

REGULATION IMPACT STATEMENT

PROBLEM/ISSUE IDENTIFICATION

1. Despite the considerable market access improvements achieved by the World Trade Organization (WTO) and tariff reductions implemented voluntarily within Asia Pacific Economic Cooperation (APEC), Australia's goods and services still face substantial barriers to trade globally.
2. Achieving a timely and successful outcome from the WTO Doha Round remains the highest priority of Australia's trade policy. In this environment, in order to advance their export interests, free trade agreements (FTAs) are being pursued by most countries. Chile has an ambitious FTA strategy, having preferential trade arrangements with 54 other countries, including benchmarks for the negotiation of any future agreements.
3. Australia has negotiated FTAs with Singapore, Thailand and the United States of America (US), and has a long-standing Closer Economic Relations agreement (CER) with New Zealand. Australia is also negotiating FTAs with Japan, China, Malaysia, Association of South East Asian Nations (ASEAN) with New Zealand, and the Gulf Cooperation Council. A joint non-government feasibility study with the Republic of Korea commenced in April 2007 and Australia announced joint FTA feasibility studies with Indonesia and India to commence in 2008.
4. In February 2008, in parallel with a review of Australia's export policies and programs, the Government commissioned an analysis of Australia's recent FTAs to assess their net benefits and to develop new benchmarks for Australia's future bilateral and regional trade agreements. The analysis is likely to be completed by 31 August 2008.
5. Although Australia's trading relationship with Chile is modest at AU\$856 million (ranked as Australia's 41st largest merchandise trading partner and 28th largest services trading partner in 2007), it is underpinned by a solid investment relationship. Australian companies have significant investments in Chile, estimated at about \$US3 billion in 2007¹, with a major presence in the mining sector. Australia's top goods exports to Chile in 2007 were coal, civil engineering equipment, specialised machinery and transport vehicles. Australia's main imports from Chile were copper, pulp and waste paper, non-ferrous base metal waste and pig iron.
6. Australian business sees significant potential in the Latin American market and considers Chile – with its relatively stable and transparent commercial environment – to be the practical stepping stone into other markets in Latin America. In addition to Australia's exporters of coal and, possibly, LNG in the future, Australia's mining services companies see increasing opportunities in Chile's buoyant mining industry, and there is also increasing interest in Chile's agriculture, entertainment and education sectors as well as in professional services (particularly engineering).
7. Australian business is currently disadvantaged by Chile's flat six per cent tariff on all products (particularly on coal, LNG and mining equipment); substantially higher tariffs on sugar, wheat and wheat flour; and the absence of tariff parity on a range of major products (including meat, dairy and some industrials) compared with countries like the US and New Zealand which have already negotiated preferential access to the

¹ Based on official Chilean Government statistics.

Chilean market. The US-Chile FTA entered into force in 2004 and the Trans-Pacific Strategic Economic Partnership (P4) Agreement (New Zealand, Singapore, Brunei Darussalam and Chile) entered into force in 2006. Although Chile has reasonably open and transparent services, investment and intellectual property regimes, it has made limited commitments in the WTO. Australian businesses are constrained by this regulatory uncertainty, particularly when making new investment decisions.

OBJECTIVES

8. Objectives for the Australia-Chile FTA (ACI-FTA) should align closely with the objectives identified for our concluded and current FTAs, as well as taking into account specific regional Australian interests, namely:

Goods

- Eliminate Chile’s flat six per cent tariff and some higher tariffs on sensitive items (wheat, wheat flour, and sugar) over the shortest possible time frame to ensure that Australia’s specific interests are addressed;
- Address non-tariff measures and business practices across-the-board that restrict Australian exports to Chile;
- Agree on a set of rules of origin that avoid unnecessary obstacles to trade and reflect the principle of substantial transformation;
- Reinforce mutual commitment to the development and application of science-based quarantine measures, consistent with the WTO Agreement on Sanitary and Phytosanitary Measures;

Services

- Remove discriminatory treatment (to the extent feasible) and bind Chile’s services regime to guarantee access for Australian service suppliers in the Chilean market, including by addressing restrictions on commercial presence and licensing requirements;

Investment

- Lock in the regulatory disciplines on Chile’s foreign investment regime and, to the extent possible, increase transparency and reduce the regulatory burden on Australian investors associated with foreign investment;

Other objectives

- Improve transparency, to the extent feasible, expand access to the Chilean government procurement market, and agree rules that are transparent, flexible and fair;
- Ensure the rights of Australian holders of intellectual property are protected effectively and enforced by binding Chile’s intellectual property regime;
- Enhance use of electronic commerce in goods and services trading, including by ensuring that customs duties will not be introduced on electronic transactions; and
- Provide a framework for settling disputes arising under the ACI-FTA.

