

TRADE & CUSTOMS

Chile



Trade & Customs

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights, including into major domestic legislation and international agreements; trade defence investigations; customs duties; trade barriers; export controls; financial and other sanctions, including trade embargoes; and recent trends and hot topics.

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LEGAL FRAMEWORK

Domestic legislation

What is the main domestic legislation as regards trade remedies?

The main domestic legislation that deals with trade remedies is:

- DFL No. 31/2004, which establishes the revised and updated text of Law 18525/86;
- Ministry of Finance Decree No. 1314/2013;
- free trade agreements executed by Chile with its trade partners; and
- WTO agreements.

Law stated - 30 June 2023

International agreements

In general terms what is your country's attitude to international trade? Has it raised tariffs in the last year?

Chile has been widely recognised as one of the global leaders in economic freedom (see the 2023 Index of Economic Freedom and the Fraser Institute's Economic Freedom of the World: 2022 Annual Report). A strong commitment to trade liberalisation has led Chile to unilaterally reduce its tariffs to a flat rate of 6 per cent, and to sign numerous trade agreements with most of its trade partners – which has lowered the average tariff to 1.8 per cent.

Chile was the first South American country to join the Organisation for Economic Co-operation and Development and has recently joined the TPP11.

Chile's strict compliance with the rule of law and respect for international agreements is well known, which accounts for the country's impeccable track record on compliance with WTO decisions .

Law stated - 30 June 2023

TRADE DEFENCE INVESTIGATIONS (OUTSIDE THE WTO DISPUTE SETTLEMENT SYSTEM)

Government authorities

Which authority or authorities conduct trade defence investigations and impose trade remedies in your jurisdiction?

The National Commission for Investigation of Price Distortions in Imported Goods (the Commission) is responsible for conducting trade defence investigations and imposing trade remedies.

Law stated - 30 June 2023

Complaint filing procedure

What is the procedure for domestic industry to start a trade remedies case in your jurisdiction?
Can the regulator start an investigation ex officio?

The procedure to start a trade remedies case can be initiated:

- by a complainant affected by dumping or subsidies – complaints should be submitted by the industry of domestic production, whose collective production represents more than 50 per cent of the total production of the similar product; or
- by request from those affected by safeguards – complaints should be submitted by the industry of domestic production affected by serious injury or threat (ie, all producers of similar or directly competitive products in the country, or those whose collective production of similar or directly competitive products constitutes a major proportion of the total domestic production).

In addition, the Commission can initiate an investigation ex officio, but this only happens in exceptional cases when it has enough background to justify it. In practice, this is very rare.

Any complaint or request must be submitted to the Technical Secretariat of the Commission in writing, addressed to the President of the Commission and accompanied by the form provided by the technical Secretariat. The completed form must include the background to the grievance and any evidence showing:

- a distortion of prices (in the case of dumping and subsidies) and how it is causing significant damage to the domestic industry affected; and
- an increase of imports (in the case of safeguards) and how it is causing or threatening to cause damage to the similar or directly competitive domestic production.

The Commission reviews the evidence and determines whether there is sufficient merit to initiate an investigation. If declared admissible, the resolution is published in abstract in the Official Gazette. If declared inadmissible, the decision is notified by registered letter to the complainant. Initiation of the investigation starts when the resolution is published in the Official Gazette.

Investigations of dumping and subsidies must be concluded within a year, and in any event within 18 months, except in exceptional circumstances. Investigations of safeguards must be concluded within 90 days.

Once the Commission decides to initiate an investigation, it should notify:

- in the case of dumping:
 - the government of the country involved; and
 - the accused companies;
- in the case of subsidies:
 - the government of the country involved;
- in the case of safeguards:
 - the Safeguards Committee of the WTO; and
 - the countries with which Chile has signed trade agreements.

Once notified of the initiation of the investigation, the Commission makes the text of the complaint available to all parties involved.

During the investigation, the Commission may require additional information from the complainant or petitioner and other interested parties. The Commission also sends questionnaires to interested parties for comment on the case.

Any information that is confidential is protected by the Commission if there is sufficient justification. Such information is not disclosed without the specific permission of the party that has provided it.

Interested parties have the right to present information orally, for which public hearings are held where they present

their arguments, offer their opinions and pronounce on the information provided by the other parties involved in the investigation. However, any information given orally must be submitted in writing and made available to other interested parties.

