activity and it applies to foreign trade activities to the extent that they affect competition in the Chilean market. The State may exercise a monopoly over certain activities on the basis of special laws, but may not give any form of monopolistic control to private enterprises, unless a special law so authorizes.¹³⁵

194. The *Fiscalía Nacional Económica* - FNE (National Economic Prosecutor's Office), created by Decree Law No. 211, is a decentralized government service of the Executive responsible for safeguarding and promoting free competition.¹³⁶ The FNE is headed by the National Economic Prosecutor, who must be a lawyer by profession and is appointed by the President of the Republic. The main task of the FNE is to investigate any fact, act or contract that is contrary to economic

¹³¹ Law No. 20.326, enacted on 20 January 2009.

¹³² The amendments were introduced by DL Nos. 2.760 and 2.879 of 1979; DL No. 3.057 of 1980; and Laws No. 19.336 of 1994, No. 19.610 of 1999, No. 19.806 of 2002 and No. 19.911 of 2003.

¹³³ DFL No. 1 of 2005 may be viewed on the website of the National Economic Prosecutor's Office at: <http://www.fne.cl/>

¹³⁴ Article 3 of DFL No. 1 of 2005.

¹³⁵ Article 4 of DFL No. 1 of 2005.

¹³⁶ Title III of DFL No. 1 of 2005.

competition in markets. It may initiate investigations at the request of a party or ex officio and may act as a party, representing the public interest in the economic field, before the TDLC or courts of law. It may defend or contest rulings by the TDLC before the Supreme Court of Justice. Another task of the FNE is to ensure compliance with the decisions and opinions of the TDLC and the commissions that preceded it. Moreover, in cases where it is not party to the proceedings, the FNE draws up technical reports at the request of the TDLC.¹³⁷

195. Law No. 19.911 (14 November 2003) introduced one of the major changes in the competition regulations by creating the TDLC, which replaced the former preventive commissions and the commission responsible for final decisions. The TDLC is a special and independent collegiate court whose task is to prevent, remedy and penalize acts contrary to free competition. It is composed of three lawyers and two economists, appointed by the President, the Supreme Court of Justice and the Council of the Central Bank, following a public competition.¹³⁸ At the request of the FNE or of an interested party, the TDLC may rule on contentious proceedings concerning acts or facts that may violate the Law and can adopt the necessary measures or penalties to prevent or remedy their anti-competitive effects, including the amendment or termination of contracts, the winding up of companies and the imposition of fines. The TDLC may also be consulted in non-contentious proceedings regarding buy-outs and mergers. It is also empowered to lay down general rules on competition and to propose amendments to legislation which it considers contrary to free competition. Appeals against decisions by the TDLC may be made to the Supreme Court of Justice.

196. In recent years, the competition authorities have undertaken several investigations into mergers and buy-outs, particularly in the transport, telecommunications, retail trade, electricity, financial services and health sectors. In October 2006, the FNE published internal guidelines on the examination of horizontal concentration operations, which clarify the criteria to be used to examine mergers completed or planned, either at the request of third parties (whether or not they are parties to the operation), the TDLC or ex officio. The guidelines have enhanced the legal certainty and transparency in this sphere, in addition to setting a maximum period of 60 days for examination of mergers by the FNE. In March 2009, the TDLC issued Resolution No. 12, which defines the relevant information to be submitted in cases where mergers are examined.¹³⁹

197. In the context of this Review, the Chilean authorities indicated that the FNE had limited powers of investigation, particularly for investigations into cartels or other collusive practices, as cases are based on documents voluntarily submitted and on testimony and reports from experts. This situation makes it difficult for the FNE to have access to direct evidence to prove the effects of an unlawful act and, hence, violation of the Law. Between 2004 and 2006, two penalty rulings by the TDLC were overturned and annulled by the Supreme Court of Justice for insufficient evidence.

198. In April 2009, the Congress approved a draft law containing important amendments to the Competition Law in order to reinforce the FNE's investigative powers and the independence of the TDLC. The amendments in this draft include an increase in maximum fines for offences; the introduction of new powers to combat hard core cartels (the possibility of granting immunity or leniency to those who provide evidence on the existence of cartels and power to carry out raids, *inter alia*); express authority for the TDLC to impose corrective measures ex officio; changes in the scope of offences; measures to give the members of the TDLC greater independence; procedural

¹³⁷ Article 39 of DFL No. 1 of 2005.

¹³⁸ Articles 5 and 6 of DFL No. 1 of 2005.

¹³⁹ The guidelines, the activities of the Economic Prosecutor's Office, and the case law and resolutions of the TDLC, may be viewed on the websites of the FNE (<http://www.fne.cl>) and the TDLC (<http://www.tdlc.cl>).

changes; and amendments intended to increase the autonomy and independence of the Economic Prosecutor's Office. The reforms came into effect with the publication of Law No. 20.361 on 13 July 2009.

199. According to a recent study evaluating competition policies in APEC economies, Chile's experience shows how adequate institutional capacity (the Government's capacity to draft and implement policies and recommendations that permit and promote development of the private sector) can increase the effectiveness of competition policy and allow Chile to reach levels of competition on local markets similar to those seen in countries with higher incomes.¹⁴⁰

200. In a report published in 2003, the OECD gave a positive evaluation of Chile's competition regime, in general terms, and made a series of recommendations to strengthen its regulatory and institutional framework.¹⁴¹ Most of the recommendations were incorporated in DFL No. 1 (2005), including the creation of the TDLC, the publication of internal guidelines for examining horizontal concentrations and public access to decisions by the FNE and the TDLC. The report noted that the Chilean authorities had been successful in implementing competition policy in relation to infrastructure (telecommunications and electricity), but that their approach had been much more prudent in relation to other industrial sectors, and it therefore recommended more dynamic implementation of the law in those sectors; the report suggested a revision of the policy on mergers and hard-core cartels. The draft law approved by Congress in April 2009 incorporated several of the recommendations on the investigation of hard core cartels, among others.

201. Without prejudice to the competent authorities' powers for safeguarding free competition, some activities such as telecommunications, water supply, electricity distribution and financial services are subject to special regulations which contain provisions on competition, under the supervision of the relevant authorities: the Undersecretariat of Telecommunications, the Supervisory Authority for Sanitary Services, the Supervisory Authority for Electricity and Fuel, the Supervisory Authority for Banks and Financial Institutions and the Supervisory Authority for Securities and Insurance (see Chapter IV(7)).

202. In February 2007, a law regulating unfair competition was published (Law No. 20.169), with the aim of protecting competitors, consumers and, in general, any person affected by an act of unfair competition. The Law defines as unfair competition conduct that is not covered by other legal provisions, including free-riding on the reputation of third parties, disseminating false information on the characteristics or price of goods and services offered, defamation of third parties and the misuse of legal action in order to hamper the operations of a competitor. Cases filed against such unlawful acts may take the form of action for cessation or prohibition of the act, a declaratory ruling on the unfair act, the elimination of its effects and compensation for damage. Such cases are heard by the civil courts, which forward their ruling to the National Economic Prosecutor, who may request the TDLC to impose a fine. Unfair practices whose purpose is to attain, maintain or increase a dominant position are examined by the competition authorities.

203. Chile's regulatory framework to protect competition includes a number of cooperation agreements signed by the FNE with competition bodies in several countries¹⁴², as well as provisions in

¹⁴⁰ APEC (2008).

¹⁴¹ OECD (2004).

¹⁴² Brazil, Canada, Costa Rica and Mexico.

the RTAs signed by Chile. Twelve of these agreements¹⁴³ contain a chapter on competition matters, with varying degrees of detail and coverage.

