



Ministerio de  
Relaciones  
Exteriores

Gobierno de Chile



**BOLIVIA`S RIGHT OF  
FREE TRANSIT.  
The reality.**

# BOLIVIA'S RIGHT OF FREE TRANSIT. The reality.

Regarding the comments made by the Ministry of Foreign Affairs and the Strategic Office for the Maritime Claim of the Plurinational State of Bolivia on the document entitled

*“Chile and Bolivia’s access to the sea.  
Myth and Reality.”*

Both the Ministry of Foreign Affairs of Bolivia and the Bolivian DIREMAR have commented on the publication entitled *“Chile and Bolivia’s Access to the sea. Myth and Reality”*. They have not only made a group of statements full of mistakes and omissions, but they have also accused Chile of allegedly *“violating”* the obligations arising from the Treaty of 1904, which is not the case. This document will address each of the points made by Bolivia.

**March 2015**





## I.

### An equivocal use of history

Bolivia claims that Chile violated the Treaty of 1904 by preventing the importation of arms to be used by Bolivia in the War of Chaco and that in 1952 Chile imposed an embargo on thousands of tons of Bolivian tin to be exported.

There was no breach of the 1904 Treaty in neither situation: the privilege of transporting weapons under the free transit regime was agreed the year 1937, after the end of the War of Chaco, and; the embargo of Bolivian tin was rejected by Chilean courts.

1. The Treaty of 1904 and the Convention on Trade of 1912 set forth the “*fullest and most unrestricted right of commercial transit*”. The free transit regime, however, did not cover the transportation of weapons. In addressing the War of Chaco (1932-1935), the Bolivian Ministry of Foreign Affairs does not take into account the fact that Chile declared itself neutral in the conflict, in line with the position taken by other American countries<sup>1</sup>. This neutrality applied to both belligerents, not only Bolivia.

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<sup>1</sup> The only incident reported in connection with military cargo destined for Bolivia, whose dispatch was delayed due to customs problems in Chile, dates back to the beginning of 1933 and coincides with a period in which the aim was to strengthen the neutrality of third countries in respect of the conflict.





Along with other States, Chile undertook enormous efforts to put an end to the conflict, from its inception. This was evidenced by Chile's participation in the Commission of Neutrals, the work of which was crucial to the attainment of that goal. Bolivia recognized this at the time.

When the League of Nations considered the possibility of implementing measures, such as imposing an arms embargo or preventing the transit of arms through the territory of neighbouring countries, Chile stated that it would only participate if all neighbouring countries also participated, and this did not occur. After the War of Chaco, the right of free transit was further extended under a new bilateral agreement: the Convention on Transit signed in 1937, which provided that "*free transit encompasses all kinds of cargo, at any time, with no exceptions whatsoever*". This is the law currently in force.

2. The accusation regarding the situation of tin during the revolution of 1952 is equally unfounded: the person who requested a Chilean court to impose an embargo on tin at Chilean ports, due to the expropriation of tin mines, was a Bolivian businessman. Finally, Chilean court ruled in favour of the Bolivian government rejecting the embargo, reaffirming the Bolivian customs agency's authority over cargo in transit at ports authorized for that purpose.





## II.

### The port regimes and free transit

Bolivia questions the scope of Chile's obligation to provide free storage, complains about alleged restrictions upon Bolivia's customs autonomy in Arica and Antofagasta and complains about various rates applied to port activities.

Bolivia confuses concepts that are not equivalent, makes inaccurate statements, pretends to be exempt of the application of international standards and fails to admit that free transit regime is duly fulfilled by Chile.

3. According to Bolivia, the storage period for Bolivian imports through Arica and Antofagasta is one year, not one year and three months as stated by Chile. Bolivia further states that the storage period for Bolivian exports is sixty days, which it says is insufficient.

