

# WORLD TRADE ORGANIZATION

RESTRICTED

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**Council for Trade in Services  
Special Session**

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## **CHILE**

### Initial offer

The following initial offer was received from the Delegation of Chile on 10 July 2003 with the request that it be circulated to Members of the Council for Trade in Services.

## **INTRODUCTION**

1. Pursuant to paragraph 6 of the Doha Ministerial Declaration concerning Members' commitment to submit a conditional initial offer for the negotiations provided for in Article XIX of the General Agreement on Trade in Services (GATS), Chile hereby submits its conditional initial offer of specific commitments in services.
2. By means of this offer, Chile reiterates its WTO commitment to achieving a progressively higher level of liberalization and delivering effective access to its services markets.
3. Given that Chile's offer takes the concepts set forth in Article I.3 of the GATS into account, the attached offer does not include services supplied in the exercise of governmental authority.
4. Furthermore, pursuant to Article VI of the GATS, Chile reserves the right to establish, maintain and fully exercise its national legislation in order to achieve legitimate policy objectives in areas such as consumer protection, health and the environment, *inter alia*. Likewise, Chile reserves the right to revise or amend this offer in the light of the outcome of the work of the subsidiary bodies of the Council for Trade in Services.
5. Chile reiterates that this offer is conditional and that it therefore reserves the right to withdraw, amend or supplement all or part of it at any time prior to the conclusion of the negotiations, in accordance with, *inter alia*, the course of the negotiations in other areas, such as agriculture, market access for non-agricultural products and rules. It also reserves the right to submit technical amendments or corrections.
6. In the event of the negotiations provided for in paragraphs 20-22 of the Doha Ministerial Declaration taking place and of their giving rise to an agreement on investment, Chile reserves the right to withdraw the mode 3 commitments from this offer and include them in the new agreement and to make the corresponding adjustments to its existing commitments.

## **HORIZONTAL COMMITMENTS**

7. Chile's initial offer contains no changes to its horizontal commitments. Nevertheless, Chile is striving to improve its mode 4 commitments which will be included in a forthcoming submission. In

this connection, it is worth noting that Chile is a co-sponsor of document TN/S/W/14 which refers to the importance of greater liberalization of mode 4 for trade in services and to the need to discuss on a multilateral basis the main barriers currently hindering this mode of supply. Furthermore, Chile reiterates the need to strive to improve the access of all Members to mutual recognition agreements under Article VII and to enhance related disciplines in the context of Article VI.4.

### **SPECIFIC COMMITMENTS**

8. This contribution by Chile includes offers in the sectors of professional services, taxation services, energy services, computer and related services, real-estate services, leasing services, management consulting services and maritime transport services. With regard to the latter, Chile, as indicated in the “Joint Statement on the Negotiations on Maritime Transport Services” (TN/S/W/11), urges all Members to participate actively in the current negotiations with a view to achieving significant liberalization in this sector.

9. Insofar as was possible, Chile drew up its Schedule of Commitments on the basis of the Services Sectoral Classification List (MTN.GNS/W/120) and in accordance with the definitions in the United Nations' Provisional Central Product Classification. However, in some sectors, such as energy services, Chile is following the “Proposed Guide for Scheduling Commitments on Energy Services in the WTO” (JOB(03)/89).

### **MFN EXCEPTIONS**

10. Chile is maintaining its exceptions to this principle at this stage of the negotiations, but is keeping them under constant review with a view to moving towards their elimination.

11. In conclusion, Chile hereby expresses its willingness to comment on or clarify any doubts concerning its conditional initial offer.

## CHILE – CONSOLIDATED SCHEDULE OF SPECIFIC COMMITMENTS

Modes of supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
<b>I. HORIZONTAL COMMITMENTS</b>			
ALL SECTORS INCLUDED IN THIS SCHEDULE	<p>(3) The commitments in this Schedule extend only to service suppliers who operate in Chile through a commercial presence, are established as a foreign investment and governed by the rules and legal procedures in force on direct foreign investment. The commercial presence covered by this Schedule is that effected solely through the Foreign Investment Statute and financed by external capital.</p> <p>Authorization to deliver services through a commercial presence may take into account the following criteria:</p> <p>(a) The effect of the commercial presence on economic activity, including its effect on employment, on the use of parts, components and services produced in Chile and on exports of services;</p> <p>(b) The effect of the commercial presence on productivity, industrial efficiency, technological development and product innovation in Chile;</p> <p>(c) The effect of the commercial presence on competition in the sector in question and other sectors, on consumer protection, on the smooth functioning, integrity and stability of the market, and on the national interest;</p>	<p>(3) Foreign investors may transfer their capital abroad three years from the date of its entry.</p> <p>Real-estate acquisitions and the performance of other legal acts in border areas must comply with the provisions of the relevant legislation, which is unbound for the purposes of this Schedule. The border area is defined as land within a distance of 10 km from the border and 5 km. from the coast and province of Arica.</p> <p>With regard to services that fall under the heading "professional services", at least 85 per cent of the staff employed by a service supplier established in Chile must be Chilean.</p> <p>As regards all other services listed in this Schedule, at least 85 per cent of the staff employed by a service supplier established in Chile must be Chilean, except in the case of enterprises with fewer than 15 employees.</p>	

