



CHILE AND BOLIVIA'S ACCESS TO THE SEA. MYTH AND REALITY.

June 2014





I. THE FACTS ON BOLIVIA'S ACCESS TO THE SEA

More than 20% of the countries in the world are landlocked. Of these countries, Bolivia is among those enjoying the greatest rights of access to the sea.

Under the 1904 Peace and Friendship Treaty (Article VI), Chile granted to Bolivia – in perpetuity – “*the broadest freedom of commercial transit through its territory and the ports of the Pacific*”. Today, Bolivia enjoys of the right to retain autonomous customs officials in Chilean ports, preferential tariffs and superior terms for storage of goods, and tax exemptions and free transit through connecting roads to port facilities. These benefits derive from the 1904 Treaty and subsequent bilateral agreements.

Through these facilities, privileges and rights in Chilean territory, Bolivia has broad access to the Pacific Ocean.

Some specific rights and privileges Bolivia enjoys include:

1. **The right to retain autonomous customs officials in the ports of Arica and Antofagasta**

As a consequence of the 1904 Treaty, Bolivia exercises customs authority in the ports of Arica and Antofagasta over cargo destined for Bolivia.

This means that **Bolivia has its own customs authorities in the ports of Arica and Antofagasta**. Those authorities, and not Chilean ones, are responsible for issuing and authorizing documentation for cargo destined for Bolivia.

Bolivia also has the discretionary power to **apply its own import duties and to set the rates for export rights**, among other powers.

Bolivia's authority to constitute customs agencies in Chilean ports differentiates it from most other landlocked countries.

2. **The right to store cargo for substantially longer periods than Chilean cargo**

Bolivian goods in transit may remain in the primary zones of the ports of Arica and Antofagasta for a period of one year, under Bolivian Customs authority. This period can be extended for three additional months (90 days) under the Chilean Customs authority. In total, **Bolivian goods in transit may remain one year and three months (455 days)** in the primary zones of the abovementioned Chilean ports.

By contrast, in the same zones, **Chilean goods or those of third countries may only remain for three months (90 days)**, after which they are considered abandoned, and recovery fines must be paid.





3. Free storage services

Bolivia enjoys **free storage services** at the ports of Arica and Antofagasta for up to **one year** for its imports and **60 days** for its exports.

Neither Chile nor any other country, except Bolivia, enjoys free cargo storage at the ports of Arica and Antofagasta.

This privilege in favor of Bolivian cargo exceeds the free transit obligations provided in the 1904 Treaty.

4. Preferential tariffs for the use of loading docks (FIO)

There is a fixed tariff of U\$0.85 per ton applied to all Bolivian goods whose freight is FIO (*Free in and out*, that is, the carrier is not responsible for the cost of loading and unloading goods) or to the goods whose loading and/or unloading must be borne by the consignee.

Chile and third countries, except Bolivia, must pay \$1.98 for the same service at the port of Arica.

5. Reduced or preferential tariffs for storage of hazardous cargo

Chile applies preferential tariffs for the storage of Bolivian cargo to be immediately removed or shipped (hazardous cargo). Bolivia pays only **US\$1.04 per ton of Bolivian cargo importation in transit** for a period of 5 days. For the same cargo and time period, Chile and all other third countries pay **US\$111.15** (for a period of 5 days).

6. Tax exemption applied to all Bolivian cargo in transit

Chilean law establishes a real exemption from all taxes that may affect cargo in free transit from or towards Bolivia through Chilean territory and ensures exemption from Value Added Taxes (VAT) levied on services provided directly to the cargo. Recently this VAT exemption has been extended to services called "Gate In", consisting of the loading of empty containers at the port, their movement to places of deposit, their unloading at those places and their basic cleaning.

The paragraphs above demonstrate that the *"right of free transit"* is exercised by Bolivia without obstacles, and under quite favorable conditions, in light of the rules provided in the United Nations Convention on the Law of the Sea.