Bolivia confuses the period during which storage is free of charge and the period during which the cargo may remain at port facilities. These two concepts are not equivalent. Bolivian imports may remain in the primary customs zones of the authorized ports and, if necessary, on out-of-port premises, for a total period of one year and three months. Imports can be stored free of charge for a period of one year<sup>2</sup>. Exports may remain in primary customs

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<sup>2</sup> The period of one year and three months must be broken down as follows: imports can remain at port facilities subject to the authority of Bolivian customs (exercised by the Bolivian Port Services Office) for one year without charge; once one year has elapsed, if the goods are not transported to Bolivia, the Chilean customs – on the



zones and under the authority of Bolivian customs for one year. Once this period has elapsed, if the goods to be exported have not been shipped overseas, Chilean customs will extend the period for 90 additional days (three months), but during this time the cargo is subject to the authority of Chilean customs. Therefore, it is wrong to state that Bolivian exports may be stored for 60 days. Rather, storage of Bolivian goods to be exported is free of charge for a period of 60 days.

In both cases, it is worth pointing out that the 90-day extension has been unilaterally afforded by Chile, as the Convention of 1937 only refers to a period of one year being applicable to imports.

4. Bolivia presents an argument concerning *“Chile’s obligation to grant Bolivia free storage”*. Bolivia’s incomplete explanation is that *“Chile’s obligation to provide free storage for Bolivian cargo is not an additional privilege outside the purview of the Treaty of 1904, since it arises from an agreement complementary to it: the Convention on Trade of 1912”*.

In reality, Article 12 of the *Convention on Trade signed in 1912* provides that:

*“Goods in transit bound for Bolivia that must be taken to the customs warehouses will be exempt from payment of storage fees at the Chilean customs; these goods cannot remain in the warehouses for a period exceeding one year...”*

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understanding that Bolivia no longer exercises any customs authority under the 1937 Convention – will extend the period for 90 additional days (three months), this time subject to the authority of Chilean customs.





This Article on its face refers only to goods in transit “*bound for Bolivia*” and stored with Chilean customs. Free storage for Bolivian exports was granted by Chile at Bolivia’s own request since neither the Peace Treaty nor any other complementary convention provided for this. In this respect, a proper interpretation of the Convention of 1912 shows that only Bolivian imports may benefit from free storage. It follows that any privilege granted in respect of exports falls outside the scope of this agreement and can only be based on a benefit afforded by Chile<sup>3</sup>.

Bolivia further claims that at the ports of Antofagasta and Iquique “*Bolivian cargo can only be stored free of charge in the area of the ports subject to the administration of Chile and not in the area managed by private concessionaires*” and that “*the State owned area is not suitable for the cargo in transit from and to Bolivia, thus a considerable portion is subject to payment as of the third day*”.

Since 1971, Antofagasta has offered a 3,000 m<sup>2</sup> covered warehouse in which Bolivian cargo may be stored free of charge. In addition, the port facility includes an uncovered area of 4,000 m<sup>2</sup>, the exact location of which can be moved, in which Bolivian cargo may also be stored free of charge. Both of these areas are located in the vicinity of Quay No. 1 of the port facility of

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<sup>3</sup> In the past, Bolivia had a proper understanding of Article 12 in that it specifically requested free storage for its exports, firstly for 30 days, later for 45 days, and finally for 60 days. Chile acceded to these requests. The free storage period of 60 days was embodied in the Agreements of Viña del Mar in 1996.







Antofagasta or in the Multi-operated Terminal under the management of Empresa Portuaria Antofagasta. Both locations were approved by Bolivia as being fit to store the said cargo and they have been available since long before Quay No. 2 was granted under concession to a privately-owned company. A third area was additionally adapted for these purposes: this is the large area of Portezuelo located outside the port (used especially to stockpile zinc concentrates and, to a lesser extent, lead concentrates), in which Bolivian exports can also be stored free of charge.

In Quay No. 2 of the port of Antofagasta, the concessionaire -the company Antofagasta Terminal Internacional (ATI)- grants Bolivian cargo in transit storage free of charge for a 5-day period even though it is not contractually bound to do so. This benefit is in addition to those granted in the three areas mentioned above and demonstrates that Bolivia's statement that "*free storage*" is only granted "*for five days at the port of Antofagasta*" is inaccurate.

