

## IV. TRADE POLICIES BY SECTOR

### (1) OVERVIEW<sup>1</sup>

1. During the review period, the agriculture and forestry sector continued to contribute to the expansion and diversification of Chilean exports. The level of tariff protection and support for the sector is low, but protection may fluctuate in the case of products subject to a price band. Domestic support is mainly geared to small farmers and does not include production-based measures. Within the fishing sector, aquaculture has gained in importance and accounts for two thirds of the sector's exports. There are some restrictions on the participation of foreigners in fishing and aquaculture.

2. The mining sector accounts for over 60 per cent of the value of Chilean merchandise exports and is the foremost recipient of foreign investment. The State continues to play a strategic role in mining, mainly in copper production. The manufacturing sector has increased its productivity, due partly to trade liberalization and the implementation of horizontal incentive policies; the industry continues to make intensive use of natural resources. Chile depends on imports to satisfy two thirds of its energy consumption. During the period under review, the energy sector encountered problems that affected the performance of the economy; steps were taken to stabilize domestic prices and ensure a sustainable energy supply. Both domestic and foreign enterprises may participate in the energy sector.

3. The services sector generates 67 per cent of Chile's GDP. Concessions to operate public telecommunications services and intermediate services are granted to companies established in Chile, regardless of the origin of the capital. Within the context of the GATS, Chile made no commitments on the supply of basic local telecommunications. The establishment of financial institutions is subject to approval by the regulatory body. Foreign banks and insurance companies may provide services in Chile through locally incorporated companies or branches with separate capital. Insurance companies were allowed to establish branches in 2007, since when foreign companies from countries with which Chile has a corresponding international treaty have also been authorized to sell international maritime and air transport insurance, together with insurance for goods in transit.

4. Chile practises an "open skies" air transport policy, but makes market access for foreign companies subject to reciprocity. It has concluded 43 bilateral air transport agreements with various degrees of openness. Chile requires reciprocity with respect to international maritime traffic cargoes. Cabotage is reserved for ships registered in Chile, with certain exceptions. For a vessel to be registered in Chile, more than 50 per cent of the capital must be owned by Chilean persons or companies. A 5 per cent tax is imposed on the income received from international maritime freight charges by persons not domiciled in Chile, except when the country in which the foreign vessels are registered offers reciprocity. There are no restrictions on foreign participation in Chilean ports and airports.

5. A valid professional diploma is required to engage in a regulated profession in Chile. Foreign diplomas must be revalidated by the University of Chile, unless recognized under an international agreement. Only Chileans and foreigners who have studied law in Chile may practise law in the country. However, foreign legal consultants may advise on foreign law. Foreign engineers who have been hired to perform a particular job in Chile must obtain authorization from the *Colegio de*

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<sup>1</sup> In Chapters III and IV, the figures in Chilean pesos have been converted into United States dollars at an exchange rate of Ch\$587.32/US\$1, which corresponds to the arithmetic average of the exchange rate for the United States dollar over the first six months of 2009. *Unidades de Fomento* – UF (Development Units) have been converted into United States dollars at a rate of US\$35.9/1 UF, which corresponds to the arithmetic average of the value of the UF over the first six months of 2009.

*Ingenieros*, the national engineering society. Foreign accountants may establish a consultancy firm in Chile, but must have at least one partner with a diploma valid for the practice of accountancy in Chile.

## (2) AGRICULTURE AND FORESTRY

6. The agriculture and forestry sector has played a major role in Chile's economic development, contributing to the rapid expansion and diversification of its exports in recent years. The level of tariff protection and support that Chile grants to agricultural products is fairly low, although protection may vary in the case of products to which the price band system applies (wheat, wheat flour and sugar). Although public expenditure in the agricultural sector increased during the review period, aid for agricultural producers has declined considerably over the last decade. Support is mainly geared to small farmers. Chile does not apply production-based support measures.

### (i) General characteristics

7. Between 2003 and 2008, GDP in the Chilean agriculture and forestry sector (which includes crop farming, livestock farming and forestry but not processing) grew at a real average rate of 5.5 per cent a year, while the sector's share of GDP at constant prices rose from 3.6 to 3.7 per cent.<sup>2</sup> Employment in the sector fell from 12.7 per cent of the total labour force in 2003 to 11.1 per cent in 2008.<sup>3</sup>

8. Chile is a major exporter of agricultural and forestry products.<sup>4</sup> In 2008, exports of these products amounted to US\$12,743 million (as compared with US\$5,934 million in 2003) and accounted for 19 per cent of total exports. The crop farming subsector accounted for 53 per cent of agricultural and forestry exports, followed by forestry (38 per cent) and livestock farming (9 per cent).<sup>5</sup> The growth of agricultural and forestry exports has accelerated in recent years, as new products such as chicken, pork, red meat and forestry products have been added to exports of fruit and wine. In 2008, the main products exported were: grapes, coniferous and non-coniferous chemical wood pulp, temperate-climate fruit (berries, etc.), pork, and other products of wood.<sup>6</sup> Chile is the world's fifth-ranking wine exporter and the southern hemisphere's leading fruit exporter.<sup>7</sup> In accordance with the definition used in Chapter I, in 2008, agricultural exports amounted to US\$15,605 million and accounted for 23.3 per cent of total exports (see Chapter I).

9. In 2008, Chile imported agricultural products (as defined in Chapter I) with a value of US\$4,554 million, equivalent to 8 per cent of total imports. Chile imports a substantial proportion of its domestic consumption of cereals (wheat, soya, maize (corn), and barley), animal and vegetable oils, bovine meat, and sugar.

10. According to the National Agricultural and Forestry Census of 2007, Chile has some 301,000 farms, of which 73 per cent are holdings of less than 20 hectares, while holdings of more than 500 hectares account for only 2 per cent. The total area allocated to crop farming, livestock raising and timber plantations is about 19 million hectares. As compared with ten years ago, the census data on the cultivated area reveal a continuing trend away from traditional crops (cereals, pulses, root

<sup>2</sup> Central Bank of Chile. Viewed at: [http://si2.bcentral.cl/Basededatos\\_económicos/](http://si2.bcentral.cl/Basededatos_económicos/)

<sup>3</sup> National Statistical Office (INE). Viewed at: <http://www.ine.cl/>

<sup>4</sup> In this section, the trade data are based on the definition of "forestry and agricultural" products used by Chile, i.e., include crop farming, livestock farming and forestry products.

<sup>5</sup> *Oficina de Estudios y Políticas Agrarias* – ODEPA (Office for Agricultural Research and Policy Development). Viewed at: <http://www.odepa.go.cl/servlet/systems.sice.balanza>

<sup>6</sup> Ibid.

<sup>7</sup> The Economist Intelligence Unit (2008).

vegetables and fodder) towards products in which Chile has a comparative advantage, such as fruit, wine and forestry products.

11. A recent OECD study notes that Chile's agricultural sector has played a key role in the country's favourable economic performance, helping to raise incomes and reduce poverty, although small-scale farmers have seen little change in their incomes.<sup>8</sup> The study concludes that the sector has benefited from a stable macroeconomic environment and an open trade regime, characterized by a uniform MFN tariff of 6 per cent, and an even lower average effective tariff resulting from Chile's wide network of preferential trade agreements. This has made possible the rapid growth of agricultural exports, mainly high value-added products such as wine and fruit.

## (ii) Policy objectives and institutional framework

12. The Ministry of Agriculture (MINAGRI), through the *Oficina de Estudios y Políticas Agrarias* – ODEPA (Office for Agricultural Research and Policy Development), is responsible for the formulation and analysis of agricultural and forestry policy. During the review period, the general thrust of this policy has remained the same, namely: to make Chile a food and forestry power; to promote inclusive agricultural development with the participation of the small and medium-sized farmer; and to foster the sustainable use of natural resources and the protection of biodiversity. MINAGRI's Strategic Agenda 2008-2010 envisages several areas of action, including the promotion of innovation through clusters and technological consortia, the creation of new export markets, the improvement of border controls connected with the implementation of sanitary and phytosanitary measures, the development of animal and plant genetics, and the protection of the environment and indigenous forests.<sup>9</sup>

13. For implementing agricultural and forestry policy, MINAGRI relies on various subordinate bodies which include, in addition to ODEPA, the *Instituto de Desarrollo Agropecuario* – INDAP (Institute for Agricultural Development), the *Servicio Agrícola y Ganadero* – SAG (Agriculture and Livestock Service), the *Corporación Nacional Forestal* – CONAF (National Forest Corporation) and the *Comisión Nacional de Riego* – CNR (National Irrigation Commission). In 2008 MINAGRI managed a budget equivalent to Ch\$334.795 billion (about US\$570 million), of which 45.9 per cent was allocated to INDAP, 22.5 per cent to SAG, 14.6 per cent to CONAF, 1.7 per cent to the CNR and 1.1 per cent to ODEPA.

14. Within the context of the Doha Development Agenda, Chile has participated actively in the negotiations on agriculture and as a member of the G-20<sup>10</sup> has submitted numerous proposals in this area. Specifically, Chile is seeking ambitious results in relation to the reduction or elimination of all trade-distorting forms of subsidy, and an effective improvement in market access, especially for fruit-farming products.

15. Through the conclusion of regional trade agreements (RTAs), Chile has negotiated the opening up of markets for its agricultural products, whilst reducing the general level of domestic protection. Nevertheless, in most of these agreements certain sensitive agricultural products, for example, those to which the price band system applies, have remained subject to longer phase-out

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<sup>8</sup> OECD (2008).

<sup>9</sup> Online information from the Ministry of Agriculture, Strategic Agenda 2008-2010. Viewed at: <http://www.minagri.gob.cl/contenidos.php?code=DQJDAVpqB1wMR1MMWlwOCQ46MmE2M2Y2MTE%3>

<sup>10</sup> The G-20 is composed of Argentina, Bolivia, Brazil, Chile, China, Cuba, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, Tanzania, Thailand, Uruguay, Venezuela and Zimbabwe.

periods or, in some cases, excluded from tariff reduction. Chile considers that the expansion of its agricultural exports is associated with the access opportunities deriving from its RTAs.

### (iii) Agricultural support indicators

#### (a) OECD

16. According to OECD estimates, between 2004 and 2007 government aid for Chilean agricultural producers (Producer Support Estimate or PSE<sup>11</sup>) accounted, on average, for 4.5 per cent of farm income (Table IV.1). This figure corresponds to a little over half the aid that Chile was granting a decade ago and is markedly lower than the current average for the OECD countries (26 per cent in 2005-2007). The Market Price Support (MPS) granted by Chile fell from 47 per cent of PSE in 2004 to only 13 per cent in 2007, and in 2005-2007 the prices paid to Chilean farmers were on average only 1 per cent higher than international prices.<sup>12</sup> The OECD notes that Chile does not grant output-based support.

17. While the support measures that generate most distortions have been reduced, public expenditure in the agricultural sector as a whole has increased. Between 2004 and 2007, payments to farmers for plot irrigation, inputs, productivity and training increased steadily, as did public expenditure on general agricultural services (General Services Support Estimate or GSSE), such as infrastructure, research and development, and inspection services. In 2007, the GSSE accounted for 37 per cent of total support for the sector.<sup>13</sup> At the same time, costs for consumers (Consumer Support Estimate or CSE), which take the form of an implicit tax, decreased from 5 to 1 per cent between 2004 and 2007. The Total Support Estimate (TSE), which includes transfers from consumers and taxpayers, as well as net budget revenues, has remained stable and accounts for just 0.28 per cent of Chile's GDP (as compared with an average of 0.97 per cent for the OECD countries).

18. The OECD points out that, in general, the Chilean agricultural sector receives no more protection than other sectors; that approximately half of government spending on the sector is on public goods; and that the other half is aimed at making the poorer farmers competitive.<sup>14</sup> However, the OECD considers that government policies should try to help small-scale farmers diversify their incomes and find better paid work outside the agricultural sector. Agricultural policies therefore need to be framed within an economy-wide context and made consistent with other policies such as regional incentives and social safety nets.

**Table IV.1**  
**Estimated support for agriculture, 2004-2007**  
(Ch\$ million)

Item	2004	2005	2006	2007
<b>Total value of production</b>	3,273,557	3,527,278	3,549,379	3,715,438
Share of MPS commodities (%) <sup>a</sup>	64	62	65	70
Total value of consumption	3,491,245	3,710,845	3,719,737	3,970,384
<b>Producer Support Estimate (PSE)<sup>b</sup></b>	163,801	179,243	157,112	149,008
Market price support (%)	47.4	45.7	27.5	12.9
Payments based on output (%)	0.0	0.0	0.0	0.0
Percentage PSE (%)	5	5	4	4
<b>General Services Support Estimate (GSSE)</b>	59,929	68,643	75,938	88,836

<sup>11</sup> The PSE includes price support, among other types of support. Its scope is greater than that of the Aggregate Measure of Support (AMS) used for expressing reduction commitments in the WTO.

<sup>12</sup> OECD (2009).

<sup>13</sup> OECD (2009).

<sup>14</sup> OECD (2008).

Item	2004	2005	2006	2007
GSSE as a share of TSE (%)	26.8	27.7	32.6	37.4
<b>Consumer Support Estimate (CSE)</b>	-173,913	-176,895	-69,457	-45,172
Percentage TSE	-5	-5	-2	-1
<b>Total Support Estimates (TSE)</b>	223,730	247,886	233,050	237,844
Transfers from consumers	173,913	176,895	72,036	45,514
Transfers from taxpayers	145,942	165,883	189,881	218,958
Budget revenues	-96,125	-94,892	-28,866	-26,629
<b>Percentage TSE (share of GDP, %)</b>	0.39	0.37	0.30	0.28

a The MPS commodities are: wheat, maize (corn), apples, grapes, sugar, tomatoes, milk, beef and veal, pigmeat and poultry.

b The PSE index includes various support measures. In this table only market price support and payments based on output are broken down.

Source: OECD (2008) and OECD (2009).

#### (b) WTO

19. Within the context of the Uruguay Round, although Chile bound most of its tariffs on agricultural products at a rate of 25 per cent, certain products remained subject to a bound rate of 31.5 per cent, namely, dairy products, wheat, wheat flour, oil-seeds and oleaginous fruit, and vegetable fats and oils. Following negotiations under Article XXVIII of the GATT 1994, the bound rate for sugar was raised to 98 per cent. Chile did not reserve the right of recourse to the special safeguard provisions for agriculture under Article 5 of the Agreement on Agriculture.

20. Chile did not undertake any commitments to reduce domestic support for agriculture, since the assistance programmes that it maintained were not covered by the definition of Aggregate Measure of Support (AMS) established in the negotiations, or because their monetary value was below the agreed *de minimis* level.<sup>15</sup>

21. According to Chile's domestic support notifications to the WTO for the period 2003-2006 and the year 2007, most of the official support programmes for farmers fall within the "green box" (measures exempt from reduction commitments) and consist of general services (research, training, advice, inspection, marketing and infrastructure), direct payments to producers (agricultural insurance), and disaster relief payments.<sup>16</sup> In 2007, the total value of this support amounted to Ch\$105.634 billion (about US\$180 million).<sup>17</sup>

22. Moreover, Chile notified as a development programme (under Article 6.2 of the Agreement on Agriculture) investment credits with a value of Ch\$14.477 billion (US\$24.6 million) in 2007. Chile's only measure that satisfies the AMS definition is the soil recovery programme, whose value in 2007 (Ch\$26.215 billion or US\$44.6 million), as in previous years, fell within the agreed *de minimis* level.<sup>18</sup>

23. Chile has notified the WTO that it does not apply subsidies to exports of agricultural products that are subject to reduction commitments.<sup>19</sup>

<sup>15</sup> Schedule VII-Chile, Part IV, Section I.

<sup>16</sup> WTO documents G/AG/N/CHL/26, of 3 December 2007, and G/AG/N/CHL/28, of 8 June 2009.

<sup>17</sup> WTO document G/AG/N/CHL/28, of 8 June 2009.

<sup>18</sup> WTO document G/AG/N/CHL/28, of 8 June 2009.

<sup>19</sup> WTO documents G/AG/N/CHL/23, of 21 March 2007, G/AG/N/CHL/23/Rev.1, G/AG/N/CHL/29, G/AG/N/CHL/30, the last three documents being dated 8 June 2009.

(iv) Policy instruments

(a) Border measures

24. During the review period, the tariff protection provided for agricultural products remained at a low level. In 2009, the average MFN tariff applied to agricultural products (ISIC definition) was 6.1 per cent.<sup>20</sup> All agricultural products are subject to a tariff of 6 per cent, with the exception of 12 tariff lines relating to poultry meat<sup>21</sup>, which are subject to a tariff of 12.5 per cent, and the products to which the price band system applies (see below and Chapter III(2)(iv)).

*Price band system*

25. In 2001, Chile's price band system (PBS) for imports of wheat, wheat flour, sugar and vegetable oils was challenged by Argentina before a WTO dispute settlement panel, which found the system to be incompatible with Chile's obligations under the Agreement on Agriculture. In October 2002, the Dispute Settlement Body (DSB) adopted the respective Panel and Appellate Body reports.<sup>22</sup> In order to implement the DSB's recommendations, at the end of 2003 Chile modified the PBS for wheat, wheat flour and sugar and stopped applying that for vegetable oils. The modification of the PBS is based on Law No. 19.897, published on 25 September 2003, and on Supreme Decree No. 831 of the Ministry of Finance of 4 October 2003.

26. Under the modified PBS, the MFN tariff applied to imports of wheat, wheat flour and sugar takes the form of a compound duty consisting of two components: (a) an *ad valorem* duty (6 per cent) and (b) a specific duty that is added to or deducted from the *ad valorem* duty. For this purpose, a price band with a "floor value" and a "ceiling value" is established in relation to a reference price. The latter is the average of the daily international prices for wheat and sugar on the most relevant markets<sup>23</sup> over a prior period. The reference price for wheat is fixed six times a year and that for sugar monthly. The upper and lower limits of the price bands for both products have been determined for a period that extends from December 2003 to the end of 2014<sup>24</sup> and are subject to an annual reduction starting from December 2007.

27. If the reference price is lower than the "floor value", the MFN tariff is the amount of the *ad valorem* component (6 per cent) plus the specific duty; in its turn, the specific duty is equal to the difference between the "floor value" and the reference price multiplied by one (1). The *ad valorem* equivalent of the MFN tariff may not exceed the level bound by Chile in the WTO. If the reference price is higher than the "ceiling value", the MFN tariff is calculated as the amount of the *ad valorem* component (6 per cent) less the specific duty; the latter is equal to the difference between the ceiling of the band and the reference price, multiplied by one (1), and may not be greater than the amount of the *ad valorem* component. If the reference price lies between the floor and ceiling values, only the MFN tariff is applied. In the case of wheat flour, the duties or rebates determined for wheat

<sup>20</sup> In the case of price band products, the *ad valorem* equivalents provided by the Chilean authorities were used for calculating the average tariff.

<sup>21</sup> Namely, lines 0207.1300, 0207.1411, 0207.1419, 0207.1421, 0207.1422, 0207.1423, 0207.1424, 0207.1429, 0207.1430, 0207.2600, 0207.2710, and 0207.2790.

<sup>22</sup> WTO documents WT/DS207/R, of 2 May 2002, and WT/DS207/AB/R, of 23 September 2002.