7. Chile and Bolivian trade

More than seven thousand Bolivian companies currently exercise this freedom by trading through Chilean ports. In fact, in the last five years, the movement of Bolivian commercial cargo has increased by 132%.





Through the port of Arica alone, Bolivia is responsible for more than 40% of the commerce originating from or destined to non-neighboring countries.

Up to March 2014, 81% of the 762,654 tons moved through the port of Arica were Bolivian cargo.

On the other hand, **these free transit benefits and privileges are made available to Bolivia at a cost to Chile of approximately US\$100 million annually.** Indeed, this is a conservative estimate when both the direct costs (investment in road and rail maintenance, payment to port companies for providing free storage and preferential tariffs to Bolivian cargo, non-taxation of goods in transit to or from Bolivia, etc.) and the costs which private entities incur to facilitate Bolivia's free transit privileges are taken into account. Moreover, the estimate excludes periodic and significant Chilean investments to expand and improve the port, customs, and railway and road infrastructure.

Finally, of the multiple trade agreements signed by Chile, only one confers asymmetrical benefits: the Economic Complementation Agreement with Bolivia. In it, Chile granted Bolivia a 0% tariff on all products (with the sole exception of sugar exceeding 6,000 tons), while Bolivia granted 0% tariff to Chile for only 300 products.

8. Sica Sica – Arica Pipeline

Bolivia's freedom of transit is apparent as well in the Sica Sica - Arica pipeline.

Chile granted Bolivia a concession for two sites in Arica, one of 13 hectares and another of 3.5 hectares, for the operation and transfer of oil to be exported by pipeline. Chile also granted a concession for the use of a strip of land for the pipeline from Arica to the border 10 meters wide and 150 kilometers long, amounting to an area of over 150 hectares.

Through an agreement signed in 1992, Chile authorized the bidirectional use of the pipeline and the storage of oil, rendering facilities suitable for both exportation and importation.

II.

CHILE AND BOLIVIA HAVE CLEAR AND DEFINITIVE BOUNDARIES BASED ON A TREATY FULLY IN FORCE

The frontier between Chile and Bolivia was established in the Treaty of Peace and Friendship, signed by both states in 20 October 1904. This treaty established their boundaries and also rules over aspects of the border relations between Chile and Bolivia, setting up a regime that has governed relations between both countries for over 110 years.

This treaty was freely consented to 24 years after the end of conflict in the 19th century and 20 years after a truce established peace between them.





In his presidential campaign at the time, Bolivian Minister of Defense, Ismael Montes, presented the successful negotiation of the Treaty as a central element of his candidacy. Montes was elected in May 1904 with an overwhelming majority (76.45% of the votes) and was later reelected for a second period between 1913 and 1917. Similarly, the former Minister of Foreign Affairs Eliodoro Villazón, who participated in the negotiation of the treaty, was elected President of Bolivia in 1909.

The 1904 Treaty reestablished peace and friendship relations between Chile and Bolivia and terminated the Truce Pact.

It recognized the absolute and perpetual dominion of Chile over the territories alluded to in Article 2 of the Truce Pact: between the mouth of the Loa River and the 23rd parallel. The boundary between Chile and Bolivia from South to North was established.

By virtue of the Treaty, Chile granted Bolivia the following benefits:

a) Free transit in perpetuity in favor of Bolivia through the Chilean territory and ports. This guaranteed access to the sea to Bolivia.

b) The building of the Arica – Alto La Paz railway by Chile.

This work of engineering allowed Bolivia, for the first time, to have effective access to the Pacific Ocean. In full compliance with the 1904 Treaty, in 1928 Chile transferred, permanently and free of charge, the Bolivian section of the railway to the Government of Bolivia.

c) Financial obligations assumed by Chile

Chile agreed to pay to Bolivia three hundred thousand pounds sterling at the time, in two installments, and assumed responsibility over Bolivia's guarantees in connection with the building of the Bolivian railway network to improve its internal connectivity. Similarly, Chile took over debts recognized by Bolivia to individuals.