In respect of the port of Iquique, Chile authorized the port for Bolivia's free transit in 2008<sup>4</sup>. In addition, a 4-hectare tract of land in Alto Hospicio was granted under concession to Empresa Portuaria de Iquique<sup>5</sup> free of charge for the sole purpose of storing and handling cargo in transit. However, as Bolivia has not

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<sup>4</sup> Supreme Decree No. 141 of the Ministry of Foreign Affairs dated 13 May 2008, in accordance with the 1904 Treaty of Peace and Friendship and subsequent agreements.

<sup>5</sup> Exempt Resolution No. 357 of the Regional Ministerial Secretariat of National Assets of Tarapacá dated 30 June 2008.





yet expressed its acceptance of that authorization, implementation is still pending due to Bolivia's lack of action.

5. Bolivia further states that it enjoys *“limited customs autonomy at the ports of Arica and Antofagasta”* and it refers to the intervention of Chilean customs in respect of Bolivian high-risk cargo in transit. This statement does not match with the real facts. Chilean agencies intervene to safeguard the certification acquired by the Chilean ports relating to their reliability, which is crucial for the proper performance of Chile's foreign trade and the handling of goods in transit; Chilean agencies intervene only after having conducted a thorough inspection, and in fulfilment of their inherent duties relating to customs when there are funded suspicions of drug trafficking. Furthermore, and besides a limited percentage of Bolivian trucks in transit that are intervened, no cargo in transit to Bolivia is inspected by Chilean Customs. The free transit regime is not infringed in any manner, as both the Bolivian customs agency and the owner or consignee of the merchandise are informed of such activity with complete transparency.

It must be noted that in January 2015, 1970 trucks carrying Bolivian exports in-transit entered Chile destined for the Port of Arica, of which, 110 -5.6%- were screened. Of the screened trucks, only 20 -1%- went to physical intervention. This data confirms that Chilean Customs inspects a reduced number of the trucks in transit.





In what refers to imports, and according to the 1912 Convention on Trade and subsequent agreements, Chilean Customs do not conduct physical examination on Bolivian imports arriving to Chilean ports under free transit regime.

6. Bolivia complains about rates related to port activities:

(i) First, Bolivia refers to *“a price increase from 150 to 800 American dollars per inspected and screened container which goes through our country”* applicable to high-risk cargo. These inspections are a direct consequence of the increase in the detection of illegal drugs in Bolivian cargo shipped overseas from Chilean ports. In any event, the 800 USD figure mentioned by the Minister of Foreign Affairs of Bolivia concerns only one case that occurred in Iquique, a port which does not operate under the free transit regime.

(ii) Secondly, Bolivia complains about *“the rates charged for warehousing hazardous cargo (IMO) in port”*. In order to assess which cargo is hazardous, Chile must act in accordance with the relevant international rules and thus apply the classification criteria defined by the United Nations. The assessment procedures carried out are neither arbitrary nor discriminatory; these procedures are the same as those applied to Chilean and foreign cargo, without distinction.<sup>6</sup> This category of cargo and the

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<sup>6</sup> The storage of Bolivian cargo in transit designated as hazardous is much more frequent than what the Bolivian document states. In addition, the road vehicles which remove the hazardous cargo have faced, on numerous occasions, internal difficulties attributable to the Bolivian companies. The removal of such cargo is not immediate and, therefore, its storage in port does benefit from the preferential rates. These are not exceptional situations in any way, as claimed by Bolivia.





rates that apply to it have also been the subject of express agreements entered into by Chile and Bolivia. The agreements currently in force are those signed in 1996.