<sup>23</sup> For wheat, the most relevant markets are the *Argentine bread wheat* market during the period extending from 16 December to 15 June of the following year and the *No. 2 Soft Red Winter* market during the period from 16 June to 15 December. In the case of refined sugar, the most relevant market is *No. 5 white sugar futures contract, London Exchange*, while for raw sugar it is *No. 11 raw sugar contract, New York Exchange*.

<sup>24</sup> Law No. 19.897 and Supreme Decree No. 831.

multiplied by a factor of 1.56 are applied. All the duties or rebates thus calculated are established by Supreme Decree and published in Chile's *Diario Oficial* (Official Journal).

28. At the end of 2005, Argentina again challenged the PBS for wheat. The corresponding Panel found that, in continuing to maintain a border measure similar to a variable import tax and a minimum import price, Chile had failed to bring the PBS into conformity with the WTO rules. The Panel report and the report of the Appellate Body, which upheld the Panel's conclusions, were adopted by the DSB in May 2007.<sup>25</sup>

29. Following these findings, Chile undertook to modify the PBS for wheat and wheat flour. In September 2007 a corresponding draft law was submitted to Congress and in mid-2009 it was awaiting approval by the Senate. The draft law provides for the replacement of the duty determined in accordance with the PBS by a compound tariff consisting of two fixed components: (i) US\$30 per tonne of wheat or US\$47 per tonne of wheat flour, and (ii) the *ad valorem* tariff (6 per cent); the sum of these two components will determine the MFN tariff of the two products. The PBS will continue being applied to sugar imports.

30. In a context of high international prices, the PBS appears not to have increased the tariff applied to wheat, wheat flour and sugar above the general level of 6 per cent. For example, data provided by ODEPA for the period from December 2003 to December 2008 indicate that in 19 out of the 30 two-month periods in which reference prices were established for wheat and wheat flour an MFN tariff of less than 6 per cent was applied; in nine periods the tariff applied was equal to 6 per cent; and only in two periods was a duty of more than 6 per cent applied. In January 2009, the simple average MFN tariff applied under the PBS was 0 per cent for wheat and 6 per cent for sugar.<sup>26</sup>

#### *Tariff quota for refined sugar*

31. In January 2002, as a result of the amendment of its Schedule of Concessions, Chile introduced an annual MFN tariff quota of 60,000 tonnes for refined sugar<sup>27</sup> and at the same time increased the bound tariff for sugar<sup>28</sup> from 31.5 to 98 per cent.<sup>29</sup>

32. In-quota imports enter duty free, while the out-of-quota rate applied is 6 per cent plus the specific duty or rebate determined under the PBS. The *ad valorem* equivalent of the specific component of the band fluctuated between 37.6 per cent in 2004, -5.3 per cent in 2006 and 0 per cent in January 2009.<sup>30</sup>

33. According to the regulations on the administration of the tariff quotas for sugar, these quotas are intended for imports of inputs for the manufacture of food products. Allocation is proportional to the total amount of sugar actually processed and used as an input in the manufacture of food preparations, other than sugar, placed on the domestic market by each producer during a prior period.<sup>31</sup> No single importer may make use of more than 20 per cent of the quota. Quotas are reserved for imports from Argentina (21,000 tonnes), Guatemala (16,700 tonnes), Brazil

<sup>25</sup> WTO documents WT/DS207/RW, of 8 December 2006, and WT/DS207/AB/RW, of 7 May 2007.

<sup>26</sup> Information provided by the Chilean authorities.

<sup>27</sup> Tariff heading 1701.9900.

<sup>28</sup> Tariff headings 1701.1100, 1701.1200, 1701.9100 and 1701.9900.

<sup>29</sup> Law No. 19.772 of 8 November 2001.

<sup>30</sup> Information provided by the Chilean authorities.

<sup>31</sup> National Customs Service Resolution No. 4.062 of 29 October 2003, as amended by Resolutions No. 4.696 of 29 October 2004 and No. 2.897 of 29 June 2005.

(9,700 tonnes) and other countries (12,600 tonnes). The notifications, the requirements for applying for a quota and the quota allocations are published on the Customs website.

34. According to Chile's notifications to the WTO<sup>32</sup>, the tariff quotas for sugar were utilized 100 per cent or nearly 100 per cent during the period 2003-2005, 87 per cent in 2007, and 37 per cent in 2008. The non-utilization of the quota in 2006 and its reduced utilization in 2008 were apparently due to the fact that the application of the PBS resulted in an MFN tariff of around zero per cent.

35. In 2003, Chile established two additional annual quotas for sugar: one of 30,000 tonnes for tariff line 1701.9100 and another of 15,000 tonnes for tariff lines 1701.91 and 1701.99.<sup>33</sup> Against these quotas, the Executive can establish tariff preferences for countries that have signed trade agreements with Chile, as it did in 2008 in favour of Bolivia, Colombia and Honduras.<sup>34</sup> Apart from sugar, under its RTAs Chile applies tariff quotas to imports of certain agricultural products, including meat products and oils.

#### *Other measures*

36. Chile has also resorted to contingency measures to protect certain sensitive agricultural products. In fact, most of the safeguards imposed by Chile under Article XIX of the GATT 1994 have involved products of this kind, including wheat and wheat flour, dairy products, sugar, and fructose. Moreover, since the findings of the 2007 Panel, Chile has imposed anti-dumping duties on imports of wheat flour from Argentina; these duties were still in force in June 2009 (see Chapter III(2)(vii)).

#### *(b) Domestic support measures*

37. Within the framework of its policy objectives for the agricultural sector, the Government of Chile maintains several domestic support programmes, most of which are targeted at small-scale farming. In this connection, the budget allocated to the agricultural sector increased considerably during the review period to reach Ch\$224,247 million (about US\$382 million) in 2008.<sup>35</sup> The main areas on which public expenditure has been concentrated are: irrigation; improvements in productivity and capacities (including preferential financing); rural development; soil reclamation; research and development; training; sanitary and phytosanitary measures; and marketing and promotion.

38. The development of irrigation is one of the main tools of Chilean agricultural policy. The National Irrigation Commission (CNR) administers Law 18.450, which provides for the granting of subsidies to the private sector for small-scale irrigation projects costing not more than 12,000 UF (US\$430,800) in the case of individual farmers, or 24,000 UF (US\$861,600) in the case of projects undertaken by farmers' associations. The maximum amount of the subsidy is 75 per cent of the cost of the project. Moreover, the Ministry of Public Works (MOP) invests in larger-scale irrigation projects intended to benefit whole communities or regions. In 2008, total public expenditure on irrigation amounted to Ch\$50,265 million (about US\$85.5 million), of which 80 per cent was administered by the CNR and 20 per cent by the MOP.<sup>36</sup>

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<sup>32</sup> WTO documents G/AG/N/CHL/18, of 13 May 2005, G/AG/N/CHL/21, of 27 September 2006, G/AG/N/CHL/25, of 21 March 2007 and G/AG/N/CHL/27, of 31 March 2009.

<sup>33</sup> Law No. 19.897 of 17 September 2003.

<sup>34</sup> Exempt Resolution No. 8.834 of 5 December 2008.

<sup>35</sup> Provisional figures provided by the Chilean authorities.

<sup>36</sup> Information provided by the Chilean authorities.



39. The programmes intended to improve the productivity of small-scale family farming (*agricultura familiar campesina*) are another cornerstone of Chile's agricultural policy. The objective of the Institute for Agricultural Development (INDAP) is to promote the development of this sector in order to turn small-scale family farms into self-sustaining productive units. Some of INDAP's programmes are aimed at capitalizing and modernizing small farming with a view to improving its market integration and economic rate of return, while other programmes are directed towards the development of human capital and include technical advisory services, business training and training for small farmers.<sup>37</sup> The 2009 Budget Law allocated INDAP around Ch\$76,170 million (about US\$129.6 million) to cover both kinds of programmes.<sup>38</sup>

40. INDAP also operates credit programmes for the small farmer or *campesino*. The loans offered may be short-term (up to 359 days), mainly to provide working capital, or long-term, to finance investment in capital goods and infrastructure relating to products which take a long time to mature. The budget allocated to INDAP in 2009 for such loans amounted to Ch\$38,373 million (about US\$65.3 million).<sup>39</sup>

41. To make it easier for small agricultural producers to obtain private credit, INDAP uses an instrument called the *Bono de Articulación Financiera* (BAF) or "financial linkage subsidy". This consists of an incentive for financial institutions that grant credit to small farmers and covers the major transaction costs associated with these loans. The subsidy is determined by competitive bidding among the institutions that have signed a participation agreement with INDAP. In 2009, Ch\$3,574 million (about US\$6 million) was allocated for the BAF.

42. The *Fondo de Administración Delegada* – FAD (Delegated Cash Management Fund) was established in 2003. Through this fund INDAP transfers resources to financial institutions to enable them to provide financing for small agricultural producers. The resources are transferred by competitive bidding, with the financial institutions quoting the interest rates that they will pay INDAP for administering the funds. The advantages of the FAD for the financial institutions consist in the mechanism for the coverage of the portfolio risk, which is partially assumed by INDAP, and access to resources at rates lower than the market rate. In 2007, a total of 15,169 loans were granted under this procedure for an amount in excess of Ch\$10,300 million (US\$17.5 million).

43. Faced with the shortage of credit resulting from the global financial crisis, in February 2009 MINAGRI introduced measures to generate liquidity for input distributors and the agro-industry, so that they, in their turn, could extend credit to small agricultural producers; the measures include guarantee mechanisms operating through the FAD, debt rescheduling and the purchase of debt portfolios, the injection of working capital and a general expediting of State contributions.<sup>40</sup>

44. Chile maintains an agricultural insurance programme that transfers the weather risk to which farm crops are exposed to private insurance companies. The State grants a subsidy of 50 per cent of the net insurance premium plus a fixed amount of 1.5 UF (US\$54) per policy, with a maximum of 55 UF (US\$1,975); in the case of small famers, the subsidy can cover up to about 90 per cent of the net premium. In 2009, Ch\$4,241 million (about US\$7.2 million) was allocated to agricultural insurance with a view to covering 16,000 policies.<sup>41</sup>

<sup>37</sup> INDAP's support programmes can be viewed on its website at: <http://www.indap.gob.cl>

<sup>38</sup> The budgeted costs include current transfers to the private sector plus capital transfers to the private sector.

<sup>39</sup> INDAP. Viewed at: <http://www.indap.gob.cl>

<sup>40</sup> INDAP online information. Viewed at: <http://www.indap.gob.cl>

<sup>41</sup> Ministry of Finance (2008), p. 38.

45. Another of the main agricultural support programmes is the *Sistema de Incentivos para la Recuperación de Suelos* – SIRSD (System of Incentives for Soil Reclamation), whose purpose is to reclaim or improve degraded or eroded land. The SIRSD involves the granting of a subsidy that varies between 50 and 80 per cent of the net costs associated with the inputs, works and technical assistance necessary to reclaim the soil.<sup>42</sup> The SAG and INDAP are responsible for administering this programme, INDAP's support being targeted exclusively at small farmers. For the purpose of improving 155,000 hectares of degraded soil, the 2009 budget allocated about Ch\$28,000 million (about US\$47.6 million) of resources to the SIRSD<sup>43</sup>, of which 62 per cent went to INDAP and the rest to the SAG.

46. The SAG is responsible for establishing animal and plant health regulations, as well as for the corresponding inspection and certification services (see Chapter III(2)(ix)). The SAG's services are offered to the farming community, although there are some programmes targeted at individual farms, such as disease and pest controls and subsidies for improving sanitary conditions. Much of Chile's favourable agricultural export performance in recent years is due to the high standard of its sanitary and phytosanitary regulations. In 2009, the SAG's budget for this item included Ch\$10,104 million (US\$17.2 million) for controlling viniferous and table grape vine pests and Ch\$329 million (US\$0.5 million) for improving the competitiveness of beef producers.<sup>44</sup>

47. Export promotion is another way in which the Chilean Government supports farmers. PROCHILE provides support to help the sector's businesses increase and diversify their exports, by supplying market intelligence, information about business opportunities and assistance in establishing contacts with foreign buyers. In 2008, the Forestry and Agricultural Export Promotion Fund had a budget of US\$14.6 million.<sup>45</sup>

#### (v) Forestry

48. Chile has an important forestry sector that is making an ever-increasing contribution to the country's merchandise exports. Timber plantations, mainly of pine and eucalyptus, cover an area of 2.5 million hectares. In 2008, exports of wood products amounted to US\$4,326 million, equivalent to 6.4 per cent of total merchandise exports.<sup>46</sup>

49. The Government has encouraged forestry activities by offering subsidies and favourable tax treatment. The *Corporación Nacional Forestal* – CONAF (National Forest Corporation), which is responsible for the conservation and sustainable use of woodland and forest resources, offers rebates of between 75 and 90 per cent of the net costs of afforestation and sustainable forest management activities, especially those carried out by small woodland owners.<sup>47</sup> In 2009, it was planned to budget Ch\$24,600 million (about US\$42 million) for CONAF forest management, woodland area protection and fire control programmes.<sup>48</sup>

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<sup>42</sup> The SIRSD covers several programmes: recovery of soil phosphate fertility, lime dressing to correct excess acidity, establishment and regeneration of pastures, soil conservation and reclamation, and crop rotation.

<sup>43</sup> Ministry of Finance (2008), p. 38.

<sup>44</sup> Ministry of Finance (2008).

<sup>45</sup> Information provided by the Chilean authorities.

<sup>46</sup> WTO Secretariat calculations based on data provided by the Chilean authorities. Does not include semi-manufactures or manufactured wood products.

<sup>47</sup> Decree Law No. 701 on Forest Development (1974) and amendments thereto.

<sup>48</sup> Ministry of Finance (2008).

50. The Law on Indigenous Forests<sup>49</sup> (populated by native species) was approved in 2008 and provides rebates to help meet the cost of reclaiming, protecting and improving indigenous forests. In 2009, Ch\$5,629 million (about US\$9.6 million) was budgeted for the implementation of this law.<sup>50</sup>

### (3) FISHING AND AQUACULTURE

51. During the review period, the production of the Chilean fishing industry stabilized, partly as a result of a fisheries management system underpinned by medium- and long-term policies involving the definition of catch quotas. Aquaculture, which accounts for two thirds of the fisheries sector's external sales, has encountered serious sanitary problems. The residence and establishment requirements for foreign natural and legal persons to participate in fishing and aquaculture are being maintained, as is the limit on foreign capital in fishing enterprises.

52. Between 2003 and 2008, the GDP of the fisheries sector, including aquaculture, grew at an average real rate of 4.0 per cent a year (although with substantial annual fluctuations), while its share of GDP at constant prices remained stable, amounting to 1.2 per cent in 2008.<sup>51</sup> The fisheries sector, including processing activities, employs approximately 144,000 people (equivalent to 2 per cent of the national labour force), half of whom are involved in small-scale fishing.<sup>52</sup>

53. Since its previous Review, Chile has made progress with the consolidation of its fisheries sector, succeeding in stabilizing landings from the main fisheries on the basis of new legislation that promotes better utilization of fisheries resources. While catch volumes have been tending to stabilize, aquaculture has been gaining in importance. Chile is the world's second producer of farmed salmon after Norway, with a more than 35 per cent share of the world market; trout, various molluscs and algae are also farmed.

54. The exports of the fisheries sector as a whole doubled in value during the period under review, reaching US\$4,110 million in 2008.<sup>53</sup> Aquaculture contributes 65 per cent of exports and caught fish the rest. The main products exported are Atlantic salmon (fresh and frozen), rainbow trout, fish meal, Pacific salmon and jack mackerel, which together account for about 74 per cent of fisheries exports.<sup>54</sup>

55. The Undersecretariat of Fisheries of the Ministry of Economy is responsible for policy formulation and application of the legislation governing fishing and aquaculture. The *Servicio Nacional de Pesca* – SERNAPESCA (National Fisheries Service) monitors compliance with the legislation and issues and applies technical regulations and sanitary standards in the sector (see Chapter III(2)(ix)). The *Instituto de Fomento Pesquero* – IFOP (Institute for the Promotion of Fishing) carries out public-interest research in support of the decisions of the fisheries authority.

56. Under the General Law on Fisheries and Aquaculture (Supreme Decree No. 430 of 1991), access to fishing is regulated in order to maintain a sustainable level of exploitation of fisheries resources. There are four access regimes: (i) a general access regime; (ii) a regime for species being fully exploited; (iii) a recovering fisheries regime; and (iv) an incipient fisheries regime. Licences to fish for species classified in the first category are granted on the basis of less rigorous requirements; on the other hand, the granting of licences for the second category is suspended and new operators

<sup>49</sup> Law No. 20.283 on Reclamation of the Indigenous Forest and Forest Development of 2 July 2008.

<sup>50</sup> Ministry of Finance (2008).

<sup>51</sup> Central Bank information. Viewed at: <http://si2.bcentral.cl/Basededatoseconomicos/>

<sup>52</sup> Information provided by the Chilean authorities.

<sup>53</sup> Information provided by the Chilean authorities.

<sup>54</sup> Undersecretariat of Fisheries data. Viewed at: <http://www.subpesca.cl>

may gain access only through the transfer of licences already granted and subject to the conditions laid down in the law. Special permits to fish for incipient or recovering species are awarded by public tender, are transferable and are granted for a period of ten years; the quantity in tonnes depends on the annual global quota established by the Undersecretariat of Fisheries.

57. The first five nautical miles off the Chilean coast, the fjords and the sea islands, together with the inland waters, are reserved for small-scale fishing. Before they can catch fish, small-scale fishermen and their vessels must first be registered in the Small-Scale Fishing Registry. Small-scale fishing is that engaged in by a vessel with a maximum length of 18 metres, not more than 80 cubic metres of hold space and a displacement of up to 50 gross register tonnes (GRT).

58. For the purpose of distributing the annual quota allocated to the industrial fisheries sector, Law No. 19.713 of 2000 established maximum catch limits per enterprise, based on the operational and functional parameters of the fleet. Law No. 19.849 of 2002 extended Law No. 19.713 up to 2012 and created the Small-Scale Harvesting Regime, which distributes among the small-scale fishing associations the small-scale share of the annual quota for certain fisheries.

59. Under the legislation, it is necessary to obtain a concession from the Ministry of Defence to engage in aquaculture. SERNAPESCA and the Undersecretariat of Fisheries carry out technical studies of concession applications; an environmental impact assessment is also often required.<sup>55</sup> In recent years, the procedures for obtaining aquaculture concessions have been simplified, which has made it possible to speed up the granting process, with a corresponding increase in applications to develop aquaculture in more southerly areas (in 2008, a total of 1,600 applications were submitted). Supreme Decree No. 125 of 2003 enacted the National Aquaculture Policy, which is intended to promote the economic growth of aquaculture within a framework of environmental sustainability and fair access to the activity. The priorities for the sector include improving the sanitary regulation of aquaculture products.