As regards on-site visits, during investigations of dumping or subsidies the Commission may carry out inspections in a foreign territory to verify the information provided and obtain further details.

The Secretariat prepares a technical report based on the information collected, which is confidential and provides the necessary elements for the Commission's decision regarding the existence of price distortions or increased imports and how they affect domestic production.

During the investigation, the Commission can recommend to Chile's President, through the Minister of Finance, the application of provisional measures. These measures are implemented through the enactment of a presidential decree.

Anti-dumping and countervailing duties must be implemented within 60 days from the date of initiation of the investigation, and they cannot exceed four months, or six months in qualified cases.

Safeguard measures must be implemented within the first 30 days from the start of the investigation, and they cannot exceed 200 days.

On the conclusion of the investigation, the Commission may recommend:

- not to apply a measure – the Commission issues a resolution ending the investigation that is published in the Official Gazette; or
- the application of a definitive measure – the recommendation and its background are sent to the President, through the Minister of Finance, for a decision. The President enacts a presidential decree instructing the implementation of the recommended measure.

Duration of the measures

Anti-dumping and countervailing duties cannot exceed one year from the publication of the presidential decree in the Official Gazette. Furthermore, the recommended measure cannot exceed the margin of distortion.

In the absence of provisional measures, Safeguard measures cannot exceed two years from the publication of the presidential decree in the Official Gazette. If provisional measures were applied during the investigation, the period of two years is counted from the date of publication of the decree. It is renewable for a maximum of two years.

Law stated - 30 June 2023

Contesting trade remedies

What is the procedure for foreign exporters to defend a trade remedies case in your jurisdiction?

Foreign exporters have the same trade remedies and procedures available for the domestic industry. Investigations considered admissible are published in the Official Gazette and normally the Commission notifies exporters that have been identified.

Law stated - 30 June 2023

WTO rules

Are the WTO rules on trade remedies applied in national law?

Yes. WTO rules on trade remedies are applied in national law, as Chile is an active WTO member. Chilean trade remedy legislation makes express reference to WTO legislation and makes it applicable in the cases and under the conditions established in such domestic legislation.

Law stated - 30 June 2023

Appeal

What is the appeal procedure for an unfavourable trade remedies decision? Is appeal available for all decisions? How likely is an appeal to succeed?

There is no specific appeal procedure against trade remedy decisions, so the general regulation applies – which provides the affected party with the following options.

Administrative actions

Administrative actions include:

- administrative appeal: this is a claim before the Commission within five days following the decision's publication. The Commission has 30 days to resolve it. The action may consider legal or policy issues;
- hierarchic appeal: this is a similar claim to the above, but it is submitted before the head of the Commission. In this case, it would be the Minister of Economy; and
- presentation to the Comptroller General: this can be made by anyone before the controller entity to discuss the legality of a resolution. It is a short procedure in which the Comptroller requests information of the affected agencies and makes a decision.

Jurisdictional actions

Jurisdictional actions include:

- appeal for nullity of public law: this is an action before a civil judge (ordinary courts of justice). The trial will follow the rules of the general procedure; therefore, it is a long process that could take years. However, plaintiffs may ask for precautionary measures to avoid the effects of the contended act. The argument for the claim in this case would be an administrative act against the Constitution; therefore, it is only a legal claim and not a policy issue. Even though, theoretically, there is no statute of limitation for this action, the courts have said that the general rules should be applicable, hence there is a five-year statute of limitation; and
- protection appeal: this is a claim before a Court of Appeals for a breach of some of the constitutional rights established in article 19 of the Constitution. The claim must be filed within 30 days of the announcement of the administrative act. This is a simple and short procedure where the court decides after receiving the report of the affected agency.

All of the above actions (except for the presentation to the Comptroller General) require an affected right or a legitimate interest of the plaintiff (usually steered and represented by MPs, but in fact anyone could file these actions).

Review of duties/quotas

How and when can an affected party seek a review of the duty or quota? What is the procedure and time frame for obtaining a refund of overcharged duties? Can interest be claimed?

If, after an investigation, the authority does not recommend the application of definitive measures, the affected party may seek reimbursement of any provisional measures paid, plus interest.

Law stated - 30 June 2023

Compliance strategies

What are the practical strategies for complying with an anti-dumping/countervailing/safeguard duty or quota?

The strategy will depend on each case, but, generally, seeking reviews and refunds of overcharged duties is a path that should be considered, as Chilean courts apply the rule of law and decide in favour of anyone who can sufficiently support a case, even if the decision goes against the Chilean state.