(iii) Thirdly, Bolivia refers to *“the monopoly to the detriment of the preferential docking fees applicable to FIO freight”*. By definition, a sea-freight booked FIO does not include the costs of transporting cargo between warehouse sites and the loading dock. In ports authorized to operate under the free transit regime, as well as in other Chilean or foreign ports, such transport costs are borne by the owner or consignee of the merchandise. The choice of the conditions of carriage is made by those who book the sea-freight; neither Chilean port companies, nor the government of Chile can be held liable for such choices. It is worth noting that the docking fee paid in relation to Bolivian FIO cargo is extremely low and was agreed upon by both countries in 1996<sup>7</sup>.

(iv) Fourthly, Bolivia makes reference to *“irregular collection of taxes levied on all services applied to Bolivian cargo in transit”*. Its arguments focus on the *“Gate In”* services applicable to empty containers transporting Bolivian cargo in transit and the admissibility of claiming Value-Added Tax (VAT) on those

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<sup>7</sup> The docking fee paid in respect of Bolivian FIO cargo, equal to US\$ 0.85 per ton, is very low and bears no relation to the current docking fees. It was set forth in 1996 in the Agreements of Viña del Mar signed by the Bolivian Autonomous Customs Warehouses Administration Office (A.A.D.A.A.) and the Chilean EMPORCHI. It has not been subject to any modifications since then and was adopted by the concessionaires of the ports of Arica and Antofagasta without variation or readjustment.





services<sup>8</sup>. This matter needed clarification: the Chilean Internal Tax Services -by adopting a measure which reflects the objectivity of the acts of Chilean agencies- decided that there exists a cause and effect relationship between maritime transport and the “Gate In” services applicable to empty containers. It concluded that it was appropriate to qualify those services as being provided “directly to the cargo in transit” and therefore not subject to VAT. This resolution has been respected without any incidents. Bolivia’s claim, therefore, lacks foundation.

7. Bolivia refers to employment problems which have affected port activities:

*(i) Interruption of activities of port workers. Antofagasta (September 2012) and Iquique (April 2013 and January 2014).*

These events were the result of decisions taken by the port workers autonomously; they did not occur due to any acts of Chile. Their purposes and potential effects were not attributable to the latter, which cannot therefore be held responsible.

Bolivia appears to object to the right of workers to strike in general and port workers in particular. These events did not only affect Bolivian trade. They affected all users of the ports concerned, irrespective of nationality, including Chileans, without distinction.

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<sup>8</sup> “Gate In” services include the loading of empty containers in port, their transport to warehouse facilities, unloading there, inspection and basic cleaning.





In any event, it must be emphasized that the free transit regime applicable to Bolivian cargo does not yet apply to the port of Iquique since, as stated above, Bolivia has not responded to the decision taken by Chile in 2008 to authorize the port to operate under the free transit regime.

(ii) *Strikes of customs officials in November 2013.*

Likewise, these strikes cannot be considered an official act of Chile. They were workers' demonstrations organized by unions representing public service officials. As in the cases mentioned above, these strikes not only affected Bolivia's foreign trade, but also the international trade of all users, including Chileans.

Chile took all the necessary steps to mitigate the effects of these strikes by guaranteeing reasonable shifts, which made it possible for the port of Arica to remain operative in accordance with the usual procedures and in pursuance of the protocols and procedures agreed upon in respect of all cargo subject to the free transit regime. Chile also adopted measures aimed specifically at maintaining the usual control over cargo entering at the border facility of Chungará, at the Paso de Tambo Quemado, which is the border facility most frequently used by Bolivian cargo in transit. The absence of congestion in the surroundings of the port of Arica during the strike that took place from 25 November until 29 November 2013 provides evidence of the contingency plans adopted by the government. Furthermore, during that period a





total of 550 Bolivian trucks were loaded and departed from the port, and another 193 trucks were unloaded.

8. The Bolivian authorities have also mentioned a *“prohibition on stockpiling lead minerals in the port of Antofagasta”* and an *“increase in costs due to the authorization of out-of-port areas for storage of Bolivian cargo in Antofagasta and Iquique”*.