60. Since Chile's last Review, there have been no changes in the legislation on foreign participation in the fisheries sector. Foreign natural persons are not permitted to fish in Chilean waters or own fish farms unless they are permanent residents or, in the case of legal persons, established under Chilean law. To engage in fishing it is necessary to hold a fishing licence issued by the Undersecretariat of Fisheries and be registered in the ship register administered by SERNAPESCA. Only a Chilean natural or legal person may register a vessel in Chile. A legal person must be established with its principal domicile and real and effective head office in Chile; a majority of its directors or managers must be Chilean; more than 50 per cent of its capital must be of Chilean origin; and the investment must be approved by the Foreign Investment Committee (see Chapter II(3)).<sup>56</sup> However, foreign participation in the fisheries sector may be possible without capital restrictions on condition of reciprocity in the country of origin of the capital.

61. To import hydrobiological species it is necessary to produce sanitary certificates issued by the country of origin. Fish products to be used as inputs for the production of exportables can be imported only with the permission of SERNAPESCA. The sanitary norms applicable to the fisheries sector can be viewed on the Service's website.<sup>57</sup> Since June 2007, the Chilean salmon industry has been faced with a health problem resulting from an outbreak of the infectious salmon anaemia (ISA) virus. To deal with this problem, SERNAPESCA has implemented a contingency plan which, among other measures, includes sacrificing cages with infected fish, the establishment of quarantine and

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<sup>55</sup> The procedure for applying for aquaculture concessions is available on the Undersecretariat of Fisheries website at: <http://www.subpesca.cl>

<sup>56</sup> Article 11 of Decree Law No. 2.222 of 31 May 1978.

<sup>57</sup> SERNAPESCA online information. Viewed at: <http://www.sernapesca.cl>

surveillance zones, restrictions on movement from the areas affected, biosecurity measures, special harvesting conditions and permanent monitoring of the fish farming sites in the affected areas. A plan for the rational handling and use of antibiotics in the salmon industry has also been drawn up. According to the authorities, the virus has had a severe impact on production and employment. In 2008, it was necessary to sacrifice approximately 24,000 tonnes and outbreaks of the virus were recorded at 13 per cent of the farming sites in operation. It is expected that in 2009 amendments to the Law on Fishing, designed to improve the organization of this activity, will be adopted.

62. The Fisheries Administration Fund, established by Law No. 19.849 (2002), finances fishery research projects, small-scale fishing promotion projects, programmes for the surveillance and administration of fishing activities, and training and retraining programmes.<sup>58</sup> In 2008, the Fund had a budget of US\$12 million, of which US\$10 million was earmarked for small-scale fishing and the rest for research and development.<sup>59</sup>

63. Within the context of the Doha Development Agenda negotiations, Chile is advocating the introduction of WTO disciplines that specifically address the problems of distortion relating to fisheries subsidies. To this end, Chile has submitted, individually<sup>60</sup> or jointly with other WTO Members<sup>61</sup>, several communications proposing various approaches to improving disciplines in the area of fisheries subsidies.

#### **(4) MINING**

64. During the period under review, the Chilean mining sector benefited from high international mineral prices, which enabled it to consolidate its position as Chile's main exporter and recipient of foreign direct investment. The State continues to play a fundamental role as an operator in the sector, mostly in copper production. Since its last Review, Chile has introduced a specific mining tax levied on a mining company's operating income. A regulation remains in place requiring the main mining companies to deliver a certain proportion of the copper refined to the domestic manufacturing sector.

##### **(i) General characteristics**

65. The output of Chile's mining sector continued to increase in value during the review period, although the fall in the international prices of copper and other metals put this trend into reverse starting in the second half of 2008. In 2008, mining's share of GDP was 6.7 per cent at constant prices, as compared with 8.4 per cent in 2003.<sup>62</sup> During the same period, employment in the sector remained stable at about 1.5 per cent of the total labour force.<sup>63</sup>

66. Chile's copper mining industry is one of the largest in the world. Its development in recent years has mainly reflected the substantial increase in the international prices of copper and other metals. Although the general mining production index increased from 100 to 114 between 2003 and 2007, it fell back to 108 in 2008.<sup>64</sup> The authorities have attributed the sluggish production to the lack

<sup>58</sup> The programmes of the Fisheries Administration Fund can be viewed at: <http://www.fap.cl>

<sup>59</sup> Information provided by the Chilean authorities.

<sup>60</sup> WTO documents TN/RL/W/115 and Rev.1, of 10 and 13 June 2003.

<sup>61</sup> WTO documents TN/RL/W/166, of 2 November 2004, TN/RL/W/196, of 22 November 2005, and TN/RL/W/234, of 17 July 2008.

<sup>62</sup> Central Bank information. Viewed at: <http://si2.bcentral.cl/Basededatos economicos>

<sup>63</sup> National Statistical Office (INE) data. Viewed at: <http://www.ine.cl>

<sup>64</sup> National Statistical Office data. Viewed at: [http://www.ine.cl/canales/chile\\_estadistico/estadisticas\\_economicas/mineria/series\\_estadisticas/series\\_estadisticas.php](http://www.ine.cl/canales/chile_estadistico/estadisticas_economicas/mineria/series_estadisticas/series_estadisticas.php)

of new high-quality deposits as a result of a decline in exploration between 1998 and 2003 and to a reduction in the average grade of the ore in the country's mines.

67. Chile is the world's leading producer and supplier of copper, with a market share of 34 per cent in 2008<sup>65</sup>, and its reserves are estimated at 38 per cent of world reserves.<sup>66</sup> It is also a major producer of molybdenum, manganese, gold, silver, zinc and iron, and of non-metallic minerals such as iodine, nitrates, borates, salt and lithium nitrate.

68. Mining continues to be Chile's foremost recipient of foreign direct investment, with 45 per cent of the total amount invested in 2008 (under Decree Law 600) and with an annual average of US\$947 million between 2004 and 2008.<sup>67</sup> In 2008, mining products accounted for about 60 per cent of Chilean merchandise exports (Table AI.1). Taken together, copper ore and refined copper accounted for 54 per cent of Chile's exports in 2008.

69. According to the Chilean authorities, geological and structural factors and the maturity of the Chilean mining industry will help to moderate the impact of the global crisis in the sector. For example, expenditure on exploration will decline less than in the rest of the world, since enterprises face fewer financing restrictions in the Chilean market. However, copper production is expected to be lower in 2009 and investment projects are likely to be postponed.<sup>68</sup>

70. The State still retains a strategic stake in the Chilean mining industry through the State-owned enterprises *Corporación Nacional del Cobre* – CODELCO (National Copper Corporation) and *Empresa Nacional de Minería* – ENAMI (National Mining Company). Within the context of this review, the authorities have indicated that there are no plans to privatize these enterprises.

71. CODELCO is the world's largest copper-producing enterprise and its second molybdenum producer. In 2008, it produced 1.55 million tonnes of refined copper<sup>69</sup> and 20,525 tonnes of molybdenum.<sup>70</sup> Total sales amounted to US\$14,425 million during 2008, of which 76 per cent corresponded to copper (refined and concentrated) and the rest to by-products. In 2008, its copper sales amounted to US\$11,004 million, broken down by region as follows: Asia (44 per cent), Europe (29 per cent), North America (18 per cent) and South America (9 per cent).<sup>71</sup> A fixed 10 per cent of the value of CODELCO's external sales of copper and by-products is allocated to the Armed Forces, and its profits are paid into the general State budget. In mid-2009 the Senate was discussing a draft law to amend CODELCO's founding charter (Decree Law No. 1.350 of 1976) with a view to improving its corporate governance, as well as the rules on the disposal of its mining concessions (Law No. 19.137 of 1992 on partnerships with third parties).

72. The role of ENAMI is to promote the development of small and medium-scale mining in accordance with Decree Law No. 153 (ENAMI Charter) and Supreme Decree No. 76<sup>72</sup>, by offering

<sup>65</sup> *Comisión Chilena del Cobre* – COCHILCO (Chilean Copper Commission) (2008).

<sup>66</sup> COCHILCO, with *Minerals Commodity Summaries* (USGS) and *World Metal Statistics* data. Viewed at: [http://www.cochilco.cl/atencion\\_usuario/chile\\_mineria.asp](http://www.cochilco.cl/atencion_usuario/chile_mineria.asp)

<sup>67</sup> Foreign Investment Committee figures. Viewed at: <http://www.foreigninvestment.cl/estadisticas/estadisticas.asp>

<sup>68</sup> Statements by COCHILCO's Director of Research, 2 April 2009. Viewed at: [http://www.cochilco.cl/Archivos/destacados/20090403094932\\_COMUNICADO%20DE%20PRENSA%20COC HILCO%20CRU.pdf](http://www.cochilco.cl/Archivos/destacados/20090403094932_COMUNICADO%20DE%20PRENSA%20COC HILCO%20CRU.pdf)

<sup>69</sup> Includes CODELCO's participation in the El Abra deposit.

<sup>70</sup> CODELCO, Annual Report 2008.

<sup>71</sup> CODELCO, Annual Report 2008.

<sup>72</sup> Supreme Decree No. 76 on Small and Medium-Scale Mining Development Policy, July 2003; amended by Supreme Decree No. 4 of 2009.

services to facilitate access to the metals market on competitive terms. ENAMI is active in three areas: promotion (technical assistance and financing); production, by processing ore in its refineries and smelting plants; and marketing, by purchasing the mineral products of small and medium-sized suppliers on market terms and selling them in the globalized markets.<sup>73</sup> Law No. 19.993 (2005) authorized ENAMI to transfer the Las Ventanas smelting plant and refinery to CODELCO so as to improve its finances and enable it to concentrate on small and medium-scale mining; nevertheless, the processing of the products of small and medium-scale mining that ENAMI sends to this plant is guaranteed.

**(ii) Policy objectives and legal and institutional framework**

73. The Ministry of Mining is responsible for national mining policy. At regional government level, it operates through the Regional Ministerial Secretariats (SEREMIS). Moreover, for implementing its mining policy, the Ministry relies mainly on two of its subordinate agencies: the *Comisión Chilena del Cobre* – COCHILCO (Chilean Copper Commission) and the *Servicio Nacional de Geología y Minería* – SERNAGEOMIN (National Geology and Mining Service). COCHILCO proposes policies for the sustainable development of the mining sector, supervises compliance with the mining regulations and the performance of the State-owned mining enterprises and advises the Foreign Investment Committee on approvals of mining investment contracts. SERNAGEOMIN is responsible for the geological survey of Chile, for keeping the register of mining concessions and the official mining land register, and for prevention and inspection where mine safety is concerned.

74. According to the Bicentenary Mining Policy, the main components of State policy in the sector are: to consolidate the development of the mining industry and its international leadership; to promote the sustainable development of the industry; to build capacity in education, innovation and technological development in the sector; to enhance the efficiency and contribution of the State mining enterprises; and to strengthen the institutional system.<sup>74</sup>

75. Under the Political Constitution of the Republic, the absolute, inalienable, exclusive and imprescriptible ownership of all mines is vested in the Chilean State.<sup>75</sup> However, under the legal concessions regime, individuals, both Chilean and foreign, may explore and exploit minerals. The Constitutional Organic Law on Mining Concessions<sup>76</sup> and the Mining Code<sup>77</sup> establish the procedures for the granting of exploration and exploitation concessions and the legal mechanisms for their protection. Concessions are granted to any person who fulfils the requirements laid down and may be granted for all mineral substances subject to concession, including those that lie under the sea bed and those accessible from land through tunnels.

76. On the other hand, legal concessions are not granted for the exploration, exploitation or refining of uranium, lithium, liquid or gaseous hydrocarbons, or deposits of any kind in maritime waters subject to national jurisdiction or situated, wholly or partially, in areas identified as important for national security. However, the State can grant operating contracts which allow individuals, national or foreign, to exploit those minerals for which concessions are not granted. These contracts permit the exploitation of a specific mineral for a limited period, for which the State provides the necessary permits and licences.

<sup>73</sup> For further information on ENAMI's activities, consult its website at: <http://www.enami.cl>

<sup>74</sup> Ministry of Mining (2005).

<sup>75</sup> Article 19, No. 24, of the Political Constitution of the Republic.

<sup>76</sup> Law No. 18.097 of 21 January 1982.

<sup>77</sup> Law No. 18.248 of 14 October 1983.

77. Foreign investment can participate in the Chilean mining industry under Decree Law No. 600 (see Chapter II(3)). Foreign investors in the mining sector have eight years within which to bring in the capital, a period which may be extended to as much as 12 years by the Foreign Investment Committee when prior exploration is required.

78. Mining enterprises may not avail themselves of the tax benefits of the free zone regime, nor do they have access to the export finance programmes and the simplified drawback system. However, Law No. 19.709 of January 2001 established a preferential customs and tax regime for the commune of Tocopilla (Region II) which provides benefits similar to those available in free zones for industrial enterprises that produce inputs, parts or components or repair capital goods for the mining industry. This regime will remain in force up to 31 December 2026 and is applicable only to enterprises established in Tocopilla between February 2001 and January 2012 (see Chapter III(4)(iii)). Supreme Decree No. 135 (1983), which allows mineral and oil refiners to import raw materials at reduced rates of duty and tax provided that they are re-exported after processing, is still in force.

79. Since its previous Review, Chile has made changes in its mining legislation. Law No. 20.026<sup>78</sup>, in force since January 2006, established the specific mining tax (IEM) on the operating income of the mine operator. The rate is 5 per cent for mining companies with annual sales of more than 50,000 tonnes of refined copper, and 0.5 to 4.5 per cent if the annual sales vary between 12,000 and 50,000 tonnes. Mining operations with annual sales of less than 12,000 tonnes are exempt from the tax. The authorities have indicated that the impact of the IEM on new investment has been insignificant. The resources generated by the IEM are destined for development and innovation projects in the mining and other sectors. According to the assessments for fiscal year 2008, the IEM levied on private sector mining amounted to US\$496 million.<sup>79</sup>

80. Moreover, Law No. 20.026 (which amends Decree Law No. 600) establishes a new system of tax invariability applicable to foreign mining investments of not less than US\$50 million. Invariability of the IEM and other taxes (including royalties) is granted for a period of 12 years. The amount and the method of calculation of mining concession fees also remain invariable. Foreign investors who wish to avail themselves of this benefit must submit their annual financial statements to external audit and present them to the *Superintendencia de Valores y Seguros* – SVS (Securities and Insurance Supervisory Authority).

81. Law No. 20.235, published on 31 December 2007, is intended to facilitate access to the securities market for mining enterprises to enable them to obtain financing for their exploration and exploitation projects by issuing shares and/or bonds. For this purpose, at the end of 2008, the Qualifying Commission for Competence in Mining Resources and Reserves was established, with responsibility for administering the public register of the "competent persons" who will prepare the technical reports necessary for mining enterprises to make public offerings. It was expected that the first "competent persons" would be certified in July 2009.

82. In August 2005, the Ministries of Mining and the Economy, together with other public and private entities, signed the Framework Agreement for the Integral Sustainability of Small-Scale Mining, whose objectives include improving the environmental conditions of the productive processes and the health and safety conditions in the industry. In May 2008, the National Public-Private Strategic Council of the Mining Cluster was set up to identify areas of mining suitable for developing research and technological innovation and to create productive links between the producing industry, the inputs industry and mining services.

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<sup>78</sup> Published on 16 June 2005.

<sup>79</sup> Chilean Internal Tax Service information.



83. In November 2008, the Ministries of Mining and Energy, the National Energy Commission, the sector's trade associations (the Mining Council and the National Mining Society) and Chile's principal mining enterprises signed the Protocol of Agreement on Energy Efficiency in Large-Scale Mining. The signatories undertook to promote research aimed at introducing improved energy efficiency practices into mining, to encourage the development of pilot projects and programmes, and to step up technological development and innovation in the field. The protocol of agreement is an important one, given the close relationship between production and energy supply in the mining sector, which consumes on average 9 per cent of the country's energy.<sup>80</sup>

84. The Law establishing the Copper Reserve (No. 16.624 of 1967) remains in force. This law sets quotas for the delivery of refined copper by the large-scale mining companies to authorized domestic manufacturing sector enterprises with a view to satisfying their demand for the metal. According to the authorities, the operations under this law comply with market conditions, since in determining the price of the deliveries efforts are made to ensure that, as far as the producer is concerned, there is little difference between selling to a domestic customer and exporting. COCHILCO establishes the Reserve on the basis of annual requests submitted by the manufacturing enterprises. Supreme Decree No. 32/88 establishes the procedures for allocating the Reserve to the requesting enterprises. The annual average volume of copper delivered from the Reserve is 80,000 tonnes (equivalent to 1.5 per cent of total copper production in 2008).

85. The Copper Stabilization Fund, established in 1986, was a means of enabling the Treasury to preserve national economic stability in the face of international economic fluctuations and adverse variations of the price of copper in world markets. In 2007, the Fund ceased to exist, becoming part of the *Fondo de Estabilización Económica y Social* – FEES (Economic and Social Stabilization Fund) *Fondo* (see Chapter I). In November 2008, the Government announced that permission would be given to use this Fund to support small-scale mining, through ENAMI, in view of the fall in copper prices. It was calculated that in the next 15 months (from November 2008) this operation would cost approximately US\$18 million.<sup>81</sup>

## (5) MANUFACTURING

86. Chile's manufacturing sector has succeeded in increasing productivity and remains an important generator of value added and employment, which partly reflects the national development strategy based on trade liberalization and cross-sectoral policies. The manufacturing sector continues to make intensive use of local natural resources, thereby exploiting Chile's comparative advantage.

87. Between 2003 and 2008, the GDP of the manufacturing sector<sup>82</sup> increased at an annual average rate of 4 per cent at constant prices, while its share of GDP declined from 16.4 to 15.8 per cent during the same period.<sup>83</sup> The most important manufacturing activities include: the food and beverages industry, the chemicals industry, the oil, rubber and plastics industry, and the paper and printing industry (Table IV.2). In terms of their contribution to GDP, the two most dynamic industries during the review period were the paper and printing industry and the metal products, machinery and equipment industry.

88. The Chilean processing industry continues to make intensive use of local natural resources, particularly those of the forestry, fishing and mining sectors. In 2008, the manufacturing sector

<sup>80</sup> Energy Commission, National Energy Audit (2007).

<sup>81</sup> Revista Am, viewed at: <http://www.aminera.cl>, 28 November 2008.

<sup>82</sup> Includes the processing of agriculture and forestry products, minerals and other raw materials.

<sup>83</sup> Central Bank figures. Viewed at: <http://si2.bcentral.cl/Basededatoseconomicos/>

employed about 862,000 people, equivalent to 13 per cent of the total labour force (as compared with 14.2 per cent in 2003).

**Table IV.2**  
**Manufacturing sector GDP, constant prices 2003-2008**  
(2003 Ch\$ million and percentage of manufacturing GDP)

Sector	2003	2004	2005	2006	2007 <sup>a</sup>	2008 <sup>b</sup>
<b>Contribution of the manufacturing sector to GDP (constant Ch\$ million)</b>	<b>8,398,990</b>	<b>8,985,620</b>	<b>9,520,422</b>	<b>9,896,183</b>	<b>10,200,157</b>	<b>10,200,496</b>
<b>Percentage of manufacturing GDP</b>						
Food, beverages, and tobacco	30.1	29.6	29.7	29.5	29.5	30.2
Textiles, clothing, and leather	4.7	4.8	4.8	4.9	4.5	4.2
Wood and furniture	6.7	7.1	6.8	6.7	6.4	6.1
Paper and printing	10.4	10.9	10.4	10.5	11.9	12.3
Chemicals, petroleum, rubber, and plastics	28.1	27.6	27.7	28.1	26.8	26.4
Non-metallic mineral products and basic metal industries	8.1	8.4	8.5	8.4	8.4	7.9
Metal products, machinery, equipment, etc.	11.9	11.5	12.1	11.8	12.5	12.9

a Provisional figures.

b Preliminary figures.