204. The Chilean State does not have any overall power to control the prices of goods and services, but nevertheless does so in respect of activities where it is deemed that there is a natural monopoly in order to avoid abuse of a dominant position by private operators. These sectors include local basic telephony, electricity, and drinking water and sewage services. The determination of rates for the basic telephony and electricity sectors is dealt with in Chapter IV. The Supervisory Authority for Sanitary Services sets the maximum rate that may be imposed by companies supplying drinking water and processing waste water. The rates are calculated in such a way that the profitability of a company operating efficiently is equal to the cost of the capital on assets employed.¹⁴⁴

(iii) Incentives

205. Chile has a large number of incentive programmes intended to achieve objectives such as promoting investment and employment in remote or disadvantaged regions, the development of MSMEs, and the promotion of technological innovation, *inter alia*. These incentives mainly consist of tax concessions, financing for investment and technological development, and support for business management.

(a) Support for regional development

206. As mentioned above (section (3)(iv)), Chile notified to the WTO as subsidies three programmes whose objective is regional development, namely, tax credits for investment in certain provinces, tax exemptions in free zones and the Fund for the Promotion and Development of Remote Areas.¹⁴⁵ These programmes are described below.

Tax credits

207. With a view to promoting economic development in the provinces of Arica and Parinacota, Decree with Force of Law No. 1 of the Ministry of Finance (Arica Law) of September 2001¹⁴⁶ grants tax credits to companies investing in these provinces. Investment projects amounting to more than 2,000 UTM¹⁴⁷ (around US\$139,000¹⁴⁸) to be used for economic activities in Arica and 1,000 UTM (US\$69,500) or more in Parinacota, are eligible for a tax credit of 30 per cent of the value of fixed physical assets (buildings, machinery and equipment) in the province of Arica (40 per cent in the case of tourism projects), and 40 per cent in the province of Parinacota. Taxpayers are eligible for this concession until 31 December 2011 and the credits may be repaid up to 2034.

208. Similarly, the Austral Plan (Law No. 19.606 of March 1999) provides tax credits for investment in regions XI and XII (Aysén and Magallanes) and in the province of Palena in the region

¹⁴³ These are the agreements with MERCOSUR, Canada, Mexico, Central America, the European Union, the United States of America, EFTA, the Republic of Korea, the P-4, Japan, Australia and Peru.

¹⁴⁴ For further information on how rates are set, see the website of the Supervisory Authority for Sanitary Services at: <http://www.siss.cl/article-4336.html>

¹⁴⁵ WTO document G/SCM/N/155/CHL of 24 November 2008.

¹⁴⁶ DFL No. 1 of the Ministry of Finance of 2001 contains the revised, coordinated and consolidated text of Law No. 19.420 of 1995, as amended by Laws No. 19.478 of 1996 and No. 19.669 of 2000.

¹⁴⁷ Law No. 20.268 (24 June 2008) amended DFL No. 1 and for 2008 and 2009 set a minimum amount for investment projects of 1,000 UTM, a figure of 1,500 UTM for 2010 and 2,000 UTM for 2011.

¹⁴⁸ In June 2009, the UTM was worth Ch\$36,792, some US\$69.5.

of Los Lagos. Investment projects amounting to a minimum of 2,000 UTM (some US\$123,000)¹⁴⁹ in the transport, energy, tourism, property, manufacturing, agriculture, aquaculture and research and development (R&D) sectors are eligible for a tax credit of up to 32 per cent of the value of fixed physical assets. The credits are granted until 2011 and may be repaid up to 2030. According to data provided by the authorities, in 2008 tax credits granted for investment under the Austral Plan amounted to Ch\$73.996 billion (US\$126 million), while those granted under the Arica Law amounted to Ch\$14.097 billion (US\$24 million).

209. There are also special tax and tariff incentives for activities in Tierra del Fuego and in Antarctic territory (Law No. 19.149). These are available to mining, manufacturing, transport, fishing and tourism companies producing goods or services that include a minimum of 25 per cent, by value, of local labour and inputs. The concessions, which are planned to remain in force until 2035 (or 2036 in some zones), include exemption from first category income tax, VAT on sales and import duties. There is an additional credit equivalent to 20 per cent of the value of sales made by these companies in the rest of Chile.¹⁵⁰ It is estimated that the cost of tax and tariff incentives under these programmes in 2009 will be Ch\$1.18 billion (US\$2 million).¹⁵¹

Free zones

210. Ministry of Finance Decree No. 341 of 1997 establishes two free zones: one in the port of Iquique in the far north of Chile and the other in Punta Arenas in the south. The revised, coordinated and consolidated text of the Decree can be found in DFL No. 2 of the Ministry of Finance, published on 10 August 2001.¹⁵² Any type of activity can be carried out in the free zones of Iquique and Punta Arenas, but mining, fishing and financial services are not eligible for the concessions offered there.

211. Management companies and firms setting up in the free zones are exempt from payment of tariffs, VAT and other charges on imports, first category income tax under the Income Tax Law, and payment of VAT on goods and services for all their operations within the zone.

212. Goods imported into a free zone may remain in a warehouse, be processed, finished or marketed within the zone, without any restrictions, and may be re-exported without paying tax. Sales or transfers of goods from a free zone to Chilean customs territory, however, are subject to tariffs, VAT and other import duties from the moment they leave the zone¹⁵³, unless the goods are eligible for tariff exemption under a free-trade agreement. There are no limits on the percentage of production which companies in free zones may export to Chilean customs territory and there are no domestic content requirements.

213. Goods transferred from a free zone to the immediately adjoining area, called the "extension zone" are subject to a flat rate tax of 0.8 per cent on the c.i.f. value.¹⁵⁴ This tax may be utilized as a tax credit against import duties and VAT if the goods are subsequently transferred elsewhere in Chile

¹⁴⁹ In January 2009.

¹⁵⁰ Law No. 18.392 of 14 January 1985 (amended by Law No. 19.606 of 14 April 1999), and Law No. 19.149 of 6 July 1992 (amended by Law No. 19.270 of 6 December 1993).

¹⁵¹ Information provided by the Chilean authorities.

¹⁵² DFL No. 2 was the subject of some amendments under Law No. 19.827 of 31 August 2002, Law No. 20.122 of 28 September 2006, and Law No. 20.320 of 31 December 2008.

¹⁵³ Sales to visitors not exceeding US\$1,000, and of a non-commercial nature, are exempt from tariffs and VAT.

¹⁵⁴ Resolution No. 1172 of the National Customs Service of 24 February 2009.

or exported. The regions of Aysén and Magallanes and the province of Palena in the Los Lagos region have been declared "extension zones" for the free zone in Punta Arenas in respect of capital goods.¹⁵⁵

214. The preferential regime in the Iquique free zone applies to industrial manufacturing companies established or setting up in Arica and engaged in activities for the purpose of obtaining goods different from the foreign raw materials, parts or components used to make them, or whose production process results in an irreversible transformation of the foreign raw materials, parts or components.¹⁵⁶ When imported to the rest of Chile, but only up to 31 December 2010, these goods will be exempt from import duties, taxes and other customs levies.

215. Law No. 19.709 of 31 January 2001 established a preferential customs and tax regime for the commune of Tocopilla in the Antofagasta region and this will remain in force until 31 December 2026. Manufacturing companies whose sole purpose is to produce inputs, parts or components, or to repair capital goods for the mining industry, and which became established in the commune of Tocopilla between 1 February 2001 and 31 January 2006, are eligible for this regime. Law No. 20.333 (4 February 2009) extended this cut-off date to 31 January 2012.¹⁵⁷

216. It is the Ministry of Finance's task to determine the tax regime for the free zones. The zones are managed and operated by joint ventures in which the public and private sectors participate. Activities in the free zones of Iquique and Arica consist of export processing, for example, manufacturing, assembling and finishing imported goods, whereas in the Punta Arenas free zone the activities are mainly commercial. The companies managing these zones are in the real estate business. According to information provided by the authorities, at 31 December 2007, the Arica free zone had 116 users, while the Iquique zone had 1,831. The free zone in Punta Arenas had 58 companies in May 2008.

