

OUTBOUND FOREIGN INVESTMENT OPPORTUNITIES

It was no coincidence that Chilean President Sebastián Piñera's first official visit to China took place in November 2010. Chile was the first South American country to establish diplomatic relations with China and the President's visit marked the 40th anniversary of the establishment of bilateral relations between the two nations on 15 December 1970.

The past 40 years have witnessed steady development of bilateral economic and trade cooperation and close exchanges and fruitful achievements of collaboration in education, science and technology and other fields.

Specifically, Chile was the first Latin American country to sign a bilateral agreement on China's entry into the World Trade Organization, to recognize China's full market economy status and to sign a bilateral free trade agreement with China.

Key Developments to Date

The Goods FTA was signed on 18 November 2005 and entered into force on 1 October 2006. This agreement has resulted in a gradual and systematic reduction of the duty imposed upon importations.

With the signing of the FTA, trade between the two nations has increased exponentially. The products imported from China are more numerous and diversified than the products exported by Chile to China. Although the majority of products that Chile imports from China correspond to goods of final consumption (for example, electronic goods and shoes), importations of intermediate and capital products have also increased. In 2010, 88% of the total of products imported from China entered the Chilean market free of tariffs, figure that will be increased to 98% by 2015.¹

During 2009, Chilean exportations towards China increased, playing a significant counter-cyclical role in the country's economy. China is now consolidated as one of Chile's main trading partners and more than 23% of Chile's exportations are destined to China (concentrated on the mining sector), more than double the trade volume that existed prior to the signing of the FTA.

¹ Refer to "*Relaciones Económicas entre Chile y China: Evaluación a Cuatro Años del TLC*"; Report issued by Department of Studies, General Directorate of International Economic Relations, Chilean Ministry of Foreign Relations, 1 October 2010, pg.20.

The Supplementary Services Agreement was signed on 13 April 2008 and entered into force on 1 August 2010. Under the regulatory framework, each country offers service providers of the other country access to its respective markets. Both countries assume the obligation not to discriminate against a foreign service provider and certain transparency regulations are established. Also, both nations commit to ensure that all laws of general application that affect commerce are administered in a manner that is reasonable, objective and impartial.

With this solid framework in place, both Chile and China are well placed to capitalize on their respective competitive advantages in certain sectors. For example, in the case of Chile, its Economic Development Agency (CORFO) has set up an office in China focused on architecture, supporting Chilean bidders to enter into joint venture projects with the Chinese. In addition, this organ provides subsidies to Chinese and other foreign investors for investment in certain parts of the country, as well as in new sectors, particularly in high technology and other innovative fields.

Foreign Investment Regime

The clear policy of the government to attract foreign investment is reflected in the legal and tax systems, as well as the specific foreign investment regulations. It is often stated that Chile has a stable and transparent legal framework for foreign investment, characterized by clear, non-discriminatory and non-discretionary rules. The flexibility of Chilean foreign investment and tax laws contribute to foreign investment confidence.

Under Chilean law, foreign investments must be brought into Chile using any of several legal statutes. The most frequently used are:

- i) The Foreign Investment Statute, known as Decree Law N° 600 ("DL 600"), a special voluntary investment regime ² ; and,
- ii) Chapter XIV of the Central Bank's Compendium of Foreign Exchange Regulations.

These regulations establish a framework for the administration of the government's foreign investment policy.

² A commission has been set up to study possible changes to the DL600. Although this law reform process is in an early stage, any changes will surely only benefit Chinese outbound investors as the Chilean government works to actively promote the consolidation and growth of China-Chile trade and investment relations.

Outlook for 2011

Negotiations toward the signing of an Investment Protocol are well advanced and said agreement is anticipated to be signed shortly. The objective of this agreement is to grant increased certainty at the time of reciprocal investment in order to strengthen and promote business relations between China and Chile.

If we analyze the historical investment figures, the amounts are low in both directions as compared to Chinese investment in the Latin American region and Chilean investment abroad.

Materialized foreign direct investment coming from China between 1974 and 2009 reached a total of US\$85 million (recently concentrated in mining), figure that represents only 0.1% of the total foreign investment received by Chile in said period³. Consequently, Chinese investment in Chile is relatively reduced, making up around 0.2% of regional investment and less than 0.039% of its global investment. In fact, of the total Chinese investment in Latin America, 67.2% is destined to the Cayman Islands and 28.7% to the British Virgin Islands. Chile is the 13th destination, following countries such as Brazil, Peru, Argentina, Venezuela, Mexico, Ecuador, Panama, Cuba, Guyana and Surinam⁴.

On the other hand, Chilean investment in China during the period between 1990 and June 2010 reached \$212 million (mainly in the industrial sector), representing 0.4% of the total invested abroad⁵.

Despite the aforementioned disillusioning figures, the Chilean government has implemented a new strategy to attract foreign investment from Asia and especially from China. During the Chilean government's recent visit to China, the executive vice-president of the Foreign Investment Committee (FIC), Matías Mori, met Zhang Yingxin, deputy director general of the Chinese Ministry of Commerce's Investment Promotion Agency (CIPA) and the pair agreed on a protocol which will allow potential Chinese investors to be informed about a portfolio of projects that the Chilean government will put out to tender over the next four years in areas that include public works, ports, geothermal exploration, non-renewable energies and mining. In addition, through its website, CIPA will publicize the FIC's publications about Chile's business climate and investment opportunities and will pass on enquiries to the China Desk that the FIC plans to launch before the end of the year. This

³ Idem, N° 1, pg. 24

⁴ Idem, N° 1, pg. 24

⁵ Idem, N° 1, pg. 24

will provide an easy channel of communication to answer enquiries from potential Chinese investors in their own language.

Opportunities

Chile welcomes Chinese investment and it can become a platform for Chinese entrepreneurs to invest in other Latin American countries. Chile has signed 57 FTA's with more than 19 countries. The network of treaties allows Chile to be a springboard to attract investment from China, to carry out trade and investment from Chile in other countries in Latin America. In addition, the Investment Platform Law allows Chinese investors to set up a platform in Chile for channelling and managing investments in third countries, allowing them to tap into Chile's advantages without having to pay Chilean tax on earnings from these overseas investments. Chile also has competitive advantages for exporting financial and IT services.

Certain sectors offer evident opportunities for Chinese investments. During Mining Minister Laurence Golborne's recent visit to China in November 2010, he referred to the opportunities for investment in mining that Chile offers Chinese investors, drawing attention to copper but also other minerals such as molybdenum, gold, lithium and silver. "Chile has the human capital, infrastructure, network of suppliers and access to capital markets that initiatives of this type require," he told the seminar. "That is reflected in the fact that the most important international mining companies have operations in Chile," he added. President Piñera also touched on the opportunities in agriculture and tourism.

In our firm's opinion, the best way for Chinese companies to enter Chile is to become partners with Chilean companies and develop joint activities, which will allow Chinese investors to enter easily in a market that it is relatively unknown to them.

We invite you to visit Chile to become familiar with the country and the huge opportunities it offers.

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This article was written by Grasty Quintana. For further information, please visit www.gqmc.cl.

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