
**BEUCHAT, BARROS
& PFENNIGER**

attorneys / intellectual property

“Emerging Markets: Are you ready to advise your clients?”

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Santiago

Chile

Sudamérica



General Overview

Full Independence: 1818

Political regime: Democracy

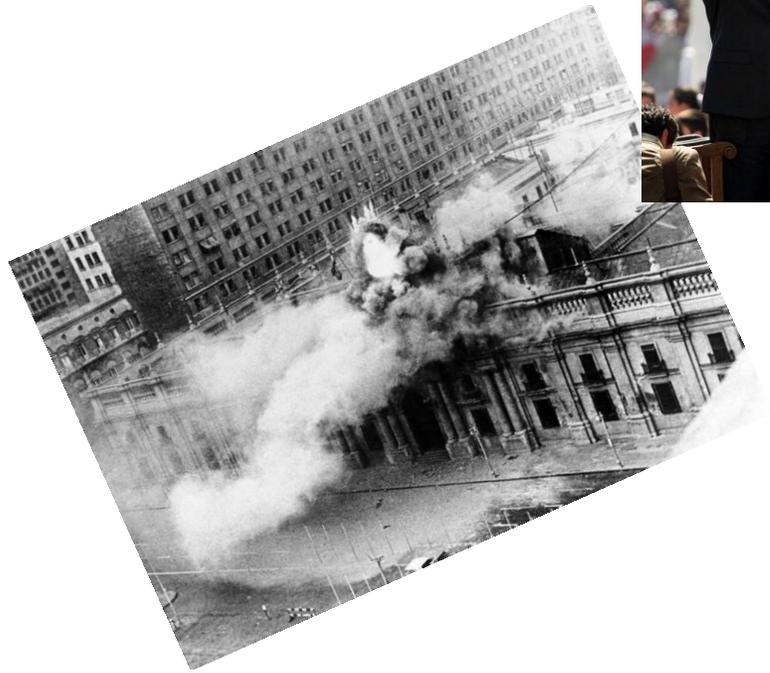
Political stability: Democracy has been interrupted in three times since we became independent. 1891 (Civil War), 1925 – 1932 (political unrest), 1973 – 1989 (dictatorship).

Population: 17.95 Millions

Territory surface: 756,102 km²

Chile is the 41st largest export economy in the world and the 77th most complex economy according to the Economic Complexity Index (ECI).





Our recent history

What we were 50 years ago and what we are now

50 years ago Argentina and Venezuela had about twice as much income per capita than Chile. Brazil, Mexico and Uruguay were also firmly ahead of Chile.

Chile was a relatively closed economy with exports heavily concentrated in copper

High inflation was chronic, as were balance of payment crises.

Public deficits were large and funded mainly through money printing and high reserve requirements on deposits.

On the top of this, in 1973 our Democracy broke down and the Chilean economy collapsed.

What happens now?

For the last three decades, Chile has been the fastest-growing economy in the region reaching an outstanding record: To become the richest nation in Latin America.

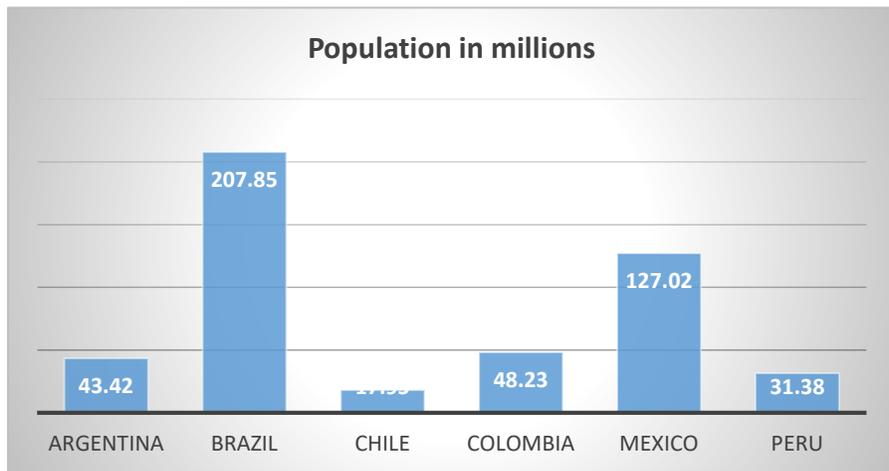
Poverty has fallen dramatically, life expectancy has extended and educational attainment has increased dramatically.

Today, the country exhibits one of the highest levels of human development in the region.

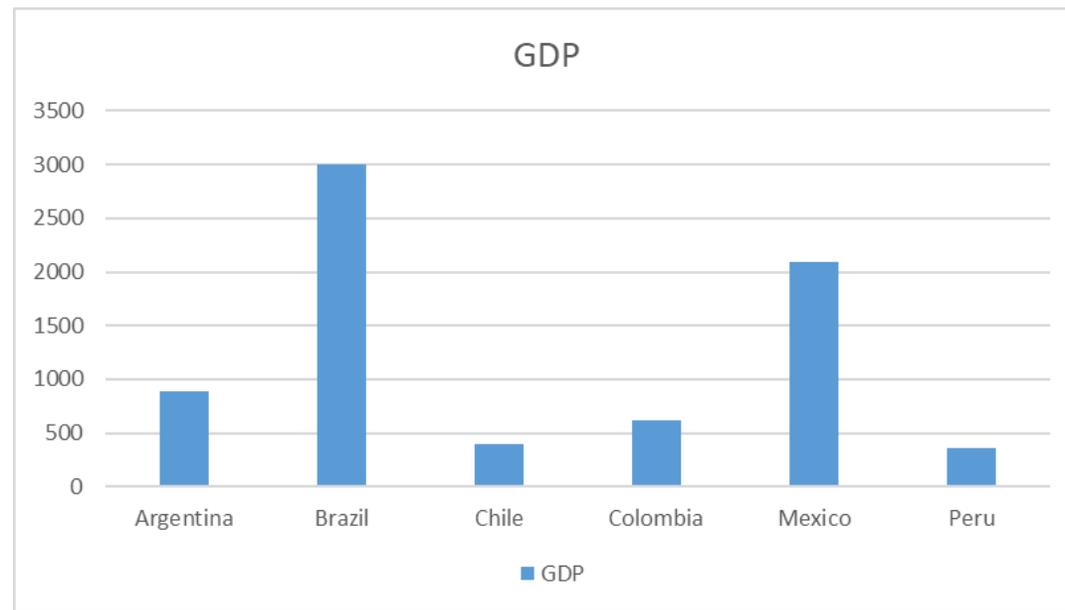
Chile has a very open economy with a diversified export base. The economic action of the public sector is focused mainly on social protection and regulation.

Inflation is low, net public debt very low and capital markets have deepened.

