

III. TRADE POLICIES, BY MEASURE

(1) MEASURES AFFECTING IMPORTS

(i) Customs procedures

1. The time required to import goods has fallen from 30 days in 2006 to ten days in 2009.¹ Of these ten days, two are for customs clearance. According to figures provided by the authorities, the average time taken for customs clearance is 22 hours for imports of goods subject to inspection. El Salvador is 57th out of 181 economies as regards the ease with which import and export formalities can be completed and their cost.²

2. El Salvador's customs regime is based on the Uniform Central American Customs Code (CAUCA IV) and its implementing regulations (RECAUCA IV) and on domestic legislation, including the Organic Law on the Directorate-General of Customs, adopted in 2006, the Law streamlining customs procedures, amended in 2005 and 2006, and the Special Law on penalties for customs offences, amended in 2006.

3. The Directorate-General of Customs (DGA) is responsible for applying the customs regulations³ and is attached to the Ministry of Finance. Customs regulations, including orders issued by the DGA, can be found on the DGA's website.⁴ The DGA has published a *Guía Aduanera* (Customs Manual), which explains customs procedures.⁵ El Salvador belongs to the World Customs Organization but has not signed the Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures.

4. Importers must be registered with the DGA.⁶ Inclusion in the register is automatic after completion of the requirements laid down in the Law on the registration of importers.⁷ The use of a customs agent is optional for businesses, subject to authorization by the DGA.⁸

5. Shippers of freight carried by sea must send the cargo manifest to Customs electronically⁹ at least 48 hours prior to arrival of the means of transport in the port of unloading, and for air freight at least two hours beforehand.¹⁰ The authorities have indicated that the purpose of this requirement is to provide the DGA with information prior to arrival of the goods in Salvadoran customs territory. No electronic manifest is required from those transporting freight by land.

6. The goods declaration may be transmitted to Customs before the goods arrive in the port of unloading. It is also possible to pay import duties before the declaration is transmitted to Customs.

¹ Online information from the World Bank, *Doing Business: Measuring business regulations*. Viewed at: <http://www.doingbusiness.org/ExploreTopics/TradingAcrossBorders>

² *Idem*.

³ Article 3 of the Organic Law on the Directorate-General of Customs, Legislative Decree No. 903 of 12 January 2006.

⁴ Viewed at: <http://www.aduana.gob.sv>

⁵ USAID and DGA (2008), *Guía Aduanera*. Viewed at: http://www.aduana.gob.sv/index.php?option=com_content&task=view&id=8432&Itemid=34&show=1

⁶ Article 1 of the Law on the registration of importers, Legislative Decree No. 224 of 22 December 2000.

⁷ *Ibid.*, Article 7.

⁸ Articles 9 of the Law streamlining customs procedures and 87 of RECAUCA IV.

⁹ Article 2 of the Law streamlining customs procedures, Legislative Decree No. 906 of 2 March 1999.

¹⁰ General administrative provisions DGA-016-2007 of 7 November 2007 and DGA-013-2008 of 6 May 2008.

Both procedures may be conducted through Teledespacho, a computerized customs administration system that operates on the basis of the United Nations ASYCUDA++ scheme. Customs must be given the originals of the invoice, the transport document and, where the goods so require, the import permit. The original or a copy of the certificate of origin must also be submitted when goods are imported under a preferential trade agreement.

7. No security has to be deposited for definitive imports. El Salvador does not impose fees for customs services, with the exception of storage of the goods and parking for the means of transport.

8. Any person "with a legitimate interest" may consult the DGA on any matter that might affect customs taxation.¹¹ The DGA's reply is not binding, except in the case of an "advance decision" given in connection with one of El Salvador's preferential trade agreements.¹²

9. The DGA may require the imported goods to undergo physical or documentary inspection depending on the level of risk. The criteria used by Customs to determine the level of risk include the tariff classification, the value, the amount, the origin, licensing requirements or restrictions, expiry of time-limits and any errors found in the transport documents. The authorities have indicated that, at the end of 2009, 8.3 per cent of imports were subject to physical inspection, compared to 23 per cent in 2006. Approximately 4.3 per cent of imports undergo documentary inspection.

10. The DGA is authorized to conduct inspections subsequent to clearance. Importers must keep the relevant documents for the purpose of ex post inspections for a period of four years from the date of clearance.¹³ Some 1.1 per cent of goods declarations are subject to ex post inspection.

11. Importers may contest decisions by Customs through administrative channels, lodging an "appeal for review" with the Director-General of Customs, who must take a decision within the time-limits laid down in the Special Law on penalties for customs offences. The appeals body is the Internal Revenue Appeals Court, whose rulings exhaust administrative channels.¹⁴ Between 2006 and 2008, this Court issued 218 rulings on customs matters.

12. At the end of 2008, the DGA introduced the Customs Programme for Business Compliance (PACE), in which participation is voluntary. If a business wishes to participate in the PACE, its compliance with the taxation and customs regulations and its internal audit procedures must be evaluated and certified. The benefits of participation in the PACE include a reduction in the number of shipments subject to review and streamlined physical inspection procedures. The DGA also appoints a "person responsible" for each participating business to follow up individually any shipments where there are delays in customs clearance. At the beginning of 2009, five businesses, whose imports accounted for around 3.5 per cent of the value of total imports, belonged to the PACE.¹⁵

13. Since April 2007, a "single window for imports" has been operating in San Salvador. The office is composed of officials from bodies involved in import formalities, including those responsible for issuing permits for the import of certain products (see section (vi) below). This initiative has considerably shortened the average time taken to complete licensing formalities, from 20 days to one

¹¹ Article 5 of the Law streamlining customs procedures.

¹² See General administrative provision DGA-015-2008 of 6 October 2008.

¹³ Article 223 of RECAUCA IV.

¹⁴ Law on the organization and functioning of the Internal Revenue Appeals Court, Legislative Decree No. 135 of 21 December 1991.

¹⁵ Online information from the DGA, *Estadísticas de empresas aprobadas en el Programa PACE*. Viewed at: http://www.aduana.gob.sv/index.php?option=com_content&task=view&id=9669&Itemid=297

day.¹⁶ El Salvador is planning to set up a "virtual single window" through which users may complete import licensing formalities on line.

14. Since 2004, El Salvador and Guatemala have had "integrated offices" in the land customs posts along their common border.¹⁷ Under this initiative, users may go directly to the customs post at the place where the goods are to be imported in order to complete the relevant formalities, without also having to go to the customs post at the point of export, as was previously the case. The Members of the CACM have also set up "peripheral customs posts" along the borders of their common customs territory. Users of the peripheral customs posts may complete certain formalities with officials from the country of final destination of the goods. El Salvador has officials in several peripheral customs posts, including those at Tecún Umán (Guatemala), Puerto Cortés (Honduras) and Peñas Blancas (Nicaragua).¹⁸

15. According to the authorities, the DGA is making efforts to combat corruption by prosecuting and, when necessary, dismissing officials who engage in such practices. The DGA has also drawn up "criteria for intervention" in order to lessen the discretionary powers of its officials.

(ii) Customs valuation

16. El Salvador has not notified its customs valuation legislation to the WTO and has not replied to the checklist of issues on customs valuation.¹⁹

17. In response to a request from El Salvador, the WTO General Council granted it a waiver to enable it to use minimum values for certain used goods until 7 March 2003 or 7 March 2005, depending on the goods in question.²⁰ In October 2004, El Salvador notified the WTO of the "technical criteria and methodology for determining minimum values".²¹ In connection with this Review, El Salvador has indicated that it does not apply minimum values to any product.

18. El Salvador's valuation regime is based on CAUCA IV and its implementing regulations (RECAUCA IV), in force since August 2008.

19. The customs value of imports is generally the transaction value, including the cost of insurance and shipping to the place of import and other c.i.f. charges.²² According to the authorities, the transaction value is the valuation method used for 95 per cent of imports. Reversal of the order of the valuation methods provided in Articles 5 and 6 of the Customs Valuation Agreement at the request of the importer is not automatic but must be approved by Customs.²³

20. RECAUCA IV determines the criteria according to which the interest paid under a financing agreement for the purchase of the imported goods is not considered by Customs to be part of the customs value.²⁴ These criteria are the same as those laid down in the WTO Customs Valuation Agreement. The DGA determines the customs value of computer media containing data or

¹⁶ USAID and DGA (2008).

¹⁷ Online information from the Ministry of the Economy, *Integración económica centroamericana: unión aduanera*, March 2006. Viewed at: <http://www.minec.gob.sv/policom/default.asp?id=34&mnu=32>

¹⁸ SIECA (2007), *Unión aduanera en cifras*, October. Viewed at: <http://www.sieca.org.gt/site/VisorDocs.aspx?IDDOC=Cache/17990000002380/179900000002380.swf>

¹⁹ The checklist of issues is contained in WTO document G/VAL/5 of 13 October 1995.

²⁰ WTO document WT/L/476 of 12 July 2002.

²¹ WTO documents WT/L/586 and G/VAL/N/4/SLV/2 of 20 October 2004.

²² Article 188 of RECAUCA IV.

²³ WTO document WT/Let/14 of 24 April 1995.

²⁴ Article 190.

instructions on the basis of the cost of the computer medium and not on that of the data or instructions.²⁵ In order to apply the transaction value method when there has been a series of sales prior to import, the customs value is based on "the value corresponding to the latest transaction prior to submission of the declaration of the goods".²⁶ Where necessary, Customs uses the exchange rates published on the Internet by the Central Reserve Bank of El Salvador.

21. Customs keeps a database with information on prices in order to conduct enquiries into the values declared. It has published a "list of reference prices for the import of fruit and vegetables from Central America".²⁷ According to the authorities, these reference prices are used to calculate the value of small volumes of goods imported by persons who have no tax registration number or commercial invoice. It also makes available to the public a tool for calculating the customs value of used vehicles imported from Canada or the United States of America according to the "method of last resort".²⁸

22. If it becomes necessary to postpone determination of the customs value of goods, the rules give the possibility of removing the goods from Customs subject to lodging of security.²⁹ The amount of the security is equivalent to the amount of the tariff duties and any other taxes determined on the basis of the Customs reference values.

(iii) Rules of origin

23. El Salvador has notified the WTO that it does not apply non-preferential rules of origin.³⁰ It has also notified that it applies preferential rules of origin under its trade agreements with other Members of the CACM, Chile, the Dominican Republic, Mexico and Panama.³¹

24. El Salvador's preferential trade agreements lay down specific rules of origin (Table AIII.1). These define the changes in tariff classification required in order to confer origin on goods that have not been wholly obtained or produced entirely in the territory of one of the signatory countries. To a lesser extent, preferential rules of origin lay down criteria on regional value content that are either applied separately or in conjunction with a change in tariff classification.

25. In general, origin is determined on the basis of the certification by exporters or producers. A certificate of origin issued under the trade agreement with Chinese Taipei must also be endorsed by the competent authority in the place of origin of the goods.

(iv) Tariffs

26. El Salvador's tariff policy is defined within the CACM framework. It applies the Central American Import Tariff, which is contained in Annex A to the Convention on the Central American Tariff and Customs Regime. The Council of Ministers for Economic Integration, composed of the

²⁵ USAID and DGA (2008), *Guía Aduanera*. Viewed at: http://www.aduana.gob.sv/index.php?option=com_content&task=view&id=8432&Itemid=34&show=1

²⁶ Article 192 of RECAUCA IV.

²⁷ DGA Information Bulletin No. 3, *Valor de transacción para la importación de frutas y verduras*, of 25 July 2006.

²⁸ DGA Information Bulletin No. 12, *Importación de vehículos usados*, of 17 October 2005.

²⁹ Article 202 of RECAUCA.

³⁰ WTO document G/RO/N/10 of 16 August 1996.

³¹ WTO documents G/RO/N/11 and G/RO/N/43 of 10 September 1996 and 15 March 2004, respectively.

Ministers of the Economy of the CACM member countries, is the only body empowered to amend the rates in the Central American Import Tariff.

27. The Central American Import Tariff consists of the following basic rates: zero per cent on raw materials, and intermediate and capital goods not produced in the CACM; 5 per cent on raw materials produced in the CACM; 10 per cent on intermediate and capital goods produced in the CACM; and 15 per cent on finished goods.³² The CACM member countries may apply other rates, but these must be approved by the Council of Ministers. The Secretariat for Central American Economic Integration estimates that the rates applied to 95.7 per cent of the tariff lines in the Central American Import Tariff are harmonized among CACM member countries.³³

28. The Central American Import Tariff is based on the Harmonized Commodity Description and Coding System (HS) and reflects the amendments appearing in the fourth Recommendation on amendment of the HS, approved in June 2004 (HS 2007).³⁴

29. El Salvador gives both WTO Members and non-members MFN tariff treatment as a minimum.

(a) Structure and levels

30. The applied tariff as at early 2009 included 6,564 eight-digit tariff lines (Table III.1). El Salvador has no seasonable or variable tariffs. Since the previous Review in 2003, tariff quotas have been imposed on imports of Cheddar-type cheese in blocks or slabs (Chapter IV(1)).