Law stated - 30 June 2023

CUSTOMS DUTIES

Normal rates and notification requirements

Where are normal customs duty rates for your jurisdiction listed? Is there an exemption for low-value shipments, if so, at what level? Is there a legally binding system of information for applied tariffs or similar in place? Are there prior notification requirements for imports?

Customs duty rates are listed in the Customs Tariff , which constitutes a binding tariff information system. There are no exemptions for low-value shipments, except for non-commercial goods purchased in duty-free shops (up to US \$500) and travellers' luggage.

There are no prior notification requirements for imports. However, qualified goods such as chemicals, weapons, animals and others require prior control for their importation .

Law stated - 30 June 2023

Special rates and preferential treatment

Where are special tariff rates, such as under free trade agreements or preferential tariffs, and countries that are given preference listed?

Special tariff rates are listed in the Customs Tariff and in free trade or other commercial agreements signed by Chile.

Law stated - 30 June 2023

How can GSP treatment for a product be obtained or removed?

There is no Generalised System of Preferences, even though Chile is a beneficiary country for Australia, Belarus, Japan, Kazakhstan, New Zealand, Russia and Turkey. In Chile, preferential treatment is granted based on the product and its origin, following the trade agreements to which Chile is a party.

Law stated - 30 June 2023

Is there a duty suspension regime in place? How can duty suspension be obtained?

There is a specific regime of admission under which goods may be kept in special facilities, upon prior authorisation by customs authority, for up to 90 days. No duties are paid until goods are taken out of the facility. An interest rate is charged in addition to the duties if the goods are kept for more than 30 days.

On the other hand, regulation allows for temporary admission in which no customs duties or reduced rate duties are paid during a specific period. After that period, if the goods have not been re-exported, full duties must be paid.

Additionally, importers who obtain authorised economic operators certification by the customs authority, and small and medium-sized companies (ie, S corporations) who import goods that have not previously been subject to suspensive regimes provided for by law – and that meet certain legal requirements – may withdraw foreign goods that are kept in customs storage facilities for their import, without prior payment of duties, taxes, fees and other charges they may trigger, except for the payment of storage and mobilisation services. However, such importers must provide an immediate execution bank cheque or insurance policy or an equivalent as a guarantee, to ensure the payment of duties, taxes and other charges, and any eventual adjustments and interest that may be accrued. If the payment is not made within the legal term, the said guarantee will be made effective until full payment of the duties, taxes and other charges due, including any adjustments and interests.

Foreign goods may also be subject to customs deposit destination for a period of one year without prior payment of duties and other charges caused by their import, and must be subject to minor processes such as assembling, packaging, finishing, ironing, bagging, packaging or labelling. The requirements and guarantees that the interested parties must fulfil to authorise the referred destination are established by supreme decrees.

Law stated - 30 June 2023

Has your country applied tariffs for 'national security' reasons?

No.

Law stated - 30 June 2023

Challenge

Where can customs decisions be challenged in your jurisdiction? What are the procedures?

There are two main options to challenge customs decisions in Chile:

- submit a claim before the same authority within 15 days of its decision. The authority has 30 days to decide the claim; or
- file a lawsuit before the tax and customs courts within 90 days of the customs decision. The procedure is similar

to a trial, in which the authority has to present its defences and there will be a period to present and discuss evidence (including witnesses), and the final decision of the court may be challenged before a court of appeal and then, if applicable, before the Supreme Court.

Law stated - 30 June 2023

TRADE BARRIERS

Government authorities

What government office handles complaints from domestic exporters against foreign trade barriers at the WTO or under other agreements?

The Under Secretary for International Economic Relations (Subrei), part of the Ministry of Foreign Affairs, handles complaints from domestic exporters.

Law stated - 30 June 2023

Complaint filing procedure

What is the procedure for filing a complaint against a foreign trade barrier?

There is no formal investigation process for such complaints.

Law stated - 30 June 2023

Grounds for investigation

What will the authority consider when deciding whether to begin an investigation?

The authority addressing a complaint will likely take into consideration the complaint's merits and the evidence presented to substantiate it, the interests of other Chilean importers or exporters, the broader political relationship between Chile and the country or territory in question, and the remedies available to address the barrier.

Law stated - 30 June 2023

Measures against foreign trade barriers

What measures outside the WTO may the authority unilaterally take against a foreign trade barrier? Are any such measures currently in force?