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Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
	<p>(d) The contribution of the commercial presence to Chile's integration into world markets.</p> <p>This Schedule applies only to the following types of commercial presence for foreign investors: open and closed corporations, private-limited companies, and subsidiaries (which, under Chilean legislation, are the equivalent of corporation agencies).</p> <p>(4) Unbound, except for transfers of natural persons within a foreign enterprise established in Chile, in accordance with (3) commercial presence, senior and specialized personnel who have been in the employ of the organization for a period of at least two years immediately preceding the date of their application for admission performing the same type of duties as in the parent company of their country of origin. In any case, in accordance with (3) commercial presence, foreign natural persons may not make up more than 15 per cent of the total staff employed in Chile.</p> <p>The category of senior and specialized personnel does not include members of the board of directors of a company established in Chile.</p> <p>For all legal purposes, senior and specialized personnel must establish domicile or residence in Chile.</p>	<p>(4) Unbound, except for the categories of natural persons listed under market access.</p>	

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Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
	<p>Senior personnel are executives who come under the direct supervision of the board of directors of the enterprise established in Chile and who, <i>inter alia</i>:</p> <ul style="list-style-type: none"> <li>- direct the management of the organization or one of its departments or subdivisions;</li> <li>- supervise and control the work of other supervisory, professional or managerial employees;</li> <li>- are personally authorized to hire and dismiss, recommend hiring and dismissal and take other personnel actions.</li> </ul> <p>Specialized personnel are highly qualified persons who are indispensable to the supply of the service because of their professional knowledge or:</p> <ul style="list-style-type: none"> <li>- possession of qualifications for a particular type of work or activity requiring specialized technical expertise;</li> <li>- proprietary knowledge of the organization's services, research equipment, techniques or management; and</li> <li>- the non-availability of such specialized personnel in Chile.</li> </ul> <p>Service providers are admitted into Chile temporarily for a period of two years which can be extended for a further two years. Personnel admitted under these conditions will be subject to the labour and social security legislation in force.</p>		

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<b>II. SECTOR-SPECIFIC COMMITMENTS</b>			
<p>1. BUSINESS SERVICES</p> <p>A. <u>Professional services</u></p> <p>International legal services<sup>1</sup></p> <p>Solely advisory services on matters of public international law and international commercial law (86190)</p>	<p>Without prejudice to what is established in Section I (Horizontal Commitments), suppliers of the professional services included in this Schedule may be subject to assessment by the competent authorities in connection with which they must show that they fulfil the requirements designed to ensure that they perform competently in the sector.</p> <p>If professional advisory services involve an appearance or formal procedures before a Chilean court of justice or administrative body then this appearance shall be made or this procedure executed by a professional recognized in Chile.</p> <p>(1) Unbound (2) Unbound (3) None (4) Unbound, except as indicated in the horizontal section.</p>	<p>(1) Unbound (2) Unbound (3) None (4) Unbound, except as indicated in the horizontal section.</p>	

<sup>1</sup> Refers solely and exclusively to matters relating to public international law. If an advisory service involves an appearance before a Chilean court of justice or administrative body, then this must be conducted by a lawyer authorized to practise in Chile who fulfils the requirement of being a Chilean national. The same requirement must be fulfilled whenever there is a need for a written instrument or formal procedure to be executed by a professional recognized in Chile. The provision of advisory services does not confer the right to use the title of Attorney and therefore does not include representation services in contentious or non-contentious matters.