217. Over the period under review, activities in free zones have expanded. The figures provided by the authorities show that the total volume of foreign goods entering the free zones of Arica, Iquique and Punta Arenas rose from US\$1.616 billion in 2003 to US\$3.702 billion in 2008. In the three zones, goods leaving the free zone for an extension zone (according to requests for registration of invoices), as a whole, rose from US\$604 million in 2003 to US\$1,340 million in 2008, while consignments of goods from one free zone to another, abroad, to free warehouses or to a primary zone (according to re-shipment requests) increased from US\$406 million to US\$1.044 billion in 2008. According to estimates by the authorities, the fiscal cost¹⁵⁸ of implementing the free zone programmes in 2008 amounted to Ch\$44.616 billion, or some 0.27 per cent of total customs tax revenue.

218. Firms established in the free zones are also entitled to streamlined customs procedures: they are exempt from the obligation to use a customs dispatcher or agent for their customs operations; they may leave Chilean or imported goods in a warehouse within the free zone for an unlimited length of time; and they benefit from a remote endorsement scheme which consists of electronic control of the goods by the National Customs Service.

¹⁵⁵ Law No. 19.946 of 11 May 2001.

¹⁵⁶ Article 27 of DFL No. 2 of 2001.

¹⁵⁷ The concessions under this regime may be viewed on the website of the Official Journal of Chile at: <http://www.diariooficial.cl/actualidad/20ulle/19709-html>

¹⁵⁸ The fiscal cost means the amount which the Treasury forgoes because of tax or tariff concessions.

Fund for the Promotion and Development of Remote Areas

219. In order to assist the development of disadvantaged regions in the far north and south of Chile, the *Fondo de Fomento y Desarrollo de las Regiones Extremas* (Fund for the Promotion and Development of Remote Areas)¹⁵⁹ provides financial assistance for small- and medium-sized enterprises wishing to invest in these regions. The Fund operates on an annual basis and is approved each year under the Finance Law. It is only available to small- and medium-sized producers of goods and services in the construction, machinery, equipment, special animal feed and small-scale fishing sectors. The annual amount of individual investment may not exceed 50,000 UF (around US\$1.8 million) and the funds provided may not exceed 20 per cent of the investment in fixed assets. According to information provided by the Chilean Treasury, in 2008 the Fund paid out Ch\$1,049 million (US\$1.78 million).

220. In addition, employers in companies located in the far north (Region I) and in the far south (Regions XI and XII and the province of Chiloé) are eligible for a subsidy representing 17 per cent of taxable remuneration, up to a maximum of Ch\$147,000 (approximately US\$250) per month for each employee.¹⁶⁰ According to information from the authorities, the fiscal cost of this subsidy in 2008 was Ch\$51,000 million (some US\$87 million).

(b) Support for MSMEs

221. Chile has several business support programmes, the majority of which are administered by CORFO and are intended for small businesses. They range from micro enterprises with annual sales of 2,400 UF (US\$86,160) or less up to medium-sized enterprises with annual net sales of up to 100,000 UF (some US\$3.6 million). The support essentially consists of financing to start businesses, innovate, improve management, develop networks of suppliers, encourage association between enterprises, and boost the creation and transfer of technology, *inter alia*.¹⁶¹

222. One of the most important programmes is the "CORFO Investment Credit", which consists of granting long-term credit to finance investment projects by MSMEs. The credit is channelled through commercial banks and may finance up to 100 per cent of the investment, with repayment terms of three to ten years and interest rates ranging from 10.8 to 15 per cent annually. CORFO also offers a guarantee that covers 50 to 70 per cent of the credit, with a limit of 5,000 UF (around US\$179,500) per beneficiary. The authorities have indicated that, in 2008, loans amounting to US\$224.4 million were granted, with guarantees amounting to US\$106.1 million.

223. CORFO's *Fondo de Asistencia Técnica* - FAT (Technical Assistance Fund) finances business management projects that help to enhance the quality and productivity of businesses. CORFO covers up to 70 per cent of the total cost of employing consultants, with minimum and maximum limits. The *Programa de Desarrollo de Proveedores* (Suppliers' Development Programme) finances projects to integrate MSMEs in export chains and clusters, covering up to 50 per cent of the total cost of the project (with ceilings for each stage of the project and by business). The *Proyectos Asociativos de Fomento* (Cooperative Promotion Projects) programme supports the establishment and growth of groups of at least five firms that have a common business plan so as to enable them to achieve

¹⁵⁹ The Fund was set up in 1980 pursuant to Decree Law No. 3.529 of the Ministry of Finance. Decree No. 15 of 1981 laid down the terms for the Fund and it was amended by Law No. 19.606 of March 1999.

¹⁶⁰ Law No. 19.853 of 11 February 2003, and Decree Law No. 889 of 30 January 1975.

¹⁶¹ The details of the programmes offered by CORFO may be viewed at: http://www.corfo.cl/líneas_de_apoyo

economies of scale, share information on markets and obtain access to competitive resources. CORFO finances up to 50 per cent of the total cost of each stage of the project, with maximum limits.

224. CORFO also has many other financing and support programmes for MSMEs. According to figures given by the authorities, in 2008 the loans granted by CORFO to MSMEs amounted to US\$512 million, channelled through the banking and non-banking financial system, while the amount of other support and subsidies to businesses and technological entities amounted to some US\$92.2 million.

(c) Innovation for competitiveness

225. One of the economic policy priorities of the Chilean Government and CORFO's principal field of action is support for technological innovation in business. At the head of the institutional structure in this area is the President of the Republic, who is advised by the *Consejo Nacional de Innovación para la Competitividad* - CNIC (National Council on Innovation for Competitiveness). A Committee of Ministers of Innovation, chaired by the Minister of the Economy, is responsible for drafting innovation policy, following the recommendations of the CNIC, and also manages the *Fondo de Innovación para la Competitividad* (Fund for Innovation for Competitiveness).

226. Support is provided through various entities, particularly through InnovaChile, which since March 2005 has replaced the former *Fondo Nacional de Desarrollo Tecnológico y Productivo* (National Technological and Production Development Fund). InnovaChile, which is part of CORFO, provides financing for research and development projects to any type of company whose purpose is to promote innovation and technology transfer. Projects are selected by committees composed of representatives of the public and private sectors and academia. Lines of support are also available for research centres. In 2008, InnovaChile had a budget of Ch\$47,772 million (around US\$81 million) to be allocated to its various support lines. The same year, the total government resources for innovation amounted to Ch\$233 billion (around US\$398 million), corresponding to 0.68 per cent of the GDP.¹⁶²

227. Law No. 20.241, published on 19 January 2008, established a tax incentive for private investment in research and development. It consists of a credit against first category income tax corresponding to 35 per cent of all payments connected with research and development contracts certified by CORFO and signed with research centres listed in the Register kept by CORFO. Another concession is the tax reduction applicable to the remaining 65 per cent of such payments, which can be deducted as a necessary cost for the production of income, irrespective of the firm's sector of activity.

