



# Chile: Intellectual Property Issues

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## CHILE

## INTELLECTUAL PROPERTY ISSUES

**I. Intellectual Property Laws**

Law 17336<sup>1</sup> on Intellectual Property (IP) and its regulations adopted by Law 19166 provide the legal framework for intellectual property rights in Chile. The Law protects the works of both Chilean and foreign authors. Protected works include: books, pamphlets, articles, writings, compilations, radio and television adaptations, newspapers, magazines, photographs, computer programs, etc. The Law protects the form in which an idea is represented and its format, but not the idea itself.<sup>2</sup>

The present policy in Chile reinforces the national laws concerning intellectual property rights, while at the same time coordinating the action of different government agencies to enhance and cooperate with international institutions related to IP protection.<sup>3</sup> In recent years, Chile has adopted new intellectual property and technology transfer laws that have strengthened the protection of the owner's rights, both national and foreign.<sup>4</sup> This is a result of international pressure, especially from the United States, toward countries where IP protection needed to be strengthened in order to increase foreign investment.<sup>5</sup> Chilean authorities were motivated to change the IP regulatory system, because it would encourage foreign technology companies to invest in Chile and would assist Chilean companies in advancing national technological innovation. Many of the IP regulations were amended during the 1980s. The many changes in IP rules included: the adoption of international IP conventions; the inclusion of the protection of IP rights in the 1980 National Constitution<sup>6</sup>; and the designation of IP as a specialized area of Law with a special set of rules differentiated from the general principles of private law. Finally, there was a remarkable commercial benefit for Chile, which increased its trade volume with the United States. It is expected that the increase in the Chilean exports to the United States and the entry of U.S. investments in Chile will also increase the number of IP protection petitions in the near future.<sup>7</sup>

The enforcement of the IP legislation has been limited mainly to the decisions of the Office of Copyright, which have very seldom been reversed in the courts. This is the consequence of the longstanding tradition of prominence of the executive, which characterizes governments in Latin America, and especially Chile.<sup>8</sup>

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<sup>1</sup> Law 17336 of Oct. 1970, amended by Law 17773 of Oct. 1972; Law 18443 of Oct. 1985; and Law 18957 of Mar. 5, 1990.

<sup>2</sup> <http://www.utem.cl/cvt/derecho/propiedad.html>.

<sup>3</sup> P. Ruiz-Tagle Vial, *Propiedad Intelectual y Contratos*, in EDITORIAL JURIDICA DE CHILE, Santiago, 2001, at 112.

<sup>4</sup> *Id.* at 115.

<sup>5</sup> *Id.* at 214.

<sup>6</sup> Constitución Política de la República de Chile, 7<sup>th</sup> Edition, Editorial Jurídica de Chile, 2000, art. 19 ¶ 25.

<sup>7</sup> *Supra* note 3, at 228.

<sup>8</sup> *Supra* note 3, at 145.

## II. Biotechnology Regulatory Framework

The regulatory system for biotechnology products is still in the developmental stage, although much has been accomplished in recent years. The regulatory system for field trials is operating under health regulations for the importation of plant material. Therefore, the law requires field trials of imported transgenic products. There is no system in place for the regulation of transgenic products developed domestically and no system for the approval of products available to Chilean consumers.<sup>9</sup>

In November 1993, the “Advisory Committee on the Release of Transgenic Organisms (CALT)” was created to provide technical support to the Agricultural and Livestock Service (SAG) with regard to the introduction and environmental release of transgenic material. The CALT members are specialists appointed by the Minister of Agriculture as permanent officials representing the Ministry of Agriculture, Ministry of Health, agricultural research centers, and Universities. The Advisory board does not have any private sector representation. The Department of Plant Protection under the National Agricultural and Livestock Service (SAG) acts as secretariat to the CALT.<sup>10</sup>

Chilean regulators are focused on preserving the unique indigenous species found in the distinct ecosystem zones that divide the country. The primary role of the Agricultural and Livestock Service (SAG) is the protection of the zones through quarantine procedures. As a result, the regulatory system is very focused on the threat of invasive foreign species. The regulations under which Chile is currently regulating Genetically Modified Organisms (GMOs) are limited in their authority to import products. Transgenic plants produced at the National Institute of Agricultural Engineering (INIA), a government research facility, have been voluntarily submitted to CALT for review. Chilean regulators seem to be taking “a wait and see approach” before developing domestic regulations with the hope of benefitting from international initiatives such as the U.N. Biosafety Protocol.<sup>11</sup>

On the national level, Chile has enacted the Law on the Rights of Breeders of New Plant Varieties<sup>12</sup> and its regulation,<sup>13</sup> which implements the International Convention for the Protection of New Plant Varieties adopted in Chile in 1996.<sup>14</sup>

On the international level, Chile has ratified and promulgated the Statute of the International Center of Genetic Engineering and Biotechnology of 1983, as well as its related Protocol of 1984.<sup>15</sup>

On March 24, 2004, the First Global Biotechnology Forum, organized by the U.N. Organization for Development and the Government of Chile, will take place in the city of Concepcion, Chile. The purpose of the forum will be the analysis of the influence of biotechnology in the productivity and

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<sup>9</sup> <http://www.ejbiotechnology.info/content/vol3/issue1/full/2/index.html> at 4.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Law 19342 of Oct. 17, 1994 in D.O. Oct. 17, 1994.

<sup>13</sup> Supreme Decree 373 of the Ministry of Agriculture of Oct. 11, 1996 in D.O. Dec. 28, 1996.

<sup>14</sup> Decree 18 of 1996 of Jan. 5, 1996 in D.O. Mar. 23, 1996.

<sup>15</sup> Decree 396 of Mar. 17, 1998 in D.O. June 2, 1998.

economy of developing countries.<sup>16</sup>

### **III. Biological Diversity Conventions**

Chile signed the United Nations Convention on Biological Diversity on June 13, 1992, and ratified it on September 9, 1994. The related United Nations Bio-Safety Protocol was signed on May 24, 2000, but it is still pending ratification.<sup>17</sup>

There are two other agreements signed with the U.N. Program for Development on the Preservation and Sustainable Use of Global Biodiversity in Chiloé<sup>18</sup> and Salar Del Huaso<sup>19</sup>.

Prepared by Graciela I. Rodriguez-Ferrand  
Senior Legal Specialist  
Law Library of Congress  
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<sup>16</sup> <http://www.udec.cl>.

<sup>17</sup> <http://www.biodiv.org/world/reports.aspx?type=all>.

<sup>18</sup> Decree 2 of Jan. 2, 2002 in Diario Oficial ( D.O.) Apr. 18, 2002.

<sup>19</sup> Decree 31 of Feb. 8, 2002 in D.O. July 28, 2002.