31. All the applied rates are *ad valorem*. The tariff comprises 11 rates ranging from 0 to 164 per cent. The most common rate is zero per cent, which applies to some 47 per cent of tariff lines, followed by 15 per cent (around 20 per cent of tariff lines) and 10 per cent (some 16 per cent of tariff lines).

Table III.1
MFN tariff structure, 2009
(Percentage)

Total number of tariff lines	6,564
Non- <i>ad valorem</i> tariffs (% of all tariff lines)	0.0
Tariff quotas (% of all tariff lines)	0.0
Duty-free tariff lines (% of all tariff lines)	47.2
Average of lines exceeding zero (%)	11.9
Domestic tariff "peaks" (% of all tariff lines) ^a	2.8
International tariff "peaks" (% of all tariff lines) ^b	2.8
Bound tariff lines (% of all tariff lines)	100.0

a Domestic tariff peaks are defined as rates exceeding three times the overall simple average applied rate.

b International tariff peaks are defined as rates exceeding 15 per cent.

Source: WTO Secretariat estimates based on data provided by the authorities of El Salvador.

32. The simple average of MFN tariffs applied fell from 7.4 per cent in 2002 to 6.3 per cent in early 2009 (Table III.2). This reflects to a large extent the marked decrease in the average rates applied to textiles and their manufactures, from around 18 per cent in 2002 to some 10 per cent in early 2009. The coefficient of variation increased slightly over the same period, from 1.2 to 1.4.

³² Resolution No. 26-96 (COMRIEDRE IV) of 22 May 1996.

³³ SIECA (2009), *La unión aduanera centroamericana*, July. Viewed at: <http://www.sieca.org.gt/site/Enlaces.aspx?ID=002005>

³⁴ Resolution No. 180-2006 (COMIECO XXXIX) of 9 November 2006.

33. The simple average MFN tariff applied to agricultural products according to the WTO definition is 12.9 per cent, compared to 5.2 per cent for other products. The average applied to agricultural products has increased by almost one percentage point since the previous Review of El Salvador because of the higher rates imposed on chicken thighs, legs and preparations (Chapter IV(1)). A rate of 40 per cent applies to around 70 tariff lines covering products such as sausages, dairy products, rice, sugar, rum and ethyl alcohol.

Table III.2
Breakdown of the MFN tariff, 2009

Description	MFN				Average bound tariff (%) ^a
	Number of lines	Average (%)	Range (%)	Coefficient of variation (CV)	
Total	6,564	6.3	0 – 164	1.4	37.0
HS 01-24	1,003	13.3	0 – 164	1.2	43.7
HS 25-97	5,561	5.0	0 – 30	1.2	35.8
By WTO category					
Agricultural products	939	12.9	0 – 164	1.3	43.0
- Animals and animal products	127	29.0	0 – 164	1.1	55.3
- Dairy products	31	24.8	0 – 40	0.6	38.8
- Coffee and tea, cocoa, sugar, etc.	170	12.2	0 – 40	0.8	42.3
- Cut flowers and plants	59	5.8	0 – 15	1.2	30.7
- Fruit and vegetables	206	13.2	0 – 30	0.4	39.2
- Cereals	23	13.7	0 – 40	1.2	38.0
- Oilseeds, fats and oils and their products	94	5.2	0 – 15	1.1	48.6
- Alcoholic beverages and liquids	53	19.2	0 – 40	0.6	48.2
- Tobacco	19	7.4	0 – 30	1.0	74.0
- Other agricultural products n.e.s	157	3.6	0 – 15	1.4admi	36.2
Non-agricultural products (including petroleum)	5,625	5.2	0 – 30	1.2	36.0
- Non-agricultural products (excluding petroleum)	5,601	5.2	0 – 30	1.2	36.0
- Fish and fish products	157	9.6	0 – 15	0.6	44.8
- Minerals, precious stones and metals	372	5.0	0 – 15	1.2	37.6
- Metals	712	3.0	0 – 15	1.6	35.3
- Chemicals and photographic products	1,105	2.5	0 – 15	1.8	37.2
- Leather, rubber, footwear, and travel articles	208	7.7	0 – 20	0.7	39.6
- Wood, wood pulp, paper and furniture	453	6.3	0 – 15	0.9	36.4
- Textiles and clothing	939	9.8	0 – 20	0.5	38.8
- Transport equipment	221	6.4	0 – 30	1.4	35.4
- Non-electrical machinery	587	1.4	0 – 15	2.8	30.8
- Electrical machinery	339	3.1	0 – 15	1.8	27.8
- Non-agricultural products n.e.s.	508	7.5	0 – 30	1.1	34.4
- Petroleum	24	4.2	0 – 15	1.2	40.0
By ISIC sector^b					
Agriculture and fishing	411	8.1	0 – 40	0.9	37.4
Mining	107	1.8	0 – 15	1.8	35.3
Manufacturing	6,045	6.2	0 – 164	1.4	37.0
By HS chapter					
01 Live animals and animal products	299	16.1	0 – 164	1.3	46.7
02 Plant products	376	9.8	0 – 40	0.8	35.1
03 Fats and oils	54	7.3	0 – 15	0.9	63.7
04 Food preparations, etc.	274	16.4	0 – 164	1.0	48.5
05 Mineral products	178	2.7	0 – 15	1.5	36.6
06 Products of the chemical and related industries	961	2.0	0 – 15	2.1	36.4
07 Plastics and rubber	333	4.6	0 – 15	1.0	38.2
08 Hides and skins	108	8.3	0 – 15	0.7	41.4
09 Wood and articles of wood	138	7.9	0 – 15	0.6	33.0
10 Wood pulp, paper, etc.	294	5.1	0 – 15	1.1	37.3
11 Textiles and textile articles	920	9.6	0 – 20	0.5	38.7
12 Footwear, hats and other headgear	64	13.1	0 – 20	0.3	41.8
13 Articles of stone	176	6.4	0 – 15	1.0	39.6
14 Precious stones, etc.	54	6.9	0 – 15	0.8	38.5
15 Base metals and articles of base metal	698	3.3	0 – 15	1.5	35.9
16 Machinery and mechanical appliances	974	2.2	0 – 15	2.2	29.4
17 Transport material	234	6.2	0 – 30	1.5	35.6
18 Precision instruments	237	3.9	0 – 15	1.5	31.9
19 Arms and ammunition	21	30.0	30 – 30	0.0	40.0
20 Miscellaneous manufactured articles	162	10.7	0 – 15	0.5	39.4

Description	MFN			Coefficient of variation (CV)	Average bound tariff (%) ^a
	Number of lines	Average (%)	Range (%)		
21 Works of art, etc.	9	7.8	5 – 10	0.3	40.0
By stage of processing					
First stage of processing	809	6.6	0 – 40	1.1	37.3
Semi-processed products	2,182	4.0	0 – 40	1.3	36.5
Fully processed products	3,573	7.6	0 – 164	1.4	37.3

a The bound rates are given in the HS 2002 classification and the applied rates in that of the HS 2007; consequently, there may be differences between the number of lines included in the breakdown.

b ISIC (Rev. 2), excluding electricity (one line).

Source: WTO Secretariat estimates based on data provided by the authorities.

34. Tariff escalation exists, but does not follow the usual lines. Even though the average tariff on finished goods is higher than that on semi-finished goods, the average rate applied on raw materials is higher than that on semi-finished goods (Table III.2).

35. The average effective tariff fell slightly between 2003 and 2008, from 3 per cent to 1.8 per cent.³⁵ This level remains below the simple average of MFN tariffs and reflects the tariff concessions granted under preferential trade agreements or incentive schemes.

(b) Bindings

36. The bindings in El Salvador's concessions appear in a list that precedes the Uruguay Round and in Schedule LXXXVII annexed to the GATT 1994. The transposition of El Salvador's schedule of commitments to the HS 96 has been certified.³⁶ Until 31 December 2009, El Salvador is covered by a collective waiver under which the General Council suspended the application of the GATT 1994 disciplines on binding to allow Members to apply the HS 2007 changes at the national level pending their incorporation into their schedules of concessions.³⁷

37. In 2007, El Salvador renegotiated its schedule of commitments in accordance with Article XXVIII of the GATT 1994 for certain poultry products (Chapter IV(1)).

38. El Salvador bound all its tariffs at 32 rates ranging from 0 to 164.4 per cent. Some 70 per cent of its tariff lines are bound at 40 per cent. The average bound rate is 37 per cent.

39. El Salvador grants concessions under the Ministerial Declaration on Trade in Information Technology Products. At the end of 2009, this instrument was being ratified by El Salvador's Legislative Assembly.

40. The Secretariat has not identified any tariff line where the applied rate exceeds the respective bound rate.³⁸

³⁵ The effective tariff is the ratio of the value of revenue earned from tariffs to the value of the imports of goods.

³⁶ WTO document WT/Let/467 of 16 April 2004.

³⁷ WTO document WT/L/745 of 22 December 2008.

³⁸ In conducting this analysis, the Secretariat only took into account the tariff lines in El Salvador's revised tariff schedule that are strictly comparable with the HS 2007.

(c) Preferential tariffs

41. Under preferential trade agreements with the other Members of the CACM, Chile, the United States of America, Mexico, Panama, the Dominican Republic and Chinese Taipei, El Salvador grants preferential tariff treatment for goods that meet the origin requirements in these agreements.

42. Virtually all imports from Costa Rica, Guatemala, Honduras and Nicaragua are subject to a tariff of zero per cent. The exceptions are unroasted coffee and cane sugar from any of these countries, roasted coffee from Costa Rica and distilled spirits and petroleum products from Honduras.³⁹ El Salvador applies MFN rates to all these products. In addition, ethyl alcohol from Costa Rica or Honduras is subject to "import controls" (see also Chapter II(4)(ii)).

43. The simple average tariff applied by El Salvador to partners with which it has signed free trade agreements (FTAs) range from 1.3 per cent (Chile and Mexico) to 4.9 per cent (Chinese Taipei) (Table AIII.2). At the beginning of 2009, El Salvador applied a zero tariff on around 80 per cent of the tariff universe for all the partners with which it had signed FTAs, except Chinese Taipei, for which the zero rate covered 57 per cent of the tariff universe.

(v) Other charges affecting imports

44. At each marketing stage, the import and sale of the majority of goods and the supply of services are subject to the property transfer and services tax (known as value added tax (VAT))⁴⁰, at a rate of 13 per cent. The taxable base for imports is the customs value plus tariff duties and any other taxes.⁴¹ For Salvadoran goods, the taxable base is the selling price plus any other taxes applicable.

45. Imports of machinery duly registered with the Directorate-General of Internal Taxation in the Ministry of Finance are exempt from VAT; imports of buses and rental vehicles for public passenger transport are also exempt. The services exempt from VAT include the following: public health, education, public land transport of passengers, insurance and reinsurance, and banking.

46. Since 2004, domestic and imported alcoholic beverages have been subject to a special tax determined according to the type of beverage and its alcohol content (Table III.3). This special tax applies to sales by the producer and to imports. Prior to this, there was a special tax on alcoholic beverages amounting to C 0.05 for each percentage of alcohol strength by volume per litre and a 20 per cent *ad valorem* tax on the retail price.⁴²

Table III.3
Tax on alcoholic beverages, 2009

Tariff heading	Description	Amount of the tax (US\$/percentage of alcohol strength by volume per litre)
22.03.00.00	Beer made from malt	0.0825
22.04.10.00	Sparkling wine	0.07
22.04.21.00	Other wine; grape must with fermentation prevented or arrested by the	0.07
22.04.29.00	addition of alcohol	
22.04.30.00	Other grape must	0.07

³⁹ Annex to Resolution No. 05-2006 (CEIE) of the Executive Committee for Economic Integration, 16 June 2006.

⁴⁰ Title I of the Law on the tax on the transfer of property and the supply of services, Legislative Decree No. 296 of 31 July 1992.

⁴¹ Article 48 of the Law on the property transfer and services tax.

⁴² See Chapter III(2)(v), *Trade Policy Review: El Salvador*, WTO (2003), Geneva.

Tariff heading	Description	Amount of the tax (US\$/percentage of alcohol strength by volume per litre)
22.05.10.00	Vermouth and other wine flavoured with plants or aromatic substances	0.07
22.05.90.00		
22.06.00.00	Other fermented beverages, including cider, perry and mead; mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages	0.0825
22.08.20.10	Spirits of grape wine or grape marc	0.04
22.08.20.90		
22.08.30.10	Whiskey	0.15
22.08.30.90		
22.08.40.10	Rum	0.05
22.08.40.90	Other spirits obtained by distillation after fermentation of sugar cane products	0.015
22.08.50.00	Gin and geneva	0.14
22.08.60.10	Vodka	0.0325
22.08.60.90		
22.08.70.00	Liqueurs	0.14
22.08.90.90	Other (spirits)	0.08

Source: WTO Secretariat on the basis of the Law regulating the production and sale of alcohol and alcoholic beverages.