(iv) State-owned enterprises and privatization

228. Chile has notified the WTO that Comercializadora de Trigo S.A. (COTRISA) is the only State-trading enterprise.¹⁶³ COTRISA has the authority to intervene in the market for wheat and other grains, purchasing from Chilean producers when the transaction price is lower than the price that would exist in a competitive market. Nevertheless, as Chile's notification indicates, COTRISA has not intervened in the domestic market for grain since 2003 and has not engaged in importation or exportation. In 2008, its tasks mainly concerned providing services connected with packaging, storage and certification of the quality of grain, and encouraging production links between small- and medium-sized grain producers and industrial users.

¹⁶² Figures provided by the Chilean authorities.

¹⁶³ WTO document G/STR/N/12/CHL of 6 August 2008.

229. After more than three decades of privatization, which covered major economic sectors such as telecommunications and electricity, there were 30 State-owned enterprises in Chile at the beginning of 2009. Some of these are of major economic importance, for example, the *Corporación Nacional del Cobre* - CODELCO (National Copper Corporation), the world's largest producer of copper, the BancoEstado, the *Empresa Nacional del Petróleo* - ENAP (National Petroleum Company) and the *Empresa Nacional de Minería* - ENAMI (National Mining Company) (see Chapter IV(4)). Other companies either owned by the State or in which the State is a shareholder are active in sectors such as port infrastructure, urban and inter-urban land transport, postal services, communication media, defence, gambling, free zones and supplies for remote areas.

230. In 2007, Chile's State-owned enterprises as a whole earned operating revenue of US\$31.872 billion, corresponding to 27.17 per cent of the GDP, with book assets of US\$11.734 billion, and they employed 46,366 workers. The five largest companies had 83.4 per cent of the assets (CODELCO alone accounted for 40.4 per cent) and 96.8 per cent of the operating revenue (CODELCO was responsible for 53 per cent). The majority of State-owned enterprises (23) are monitored by the *Sistema de Empresas Públicas* - SEP (Government Enterprises System), a technical body whose role is to represent the State's interests in enterprises in which it is a partner or shareholder or which it owns. The SEP appoints the boards of directors and monitors the strategic management of these enterprises in order to ensure that their performance is based on the principles of efficiency, competitiveness, transparency and probity, and that they are profitable.

231. Between 2003 and 2008, privatization mainly focused on ports (see Chapter IV(7)(v)) and sanitary services. In the case of companies providing sanitary services, the rights to operate sanitary concessions for the production and distribution of drinking water and the collection and disposal of waste water were put out to tender for a period of 30 years, and there are six regional sanitary companies. The income earned from privatization was over 17.5 million UF (approximately US\$628 million).

(v) Government procurement

232. Chile has significantly reformed its regime for government procurement of goods and services since 2003 in order to make it more transparent and efficient, *inter alia*, through the use of an electronic procurement platform. The reforms were envisaged as practical improvements and they have expanded participation by suppliers and buyers in the government procurement market. There is no discrimination whatsoever as regards products, services and suppliers according to their origin. Purchasing by State-owned enterprises and for public works is governed by the respective regulations.

233. Procurement by the Chilean Government (excluding State-owned enterprises and concessions) amounted to US\$5.045 billion (corresponding to 2.9 per cent of GDP) in 2008. Over 900 purchasing agencies among the central and local administrative authorities are on ChileCompra's electronic bidding platform and some 1,600,000 contracts are handled annually.¹⁶⁴

234. Chile did not sign the WTO plurilateral Agreement on Government Procurement, but is an observer in the corresponding committee. The Chilean authorities have indicated that, for the time being, they have no plans to negotiate accession to this Agreement, but they have expressed an interest in following the drafting of the new text. Chile has accepted commitments on government procurement under the RTAs it has signed. By mid-2009, there were government procurement sections in 11 agreements signed by Chile (with Central America, the European Community, the United States of America, the Republic of Korea, EFTA, the P-4, Canada, Japan, Australia, Colombia

¹⁶⁴ ChileCompra, 2008-2010 Strategic Plan.

and Mexico). Moreover, in January 2009, Chile signed an agreement on government procurement with Uruguay within the LAIA framework and this is expected to come into effect during the last quarter of 2009.

235. As part of the State's wide-ranging modernization plans, in 2003 Chile started to reform its government procurement regime. One pivotal element of this reform was the enactment of the Procurement Law (Law No. 19.886), which came into force in August 2003 with the aim of grouping together the procedures for government procurement of goods and services. According to the 2008-2010 Strategic Plan, the objectives of Chile's government procurement policy are to ensure a transparent, efficient and inclusive government market and to generate innovation for its sustainability.¹⁶⁵

236. A World Bank study found that Chile's government procurement regime is considered generally free of corruption, given the probity of the public servants, decentralization and good budgetary and control systems. As regards the 2003 reforms, the study found that their conceptual approach and design could be considered as best practice and, although implementation was still under way, there were already positive results, particularly as regards disclosure of information, participation by buyers and sellers, and procurement based on framework agreements (see below).¹⁶⁶ Nevertheless, some aspects of public works procurement could be improved (see below).

(a) Procurement of goods and services

237. The Basic Law on Administrative Contracts for the Supply and Rendering of Services (No. 19.886) of 30 July 2003¹⁶⁷ and its implementing Regulations (Ministry of Finance DS No. 250 of September 2004)¹⁶⁸ lay down the legal framework for government procurement of goods and services by all Central Government departments, regional and provincial governments, municipal authorities, the armed forces, the Central Bank and the Comptroller General of the Republic. The Law does not apply to State-owned enterprises, which follow their own regulations. In the case of public works, Law No. 19.886 applies to the mandatory use of the electronic information system for procurement and the *Tribunal de Contratación Pública* (Government Procurement Tribunal) (see below), and on a general supplementary basis.¹⁶⁹

238. The main reforms introduced by Law No. 19.886 include the creation of the *Dirección de Compras y Contratación Pública* - DCCP (Directorate of Purchasing and Government Procurement) of the Ministry of Finance, which is responsible for implementing the relevant government policy, as well as the creation of an electronic information system for purchasing and government procurement (ChileCompra)¹⁷⁰, through which all entities covered by Law No. 19.886 must quote prices, invite bids, source contractors, award contracts and carry out procurement procedures for goods, services and public works (even though the latter are not subject to the law). This electronic procurement information system is open to the public and free of charge and is managed by the DCCP. Law

¹⁶⁵ The Strategic Plan may be viewed at: <http://www.chilecompra.cl>

¹⁶⁶ World Bank (2004).

¹⁶⁷ Laws No. 20.088 of 2006 and No. 20.238 of 2008 introduced minor changes to Law No. 19.886, particularly to Article 4 thereof, concerning cases of disqualification from procurement.

¹⁶⁸ Amended by Decree No. 1562 of the Ministry of Finance, published on 20 April 2006, and by Decree No. 260 of 13 July 2007.

¹⁶⁹ Law No. 19.886 and its implementing Regulations may be viewed at: http://chilecompra.cl/normativa_legal.htm

¹⁷⁰ The ChileCompra website is: www.chilecompra.cl

No. 19.886 also set up the *Registro Nacional de Proveedores de la Administración Pública* (National Register of Public Administration Suppliers)¹⁷¹ and the Government Procurement Tribunal.¹⁷²

239. Law No. 19.886 provides for four types of government procurement, namely, framework agreements, public bidding, private bidding and direct negotiation or contracting. Framework agreements allow the purchase of a wide variety of goods and services by various entities to be grouped together for greater efficiency and lower prices. Under such agreements, awarded following a public bidding procedure, the DCCP agrees unit prices with suppliers of the goods and services in question, which government agencies then purchase simply through purchase orders in accordance with the terms laid down in the framework agreements.