OPTIONS

9. Australia can address the market access problems identified above through multilateral, regional and bilateral trade negotiations.

Multilateral

10. At the multilateral level, as noted above, the successful and early conclusion of the Doha Round of negotiations in the WTO is the Australian Government's key trade policy priority. Australia is seeking improved market access across agriculture, industrial products and services. The Doha Round has made important progress since it was launched in 2001, but a number of significant differences remain between key WTO Members. Conclusion of the Doha Round this year is possible but not assured.

Regional

11. At the regional level, the Australian Government remains committed to the achievement of voluntary trade liberalisation and the APEC Bogor Goals by 2020. APEC's future work on regional economic integration are guided by actions and recommendations endorsed by Leaders during Australia's hosting of APEC in 2007. Key agreed actions include continuing support for the multilateral trading system; examination of the options and prospects for a Free Trade Area of the Asia-Pacific (FTAAP); and strengthening APEC's work to promote high-quality free trade areas. Australia will take an active role in examination of the prospects for an FTAAP, including examination of the feasibility of streamlining existing FTA/RTA agreements within APEC into an FTAAP. The process has not begun, but it is expected to be a longer-term project.

Bilateral

12. At the bilateral level, a comprehensive, WTO-consistent bilateral FTA with Chile would build on those multilateral and regional objectives. To help boost the pace of trade liberalisation and encourage the successful conclusion of the Doha Round, most countries are entering into bilateral trade agreements. Chile is no exception and, as noted above, has an expansive FTA agenda having concluded preferential trade arrangements with 54 countries.

13. In December 2006, the Government agreed to commence a bilateral negotiation process with Chile with a view to obtaining a comprehensive and ambitious FTA. In parallel, public submissions were sought for and consultations undertaken with stakeholders, including other federal government agencies, State and Territory governments, industry groups and business. Preparatory meetings were held in Chile in February and April 2007 to discuss the scope of the ACI-FTA and to compare in detail our respective FTAs with the US. Following this preliminary phase, in July 2007 the Government agreed to enter into FTA negotiations with Chile. Negotiating rounds were held in August and October 2007. A split round was held in December (goods/related issues) and January 2008 (services/investment/IP). In March 2008, inter-sessional meetings were held in Canberra and in Santiago. These meetings were followed by a full round in Santiago in early April 2008. Chapter headings in the FTA give an indication of the issues that were the focus of the negotiations:

- Trade in Goods: tariffs will be eliminated on lines covering 97 per cent of trade with tariffs on the remaining lines eliminated by year six of the ACI-FTA;
- Rules of Origin: product specific rules based on the change in tariff classification system have been agreed; exporters will be able to issue certificates of origin directly;
- Customs Procedures: the FTA enshrines a modern, harmonised and simplified system of customs procedures that is consistent with Australian practice;

- Trade in Services and Investment: the services and investment package locks in Chile's current liberal services and investment regime and is therefore significantly GATS-plus;
- Government Procurement: the ACl-FTA will provide Australian exporters with a level of access equal to competitors from other countries which have an FTA with Chile;
- Intellectual Property: the ACl-FTA makes commitments on intellectual property protection for patents, trademarks and copyright, including the appropriate enforcement mechanisms; and
- Cooperation: the ACl-FTA includes provisions on Cooperation, to which Chile attaches considerable significance and which have been a feature of its recent FTAs.

IMPACT ANALYSIS (incorporating Trade Impact Analysis)

14. Concluding a high quality, comprehensive liberalising agreement with Chile would be expected to:

- boost Australia's merchandise exports to Chile, by increasing Australia's competitiveness via the elimination of the flat six per cent tariff and reducing some higher tariffs on sensitive sectors (wheat, wheat flour, sugar);
- boost Australian investor confidence in Chile by locking in the regulatory disciplines surrounding Chile's foreign investment regime;
- increase the opportunities for trade with Chile for small to medium sized enterprises by providing them with greater certainty regarding Chile's trade and investment regulation;
- increase trade opportunities for Australian business in other Latin American markets - Australian industry sees Chile as a practical stepping stone into the wider region;
- demonstrate Australia's commitment to Chile, Latin America and APEC; and
- reinforce both domestically and internationally Australia's commitment to concluding high quality, WTO-plus, comprehensive and liberalising trade agreements and be a positive demonstration to our other FTA partners.