47. Both domestic and imported aerated beverages are subject to an *ad valorem* tax of 10 per cent on the retail price, excluding VAT (Table III.4).⁴³ This tax applies to sales by the producer and to imports.

Table III.4
Other taxes on specific products, 2009

Tariff heading	Description	Amount of the tax
Law on the taxation of plain or sweetened aerated beverages		
22.01.10.00	Mineral waters and aerated waters	10%
22.01.90.00	Other (waters, not containing added sugar or any other sweetening matter or flavoured, ice and snow)	10%
22.02.10.00	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured	10%
22.02.90.10	Food preparations of the types included in Note 1(a) of Chapter 30, suitable for consumption as beverages	10%
22.02.90.90	Other (non-alcoholic beverages)	10%
Law on the taxation of tobacco products		
24.02.10.00	Cigars and cheroots, containing tobacco	US\$0.005 per unit + 39%
24.02.20.00	Cigarettes, containing tobacco	US\$0.005 per unit + 39%
24.02.90.00	Other (cigars, cheroots and cigarettes of tobacco substitutes)	US\$0.005 per unit + 39%
24.03.10.10	Handrolling tobacco for preparing cigarettes	US\$0.005 per unit + 39%
24.03.10.90	Other (smoking tobacco, whether or not containing tobacco substitutes in any proportion)	US\$0.005 per unit + 39%
24.03.91.00	"Homogenized" or "reconstituted" tobacco	US\$0.005 per unit + 39%
24.03.99.00	Other (tobacco and tobacco substitutes, processed; tobacco extracts and juices)	US\$0.005 per unit + 39%
Law on taxes for the control and regulation of firearms, ammunition, explosives and similar articles		
36.01.00.00	Propellant powders	30%
36.03.00.00	Safety fuses, detonating fuses, percussion or detonating caps, igniters and electric detonators	30%
36.04.10.00	Articles for fireworks	30%
36.04.90.00	Other (signalling flares, rain rockets and similar articles, firecrackers and other pyrotechnic articles)	30%
93.02.00.00	Revolvers and pistols, other than those of headings 93.03 and 93.04	30%
93.03.10.00	Muzzle-loading firearms	30%
93.03.20.00	Other sporting or hunting shotguns, with at least one smooth barrel	30%
93.03.30.00	Other sporting or hunting shotguns	30%
93.03.90.00	Other (firearms and artefacts which operate by the firing of an explosive charge)	30%

⁴³ Article 1 of the Law on the taxation of plain or sweetened aerated beverages, Legislative Decree No. 641 of 7 March 1996.

Tariff heading	Description	Amount of the tax
93.05.10.00	Parts and accessories of revolvers or pistols	30%
93.05.21.00	Shotgun barrels	30%
93.05.29.00	Other (parts and accessories of shotguns)	30%
93.05.99.00	Other (parts and accessories of articles of headings 93.01 to 93.04)	30%
93.06.21.00	Cartridges	30%
93.06.29.00	Other (pellets for air guns)	30%
93.06.30	Other cartridges and parts thereof	30%
93.06.90.00	Other (bombs, grenades, torpedoes, mines, missiles, etc.)	30%

Source: WTO Secretariat based on the General administrative provisions No. DGRA-004-2005 of 17 May 2005.

48. A specific tax and an *ad valorem* tax apply to both domestic and imported cigarettes and other tobacco products (Table III.4).⁴⁴ These taxes apply to sales by the producer and to imports. The specific tax amounts to US\$0.005 on each cigarette or other tobacco product, while the *ad valorem* tax is 39 per cent. The taxable base for domestic and imported products is the retail price, excluding VAT and the specific tax on tobacco products.

49. A tax of 30 per cent applies to the sale of firearms, ammunition and pyrotechnic articles.⁴⁵ The taxable base is the selling price, excluding VAT. Imports for personal use are also taxed. The taxable base is the customs value plus tariff duties and any other taxes applicable, including VAT.

50. Until mid-2008, El Salvador taxed empty sacks and bags of synthetic fibre, whether produced domestically or imported, at 80 per cent.⁴⁶ Legislative Decree No. 648, published in the Official Journal of 27 June 2008, abolished this tax.

(vi) Prohibitions, restrictions and licensing

51. El Salvador does not allow the import of certain products (Table III.5). The products prohibited include heavy passenger vehicles over ten years old.⁴⁷ Previously, this prohibition applied to vehicles over 15 years old.⁴⁸ It is also prohibited to import light passenger or freight vehicles over eight years old and heavy freight vehicles over 15 years old.

Table III.5
Import prohibitions, 2009

Description
Material that is subversive or doctrines contrary to the State's political, social or economic order
Material of an obscene character
Films contrary to ethics and morals
Abortifacient substances
Slot machines
Roulette games, game tables and any other prohibited games equipment or artefacts
Opium with less than 9% of morphine, opium slag and slash, and any artefacts for smoking opium
Paper without the proper stamp for making cigarettes, white or coloured, in pads, rolls, cylinders, booklets or tubes
Machines and tools for fabricating coins
Counterfeit currency

⁴⁴ Article 1 of the Law on the taxation of tobacco products, Legislative Decree No. 539 of 22 December 2004.

⁴⁵ Chapter III of the Law on taxes for the control and regulation of firearms, ammunition, explosives and similar articles, Legislative Decree No. 540 of 22 December 2004.

⁴⁶ See Chapter III(2)(v), *Trade Policy Review: El Salvador*, WTO (2003), Geneva.

⁴⁷ Article 1 of the reforms to the Law on land transport, transit and highway safety, Legislative Decree No. 288 of 22 May 2007.

⁴⁸ Chapter III(2)(vii), *Trade Policy Review: El Salvador*, WTO (2003), Geneva.

Description
Smooth silver coins of less than 0.900 of width
Tokens of any type of metal or their alloys, that could circulate as coins
Coffee bushes and coffee seeds for sowing
Used motor vehicle over a certain number of years old

Source: WTO Secretariat, on the basis of Legislative Decree No. 647 of 20 December 1990 and information provided by the authorities.

52. There are 13 categories of goods that may only be imported by the State.⁴⁹ The goods subject to this measure include implements of war, potassium nitrate, stamped paper for cigarettes and raw sugar cane alcohol.

53. In early 2004, El Salvador notified the WTO of the legal instruments containing information on import licensing procedures for goods subject to tariff quotas (Chapter IV(1)).⁵⁰ It has not notified the sources for information on import licensing procedures for other goods, nor has it replied to the questionnaire on import licensing procedures. In the context of its previous Review, El Salvador undertook to reply to the questionnaire and to submit the relevant notifications on import licensing procedures "as soon as possible".⁵¹

54. An import permit is required for the import of certain goods (Table III.6). The DGA has a system on the Internet to search for the import requirements applicable to each product.⁵²

Table III.6
Goods subject to import permits

	Purpose of the permit ^a	Quantitative restriction ^b	Entity issuing the permit	Legal basis
Arms, ammunition and explosives	Public safety	Yes	Ministry of National Defence	Law on the control and regulation of firearms, ammunition, explosives and similar articles
Pyrotechnic articles	Public safety	Yes	Ministry of National Defence	Law on the control and regulation of firearms, ammunition, explosives and similar articles
Narcotics, psychotropic substances, aggregated products, precursors, chemical substances and veterinary and anaesthetic products	Public health	Yes	Higher Council for Public Health	Law regulating activities concerning drugs and Regulations on narcotics, psychotropic substances, precursors, chemical and aggregated substances and products
Approximately 1,000 tariff lines (at the eight-digit level) covering products such as certain food preparations, chemicals and compounds, pharmaceuticals, fertilizers and perfumery preparations	..	No	Chemical/Pharmaceutical Supervisory Board	Health Code and Regulations on proprietary drugs
Alcohol	Public health	No	Ministry of Public Health and Social Welfare	Law regulating the production and sale of alcohol and alcoholic beverages
Plants and animals and products thereof	Sanitary and phytosanitary protection	No	Ministry of Agriculture and Livestock	Law on plant and animal health
Beverages, prepared foodstuffs and raw materials and food additives	Public health	No	Ministry of Public Health and Social Welfare	Health Code

⁴⁹ Article 5 of Legislative Decree No. 647 of 20 December 1990.

⁵⁰ WTO document G/LIC/N/1/SLV/1 of 3 February 2004.

⁵¹ WTO document WT/TPR/M/111/Add.1 of 25 June 2003.

⁵² DGA online information, *Arancel electrónico DGA El Salvador*. Viewed at: <http://appm.aduana.gob.sv/sacelectronico/Default.aspx>

	Purpose of the permit ^a	Quantitative restriction ^b	Entity issuing the permit	Legal basis
Chemical and chemical-biological products for agricultural use or for livestock or veterinary use	Sanitary and phytosanitary protection	No	Ministry of Agriculture and Livestock	Law on plant and animal health; Law on the control of pesticides, fertilizers and products for agricultural use; and its implementing regulations
Hydrocarbons	Protection of the environment	No	Ministry of the Economy	Law regulating the deposit, transport and distribution of petroleum products
Sources and equipment generating ionizing radiation	Public health	No	Ministry of Public Health and Social Welfare	Special regulations on radiological protection and safety
Hazardous substances	Public health and protection of the environment	Yes	Ministry of the Environment and Natural Resources	Law on the environment and its implementing regulations
Ozone-depleting substances	Protection of the environment	Yes	Ministry of the Environment and Natural Resources	Law on the environment and its implementing regulations
Wildlife	Protection of the environment	Yes	Ministry of the Environment and Natural Resources	Law on the protection of wildlife

.. Not available.

a As indicated by the authorities in connection with this Review.

b Refers to use of the permit as a way of controlling the volume of imports.

Source: WTO Secretariat, on the basis of USAID, Directorate-General of Customs (2008) and WTO (2003).

55. In mid-2008, El Salvador abolished the licensing regime used to control the volume of imports of sacks (bags) made from coarse fibre.⁵³ The Ministry of the Economy issued import licences to users of such sacks according to the volume of demand and domestic production.⁵⁴

56. The import of some goods, for example, honey, glucose syrup, malt extract, maize starch, gum Arabic and unrefined oils requires a permit from the Ministry of Public Health and Social Welfare (MSPAS) and a "visa" from the Chemical/Pharmaceutical Supervisory Board. The authorities have indicated that the visa requirement allows a register to be kept of all such products entering El Salvador. Other products such as pure ethyl alcohol, kerosene and sulphuric acid also require a visa and an import authorization, both issued by the Higher Council for Public Health. The import of disodium carbonate and potassium carbonate requires a visa issued by the Higher Council for Public Health and the Chemical/Pharmaceutical Supervisory Board, as well as authorization from the MSPAS and the Higher Council for Public Health.

57. Since the end of 2008, the import of around 70 products has no longer required a visa from the Chemical/Pharmaceutical Supervisory Board.⁵⁵ Among the goods covered by this measure are engine oils, batteries for vehicles, water-based paints, cement, dyes, adhesives, liquefied petroleum gas, extinguishers, shoe polish, contact lenses, prostheses with no chemical substances, salt and hygiene products. A visa from the Chemical/Pharmaceutical Supervisory Board is no longer required for the import of some foodstuffs, infant milk formula and veterinary medicines.

58. A "single window for imports" has been operating in San Salvador since April 2007 and brings together officials from those bodies responsible for issuing import permits (see section (1)(i) above).

⁵³ Legislative Decree No. 648 of 27 June 2008.

⁵⁴ *Idem*.

⁵⁵ Information Bulletin No. DGA-024-2008, *Productos que no requieren visado de la Junta de Vigilancia*, of 19 November 2008.

(vii) Contingency measures

59. El Salvador has not applied any anti-dumping or countervailing measures since the previous Review. It has not initiated any investigations in relation to such measures and has not received any requests for investigation. El Salvador has submitted semi-annual reports to the WTO on anti-dumping and countervailing measures.

60. In April 2008, El Salvador notified the WTO of the Central American Regulations on Unfair Business Practices, approved in April 2007.⁵⁶ The Committee on Anti-Dumping Practices (ADP Committee) and the Committee on Subsidies and Countervailing Measures (SCM Committee) examined this notification in October 2008 and May 2009.⁵⁷ The Regulations reflect the need "to update the regional regulations in accordance with the undertakings ... within the framework of the World Trade Organization".⁵⁸ In addition to these Regulations, the Agreement on Implementation of Article VI of the GATT 1994 and the Agreement on Subsidies and Countervailing Measures also form part of El Salvador's legal framework for anti-dumping and countervailing measures and became domestic laws when the ratification of the Marrakesh Agreement was published in the Official Journal.⁵⁹

61. El Salvador does not exempt any preferential trading partner from the application of anti-dumping or countervailing measures.

62. El Salvador has not applied any safeguard measures since the previous Review. It has not initiated any investigation in relation to such measures and has not received any requests for investigation.