Source: Online information from the Central Bank of Chile. Viewed at: <http://si2.bcentral.cl/Basededatoseconomicos>

89. In 2008, exports of manufactured products (SITC classification) amounted to US\$8,102 million, equivalent to 12 per cent of Chilean merchandise exports. The principal exports of the manufacturing sector include chemical products, semi-manufactured wood, paperboard and paper products, machinery and transport equipment. In the same year, imports of manufactured products totalled US\$34,076 million, i.e., 60 per cent of total merchandise imports. Imports of manufactured goods consisted mainly of machinery, transport equipment and chemical products.

90. According to a recent OECD study, the productivity of Chile's manufacturing industry has increased in the last few years, but still remains below the average for the OECD countries and is characterized by considerable differences between the various industrial activities. The study also points out that trade liberalization has been a significant factor in the increase in the productivity of Chilean industry, due to the greater exposure to foreign competition and easier access to imported inputs and capital goods that incorporate technological advantages.<sup>84</sup> According to the WTO Secretariat's calculations, the productivity of labour in the manufacturing sector grew at a real annual average rate of 3 per cent during the period 2003-2008.

91. A Central Bank of Chile study notes that the deceleration in productivity starting in 2000 is a phenomenon that affects the majority of Chile's manufacturing sectors and that the most energy-intensive sectors are those that have experienced the greatest reduction in the rate of productivity growth.<sup>85</sup> According to the same study, these results suggest that the increase in the price of energy could be an important determinant of this deceleration (see (6) below).

92. Chile does not apply any development policy targeted specifically at the manufacturing sector. Industrial activities, like others, benefit from cross-sectoral policies that pursue objectives such as the promotion of investment, the development of SMEs, the encouragement of technological innovation and clusters. The cross-sectoral incentives consist basically of tax concessions, financing

<sup>84</sup> OECD (2007), pp. 30-31.

<sup>85</sup> Álvarez, García and García (2008).

for investment and technological development, and support for business management (see Chapter III(4)(iii)).

93. At the end of 2008, the average MFN tariff applied to manufactured products (ISIC definition) was 6 per cent. The almost uniform structure of Chile's Tariff is devoid of tariff escalation and provides virtually no special assistance for the manufacturing sector (see Chapter III(iv)). Law No. 20.269, which entered into force on 27 June 2008, abolished the MFN tariff applied to imports of capital goods included in the definition<sup>86</sup> and the list established by Law No. 18.634.<sup>87</sup>

94. Since its last Review, Chile has not applied any anti-dumping or countervailing duties to manufactured products. Between 2002 and 2003, Chile maintained safeguard measures (tariff surcharge of 10 per cent) on imports of certain steel products.

95. The manufacturing sector can take advantage of the general export incentive programmes that consist essentially of administrative facilities for the payment and reimbursement of customs duties (see Chapter III(3)(iv)). The tariff and tax concessions granted to the automotive industry under the Automotive Statute were abolished by Law No. 19.912 of November 2003. The prohibition on importing used vehicles, used motorcycles and used tyres which, according to the authorities, is for environmental and safety reasons, is being maintained (see Chapter III(2)(vi)).

## **(6) ENERGY**

96. Private companies, domestic and foreign, can participate in all energy sector activities, although in practice the State-owned enterprise ENAP dominates hydrocarbon exploitation, production and refining. Chile is a net importer of energy and depends on foreign supplies for about two thirds of its energy consumption. During the review period, the energy sector was confronted with supply problems that adversely affected Chile's economic performance. Chile has intervened in the domestic market by establishing a system for stabilizing the domestic prices of certain fuels derived from petroleum and is adopting policies aimed at ensuring a sustainable energy supply in the long term.

### **(i) General characteristics**

97. In 2008, the energy sector (which includes electricity, gas and water) accounted for 1.8 per cent of Chile's GDP (at constant 2003 prices)<sup>88</sup> and employed 0.6 per cent of the national labour force.<sup>89</sup> Despite the fact that up to 2005 the energy sector, particularly the electricity sector, received substantial investment flows, its GDP decreased at a real annual average rate of -0.4 per cent between 2003 and 2008. According to the IMF, the contraction of GDP in the energy sector was associated with the reduced availability of hydroelectric resources due to droughts, together with cutbacks in the

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<sup>86</sup> According to Article 2 of Law No. 18.634, "capital goods" means those machines, vehicles, equipment and tools that are intended, directly or indirectly, for the production or marketing of goods or services whose depreciation period exceeds three years.

<sup>87</sup> Since the elimination of the tariff, which is applied *ad hoc* to capital goods that comply with the definition in Law No. 18.634, did not appear in the Chilean Tariff in effect in March 2009, it was not taken into account in the analysis of its structure carried out by the WTO Secretariat.

<sup>88</sup> Central Bank data. Viewed at: <http://si2.bcentral.cl/Basededatos economicos>

<sup>89</sup> National Statistical Office (INE) data. Viewed at: <http://www.ine.cl>

supply of imported natural gas and high oil prices. Moreover, the IMF estimates that the restrictions on the availability of energy have reduced economic growth by one percentage point.<sup>90</sup>

98. In 2007, gross output of primary energy amounted to 91,775 teracalories<sup>91</sup>, of which 54 per cent corresponded to firewood; 25 per cent to natural gas, coal and oil; and 21 per cent to hydroelectricity. In terms of consumption, the 2007 data indicate that gross consumption of primary energy can be broken down as follows: crude oil (40 per cent), natural gas (16 per cent), hydroelectricity (7 per cent), firewood (19 per cent), and coal (15 per cent).<sup>92</sup> According to the National Energy Audit, Chile imported about 68 per cent of its gross primary energy consumption in 2007.<sup>93</sup>

99. The sector's institutional framework comprises the National Energy Commission (CNE), which is responsible for formulating the policies and regulations that govern the energy sector and overseeing their application, as well as for regulating prices, where appropriate, and technically evaluating the investments of the State-owned enterprises operating in the sector. Its Ministerial Council is headed by the Minister who presides over the CNE and is composed of the Ministers of Mining, the Economy, Finance, National Defence, and Planning and Cooperation, and the Secretary-General of the Presidency.

100. The Ministries of the Economy and Mining issue concessions and decrees and participate in the discussion of regulatory issues. The Electricity and Fuels Supervisory Authority (SEC) oversees the enforcement of the legislation and technical regulations on the generation, production, storage, transport and distribution of liquid fuels, gas and electricity. The competition authorities supervise the operation of the energy markets, particularly the electricity transmission and distribution markets. A Panel of Experts, created in 2005, settles differences between the players in the electricity sector (see (iii) below). In June 2009, Congress was in the process of debating a draft law on establishing a Ministry of Energy that would take over some of the functions currently being performed by the Ministries of Mining and the Economy.

## (ii) Hydrocarbons

101. Under the Chilean Constitution, the right to explore and exploit hydrocarbon deposits is reserved for the State. However, private companies, domestic and foreign, can participate in these activities through *Contratos Especiales de Operación Petrolera* – CEOP (Special Petroleum Operation Contracts) subject to the conditions laid down, in each case, in a presidential decree. In the first half of 2009, there were 14 CEOPs in effect and one in process of being approved; of the CEOPs in force, 11 were located in the Magallanes area, two in Iquique and one in Arauco. As a result of an international tendering procedure, nine CEOPs were in their initial development stage and involved commitments to invest in exploration valued at about 250 million dollars.

102. Enterprises to refine, distribute, market, store and transport hydrocarbons in their various forms or to import and export these products may be started up freely. However, a concession must be obtained for the transport and distribution of natural gas.<sup>94</sup>

<sup>90</sup> IMF (2008).

<sup>91</sup> One teracalorie is equivalent to one billion calories.

<sup>92</sup> CNE online data, National Energy Audit. Viewed at: [http://www.cne.cl/fuentes\\_energeticas/f\\_primarias.html](http://www.cne.cl/fuentes_energeticas/f_primarias.html)

<sup>93</sup> CNE online data. Viewed at: [http://www.cne.cl/cnewww/opencms/06\\_Estadísticas/balances\\_Energ.html](http://www.cne.cl/cnewww/opencms/06_Estadísticas/balances_Energ.html). BNo. 2007

<sup>94</sup> Law on Gas Services and amendments thereto (Decree No. 323 of May 1931, amended in 1989).

103. The *Empresa Nacional de Petróleo* – ENAP (National Petroleum Company), which is State-owned, continues to dominate the exploration, production and refining of petroleum and natural gas. Its exploration and production activities are concentrated in the Magallanes Basin, where most of the hydrocarbon deposits have been discovered. In 2008, petroleum production totalled 177,000 cubic metres and natural gas production 2,171 million cubic metres.<sup>95</sup> Domestic crude production covers less than 5 per cent of annual demand and has decreased each year as a result of well depletion and the decline in reserves; the rest of the demand is met by oil imported by ENAP.

104. In 2008, Chile imported crude oil and petroleum products valued at US\$13.9 billion, equivalent to 24 per cent of its total merchandise imports. Moreover, private companies in Chile import natural gas from Argentina under a Protocol signed by the two countries in 1995. Since 2004, there have been increasing restrictions on the delivery of Argentine gas, which has affected the supply to Chilean power stations, industrial customers and the Methanex petrochemical complex in the Magallanes area. In response to these restrictions, a consortium consisting of private companies and ENAP has invested in the construction of a liquefied natural gas (LNG) terminal in the Quintero area, which is expected to enter into service in the second half of 2009 with a view to supplying residential, commercial and industrial consumers and some power stations in the central basin (see also (iii) below).

105. Refining is carried out by three enterprises belonging to ENAP, one located in the Valparaíso Region, another in the Bío-Bío Region and the third in Magallanes. In 2007, the three enterprises together had a total daily capacity of 37,800 cubic metres<sup>96</sup> (13.6 million cubic metres of fuel per year), enough to provide for between 75 and 85 per cent of the demand for fuel. Where distribution is concerned, there are four enterprises operating in the liquid fuel market and three in the liquefied gas market, all with national coverage. There are five enterprises that transport and distribute natural gas in their respective concession areas.

106. The prices of liquid fuels and liquefied gas are free and governed by the prices quoted internationally through import parity (see below), with the addition of business costs and margins. There are specific taxes on gasoline and diesel (see Chapter III(2)(v)). Except in the Magallanes region, the tariffs for the distribution of natural gas can be set freely. However, the Law on Gas Services empowers the *Tribunal de Defensa de la Libre Competencia* – TDLC (Tribunal for the Defence of Free Competition) to request the Ministry of the Economy to regulate the tariffs of those users who consume less than 100 gigajoules, if during a year the distributor's rate of return exceeds by more than five points the rate for the cost of capital calculated by the Ministry. The Law also stipulates that all consumers with comparable characteristics must pay the same price.

107. The *Fondo de Estabilización de Precios del Petróleo* – FEPP (Fund for the Stabilization of Petroleum Prices), created in 1991<sup>97</sup>, and the *Fondo de Estabilización de Precios de los Combustibles* – FEPCO (Fund for the Stabilization of Fuel Prices), created in 2005<sup>98</sup>, are intended to stabilize the domestic prices of fuels against oil market fluctuations. Both Funds operate by establishing weekly reference price bands for fuel oil, gasoline, kerosene, diesel and liquefied gas. The upper and lower limits of the price bands are compared with the parity price for the product in question (spot price in a relevant market, free Chilean port). When the parity price exceeds the upper limit of the price band, the difference is covered by the resources of the FEPP or the FEPCO, as appropriate, while if the parity price falls below the band, the FEPP or the FEPCO takes in funds through taxes. The adjustments resulting from the Funds are applied directly to the producers and importers in the form

<sup>95</sup> CNE online data. Viewed at: [http://www.cne.cl/archivos\\_bajar/produccion\\_anual\\_combustibles.xls](http://www.cne.cl/archivos_bajar/produccion_anual_combustibles.xls)

<sup>96</sup> Information provided by the Chilean authorities.

<sup>97</sup> Law No. 19.030 of 1991, as amended by Law 19.681 of 2000.

<sup>98</sup> Law No. 20.063 of 29 September 2005, as amended by Law No. 20.278 of 29 August 2008.

of a tax or credit and, through them, to the rest of the economy. At the end of April 2009, the FEPP had an estimated balance of US\$44 million, while the FEPCO had an estimated balance of US\$502 million.<sup>99</sup>

108. According to the IMF, to facilitate the adjustment of the Chilean economy to higher petroleum prices, the Government of Chile injected US\$200 million into the FEPP and announced an additional contribution of US\$1,000 million in June 2008. The IMF estimates that with this measure subsidies amounting to US\$500 million would be granted.<sup>100</sup> Moreover, the Government has temporarily reduced, by variable percentages, the rate of the specific tax on gasoline (see also (iii) below).

### (iii) Electricity

109. Chile has an installed power generating capacity of about 13,000 MW (as compared with 11,146 MW in 2002), 38 per cent of which is provided by hydroelectric power plants, 61.8 per cent by thermal power plants, and 0.2 per cent by wind farms. In 2007, a total of 56,378 GWh was generated.<sup>101</sup> The mining and industrial sectors are the main consumers of electrical energy, accounting for about 37 per cent of total consumption. Chile imports approximately 4 per cent of the electricity it consumes.<sup>102</sup>

110. The cost of electricity in Chile is high. The increases in recent years have been due, in part, to cutbacks in the supply of imported natural gas and the high prices of hydrocarbons. For example, the *precio medio de mercado* – PMM (average market price)<sup>103</sup> for the Central Grid, published by the CNE, rose from Ch\$28.71/kWh in November 2006 to Ch\$57.19/kWh in May 2009. The increase in electricity prices appears to have had a negative impact on industrial productivity (see (5) above).

111. The Chilean electricity market includes the generation, transmission and distribution of electricity, all of which are in the hands of private capital, domestic and foreign. The State, through the CNE and the SEC, is responsible for regulation, oversight and planning. The competition authorities can regulate prices in those segments in which they consider that there is no competition.<sup>104</sup> Where generation is concerned prices can be set freely, whereas the tariffs for transmission and distribution and for supplying small consumers are regulated.

112. The main legislative instrument governing the electricity sector is the *Ley General de Servicios Eléctricos* – LGSE (General Law on Electrical Services).<sup>105</sup> The amendments made to the LGSE during 2004 and 2005 are aimed at consolidating a competitive generation market and ensuring free access to power transmission and distribution lines.

<sup>99</sup> CNE online data. Viewed at: <http://www.cne.cl/hydrocarbons/destacados/comunicados/coffep30mar2009.htm>

<sup>100</sup> IMF (2008).

<sup>101</sup> CNE online data. Viewed at: <http://www.cne.cl/estadísticas/anuario/electricidad>

<sup>102</sup> CNE online data. Viewed at: [http://10.0.0.128/cnewww/opencms/06\\_Estadísticas/anuario\\_estadístico/](http://10.0.0.128/cnewww/opencms/06_Estadísticas/anuario_estadístico/)

<sup>103</sup> The PMM is determined using the average prices of the free customer contracts communicated to the CNE by the generating companies, corresponding to the four-month window ending the third month prior to the date of publication of the average market price. CNE online information. Viewed at: [http://www.cne.cl/electricidad/destacados/price\\_medio/Precio\\_Medio\\_de\\_Mercado\\_SIC\\_ABR.xls](http://www.cne.cl/electricidad/destacados/price_medio/Precio_Medio_de_Mercado_SIC_ABR.xls)

<sup>104</sup> OECD (2004).

<sup>105</sup> Decree with Force of Law No. 4, published on 5 February 2007, contains the revised, coordinated and consolidated text of the General Law on Electrical Services (1982).

113. In general, concessions are not needed to install generating units. Where hydroelectric power stations are concerned, a concession may or may not be requested; if it is, the administrative procedures necessary for them to be brought into service will be expedited.<sup>106</sup> Generation projects must obtain environmental permits and other authorizations in the same way as any other industrial plant. The authority may impose certain technical requirements on generating stations before they are interconnected with the grid, to ensure the safety and quality of the service.<sup>107</sup>

114. Generating companies may sign long-term supply contracts with distributors and/or large industrial customers, which require them to supply the customer's demand at agreed prices. There is a parallel short-term (spot) market, on which the generating companies sell the power they produce at marginal prices; its function is to enable these companies to cover the differences between their power generation and their contractual commitments. The short-term operation of the generators connected to a particular grid is planned and decided by the *Centro de Despacho Económico de Carga* – CDEC Economic Load Dispatch Centre, which groups representatives of the generating and transmission companies and the large-scale users.

115. Power is transmitted by the companies that own the lines and substations for transporting electricity from the point of generation to the distribution or consumption centres. Transmission units may operate either under or without a concession; in the first case the administrative procedures necessary for them to be brought into service are expedited.<sup>108</sup> The tariffs for the use of transmission lines are regulated.

116. In order to ensure open access to transmission installations and compliance with the service obligation, Law No. 19.940 of 2004 (so-called Short Law I), amending the LGSE, establishes that the transport of electricity through the trunk system and the subtransmission systems is a public electrical service.<sup>109</sup> Thus, the transmission company is under an obligation to provide the service to anyone who requests it and is responsible for investing in new lines or extensions. The generating companies may impose a right of way on the available transmission capacity through the payment of tolls. The CDEC for each grid coordinates the operation between the generating and transmission companies.

117. The distribution market consists of the companies that own the installations for distributing electricity to the end users in specific geographical areas. In order to operate, the distributors must obtain a public service concession. The definitive concessions are for an indefinite period and are non-exclusive.

118. Concession-holders are under the obligation to provide the service to anyone who requests it within their area. Moreover, they must maintain power supply contracts that enable them to cover the estimated consumption of their customers for at least three years ahead. Law No. 20.018 of May 2005 (Short Law II), which amended the LGSE, requires distributors to sign supply contracts with the generators who offer to supply power at the best price in public tender proceedings.

119. Consumers are classified according to the scale of their demand for electricity. Those with a connected load of less than 2,000 kW (residential, commercial and SME customers) are considered to

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<sup>106</sup> Articles 2, 3 and 4 of Decree with Force of Law No. 4 of 2007.

<sup>107</sup> Law No. 19.940 of March 2004, published on 13 March 2005.

<sup>108</sup> The concession application is optional. Articles 2, 3 and 4 of Decree with Force of Law No. 4 of 2007.

<sup>109</sup> The trunk system consists of all the lines and substations that form the common market, while the subtransmission systems are those that enable the power to be transported from the trunk system to the local consumption points.

be regulated customers and pay a tariff established by the CNE.<sup>110</sup> Consumers with a connected load of 2,000 kW or more (large-scale industrial and mining users) are considered to be free customers and are able to negotiate contracts to purchase electricity directly with the generating companies; these customers accounted for about 61 per cent of total consumption in 2007.