240. Pursuant to Law No. 19.886 (Article 5), public bidding procedures are the general rule and are mandatory if the contracts exceed 1,000 UTM (around US\$70,000), except in the circumstances covered by the Law. Nevertheless, according to the implementing Regulations for the Law, a public bidding procedure is required for procurement of goods and services exceeding 100 UTM (approximately US\$7,000).¹⁷³ Private bidding procedures and direct contracting are rare; they must be based on a substantiated resolution and are only allowed in the circumstances defined in the Law.¹⁷⁴ Breaking up contracts for the sole purpose of avoiding the public bidding procedure is prohibited. The authorities have indicated that 91 per cent of procurement is through a public bidding procedure.

241. All procurement, that is to say, public or private bidding procedures, direct negotiation or contracting and framework agreements must use the ChileCompra electronic information system. Without prejudice to the foregoing, for public bidding procedures, the call for bids may also be published in other international, national or regional media.

242. Law No. 19.886 lays down minimum time limits between the call for bids and the closing date for receipt. If the amount of a contract is 1,000 UTM or more, the call must be published at least 20 calendar days prior to the cut-off date for receiving bids; for lesser amounts, the minimum period is ten days. For direct contracting, the minimum period between publication of the price quotation and receipt of bids is five days. All these time-limits may be decreased if only single goods or services are to be procured.

243. The National Register of Public Administration Suppliers, kept by the DCCP, is an electronic register in which Chilean or foreign natural or legal persons not domiciled in Chile may be registered. Listing in the Register attests to the legality and financial and technical capacity of the suppliers, but is not an essential requirement in order to take part in procurement. Entities may decide for themselves whether or not to require that bidders should be listed in the National Register at the time of contracting. The Register is open to the public and available on the website of ChileCompra, as well as on that of ChileProveedores. An application for listing in the Register may be made at any time. According to information provided by the authorities, in April 2009 there were around 32,000 suppliers listed in the Register, of which 57 per cent were from the metropolitan region and 43 per cent from other regions.

244. Pursuant to the implementing Regulations for Law No. 19.886, entities must establish the criteria for evaluating bids, taking into account, *inter alia*, the price of the bid, the experience of the

¹⁷¹ The Register of Suppliers (ChileProveedores) website is: www.chileproveedores.cl

¹⁷² The Tribunal's website is: www.tribunaldecompras.cl

¹⁷³ Article 10, paragraph 8, of the implementing Regulations for Law No. 19.886 (DS 250/2004).

¹⁷⁴ Article 8 of Law No. 19.886 and Article 10 of its implementing Regulations.

bidders, the technical quality of the goods or services offered, technical assistance, after-sales service and the delivery date. The criteria must also be specified in advance in the tender specifications, showing the scores assigned to each of them.¹⁷⁵ The technical specifications for the goods or services to be procured must be generic and must not refer to any specific brands.

245. The bids are opened electronically through the information system. The contract is awarded to the bid that provides the most advantageous combination of the criteria laid down in the specifications and takes the form of an administrative act duly notified to the winning bidder and the other bidders. This act sets out the evaluation criteria and shows the points scored that resulted in the winner being declared as having made the most competitive bid. The administrative act awarding a contract or declaring the procurement procedure null and void must be published in such a way that all suppliers can see for themselves the results of the bidding procedure.¹⁷⁶ The contract may not be awarded to a bid that does not meet the criteria and requirements laid down in the tender specifications.

246. There is no provision in the legislation for margins of preference for national suppliers and no discrimination among products, services and suppliers according to their origin. Nor is there any provision for offsets as a condition for awarding a contract.

247. Under Law No. 19.886, in September 2005 the Government Procurement Tribunal was set up as a specialized and independent jurisdictional body of the State Administration. The Tribunal is empowered to hear and decide on action taken to challenge any illegal or arbitrary act or omission that may have occurred between the approval of the tender specifications and the award of the contract in procurement procedures by government entities, including those concerning public works. Any natural or legal person having a proven interest in a procurement procedure may submit an application to the Tribunal challenging the award within ten working days from the time when the contested act or omission became known or after its publication.

248. After the Tribunal has agreed to hear the challenge, it may decree the suspension of the bidding procedure to which the challenge relates. In a definitive ruling, the Tribunal decides on the legality or arbitrariness of the act or omission challenged and orders the measures needed to restore the rule of law. An appeal may be made against the Tribunal's rulings to the Appeal Court in Santiago. In December 2008, 334 applications had been submitted to the Tribunal since its creation, of which 211 had been finalized and 123 were being processed; on the same date, the Tribunal had issued 72 rulings.¹⁷⁷

(b) Procurement of public works

249. There is no unified regulatory framework for public works and the procurement procedures are governed by the individual organic laws pertaining to government and municipal authorities. Nevertheless, the regulations of the Ministry of Public Works (MOP) establish the guidelines followed by other entities.

250. The MOP is responsible for public infrastructure works; its organic law (DFL No. 850 of 1997) and the Regulations on Public Works Contracts (Supreme Decree No. 75 of 2004, amended by Decree No. 810 of 2008) lay down the rules to be followed for such contracts. There is also a Law on Public Works Concessions (Supreme Decree No. 900 of 1996 of the MOP) and its implementing

¹⁷⁵ Article 38 of the implementing Regulations for Law No. 19.886.

¹⁷⁶ Articles 6 and 41 of the implementing Regulations and Articles 18 *et seq.* of Law No. 19.886.

¹⁷⁷ Information viewed at: <http://www.tribunaldecompras.cl>

Regulations (DS No. 856 of 1997).¹⁷⁸ Works contracts concluded by the Ministry of Housing and Urban Planning for its own purposes and contracts for carrying out, operating and maintaining urban works with third party involvement are governed by Supreme Decree No. 236, which lays down the general basic regulations for procurement of works for housing and urban services, Law No. 19.537 on co-ownership of property, and Law No. 19.865 on shared urban financing.

251. A World Bank study in 2004 found that the MOP's bid evaluation and contract award procedures were generally open and transparent, although there was room for improvement in areas such as a unified register of contractors, the submission of bids and appeal mechanisms.¹⁷⁹ In January 2005, new MOP regulations on public works contracts came into force¹⁸⁰, introducing changes aimed *inter alia* at improving transparency, simplifying and streamlining the management of public works contracts, making the register of contractors more efficient and specifying the channels for appeals. In December 2008, amendments to the Regulations, consisting of administrative facilities, were approved so as to make it easier for SMEs to obtain access to public works contracts.

(vi) Protection of intellectual property

252. Since its previous Review, Chile has made a number of reforms to its legislation with the aim of strengthening its intellectual property regime and bringing it into line with its international commitments. In some instances, Chile's legislation goes further than the obligations under the TRIPS Agreement, for example, in certain areas relating to copyright and industrial property.

(a) Overview

253. Chile is a net importer of products with a high intellectual property content¹⁸¹; in 2007, imports of these products accounted for 9.1 per cent of total imports of goods and 2.3 per cent of total exports.¹⁸² In the same year, Chile had a payment deficit of almost US\$373 million in respect of royalties and licence fees, as a result of paying out US\$434 million while earning US\$61 million.¹⁸³

254. Chile has been a member of the World Intellectual Property Organization (WIPO) since 1975 and has signed a number of WIPO-administered treaties.¹⁸⁴ Since the previous Review, Chile has

¹⁷⁸ The MOP's rules may be viewed at: http://www.mop.cl/mop_marco_legal.htm.

¹⁷⁹ World Bank (2004).

¹⁸⁰ MOP Supreme Decree No. 75 of 2004, which replaced the former Decree dating from 1992 (DS No. 15).