Lead minerals have never been stockpiled in the port of Antofagasta, except during the pre-shipment phase itself, which by definition is of a very short duration. These minerals were stockpiled in the yards of the Antofagasta-Bolivia Railway (FCAB), a private area located outside the port facility. It gradually became clear that permanent stockpiles of zinc and lead mineral concentrates near residential areas of the city of Antofagasta were untenable from the point of view of public health. Owing to such environmental concerns, the Bolivian mineral concentrates were relocated to Portezuelo, an area that was authorized for that purpose at the expense of the Chilean Treasury. The operation remains the same: then as now, trucks are loaded in the stockpiling centres, the cargo is transported to the port where it is unloaded. Only the route is different.

With respect to the port of Iquique, even though discussions with Bolivia concerning the authorization to operate the port under the free transit regime made big steps forward, it is not yet in operation. These negotiations were conducted to comply with





Article VI of the Treaty of 1904, which expressly sets forth that this authorization must be agreed upon by both governments “*in special acts*” and “*without prejudice to their respective fiscal interests*”.

In view of the fact that the port of Iquique’s authorization has not yet become operative, the out-of-port area of Empresa Portuaria de Iquique in Alto Hospicio -along the route that joins Bolivia to Chile- has not been used for the storage, consolidation and deconsolidation of Bolivian cargo in transit, even though it is in perfect condition to be used for such purposes. It is therefore difficult to see how Bolivian businessmen could have been affected by delays or cost increases in that port<sup>9</sup>.

9. The Ministry of Foreign Affairs of Bolivia has questioned *the concession of the ports over Antofagasta and Arica*.

The Minister refers to the “*privatization*” of the ports of Antofagasta and Arica. In reality, what Chile did in 2003 and 2004 was to grant concessions over one of the two quays of the port of Antofagasta and the only quay of the port of Arica. In both cases, the commitments undertaken by Chile in relation to the free transit regime afforded to Bolivia were duly and fully safeguarded. The conditions applicable to the concession include express rules regarding the free transit regime and the practical

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<sup>9</sup> Once the port of Iquique has been authorized for free transit and becomes operative, storage in the port area of Alto Hospicio will be free and the logistics of transport by land from and to Bolivia are very likely to improve and will be expedited. This will benefit Bolivian users.







agreements currently in force. In this respect, the concession agreement for the only quay of the port of Arica provides that:

*“By virtue of the duties imposed upon Chile and in particular the port of Arica resulting from the treaties and agreements signed with the Republic of Bolivia and currently in force, the Concessionaire has the following obligations:*

- a) Adopt such measures as are deemed necessary to avoid affecting the right of free commercial transit conferred in respect of Bolivian Cargo transferred through the Quay under Concession.*
- b) Allow Bolivian customs and the customs agent appointed by the government of Bolivia to perform their usual control duties over Bolivian Cargo in transit.*
- c) Abide by all the administrative and operating procedures currently applicable to Bolivian goods in transit, whether such procedures are contained in the Operating Manual of the Integrated Transit System of the Port of Arica or whether they have been incorporated into port operations on the basis of commercial and operating practices currently in force”.*

The concession agreement for the quay of the port of Antofagasta contains similar provisions. In both cases, the concessionaire’s failure to honour the obligations undertaken in respect of cargo in transit would result in the termination of the concession, as expressly provided by the respective concession agreement.





### III.

## Free transit through Chilean territory

A third chapter of Bolivian objections refers to a set of transit regulations which are standard in countries around the world.

A distinction should be made between free transit and the complete absence of regulation of transit across territory. For instance, although the European Union guarantees freedom of transit, if a truck licensed in one country wishes to transport goods to a non-neighbouring third country, it will be bound by the transit regulations prevailing in each country it crosses.

Likewise, it is worth noting that the rights resulting from the free transit regime granted to Bolivia must be exercised in conformity with international law and the legal system of the country crossed without prejudice to fundamental matters such as personal safety, the environment and the minimum requirements for carrying out the activity of international carriage in line with the objectives of the International Road Transport Agreement (IRTA).