120. Law No. 20.040, published in July 2005, established a subsidy to help residential users of limited means pay for their electricity consumption, whenever a real cumulative increase in price of 5 per cent or more is recorded over a six-month period. The subsidy, applied provisionally during 2005-2006, was funded by the Treasury. Moreover, Law No. 20.258, published in March 2008, established a provisional mechanism for refunding the specific tax on diesel purchases in favour of the power generating companies. This mechanism will remain in effect until March 2011.

121. An important institutional reform in the electricity sector, introduced by Law No. 19.940 (2004), was the creation of a panel of experts for settling disagreements between electricity companies or between the companies and the regulatory authorities, for the purpose of applying the electricity sector regulations, including tariff aspects.

122. Chile's electricity supply system has been operating under pressure in recent years because of increased domestic demand, higher hydrocarbon prices and restrictions on the supply of imported natural gas for use in power stations, mainly in the north and centre of the country, which has forced them to use diesel, which is more expensive than gas. These problems have resulted in the postponement of several investment projects related with natural gas-based production systems, as well as in a rise in the operating costs of energy-intensive industries.

123. Although the measures adopted by the authorities to deal with the power shortage have so far made it possible to avoid rationing, the need to secure the electricity supply and reduce generating costs continues to pose a problem for the near future. It is expected that the installation of new generating plants and the implementation of the liquefied natural gas project in the central region at the end of 2009, and in the northern region at the beginning of 2010, will help to solve the problem.

124. In order to reduce the dependence on certain energy sources, and for environmental reasons, the Chilean authorities are seeking to promote the diversification of the energy matrix. Law No. 20.257 of April 2008 on non-conventional renewable energy sources stipulates that as from 2010 electricity companies that sell power from the grid will have to prove to the CDEC that 5 per cent of their annual sales comes from non-conventional renewable energy sources, such as geothermal, wind, solar and biomass, among others; this percentage will increase annually up to 10 per cent in 2024. Tax incentives are envisaged by way of compensation.

## **(7) SERVICES**

### **(i) General characteristics and multilateral commitments**

125. In 2008, services accounted for almost 67 per cent of Chilean GDP (at constant prices), as compared with 65.3 per cent in 2003. The most important subsectors were financial and business services<sup>111</sup> (16.8 per cent) and personal services<sup>112</sup> (10.8 per cent), followed by commercial and restaurant and hotel services (10.5 per cent), construction services (7.5 per cent) and transport services

<sup>110</sup> Customers whose connected load is greater than 500 kW but not greater than 2,000 kW may choose between a regulated tariff and a free price regime.

<sup>111</sup> Includes financial services, insurance, property leasing and services provided to businesses.

<sup>112</sup> Includes education, health and other services.



(7.3 per cent).<sup>113</sup> In 2008, the services sector employed about 74 per cent of the national labour force.<sup>114</sup>

126. Chile is a net importer of services and the services account is traditionally in deficit (see Chapter I). In 2008, the services sector received US\$1,190.6 million of foreign investment, equivalent to 22.7 per cent of the foreign direct investment that entered Chile under Decree Law No. 600 in that year.<sup>115</sup>

127. The specific commitments made by Chile under the General Agreement on Trade in Services (GATS) include 5 of the 12 general sectors defined in the Services Sectoral Classification List<sup>116</sup>, namely: business services, communications services, financial services, tourism and travel related services, and transport services; under the latter heading, Chile only undertook commitments relating to auxiliary air transport services (Table AIV.1).<sup>117</sup> In general, the market access conditions in Chile's existing legislation are more liberal than those stipulated in its Schedule of Specific Commitments.

128. In its Schedule of Commitments Chile recorded horizontal limitations relating to commercial presence and the movement of natural persons. The former concern service providers that operate in Chile through a commercial presence<sup>118</sup> and make investments under the Foreign Investment Statute (Decree Law No. 600). In this connection, it is indicated that the authorization of foreign investment for the provision of services may be contingent on the effects of commercial presence on economic activity (including the use of local inputs, etc.), productivity and competition and its contribution to Chile's integration in world markets. Moreover, foreign investors must wait for three years after making their investment before they are allowed to transfer their capital abroad. In practice, Decree Law No. 600 permits the repatriation of capital one year after it has entered Chile (the situation with regard to capital repatriation as it actually exists is described in Chapter II(3)).

129. With respect to the movement of natural persons, there are restrictions on the presence of senior and specialized personnel who, in addition to having worked for at least two years in the head office of the enterprise of their country of origin, must establish their domicile or residence in Chile. Moreover, the number of foreigners that a foreign enterprise may employ in Chile is limited to 15 per cent of the total staff. Service providers receive authorization to stay in Chile for a once renewable period of two years.

130. Chile's list of MFN exemptions includes the dispute settlement procedures contained in existing or future bilateral treaties on the protection of investment; reciprocal measures concerning access to freight by Chilean vessels; the Bilateral Agreement on Maritime Freight Transport with Brazil (1974); the taxation of maritime freight rates and commissions; maritime cabotage; the 1977 Agreement on International Land Transport with Argentina, Bolivia, Brazil, Paraguay, Peru and Uruguay; and audiovisual services.<sup>119</sup>

<sup>113</sup> Central Bank data. Viewed at: [http://si2.bcentral.cl/Basede\\_datos\\_economicos](http://si2.bcentral.cl/Basede_datos_economicos)

<sup>114</sup> National Statistical Office (INE) data. Viewed at: <http://www.ine.cl>

<sup>115</sup> Foreign Investment Committee online data. Viewed at: <http://www.foreigninvestment.cl/estadisticas/estadisticas.asp>

<sup>116</sup> WTO document MTN.GNS/W/120, of 10 July 1991.

<sup>117</sup> WTO documents GATS/SC/18, of 15 April 1994, GATS/SC/18/Suppl.1, of 28 July 1995, GATS/SC/18/Suppl.2, of 11 April 1997, and GATS/SC/18/Suppl.3, of 26 February 1998.

<sup>118</sup> Commercial presence includes corporations, open or closed, private limited companies, and subsidiaries.

<sup>119</sup> WTO document GATS/EL/18, of 15 April 1994.

131. Chile has signed the Fourth and Fifth Protocols annexed to the GATS, which entered into force for the country on 16 June 1998<sup>120</sup>, and has amended its Schedule of Specific Commitments on telecommunications<sup>121</sup> and financial services.<sup>122</sup> Chile is actively participating in the services negotiations under the Doha Development Agenda. In July 2003 it submitted an initial offer<sup>123</sup> and in July 2005 a revised offer.<sup>124</sup>

132. Most of Chile's RTAs contain provisions on trade in services. The agreements vary in terms of their sectoral scope and the way in which the liberalization commitments are expressed. Although most of the agreements cover telecommunications, professional services and the temporary entry of business persons, this is not the case with financial services, since whereas some RTAs contain specific rules for this sector or envisage future negotiations for its inclusion, others exclude it from their coverage. With regard to the way of expressing the commitments, some agreements establish a negative list (for example, the RTAs with Canada, United States, Mexico and Central America), while others contain a positive list of sectors to be liberalized (for example, the agreement with the European Communities).

## **(ii) Telecommunications**

133. The telecommunications sector is privately operated. Concessions to provide public telecommunications services and intermediate services are granted to enterprises established in Chile, irrespective of the origin of the capital. However, concessions for free-reception radio broadcasting are granted to companies with more than 10 per cent of foreign capital only if their country of origin grants reciprocity to Chilean companies. Interconnection tariffs are set by law and maximum tariffs may be established for concession-holders who occupy a dominant position in any of the services liable to price-setting. Since Chile's last Review, there have been no fundamental changes in the legislation governing this sector, although new provisions have begun to be applied in the areas of the VoIP service and number portability. Chile made no commitments on the supply of basic local telecommunications under the GATS.

### **(a) General characteristics**

134. Between 2003 and 2008, the aggregate value of the Chilean communications sector increased at an annual average real rate of 9.3 per cent<sup>125</sup>, while its share of GDP at constant prices increased from 2.3 to 2.8 per cent.<sup>126</sup> Communications is one of the three main recipients of foreign direct investment in Chile, having attracted about US\$2,616 million under Decree Law No. 600 during the period 2003-2008.<sup>127</sup>

135. In the telecommunications subsector, the market segments that saw the greatest expansion were mobile telephony and Internet access services, in contrast to the gradual decline in fixed telephony. Between 2003 and 2008, the number of mobile line subscribers doubled to 14.7 million,

<sup>120</sup> WTO documents WT/Let/227, of 29 June 1998, and WT/Let/288, of 18 February 1999.

<sup>121</sup> WTO document GATS/SC/18/Suppl.2, of 11 April 1997.

<sup>122</sup> WTO document GATS/SC/18/Suppl.3, of 26 February 1998.

<sup>123</sup> WTO document TN/S/O/CHL, of 16 July 2003.

<sup>124</sup> WTO document TN/S/O/CHL/Rev.1, of 5 July 2005.

<sup>125</sup> Communications GDP includes postal services, in addition to telecommunications.

<sup>126</sup> Central Bank data. Viewed at: <http://si2.bcentral.cl/Basededatos economicos>

<sup>127</sup> Foreign Investment Committee online data. Viewed at: <http://www.foreigninvestment.cl/estadisticas/estadisticas.asp>

while the penetration level reached 87.8 per cent per 100 inhabitants.<sup>128</sup> Similarly, the number of Internet connections rose from 836,000 at the end of 2003 to 1.4 million in September 2008, and the Internet penetration index rose from 2.2 to 8.4 per cent per 100 inhabitants.<sup>129</sup> The penetration indices for these two services are among the highest in Latin America.<sup>130</sup> Within the Internet market, there has been a remarkable increase in dedicated access connections (mainly ADSL), which account for 98.4 per cent of all Internet connections. At the end of 2008, there were about 3.5 million fixed telephone lines, with a penetration level of 20.9 per cent per 100 inhabitants.<sup>131</sup>

136. Chile's telecommunications sector was fully privatized during the 1980s and now has a modern infrastructure. As far as the organization of the market is concerned, in 2008 there were 16 fixed telephony providers, 3 mobile telephony providers and 32 companies offering Internet access. Telefónica (CTC) continues to occupy a dominant position with 60.1 per cent of the fixed telephony segment and 45.7 per cent of the Internet segment. In mobile telephony, Movistar accounted for 42.6 per cent of subscribers.<sup>132</sup> The State is not involved in the provision of telecommunications services, although it plays a regulatory role.

(b) Legal and institutional framework

137. The Ministry of Transport and Telecommunications (MTT), through the Undersecretariat for Telecommunications (SUBTEL), is responsible for formulating sectoral policy, implementing and enforcing the corresponding legislation (including technical regulations), administering the radio frequency spectrum, deciding on applications for concessions, permits and licences, and applying administrative sanctions in accordance with the law. The Ministry of the Economy participates in price-setting and, together with the MTT, signs the corresponding tariff decrees. The TDLC decides when to set the tariffs of those telecommunications services that are liable to tariff-setting under the law (see below).

138. The *Ley General de Telecomunicaciones* – LGT (General Law on Telecommunications)<sup>133</sup> provides for free and egalitarian access to the use of the radio frequency spectrum through concessions, permits or licences. Public telecommunications services and intermediate services<sup>134</sup> concessions are granted by the MTT (through SUBTEL) by means of a Supreme Decree and remain valid for 30 years. A concession is also required to supply radio and television services<sup>135</sup>, in which case the concession remains valid for 25 years.<sup>136</sup> If for technical reasons it is only possible to grant a limited number of concessions (for example, because of frequency spectrum constraints), they are granted on the basis of competitive bidding. Concessions are granted to legal persons established and domiciled in Chile<sup>137</sup>; there are no restrictions on the origin of the capital. However, applications for free-reception radio broadcasting concessions submitted by corporations with more than 10 per cent of foreign capital will be issued only if it can be shown that in the country of origin of the capital

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<sup>128</sup> Undersecretariat of Telecommunications (SUBTEL) online data. Viewed at: [http://www.subtel.cl/prontus\\_subtel/site/artic/20070212/pags/20070212182348.html#T1](http://www.subtel.cl/prontus_subtel/site/artic/20070212/pags/20070212182348.html#T1)

<sup>129</sup> SUBTEL online data. Viewed at: <http://subtel.cl/>

<sup>130</sup> International Telecommunication Union. Viewed at: <http://www.itu.int/ITU-D/icteye/>

<sup>131</sup> SUBTEL (2008).

<sup>132</sup> SUBTEL (2008).

<sup>133</sup> Law No. 18.168, published on 2 October 1982, and amendments thereto.

<sup>134</sup> These include signal transmission and/or switching and long-distance telephony.

<sup>135</sup> Television broadcasting concessions are granted by resolution of the National Television Council (CNTV), in accordance with Article 27 of Law No. 18.838 establishing the CNTV.

<sup>136</sup> Article 8 of the LGT and Article 15 of Law No. 18.838.

<sup>137</sup> Article 21 of the LGT.

reciprocity is granted to Chilean companies.<sup>138</sup> Other telecommunications services require permits or licences. The granting of concessions, permits and licences is free of charge and the only fees payable are those for the use of the frequency spectrum; the procedures to be followed can be found on the SUBTEL website.<sup>139</sup>

139. Nationality requirements apply to free-reception broadcasting concession-holders. According to Article 22 of the LGT, the chairmen, managers, administrators and legal representatives of radio broadcasting companies must be Chilean.<sup>140</sup> However, foreign directors are allowed, provided that they do not constitute a majority. In the case of television concessions, the chairmen, directors, managers, administrators and legal representatives must all be Chilean.<sup>141</sup>

140. The holders of concessions to provide public telecommunications services and intermediate long-distance telephony services must establish and accept interconnections.<sup>142</sup> Any interested party may offer additional services through the public networks, by connecting equipment to those networks; the marketing of these services does not require the prior agreement of the public telecommunications services concession-holders, who may not discriminate between providers of additional services.

141. The LGT establishes a general free-pricing regime for the provision of telecommunications services, but also stipulates that if the TDLC determines that some services are not being supplied under competitive conditions, tariffs may be set.<sup>143</sup> The services liable to have their tariffs set are the public local and national and international long-distance telephone services (excluding mobile telephony), and signal switching and/or transmission services provided as an intermediate service or as private circuits. During the review period, it was decided to set tariffs only for local fixed telephony services and the decision ceased to be applied as from 2009.

142. If the TDLC determines that tariffs should be set, SUBTEL takes charge of the process of calculating them in accordance with the stages established by the relevant Tariff Regulations.<sup>144</sup> Under the LGT, every five years SUBTEL sets the maximum tariffs that can be applied by the public local telephony service concession-holders deemed to be dominant, together with the interconnection tariffs. The tariff decrees can be viewed on the SUBTEL website.<sup>145</sup>

143. A distinctive aspect of the Chilean legislation is that it provides for the setting of the interconnection tariffs that must be applied by all public telecommunications service concession-holders.<sup>146</sup> This is the case with the fixed-mobile access charges that are set for the mobile telephone companies and paid by the user who makes calls terminating in mobile networks. The method of calculating interconnection tariffs is complex and appears to have given rise to an imbalance, in that mobile telephone tariffs are much higher than those for fixed telephone calls.

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<sup>138</sup> Law No. 19.733 on the Freedoms of Opinion and Information and the Practice of Journalism (Article 9).

<sup>139</sup> SUBTEL online information. Viewed at: [http://www.subtel.cl/prontus\\_subtel/site/edic/base/port/p\\_auto\\_tramites.html](http://www.subtel.cl/prontus_subtel/site/edic/base/port/p_auto_tramites.html)

<sup>140</sup> See also Article 18 of Law No. 18.838 establishing the National Television Council.

<sup>141</sup> Article 18 of Law No. 18.838.

<sup>142</sup> Article 25 of the LGT.

<sup>143</sup> Article 29 of the LGT.

<sup>144</sup> Regulation No. 4 (16 January 2003) and Regulation No. 381 (29 July 1998).

<sup>145</sup> SUBTEL online information. Viewed at: [http://www.subtel.cl/prontus\\_subtel/site/artic/20070102/pags/2007010\\_2135454.html](http://www.subtel.cl/prontus_subtel/site/artic/20070102/pags/2007010_2135454.html)

<sup>146</sup> Article 25 of the LGT.

144. Holders of national and international long-distance telephone service concessions must be established as open corporations (i.e., subject to supervision by the SVS) and may be subsidiaries or associates of public telecommunications services concession-holders.

### (iii) Financial services

145. Chile has a diversified financial sector with a high degree of international integration. Since 2003, there have been no major regulatory changes in the banking sector, but there have been some in the insurance and pension fund sectors. For reasons of national interest, approval is required for a person to acquire more than 10 per cent of a bank's capital. Bank loans are subject to maximum interest rates. Foreign banks and insurance companies may provide services in Chile through locally incorporated companies or branches with separate capital. Foreign insurance companies have been allowed to establish branches since 2007; these companies may also engage in the direct marketing of international maritime and air transport insurance and insurance for goods in transit, but only if they are established in countries with which Chile has an international treaty that allows such insurance to be effected.

#### (a) Introduction

146. In 2008, financial services<sup>147</sup> accounted for 16.8 per cent of GDP in constant pesos, as compared with the 15 per cent recorded in 2003.<sup>148</sup> Between 2003 and 2008, financial services grew at an annual average real rate of 7.2 per cent. Employment in the sector rose from 8.1 per cent to 9.1 per cent in the same period.<sup>149</sup> During the review period, Chile's trade in financial and insurance services ran a deficit, which reached US\$657.9 million in 2008, as a result of imports worth US\$970.9 million and exports worth US\$313 million.<sup>150</sup>

147. Chile has a diversified financial sector with a high degree of international integration. The sector operates within a supervisory and regulatory framework that has been deemed adequate by international organizations.<sup>151</sup> The Basel I international banking rules have been applied since 1997 and progress is being made with the incorporation of the Basel II rules. The Chilean financial sector, especially banking, has one of the highest levels of solvency in the Latin American region.<sup>152</sup> In 2008, the average capital adequacy ratio of the Chilean banking system stood at about 12 per cent.<sup>153</sup>

148. The most important sectors of the financial services market are the banking, insurance and pension fund sectors. Since privatization in 1981, the latter (pension fund managers) have experienced a notable expansion. The local capital market is also important in terms of its size, when compared with other Latin American markets.<sup>154</sup>

149. Law No. 20.130 of 2006 provided for a gradual reduction in the stamp duty on lending operations (from 1.6 to 1.2 per cent of the principal in 2009) and exempted loan refinancing

<sup>147</sup> Includes financial services, insurance, property leasing and services provided to businesses.

<sup>148</sup> Central Bank data. Viewed at: <http://si2.bcentral.cl/Basededatos economicos>

<sup>149</sup> National Statistical Office (INE) data. Viewed at: <http://www.ine.cl/>

<sup>150</sup> Central Bank data. Viewed at: [http://si2.bcentral.cl/basede\\_datos economico/951\\_417.asp?m=BP\\_serv\\_X&f=T&i=E](http://si2.bcentral.cl/basede_datos economico/951_417.asp?m=BP_serv_X&f=T&i=E) and [http://si2.bcentral.cl/basededatoseconomico/951\\_417.asp?m=BP\\_serv\\_M&f=T&i=E](http://si2.bcentral.cl/basededatoseconomico/951_417.asp?m=BP_serv_M&f=T&i=E)

<sup>151</sup> IMF (2004b).