63. In March 2008, El Salvador notified the WTO of the Central American Regulations on Safeguard Measures, approved in April 2007.⁶⁰ The WTO Committee on Safeguards examined this notification in October 2008 and May 2009.⁶¹ The Regulations reflect the need "to update the regional regulations in accordance with the undertakings ... within the framework of the World Trade Organization".⁶² In addition to these Regulations, the Agreement on Safeguards also forms part of the

⁵⁶ WTO document G/ADP/N/1/SLV/3 and G/SCM/N/1/SLV/3 of 8 April 2008.

⁵⁷ El Salvador received questions from one Member (United States) concerning its notification. The questions related to the application of the WTO rules and regional rules; access to the file; the content of resolutions on imposition of measures; the duration and review of measures; procedures for initiating investigations; and the submission of appeals (WTO document G/ADP/Q1/SLV/4-G/SCM/Q1/SLV/4 of 9 October 2008). El Salvador replied to these questions in November 2008 and received follow-up questions in March 2009; the replies to the questions were circulated in May 2009 (WTO documents G/ADP/Q1/SLV/5-G/SCM/Q1/SLV/5 of 26 November 2008; G/ADP/Q1/SLV/6-G/SCM/Q1/SLV/6 of 25 March 2009; and G/ADP/Q1/SLV/7-G/SCM/Q1/SLV/7 of 11 May 2009).

⁵⁸ Resolution No. 193-2007 (COMIECO-XLIV) of 24 April 2007.

⁵⁹ WTO documents G/ADP/N/1/SLV/1 of 24 March 1995 and G/SCM/N/1/SLV/1 of 27 March 1995.

⁶⁰ WTO document G/SG/N/1/SLV/3 of 10 March 2008.

⁶¹ El Salvador received questions from one Member (United States) concerning this notification. The questions related to the application of the WTO rules and their relation to the regional rules; the functions of the investigating authority; the conduct of visits to verify the information; the duration, scope and review of the measures; publication requirements; and dissemination of semi-annual reports (WTO document G/SG/Q1/SLV/3 of 10 October 2008). El Salvador replied to these questions in November 2008 and received follow-up questions in March 2009; the replies to the questions were circulated in May 2009 (WTO documents G/SG/Q1/SLV/4 of 26 November 2008; G/SG/Q1/SLV/5 of 24 March 2009; and G/SG/Q1/SLV/6 of 11 May 2009).

⁶² Resolution No. 194-2007 (COMIECO-XLIV) of 24 April 2007.

legal framework for safeguard measures and became domestic law when the ratification of the Marrakesh Agreement was published in the Official Journal.⁶³

64. Pursuant to the Central American Regulations on Safeguard Measures, El Salvador exempts the other Members of the CACM from the application of safeguard measures.⁶⁴ Likewise, subject to certain criteria, El Salvador exempts most of its other preferential trading partners from the safeguard measures applied under WTO provisions. In general, the criteria are that the imports of the preferential trading partners should not be "substantial" and should not contribute significantly to the injury.

65. El Salvador may impose additional tariffs on 84 eight-digit tariff lines pursuant to the special safeguard provisions in the WTO Agreement on Agriculture (Chapter IV(1)).

(viii) Technical regulations and standards

66. In March 2004, El Salvador notified the WTO that no special legislation was needed in order to apply the TBT Agreement inasmuch as following ratification of the Marrakesh Agreement the WTO Agreements had become domestic laws, pursuant to the provisions in the Constitution.⁶⁵ It also indicated that "[a]ll of El Salvador's state agencies and the national authorities responsible for the implementation and administration of technical regulations, standards and conformity assessment procedures have received copies of the Agreement on Technical Barriers to Trade (TBT Agreement) and been duly informed of the obligations arising therefrom".⁶⁶ The latest notification from El Salvador on the application and administration of the TBT Agreement dates from March 2004.

67. The enquiry point called for by Article 10.1 and 10.3 of the TBT Agreement is the Directorate for the Administration of Trade Agreements (DATCO) in the Ministry of the Economy⁶⁷, which is responsible for implementing the notification provisions in the TBT Agreement.⁶⁸

68. Since the previous Review, no Member has raised concerns in the TBT Committee regarding El Salvador's technical regulations or conformity assessment procedures.

69. El Salvador notified 114 technical regulations and conformity assessment procedures between March 2003 and April 2009 (one notification in 2009, 13 in 2008, 11 in 2007, 24 in 2006, 20 in 2005, 19 in 2004 and 26 in 2003). Prior to that, it had notified 13 measures to the WTO. Around one half of the notifications indicated that their purpose was to protect human health. Other objectives frequently mentioned were the protection of consumers and the environment. Almost all the notifications gave a period of 60 days for submission of comments. According to the authorities, El Salvador's technical regulations and conformity assessment procedures are based on international standards and the recommendations of international institutions working in the area of standardization.

70. El Salvador has not notified any mutual recognition agreement on matters relating to technical regulations, conformity assessment procedures or standards.

⁶³ WTO document G/SG/N/1/SLV/1 of 27 March 1995.

⁶⁴ Article 3 of the Central American Regulations on Safeguard Measures.

⁶⁵ WTO document G/TBT/2/Add.78 of 22 March 2004 and Article 144 of the Constitution of the Republic of El Salvador.

⁶⁶ WTO document G/TBT/2/Add.78 of 22 March 2004.

⁶⁷ WTO online information. Viewed at: http://www.wto.int/english/tratop_e/tbt_e/tbt_enquiry_points_s.htm#e

⁶⁸ WTO document G/TBT/2/Add.78 of 22 March 2004.

71. In its notification on the application and administration of the TBT Agreement, El Salvador identified the institutions which issue technical regulations in El Salvador, namely, the National Science and Technology Council (CONACYT), the Ministry of the Environment and Natural Resources, the Ministry of Agriculture and Livestock, the MSPAS, and the Ministry of Public Works.⁶⁹ The Law on the National Science and Technology Council appoints CONACYT as the coordinator of the public and private bodies involved in drawing up technical regulations and conformity assessment procedures.⁷⁰ Technical regulations or conformity assessment procedures drawn up by any institution are not valid unless they have undergone the drafting and approval procedure laid down in the Law on the National Science and Technology Council.⁷¹

72. The technical regulations, referred to as "mandatory Salvadoran standards" in the Law on the National Science and Technology Council, include regulations concerning the international system of units, protection of the environment and "products, procedures and services that may affect the life, safety and integrity" of persons or other organisms. Mandatory Salvadoran standards also include regulations that are "relevant to the economy or in the public interest."⁷²

73. The Law on the National Science and Technology Council determines the procedure for the drafting and approval of technical regulations.⁷³ Committees set up by CONACYT's Board of Directors and composed of "appropriate persons" from the public and private sectors are responsible for preparing drafts of technical regulations. The Law requires that draft technical regulations be submitted to CONACYT's Board of Directors before being transmitted to the Minister of the Economy for authorization in the form of an executive decision. The Minister of the Economy may request that a draft technical regulation be revised within 15 days following its receipt. The executive decisions by which technical regulations are approved must be published in the Official Journal and the purpose of each technical regulation must be published in a national newspaper with broad circulation.

74. According to the authorities, CONACYT follows an internal procedure based on the Code of Good Practice annexed to the TBT Agreement. This procedure gives a minimum period of 60 days for holding public consultations on draft technical regulations. Notification of the availability of the draft is published in a national newspaper and the full text of the draft is published on CONACYT's website. The authorities have also indicated that, in practice, the time that elapses between the adoption of a technical regulation and its entry into force is six months.

75. The preparation and approval of conformity assessment procedures are subject to the same procedures as those for technical regulations.

76. El Salvador keeps a public inventory of its technical regulations.⁷⁴ In mid-2009, this inventory listed some 80 technical regulations, 44 of them issued since 2003. Around one half of these fell within the category of "food technology". Other categories that have a large number of technical regulations are "petroleum products" (14 per cent of all technical regulations), "the environment" (10 per cent) and "metrology" (9 per cent). The authorities have indicated that approximately 15 technical regulations have been annulled since 2003.

⁶⁹ *Idem.*

⁷⁰ Law on the National Science and Technology Council, Legislative Decree No. 287 of 10 August 1992, Article 28.

⁷¹ *Ibid.*, Article 40.

⁷² *Ibid.*, Article 30.

⁷³ *Ibid.*, Articles 32 to 40.

⁷⁴ Viewed at: <http://www.infoq.org.sv>

77. El Salvador applies 37 technical regulations developed and approved at the CACM level.

78. CONACYT is empowered to accredit testing and calibration laboratories.⁷⁵ It has accredited 16 laboratories, four of them public and the remainder private.⁷⁶ CONACYT publishes the fees for the accreditation of testing laboratories. El Salvador is not party either to the Mutual Recognition Agreement of the International Laboratory Accreditation Cooperation (ILAC) or to the Multilateral Recognition Agreement of the InterAmerican Accreditation Cooperation (IAAC).

79. CONACYT has an accreditation programme for certification bodies.⁷⁷ The authorities have indicated that, at the end of 2009, they were revising the guidelines for the recognition of accreditation of certification bodies issued by foreign institutions.

80. El Salvador takes part in the activities of the International Organization for Standardization, the International Electrotechnical Commission, the ILAC, the IAAC, the Pan-American Standards Commission, the Central American and Caribbean Standardization Commission, and the Inter-American Metrology System.

81. The Law on the National Science and Technology Council requires producers to prove once a year that their goods comply with the relevant technical regulations.⁷⁸ According to the authorities, in practice this provision only applies to certain products. Monitoring of compliance with technical regulations for both imported and Salvadoran goods takes place when the goods are already on the market.

82. The same procedures as those for technical regulations apply to the preparation and approval of standards referred to as "recommended Salvadoran standards" in the Law on the National Science and Technology Council, including the requirements on publication in the Official Journal and approval by the Minister of the Economy. According to the authorities, there is a 60-day period for public consultation on draft standards as of notification of their availability published in a national newspaper and publication of the full text of the draft on CONACYT's website.

83. El Salvador notified the WTO that CONACYT had accepted the Code of Good Practice annexed to the TBT Agreement.⁷⁹ According to the Directory concerning the Code annexed to the TBT Agreement, CONACYT's work programme appears in the review *El Salvador Ciencia y Tecnología* and is updated every quarter.⁸⁰

(ix) Sanitary and phytosanitary measures

84. Through its Directorate-General of Plant and Animal Health (DGSVA), the Ministry of Agriculture and Livestock is responsible for sanitary and phytosanitary measures applicable to imports of plants and animals and their products, while the MSPAS, through its Food Hygiene Department, is responsible for sanitary measures applicable to imports of foodstuffs. The issue,

⁷⁵ Article 28 of the Law on the National Science and Technology Council.

⁷⁶ CONACYT online information, *Alcance de laboratorios acreditados*. Viewed at: <http://www.conacyt.gob.sv/Alcance%20de%20laboratorios.htm>

⁷⁷ CONACYT (undated), *Cinco años de gestión en ciencia, tecnología, innovación y calidad: Junta Directiva 2002-07*. Viewed at: <http://www.conacyt.gob.sv/Memoria%20CONACYT2007.pdf>

⁷⁸ Article 76 of the Law on the National Science and Technology Council.

⁷⁹ WTO document G/TBT/CS/N/61 of 23 December 1996.

⁸⁰ ISO/IEC (2009), *WTO TBT Standards Code Directory: Standardizing bodies having accepted the WTO TBT Code of Good Practice for the Preparation, Adoption and Application of Standards*, 28 February. Viewed at: http://www.standardsinfo.net/info/livelihood/link/fetch/2000/148478/6301438/docs_wto/scd-en.pdf

approval and implementation of sanitary and phytosanitary measures is mainly governed by the Law on plant and animal health, the Health Code and the Law on the National Science and Technology Council. El Salvador also applies the Central American Regulations on Sanitary and Phytosanitary Measures and Procedures, whose purpose is "to regulate sanitary and phytosanitary measures that may directly or indirectly affect trade among States Parties and prevent them becoming unnecessary barriers to trade".

85. El Salvador has designated the DATCO in the Ministry of the Economy, the DGSVA in the Ministry of Agriculture and Livestock, and the Food Hygiene Department in the MSPAS as the national enquiry point.⁸¹ The DATCO is responsible for notifications under the SPS Agreement.⁸²

86. El Salvador is a member of the Codex Alimentarius and the World Organisation for Animal Health-OIE, as well as being a contracting party to the International Plant Protection Convention.

87. Since the previous Review, one Member (United States) has expressed concern to the SPS Committee with regard to the requirements imposed by El Salvador for the import of poultry and eggs.⁸³ In April 2008, the SPS Committee was informed that El Salvador and the United States were working together to resolve the issue.⁸⁴ The authorities have indicated in connection with this Review that a mutually acceptable agreement has been reached with the United States on this issue. No Member has turned to the WTO's formal dispute settlement procedure in relation to questions concerning the sanitary and phytosanitary measures applied by El Salvador.