¹⁸¹ For example, products included in Annex A to the Ministerial Declaration on Trade in Information Technology Products (excluding headings 8524.31 and 8524.91 of the HS); pharmaceutical products (HS 30, including generic products); alcoholic beverages and spirits (HS 22, excluding vinegar), books and other printed matter (HS 49), cinematographic film (HS 3706), other exposed film (HS 3705) and records, CDs, computer programs and other recorded media (HS 8524).

¹⁸² WTO Secretariat calculations based on information from the Comtrade database (HS), United Nations Statistics Division.

¹⁸³ WTO Secretariat calculations based on Chile's balance of payments, Central Bank of Chile.

¹⁸⁴ The WIPO treaties to which Chile is party are (with the date of entry into force in brackets): Rome Convention (5 September 1974), Berne Convention (5 June 1970), WIPO Convention (25 June 1975), UPOV Convention (5 January 1996), Paris Convention (14 June 1991), Phonograms Convention (24 March 1977), Nairobi Treaty (14 December 1983), Copyright Treaty (6 March 2002), Film Register Treaty (29 December 1993), Performances and Phonograms Treaty (20 May 2002) and Patent Cooperation Treaty (2 June 2009). See: http://www.wipo.int/treaties/es/ShowResults.jsp?country_id=36C&start_year=ANY&end_year=ANY&search_what=C&treaty_all=ALL

given effect to the WIPO Treaties on Internet Copyright¹⁸⁵ and on Performances and Phonograms.¹⁸⁶ The Patent Cooperation Treaty (PCT) came into force for Chile in June 2009.¹⁸⁷ In mid-2009, accession to the Copyright Treaty and the 1991 Act of the UPOV Convention were being discussed in the Congress.

255. The majority of Chile's RTAs include special chapters on intellectual property (see Table AII.3). Where this is not the case, Chile has included clauses on geographical indications or enforcement measures as part of the market access disciplines.¹⁸⁸ Chile has also signed agreements with the European Community on trade in wines and spirits, which are annexed to its RTA. In these, both parties undertake to grant protection for geographical indications listed in the appendices to the agreements and to refrain from using certain generic indications and trademarks that are identical or similar to those of the other party. Accession to the PCT is one of the commitments undertaken by Chile in its RTAs with the United States and the European Community.

256. The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) was enacted in Chile by means of Supreme Decree No. 16 of the Ministry of Foreign Affairs, of 5 January 1995.

257. Chile has notified the texts of its intellectual property laws and regulations to the WTO (see Table AII.2). When this report was being drawn up, notifications of various laws and regulations recently submitted by Chile pursuant to the TRIPS Agreement were being examined. In September 2000, the TRIPS Council examined Chile's legislation. Chile responded to the questions put by various Members.¹⁸⁹ Chile has also replied to the checklist of issues on enforcement¹⁹⁰ and has notified the WTO that the enquiry point for intellectual property rights is the Intellectual Property Department of the Ministry of Foreign Affairs. Chile plays an active part in the work of the TRIPS Council, particularly in the area of geographical indications, on which it has submitted a proposed decision, together with 18 other Members, on the creation of a multilateral system for the registration and notification of geographical indications for wines and spirits.¹⁹¹

(b) Institutional and legal framework

258. Chile's legislation covers the intellectual property categories included in the TRIPS Agreement. Table III.6 gives an overall but not exhaustive picture of Chile's main rules on the protection of intellectual property and protected rights. During the period under review, Chile amended its legislation in order to bring it into line with the TRIPS Agreement and other international agreements. In some cases, the changes go beyond the disciplines of the TRIPS Agreement, for example, as regards the protection of undisclosed information on sanitary registration applications for pharmaceutical products and agricultural chemicals, and extension of the term of protection for copyright and related rights to 70 years.

¹⁸⁵ DS No. 70 of the Ministry of Foreign Affairs of 7 March 2003.

¹⁸⁶ DS No. 139 of the Ministry of Foreign Affairs of 22 August 2003.

¹⁸⁷ DS No. 52 of the Ministry of Foreign Affairs of 2 June 2009.

¹⁸⁸ This is the case for the agreements with Canada, Central America, China and Panama.

¹⁸⁹ The questions put to Chile and the corresponding replies can be found in the following WTO documents: IP/C/W/207 of 29 September 2000; IP/C/W/208 of 29 September 2000; IP/C/W/215 of 3 October 2000; IP/C/W/219/Add.1 of 15 November 2000; IP/C/W/222 of 16 November 2000; IP/C/W/225 of 22 November 2000; and IP/Q/CHL/1 of 7 June 2001.

¹⁹⁰ WTO document IP/N/6/CHL/1 of 3 May 2000.

¹⁹¹ WTO document TN/IP/W/10/Rev.2 of 24 July 2008.

Table III.6
Overview of intellectual property rights in Chile, 2009

Main legislation	Area covered ^a	Term	Exclusions and limitations ^a
Trademarks			
Industrial Property Law No. 19.039 (revised, coordinated and consolidated text in DFL No. 3 of 2006) and its implementing Regulations (Decree No. 236 of 2005); Law No. 19.996 of 2005; and Law No. 20.160 of 2007	Any sign that may be represented graphically, capable of distinguishing on the market products or services or industrial or business establishments, including sounds.	10 years from the date of entry in the register; renewable for equal periods at the request of the owner.	The following may not be registered as trademarks: coats of arms, flags, names of States, international organizations or government public services, names of plant varieties, names of persons, names that mislead or deceive, trademarks that are identical or similar to well-known trademarks registered in Chile or abroad, registered geographical indications and appellations of origin and distinctive signs that are contrary to public order or morality.
Patents			
Industrial Property Law No. 19.039 (revised, coordinated and consolidated text in DFL No. 3 of 2006) and its implementing Regulations (Decree No. 236 of 2005); Law No. 19.996 of 2005; and Law No. 20.160 of 2007	Any product or process that is new, involves an inventive step and is capable of industrial application.	20 years from the filing date; non-renewable unless there has been an unjustified delay on the part of the authority in processing the granting of the patent or by the sanitary authority.	Procedures and materials such as scientific theories, business plans, mathematical, surgical, therapeutic or diagnostic methods; plants and animals (except microorganisms) and essentially biological processes for the production of plants and animals (other than microbiological processes); parts of living beings as encountered in nature and natural biological processes and materials. Protection is not granted if an invention is contrary to public order, security, morality, the health of persons, animals or plants, or the environment. Compulsory licences may be granted to remedy anti-competitive practices, for reasons of public health, national security, non-commercial public use or national emergency; or to work a subsequent patent that cannot be worked without infringing a prior patent.
Utility models			
Industrial Property Law No. 19.039 (revised, coordinated and consolidated text in DFL No. 3 of 2006) and its implementing Regulations (Decree No. 236 of 2005); Law No. 19.996 of 2005; and Law No. 20.160 of 2007	Instruments, appliances, tools and objects, in which the arrangement can be claimed (appearance and functioning) and provided that it has utility.	10 years from the date of filing; not renewable.	The exclusions and limitations laid down in Title III of the Industrial Property Law concerning patents, where applicable.
Industrial drawings and designs			
Industrial Property Law No. 19.039 (revised, coordinated and consolidated text in DFL No. 3 of 2006) and its implementing Regulations (Decree No. 236 of 2005); Law No. 19.996 of 2005; and Law No. 20.160 of 2007	Industrial design: any three-dimensional form and industrial or hand-made article used to make other units that can be distinguished from similar articles and has a new appearance. Industrial drawing: combination of figures, lines or colours to be incorporated in a product for the purposes of ornamentation and that give it a new appearance.	10 years from the date of filing; not renewable.	Designs and drawings whose appearance is dictated entirely by technical or functional considerations. Articles of clothing of any kind and products which consist of a form whose exact reproduction is necessary to allow the product in which it is incorporated to be assembled or connected to another product of which it is a part.