10. *Trucks over a certain age cannot transit through Chilean territory.*



The Minister of Foreign Affairs of Bolivia complains that Chile restricts the entry of high-tonnage Bolivian trucks over 20 years old into its territory. In Chile, the use of transport trucks over 20 years old and buses over 10 years old is banned. As this regulation applies to both Chilean and foreign vehicles alike without exception, Bolivian carriers are not discriminated against. Bolivia was informed of such regulation -which is based on incontrovertible technical reasons- in the framework of the bilateral Chilean-Bolivian meetings of the enforcement agencies International Road Transport Agreement (IRTA)<sup>10</sup>. Both states have signed this Treaty and Bolivia made no reservation when it became a party.

11. *Land crew card requirement applicable to Bolivian drivers.*

This is a document required by the IRTA in its Annex II. This document demonstrates to the immigration authorities of the signatory countries that the drivers of an international road vehicle and their assistants are members of a crew<sup>11</sup>. In respect of Bolivian companies, this document is issued by the Bolivian authorities. In these circumstances, it cannot be claimed that the card requirement in any way affects free transit.

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<sup>10</sup> The IRTA is the International Road Transport Agreement, under the 1980 Treaty of the Latin American Integration Association (ALADI, its Spanish acronym), which was signed by the Argentine Republic, the Republic of Bolivia, the Federative Republic of Brazil, the Republic of Chile, the Republic of Paraguay, the Republic of Peru and the Eastern Republic of Uruguay on January 1, 1990.

<sup>11</sup> A sample card was incorporated into the IRTA as Appendix 1 of Annex II. The card must be requested by the road carrier from the authorities of its country of origin.





Furthermore, Decision 56 of the Cartagena Agreement also established a land crew card requirement applicable to Andean countries, similar to that set forth by the IRTA. As Bolivia is a signatory party to both agreements, both cards are mandatory for its carriers.

In any event, Bolivian carriers and the IRTA enforcement agencies are well aware that the card has not been required in the last few years.

12. *Need for occasional and complementary permits by carriers of cargo in-transit.*

Under the IRTA, for international transport, both bilateral and in-transit carriers must apply for a permit issued by their country of origin and for a permit issued by the in-transit country or country of destination. The country of origin will issue a document known as a “*primary permit*” and the in-transit country or country of destination will issue a “*complementary permit*”. Under this agreement, an “*occasional permit*” is required for occasional trips, as opposed to those made on a regular basis. These permits are designed for specific cargo.

Bolivia’s claim concerning the complementary and occasional permits is premised on an argument that is not supported by the IRTA and according to which the latter does not apply to Bolivian





carriers transporting cargo in transit through Chilean territory. Bolivia states that it is necessary to distinguish between bilateral traffic, i.e. traffic between Bolivia and Chile, and cargo in transit which Bolivians call “*overseas traffic*”. Regarding the latter, Bolivia asserts that the free transit regime constitutes an exception to such regulation and that only the Treaty of 1904 applies, to the exclusion of the IRTA requirements.

Bolivia complains that our country applies the basic regulations that any carrier is required to observe in order to be authorized to carry out transport activities. Those requirements are set forth in the IRTA and its internal regulations, and apply to Chilean and foreign companies alike. In this respect, it is worth noting that the free transit regime set forth in the Treaty of Peace and Friendship of 1904 is entirely consistent with the IRTA, in that its provisions do not prevent Bolivia from exercising its free transit rights. The principles and objectives contained in the IRTA further prove this consistency.

Indeed, the objective of the IRTA is to promote free transit among signatory countries and its requirements are precisely aimed at ensuring equal transit conditions in line with fundamental principles such as national treatment, and regulatory, environmental and safety standards.





Chile guarantees the application of the regime of free transit in favour of Bolivia on a broad scale, but the rights arising therefrom are neither absolute nor unlimited. It follows that the free transit regime cannot be exercised in violation of principles widely recognized and invoked within the framework of the IRTA and ALADI.