88. Two of the three measures appearing in the list of "measures contrary to intraregional free trade" published by the Secretariat for Central American Economic Integration are phytosanitary measures applied by El Salvador. The measures in question concern imports of oranges from Honduras and broken or fragmented rice from Costa Rica.⁸⁵ The authorities have indicated that this list has not been updated and that, by the end of 2009, only the measure concerning imports of Honduran oranges was still in effect.

89. El Salvador has not notified any recognition of equivalence for sanitary and phytosanitary measures since the previous Review. It recognizes the sanitary registration issued by Guatemala, Honduras and Nicaragua for foodstuffs and beverages. It also recognizes registration by the competent authorities in other CACM Members for fertilizers, pesticides and other agricultural inputs.⁸⁶

90. El Salvador does not allow the import of plants, animals or their products unless the DGSVA has issued an executive decree approving the "inspection systems, veterinary services, food safety and phytosanitary monitoring of pests and quarantine diseases" in the place of origin.⁸⁷ For the purpose of this Review, the authorities have indicated that, when conducting sanitary evaluations, the DGSVA follows the criteria and procedures of the World Organisation for Animal Health-OIE, the Codex Alimentarius and the International Plant Protection Convention. The only bodies entitled to

⁸¹ WTO document G/SPS/ENQ/24 of 1 October 2008.

⁸² WTO document G/SPS/NNA/14 of 1 October 2008.

⁸³ WTO document G/SPS/R/45 of 12 September 2007.

⁸⁴ WTO document G/SPS/R/49 of 18 June 2008.

⁸⁵ SIECA (2008), *Medidas contrarias al libre comercio intraregional*, 4 July. Viewed at: <http://www.sieca.org.gt/site/VisorDocs.aspx?IDDOC=Cache/17990000002782/17990000002782.swf>

⁸⁶ Article 21-Bis of the Law on the control of pesticides, fertilizers and products for agricultural use, Legislative Decree No. 315 of 10 May 1973.

⁸⁷ Articles 2 and 13 of the Law on plant and animal health, Legislative Decree No. 524 of 18 December 1995.

request a sanitary or phytosanitary evaluation are the competent national authorities in the country wishing to export to El Salvador.

91. Based on the findings of its evaluation, the DGSVA may lay down sanitary or phytosanitary requirements as a condition for allowing import. According to the authorities, these requirements depend on the level of risk for the product in question and may involve certification issued by the exporting country, inspection at the point of entry, or special treatment. The regulations do not specify any time-limits for the sanitary or phytosanitary evaluation procedure.

92. El Salvador does not apply any special registration requirements to importers of plants, animals or their products. These imports are subject to an import authorization issued by the Ministry of Agriculture and Livestock, and the form to be completed in order to obtain an authorization is available on line.⁸⁸

93. Under the Law on plant and animal health, the Ministry of Agriculture and Livestock has to determine the fees for inspection and quarantine services "on the basis of the real cost of the operation and the extent of the services".⁸⁹

94. The DGSVA keeps a database where the sanitary and phytosanitary requirements to be met for a particular product can be found.⁹⁰ This database also shows the combinations of products and countries for which the DGSVA must undertake an evaluation before allowing import.

95. The Health Code authorizes the MSPAS to determine the minimum requirements to be met for foodstuffs that are imported or produced in El Salvador.⁹¹ The elaboration and approval of these requirements are subject to the procedures applicable to technical regulations (see section (1)(viii) above).

96. El Salvador does not have any special registration requirements applicable to importers of foodstuffs and beverages, with the exception of alcoholic beverages. Imports of foodstuffs and beverages require authorization from the MSPAS.⁹² The requirements for obtaining an authorization can be found on the Internet and include the submission of a certificate of free sale issued by the competent authority in the country of origin of the foodstuffs or beverages.⁹³

97. Domestically produced or imported foodstuffs and beverages must be listed in the register kept by the MSPAS.⁹⁴ The registration requirements can be found on the Internet and include the list of ingredients, the label and three samples of the product.⁹⁵ Foodstuffs classified as low risk are given provisional registration within 48 hours following the submission of an application and the other documents required by the regulations. The list of low-risk foodstuffs appears in

⁸⁸ Online information from the Ministry of Agriculture and Livestock, *Sistema de información en sanidad agropecuaria - SISA*. Viewed at: <https://oas.mag.gob.sv/sisa/tramites.jsp>

⁸⁹ Article 6.

⁹⁰ Online information from the Ministry of Agriculture and Livestock, *Sistema de información en sanidad agropecuaria - SISA*. Viewed at: <https://oas.mag.gob.sv/sisa/tramites.jsp>

⁹¹ Health Code, Article 94.

⁹² Ibid., Article 88.

⁹³ Online information from the MSPAS, *Sistema de información de trámites en línea para la autorización de importación de alimentos, bebidas y sustancias químicas*. Viewed at: <http://www.gaisa-mspas.gob.sv>

⁹⁴ Article 95 of the Health Code.

⁹⁵ Online information from the MSPAS, *Sistema de información de trámites en línea para la autorización de importación de alimentos, bebidas y sustancias químicas*. Viewed at: <http://www.gaisa-mspas.gob.sv>

MSPAS Decision No. 1014.⁹⁶ Provisional registration remains in effect for two months. After this period, it must be replaced by definitive registration. Nine national laboratories are authorized by the MSPAS to analyse the samples relating to applications for the registration of foodstuffs.⁹⁷

98. El Salvador allows the import of genetically modified products provided that they comply with the Special Regulations on the safe handling of genetically modified organisms.⁹⁸

99. The MSPAS publishes the fees for authorization and registration formalities.

100. El Salvador notified 41 sanitary and phytosanitary measures between March 2003 and March 2009. The vast majority of these gave a period of 60 days in which to submit comments. Only two were emergency notifications. Around one half of the notifications concerned a standard laid down by one of the three standardization bodies specifically mentioned in the SPS Agreement. A further ten concerned national, foreign or regional standards. The remainder did not refer to any foreign standard.

(2) MEASURES AFFECTING EXPORTS

(i) Customs procedures

101. The use of a customs agent to complete export formalities is optional. Exporters must be listed in the register kept by the Export Processing Centre (CENTREX), whose purpose is to centralize, streamline and simplify export formalities.⁹⁹ CENTREX has published the requirements for registration, which is immediate and automatic.¹⁰⁰

102. Exporters must register an "export application" with CENTREX, irrespective of the product concerned. For this purpose, they may use the Integrated Foreign Trade System (SICEX) available on the Internet.¹⁰¹ SICEX is the single window linking exporters to CENTREX, Customs and other government bodies involved in export formalities. Online registration of an export application is immediate and automatic. Hard copies of the goods declaration, the invoice and the shipping documents must be submitted to Customs in order to finalize export formalities.

103. According to the authorities, if goods for export do not require physical inspection, customs clearance is virtually immediate. Physical or documentary inspections are conducted by Customs depending on the level of risk of the goods (section (1)(i)). The proportion of exports subject to physical inspection is 4.3 per cent.

⁹⁶ Decision No. 1014, Administrative regulations for the sanitary registration of processed foodstuffs and beverages classified as risk "C" and authorization for imports following special applications, of 24 October 2008.

⁹⁷ Online information from the MSPAS, *Sistema de información de trámites en línea para la autorización de importación de alimentos, bebidas y sustancias químicas*. Viewed at: <http://www.gaisa-mspas.gob.sv>

⁹⁸ Legislative Decree No. 78 of 1 July 2008.

⁹⁹ Online information from the Export Processing Centre. Viewed at: <http://www.centrex.gob.sv>

¹⁰⁰ *Idem*. Viewed at: http://www.centrex.gob.sv/scx_html/requisitos_registro_exportador.html

¹⁰¹ See CENTREX (2009), *Manual de usuario para autorizar exportaciones mediante el Sistema Integrado de Comercio Exterior (SICEX)*, November. Viewed at: <http://www.centrex.gob.sv>

(ii) Taxes and other charges

104. El Salvador does not apply duties or other taxes on exports. VAT on exports is zero-rated.¹⁰² Consequently, exporters may request a refund of VAT paid on inputs or services used to produce the goods for export.

(iii) Prohibitions, restrictions and licensing procedures

105. El Salvador does not permit the export of liquefied petroleum gas in portable cylinders or used containers for liquefied petroleum gas.¹⁰³ This measure applies under a programme subsidizing liquefied petroleum gas (Chapter IV(3)). Since mid-2008, a licence has been required to export natural gas. The Directorate of Hydrocarbons and Mining in the Ministry of the Economy grants licences provided that "domestic supplies are not affected".¹⁰⁴

106. There is also a ban on the export of ferrous and non-ferrous waste and scrap of tariff headings HS 7204.1000, 7204.2900 and 7404. This measure, which is a response to the increase in exports of products made from materials obtained by unlawful means, does not apply to those exporters registered with the DGA which export products derived "directly from [their] industrial processes".¹⁰⁵

107. Exports of fertilizers, pesticides and other agricultural inputs must be authorized by the Ministries of the Economy and of Agriculture and Livestock. Both Ministries grant such authorizations provided that "domestic supplies are guaranteed".¹⁰⁶

108. Exports of cane sugar must be authorized by the Governing Board of the Salvadoran Sugar Agro-Industry Council.¹⁰⁷ Authorization is contingent upon "the obligation for refineries involved in sugar processing in El Salvador to supply the domestic market as a priority". A permit issued by the Salvadoran Coffee Council is required to export coffee.¹⁰⁸

109. Pursuant to its international commitments on the environment and public health, El Salvador imposes prohibitions and restrictions on the export of certain goods.

(iv) Tariff and tax concessions

110. In January 2002, El Salvador notified the WTO of the programme applied under the Export Recovery Law, pursuant to Article 25 of the SCM Agreement.¹⁰⁹ It also requested an extension of the transition period provided by Article 27.4 of the SCM Agreement in order to phase out this programme.¹¹⁰ In December 2002, the SCM Committee granted the extension until

¹⁰² Article 75 of the Law on the tax on the transfer of property and the supply of services.

¹⁰³ Article 8-B of the Law regulating the deposit, transport and distribution of petroleum products, Legislative Decree No. 169 of 23 December 1970.

¹⁰⁴ Article 50 of the Law on natural gas, Legislative Decree No. 630 of 20 June 2008.

¹⁰⁵ Articles 1 and 2 of Legislative Decree No. 456 of 17 December 2007.

¹⁰⁶ Article 21 of the Law on the control of pesticides, fertilizers and products for agricultural use, Legislative Decree No. 315 of 10 May 1973.

¹⁰⁷ Article 20 of the Sugar Agro-Industry Production, Industrialization and Marketing Law, Legislative Decree No. 490 of 17 August 2001.

¹⁰⁸ Article 21 of Legislative Decree No. 353 of 19 October 1989.

¹⁰⁹ WTO document G/SCM/N/38/SLV-G/SCM/N/48/SLV-G/SCM/N/60/SLV-G/SCM/N/71/SLV of 10 January 2002.

¹¹⁰ WTO document G/SCM/N/74/SLV/2 of 7 January 2002.

31 December 2005.¹¹¹ Subsequently, El Salvador submitted three notifications on the programme in question, covering the period from 1 July 2001 to 31 December 2004.¹¹²

111. The Export Recovery Law has not been amended since the previous Review of El Salvador in 2003. It gives exporters a refund of 6 per cent of the f.o.b. value of their exports outside Central America.¹¹³ Exporters of minerals are not entitled to the refund, while exporters of coffee and sugar have the right provided that not less than 30 per cent of the value added of their exports is of Salvadoran origin. Exporters of "organic" and "gourmet" coffee are not subject to this requirement. Exporters of cotton are not eligible for the refund.

112. Between 2000 and 2004, the average annual amount refunded under the Export Recovery Law was US\$15.4 million.¹¹⁴ Exports benefiting from the incentive under this Law accounted for 7.8 per cent to 9.3 per cent of El Salvador's total exports over the same period.

113. In December 2001, El Salvador requested an extension of the transition period provided by Article 27.4 of the SCM Agreement in order to phase out export subsidies under the programmes implemented within the framework of the Law on industrial and marketing free zones.¹¹⁵ In accordance with the procedure approved by the SCM Committee for granting such extensions, El Salvador notified these programmes.¹¹⁶ The Committee granted annual extensions during the period 2003-2007 for the elimination of export subsidies under these programmes.¹¹⁷

114. In September 2007, El Salvador once again requested an extension under the Law on industrial and marketing free zones, in accordance with the procedure adopted by the General Council.¹¹⁸ According to this procedure, El Salvador undertook to phase out export subsidies under the programmes implemented within the framework of the Law on industrial and marketing free zones by 31 December 2015 at the latest and to submit an action plan for this purpose in 2010. Pursuant to the procedure approved by the General Council, El Salvador notified these programmes in mid-2008.¹¹⁹ The SCM Committee granted annual extensions during the period 2008-2009 for the elimination of export subsidies under these programmes.

¹¹¹ WTO document G/SCM/99 of 18 December 2002.

¹¹² WTO documents G/SCM/N/99/SLV of 4 August 2003; G/SCM/N/114/SLV of 2 July 2004; and G/SCM/N/128/SLV of 4 July 2005.