Main legislation	Area covered ^a	Term	Exclusions and limitations ^a
Layout designs of integrated circuits			
Industrial Property Law No. 19.039 (revised, coordinated and consolidated text in DFL No. 3 of 2006) and its implementing Regulations (Decree No. 236 of 2005); Law No. 19.996 of 2005; and Law No. 20.160 of 2007	The three-dimensional arrangement of elements in layout designs of integrated circuits designed for their manufacture, to the extent that they are original.	10 years from the date of filing for registration or first commercial exploitation in any part of the world; not renewable.	The right does not include reproductions of layout designs made for private or evaluation purposes, analysis, research or teaching; acts of commercial exploitation of original layout designs created as a result of the evaluation or analysis of a protected layout design; acts of commercial exploitation of any article incorporating an unlawfully produced integrated circuit if the person carrying out such acts did not know and had no reasonable ground to know that it incorporated an unlawfully reproduced integrated circuit.
Business secrets and information submitted to the authority in order to obtain sanitary registration			
Industrial Property Law No. 19.039 (revised, coordinated and consolidated text in DFL No. 3 of 2006) and its implementing Regulations (Decree No. 236 of 2005); Law No. 19.996 of 2005; and Law No. 20.160 of 2007	Any knowledge regarding products/industrial processes which, if not disclosed, gives its owner an improvement, advance or competitive advantage. Undisclosed test data submitted to the authority in order to obtain the sanitary registration of pharmaceutical products and agricultural chemicals. Registration is with the Public Health Institute.	Indefinite. The competent authority may not disclose or utilize the test data for a period of 5 years for pharmaceutical products and 10 years for agricultural chemicals.	None. Protection is not granted if the owner engages in anti-competitive practices; for reasons of public health, national security, non-commercial public use or national emergency; if the product is the subject of a compulsory licence, if it has not been put on sale in Chile or abroad 12 months after its sanitary registration, or if the application for protection was submitted in Chile 12 months after the date on which the first registration abroad was obtained.
Geographical indications (GI) and appellations of origin (AO)			
Industrial Property Law No. 19.039 (revised, coordinated and consolidated text in DFL No. 3 of 2006) and its implementing Regulations (Decree No. 236 of 2005); Law No. 19.996 of 2005; and Law No. 20.160 of 2007. Law No. 18.455 of 1985 (Appellations of origin); and Decree No. 464 of 1995 (Wine-growing zoning)	GI: identifies the product as originating in a country or region or locality of the national territory, when its quality, reputation or other characteristic is basically attributable to its geographical origin. AO: <i>Ibidem</i> . Also taking into consideration other natural and human factors affecting the special nature of the product.	Indefinite.	The following are not recognized as GI or AO: signs or expressions contrary to morality or public order; those that may mislead as to the geographical source, nature, method of manufacture, or qualities of the product; those that are generic (except those recognized in Chile's trade treaties); those that are identical or similar to other GI or AO for the same product.

Main legislation	Area covered ^a	Term	Exclusions and limitations ^a
Copyright and related rights			
Law No. 17.336 of 1970 (amended by Law No. 19.912 of 2003, Law No. 19.914 of 2003, and Law No. 19.928 of 2004) and its implementing Regulations (Decree No. 1.122 of 1971)	Literary, artistic and scientific works, including, <i>inter alia</i> , musical compositions, radio or television adaptations, photographs, cinematographic works and computer programs.	Life of the author plus 70 years after his death or from the first publication or fixation, depending on the type of work.	No authorization or remuneration is required if the work is used privately, in educational establishments or charitable or similar institutions, not for profit.
Regulations on the distribution of related rights (DS No. 4.764 of 1985)	Includes economic and moral rights. No registration required.	50 years for broadcasts of broadcasting organizations.	The adaptation of a computer program provided that it is essential for use in a particular computer and not intended for any other use; the copy of a computer program for filing or back-up purposes; these may not be transferred under any title. The exceptions provided in Articles 38 to 45 of Law No. 17.336 also apply.
New plant varieties			
Law No. 19.342 of 1994 and its implementing Regulations (Decree No. 373 of 1996)	New plant varieties that are distinct, homogeneous and stable. Registration is with the Agriculture and Livestock Service.	18 years for trees and vines and 15 years for other species. Not renewable.	A breeder's right is not infringed if the farmer uses properly harvested reproduction material on his own farm. This material may not, however, be publicized or transferred as seed. Compulsory licences are granted if the breeder exercises an abusive monopoly of the exploitation or sale of the protected variety.

^a The description of the areas covered and the exclusions or limitations listed is not exhaustive.

Source: WTO Secretariat.

259. Since the previous Review, Chile has made a number of changes to Law No. 19.039 on industrial property.¹⁹² These include the incorporation of new categories of protection in 2005¹⁹³; the protection of undisclosed information on new chemical entities submitted for the purpose of registering pharmaceuticals (five years) and agricultural chemicals (ten years); the extension of the term for patents from 15 to 20 years from the date of filing; limited exceptions to patentability; the determination of new grounds for granting compulsory licences; stronger trademark protection, including the incorporation of sounds and well-known marks; and new provisions on enforcement concerning summary civil proceedings, preventive and preliminary measures.¹⁹⁴ In 2007, changes were also introduced in the procedure for annulling registration, a supplementary term of protection in cases of unjustified administrative delay in granting a patent, the coexistence of trademarks and geographical indications or appellations of origin, and recognition of collective and certification marks.¹⁹⁵

260. As regards copyright and related rights, the major changes introduced since 2003 concern clarification of the scope of the rights protected (including, for example, making the work available to

¹⁹² DFL No. 3, of 9 March 2006, contains the revised, coordinated and consolidated text of Law No. 19.039.

¹⁹³ Namely, geographical indications and appellations of origin, layout designs of integrated circuits, industrial designs, business secrets and undisclosed information.

¹⁹⁴ Amendments introduced by Law No. 19.996, published on 11 March 2005.

¹⁹⁵ Amendments introduced by Law No. 20.160, published on 17 January 2007.

the public)¹⁹⁶, the incorporation of new elements such as textile designs and information management, and extension of the term of copyright protection from 50 to 70 years after the author's death (or from the date of publication or fixation, depending on the type of work). There are also new provisions on border measures in order to ensure enforcement of rights (see below).¹⁹⁷ In mid-2009, the National Congress was discussing a draft intellectual property law¹⁹⁸, which deals with issues such as civil and criminal proceedings to deal with piracy-related offences, limitations and exceptions to copyright and related rights and the responsibility of Internet service providers. The draft, which has been the subject of considerable debate among the various stakeholders in the knowledge industry, civil society and the Government, has been approved by the Chamber of Deputies and is now before a special Senate commission.

261. Law No. 20.169 was enacted in early 2007 to punish acts of unfair competition and applies specifically to intellectual property rights. Acts considered by the Law to constitute unfair competition include improper use of distinctive signs belonging to a third party, false information on the goods or services of a third party likely to impair its reputation on the market and the manifestly abusive exercise of judicial proceedings in order to hamper action by an agent on the market (see also (4)(ii) above).

262. The *Instituto Nacional de Propiedad Industrial* - INAPI (National Industrial Property Institute), of the Ministry of the Economy, is the government body responsible for registering and promoting industrial property rights (trademarks, patents, utility models, industrial designs, integrated circuits and geographical indications) and it has a database of applications and/or registration of trademarks and patents that is open for consultation.¹⁹⁹ The INAPI started to operate in January 2009²⁰⁰, replacing the former Industrial Property Department. The *Departamento de Derechos Intelectuales* - DDI (Intellectual Property Rights Department) in the Directorate of Libraries, Archives and Museums, is responsible for the Intellectual Property Register (copyright and related rights).²⁰¹ The Seeds Department of the SAG deals with applications for the protection of new plant varieties and the SAG's New Plant Variety Assessment Committee grants registration for them.

