

April 2, 2015

By email

Mr. Víctor Pey Casado
and Foundation President Allende
c/o Mr. Juan E. Garcés
Calle Zorrilla no. 11, primero derecha
Madrid – 28014
Spain
and
c/o Ms. Carole Malinvaud
Ms. Alexandra Munoz
Gide Loyrette Nouel
22, cours Albert 1er
75008 Paris
France

Republic of Chile
c/o Mr. Jorge Pizarro
Ms. Liliana Macchiavello
Mr. Carlos Dettlef
Ms. Victoria Fernández-Armesto
Committee on Foreign Investments
Ahumada 11, Piso 12
Santiago de Chile, Chile
and
c/o Mr. Paolo Di Rosa
Ms. Gaela Gehring Flores
Arnold & Porter LLP
555 Twelfth Street, N.W.
Washington D.C. 20004-1206, USA
and
Mr. Jorge Carey
Mr. Gonzalo Fernández
Carey & Cia
Isidoro Goyenechea 2800 Piso 43
Las Condes, Santiago, Chile

Re: Víctor Pey Casado and Foundation President Allende v. Republic of Chile
(ICSID Case No. ARB/98/2 – Resubmission)

Dear Sirs and Mesdames,

1. The Tribunal renews the expression of its gratitude to the Parties for their thoughtful views on the procedure at the forthcoming hearing, and the increasing common ground between them which this exchange of views has revealed.

2. The Tribunal shares the view of the Parties that a fifth hearing day should not be necessary, but asks the Parties to remain at the Tribunal's disposal on Friday, 17 April 2015, in case of need. The Tribunal undertakes to notify the Parties at the latest on Wednesday, 15 April 2015, whether their presence will in fact be required on the 17th.

3. Bearing in mind its own needs as well as those of the Parties, the Tribunal believes that the most appropriate sitting hours will in principle be between 9:30 a.m. and 5:30 p.m., but will retain the flexibility to extend the sitting hours until later on any given evening if that seems desirable. There will be a one hour break for lunch, and shorter breaks mid-morning and mid-afternoon to be taken at whatever time seems to the Tribunal to be most convenient in the light of the progress of the proceedings on that day. See further below.

4. The Tribunal will find it of greatest help if the proceedings were to begin on each side with a full introductory exposé of the arguments of law and of fact on which that side intends to rely. The Parties are asked to bear in mind in this connection the limited issues which are for decision in these proceedings, as indicated in paragraph 15.3 of Procedural Order No. 1. The introductory argument should accordingly

cover all questions of law and fact (including expert opinion) which are relevant to the determination of these issues, in the light of the submissions made by the opposing Party or Parties and its witnesses. The Claimants will be called upon first, followed by the Respondent. In the opinion of the Tribunal, and bearing in mind that there will be simultaneous interpretation, it would be advisable to allow each side up to a maximum of 5 hours for this purpose; this is however a maximum, and the Tribunal would welcome it if the opening arguments could be completed in less time. The Claimants will accordingly be heard on Monday, 13 April 2015, and the Respondent partly on the same day and partly on Tuesday, 14 April 2015. The Respondent will be allowed not less than 1½ hours to commence its opening argument on Monday, 13 April, and the sitting hours will, if necessary be adjusted accordingly. As the opening arguments on both sides will be concluded before the end of the sitting hours on 14 April 2015, the examination of the expert witnesses will begin in the time that remains.

5. The second phase of the proceedings will consist of an examination of the one witness who has been put forward as an expert on the law of Chile. The witness will be given a limited opportunity to introduce the main points in his report and the Respondent a limited opportunity to conduct a direct examination of the witness, before the witness is made available for cross-examination by the Claimants; the introduction and the direct examination will together not last longer than 15 minutes. The witness will then be subject to cross-examination by the Claimants, after which the Respondent will be permitted a limited re-examination confined to issues that have arisen in the cross-examination. The Tribunal does not anticipate that the cross-examination will last for longer than one hour, but will be prepared to allow a moderate extension of time in case of need. The witness examination will accordingly be completed within one half day.

6. The third phase of the proceedings will consist of an examination of the expert witnesses who have been put forward by both sides on the assessment of damages, beginning with the experts for the Claimants and continuing with the expert for the Respondent. The Parties are requested to notify one another and the Tribunal, not later than Wednesday, 8 April, of the names of the experts who will be offered for examination and cross-examination on each side. A period of 30 minutes will be set aside at the outset for the expert witness to present the main findings of his report and for direct examination (if any) by the Party or Parties calling the witness. The expert witness will then be available (as above) for cross-examination by the opposing Party or Parties for a period of two hours, followed by a limited re-examination confined to issues that have arisen in the cross-examination. These allocations of time will be subject to adjustment at the Tribunal's discretion in case of need. The Tribunal also reserves to itself the possibility, if time permits after the completion of the cross-examination and re-examination, of recalling the two expert witnesses to be questioned together by the Tribunal itself, and may for that purpose extend the sitting hours on Wednesday, 15 April 2015.

7. The final day, Thursday, 16 April 2015, will be devoted to closing argument, commencing with the Claimants and concluding with the Respondent, to permit each side to respond to all questions of law, fact, and expert opinion covered in the opening argument and the expert evidence of the other side. Each side will be allowed a period of 2 hours for this purpose, separated by an extended break in the middle of the day to allow adequate preparation time to the Respondent. The Tribunal may accordingly decide, at its discretion, to start either the morning session or the afternoon session, or both, later than the normal starting time.

8. The Tribunal does not believe that it will derive any advantage from a third round of oral argument thereafter, but will discuss with the Parties at the close of the proceedings whether there would be any benefit in final written submissions post-hearing.

9. The Tribunal does not, moreover, see a need to set aside any specific period of time for questions to counsel by the Tribunal itself, but will instead reserve to itself, if that seems necessary, the possibility of posing questions to one or both sides for answer either during the oral proceedings or in writing thereafter.

In the former case, the Tribunal will give adequate notice to ensure that the Party or Parties concerned is able to answer the question in the course of its closing argument on 16 April 2015.

10. A schedule illustrating these arrangements is attached for the Parties' guidance.

11. Simultaneous interpretation between the three languages, English, French, and Spanish, will be available throughout the hearing, including for the examination of the expert witnesses.

12. There will likewise be transcription of the proceedings in all three languages. Given the moderate sums involved (c. USD 12,000 in total), as well as the convenience for the Tribunal itself, the additional cost of real-time transcription will be registered as part of the costs of the arbitration, and the Tribunal will in due course decide, under Arbitration Rules 28 and 47, how this cost is to be borne.

13. For the sake of clarity, the Tribunal indicates that, in the light of the views expressed by all Parties, the document referred to in the Claimants' letter of 11 March 2015 and the Respondent's letter of 17 March 2015 is considered to have been admitted to the proceedings and may therefore be referred to in argument; but this is entirely without prejudice to whatever view the Tribunal may eventually take, having heard the argument of all Parties, on the document's relevance to the issues before the Tribunal or on the weight to be attached to it.

14. This letter may be cited as Procedural Order No. 3.

Yours sincerely,

[Signed]

Benjamin Garel
Secretary of the Tribunal

Encl.

cc: Members of the Tribunal