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Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
Accounting and auditing <sup>2</sup>			
Financial auditing (86211)	(1) Unbound (2) Unbound (3) None (4) Unbound, except as indicated in the horizontal section.	(1) Unbound (2) Unbound (3) None (4) Unbound, except as indicated in the horizontal section.	
Accounting review (86212)	(1) Unbound (2) Unbound (3) None (4) Unbound, except as indicated in the horizontal section.	(1) Unbound (2) Unbound (3) None (4) Unbound, except as indicated in the horizontal section.	
<b>Taxation services (863)</b>	<b>(1) Unbound</b> <b>(2) Unbound</b> <b>(3) None</b> <b>(4) Unbound, except as indicated in the horizontal section.</b>	<b>(1), (2) and (3) None/Chile may grant preferential subsidies to Chilean nationals.</b>  <b>(4) Unbound, except as indicated in the horizontal section/Chile may grant preferential subsidies to Chilean nationals.</b>	
Architectural services			
Advisory and pre-design architectural services (86711)	(1) Unbound (2) Unbound (3) None (4) Unbound, except as indicated in the horizontal section.	(1) Unbound (2) Unbound (3) None (4) Unbound, except as indicated in the horizontal section.	

<sup>2</sup> Financial statements must be endorsed by a professional legally authorized to practise in Chile.

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Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
Architectural design (86712)	(1) Unbound (2) Unbound (3) None (4) Unbound, except as indicated in the horizontal section.	(1) Unbound (2) Unbound (3) None (4) Unbound, except as indicated in the horizontal section.	
Engineering services			
Engineering design services for industrial processes and production (86725)	(1) Unbound (2) Unbound (3) None (4) Unbound, except as indicated in the horizontal section.	(1) Unbound (2) Unbound (3) None (4) Unbound, except as indicated in the horizontal section.	
Engineering design services relating to sanitary works (86726)	(1) Unbound (2) Unbound (3) None (4) Unbound, except as indicated in the horizontal section.	(1) Unbound (2) Unbound (3) None (4) Unbound, except as indicated in the horizontal section.	
Mechanical engineering design services (86726)	(1) Unbound (2) Unbound (3) None (4) Unbound, except as indicated in the horizontal section.	(1) Unbound (2) Unbound (3) None (4) Unbound, except as indicated in the horizontal section.	



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Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
Electrical engineering design services (86726)	(1) Unbound (2) Unbound (3) None (4) Unbound, except as indicated in the horizontal section.	(1) Unbound (2) Unbound (3) None (4) Unbound, except as indicated in the horizontal section.	
Chemical and process engineering design services (86726)	(1) Unbound (2) Unbound (3) None (4) Unbound, except as indicated in the horizontal section.	(1) Unbound (2) Unbound (3) None (4) Unbound, except as indicated in the horizontal section.	
Environmental engineering design services (86726)	(1) Unbound (2) Unbound (3) None (4) Unbound, except as indicated in the horizontal section.	(1) Unbound (2) Unbound (3) None (4) Unbound, except as indicated in the horizontal section.	
<b>Integrated engineering services for energy services (86733)</b>	(1) None (2) None (3) None  (4) Unbound, except as indicated in the horizontal section.	(1), (2) and (3) Unbound for anthropological, archaeological and palaeontological studies, research or any other activity conducted in the 200-nautical-mile maritime zone under national jurisdiction and studies in border areas.  Chile may grant preferential subsidies to Chilean nationals.  (4) Unbound, except as indicated in the horizontal section, in which case the restrictions for Modes 1, 2 and 3 apply.  Chile may grant preferential subsidies to Chilean nationals.	

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<p>COMPUTER AND RELATED SERVICES</p> <p><b>Consultancy services related to the installation of computer hardware (841)</b></p> <p><b>Software implementation services (842)</b></p> <p><b>Data processing services (other than data-processing services for financial services) (843)</b></p> <p><b>Database services (other than database services for financial services) (844)</b></p> <p><b><u>REAL-ESTATE SERVICES</u></b></p> <p><b><u>Real-estate services involving own or leased property (821)</u></b></p>	<p>(1) None</p> <p>(2) None</p> <p>(3) None</p> <p>(4) Unbound, except as indicated in the horizontal section.</p> <p>(1) Unbound</p> <p>(2) Unbound</p> <p>(3) None</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>(1), (2) and (3) None/Chile may grant preferential subsidies to Chilean nationals.</p> <p>(4) Unbound, except as indicated in the horizontal section/Chile may grant preferential subsidies to Chilean nationals.</p> <p>(1), (2) and (3) None/Chile may grant preferential subsidies to Chilean nationals.</p> <p>(4) Unbound, except as indicated in the horizontal section/Chile may grant preferential subsidies to Chilean nationals.</p>	