15. The implications of an FTA with Chile on domestic production would be limited, given Australia's already open and liberal trading regime and the low level of bilateral trade. Although the horticulture and salmon industries have expressed concerns regarding Chilean exports threatening domestic supply - based on the possibility of an accelerated Import Risk Assessment process for Chile - Australia's FTAs do not provide for such an acceleration mechanism and do not compromise Australia's science based quarantine approach.

16. Continuing to pursue trade gains only via the multilateral trading system at the expense of FTA negotiations could lock Australia out of any near-term improved market access gains, particularly in coal and LNG. Members have not set a date for conclusion of the Doha Round of negotiations and Chile's ambitious FTA agenda is progressively reducing the competitiveness of Australia's goods exports. In services, Chile's WTO commitments and current GATS revised offer are very limited in their

application. Pursuing trade gains via the multilateral trading system is unlikely to provide for the same level of services liberalisation and would not provide for additional commitments in investment that are outside the current scope of the WTO but can be covered by FTAs.

Compliance costs

17. With respect to trade in goods, rules of origin (ROO), which determine whether or not a good qualifies for preferential tariff treatment, are one of the main areas of an FTA that can impose compliance costs on business, for example by requiring additional paperwork. The product specific ROO and the certification system used in the FTA with Chile have been designed to minimise these costs.

18. The product specific rules (PSRs) are based primarily on change in tariff classification (CTC), a simple means of judging whether goods have undergone substantial transformation in the production process and therefore qualify for preferential tariff treatment. CTC rules are supported by industry as they do not require burdensome cost calculations or extensive records. CTC rules are already used in Australia's FTAs with the United States and Thailand and, more recently, with New Zealand in the Closer Economic Relations trade agreement. CTC is also the main methodology under consideration in Australia's current FTA negotiations. The CTC rules in the FTA with Chile are supplemented for certain items by regional value content rules (which require a certain percentage of production to be undertaken in the territory of an FTA Party). Although these require additional records and calculations, they are necessary in order to take into account instances where a CTC would not reflect substantial transformation.

19. Australian exporters will be able to directly issue certificates of origin (which specify that their goods meet the relevant PSR). This will be of particular benefit to those companies that have the capacity to easily self-assess their production processes with respect to ROO, such as many manufacturers and agricultural producers, who will not have to engage a third party to issue certificates – saving money and time. Exporters will also have the option to ask representatives to issue certificates of origin on their behalf. This will allow exporters to seek guidance as necessary from bodies such as the Australian Chamber of Commerce and Industry, the Australian Industry Group and others who have experience in issuing certificates.

20. The FTA will not impose any new costs on exporters or importers as far as customs clearance is concerned as the rules in the FTA chapter on customs procedures are consistent with current domestic regulations. Australian exporters will benefit from 'advance rulings' that will enable them to ascertain whether their exports will qualify for preferential tariff treatment before they ship their goods.

21. The ACI-FTA secures non-discriminatory access to the Chilean government procurement market for Australian suppliers, creating export opportunities for Australian business. The ACI-FTA covers procurement by Chile's central and sub-central (municipal) government entities and effectively provides Australian exporters with a level of access equal to competitors from other countries which have an FTA with Chile.

22. The provisions which have been agreed in the Government Procurement chapter are broadly consistent with those contained in the equivalent chapter of the AUSFTA and will not require any changes to the established government procurement policy and procedures of either the Commonwealth, or State/Territory Governments.

23. Australian industry's access to trade remedies would not be affected by the ACI-FTA, which seeks to maintain the integrity of our system and is consistent with our WTO rights and obligations.

24. The chapters on Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT) reaffirm the commitment of each party to the relevant WTO Agreements and enhance consultative arrangements to facilitate a closer trading relationship. They do not propose any modifications to Australia's system.

25. Chile's commitments on services and investment lock in its current open domestic regulatory regime, but go substantially beyond its existing WTO commitments and generally match the commitments made in Chile's most liberalising FTA to date – that with the US. Overall, the services outcome provides significant improvements for Australian service providers compared with Chile's WTO commitments.

26. The Cross-Border Trade in Services chapter includes obligations on national treatment, market access, most-favoured nation treatment and local presence. The chapter, like the GATS, respects the right of governments to adopt domestic regulation affecting trade in services, but requires these to be administered in a reasonable, objective and impartial manner. The Investment chapter covers both the pre-establishment and post-establishment stages of investment. The key obligations of the chapter are national treatment, most-favoured nation, performance requirements and on senior management and boards of directors. The Financial Services chapter contains similar obligations, with additional provisions that reflect the importance of regulation of this sector to ensure the integrity and stability of the financial system. These provisions draw on specific WTO provisions relating to financial services and recognise the right of the Parties to take measures necessary for prudential reasons while seeking to ensure that these and other regulatory actions do not become unnecessary or discriminatory barriers to trade.