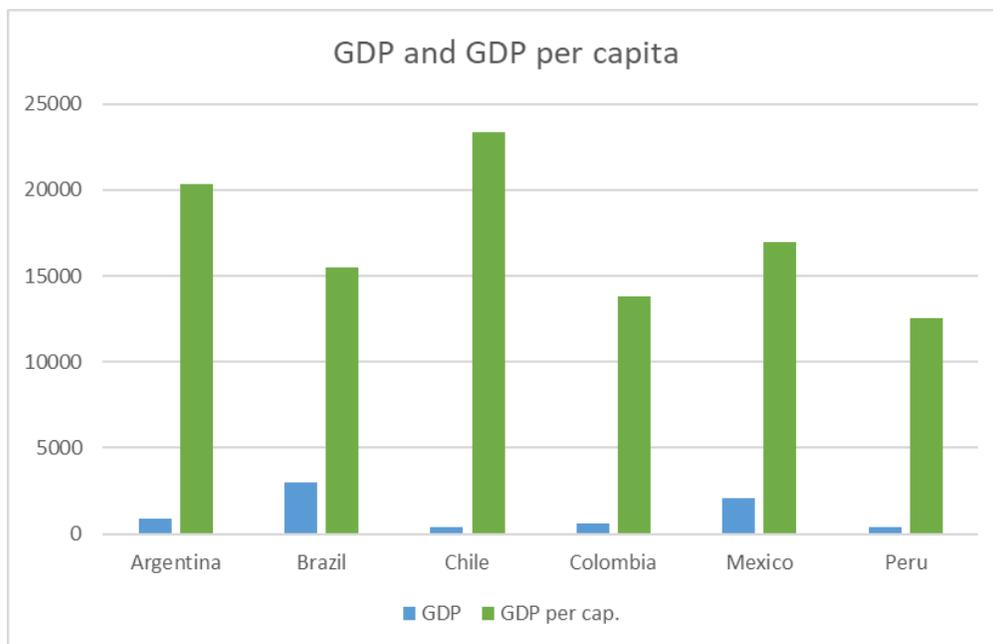
Population in millions



GDP



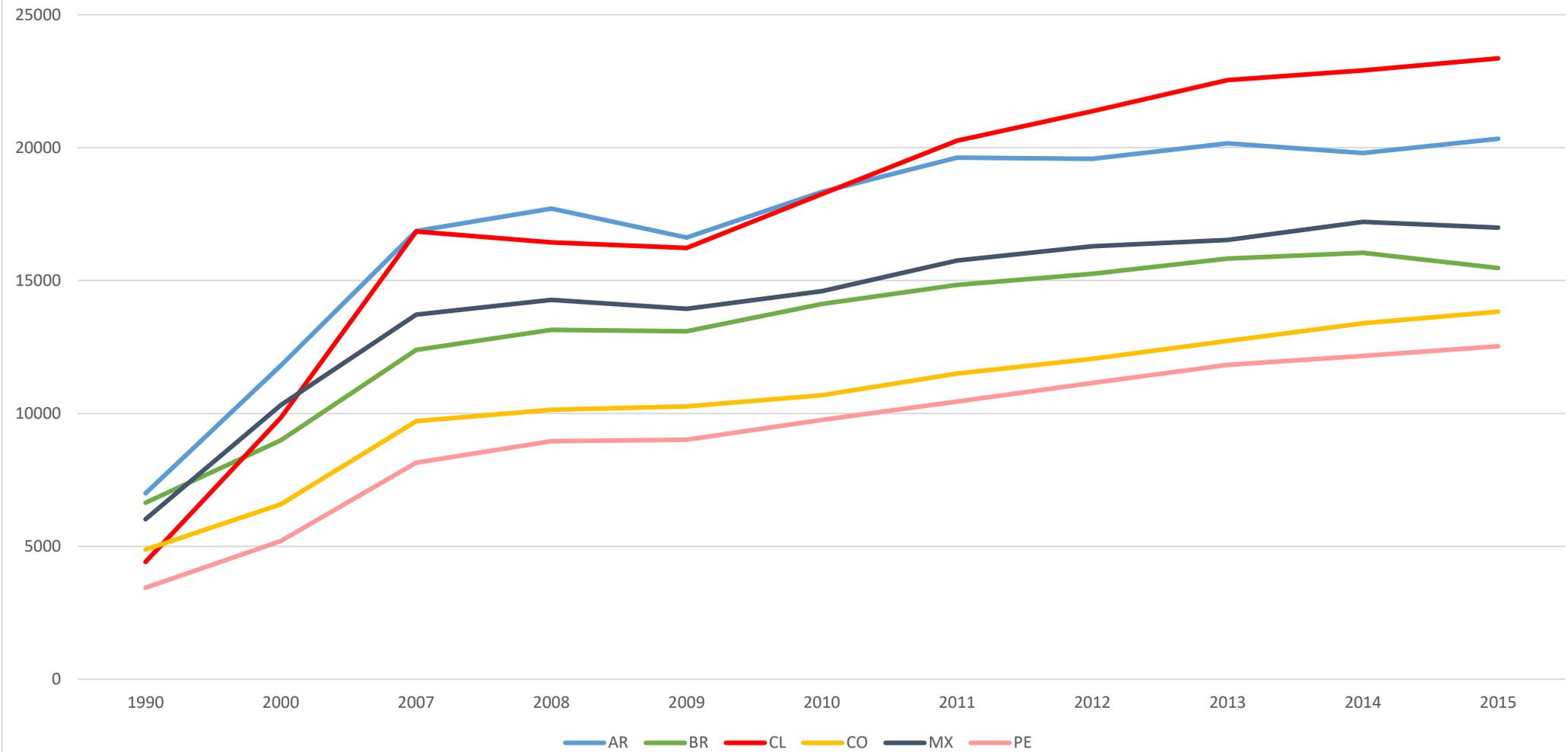
GDP and GDP per capita



Argentina	883,01
Brazil	3004,42
Chile	397,46
Colombia	624,4
Mexico	2096,03
Peru	366,23

Gross Domestic Product (Billion US\$)(Constant 2011 US\$ (PPP))

GDP per capita, PPP (current international \$)



<http://databank.worldbank.org/data/reports.aspx?source=2&series=NY.GDP.PCAP.PP.CD&country=#>

How did it happen?

What were the key reforms to trigger this comprehensive transformation?

During this large period we can distinguish three general sub-periods that can be summarized in the following:

- a) From the independence (1818 – 1930)
- b) From 1930 – 1973
- c) From 1973 - 2014

a) From the independence (1818 – 1930)

- Liberal regime
- Chile's development followed the same pattern as other economies of the new world, such as Australia, Canada, Argentina, Uruguay and New Zealand.
- GDP growth was led by primary exports to the growing markets in the North Atlantic.
- Little improvement on social indicators.
- During this period, Chile led economic growth in the region and improved its relative standard of living compared to the US and Western Europe.
- This came suddenly to a halt after World War I breakout.

b) From 1930 – 1973

- The State assumed a more active role promoting economic development and intervening in the economy.
- After World War II, Chile's absolute economic performance stagnated.
- Political and social unrest and divisiveness reached a peak during the early 1970s and everything ended up with the military coup in 1973 and the breakdown of our democracy.

c) From 1973 - 2014

Chile found a path of economic stability and prosperity.

The private sector became the engine of growth, while the role of the public sector was severely diminished.

From 2003 to 2013, GDP growth averaged almost 5% per annum.

What were the key reforms? What made Chile special was across-the-board economic liberalization. The reforms were broad based, integral and deep.

- a) Opening up the economy*
- b) Macroeconomic stability*
- c) Privatization and low corporate taxes*
- d) Banking and capital markets reform*
- e) Expansion of the education coverage*

Main achievements during the last three decades.

In the four decades after World War II, Chile's GDP per capita increased at an average of barely 0.9 percent per year.

Since 1985 until now, GDP per capita has increased at a 3.9 percent annual pace.

In 1980, Chile had the seventh highest per capita income in Latin America – today it is the highest in the region.

In the initial phase of reforms until the mid 1980s, there was a relevant increase in income inequality, but since then it has been decreasing steadily reaching a level of 0.49 in 2013 (GINI Index), still very high for international standards.

Main achievements during the last three decades.

One of the main factors behind the decline in income inequality has been the reduction in educational gaps and the increase in higher education enrollment.

Another relevant factor has been a dynamic labor market which has pulled more Chileans, especially women, into the labor force.

Strong economic growth (5.4% during the period 1985-2013 while Latin American average economic growth was 3.1%) and slightly declining income inequality have translated into a sharp fall in the fraction of the population living below the absolute poverty line. According to the CASEN survey, the share of poverty has decreased from 45% of population thirty years ago to less than 8% in 2013, using the same methodology.

As a result of all these social developments, Chile has achieved the second highest human development index in Latin America, slightly behind Argentina.

Clouds ahead and some rain showers today

Recent polls show that mood among Chilean consumers and businesses people is very pessimistic.

Since 2013, the pace of economic growth has declined significantly from rates close to 5% to barely 2% per year.

Increasing uncertainty around the reform agenda pushed by the government.

The performance of productivity over the last decade has been lackluster. Nil or slightly negative.

Private and official estimates of long term trend growth have been downgraded from rates around 5% two years ago to rates closer to 3% currently.

Challenge: We need to move forward to recover the economic growth as a key target of public policies: with an emphasis in improving education quality, strengthening property rights and increasing labor flexibility to facilitate women participation in the labor force.