<sup>152</sup> *Superintendencia de Bancos e Instituciones Financieras* – SBIF (Banks and Financial Institutions Supervisory Authority) (2009).

<sup>153</sup> Central Bank of Chile (2008).

<sup>154</sup> IMF (2004a).

operations from payment of the duty. Law 20.326 of 20 of January 2009 provides for the non-application of the duty to lending operations during 2009, its application at a rate of 0.6 per cent in the first half of 2010 and a return to 1.2 per cent in the second half of 2010. Moreover, this law gradually reduces the rate applicable to instruments and documents pertaining to credit operations using demand deposits or without a maturity date. Law No. 20.291 of 15 of September 2008 abolished, from 1 October 2008, the taxes on the drawing of cheques and on transfers or payments made by order for payment.

(b) Banking sector

*General characteristics*

150. In December 2008, the assets of the Chilean banking system were valued at Ch\$103 trillion (US\$163,723 million), equivalent to about 116 per cent of GDP, while total deposits amounted to Ch\$61 trillion (US\$97,128 million), which amounts to 69 per cent of GDP.<sup>155</sup> On the same date, the Chilean banking system comprised 11 domestic private banks, 12 foreign private banks (subsidiaries and branches) and a State-owned bank (BancoEstado). The banks and branches under foreign ownership or control held about 41 per cent of total assets (45 per cent in 2002), while the domestic private banks held 44 per cent and the State-owned bank 15 per cent.<sup>156</sup>

151. Following the global trend, over the last 20 years Chile's banking sector has undergone increasing concentration, although during the period 2003-2008 the number of banking institutions remained relatively stable, declining slightly from 26 to 24 institutions. At the end of 2008, the five largest banks accounted for 73 per cent of total assets.<sup>157</sup> There are a few conglomerates with a substantial presence in various financial segments. The functions of the Committee of Supervisory Authorities, created in 2003 to coordinate the work of the three financial supervisory bodies<sup>158</sup>, with the participation of an observer from the Central Bank, include supervising the activities of the conglomerates through the exchange of information (Law No. 20.190).

152. During the period under review, there was an increase in the spread (see Chapter I). However, it is still relatively low, which reflects a high level of efficiency. The Chilean financial system is also characterized by the maintenance of a low level of dollarization and the availability of long-term credit, which reflects the widespread use of indexation instruments (such as UF).<sup>159</sup>

153. According to the Central Bank of Chile, the soundness of the Chilean banking system, associated with a low level of exposure to credit, market and liquidity risks, has enabled it to weather the global financial crisis. However, in view of the uncertain economic outlook, there has been a slowdown in business lending and consumer credit.<sup>160</sup>

<sup>155</sup> Information provided by the Chilean authorities.

<sup>156</sup> Information provided by the Chilean authorities.

<sup>157</sup> These are: Banco Santander-Chile (20.5 per cent), Banco de Chile (17.58 per cent), BancoEstado (14.9 per cent), Banco de Crédito e Inversiones (13.08 per cent), and Banco Bilbao Vizcaya Argentaria, Chile (7.52 per cent).

<sup>158</sup> The Banks Supervisory Authority, the Securities and Insurance Supervisory Authority, and the Pensions Supervisory Authority.

<sup>159</sup> IMF (2004a).

<sup>160</sup> Central Bank of Chile (2008).

*Legal and institutional framework*

154. Since 2003 there have been no fundamental changes in the institutional framework of the banking system. The main regulatory bodies are the *Superintendencia de Bancos e Instituciones Financieras* – SBIF (Banks and Financial Institutions Supervisory Authority), an autonomous institution linked to the Ministry of Finance, and the Central Bank of Chile. The SBIF is responsible for supervising the banks and other financial institutions.<sup>161</sup> The Central Bank establishes the reserve requirement for banks, the collateral and guarantee levels for foreign exchange transactions, and the maximum interest rate that the banks may charge. The competition authorities oversee the functioning of the banking market.

155. Since the last Review, there has been no substantial change in the basic banking legislation, namely, the *Ley General de Bancos* – LGB (General Law on Banks) and amendments thereto (Decree with Force of Law No. 3/1997 of the Ministry of Finance), although some important reforms have been introduced in such areas as the promotion of the venture capital industry (Law No. 20.190 of 5 June 2007, known as MK II) and old age pensions (Social Security Reform Law No. 20.2555 of 17 March 2008, see below). Most of the regulations relating to banking operations can be found in the Central Bank's Compendium of Financial Regulations.<sup>162</sup>

156. The registration and approval procedures for banks are laid down in Articles 27 to 39 of the LGB. Banks must be established as corporations or branches. The founding shareholders must provide the SBIF with a prospectus, a business plan for the first three years and a guarantee of 10 per cent of the capital of the proposed company, as well as meet solvency and integrity requirements. There are no limits on the number of shares that an individual investor may own in a bank or on the overall percentage of the banking system an investor may control. However, in the national interest, for a person to acquire, directly or through third parties, more than 10 per cent of a bank's capital the prior authorization of the SBIF is required.<sup>163</sup> The purpose of this provision is to prevent a person who does not meet the requirements of the Law acquiring a stake in a bank by purchasing shares. The minimum capital requirement for founding a bank is 800,000 UF (US\$28.7 million).

157. The SBIF may decide to reject the founding prospectus, within a period of 180 days, on the grounds that the shareholders do not meet the requirements laid down; failure of the SBIF to take a decision within this period will be interpreted as tacit approval and the licence will be deemed to have been granted (amendment introduced by Law No. 20.190, of 5 June 2007). The authorities have pointed out that in recent years applications to found a bank have always been processed in less than 180 days.

158. The legislation allows Chilean nationals and residents of Chile to make deposits in and obtain loans from banks located abroad. However, the cross-border supply of banking services is not permitted.

159. Subject to the approval of the SBIF, a foreign bank may operate in Chile by holding shares in a Chilean bank, establishing a corporation in Chile or setting up a branch with separate capital, in conformity with the LGB and Law No. 18.046 on the establishment of an agency of a foreign corporation. The capital and reserves that foreign banks allocate to their branches must be actually brought into the country and converted into the national currency. In operations between a branch and its parent company abroad, the two are deemed to be independent entities. There are no restrictions

<sup>161</sup> The SBIF's Statutes can be found in Title I of the General Law on Banks.

<sup>162</sup> The compendium can be viewed at: <http://www.bcentral.cl/normativa/normas-financieras/index.htm>

<sup>163</sup> Article 36 of the LGB.

with respect to the number of branches of foreign banks that can operate in the country. The LGB stipulates that for a foreign bank to obtain approval to participate in a Chilean bank, or to establish a branch in Chile, its operations must be adequately supervised in its home country and it must have the prior authorization of the competent regulatory body.<sup>164</sup> The branches of foreign banks are subject to the same regulations as domestic banks, can engage in the same activities<sup>165</sup> and can tap funds in the local market. A foreign bank may also maintain a representative office in Chile, subject to the approval of the Director of the SBIF; representative offices may not engage in banking business proper. The authorities have noted that since 2003 no applications from foreigners to establish a bank or branch in Chile have been refused.

160. Banks established in Chile, whether domestic or foreign, may set up and hold shares in banking support subsidiaries<sup>166</sup>, as well as companies with separate capital that offer various financial services permitted by law.<sup>167</sup> Banks may not participate as shareholders in companies that engage in activities other than the provision of the aforementioned services; specifically, they may not hold shares in insurance companies, industrial enterprises, commercial enterprises or public utility enterprises, among others. The LGB allows Chilean banks to carry on activities abroad, provided that they comply with minimum requirements of capital adequacy and the country in which they operate provides for adequate supervision.<sup>168</sup>

161. The authorities have tried to prevent a situation from arising in which, as a result of concentration, the banks adopt dominant position practices. Thus, limits are imposed on the maximum rates of interest (*tasa máxima convencional* – TMC (agreed maximum rate)) that banks may charge on loans, depending on the amount, the term and the currency and on whether or not the loans are adjustable for inflation.<sup>169</sup> In accordance with the reforms introduced in the Law on Consumers' Rights (2004)<sup>170</sup>, all financial institutions that offer consumer loans, including credit card companies, must respect the TMC. The competent authorities have intervened to prevent collusive practices in the consumer credit market.<sup>171</sup>

162. Chile has a deposit insurance system that covers 100 or 90 per cent of the amount deposited, depending on whether the deposits in question are sight or term deposits; in the latter case, there is a maximum of 120 UF (US\$4,320).<sup>172</sup>

163. Chile has signed the Fifth Protocol annexed to the GATS. In accordance with its Schedule of Specific Commitments, Chile does not impose any market access or national treatment limitations as regards commercial presence for providing banking services and supplementary services. Although, in its Schedule of Commitments, Chile maintains the right to require proof of need in the form of an authorization from the SBIF or the SVS, that proof has been eliminated by amendments to the

<sup>164</sup> Article 29 of the LGB.

<sup>165</sup> Article 69 of the LGB lists the activities in which banks may engage.

<sup>166</sup> Defined as the activities that provide services intended to facilitate the achievement of the purposes of the banking institution.

<sup>167</sup> Namely, over-the-counter securities agents, stock exchange brokers, mutual fund, investment fund or foreign capital fund management, asset securitization, insurance brokers, leasing operations, factoring, financial advisory services, securities custody, loan recovery and advisory services relating to the pensions system.

<sup>168</sup> Article 76 of the LGB.

<sup>169</sup> In January 2009, the TMC for non-indexed loans in national currency with a term of less than 90 days in an amount equivalent to up to 5,000 UF was 29.91 per cent, and 22.2 per cent for loans of more than 5,000 UF. See: <http://www.sbif.cl/sbifweb/servlet/InfoFinanciera?indice=4.2.1&FECHA=1/1/2009>

<sup>170</sup> Law No. 19.496 of 1997 as amended by Law No. 19.955 of July 2004.

<sup>171</sup> See, for example, TDLC Judgment No. 63 of April 2008.

<sup>172</sup> On 31 March 2009, 1 UF was equivalent to US\$36.



banking and insurance laws. Foreign banks must be companies legally established in their country of origin, acquire legal personality in Chile and put up the capital specified by law. In accordance with Chile's commitments, foreign investors in the financial sector can transfer their capital abroad two years after it was brought in<sup>173</sup> (the situation that prevails in practice as far as capital repatriation is concerned is described in Chapter II(3)).

164. Some of Chile's RTAs incorporate financial services chapters, for example, the agreements with Japan, Australia, the European Union and the United States. Other agreements envisage future negotiations for their inclusion, for example, the agreements with Korea, EFTA, Colombia, Peru, China and the P-4. In other cases, financial services are not included (agreement with Central America). The SBIF has concluded memoranda of understanding with the United States, Spain, Argentina, the Dominican Republic and Peru.

(c) Insurance

*General characteristics*

165. During the review period, the assets of the insurance companies increased steadily; in 2008 they amounted to US\$33,652 million (as compared with US\$14,559 million in 2003) and accounted for 19.9 per cent of GDP. During the same period, the net worth of the insurance companies increased from US\$2,356 million to US\$3,280 million.<sup>174</sup> In 2007, insurance premiums accounted for 3.57 per cent of GDP; the general insurance companies contributed 1.19 per cent, while the life insurance companies contributed 2.38 per cent.<sup>175</sup> The Chilean insurance sector is relatively large; its expansion is linked to the growth of the pension funds, which by law must cover the risks of death and disability resulting from occupational accidents suffered by their members.

166. At the end of 2008, there was a total of 52 insurance companies (as compared with 53 in 2003), of which 23 were in general insurance and 29 in life insurance.<sup>176</sup> The latter dominate the market with about 70 per cent of total premiums. In both groups, foreign companies hold a majority stake: 67 per cent in the general insurance market and 58 per cent in the life insurance market. In 2008, there were also 103 reinsurance companies, 48 reinsurance brokers, 187 adjusters and 2,269 insurance brokers operating in the market.<sup>177</sup>

*Legal and institutional framework*

167. The Securities and Insurance Supervisory Authority (SVS), an autonomous institution linked with the Ministry of Finance, is responsible for supervising the activities and entities involved in the Chilean securities and insurance market, as well as for regulating those activities. The Insurance Law (Decree with Force of Law No. 251 of 1931 and its amendments) constitutes the basic legislative framework for the insurance industry. The Commercial Code (rules governing insurance contracts), Decree Law No. 1.092 of 1975 on mutual insurance societies, and Law No. 18.490 of 1986 on compulsory personal accident insurance (SOAP) are also applicable.

168. To provide insurance and reinsurance services in Chile it is necessary to obtain the approval of the SVS. The Insurance Law reserves these activities for companies incorporated in Chile for this

<sup>173</sup> WTO documents GATS/SC/18, of 15 April 1994, and GATS/SC/18/Suppl.3, of 26 February 1998.

<sup>174</sup> SVS figures. Viewed at: [http://www.svs.cl/sitio/estadisticas/seg\\_market.php](http://www.svs.cl/sitio/estadisticas/seg_market.php)

<sup>175</sup> Information provided by the Chilean authorities.

<sup>176</sup> SVS figures. Viewed at: [http://www.svs.cl/sitio/estadisticas/seg\\_market.php](http://www.svs.cl/sitio/estadisticas/seg_market.php)

<sup>177</sup> SVS figures. Viewed at: [http://www.svs.cl/sitio/estadisticas/seg\\_market.php](http://www.svs.cl/sitio/estadisticas/seg_market.php)

sole purpose.<sup>178</sup> However, Law No. 20.190 of June 2007 (Law MK II) introduced an important reform by authorizing foreign insurance companies to establish branches with separate capital in Chile. Once authorized by the SVS, branches of foreign companies have the same rights and obligations as domestic insurance companies.

169. In general, insurance entities from abroad may not offer or effect insurance in Chile, either directly or through intermediaries. Nevertheless, as a result of another reform introduced by Law No. 20.190, since 2007 foreign insurance companies may sell international maritime and air transport insurance and insurance for goods in transit. However, this authorization is restricted to foreign insurance entities established in a country with which Chile has an international treaty that allows this insurance to be effected. This applies to the treaties with the United States, the European Communities, Japan and Australia.

170. Decree with Force of Law No. 251 also stipulates that any Chilean natural or legal person may take out insurance freely abroad, subject to the foreign exchange legislation. However, compulsory insurance (SOAP) and insurance relating to the pension and social security systems are excluded and must be taken out in Chile.

171. To establish an insurance company it is necessary to meet a minimum capital requirement of 90,000 UF (US\$3.2 million) and in the case of a reinsurance company 120,000 UF (US\$4.3 million).<sup>179</sup> Life insurance companies may not offer general insurance and vice versa. Moreover, insurance companies may only reinsure risks of the same group as that in which they are authorized to operate. Credit risks must be insured with a general insurance company whose sole purpose is to cover this type of risk.

172. An applicant for a licence to operate a general insurance company may request a decision by the SVS after 60 days. After that, the SVS will have five days to rule on the application; if there is no reply, the application is deemed to have been rejected. In practice, the SVS provides a report indicating the basis for its rejection. Following the entry into force of the Law on Transparency in April 2009, the SVS is under the obligation to explain the reasons for rejection. Where life insurance is concerned, the SVS has 90 days within which to approve or reject the application; if it fails to notify its decision, the licence is deemed to have been granted. The authorities have noted that the average time taken to authorize a licence varies between 45 and 60 days.

173. Foreign insurance companies may operate in Chile by establishing a corporation or, since 2007, a branch with separate capital, subject to SVS approval; they may also maintain a representative office. There are no restrictions on the number of branches that foreign insurance companies may establish in Chile. Foreign entities may carry out reinsurance operations without the need to establish themselves in Chile, provided that they have an international risk rating of at least BBB, appoint a representative in Chile and are enrolled in the SVS's register of foreign reinsurers.

174. Insurers can set premiums freely. Intermediation commissions are also agreed freely between the insurer and the insurance broker. The amounts insured, premiums and claims must be expressed in UF, unless the contracts are in foreign currency. The law authorizes insurance companies to invest in instruments and assets abroad up to a maximum of 20 per cent of their technical reserves and risk capital.

175. Insurance brokers must be registered with the SVS. To engage in this activity it is necessary to be Chilean or a foreigner established in Chile and, in the case of a legal person, to have been legally

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<sup>178</sup> Article 4 of Decree with Force of Law No. 251.

<sup>179</sup> Articles 7 and 16 of Decree with Force of Law No. 251.

incorporated in Chile for the purpose. However, Law No. 20.190 allows international maritime and air transport insurance and insurance for goods in international transit to be intermediated in Chile by natural or legal persons established in a country with which Chile has an international treaty that permits such insurance to be effected from that country.<sup>180</sup> Foreign reinsurance brokers are subject to the same requirements with respect to registration and the issuance of insurance policies as domestic brokers and must be legal persons established in their country of origin, with the capacity to intermediate risks transferred from abroad and pay claims in convertible currency.

176. In accordance with its Schedule of Commitments under the GATS, in addition to the previously mentioned evidence of economic need (see (iii) above), Chile may restrict or prescribe, in a non-discriminatory manner, the type of commercial presence that must be adopted by firms operating in the Chilean securities and insurance sector. With regard to market access, it is stipulated that insurance services may only be provided by companies incorporated in Chile that offer life or general insurance. Insurance brokers must be enrolled in the SVS's register and the service may be provided only by legal persons incorporated in Chile for the purpose. For the cross-border supply of services, foreign reinsurance companies and foreign reinsurance brokers must be enrolled in the SVS's register of foreign reinsurers.<sup>181</sup> Chile has not submitted a revised financial services offer to the WTO.

177. As in the case of banking services, some of the RTAs signed by Chile include provisions on insurance in the respective financial services chapters; other agreements envisage future negotiations with a view to their inclusion. The SVS has not signed any memoranda of understanding with its counterparts in other countries.

(d) Pension funds

*General characteristics*

178. Chile's pension system was privatized in 1981. Since then, it has become one of the most dynamic sectors of the Chilean financial system and has served as a model for the pension systems of several Latin American countries. It is a compulsory individual capital account system designed to receive the social security savings of the affiliated workers, who must each month pay 10 per cent of their wages into a personal account with the *Administradora de Fondos de Pensiones* – AFP (pension fund management company) of their choice. At the end of 2008, there were 8,372,022 people affiliated to the Individual Capital Account Pension System, which is equivalent to almost half the population of Chile (16.8 million).<sup>182</sup>

179. The AFPs, private institutions responsible for managing individual accounts through a Pension Fund, are the largest institutional investor in the Chilean financial market. The total value of the assets of the AFPs amounted to US\$82,226 million on 31 March 2009 (almost 50 per cent of GDP).<sup>183</sup> There is a high level of concentration in the pension fund market owing to the existence of economies of scale.<sup>184</sup> The number of AFPs fell from a maximum of 21 in 1994 to seven in 2003 and five in 2009. In four of the AFPs, some of the majority shareholders are controlled by foreign entities.

180. A recent study, commissioned by the OECD, indicates that the privatization of Chile's pension system has been successful in improving its long-term sustainability, creating a fairer system,

<sup>180</sup> Article 58 *bis* of Decree with Force of Law No. 251.