263. The *Instituto de Salud Pública* - ISP (Public Health Institute), belonging to the Ministry of Health, keeps the register of medicines, information on which has been protected as undisclosed information, while the Pesticides and Fertilizers Department of the SAG is responsible for registering agricultural chemicals, information on which has been protected as undisclosed information. The Interministerial Intellectual Property Committee, chaired by the Ministry of Foreign Affairs and composed also of the Ministries of the Economy, Education, Health, and Agriculture and the National Council for Culture and the Arts, was set up in 2005 to coordinate Chile's position in international forums and facilitate implementation of its international commitments.

264. Law No. 19.996 created the Industrial Property Tribunal, a special and independent jurisdictional body, to hear and settle disputes relating to opposition or cancellation of industrial property rights and plant variety rights registered with the SAG. Appeals against the Tribunal's

¹⁹⁶ So that members of the public may have access to such works from the place and at the time they wish.

¹⁹⁷ Amendments introduced by Law No. 19.912, published on 4 November 2003, Law No. 19.914 of 19 November 2003 and Law No. 19.928 of 31 January 2004.

¹⁹⁸ Bulletin No. 5012-03.

¹⁹⁹ The INAPI database is available at: http://www.dpi.cl/dpi_web/Frm_Login_default2.htm

²⁰⁰ The INAPI was created by Law No. 20.254, published on 14 April 2008.

²⁰¹ The website of the Intellectual Property Rights Department is: http://www.dibam.cl/derechos_intelectuales/contenido.asp?id_contenido=122&id_submenu=173&id_menu=38

rulings may be submitted to the Supreme Court of Justice. Infringements of rights relating to industrial property, intellectual property and registered plant varieties always come before the ordinary civil or criminal courts of justice.

265. Chile's legislation provides for the possibility of granting compulsory licences. In the case of patents, a compulsory licence is granted if the patent's owner has been guilty of conduct or practices contrary to free competition according to a decision by the Competition Tribunal (see (4)(ii) above); for reasons of public health, national security, non-commercial public use, national emergency or other extremely urgent situations; also if the compulsory licence is needed to work a subsequent patent that cannot be worked without infringing a prior patent, subject to certain conditions.²⁰² Compulsory licences can also be granted if the breeder of a new plant variety exercises an abusive monopoly of the exploitation or sale of the protected variety. The authorities have indicated that Chile has never granted compulsory licences. As regards implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, Chile has not yet ratified the Protocol amending the TRIPS Agreement (Decision of the General Council of 6 December 2005 (WT/L/641)).

266. The Intellectual Property Law contains provisions regulating the collective management of copyright and related rights.²⁰³ The collective management bodies are private bodies that must be authorized by the Minister of Education in order to engage in their activities. The Law provides that the royalties collected must be shared among the owners of the works or productions used in proportion to their use. The management bodies are obliged to agree, with any person who so requests, the concession of non-exclusive authorization for the intellectual property rights they administer, in accordance with the rates they themselves fix. In Chile there are several collective management bodies.²⁰⁴ According to data provided by the Chilean Copyright Society, in 2007 the royalties collected by the Society for copyright and reproduction rights amounted to US\$14.8 million, and remittances to foreign management bodies amounted to US\$2.8 million. According to data provided by Chileactores, the amounts collected for related rights resulting from repeat broadcasts on open television channels amounted to US\$169,704 in 2007.

267. Chile allows parallel imports for all intellectual property rights and, as a result, provides for international exhaustion of rights. The Industrial Property Law provides that patents do not give the right to prevent third parties from marketing the product covered by the patent if they acquired it lawfully after the product was legally introduced into trade in any country by the owner of the patent or by a third party, with the owner's consent.²⁰⁵ Likewise, the registration of a trademark does not authorize the owner to prohibit third parties from using it on products legally marketed in any country by the owner or with his express authorization.²⁰⁶ As regards copyright and related rights, the legislation provides that the first sale or other transfer of ownership in Chile or abroad exhausts the right of national and international distribution in respect of the original or the transferred copy of the protected work.²⁰⁷

²⁰² Article 51 of Law No. 19.039 (revised, coordinated and consolidated text).

²⁰³ Title V, Articles 91 to 102 of Law No. 17.336.

²⁰⁴ The Chilean Copyright Society, the Chilean Performers Society, the Literary Rights Society, the Collective Management Body for the Rights of Chilean Audiovisual Producers, the Association of National Theatre, Cinema and Audiovisual Authors, the Management Society for Creators of Fixed Images, the Chilean Actors Corporation, and the Collective Management Body for Producers of Phonograms and Videograms.

²⁰⁵ Article 49 of Law No. 19.039 (revised, coordinated and consolidated text).

²⁰⁶ Article 19*bis* E of Law No. 19.039 (revised, coordinated and consolidated text).

²⁰⁷ Articles 18, 66 and 68 of Law No. 17.336, as amended by Law No. 19.914.

(c) Enforcement

268. In Chile, infringement of intellectual property rights entails criminal penalties (prison or fines) and/or civil penalties (damages). The Industrial Property Law specifies the offences against rights in marks, patents, utility models, industrial designs, integrated circuits and geographical indications, and determines the respective fines. In addition, the tools or elements used to commit the offence are confiscated and given to the owner of the right, and the articles produced illegally are destroyed. There is no term of imprisonment for those infringing industrial property rights. The Intellectual Property Law, on the other hand, defines offences against copyright and related rights and these may give rise to a monetary penalty and/or imprisonment. The draft amendment to the Intellectual Property Law mentioned above proposes increasing fines for infringement of copyright and related rights and the imposition of more severe penalties for piracy committed by organized groups; it also provides for the confiscation of the materials and elements used to commit the offence and the destruction of the articles, unless the owner authorizes their donation.

269. Infringements of the rights of breeders of plant varieties are also subject to fines or imprisonment. A draft law to replace the current regulations and incorporate the standards in the 1991 Act of the UPOV Convention was being discussed by Congress in mid-2009 and it increases the fines for infringement, eliminates prison terms and makes the special measures on enforcement in the Industrial Property Law applicable, including preventive and preliminary measures.

270. As regards border measures, Law No. 19.912 provides that the owners of industrial rights, as well as the owners of copyright and related rights, may request the civil courts to suspend customs clearance of goods if an infringement has occurred or there are reasonable grounds for believing that an infringement has occurred. To maintain this measure, the owner of the right must submit a request within ten days following notification of the suspension of clearance. The customs authority may also ex officio suspend clearance of goods for a maximum period of five days if it is obvious that the goods are counterfeit or infringe copyright, in which case it must immediately notify the right-holder. In 2008, the Customs seized 1,182,421 articles suspected of infringing marks or copyright, with a value of US\$49.1 million.²⁰⁸

271. In 2008, a special force was set up within the Economic Offences Unit of the Chilean Police Force in order to investigate offences related to infringement of intellectual and industrial property rights. The special force seized goods amounting to US\$6.2 million during its first year of operation. The Economic Offences and Money Laundering Unit is responsible for giving Chilean public prosecutors support in investigations, disputes, case studies and compilation of case law on infringement of intellectual property rights. In 2008, the Office of the Public Prosecutor investigated 1,179 cases of infringement of intellectual property rights and 7,425 cases of infringement of industrial property rights.²⁰⁹

²⁰⁸ Information provided by the Chilean authorities.

²⁰⁹ *Idem*