Evolution in the protection of the IP in Chile

Local law

Law 19039 September 30, 1991
Adaptation to the TRIPPS 2005

Multilateral agreements

WIPO, World Intellectual Property Organization (from 1975)
WTCO, World Trade Commerce Organization (from 1991)
GATT, General Agreement on Tariff and Trade (from 1949)
TRIPPS, Trade-related Aspects of Intellectual Property Rights (from 1995)
UPOV '78, International Union for the Protection of New Varieties of Plants

WHO, World Health Organization
WCO, World Custom Organization
ICPO International Criminal Police Organization – INTERPOL

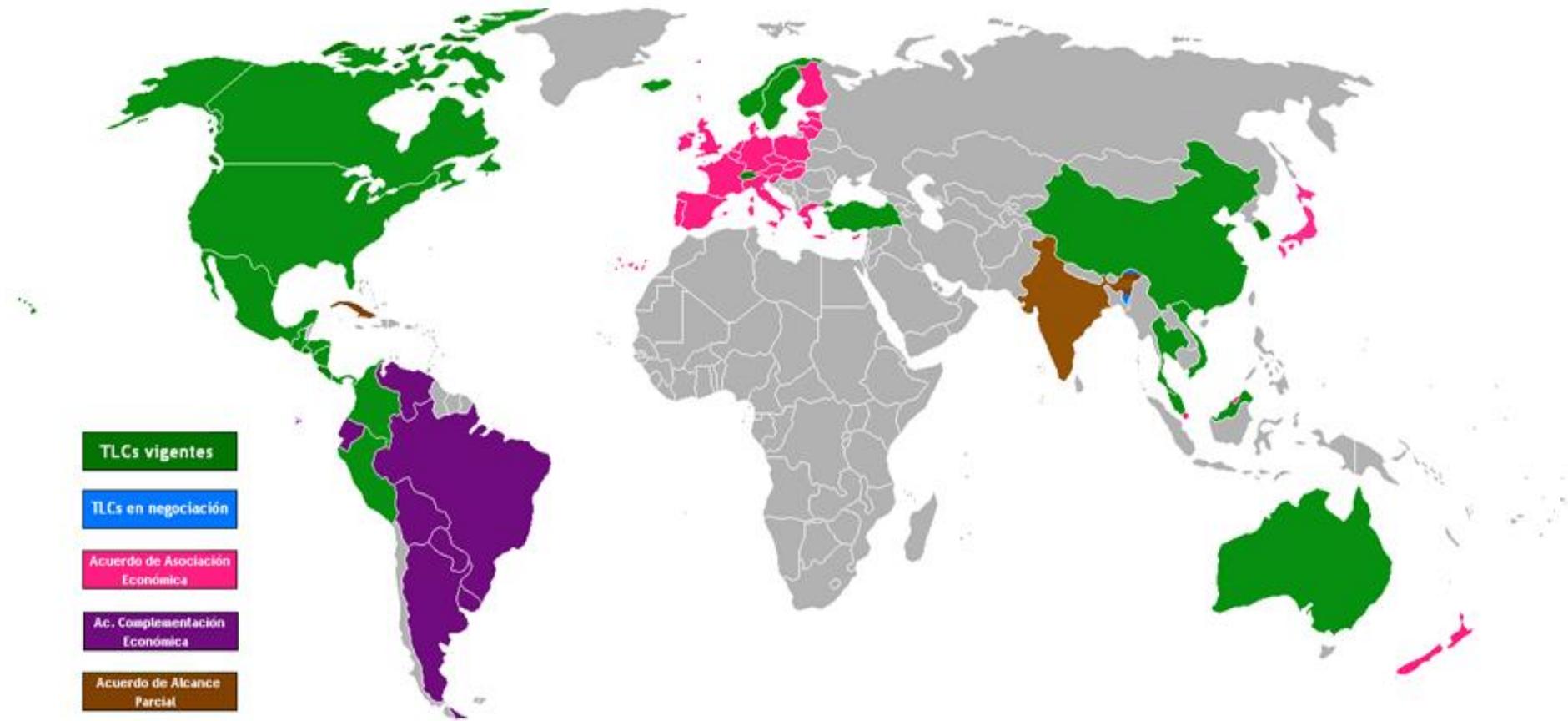
UNCTAD, United Nation Conference on Trade and Development.
APEC, Asia Pacific Economic Cooperation
OECD, Organization for Economic Cooperation and Development
TPP, Trans Pacific Partnership (*)

Regional Agreements

PROSUL / PROSUR (Argentina, Brazil, Colombia, Ecuador, Paraguay, Peru, Uruguay)
ALIANZA DEL PACÍFICO (Chila, Colombia, Mexico and Peru).

Evolution in the protection of the IP in Chile

Bilateral or plurilateral Trade Agreements cover more than 90% of Chile's foreign trade



Chile and the WIPO

Chile is collaborating with special programs such as:

WIPO CASE (Centralized Access to Search and Examination), in a first step Chile as accessing office and then as a depositing office;

WIPO GLOBAL BRAND DATABASE;

WIPO PUBLISH (to connect the Chilean Patent Database with WIPO CASE, using this platform for sharing information related with patent, trademarks and designs);

GLOBAL DOSSIER;

CATI (Centros de Apoyo a la Tecnología y a la Innovación, developed by the WIPO to provide information related to technology, state of the art searches etc....)

Chilean Patent and Trademark Office (INAPI) has been accepted as Library Depository of WIPO publications

Chilean TM and patent Office (INAPI) as ISA (International Search Authority) / **IPEA** (International Preliminary Examination Authority)

INAPI implemented the **PPH** (Canada -CIPO-; Mexico -IMPI-; Peru -INDECOPI-; Colombia -CIP-; PROSUR and

It is working in a more detailed patent classification following the Cooperative Patent Classification system (to be implemented)

INAPI signed a collaboration agreement with the offices member of **TM-5** (USPTO, EUIPO, JPO, KIPO and SIPO) mainly for the “**ID list project**”. This facilitates to foreign applicants to use the accepted terms of classification used their countries when applying in Chile.

INTERNATIONAL EVALUATIONS IN IP

According to the Global Competitiveness Index (GCI)

According to the Global Competitiveness Index (GCI) of 2015/2016 **Chile ranks in place 35 being the highest rank of a Latin American country**, the closest country is Panamá, ranks 50, Costa Rica, ranks 52 and México, ranks 57.

Despite this relatively high rank, a specific rank within the First Pillar Institutions related to Intellectual Property Protection, Chile ranked 49 which represents 4.2 points* and we see a positive evolution from 2009 – 2016

(*) it is surpassed by Panama, ranks 37/140; Uruguay, ranks 38/140 and Costa Rica, ranks 44/140.

Ranking and qualification of the Intellectual Property System in Chile

Intellectual Property Index Ranking Qualification	Competitivy Global Index Ranking Qualification	Period Years
56/137 4.4	33/137 4.7	2017-2018
52/138 4.3	33/138 4.6	2016-2017
49/140 4.2	35/140 4.6	2015-2016
56/144 3.9	33/144 4.6	2014-2015
56/144 3.9	34/148 4.6	2013-2014
60/148 3.8	33/144 4.6	2012-2013
61/144 3.7	31/142 4.7	2011-2012
63/142 3.6	30/139 4.7	2010-2011
59/139 3.7		

Source: Annual report World Economic Forum. Executive Opinion Survey, included in "The Global Competitiveness Report."

INTERNATIONAL EVALUATIONS IN IP

Global Intellectual Property Center (GIPC) of the US Chamber of Commerce

Chile's overall score is 43% (15.14 out of 35) according to the fifth edition (2017). This is a slight drop from the previous year.

Areas of strength:

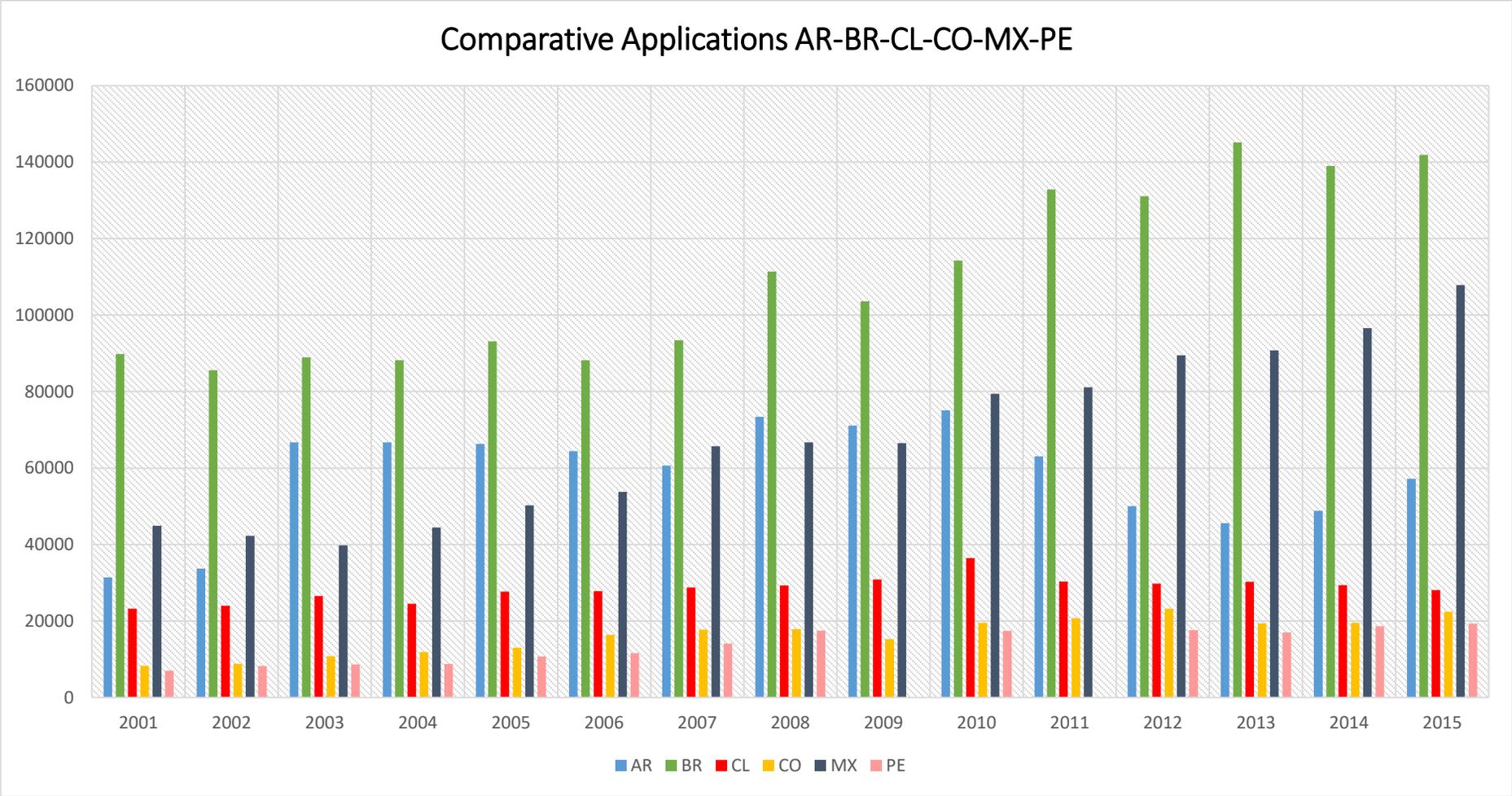
- **Basic civil and procedural remedies for IP infringement in legislation**
- **Efforts to improve enforcement through interagency coordination, international cooperation, information sharing, and pending IP reform**
- **Commitment to improve IP environment through international trade agreements**
- **Efforts to streamline IP registration process, including a recent PPH agreement with Mexico, Colombia, and Peru**

Areas of weakness:

- Patchy patent protection for pharmaceuticals, including obstacles to patentability and lack of effective patent enforcement
- High levels of counterfeiting and piracy
- Lack of sufficient framework to tackle online piracy
- Criminal enforcement problematic and rarely pursued, notably for copyright piracy

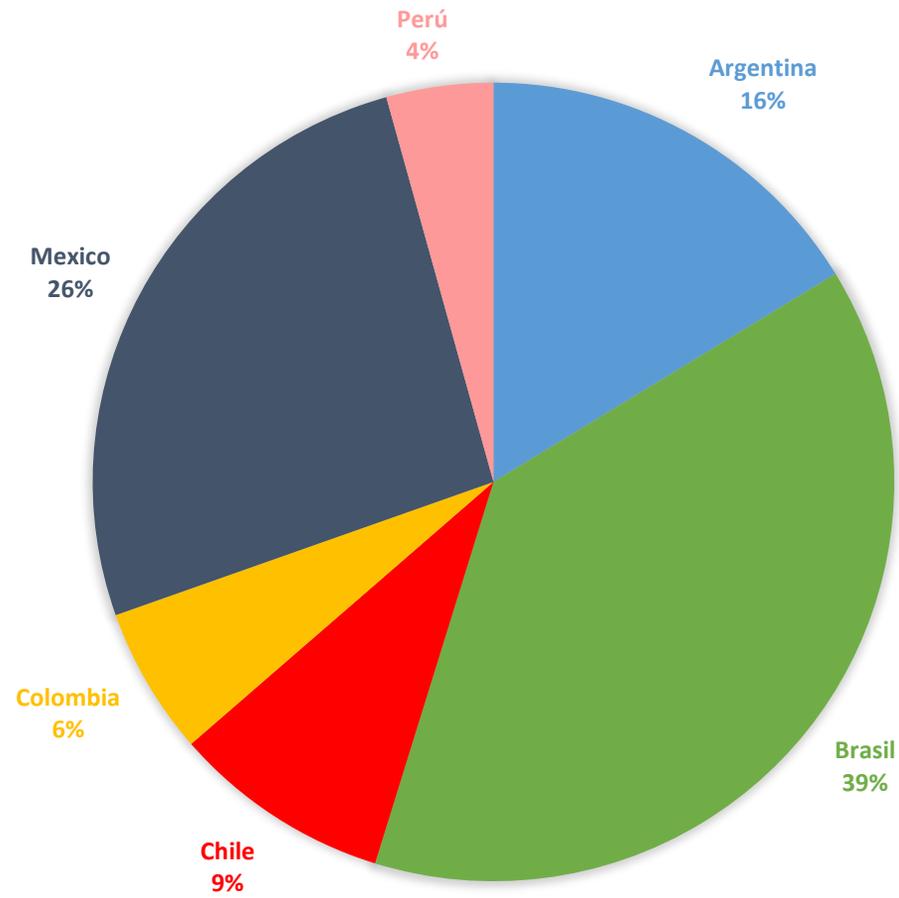
Comment: If we consider the weakness points mentioned by the GIPC this is not due to a problem that relays on the legal system in strict sense but instead, it is related to some non-efficient and responsive reaction of the entities in charge of the IP system administration (Chilean Trademark and Patent Office or the Judicial System).

Chile in figures



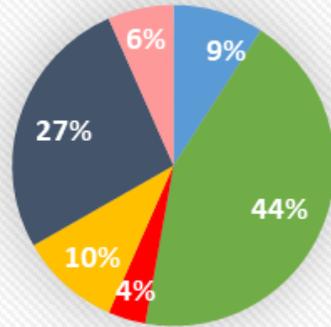
Source: http://www.wipo.int/ipstats/en/statistics/country_profile/

COMPARATIVE TM FILINGS 2010-2015



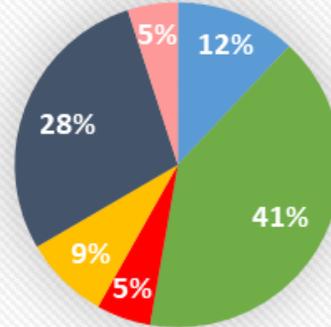
Comparative: Population/Gross Domestic Product/TM Filing

Population/ 100



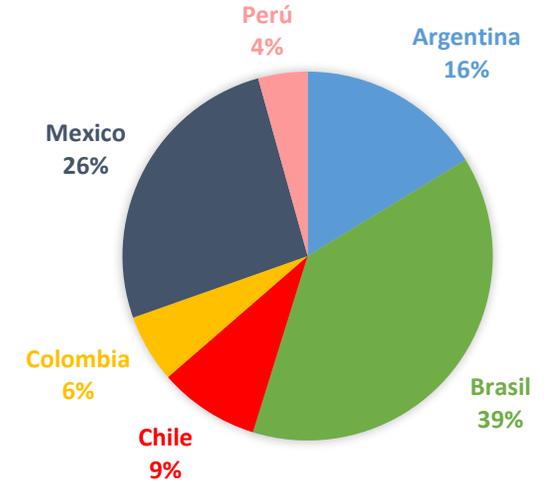
■ Argentina ■ Brazil ■ Chile
■ Colombia ■ Mexico ■ Peru