¹¹³ Articles 2 and 3 of the Export Recovery Law, Legislative Decree No. 460 of 18 April 1990.

¹¹⁴ WTO document G/SCM/N/128/SLV of 4 July 2005.

¹¹⁵ WTO document G/SCM/N/74/SLV/1 of 3 January 2002.

¹¹⁶ WTO documents: G/SCM/N/38/SLV/Suppl.1-G/SCM/N/48/SLV/Suppl.1-G/SCM/N/60/SLV/Suppl.1-G/SCM/N/71/SLV/Suppl.1, G/SCM/N/114/SLV, G/SCM/N/123/SLV, G/SCM/N/146/SLV, G/SCM/N/155/SLV and G/SCM/N/177/SLV. The procedure for granting the extensions provided by Article 27.4 to certain developing country Members appears in WTO document G/SCM/39 of 20 November 2001.

¹¹⁷ WTO documents G/SCM/65 and G/SCM/65/Add.1-4.

¹¹⁸ WTO document G/SCM/N/163/SLV of 17 September 2007. The procedure for continuing the extensions granted to certain developing country Members pursuant to Article 27.4 of the SCM Agreement during the transition period provided by Article 27.2(b) of the SCM Agreement appears in WTO document WT/L/691 of 31 July 2007.

¹¹⁹ WTO document G/SCM/N/177/SLV of 7 July 2008.

115. Since the previous Review of El Salvador, there have been five amendments to the Law on industrial and marketing free zones.¹²⁰

116. The Law on industrial and marketing free zones allows businesses located in free zones or declared to be "inward processing warehouses" to import equipment and inputs without paying tariffs or other import taxes.¹²¹ Under this Law, such businesses are also exempt from payment of income tax, the tax on transfer of real estate and municipal taxes on assets. The incentives provided by the Law are granted as long as the business is operating and provided that the requirements laid down in the Law are met. These incentives may not be combined with those under the Export Recovery Law.

117. Some of the activities that are not eligible for the tax benefits and incentives provided under the Law on industrial and marketing free zones are: exploration, exploitation and processing of natural gas, petroleum and petroleum fuels, oils, greases and lubricants; production and marketing of cement and clinker; marketing of metal waste and scrap; exploitation of minerals; and fishing, except for tuna for processing.¹²²

118. The Law on industrial and marketing free zones does not lay down any minimum export requirements. Sales to the domestic market are subject to payment of tariffs and other taxes applicable to imports.¹²³ The customs value is the c.i.f. value of the goods, except in the case of textiles and clothing, whose customs value excludes "the domestic added component".¹²⁴ Likewise, at least half of the value of textiles and clothing intended for the domestic market must be of Salvadoran origin.¹²⁵ The income earned from sales to the domestic market is subject to income tax and municipal taxes.

119. Agricultural products in Chapters 1 to 24 of the HS 2007 intended for the domestic market must also meet national content requirements and their processing comes under the Law on industrial and marketing free zones. The value of sales of such products on the domestic market (as a proportion of each enterprise's total sales) may not exceed the proportion of the Salvadoran content value in the value of sales to the domestic market.

120. Enterprises benefiting from the Law on industrial and marketing free zones must meet the national regulations on health and the environment and give their employees all the benefits laid down in the labour legislation.¹²⁶

121. El Salvador's notifications to the WTO do not contain any information on the amount of the subsidies granted under the Law on industrial and marketing free zones. According to these notifications, net exports from free zones and inward processing warehouses amounted to US\$564 million in 2007, compared to US\$456 million in 2000 (see also Chapter IV(2)).

¹²⁰ Legislative Decree No. 130 of 23 January 2004; Legislative Decree No. 616 of 16 March 2005; Legislative Decree No. 858 of 9 December 2005; Legislative Decree No. 943 of 24 February 2006; and Legislative Decree No. 483 of 20 December 2007.

¹²¹ Articles 17 and 19 of the Law on industrial and marketing free zones, Legislative Decree No. 405 of 23 September 1998.

¹²² Law on industrial and marketing free zones, Article 6.

¹²³ *Ibid.*, Article 3.

¹²⁴ *Idem.*

¹²⁵ *Idem.*

¹²⁶ *Ibid.*, Article 29.

122. In October 2007, the Legislative Assembly approved the Law on international services.¹²⁷ This Law gives fiscal incentives to businesses exporting services located in "parks" and service centres. The activities giving the right to these incentives include international distribution services; international logistics operations; international call centres; the design and development of software, and computer systems and programs; research and development; repair and maintenance of aircraft and vessels; support for administrative procedures; and medical services.¹²⁸ Firms providing repair and maintenance services for aircraft and vessels and call centres do not have to be located in a services park in order to be eligible for these incentives but may operate in "service centres", that is to say, defined areas where there is only one firm.¹²⁹

123. The incentives provided by the Law consist of exemptions from: tariffs and other taxes on imports of goods needed to supply the service in question; income tax; and municipal taxes on assets. The incentives provided by the Law are granted as long as the business is operating and provided that the requirements laid down in the Law are met. Imports of foodstuffs and beverages, tobacco, luxury goods, motor vehicles and some other goods are subject to payment of tariffs and other applicable taxes.

124. The Law on international services allows businesses established in service parks or centres to supply services to the domestic market.¹³⁰ Firms which provide medical services or repair or maintain vessels and aircraft are not allowed to do so. Sale of services to the domestic market is subject to payment of income tax, VAT and the applicable municipal taxes.

125. Firms providing support for administrative procedures must invest at least US\$150,000 during their first year of operation in order to be eligible for the incentives provided by the Law on international services.¹³¹ They must also provide at least ten permanent jobs and have signed a contract for at least one year with their client. Suppliers of medical services must also meet minimum investment requirements. The minimum amount in the case of firms providing medical services involving surgical operations is US\$10 million, compared to US\$3 million if the firm does not offer surgery.

126. The Ministry of the Economy is responsible for authorizing the tax incentives provided in the Law on international services. By August 2009, El Salvador had not authorized any service park under the Law on international services. Nevertheless, 25 businesses have made use of the Law: 13 of these are in free zones and are mainly engaged in international logistics activities, while most of the other 12 are international call centres.

127. The Law on tourism, approved in 2005, authorizes the Ministry of Finance to grant fiscal incentives to tourism businesses which invest in areas declared to be "projects of national tourist interest" by the Ministry responsible for tourism (section (3)(iii)).¹³²

(v) Promotion, financing, insurance and guarantees

128. Through the commercial banks, the Multisectoral Investment Bank (BMI), a public credit institution, offers loans for up to 365 days to finance exporters' working capital.¹³³ The BMI's annual

¹²⁷ Legislative Decree No. 431 of 25 October 2007.

¹²⁸ Law on international services, Article 5.

¹²⁹ Ibid., Article 24.

¹³⁰ Ibid., Article 8.

¹³¹ Ibid., Article 23.

¹³² Article 22 of the Law on tourism, Legislative Decree No. 899 of 20 December 2005.

interest rate for commercial banks granting this type of loan is 5.75 per cent. In 2007, the BMI granted loans totalling US\$2.3 million to exporting firms. Each bank determines the rate of interest to be paid by the exporters.

129. Under the "Export with guarantees" programme, the BMI guarantees certain commercial bank loans for companies which export to Canada and the United States of America.¹³⁴ The loans guaranteed must be backed up by the commercial invoice issued by the exporter. The amount of the guarantee is the amount of the commercial invoice and the cost is 1 per cent (plus VAT) of the amount of the invoice. Between 2006 and mid-2009, the BMI had guaranteed approximately US\$2.7 million.

130. The Export Promotion Fund (FOEX) is a Ministry of the Economy programme giving financial assistance to small and medium-sized enterprises for the promotion of their exports. The authorities have indicated that the majority of the FOEX's resources come from international grants. Firms with annual sales not exceeding US\$7 million are eligible for assistance under the FOEX. The amount of the financial support covers up to 70 per cent of the cost of the project. Between 2002 and mid-2009, the amount disbursed under the FOEX amounted to some US\$3.9 million.

131. The National Export and Investment Promotion Commission (CONADEI), attached to the Office of the President of the Republic, was set up in 2004 with the aim of encouraging growth and diversification of exports and attracting foreign investment.¹³⁵ CONADEI operates under the names of two previously existing bodies: "Exporta El Salvador" and "PROESA". When it was set up, CONADEI took over the assets of both these bodies (as well as those of the Foreign Trade Services Centre or "Trade Point El Salvador").

132. The principal activities of CONADEI are to disseminate information on foreign markets, develop export strategies and promote El Salvador's products abroad.¹³⁶ CONADEI also provides potential investors with information and gives assistance for the establishment of businesses, as well as for completing formalities after they have been set up.¹³⁷

(3) OTHER MEASURES AFFECTING PRODUCTION AND TRADE

(i) Creation and taxation of businesses

133. A recent study by the World Bank shows that the ease with which businesses can be created has made notable progress in El Salvador in recent years, although it suggests improvements as regards payment of taxation. Businesses with Salvadoran or foreign capital domiciled in El Salvador are eligible for the same benefits.

134. Trading companies in El Salvador are governed by the Commercial Code (Legislative Decree No. 671 of 8 May 1970) and amendments thereto, the most recent of which was contained in Legislative Decree No. 641 of 26 June 2008. Any Salvadoran or foreign firm wishing to operate in El Salvador, as well as its respective legal representatives, the members of the board of directors, individual traders and any changes to such entities, must be recorded in the Commercial Register. In

¹³³ BMI online information, *Pre y exportación de productos*. Viewed at: https://www.bmi.gob.sv/portal/page?_pageid=38,89744&_dad=portal&_schema=PORTAL

¹³⁴ Ibid., *Exporte con garantía*. Viewed at: https://www.bmi.gob.sv/portal/page?_pageid=38,57336&_dad=portal&_schema=PORTAL

¹³⁵ Executive Decree No. 57 of 23 November 2004.

¹³⁶ Online information from Exporta El Salvador. Viewed at: <http://www.exporta.gob.sv>

¹³⁷ Online information from PROESA. Viewed at: <http://www.proesa.com.sv>

order to facilitate formalities for setting up businesses, the National Registry Centre (CNR), the Ministries of Finance and Labour, and the Salvadoran Social Security Institute have jointly set up a single window for comprehensive services in the offices of the CNR's commercial registry, where the services provided by the various bodies are centralized.¹³⁸

135. The Commercial Code classifies businesses into partnerships or corporations; both types of business may have open-ended capital. Partnerships may be: general partnerships; limited partnerships; or limited liability companies. Corporations may be established as: public limited companies; or partnerships limited by share capital. There is a minimum capital requirement for setting up a company and, following the reforms introduced into the Commercial Code in 2008, this is US\$2,000. In the case of a public limited company, this capital must be fully paid up and at least 5 per cent of the value of each share must be paid in cash. The most common type of business is a public limited company.

136. Foreign businesses may operate in El Salvador either by electing domicile in the country or setting up subsidiaries, which must be registered in the Commercial Register. No prior authorization is required to set up a foreign company. The capital requirements are those mentioned above. The company or subsidiary is subject to the laws and authorities of El Salvador in respect of deeds, rights and obligations acquired in Salvadoran territory or having effect there. The formalities are the same as those for Salvadoran companies.

137. A company's legal representative may be a foreigner but if so the requirement is to reside in El Salvador and have resident status. Resident status as an investor is given to foreign investors who invest more than 4,000 minimum monthly salaries. Companies with foreign capital set up in El Salvador have the same obligations and in general may obtain the same benefits as Salvadoran companies. The income of Salvadoran companies and companies with foreign capital domiciled in El Salvador is subject to a monthly 1.5 per cent withholding tax on their invoices. For those companies not domiciled in El Salvador but operating there, the withholding tax is 20 per cent. Foreign companies may freely transfer capital and profits.

138. The main taxes on business activities are: income tax, which amounts to 25 per cent of taxable income for legal persons, after deducting the legal reserve, and up to 30 per cent of taxable income for natural persons; social security contributions (7.5 per cent of gross salaries); pension fund contributions (6.75 per cent of gross salaries); other payroll taxes (1 per cent of gross salaries); and capital gains tax (1 per cent of such gains). The basic VAT rate is 13 per cent.

139. According to calculations by the World Bank, in 2008 taxes as a whole in El Salvador amounted in practice to 34.9 per cent of profits, the lowest figure in Central America.¹³⁹ This rate is noticeably lower than the average for all Latin American and Caribbean countries (48.6 per cent) or all OECD countries (45.3 per cent).