If the acts, policies or practices of the government of a country adversely affect, or lead directly or indirectly to adverse effects on trade in goods or services in Chile, the Chilean government may take measures including suspension or withdrawal of statutory rights or privileges granted to that country or imposition of a surtax on its goods. If it is not possible to agree on proper compensation with a country that has applied a safeguard measure, Law 18,525 authorises the President of Chile to apply additional duties applicable to goods exported from the other country. Currently there are no measures in force.

Law stated - 30 June 2023

Private-sector support

What support does the government expect from the private sector to bring a WTO case?

Any assistance that reduces the government's costs in proceeding with the case is likely to be welcome. The government will expect affected domestic private sector interests to provide relevant economic data and other evidentiary material that will substantiate the complaint. Assistance from qualified private sector counsel and experts in preparing and reviewing arguments and obtaining and reviewing evidence may have a bearing on whether the government proceeds with the case.

Law stated - 30 June 2023

Notable non-tariff barriers

What notable trade barriers other than retaliatory measures does your country impose on imports?

Chile imposes strict sanitary and phytosanitary controls, mainly to protect the country's agriculture.

Chile maintains a price band system for wheat, wheat flour and sugar that, under several free trade agreements and following a WTO panel loss against Argentina, will be phased out for imports. Feedstuff containing more than 65 per cent sugar content, such as high fructose corn syrup, are subject to the sugar price band system. The price band system guarantees a minimum and maximum import price for the affected products, adding a special tax to the tariff rate to raise the price to the minimum price. The government sets a minimum import price that is normally higher than both international and Chilean domestic prices. Since 2008, the minimum price has been reduced by 2 per cent per year.

The export or import process requires every company operating in the country to contract the services of a customs agent. The customs agent is the link between the exporter or importer and the National Customs Service. The customs agent's mission is to facilitate foreign trade operations and to act as the official representative of the exporter or importer in the country. Customs agents' fees are not standardised. This is an extra cost borne by non-Chilean companies operating in the country. However, companies established in any of the Chilean duty-free zones are exempt from the obligation to use a customs agent when importing or exporting goods.

Law stated - 30 June 2023

EXPORT CONTROLS

General controls

What general controls are imposed on exports?

The documentation required for exporting from Chile is the single export document, the bill of lading (or airway bill) and the commercial invoice (unless the export is not for commercial purposes and the value of the goods is less than US \$2,000 free on board, or unless a pro forma is applicable).

Specific goods, such as food, fruit and minerals, have specific certifications and requirements related to weight.

Exports are not subject to duties or taxes.

Law stated - 30 June 2023

Government authorities

Which authorities handle the controls?

The Customs Service is the main authority. Moreover, the customs agent (the equivalent to the customs broker) is an auxiliary of the authority, and therefore has some faculties to control.

Furthermore, there are goods that require a licence and their exportation is controlled by the following public agencies:

- the Agricultural and Livestock Service;
- the Public Health Institute; and
- the National Fisheries and Aquaculture Service.

Additionally, the Director of the National Customs Service, at the request of interested parties, may certify persons as authorised economic operators who may act in the foreign trade logistics chain to access the benefits related to the control and simplification of customs processes, according to their role in the chain. A regulation will establish the activities that can be considered for the referred certification.

For import and export destinations, the customs authority may certify persons for the purpose of assisting in the determination of weight and moisture content, sample collection, preparation of representative samples, measurement, calibration, chemical analysis and others factors to be determined by resolution of the Director of the National Customs Service.

In both of these cases, a regulation will establish the requirements and obligations of the people who access said certifications.

Law stated - 30 June 2023

Special controls

Are separate controls imposed on specific products? Is a licence required to export such products? Give details.

Weapons, related goods and dual-use equipment are subject to a special regime controlled by the General Directorate for National Mobilisation. Those interested in exporting must be previously registered in a Registry of Exporters and exports must be authorised by the General Directorate for National Mobilisation.

Law stated - 30 June 2023

Supply chain security

Has your jurisdiction implemented the WCO's SAFE Framework of Standards? Does it have an AEO programme or similar?

Chile is part of the World Customs Organization's SAFE Framework of Standards. An amendment to the Chilean Customs Ordinance that came into force in March 2017 incorporates the AEO programme into the Chilean legal system as a definitive measure, and Decree No. 1140 of the Ministry of Finance has regulated the programme in detail. The AEO programme allows companies to prove that their processes are safe and that their controls and procedures guarantee compliance with customs regulations, leading to improvements in the efficiency of clearance processes,

reduction of time frames, costs and losses in production, and predictability of the supply chain.