GDP/100

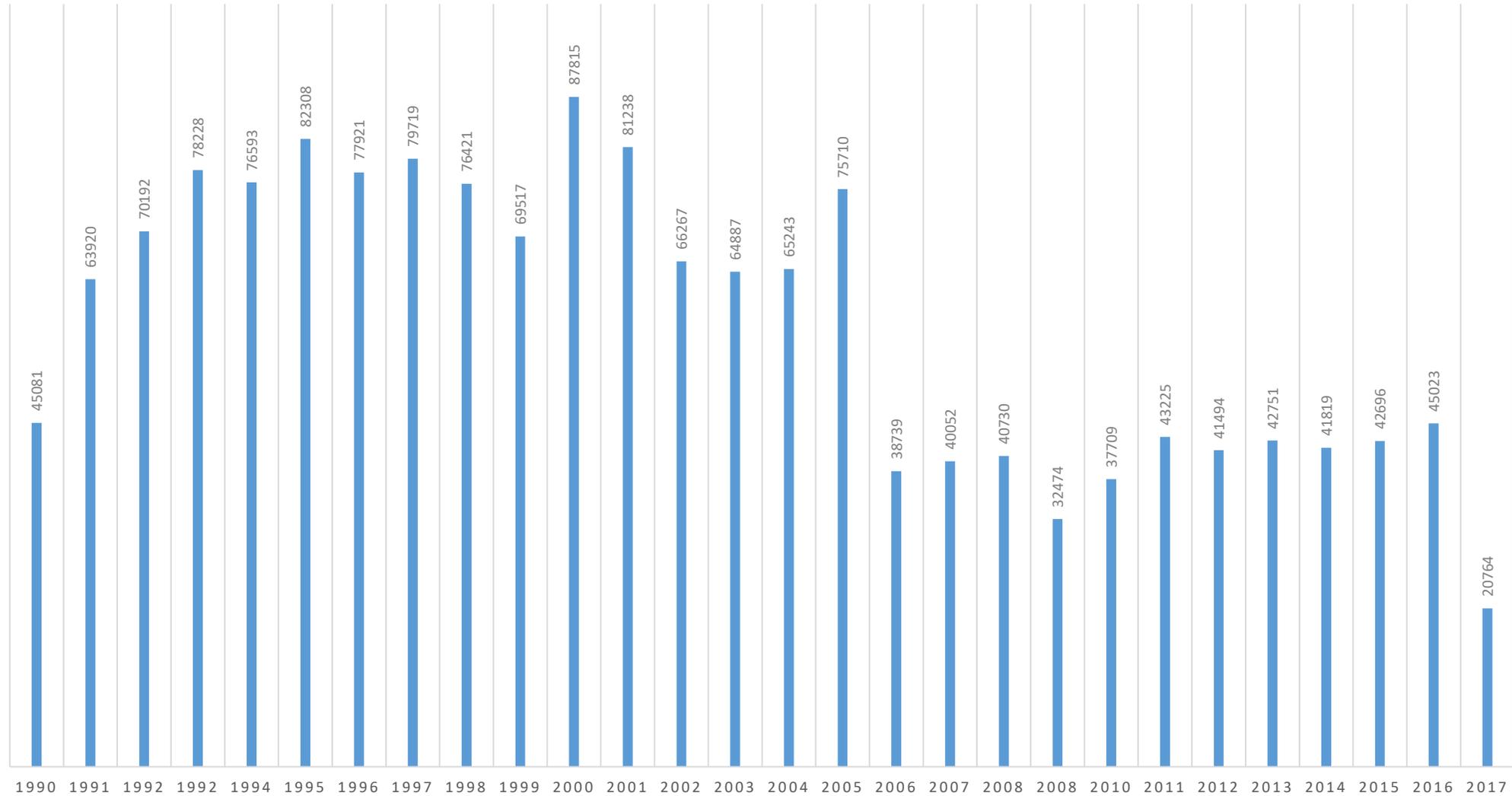


■ Argentina ■ Brazil ■ Chile
■ Colombia ■ Mexico ■ Peru

COMPARATIVE TM FILINGS 2010-2015



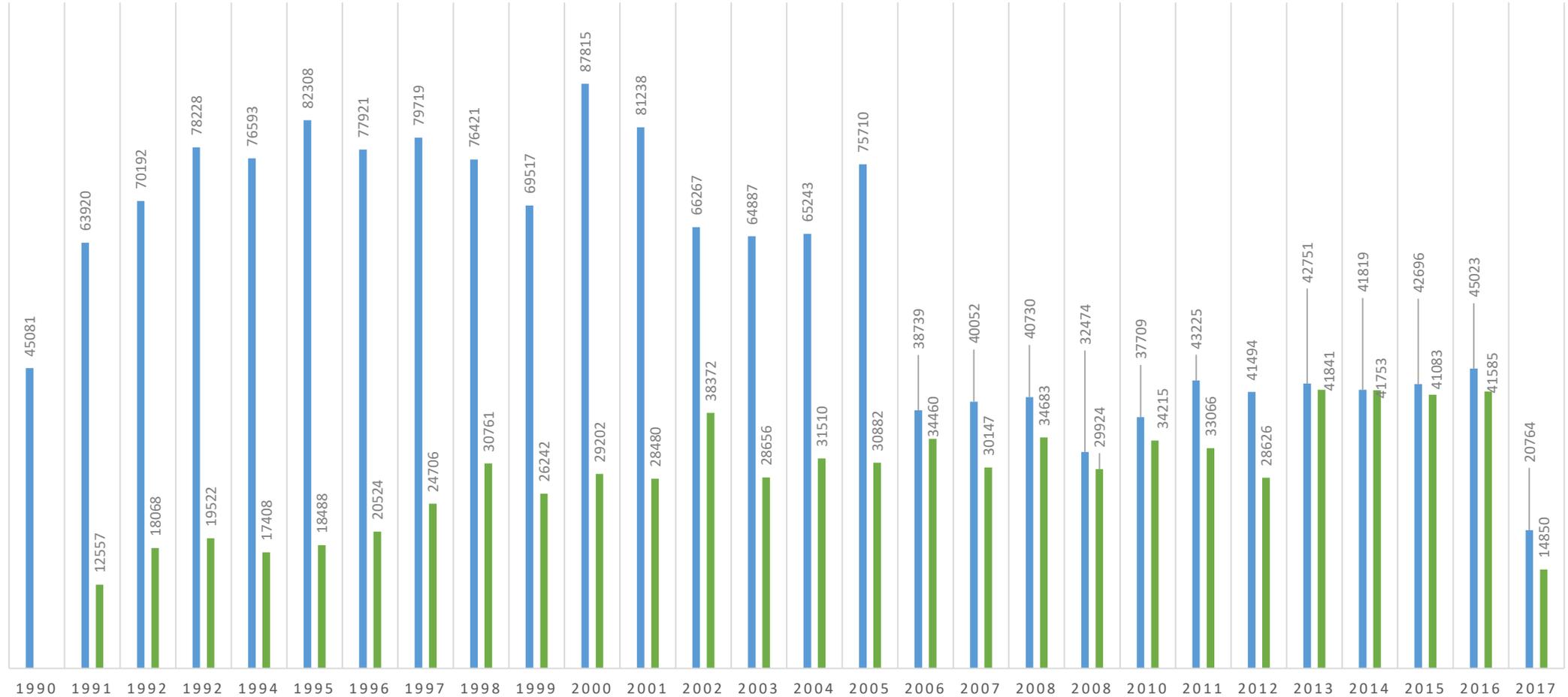
TRADEMARK APPLICATIONS 1990-2017



Source: <http://www.inapi.cl/portal/publicaciones/608/w3-propertyvalue-878.html>

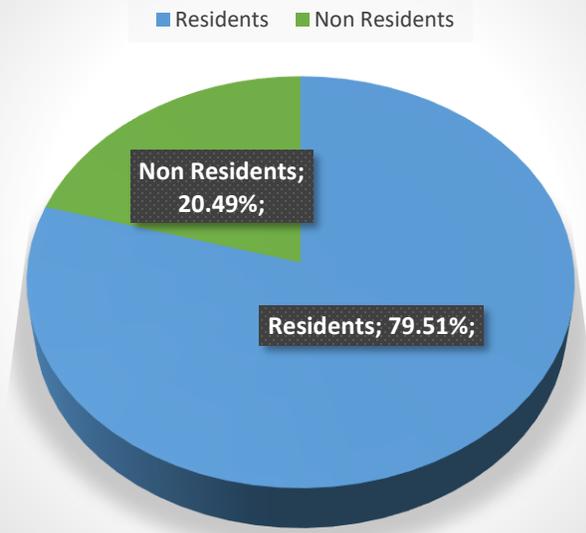
APPLICATIONS-GRANTINGS 1990-2017

■ Applications ■ Grantings