27. Australia's States and Territories are fully covered by the provisions of the services and investment chapters. States and Territories have agreed to list individually all of their existing non-conforming measures against the obligations in these chapters. The Department of Foreign Affairs and Trade is currently working with the States and Territories to compile this list, to be inserted into the FTA prior to signature.

28. Chile was initially reluctant to negotiate chapters on Financial Services, Telecommunications and Electronic Commerce but agreed at our insistence that the FTA be truly comprehensive and WTO-plus. The chapters on these issues, as well as the one on movement of natural persons, extend existing WTO rules in a manner that protects Australia's commercial interests and reinforces our negotiating positions on these issues in the WTO.

29. Key provisions of the Electronic Commerce chapter include commitments to maintain domestic legal frameworks governing electronic commerce that minimise the regulatory burden; support industry-led development of electronic commerce; and provide protection for consumers using electronic commerce that is at least equivalent to that provided for consumers of other forms of commerce.

30. The Intellectual Property chapter locks in Australia and Chile's current standards of intellectual property protection for patents, trademarks, geographical indications and copyright, including through appropriate enforcement mechanisms.

31. The impact of an Australia-Chile FTA on Australian consumers is likely to be wholly positive, providing a greater availability of Chilean products (albeit limited at present) in the Australian marketplace and at more competitive prices in those cases where the consumer good is currently subject to duty (eg wine).

CONSULTATION

32. DFAT negotiators consulted with relevant Commonwealth agencies, State and Territory Governments, peak industry groups (eg Horticulture Australia, Australian Vice Chancellors Committee, Australian Institute of Consulting Engineers, Australian Industry Group), Australian companies (including those based in Chile) and education institutions in five state capital cities (teleconferences for Hobart) and Santiago between February and May 2007. State and Territory Governments and Ministers were also consulted via correspondence, Officials' Groups meetings and teleconferences. Federal Government agencies and Ministers have been consulted via bilateral meetings, correspondence and inter-departmental committee meetings. Public submissions were invited via nation-wide press advertisements, the DFAT website and industry association networks. Consultations sought information on trade relations with Chile, including information on market access, issues that industry would like to see addressed in an FTA, and views on the impact of an FTA on Australia's exports to Chile. Stakeholders were updated via bulletins following each round of negotiations.

33. A diverse range of sectors participated in the consultations, including agriculture, education, manufacturing, telecommunications, mining/energy, and financial institutions. Domestic consultations showed that there is considerable support from Australian business for an FTA with Chile, particularly Australian exporters and investors in sectors such as mining/energy; education and engineering services; and the meat and dairy industries. Business identified that the elimination of the flat six per cent tariff would increase their competitiveness, particularly in coal and potentially in LNG.

34. The horticulture (mainly fruit) and salmon industries have expressed on-going concerns about the FTA, largely on grounds of increased competition in the domestic market, limited export opportunities and fear of accelerated Import Risk Assessment processes. This opposition needs to be considered against the fact that Australia's tariffs are already very low on these products (zero in many cases) and the FTA will not affect Australia's strict quarantine regime or systems for assessing food safety risks (all of which would apply to possible future imports of Chilean horticulture and salmon).

CONCLUSION

35. An ACI-FTA that is WTO-consistent and implemented promptly should deliver moderate benefits for Australia by boosting market access, increase the medium term competitiveness of Australian coal and, potentially, LNG and provide a more secure and transparent processes for Australian investors.

36. The adjustment costs to Australia of an FTA with Chile would be small and outweighed by the commercial and strategic regional, economic and foreign policy gains.

IMPLEMENTATION AND REVIEW

37. The FTA negotiation process was carried out over the period February 2007 to May 2008. The text will require translation into Spanish (the first FTA Australia has negotiated which will be official in a language other than English). Once the finalised the ACI-FTA text is approved for signature by the Executive Council, the agreement can be signed by representatives of the Australian and Chilean Governments – potentially in July or soon thereafter. The text will be tabled in Parliament and examined by the Joint Standing Committee on Treaties.

Once domestic processes are completed, Australia and Chile will exchange diplomatic notes advising that the ratification process has been completed by both Parties – possibly at the APEC Economic Leaders meeting scheduled for late November 2008. Both Parties are aiming for entry into force on 1 January 2009.