Law stated - 30 June 2023

Applicable countries

Where is information on countries subject to export controls listed?

There is no list of countries subject to export controls.

There is a list of countries considered as tax havens or harmful preferential tax regimes , but this is only for tax purposes.

Law stated - 30 June 2023

Named persons and institutions

Does your jurisdiction have a scheme restricting or banning exports to named persons and institutions abroad? Give details.

There are no restrictions or bans on exports based on the person or institution abroad. Nevertheless, certain Chilean companies and individuals such as customs agents must inform the Financial Analysis Unit about:

- transactions carried out with entities listed as terrorists according to the United Nations; and
- individuals entering the country with more than US\$10,000 in cash, which the National Customs Service must report.

Law stated - 30 June 2023

Penalties

What are the possible penalties for violation of export controls?

The export of banned products, tax evasion or exporting through illegally authorised facilities or not through the Customs Service are punishable under smuggling or fraud legislation. Sanctions will depend on the value of goods. If it is more than approximately US\$1,650, sanctions range from one to five times the goods' value or from 60 days to three years' imprisonment. If the value is less than approximately US\$1,650, sanctions range from one to five times the goods' value.

There are other sanctions established for offences or infringements corresponding to penalties from approximately US \$65 or a determined percentage of the imported goods' value.

Law stated - 30 June 2023

FINANCIAL AND OTHER SANCTIONS AND TRADE EMBARGOES

Government authorities

What government offices impose sanctions and embargoes?

There are no sanctions or embargoes in place, but Chile's President is empowered to impose such measures.

Applicable countries

What countries are currently the subject of sanctions or embargoes by your country?

There are no countries subject to sanctions or embargoes.

Law stated - 30 June 2023

Specific individuals and companies

Are individuals or specific companies subject to financial sanctions?

There are no individuals or companies subject to financial sanctions.

Law stated - 30 June 2023

OTHER RELEVANT ISSUES

Other trade remedies and controls

Describe any trade remedy measures, import or export controls not covered above that are particular to your jurisdiction.

Not applicable.

Law stated - 30 June 2023

UPDATE AND TRENDS

Recent developments

Are there any emerging trends or hot topics in trade and customs law and policy in your jurisdiction? What effects are Brexit, the withdrawal of the US from TPP and TTIP, RCEP and negotiations of FTAs (such as the EU–Japan Free Trade Agreement, the Pacific-Alliance, etc) expected to have on your jurisdiction?

Chile has executed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which is between Australia, Brunei, Canada, Chile, Malaysia, Mexico, Japan, New Zealand, Peru, Singapore and Vietnam. This important agreement has been approved by the Congress and entered into effect in February 2023.

The CPTPP is the result of negotiations between the parties of the Trans-Pacific Partnership after the withdrawal of the United States. Therefore, the CPTPP has the same goals of integration and modernisation; nonetheless, 20 sections were suspended (most of them related to the intellectual property chapter pushed by the United States).

The CPTPP addresses several topics, such as trade facilitation, trade defences, trade of goods and services, public procurement, competition, environmental commitments, transparency and anti-corruption rules and dispute resolution clauses, among others.

After Brexit, Chile and the United Kingdom subscribed to an association agreement with the same terms as the agreement between Chile and the European Union, except for those amendments needed to adapt the agreement to a bilateral one. This agreement entered into effect in January 2021. Furthermore, Chile and United Kingdom are



negotiating the modernisation of the agreement.

Other agreements that Chile is currently negotiating or that have been subscribed to but not yet approved by the Chilean Congress, are:

- the modernisation of the EU agreement;
- the modernisation of the European Free Trade Association agreement;
- the deepening of the South Korea agreement;
- the agreement between the Pacific Alliance and Associated States;
- the agreement with Singapore; and
- the economic association agreement with the United Arab Emirates, among others.

Law stated - 30 June 2023

Jurisdictions

	Chile	Porzio Ríos García
	China	Global Law Office
	Colombia	Araújo Ibarra International Trade Consultants SAS
	Eurasia	Dentons
	European Union	Fieldfisher
	India	Khaitan & Co
	Japan	Mori Hamada & Matsumoto
	Jordan	AL Armouti Lawyers & Consultants
	Malaysia	SKRINE
	Mexico	Galicia Abogados SC
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