In this respect, Bolivia's aspiration cannot be accepted: Bolivian carriers cannot operate on our roads without the permits that are required from other foreign transportation companies under the IRTA, without insurance, and without either the required technical qualification or minimum safety standards. Drivers of these transportation companies cannot be expected to perform their duties without the minimum working and health conditions to which any worker is entitled.

Finally, the Treaty of 1904 -in light of its date of conclusion- could not have contained operational rules applicable to transportation and even less to transportation by land. In practice, the IRTA regulations and requirements have been complied with, such as the use of the "*International Cargo Manifest (ICM)/ Customs Transit Document (CTD)*", to which signatory countries agreed in order to protect cargo in transit as well as vehicles that transport cargo. Moreover, Bolivia does issue primary permits, but refuses to apply for complementary ones.





### 13. *Controls over cargo-transporting vehicles by the Chilean Ministry of Transport upon entry into our country.*

In 2013, after advance notice had been given to Bolivia, Chilean authorities<sup>12</sup> began to place controls on truck drivers entering Chile through the Paso de Tambo Quemado (Chungará, on Road 11-CH). These controls have been, and continue to be, performed under the abovementioned IRTA, to which both Bolivia and Chile are parties. This control entails a visual, technical and mechanical inspection of the truck as well as the verification of the documentation of the driver. This examination takes on average approximately two minutes per vehicle, with no major impact on the waiting period at the Chungará border facilities.

Broadly speaking, these controls have been directly applied to no more than 5% of the trucks destined for Chile, as they have only been in place for a few hours per day, from Monday to Wednesday every week. By way of example, from July to September 2013, only 11.5% of the inspected trucks were returned to Bolivia. In all such cases, the decision was due to noncompliance with the applicable laws, namely: the absence of an identification plate; drivers without a license; slick tires or tires in poor condition; missing lights, lamps or bumpers; air break hoses in poor condition; the absence of fire extinguishers, chocks or appropriate signalling equipment, etc.<sup>13</sup>

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<sup>12</sup> The Ministry's Regional Secretariat of Transport of the Arica and Parinacota Region.

<sup>13</sup> According to the Chilean Ministry of Transport, the controls enabled a reduction of accidents involving trucks on Road 11-CH between Chungará and Arica by almost one third during 2013.





14. *Fines for traffic violations imposed by Carabineros.*

All fines imposed by Carabineros [Chilean police] for violations or breaches of traffic regulations within the urban area of Arica or on Road 11-CH have nothing to do with the exercise of free transit rights, and do not interfere with cargo in transit. In this respect, Article 34 of the IRTA should be taken into consideration. This rule provides that the imposition of fines arising from acts or omissions that are contrary to the laws and regulations, i.e. the Traffic Act and its Regulations, shall be resolved or enforced by the signatory country in which those acts or omissions have occurred, pursuant to its own legal system.

Claiming that the Carabineros seize driving licenses is also inaccurate. It is publicly known that law enforcement agents act under instructions not to withhold licenses from foreign drivers who have committed traffic violations in Chile.

15. *Mandatory insurance coverage for private vehicles.*

Through Supreme Decree No. 151 of 2013, the Ministry of Transport made insurance coverage against personal accidents compulsory for foreign private vehicles entering Chile. This Supreme Decree is unrelated to free transit or to the IRTA. Indeed, foreign vehicles engaged in international passenger or cargo transport covered by the latter transport agreement, are exempted from the application of the Supreme Decree in accordance with its Section 1(2). The IRTA contains its own







provisions regarding insurance (Section 13 and Annex III). Furthermore, the insurance requirement applies only to private vehicles, not to trucks (whether or not they transport cargo). Bolivia was informed of the entry into force of these regulations, and it failed to make enquiries or formulate any requests for clarification in this regard.