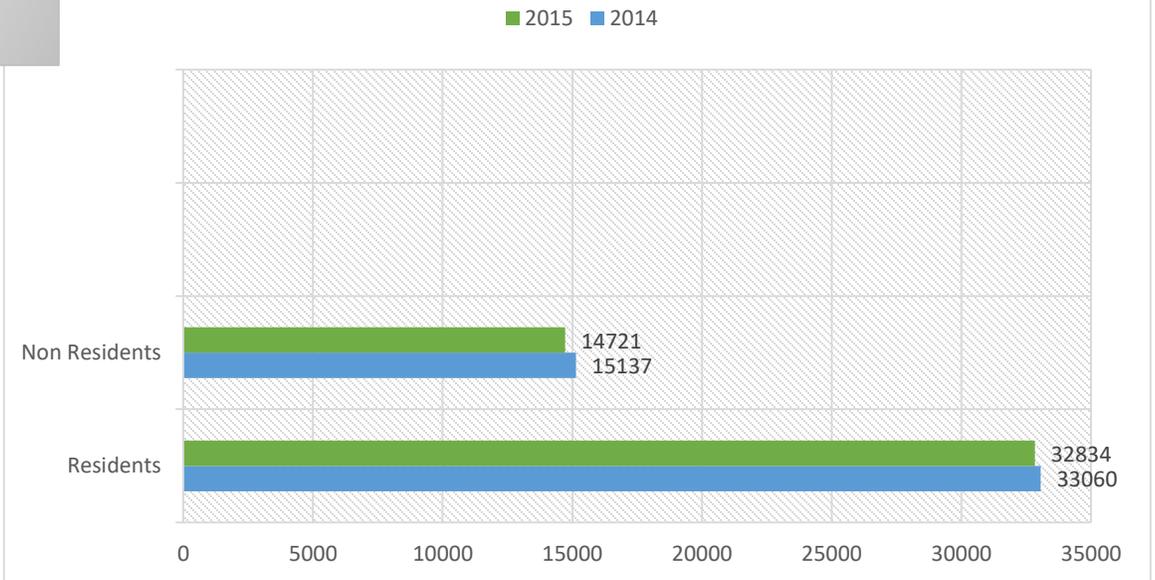


Source: <http://www.inapi.cl/portal/publicaciones/608/w3-propertyvalue-920.html>

TM Applications. Residents - Non-residents 1990 - 2016

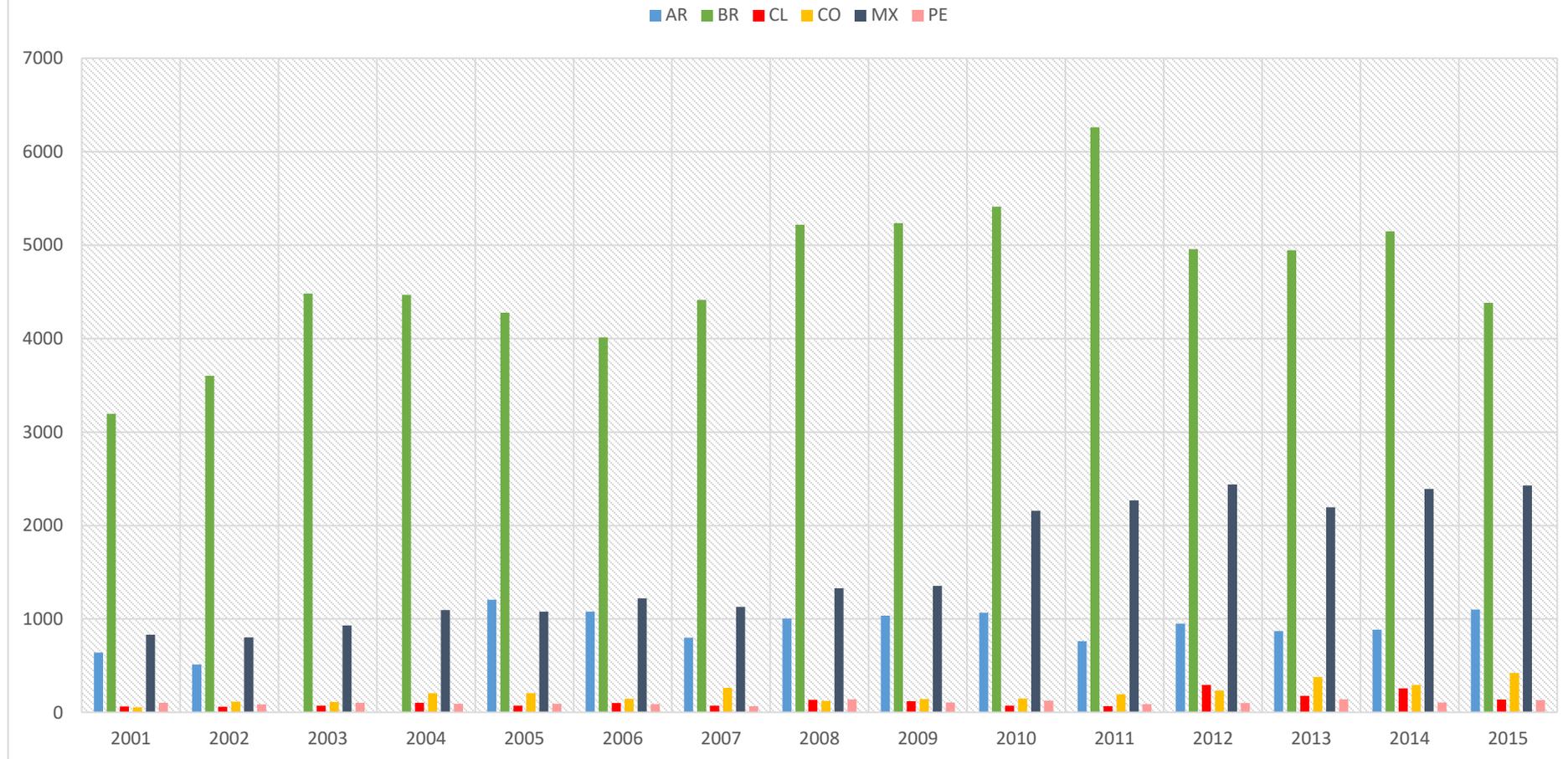


Resident -Non Resident TM applications 2014-2015



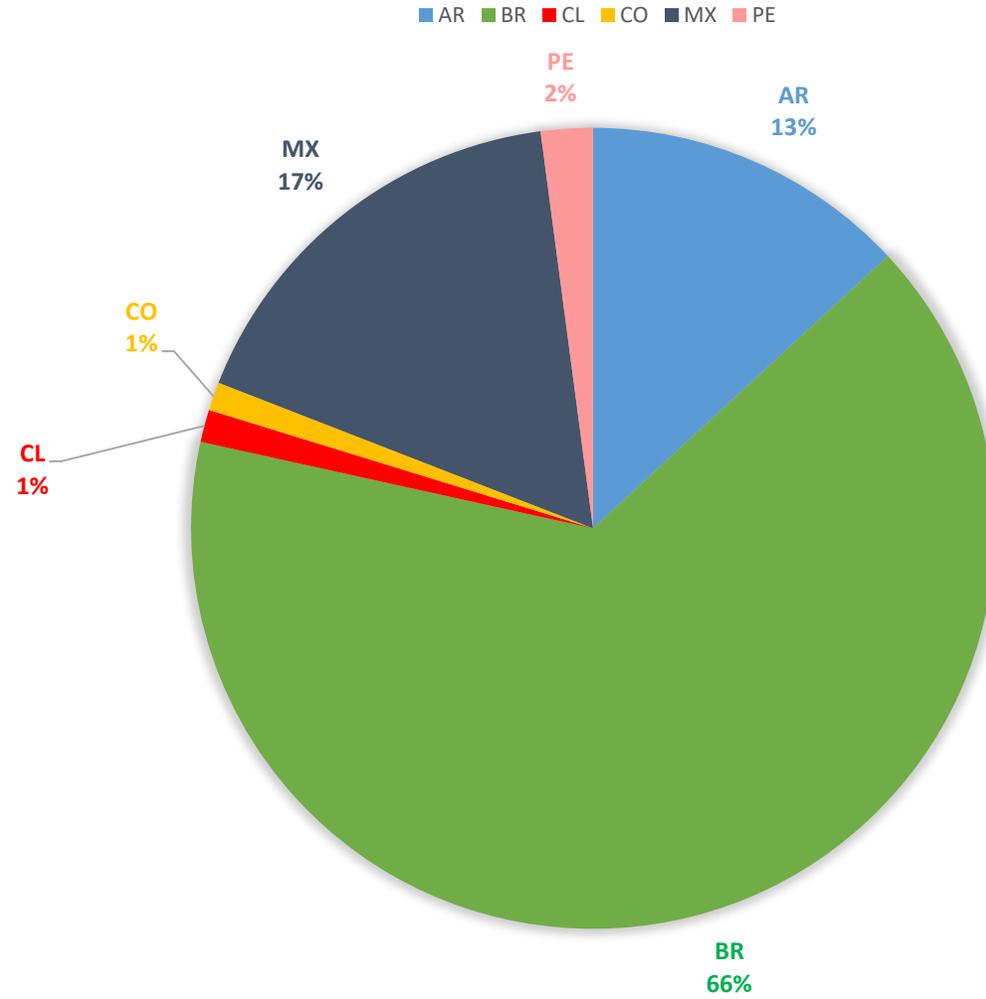
Source: <http://www.inapi.cl/portal/publicaciones/608/w3-propertyvalue-878.html>