<sup>181</sup> WTO document GATS/SC/18/Suppl.3, of 26 February 1998.

<sup>182</sup> Pensions Supervisory Authority. Viewed at: [http://www.safp.cl/573/articles-5945\\_resource\\_1.pdf](http://www.safp.cl/573/articles-5945_resource_1.pdf)

<sup>183</sup> Pensions Supervisory Authority (2009).

<sup>184</sup> SAFP (2006).

promoting the development of capital markets and removing some distortions in the operation of labour markets. However, it notes that there is room for operational costs and prices to go down, as well as for improvements in the extent and quality of the funded pension programme coverage. The study concludes that, while some regulatory changes could improve these aspects, the long-term solution lies in the creation of more jobs in the formal sector, the reduction of unemployment and an increase in the retirement age.<sup>185</sup>

*Legal and institutional framework*

181. The *Superintendencia de Pensiones* – SP (Pensions Supervisory Authority) is the public body responsible for authorizing the establishment of AFPs, overseeing the legal, administrative and financial aspects of their functioning and regulating their operations.

182. The pension fund sector is governed mainly by Decree Law No. 3.500 of 1980, which created the individual capital account system managed by the AFPs. During the review period, reforms were introduced in the pension legislation, in particular those effected by Law No. 20.255, published on 17 March 2008. Among other things, Law No. 20.255 extended the scope of the system by making it compulsory for the self-employed as well; allowed the insurance companies to set up their own AFPs; increased the options and the maximum limits for investment in domestic and foreign instruments available to the Pension Funds<sup>186</sup>; and established a public tender mechanism for allocating new compulsory accounts. Another of the principal objectives of the reform was to expand the social protection.

183. AFPs must be established as sole-purpose corporations, subject to the approval of the SP. Any Chilean or foreign person, natural or legal, may be a shareholder in an AFP. There are no restrictions on the participation of foreign investment in the equity of an AFP. The minimum capital requirement for establishing an AFP is 5,000 UF (US\$179,500).<sup>187</sup> AFPs may charge commissions, which they may set freely and which must be uniform for all those affiliated to the same AFP. Moreover, AFPs must provide a minimum rate of return on the Pension Funds they manage. The resources of the Pension Funds may only be invested in the securities expressly established by law and the level of risk varies according to the Fund.

184. Chile has not made any specific commitments with regard to pension funds under the GATS.

**(iv) Air transport and airports**

185. Chile practises an "open skies" policy based on free market entry and free pricing. However, for foreign companies market entry is subject to the principle of reciprocity. Chile has negotiated 43 bilateral air transport agreements with different degrees of openness; more than half of these agreements grant fifth and sixth freedom rights and several also grant the seventh freedom. There are no restrictions on private or foreign participation in Chilean airports; the 12 main airports are State-owned, but nine of them have been put out on concession to the private sector.

**(a) General characteristics**

186. During the period 2003-2008, international passenger traffic (expressed as the number of passengers per kilometre flown or pax-km) increased by 46 per cent, driven by strong economic

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<sup>185</sup> OECD (2009b).

<sup>186</sup> For more information, see Article 45 of Decree Law 3.500 (as amended by Law No. 20.255).

<sup>187</sup> On 31 March 2009, 1 UF was equivalent to US\$36.

growth.<sup>188</sup> However, since the first quarter of 2009 the effects of the global economic crisis on the Chilean aviation industry have become more noticeable: in January-March 2009, international passenger traffic fell by 12 per cent as compared with the same period in the previous year.<sup>189</sup> In 2007, less than 1 per cent of Chile's foreign trade, expressed in tonnes, was moved as air cargo.<sup>190</sup> Between 2003 and 2008, international cargo traffic (measured in tonnes per kilometre flown) progressed slowly, increasing by only 16 per cent during the period.<sup>191</sup> In the first quarter of 2009 international cargo traffic was 20.1 per cent down on the corresponding figure for 2008.

187. In 2008, the exports and imports carried by Chile's air transport services were valued at US\$2,025.3 million and US\$1,166.2 million, respectively.<sup>192</sup> In 2008, airline companies incorporated in Chile carried 48 per cent of international passenger traffic (expressed in pax-km) and held 50 per cent of the international air cargo market.<sup>193</sup>

188. The domestic air transport market is highly concentrated, with one dominant player (the Lan Group) and several smaller ones (SKY, PAL and Aero DAP). Competition in the international market has intensified in recent years with the entry of low-cost airlines. At the beginning of 2008, there was a total of 32 airline companies providing international passenger and cargo air transport services in Chile.

189. A study of the industrial organization of the Chilean domestic air transport industry has concluded that, despite the high level of concentration, the markets are sufficiently competitive, among other things, because there are no legal obstacles to entry or real restrictions on the ability of a foreign operator to access the domestic markets. However, the study suggests that there is room to increase competition and prevent the use of anticompetitive practices.<sup>194</sup>

190. The Chilean airport network comprises 330 airports and airfields. The *Dirección General de Aeronáutica Civil* – DGAC (Directorate-General of Civil Aeronautics) manages 35 of them and also performs supervisory and control functions in relation to the rest. The primary network is composed of 12 State-owned airports with facilities for international operations, of which nine are managed by domestic and foreign private concession-holders. The secondary network comprises 13 airports that provide links between the country's main cities, the rest being public and private airfields.<sup>195</sup> Merino Benítez international airport, which serves the metropolitan area of Santiago handles more than 98 per cent of international passengers and cargo. In 2008, this airport recorded 4.8 million passenger arrivals and departures (as compared with 3 million in 2002).<sup>196</sup>

191. Since 1997 nine concessions have been granted to private companies for airport construction, maintenance and management, which has made it possible to expand and modernize the main regional airports. Concessions are granted through competitive bidding for a fixed term. The dominant airline

<sup>188</sup> *Junta de Aeronáutica Civil* – JAC (Civil Aeronautics Board) online data. Viewed at: [http://www.jac-chile.cl/OpenSupport\\_EstadisticasVuelo/asp/pagDefault.asp?argInstanciaID=48](http://www.jac-chile.cl/OpenSupport_EstadisticasVuelo/asp/pagDefault.asp?argInstanciaID=48)

<sup>189</sup> JAC online data. Viewed at: <http://www.jac-chile.cl/OpenNews/asp/pagDefault.asp?argInstanciaId=1&argNoticiaId=41&argEdicionId=1>

<sup>190</sup> Information provided by the Chilean authorities.

<sup>191</sup> JAC data. Viewed at: [http://www.jac-chile.cl/OpenSupport\\_EstadisticasVuelo/](http://www.jac-chile.cl/OpenSupport_EstadisticasVuelo/)

<sup>192</sup> Central Bank figures. Viewed at: [http://si2.bcentral.cl/basededatoseconomico/951\\_417.asp?m=BP\\_serv\\_X&f=T&i=E](http://si2.bcentral.cl/basededatoseconomico/951_417.asp?m=BP_serv_X&f=T&i=E) and [http://si2.bcentral.cl/basededatoseconomico/951\\_417.asp?m=BP\\_serv\\_M&f=T&i=E](http://si2.bcentral.cl/basededatoseconomico/951_417.asp?m=BP_serv_M&f=T&i=E)

<sup>193</sup> JAC figures. Viewed at: [http://www.jac-chile.cl/OpenSupport\\_EstadisticasVuelo/](http://www.jac-chile.cl/OpenSupport_EstadisticasVuelo/)

<sup>194</sup> Agostini (2006).

<sup>195</sup> DGAC data. Viewed at: <http://www.mop.cl/dap/>

<sup>196</sup> Information provided by the Chilean authorities.

company has a minority stake in several of the airport concession-holders.<sup>197</sup> The State does not participate in the supply of air transport services, except insofar as it controls air traffic and collects fees for air traffic control and use of the airports.

(b) Legal and institutional framework

192. Since the last Review there have not been any fundamental changes in the legal and institutional framework for air transport in Chile. The legislation comprises: the Charter of the Civil Aeronautics Board (Decree with Force of Law No. 241 of 1960); the Law on Commercial Aviation (Decree Law No. 2.564 of 1979) establishing the basis of Chilean commercial aviation policy; Law No. 18.916 of 1990 approving the Aeronautics Code (as amended by Law No. 19.366 of 1995); the Law on the Organization of the Directorate-General of Civil Aeronautics (Law No. 16.752 of 1968); and Supreme Decree No. 102 of 1981 of the Ministry of Transport and Telecommunications establishing the public tender procedures for the allocation of international frequencies to domestic airline companies. International air transport is governed by 43 bilateral agreements and three multilateral agreements negotiated by Chile (see below).

193. The public institutions that regulate the commercial air transport sector are the DGAC of the Ministry of National Defence, which functions as the national aviation authority<sup>198</sup>; the *Junta de Aeronáutica Civil* – JAC (Civil Aeronautics Board), responsible for commercial aviation policy and for negotiating reciprocity in international agreements<sup>199</sup>; and the *Dirección Nacional de Aeropuertos* – DAP (National Directorate of Airports), which is entrusted with planning the development of the airport infrastructure.<sup>200</sup>

194. In accordance with its legislation, Chile practises an "open skies" commercial air transport policy, based on free market entry, free pricing and minimum official intervention. No licences are required to enter the market; both Chilean and foreign companies may furnish air transport services in the country, provided that they comply with the technical requirements and hold the compulsory insurance.<sup>201</sup>

195. However, free market entry for foreign companies is subject to the principle of reciprocity in their country of origin. The JAC may restrict the access of foreign companies to the domestic market if their country of origin applies restrictions on Chilean companies, or if the foreign company operates a route that is restricted by a third country for Chilean companies and this restriction is deemed to have a significant impact on the Chilean airlines.<sup>202</sup> Any airline company incorporated and domiciled in Chile is regarded as a domestic airline company, regardless of whether the shareholders, board members and/or executives are or are not Chilean and reside or do not reside in Chile. However, for an aircraft to be registered in Chile more than 50 per cent of the capital must belong to Chilean natural or legal persons. A Chilean airline company can use both Chilean and foreign-registered aircraft to provide air transport services.

196. Airline companies can establish their tariffs freely, but must register them with the JAC. The authority is not authorized to set or challenge tariffs. However, exceptionally it may set tariffs on international routes where the authority of the other country involved does not accept free pricing,

<sup>197</sup> Agostini (2006).

<sup>198</sup> For further information see the DGAC website at: <http://www.dgac.cl/portal/>

<sup>199</sup> For further information see the JAC website at: <http://www.jac-chile.cl/>

<sup>200</sup> For further information see the DAP website at: <http://www.mop.cl/dap/>

<sup>201</sup> Article 1 of Decree Law No. 2.564.

<sup>202</sup> Article 2 of Decree Law No. 2.564.

although this has never happened in practice.<sup>203</sup> It should be noted that before approving the merger between Lan Chile and Ladeco in 1995, the Resolutive Commission (predecessor of the TDLC) required these companies to submit a plan for the self-regulation of tariffs that establishes certain restrictions with respect to the tariffs that Lan Chile may charge in the domestic markets.<sup>204</sup>

197. There are no restrictions on the participation of foreign investors in airport concessions.

198. There are no legal provisions requiring national aircraft to be repaired or maintained in Chile. Both domestic and foreign companies can provide aircraft maintenance services in Chile. There are no restrictions on the supply of ground handling services by domestic or foreign companies. Providers of computer reservation services do not have to be established in Chile in order to offer their services. Moreover, there are no restrictions on the number of providers of computer reservation systems that can operate in Chile, or on the number of travel agencies to which these providers can offer their services.

199. In conformity with its air transport liberalization policy, by 2009 Chile had negotiated 43 bilateral air transport agreements or conventions with varying degrees of openness (Table IV.3). In 35 of these agreements third and fourth freedom rights are established without restrictions (in another eight cases the number of flights is restricted). In 26 agreements fifth and sixth freedom rights are also granted. In addition, in 16 cases the agreements grant the seventh freedom (with respect to passenger or cargo transport). Moreover, in seven bilateral conventions the right of air cabotage is granted. The authorities have pointed out that their policy is to achieve the greatest possible openness in each agreement, but that frequently the degree of openness achieved depends on what the other party is prepared to accept. In general, the agreements concluded by Chile, in particular the most recent, are fairly liberal and its air transport liberalization policy has been deemed to be "best practice".<sup>205</sup>

200. Chile has included a chapter on air transport in some of its RTAs (for example, those with Central America and Mexico) by incorporating bilateral conventions within the framework of these agreements. Chile participates in the Fortaleza Agreement on regional air transport services concluded with Argentina, Bolivia, Brazil, Paraguay, Peru and Uruguay. Chile also forms part of the multilateral air transport agreement concluded between various members of APEC (Brunei, Chile, United States, New Zealand, Peru, Samoa and Singapore). Moreover, in 2003, Chile, together with Brunei, New Zealand and Singapore, signed an optional protocol to the APEC agreement permitting national cabotage and the seventh freedom for passenger transport.

201. Under the GATS, Chile made specific commitments on aircraft maintenance and auxiliary air transport services. Chile's Schedule permits the commercial presence of foreign providers to offer aircraft maintenance services, the opening of offices, the issue and sale of air transport fares and tickets, the ground operation of support equipment and computer reservation systems; for the latter cross-border supply was also bound (Table AIV.1).

<sup>203</sup> JAC online information. Viewed at: <http://www.jac-chile.cl>

<sup>204</sup> Resolution No. 496 of 1997 of the Resolutive Commission approved the plan proposed by Lan and Ladeco.

<sup>205</sup> IATA, Agenda for Freedom. Viewed at: <http://www.agenda-for-freedom.aero/agenda/>

Table IV.3  
Rights for foreign airlines in Chile

Country	Year	Between territories of the parties	Between counterparty territory and third countries	From counterparty territory to third countries	Within counterparty territory
		3rd and 4th freedoms	5th and 6th freedoms	7th freedom	Cabotage
England <sup>b</sup>	2008	Open skies	Open skies	Open skies	Open skies
Paraguay	2005	Open skies	Open skies	Open skies	Open skies
Uruguay <sup>a</sup>	2003	Open skies	Open skies	Open skies	Open skies
Brunei	2002	Open skies	Open skies	Open skies	Open skies
New Zealand	2002	Open skies	Open skies	Open skies	Open skies
Singapore	2002	Open skies	Open skies	Open skies	Open skies
United Arab Emirates	2005	Open skies	Open skies	Open skies	Open skies
Finland	2005	Open skies	Open skies	Open skies	Without rights
United States	2002	Open skies	Open skies	Open skies (cargo)	Without rights
Guatemala	1999	Open skies	Open skies	Open skies (cargo)	Without rights
Panama	1997	Open skies	Open skies	Open skies (cargo)	Without rights
Dominican Republic	2006	Open skies	Open skies	Open skies (cargo)	Without rights
Jamaica	2006	Open skies	Open skies <sup>h</sup>	Open skies (cargo)	Without rights
Ecuador	2007	Open skies	Open skies <sup>c</sup>	21 flights/week	Without rights
Malaysia	2009	Open skies	Open skies	Without rights	Without rights
Belgium <sup>a</sup>	2001	Open skies	Open skies	Without rights	Without rights
Korea	2001	Open skies	Open skies	Without rights	Without rights
Denmark	2001	Open skies	Open skies	Without rights	Without rights
Netherlands	2001	Open skies	Open skies	Without rights	Without rights
Luxembourg <sup>a</sup>	2001	Open skies	Open skies	Without rights	Without rights
Norway	2001	Open skies	Open skies	Without rights	Without rights
Sweden	2001	Open skies	Open skies	Without rights	Without rights
Aruba	1999	Open skies	Open skies	Without rights	Without rights
Costa Rica	1999	Open skies	Open skies	Without rights	Without rights
Brazil <sup>b</sup>	2008	Open skies	Open skies <sup>e,f</sup>	Without rights	Without rights
Colombia	1993	Open skies	Open skies <sup>d</sup>	Without rights	Without rights
China	2009	Open skies	Open skies (6a) <sup>g</sup>	Without rights	Without rights
Argentina	1996	Open skies	Open skies (6a)	Open skies (cargo)	Without rights
Spain	2008	Open skies	19 flights/week	Without rights	Without rights
Canada	2001	Open skies	14 flights/week	Without rights	Without rights
Switzerland	2001	Open skies	7 flights/week	Without rights	Without rights
Italy	1999	Open skies	7 flights/week	Without rights	Without rights
Bolivia	1998	Open skies	Without rights	Without rights	Without rights
Cuba	1995	Open skies	2 points	Without rights	Without rights
Israel	1982	Open skies	To be determined	Without rights	Without rights
Peru	2007	28 flights/week	14 flights/week	Open skies (cargo)	Without rights
India <sup>a</sup>	2007	14 flights/week	14 flights/week	Open skies (cargo)	Without rights
Germany	1998	9 flights/week	9 flights/week	Without rights	Without rights
France (Paris)	1998	7 flights/week	7 flights/week	Without rights	Without rights
France (Papete)	1998	7 flights/week	7 flights/week	Without rights	Without rights
Australia	1998	7 flights/week	7 flights/week	Without rights	Without rights
Mexico	1998	10 flights/week	Without rights	Without rights	Without rights
Venezuela	1992	2 flights/week	2 flights/week	Without rights	Without rights
		Open skies with 35 countries	Open skies with 26 countries	Open skies with 16 countries	Open skies with 7 countries

a Agreement signed but not ratified.

b Agreement initialled but not yet signed.

c Open skies within Latin America; up to 15 scheduled flights outside the region.

d Open skies within Latin America; up to 3 scheduled flights outside the region.

e Open skies within South America.

f Outside of South America up to 56 passenger flights/week and 37 cargo flights/week in 2012.

g With 5th freedom: 7 scheduled passenger flights and 14 cargo flights.

h With the exclusion of Miami, New York and Toronto.

Note: Open skies means without limitation on the number of flights or operating points.

Source: Chile Civil Aeronautics Board (JAC).



**(v) Maritime transport and ports**

202. In accordance with its legislation, Chile may require reciprocity where international maritime traffic cargoes are concerned. Cabotage is reserved for vessels registered in Chile, although exceptions are allowed. To register a vessel in Chile more than 50 per cent of the capital must be owned by Chilean natural or legal persons. A 5 per cent tax is levied on the income from maritime freight transport to or from Chilean ports received by persons not domiciled in Chile, unless the country in which the foreign vessels are registered offers reciprocity to Chilean vessels. There are no restrictions on foreign participation in Chilean ports; most of them are privately owned and considered efficient by world standards.

**(a) Maritime transport**

203. In 2008, the value of Chile's exports and imports of maritime transport services amounted to US\$4,031 million and US\$4,877 million, respectively.<sup>206</sup> During the review period, both exports and imports of these services increased considerably due to the rapid expansion of Chile's international trade; during 2008, 91.7 per cent of Chilean foreign trade tonnage and 84.6 per cent of its foreign trade in value terms was carried by sea.<sup>207</sup> The national merchant fleet consists of 192 vessels with a total transport capacity of 951,046 deadweight tonnes.<sup>208</sup> There are two Chilean companies among the world's first 30 shipping lines.<sup>209</sup>

204. Maritime transport and port activities are governed by the Shipping Law (Decree Law No. 2.222 of 31 May 1978), the *Ley de Fomento a la Marina Mercante* – LFMM (Law on the Development of the Merchant Marine) contained in Decree Law No. 3.059 of 22 December 1979 and its regulations (Supreme Decree No. 237 of 25 July 2001), and the Law on the Modernization of the State Port Sector (Law No. 19.542 of 19 December 1997).