Chile's agreement with Bolivia amounted to a cost of 4.5% of Chile's GDP at the time. An agreement with such high cost was highly unusual for similar situations at the time. Nonetheless, Chile fully complied with its obligations.

The Bolivian diplomat Alberto Gutiérrez assessed the 1904 Treaty years after its signature, in the following way:

"The Treaty signed with Chile on 20 October 1904 was such a considerable evolution for the (Bolivian) national economy, that it can be said that it covered all its fundamental needs: railways, education, customs and financial independence". (Alberto Gutiérrez, La Guerra de 1879. La Paz: Librería Editorial GUM, 2012, p. 352).





III.

WHAT IS AT STAKE: THE NORMAL CONDUCT OF INTERNATIONAL RELATIONS AND RESPECT FOR ESTABLISHED BOUNDARIES

1. Introduction

Bolivia has requested the International Court of Justice to declare that Chile has an obligation to negotiate an agreement by which Chile will cede territory to Bolivia, so that Bolivia has “sovereign access” to the Pacific Ocean. Bolivia relies on diplomatic negotiations that have taken place in the past as a source of this alleged obligation.

Bolivia’s claim is without foundation. Chile is not subject to any legal obligation to negotiate with Bolivia in order to reach an agreement granting Bolivia a fully sovereign access to the Pacific Ocean.

2. International negotiations

Negotiations are an essential component of peaceful relations between States. Without them, States would be unable to resolve the often complex issues that form part of the international agenda. In order for negotiations to achieve their purpose, it is necessary that States have freedom to express points of view and to make proposals which take account of their rights and interests. In that context, it is imperative that States be able to participate in an open and free dialogue, without necessarily being legally obliged to reach an agreement which does not take due account of each States’ rights and interests.

Moreover, the requirement that States consent to the imposition of legal obligations upon them is a cornerstone of the international legal system, stemming from the principle of sovereign equality.

Having failed to achieve its aspiration through diplomatic relations, Bolivia now asks the Court to order Chile to fulfill Bolivia’s political aspiration. Bolivia’s claim would have potentially far-reaching consequences for the freedom of States to participate meaningfully in diplomatic negotiations, as well as their ability to discuss freely potential ways to resolve issues without fear that their negotiating partner would later say that because in particular circumstances at some point in history a diplomatic initiative was made or entertained, that it could later be considered to have created a legally binding obligation to reach a certain result.

3. Respect for established boundaries

Chile and Bolivia established their definitive boundaries in the Treaty of Peace and Friendship of 1904. This Treaty contains ongoing rights and obligations for both States, including the right of free transit for Bolivia, and has been respected and implemented by both of them for more than a century.

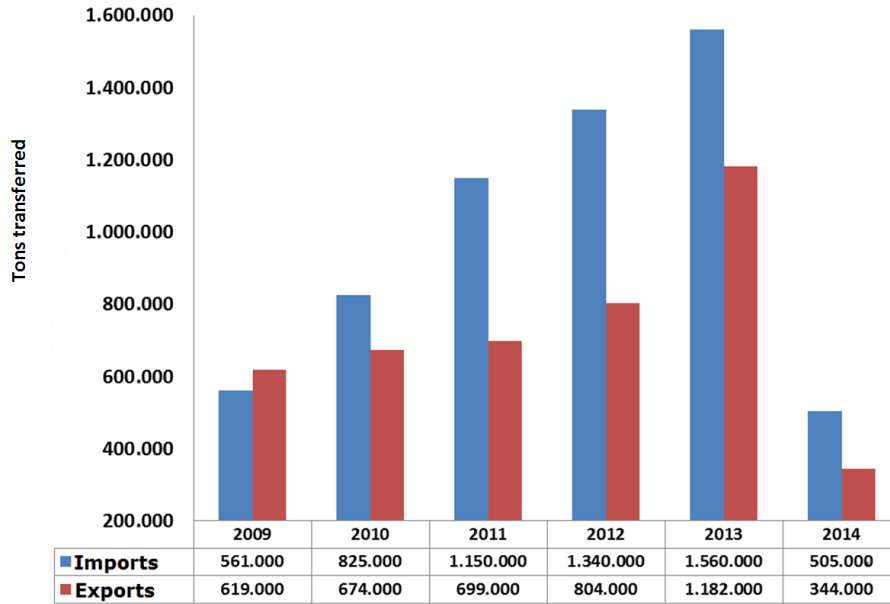
By its claim, Bolivia seeks a result by which Chile would be obliged to agree to change the boundary between the two States. Bolivia seeks to unsettle the boundary agreed 110 years ago with Chile.