Comparative Industrial Design and Drawing Applications AR-BR-CL-CO-MX-PE

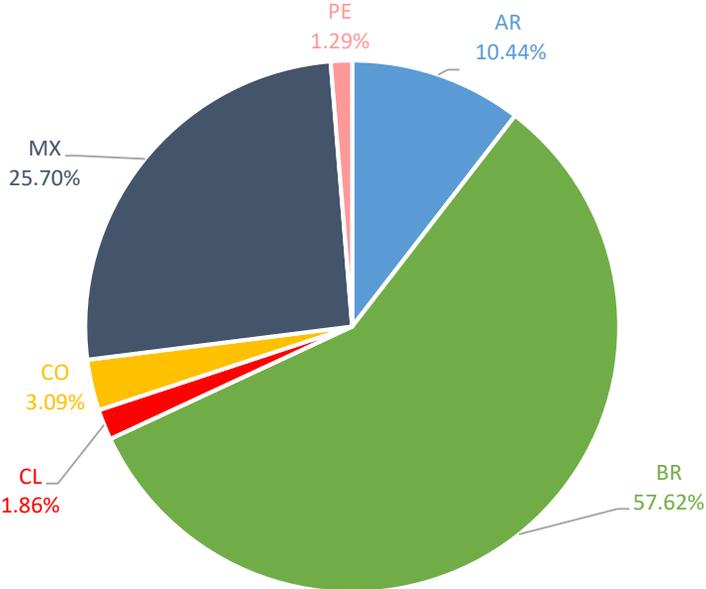


Source: http://www.wipo.int/ipstats/en/statistics/country_profile/#C

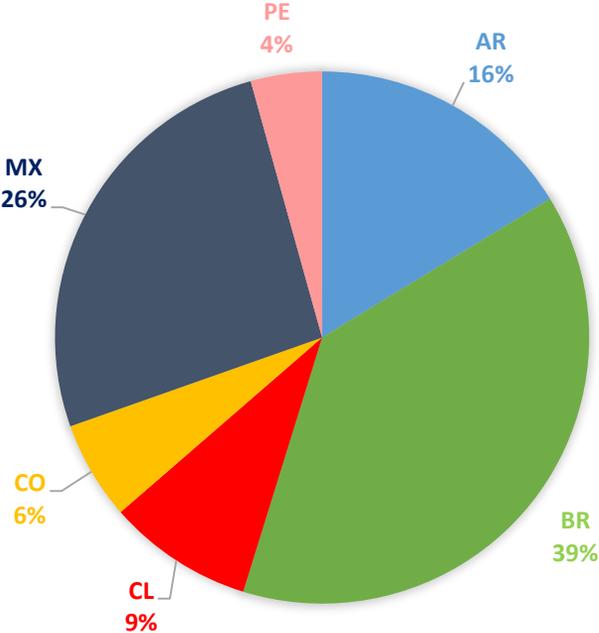
COMPARATIVE INDUSTRIAL DESIGN/DRAWING FILINGS 2001-2015



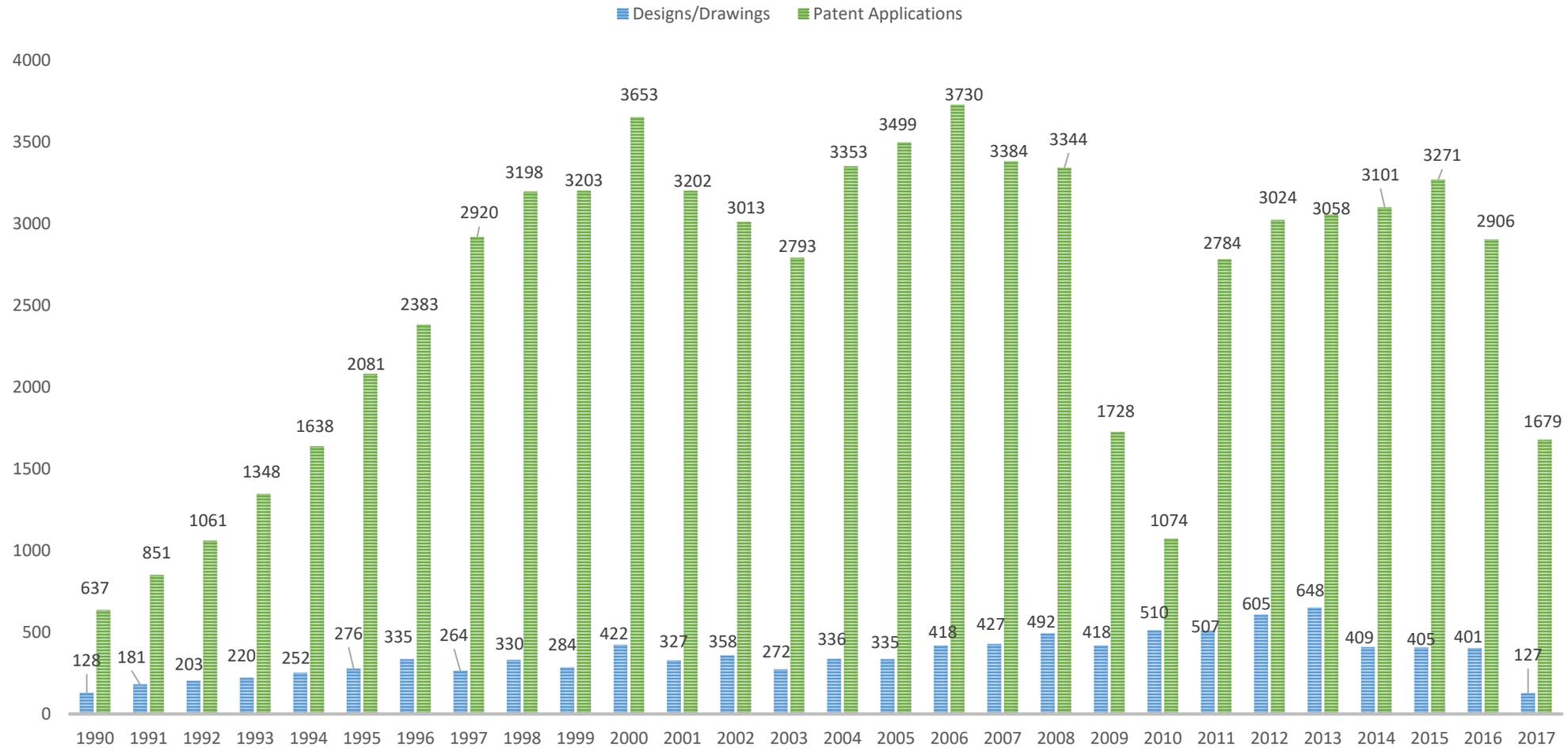
IND. DESIGN/DRAWINGS APPLICATIONS 2010 - 2015