140. In 2009, the World Bank ranked El Salvador 72nd out of 181 economies as regards "ease of doing business", a compound measurement taking into account various aspects of the regulations and business environment in a country. The report showed that there had been significant improvement as regards the procedures to be followed when setting up a business, and that eight procedures were required, which took an average of 17 days, compared to 9.7 procedures and 64.5 days on average for

¹³⁸ Information available on the CNR's website at: <http://www.e.cnr.gob.sv/portal/>

¹³⁹ Of this percentage, 17 percentage points correspond to income tax (taking into account total profits), 17.2 per cent to social security and health taxes, and the rest to other taxes. Online information from the World Bank. Viewed at: <http://www.doingbusiness.org/ExploreTopics/PayingTaxes/>

Latin America and the Caribbean.¹⁴⁰ Nevertheless, El Salvador's classification was lower as regards ease of paying taxes (124th out of 181 countries).¹⁴¹

(ii) Competition policy and price controls

141. Since the previous Review, El Salvador has made notable progress in its competition policy, both as regards the legislative and institutional frameworks. This is of special importance because small markets have a tendency towards concentration.

(a) Competition policy

142. Since the previous Review in 2003, El Salvador has introduced special legislation on competition. This is contained in the Competition Law (Legislative Decree No. 528 of 26 November 2004, amended by Legislative Decree No. 436 of 18 October 2007) and in the implementing regulations for the Competition Law (Legislative Decree No. 126 of 5 December 2006, amended by Executive Decree No. 63 of 29 May 2008). The Law came into force on 1 January 2006. In addition, Article 110 of the Constitution prohibits monopolistic practices in order to guarantee freedom to do business and to protect consumers, and it provides that monopolies may only be authorized for the State or local authorities when this is imperatively in the interests of society.

143. The Competition Law prohibits agreements, pacts, arrangements, contracts between competitors and non-competitors, as well as acts between competitors and non-competitors, for the purpose of limiting or restricting competition or preventing access to the market by any economic operator. The Law applies to all economic operators, whether natural or legal persons, State or municipal bodies, businesses in which the State has a holding, cooperatives, or any other body involved in economic activities, with the exception of those economic activities reserved by the Constitution and the legislation exclusively to the State or local authorities. In practice, the number of exceptions is limited. For example, the treatment and disposal of solid waste is restricted to local authorities and, consequently, remains outside the scope of the Competition Law.

144. The Competition Law established the Supervisory Authority for Competition, a public body with its own legal status and assets and of a technical nature, with administrative and budgetary autonomy to carry out the responsibilities and duties determined in the Law itself. The Supervisory Authority deals with the Government through the Ministry of the Economy.¹⁴² It has been operating since 2006 and its objective is to ensure compliance with the Competition Law.

145. The Competition Law specifies that the following are anti-competitive practices between competitors and as such are prohibited: (a) fixing prices or other terms of purchase or sale; (b) fixing volumes of production; (c) fixing prices in any form of public or private bidding procedure, with some exceptions; and (d) dividing up the market. Anti-competitive practices between non-competitors that are prohibited by the Law include: (a) sale contingent upon the buyer purchasing other products from the supplier; (b) transactions subject to the requirement not to use, purchase or sell goods or services normally offered to third parties or by third parties; and (c) understandings among various economic operators; in such cases it must be proved, *inter alia*, that the offender holds a dominant position in the market and that such practices have had or may

¹⁴⁰ World Bank (2009), *Doing Business 2009*. Viewed on line at: <http://www.doingbusiness.org/ExploreEconomies/?economyid=62>.

¹⁴¹ *Idem*.

¹⁴² Further information on the activities of the Supervisory Authority can be found at: <http://www.sc.gob.sv/Lasuper/index.htm>

have the effect of restricting competition and, in any event, the interests of consumers have suffered prejudice.

146. In general, the Law does not allow abuse of a dominant position. It also contains provisions on mergers. Mergers that involve the amalgamation of total assets exceeding 50,000 minimum urban salaries (SMU, US\$121.86 million in October 2009), or where total income exceeds 60,000 SMUs (US\$146.23 million in October 2009) require prior authorization from the Supervisory Authority for Competition, which has to examine whether the merger would lead to a significant restriction of competition. Nevertheless, the Supervisory Authority may not refuse economic mergers if the interested parties show that there could be sizeable gains in efficiency. The Supervisory Authority must take a decision on the merger within a period not exceeding 90 calendar days from the day following that of submission of the application. The decision must lay down the terms under which the economic merger is to take place. In the absence of such a decision, it will be understood that the economic merger may go ahead. In the case of economic mergers by economic operators subject to supervision by another entity (see Chapter IV(4)), the Supervisory Authority for Competition gives its opinion on their admissibility and this is binding.

147. Proceedings before the Supervisory Authority may be initiated either *ex officio* or following a complaint. The head of the Authority may decree preventive measures if there is an imminent risk for the market. The decision giving a definitive ruling in the proceedings may be subject to appeal, which must be lodged with the Governing Board of the Supervisory Authority in writing. A decision has to be taken on the appeal within a maximum period of ten working days subsequent to its receipt. A judicial appeal may also be made.

148. Violations of the Competition Law are punished by fines that depend on factors such as the seriousness of the offence or the prejudice caused. Fines may exceed 5,000 SMUs (US\$12.1 million in October 2009) only if the act committed is particularly serious. In addition to economic sanctions, in its final decision the Supervisory Authority may order cessation of the anti-competitive practices within a specified period and may lay down the requisite conditions and obligations, which may be structural or concern behaviour. The same sanctions may be imposed on economic operators who, although required to do so, did not request authorization for a merger. If an economic operator required to seek approval of an economic merger does not comply with the terms of the final decision taken, the Supervisory Authority may impose a fine of up to 5,000 SMUs (US\$12.1 million in October 2009) for each day of failure to comply with the decision. Violations of competition regulations are no longer subject to penal sanctions.

149. Between early 2006 and October 2009, the Supervisory Authority received 30 complaints concerning anti-competitive practices and initiated nine investigations *ex officio*. In 17 of these cases, it was determined that the complaint was unfounded and in seven that it was inadmissible; in one case the complaint was withdrawn; and in another the proceedings were suspended; in two cases, a public policy recommendation was made; and in two other cases fines were imposed. In October 2009, the remaining cases were the subject of administrative proceedings or were being reviewed. In one case against three oil companies, the maximum fine of US\$852,000 was imposed for abuse of a dominant position for the purpose of restricting competition in the market and for price discrimination. In another important case, fines were imposed on two telecommunications companies.¹⁴³ The *ex officio* cases mainly concerned the electricity, telecommunications and travel sectors. In one electricity-related case, it was found that some companies had abused their dominant position and they were fined and required to cease the anti-competitive practice immediately. In another case concerning abuse of a dominant position, fines were imposed on two companies. In the

¹⁴³ Details of these cases and of the decisions taken by the Supervisory Authority can be viewed at: <http://www.sc.gob.sv/Publicaciones/index.htm>

other cases, one was closed (liquid fuels) and the other was the subject of a public policy recommendation (cable television).

150. The Supervisory Authority also turns to punitive administrative proceedings, fining companies for their failure to cooperate in providing information in the course of an investigation or in sectoral studies conducted by the Supervisory Authority: between 2006 and October 2009, seven companies in the telecommunications sector, three in the medicines sector and one sugar producer were fined for failing to cooperate.

151. According to information from the Supervisory Authority, between the end of 2006 and October 2009, requests were made for 27 economic mergers: in eight of these cases the merger was authorized; in one case it was decided that it did not require prior approval; in 13 cases it was decided that the request was unfounded; in three cases, it was considered inadmissible; in one case the request was withdrawn; and in another, it was dismissed; lastly, two cases are still being decided.¹⁴⁴

152. The Supervisory Authority for Competition has signed agreements or memorandums of understanding with similar competition institutions in the following countries: Costa Rica, Chile, Honduras, Mexico, Nicaragua, Panama, Peru and Spain.¹⁴⁵ The agreements with Costa Rica, Honduras, Nicaragua, Panama and Peru are agreements to promote competition which imply coordination and cooperation among the agencies in the signatory countries. The agreements with the agencies in Chile, Mexico and Spain concern technical assistance.¹⁴⁶

153. The Supervisory Authority also undertakes sectoral studies on competition: between 2006 and October 2009, it carried out ten such studies concerning land transport of freight; liquid fuels; medicines (two); the electricity sector; the poultry subsector; liquefied gas; telecommunications; the sugar industry; and the dairy industry.¹⁴⁷

154. In a recent study on competition policy in El Salvador, the OECD indicated that this policy had been successfully initiated and that El Salvador's experience could serve, at least in some form, as a model for an effective way of starting to implement a competition policy.¹⁴⁸ The study also indicated that the Supervisory Authority had rapidly developed an effective programme to protect competition and that its greatest challenge was to implement the Law successfully, particularly in combating cartels. The OECD suggested, however, some adjustments to improve implementation of the Law. The main recommendations of the study are: (a) to focus on developing an anti-cartel programme; (b) to implement a clemency programme as a tool for combating cartels; (c) to modify the notification thresholds for economic mergers; and (d) to achieve better interaction between policy to protect competition and policy to protect consumers. The OECD considered that, as El Salvador's economy was relatively small, the thresholds for economic mergers were high and it might happen

¹⁴⁴ Detailed information on the Supervisory Authority's review and decision in each of the cases examined can be viewed at: <http://www.sc.gob.sv/Publicaciones/concentraciones.htm>

¹⁴⁵ The institutions concerned are, by country: Costa Rica (Commission to Promote Competition, agreement signed in November 2007); Chile (Tribunal to Protect Free Competition and National Economic Prosecutor's Office, May 2007); Honduras (Commission to Protect and Promote Competition, June 2008); Mexico (Federal Competition Commission, September 2007); Panama (Consumer Protection and Competition Authority, September 2007); Peru (National Institute for the Defence of Competition and the Protection of Intellectual Property (INDECOPI), August 2007); and Spain (Competition Court, February 2007).

¹⁴⁶ Detailed information on these agreements can be viewed at: <http://www.sc.gob.sv/Publicaciones/convenios.htm>

¹⁴⁷ These studies can be viewed at: <http://www.sc.gob.sv/Estudios/estudios.htm>

¹⁴⁸ OECD and Inter-American Development Bank (2008), *Derecho y Política de la Competencia en El Salvador*. Peer review, Paris. Viewed at: <http://www.oecd.org/dataoecd/8/52/41597186.pdf>

that a merger situated below the notification threshold was anti-competitive and prejudicial to consumers.

(b) Price controls

155. The Law on Consumer Protection gives the consumer ombudsman in the Ministry of the Economy the authority to determine and modify maximum prices for intermediate and final goods for use or for consumption and for services in cases of national emergency, provided that these are essential goods or services. The authorities have indicated that this power was not used during the period under review.

156. The National Aqueducts and Sewage Authority regulates water supply rates, while the General Supervisory Authority for Electricity and Telecommunications regulates electricity and telephone rates.

(iii) Incentives

157. The incentives given by El Salvador to its production sector focus on programmes to promote exports, programmes in support of micro and small enterprises (MSEs), transfer of technology, and programmes to attract investment.

158. El Salvador has notified the WTO SCM Committee of the Free Zones and Inward Processing Warehouse Programme pursuant to Article XVI.1 of the GATT 1994 and Article 25 of the SCM Agreement.¹⁴⁹

159. El Salvador's production sector has several financing programmes available, including those listed in Table III.7. The National Commission for Micro and Small Enterprises (CONAMYPE) is a body set up in 1996 by Executive Decree No. 48 and, since July 1999, it has come under the Ministry of the Economy. Its objective is to facilitate, improve and promote access by MSEs to expert business development services and to give them the possibility of obtaining loans, promoting mechanisms for this purpose.¹⁵⁰ The Secretariat does not have any detailed figures concerning the support given under each of these programmes.

160. Businesses set up in El Salvador are also eligible for the BMI programmes. The BMI is a government body authorized to grant loans through institutions which finance investment projects in the private sector and to obtain loans from national or international institutions. It may also guarantee obligations contracted by banks or financial institutions in order to obtain financing. In its day-to-day operations, the BMI gives credit to financial institutions so that they may transfer these resources to the final users, which then use them for permanent increases in their working capital, technical training of personnel, the purchase of machinery or equipment, and the building of facilities and physical infrastructure.¹⁵¹ The BMI's principal programmes are described in Table III.7.

¹⁴⁹ WTO document G/SCM/N/186/SLV – G/SCM/N/192/SLV of 4 June 2009.