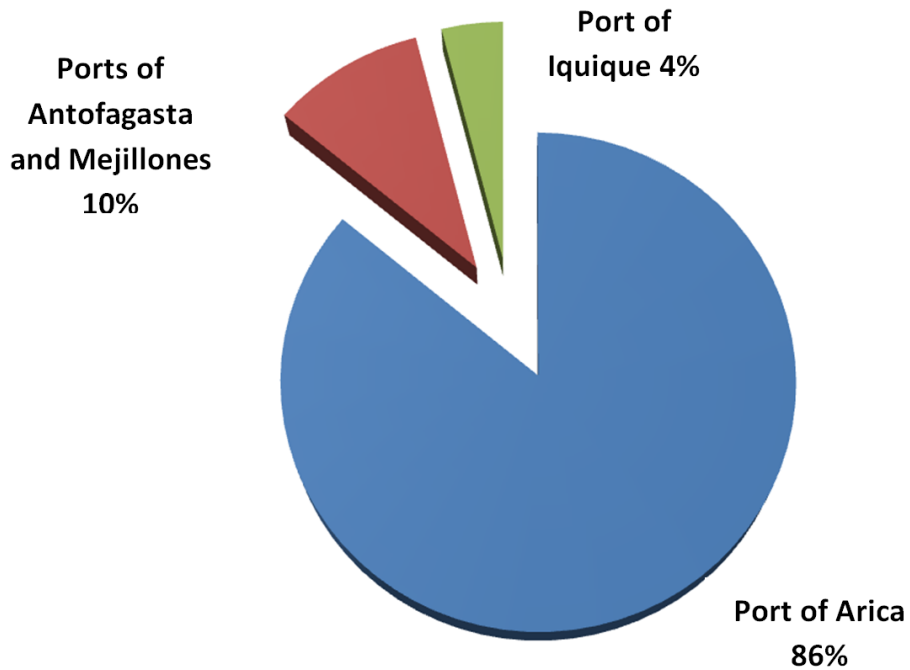
IV. RELEVANT DATA

BOLIVIAN CARGO THROUGH CHILEAN PORTS



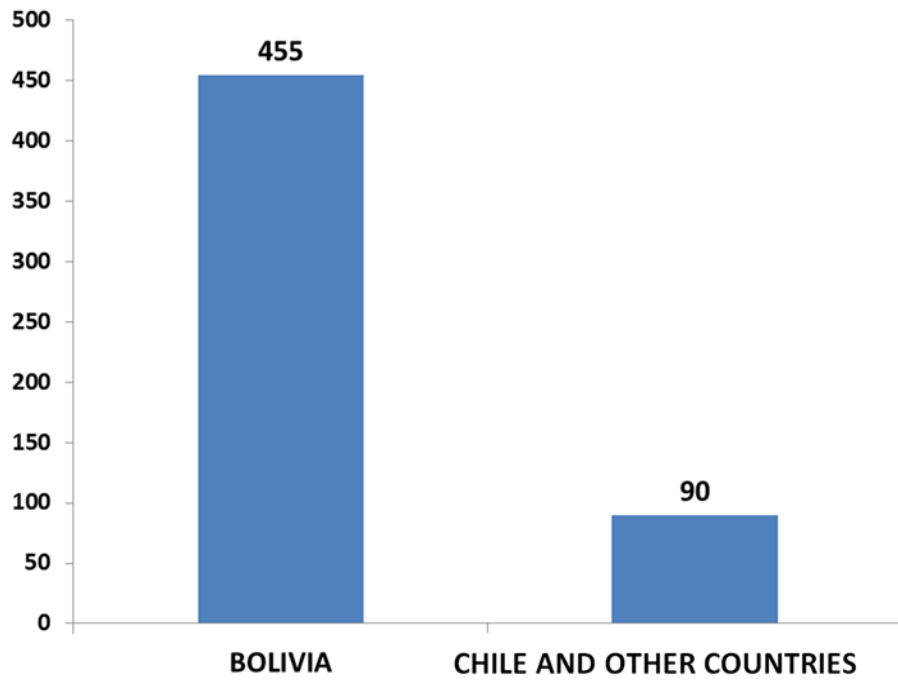
Figures updated in
30 April 2014

CHILEAN PORTS USED BY BOLIVIA

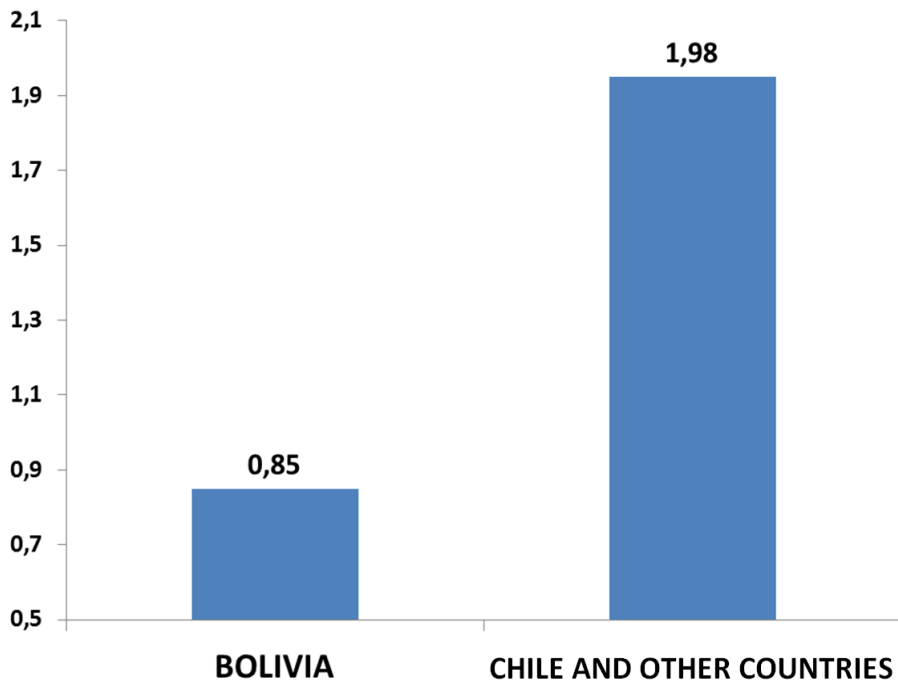




THE RIGHT OF BOLIVIAN CARGO TO REMAIN IN THE PRIMARY ZONES OF THE PORTS OF ARICA AND ANTOFAGASTA (IN DAYS)



TARIFFS FOR THE USE OF LOADING DOCK (FIO) (IN US\$)





**TOTAL BOLIVIAN FOREIGN TRADE, 2012
(EXCLUDING FOREIGN TRADE WITH NEIGHBORING COUNTRIES)**

- Transfers through Chilean ports (Ton.)
- Transfers through other countries (Ton.)