205. The main public institutions involved in the regulation of maritime transport are: the Transport Undersecretariat of the Ministry of Transport and Telecommunications, responsible for the commercial aspects of international maritime transport and cabotage; the *Dirección General del Territorio Marítimo y de Marina Mercante* – DIRECTEMAR (Directorate-General of the Maritime Territory and Merchant Marine) of the Ministry of National Defence, which is responsible for the technical aspects of the merchant marine and safety at sea; and the Merchant Marine Development Commission, which oversees the application of the principle of reciprocity where cargo preferences are concerned.

206. According to Article 11 of the Shipping Law, for a vessel to be registered in Chile its owner must be a Chilean person. Where legal persons are concerned, they must be incorporated in Chile, a majority of the directors or managers must be Chilean, and more than 50 per cent of the capital must be controlled by Chilean natural or legal persons. However, vessels, other than fishing vessels, owned by foreigners may be registered in Chile if their owners are domiciled in the country, if the principal location of their business is Chile or if they are permanently engaged in an industry or profession in Chile. Once a vessel has been entered in the corresponding Register, it is deemed to be Chilean.

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<sup>206</sup> Information provided by the Central Bank of Chile. Viewed at: [http://si2.bcentral.cl/basededatoseconomico/951\\_417.asp?m=BP\\_serv\\_X&f=T&i=E](http://si2.bcentral.cl/basededatoseconomico/951_417.asp?m=BP_serv_X&f=T&i=E) and [http://si2.bcentral.cl/basededatoseconomico/951\\_417.asp?m=BP\\_serv\\_M&f=T&i=E](http://si2.bcentral.cl/basededatoseconomico/951_417.asp?m=BP_serv_M&f=T&i=E)

<sup>207</sup> National Customs Service figures provided by the Chilean authorities.

<sup>208</sup> Information provided by the Chilean authorities.

<sup>209</sup> According to the AXS-Alphaliner Top 100 register, cited in CIMA Ingeniería EIRL (2008).

However, for it to fly the national flag the captain of the vessel and its officers and crew must be Chilean.<sup>210</sup>

207. Under the legislation, the Chilean authorities are empowered to subject access to cargoes in international maritime traffic to the principle of reciprocity. According to Article 4 of the LFMM, the percentage access of foreign merchant vessels to maritime cargoes, from or to Chile, depends on the percentage access allowed, in the corresponding traffic, to Chilean vessels by the country in question. The Chilean authorities have pointed out that, being discretionary, the reciprocity requirement is applied flexibly and only in response to limitations on access to cargoes imposed by the countries of origin of the foreign vessels.

208. National maritime cabotage is reserved for vessels registered in Chile (Article 3 of the LFMM). However, foreign merchant vessels may participate in national cabotage if the volumes of cargo involved exceed 900 tonnes, subject to a public tender procedure organized by the user. In this case, and solely for tender acceptance purposes, bids involving foreign vessels are increased by a percentage equivalent to the general customs tariff rate. If the cargo volume is equal to or less than 900 tonnes and no Chilean vessels are available, cabotage in foreign merchant ships may be allowed. Such authorization may also be given for the exclusive transport of passengers. Moreover, foreign vessels are also allowed to carry empty containers in cabotage traffic, subject to reciprocity.

209. The legislation allows Chilean or foreign shipping companies that provide international freight and passenger transport services to recoup the VAT paid to purchase or import goods or use services, insofar as these operations are necessary for the development of their activities.<sup>211</sup> The Income Tax Law establishes an additional 5 per cent tax on the income received by persons not domiciled or resident in Chile by way of charges for carrying maritime freight to or from Chilean ports.<sup>212</sup> The tax is not applied if in the country in which the foreign vessels are registered there is no similar tax or Chilean shipping companies are granted exemptions. This tax was included in Chile's List of MFN Exemptions under the GATS. The authorities have explained that the tax is seldom applied.

210. Chile is a signatory to the United Nations Convention on the Law of the Sea, has been a member of the International Maritime Organization since 1972, and has signed various international maritime transport agreements. Moreover, Chile applies a Bilateral Agreement on Maritime Transport concluded with Brazil in 1974. Chile has not made any specific commitments on maritime transport under the GATS.

(b) Ports

211. Chile has 36 ports, of which 10 are State-owned and 26 are in private ownership. Of the latter, 15 are for public use and 11 for private use. Six of the State-owned ports are operated by private companies under concessions. As far as cargo handling is concerned, the most active ports are Quintero, San Antonio, Valparaíso, Huasco, Lirquén, San Vicente and Mejillones. The volume of freight moved through Chilean ports (including transit, but excluding cabotage) rose from 58.8 million tonnes in 2003 to 83.6 million tonnes in 2007. In 2007, the privately owned ports handled 64 per cent of cargo (mainly bulk), while the rest was handled by the State port enterprises

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<sup>210</sup> Articles 13 and 14 of the Shipping Law.

<sup>211</sup> Article 7 of the LFMM.

<sup>212</sup> Article 59, No. 4, of the Income Tax Law.

(including private concession-holders). During the review period, the freight volume carried by cabotage remained almost static, amounting to 12.3 million tonnes in 2007.<sup>213</sup>

212. The State port enterprises<sup>214</sup> manage the State-owned ports for public use and are governed by Law No. 19.542. Private companies may participate through port concessions for operating wharves or through cargo handling under the multi-operator system. Concessions are granted by the State port enterprises under a public tender procedure, in accordance with the Regulations established by Supreme Decree No. 104 (1998) of the Ministry of Transport and Telecommunications. Chilean or foreign natural or legal persons may participate in the bidding. The *Sistema de Empresas* (SEP) (Enterprise System) oversees the management of the State port enterprises.

213. To engage in port activities in a private port it is necessary to obtain a maritime concession granted directly by the Marine Undersecretariat of the Ministry of Defence; the port thus put out on concession may decide whether it will be for public or private use.<sup>215</sup> The ports are subject to regulation and supervision by other public agencies such as the Customs, the SAG, the Ministry of Health and DIRECTEMAR.

214. The State has continued to encourage the participation of the private sector in port activities, although the process of granting port operating concessions progressed more slowly during the review period. From 1999 to 2004 seven State wharves were put up for tender, of which five were awarded to enterprises with both domestic and foreign capital participation. A new series of port concessions that will include wharves in the ports of Coquimbo, Valparaíso and San Antonio is planned for the near future.

215. The injection of capital into the concession ports since the end of the 1990s, together with the greater competition between State ports, has made possible a considerable improvement in the efficiency of Chile's ports and a reduction in their costs.<sup>216</sup> In keeping with the global trend, Chilean ports have experienced a steady increase in the use of containers, which grew by more than 15 per cent a year between 2003 and 2007.<sup>217</sup>

216. A recent diagnostic study of maritime transport in Chile recognizes the levels of efficiency achieved by the Chilean ports, but points out that these will not be sufficient to absorb the increase in demand generated by the expansion of the country's foreign trade in the next few years, and therefore recommends that a start be made as soon as possible on expanding the national port infrastructure.<sup>218</sup> Similarly, a report of a panel of port experts notes that the rapid growth of Chile's foreign trade poses a challenge not only for the provision of infrastructure but also for the entire associated supply chain.<sup>219</sup>

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<sup>213</sup> Cámara Marítima and Portuaria Chile, A.G., *Anuario 2007*. Viewed at: <http://www.camport.cl/anuario2007/indice.htm>

<sup>214</sup> The State Port Enterprises are: Arica, Iquique, Antofagasta, Coquimbo, Valparaíso, San Antonio, Talcahuano-San Vicente, Port Montt, Chacabuco and Austral.

<sup>215</sup> Decree with Force of Law No. 340 of 1960.

<sup>216</sup> For example, in Chile the cost of handling a container is US\$85. Drewry Shipping Consultants figure provided by the Chilean authorities. According to another indicator, the average value of the logistical costs (transport, inventories and intermodal transfer) as a proportion of the value of the products transported is 18 per cent, one of the lowest in Latin America. CIMA Ingeniería EIRL (2008).

<sup>217</sup> CIMA Ingeniería EIRL (2008).

<sup>218</sup> CIMA Ingeniería EIRL (2008).

<sup>219</sup> SEP (2008).

(vi) Professional services

217. A valid professional diploma is required to engage in a regulated profession in Chile, including law, accountancy and engineering. Foreign diplomas must be revalidated by the University of Chile or be otherwise recognized under an international agreement. Only Chilean citizens and foreigners who have completed their law studies in Chile may appear before Chilean courts. However, legal consultants with foreign diplomas may provide legal advice on foreign law in Chile. Engineers who obtained their diploma abroad and are hired to perform a particular job in Chile must receive temporary authorization from the *Colegio de Ingenieros de Chile*, the national society of engineers. Accountants with foreign diplomas may establish a consultancy firm in Chile, but must have at least one partner with a diploma valid for the practice of accountancy in Chile.

(a) General characteristics

218. To exercise in Chile a profession for which a qualifying professional diploma is indispensable, it is necessary to obtain a valid professional diploma.<sup>220</sup> This requirement applies both to Chilean citizens and to foreigners wishing to exercise a profession in Chile on a permanent basis. The situation is different when the professional services are to be supplied on a temporary basis. In this case a foreign provider may provide professional services by acting as a consultant, for which it is not necessary to hold a diploma valid in Chile.

219. In Chile there are two ways of obtaining the recognition or revalidation of diplomas for studies completed abroad: under international agreements or through the system of revalidation and recognition administered by the University of Chile.

220. Chile has bilateral mutual recognition agreements with Uruguay, Ecuador, Colombia, Spain<sup>221</sup>, Brazil and Peru, under which it automatically recognizes diplomas granted in these various countries and authorizes the exercise of the corresponding profession in its territory. The persons concerned must submit the documents required<sup>222</sup> (previously authenticated by the Chilean consulate of the country in which the studies were completed) to the Ministry of Foreign Affairs for review and subsequent registration, which constitutes qualification. Chile, along with Bolivia, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Peru, is also a signatory to the Mexico Agreement (1902). Under this agreement, diplomas granted in the signatory countries are automatically recognized, but in the case of medical (including pharmacy) diplomas a general examination must be passed before it is possible to exercise the profession. Data provided by the authorities show that, between 2003 and 2008, a total of 5,982 foreign diplomas were recognized under mutual recognition agreements.

221. In the case of countries with which Chile has no agreement, foreign diplomas are recognized or revalidated by the University of Chile which, under its Charter<sup>223</sup>, is the only institution so authorized by the Ministry of Education. University Decree No. 0030.203 of 2005<sup>224</sup> regulates the foreign diploma recognition and revalidation procedures in detail, without prejudice to the relevant international treaties to which Chile is a signatory.

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<sup>220</sup> The professions for which a professional diploma is required are listed in Article 52 of the Constitutional Law on the Organization of Education (Law No. 18.962).

<sup>221</sup> This agreement is at an impasse since Spain has failed to recognize Chilean diplomas.

<sup>222</sup> Photocopy of the diploma, certificate of authenticity, photocopy of the grade transcript, photocopy of the passport or identity card, official translation of the diploma and of the grade transcript (in some cases it may be an ordinary translation).

<sup>223</sup> Decree with Force of Law No. 153 of 1981.

<sup>224</sup> This Decree repealed University Decree No. 006895 of 1993.

222. In general, the revalidation procedure consists in submitting the authenticated documents<sup>225</sup> to the Office of the Rector of the University of Chile, which after reviewing them refers them to the relevant faculty or institute. Once the academic unit in question has examined the records (within a period of 60 days), it sends the Rector a reply, in which it may approve or reject the application or demand that additional curricular requirements be met. In the case of approval, the University of Chile delivers a diploma certifying that the person concerned holds a foreign professional diploma equivalent to a diploma granted by the University of Chile or other national institutions. The obtaining of such a diploma is sufficient to authorize the exercise in Chile of most of the professions that require a qualifying professional diploma, except for the health professions, for which an additional examination and/or practical experience is required.

223. In Chile it is not necessary to belong to a professional association or society or to obtain special authorization from a trade association to exercise a profession (except in the case of engineers who graduated abroad, see below). Once in possession of a diploma valid in Chile, foreigners may join professional societies on the same terms as Chilean nationals, except in the case of the *Colegio de Médicos* (College of Physicians), to join which a definitive residence certificate is required.

224. In general, the RTAs concluded by Chile incorporate provisions on cross-border trade in services, including professional services. Among other things, they stipulate that the granting of licences or certificates should not constitute an unnecessary barrier to trade and, where professional services are concerned, governments are called upon to encourage the competent authorities to establish common criteria for the recognition of diplomas and licences (for example, in the RTAs with the United States and Canada). The inclusion of chapters on temporary entry for businesspersons is also common (for example, the agreements with Canada, Mexico, United States, Australia, Japan, Colombia, Peru, Korea and the P-4). In these cases the aim is to establish transparent criteria and procedures for the temporary entry of professionals and to facilitate the procedure for granting visas.

225. Within the framework of the GATS, Chile undertook specific commitments under four professional services headings: international legal services (solely for advice on matters of public international law), accountancy and auditing, architectural services and engineering services, for which commercial presence was bound. In the case of advice on international law, if this involves appearing before a Chilean court or administrative body or generates any formal procedure, the service must be provided by a locally qualified lawyer of Chilean nationality. With respect to accounting services, the presentation of financial statements must be endorsed by a professional legally authorized to practise in Chile. In accordance with its horizontal commitments, Chile bound the temporary transfer of natural persons (senior and specialized personnel) within a foreign enterprise established in Chile, for a once-renewable period of two years. Where enterprises with a staff of 15 or more are concerned, in no case may the foreign personnel exceed 15 per cent of the total number of persons employed.<sup>226</sup> Under Article VII.4 of the GATS, Chile has notified the agreements on the mutual recognition of diplomas it has in force.<sup>227</sup>

(b) Legal services

226. In Chile, in accordance with the Courts Organization Code, law diplomas authorizing the exercise of the profession are granted exclusively by the Supreme Court of Justice to those who hold an academic degree (*Licenciado*) in legal and social sciences and meet the requirements laid down in

<sup>225</sup> Original copy of diploma, grade transcript, programme of study, course content, curriculum vitae, and a certificate of entitlement to practise the profession in question in the country in which the diploma was granted.

<sup>226</sup> WTO document GATS/SC/18, of 15 April 1994.

<sup>227</sup> WTO document S/C/N/8, of 22 December 1995.

the Code. Up to a few years ago, only Chilean nationals could obtain a law diploma and practise as a lawyer. Following the publication of Law No. 20.211 of 5 September 2007, resident foreigners who have completed all of their law studies in Chile may exercise the profession.<sup>228</sup> Foreign lawyers with diplomas obtained abroad may not plead before or address a Chilean court.

227. Some of the RTAs signed by Chile provide for the status of foreign legal adviser, which allows a national of the other Party to provide legal consultancy or advisory services in relation to the law of a country in which the national in question is authorized to practise as a lawyer. Moreover, under these agreements, the Parties must consult with their relevant professional bodies with respect to the form of association of national lawyers with foreign legal advisers and the drafting of rules for the authorization of such advisers. As noted above, under these agreements, foreign legal advisers are not required to possess a diploma valid in Chile in order to provide their services in the country. Foreign legal advisers are not permitted to advise on Chilean law. At the same time, there are no restrictions on a foreign lawyer establishing a foreign law consultancy in Chile.

228. The *Colegio de Abogados de Chile A.G.*<sup>229</sup> is a private professional organization whose aim is to develop, protect and advance the legal profession and its prestige. It also establishes codes of good practice that govern the exercise of the profession in Chile. Membership of the *Colegio de Abogados* is optional and is not a prerequisite for practising law.

(c) Engineering services

229. To exercise the profession of engineer it is necessary to be in possession of a professional diploma valid in Chile, whether it be a national diploma or a foreign one that has been revalidated or recognized. Article 6 of Law No. 12.851<sup>230</sup> stipulates that engineers who graduated abroad (whether Chilean or foreign) and have been specially hired to perform a particular function in Chile must apply for permission to the *Colegio de Ingenieros de Chile*, which will proceed to enrol them in a special register, placing them under the society's protection and discipline. Permits are granted for the duration of the contract, but with a maximum of three years.<sup>231</sup> In these cases, there is no need for the persons concerned to revalidate their foreign diploma.

230. There is no legislation that limits the exercise of the profession of engineering in Chile on the basis of nationality. Likewise there are no restrictions on the establishment of a foreign firm of consulting engineers or on the association of foreigners with Chilean professionals in consulting engineering firms in Chile; in these cases, the foreign engineers are not required to obtain the permission of the *Colegio de Ingenieros*.

231. Chile's RTAs frequently contain provisions in which the Parties undertake to work together with their relevant professional bodies for the purpose of establishing procedures for granting engineers of the other party temporary licences to exercise their profession in their territory.

(d) Accounting and auditing services

232. To exercise the accounting and auditing profession in Chile it is necessary to possess a qualifying diploma. The *Colegio de Contadores de Chile A.G.* is a private professional association

<sup>228</sup> Article 526 of the Courts Organization Code, as amended by Law No. 20.211 (2007).

<sup>229</sup> Created by Article 1 of Decree Law No. 3.621.

<sup>230</sup> Law No. 12.851, published on 6 February 1958, established the *Colegio de Ingenieros*.

<sup>231</sup> The procedure is governed by the regulations approved by the *Colegio de Ingenieros de Chile* and published in the Official Journal of 28 April 1999. Viewed at: [http://www.ingenieros.cl/index.php?option=com\\_content&task=view&id=124&Itemid=254](http://www.ingenieros.cl/index.php?option=com_content&task=view&id=124&Itemid=254)

empowered by Law No. 13.011<sup>232</sup> to issue standards for the practice of accountancy and auditing in Chile. These standards are based on Generally Accepted Accounting Principles and other international standards. The State oversees the application of the accounting and auditing rules through the Banks and Financial Institutions and Securities and Insurance Supervisory Authorities. There are no legal provisions that limit the exercise of the accounting or auditing profession in Chile on the basis of nationality.

233. The external auditors of open corporations must be enrolled in the Register of Auditors of the Securities and Insurance Supervisory Authority.<sup>233</sup> Only juridical persons legally established in Chile as partnerships or associations and whose main business is the provision of auditing services may be enrolled in this Register.

234. Chile participated in the preparation of guidelines for mutual recognition agreements in the accountancy sector of the WTO Working Group on Professional Services and replied to the questionnaire on the sector.<sup>234</sup> In this document, Chile noted that there were no restrictions on the commercial presence of foreign providers of accounting services in Chile. However, foreign firms must have at least one partner with a licence to exercise the profession in Chile, since that is a requirement for the presentation of financial statements.

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<sup>232</sup> Law No. 13.011 of 1958 established the *Colegio de Contadores de Chile*.

<sup>233</sup> Article 50 of the Regulations of the Law on Corporations (Law No. 18.046).

<sup>234</sup> WTO document S/WPPS/W/7/Add.15, of 2 October 1996.





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