16. *Disruption at the Chungará border facilities due to electricity outages.*

Electricity outages at the Chungará border facilities, in particular due to weather conditions during the winter season in the Altiplano region, have seldom occurred and these circumstances cannot be attributed to the Chilean government. Nor can these situations be said to have been so significant as to impede free transit, as these are force majeure events. Such contingencies have also occurred at Bolivian border posts, forcing the relevant Bolivian entities to operate at Chilean border posts (as was the case in Chungará and Colchane in 2013 and 2014).

## IV.

### The Arica-La Paz Railway

Bolivian authorities refer to the obligation to maintain the Arica-La Paz Railway in operation.

Bolivia misinforms ignoring that currently the railroad is operational from the Port of **Arica up to the border.**





17. *“The Arica-La Paz Railway paralysis”.*

The passenger service of the Arica-La Paz Railway was suspended in 1997 due to a lack of demand. It was Bolivia that ceased to operate the locomotive providing this service. The construction of the road between Arica and La Paz that runs through Paso de Tambo Quemado has led travellers to use buses to travel between the two cities.

As regards cargo transport, the Arica-La Paz Railway did not cease to operate in 2001 but in 2006. It should be noted that in 2001 the railway infrastructure suffered serious damage as a result of poor weather during the Altiplano’s winter season. This led to a temporary interruption of service that was resumed after the Chilean government fully repaired the bridges and the railroad. While the repair works were in progress, the state-owned company, Empresa de Ferrocarriles del Estado (EFE), temporarily ceased to demand payment of rent for the Chilean section of the Arica-La Paz Railway.

In 2006, the Arica-La Paz Railway ceased to operate because the lessee company of the Chilean section of the railway went bankrupt. The company vested with the operation and administration of the Chilean section was a Bolivian company pursuant to a lease agreement concluded in 1997. This company, operating under the name *“Administradora del Ferrocarril de Arica a La Paz S.A.”*, became insolvent and was unable to





maintain the railway track or comply with the duty to operate the railway on a permanent and ongoing basis. Several reasons converged in the insolvency: the finishing of the Patacamaya-Arica road in 1996; cheap and subsidized oil in Bolivia; increase of the Bolivian truck fleet; non-transshipment from production centers in Bolivia to the Port of Arica; lack of tolls in the international route Chungará-Tambo Quemado. All of these factors made ground transportation capable of offering a cheaper and long-lasting tariff for transit freights.

Due to bankruptcy, Empresa de Ferrocarriles del Estado recovered the Chilean section and promptly subscribed an agreement with Empresa Portuaria Arica, giving the latter a broad mandate to take charge of necessary actions for the “*Reparation and Restoration of the Arica-La Paz Railway*” project.

According to Chilean legislation, in 2007 the Reparation and Restoration Project entered to the Environmental Impact Assessment System, and in 2008, the Environmental Remediation Plan, proposed by EFE, was approved. The execution of this plan derived into a complex and far-reaching job, because transport and storage of minerals concentrates, polluted wide sectors of the road, as well as the train stations and the property of the Maestranza Chinchorro in Arica. Moreover, several archeological remains were found, requiring additional works.





In 2011 EFE transferred the operation of the railway's Chilean sector to its subsidiary, Ferrocarril de Arica a La Paz S.A., incorporated in 1993. At early 2013, the railway was completely restored, though Environmental Remediation continued after that date. Because of the earthquake that affected the region in April 2014, the railway suffered serious damages thus additional restoration was required that year.

Currently, the railroad is operational up to the border, with some route-specific technical restrictions. It is expected that the railroad will be restored to the standards existing prior to the 2014 earthquake by early 2016, upon completion of Phase II of the reconstruction operation contract. Two engines and 20 carriages have been repaired and refurbished so far and are ready for use. Pull tests are being conducted on the railroad tracks.

All information herein demonstrates that Chile is faithfully giving effect to the fullest and most unrestricted free transit enjoyed by Bolivia, which grants it unhindered access to and from the sea, on the basis of a legal system grounded on the 1904 Treaty and other binding international agreements, as well as on the careful diligence of Chilean supervising authorities.