TM APPLICATIONS 2010-2015

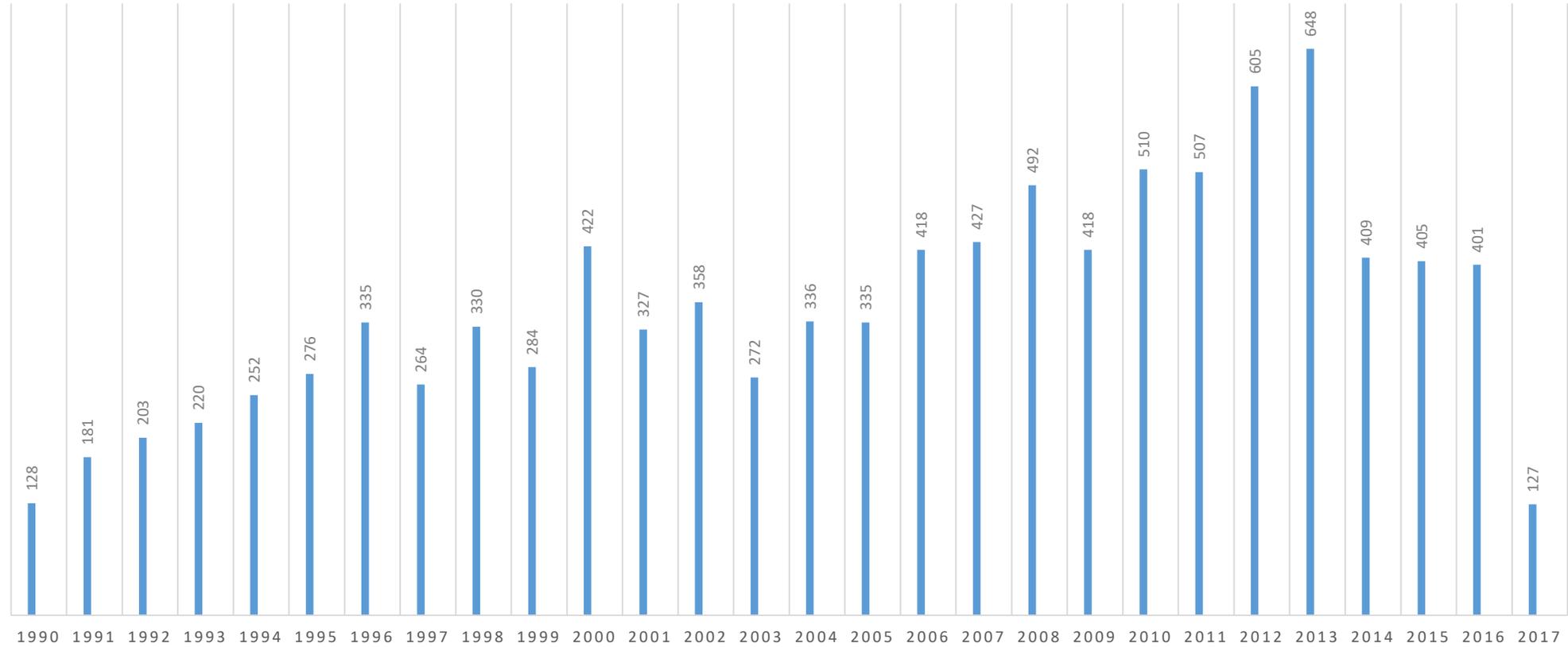


PATENTS AND INDUSTRIAL DESIGNS



Source: <http://www.inapi.cl/portal/publicaciones/608/w3-propertyvalue-877.html> and <http://www.inapi.cl/portal/publicaciones/608/w3-propertyvalue-880.html>

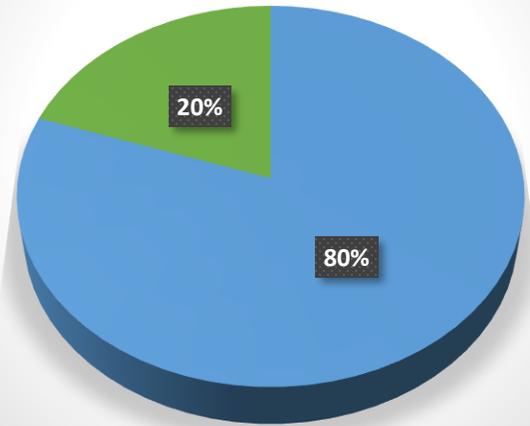
INDUSTRIAL DESIGNS / DRAWINGS APPLICATIONS



Source: <http://www.inapi.cl/portal/publicaciones/608/w3-propertyvalue-880.html>

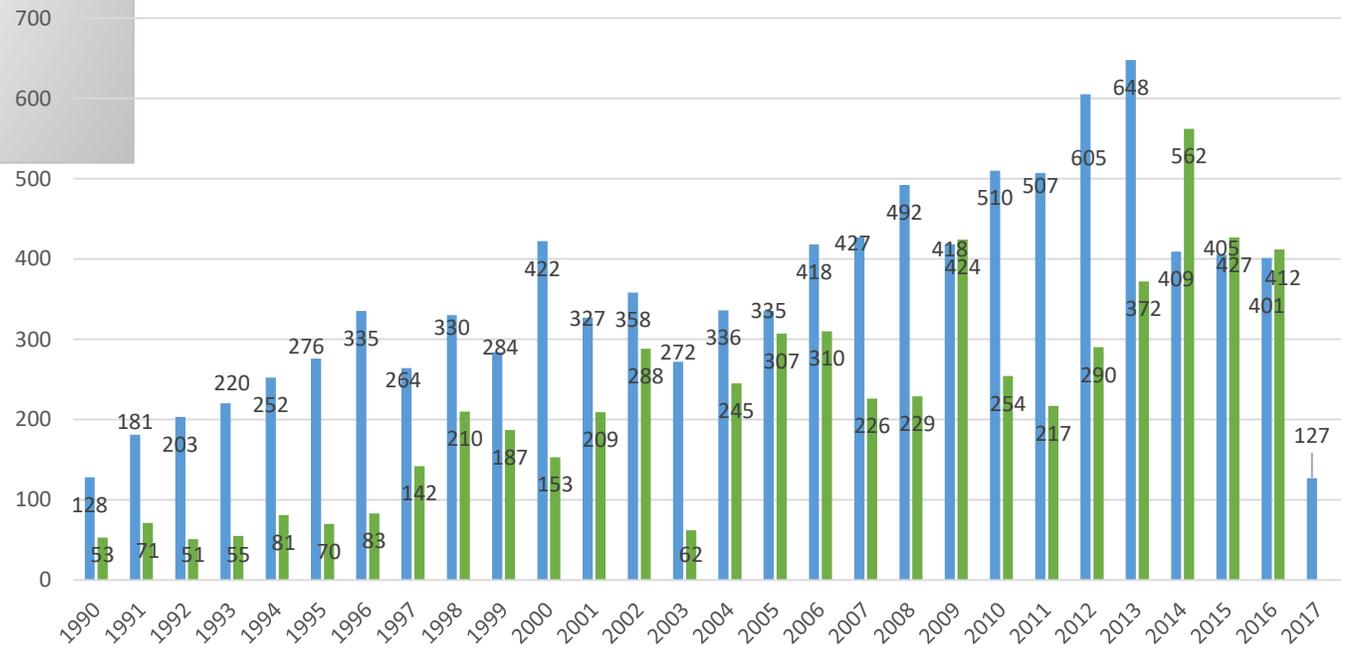
Design / Drawing Applications 1990- 2015

■ Non Residents ■ Residents



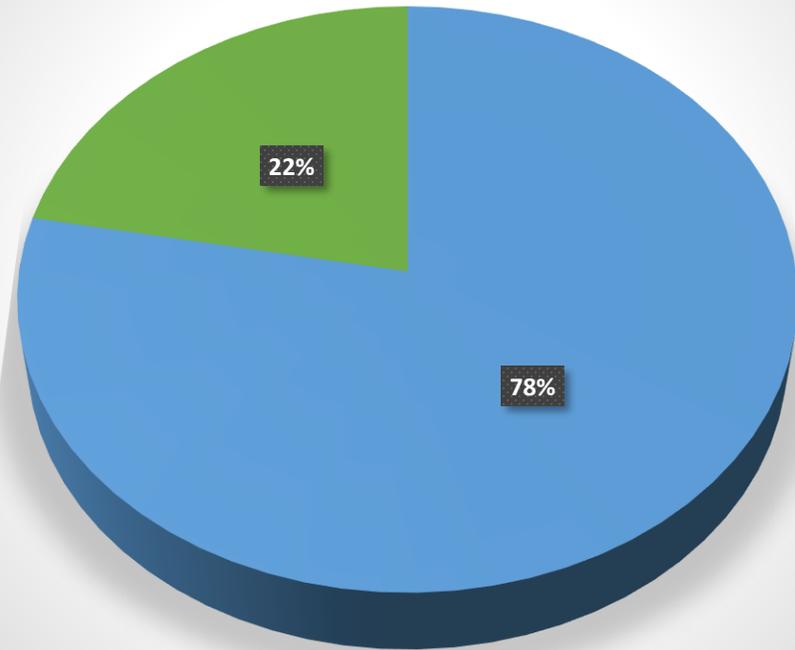
Applications-Grantings - Industrial Designs / Drawings

■ Applications ■ Grantings



Internet Filings / Window Filings 2015-2016

■ Internet Filings ■ Window Filings



Chilean IP System and the protection of the IP rights

The figures recently shown give a general impression about Chile's location amongst the rest of the Latin-American countries, and demonstrate that a general development of the country's economy naturally has been encompassed with an insertion into the international concert and improvement of general standards of IP protection.

The Chilean Trademark Office's main positions (National Director as well as Trademark Registrar and Patent Registrar) are not fully depending from the political coalition in office since they are selected according to her/his merits based on objective grounds.

Challenges: Mainly in two aspects that are presents in the new law which is under discussion in the National Congress from 2012:

- **To expand the objects of protection in TM (Trade Dress; smell TM, Motion TM etc..)**
- **To relax the requirements for industrial designs / drawings**

THANKS!

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