¹⁵⁰ CONAMYPE considers a micro enterprise to be a natural or legal person operating in the market and producing and/or selling goods or services on its own behalf, with an annual gross level of sales not exceeding US\$100,000, and with up to ten paid employees. A small enterprise may have an annual gross level of sales not exceeding US\$1 million and up to 50 paid employees. The level of annual gross sales for a medium-sized enterprise is up to US\$7 million and it may have up to 100 paid employees. Information viewed at: <http://www.conamype.gob.sv/mipyme.php>

¹⁵¹ Online information from the Multisectoral Investment Bank (BMI). Viewed at: https://www.bmi.gob.sv/portal/page?_pageid=38,55286&_dad=portal&_schema=PORTAL

Table III.7
Financing programmes for technological development, productivity and competitiveness

Programme	Description
Competitive Resources Exchange (BRC), National Scheme of Alliances for Technological Innovation (SINALIT)	The BRC is a SINALIT financing instrument that finances projects to generate and transfer agricultural, agro-industrial and forestry technology. It focuses on financing projects submitted to SINALIT by organizations of producers, agro-industrialists and traders who wish to improve their production, business and marketing technology. The SINALIT programme ended in December 2008.
Individual Technical Assistance Fund (FAT), administered by CONAMYPE	Economic support given to businesses by the Government, with international cooperation, to enable them to purchase technical assistance or business consultancy services on an individual basis. The incentive consists of a partial subsidy from the Government, corresponding to 80 per cent of the total cost of the services received. The criteria for eligibility for the programme are: owning a micro or small enterprise that has operated in the market for at least six months; annual sales not exceeding C 6 million or the equivalent in United States dollars; not more than 50 employees; ability to pay 20 per cent of the cost of the technical assistance to be given; possession of a facility for conducting the activities. The FAT may finance up to US\$550 per enterprise. The support financed by the FAT comes from the Government and international cooperation, mostly from EU cooperation funds.
FAT Grupal FAT Asociativo	Similar to the above, except that the Fund may finance up to a maximum of US\$500 per enterprise. Co-financing provided by the Government to a group of at least 5 and a maximum of 12 enterprises to allow them to have access to specialized services for the purpose of creating associations intended to enhance their business competitiveness. The requirements are the same as those for the individual FAT. Projects are divided into two stages: Stage 1: technical assistance for creating associations, for which the FAT finances up to US\$1,125 per enterprise; Stage 2: implementation of the project, for which the FAT may finance up to US\$3,000 per enterprise, annually.
BONOMYPE (CONAMYPE)	This is a programme through which vouchers are given to businessmen with which they can buy training services from various suppliers.
BMI - Agriculture BMI - Trade BMI - Construction BMI - Electricity, gas, water and sanitary services BMI - Manufacturing industry BMI - Mining and quarrying BMI - Services BMI - Transport, storage and communications BMI - Housing BMI - Other activities	The BMI's credit lines aim to support development of the country's various economic sectors by providing the financial resources necessary to carry out investment projects; they range from covering the need for working capital to the purchase of land for production purposes, financial support for students, the purchase of housing, and environmental rehabilitation and conservation work.
FOEX Ministry of the Economy	The Export Promotion Fund (FOEX) is a Ministry of the Economy programme giving financial assistance to small and medium-sized enterprises for the promotion of their exports. Most of its resources come from international grants. Firms with a maximum of 100 employees and annual sales ranging between US\$70,000 and US\$7 million are eligible for assistance under the FOEX. The amount of the financial support covers 50 per cent of the cost of the beneficiary enterprise's "export development plan". Assistance is in the form of non-repayable co-financing of up to 70 per cent of the total cost of a project or one-off initiative. Between 2002 and mid-2009, the amount disbursed under the FOEX amounted to some US\$3.9 million.

Source: WTO, on the basis of information provided by the Salvadoran authorities.

161. In addition, the BMI runs several programmes intended to promote economic development, including the following: the Industrial Building Trust Fund (FITEX) to promote the creation of industrial centres, the Private Free Zone Development Programme, through which up to three quarters of the total cost of developing a free zone or the cost of purchasing or erecting industrial buildings in private free zones is financed; and the Integrated Coffee-Growing Renewal Programme, to enhance the productivity of the coffee-growing sector and support its productive restructuring. The BMI also has an export credit programme (see section (2)(v) above).

162. In addition to the aforementioned programmes, during the period under review the BMI continued with the Programme for the Expansion of Microcredit Coverage (PACM), initiated in September 2001 and terminated in September 2006. This programme, implemented by the BMI in coordination with CONAMYPE, allowed financial institutions to expand their coverage through an incentive scheme which included training in credit technology, computer equipment and payment to

credit agencies. Between 2001 and 2006, 81,181 loans were given for an amount of US\$77.8 million.¹⁵²

163. Sectoral incentives are also provided for in the Law on international services (Decree No. 431 of 11 October 2007) and in the Law on tourism (Decree No. 899 of 10 December 2005). The Law on international services provides for the creation of parks to provide certain services, for example, international call centres, information technology, or the repair of aircraft and vessels. Activities within these parks are free of income tax and VAT as well as import tariffs on the products needed to provide the various services. The services must be intended for export or for businesses operating under the free-zone regime.

164. Pursuant to the Law on tourism, investment of US\$50,000 or more in the tourism sector is exempt from income tax for ten years, a reduction of up to 50 per cent in municipal taxes for five years, and exemption from VAT and customs duty on imports of inputs and capital goods used for tourism projects. The authorities have indicated that, by October 2009, 17 projects had been approved for incentives under the Law on tourism, with investment for a total amount of US\$38.5 million, and that six other projects were in the process of being approved.

165. Moreover, businesses in El Salvador are eligible for the programmes administered by the Central American Bank for Economic Integration (CABEI). The CABEI programmes, other than those primarily intended for exporters (section 2(iv) above), are mainly in support of micro and small enterprises, infrastructure, the energy sector, agribusiness and low-cost housing. The interest rates applicable to the various programmes are determined according to the market rates based on the Libor and are revised each quarter. In the case of operations through intermediaries, the rate of interest charged to the final user by the intermediary institution depends on its own policies.

166. Over the period 2003-2007, the CABEI disbursed a total of US\$1,829 million to El Salvador, equivalent to 27 per cent of total CABEI disbursements during that period. Of the resources mobilized in 2007 (US\$471.7 million), 48.4 per cent went to the energy sector, 35.4 per cent to infrastructure, and 11.7 per cent for information technology and related activities, with the remainder going to other activities.¹⁵³ Three-quarters of this financing goes to the public sector. Of the disbursements channelled through the banking system, amounting to US\$154 million in 2007, 49.1 per cent went to the financial sector, 22.8 per cent to infrastructure and 18 per cent to manufacturing, with 6.3 per cent for energy.

(iv) State-owned enterprises and privatization

167. According to the notification to the WTO, the Salvadoran authorities have indicated that El Salvador has no State-trading enterprises within the meaning of Article XVII of the GATT.¹⁵⁴

168. During the period under review, the State's share in the economy remained modest as the majority of privatization had been accomplished prior to this period. The State continues to play an important role in only a few areas such as the supply of water and the management of ports, airports and railways, even though the railway sector is not in an active state of operation.

¹⁵² CONAMYPE (2007), *Memoria Anual 2006*. Viewed at: http://www.conamype.gob.sv/include/publicaciones/memo_2006.pdf

¹⁵³ Central American Bank for Economic Integration (CABEI, 2008), Annual Report 2007. Viewed at: http://www.bcie.org/english/publicaciones/memorias_07.php

¹⁵⁴ WTO document G/STR/N/6/SLV of 7 March 2001.

(v) Government procurement

169. Since the previous Review, El Salvador has made notable progress in respect of government procurement, modernizing and strengthening the regulatory and institutional frameworks in this area. Its legislation does not contain any provisions granting more favourable treatment for goods, services or public works provided by national rather than foreign suppliers, unless the bids are equal.

170. El Salvador is not party to the WTO Plurilateral Agreement on Government Procurement. The authorities have indicated that it does not plan to participate as an observer in this Agreement.

171. In 2008, current spending by the Central Government on goods and services totalled US\$335.6 million, or 1.5 per cent of GDP, while the cost of investment attained US\$210.8 million, or 1 per cent of GDP.¹⁵⁵ According to the information provided by the authorities, bidding procedures resulting in publication of the award of a contract involved a total amount of US\$1,026.8 million in 2008, compared to US\$496.6 million in 2007; these include bidding by invitation. In the case of free bidding, in 2008 the amount was US\$11.3 million and in 2007 US\$10.6 million. Public bidding was the procedure most commonly used and in 2008 it applied to 91.3 per cent of the contracts. Some 3.6 per cent of total contracts were awarded through public bidding by invitation; 3.78 per cent through a public competition; 1.1 per cent by free bidding; and 0.10 per cent by direct contracting. The authorities do not have any data on the percentage of contracts awarded to foreign suppliers.

172. El Salvador's government procurement legislation has been amended since the previous Review in 2003 by the introduction of certain modifications and implementing regulations for the Government Procurement and Contracting Law (LACAP, Legislative Decree No. 868 of 5 April 2000). These reforms are contained in Legislative Decree No. 66 of 10 July 2003, Legislative Decree No. 222 of 4 December 2003, and Legislative Decrees Nos. 571 of 6 January 2005 and 909 of 14 December 2005. Government procurement is also regulated through the implementing regulations for the LACAP, Executive Decree No. 98 of 20 October 2005. The Law and its implementing regulations apply to all government bodies, including municipal authorities and State-owned enterprises. The Law's provisions do not apply to procurement and contracting financed through funds coming from international organizations, if this is stipulated in an agreement or treaty, or to agreements between State institutions themselves, or to the contracting of personal services by institutions belonging to the Government.

173. Neither the Law nor the implementing regulations contain provisions that give different treatment for goods, services or public works supplied by national or foreign suppliers, unless the bids are for an equal amount (see below). Foreigners may take part in any bidding procedure provided that they meet all the specified requirements.

174. According to the provisions in the legislation, government procurement in El Salvador is decentralized from an operational standpoint, even though it must follow the regulatory guidelines laid down in the overall legislation. Each public sector body is responsible for its own planning and makes its purchases on that basis and taking into account the financial resources available. The LACAP provides that the Government Procurement and Contracting Regulatory Unit (UNAC), attached to the Ministry of Finance, is responsible for proposing the annual procurement and contracting policy for government institutions, for carrying out regulatory tasks and for keeping a national register of government procurement and contracting. In order to put into effect the UNAC regulations, each institution has an Institutional Procurement and Contracting Unit (UACI) responsible for operational decentralization and for carrying out all activities concerning the procurement and contracting of works, goods and services.

¹⁵⁵ Online information from COMPRASAL. Viewed at: <http://www.comprasal.sv>

175. According to the LACAP, the following are the government procurement methods utilized in El Salvador: (i) public bidding or competition; (ii) public bidding or competition by invitation; (iii) free bidding; (iv) direct contracting; and (v) the equity market. Contracting through public bidding and public bidding by invitation apply to the procurement of goods and services and to building works; contracting by competition or public competition by invitation applies to procurement of consultancy services. Free bidding is the procedure by which, in order to meet their everyday needs, institutions purchase goods or services available to the public directly from warehouses, factories or sales outlets, whether national or international. Direct contracting is the method by which an institution directly contracts a natural or legal person without going through a bidding or competition procedure; the Law provides that competition criteria must be respected and that the decision must be contained in a reasoned resolution issued by the person responsible for the institution and justified by one of the reasons provided for in the Law.¹⁵⁶ Contracting on the equity market means those operations that take place on the stock exchange when this is in the public interest and it is conducted through stockbrokers, who act on the El Salvador commodity stock exchange (BOLPROES).¹⁵⁷

176. The decision on the method of contracting to be used, with the exception of direct contracting, depends on the amount of the contract: (i) a public bidding procedure must be followed for amounts exceeding the equivalent of US\$131,826 (October 2009); (ii) public bidding by invitation may be used for amounts ranging from US\$16,608 to US\$131,826; and (iii) free bidding may be used for amounts less than the equivalent of US\$16,608; there is no limit for direct contracting.¹⁵⁸ The maximum amounts for contracting consultants are less in the case of public competition (amount exceeding 200 SMUs) and public competition by invitation (between 80 and 200 SMUs). The LACAP does not specify amounts for the use of contracting through the equity market.

177. In the case of public bidding or public competition by invitation, a list of bidders is drawn up, with a minimum of four invitations to national or foreign natural or legal persons, who are publicly invited to participate in order to ensure competitive prices. Suppliers may be in the UACI's database, but this is not a requirement in order to participate.

178. Bids are evaluated from the technical, economic and financial standpoints by a bid evaluation commission in each UACI, taking into account the evaluation criteria laid down in the bidding conditions. The regulations provide that bidding or competition conditions should set out clear, objective and measurable evaluation criteria that are relevant to the subject of the contract, in order to lessen discretionality. The evaluation criteria must be explained in the conditions in an

¹⁵⁶ The direct contracting procedure may only be approved in one of the following situations: (a) if this is required for reasons of protection of industrial or intellectual property rights or when the professional, technical or artistic expertise that is the subject of the contractual obligations does not permit a bidding procedure; (b) if a bidding procedure or competition has not been successful for the second time; (c) because the contract awarded has been annulled and for reasons of urgency there is no time for a new bidding procedure; (d) in the case of ancillary works, services or supplies or accessories or parts or spare parts for existing equipment or other equipment previously purchased for which there is no other source; (e) in the case of purchase of war equipment or implements, previously approved by the Minister of National Defence and endorsed by the President of the Republic; (f) for emergency reasons (a situation in which postponement or deferral would seriously endanger the general interest); and (g) in cases of emergency arising from war, disaster or serious disturbances.

¹⁵⁷ Law on the products and services exchange, Legislative Decree No. 33 of 19 June 1997.

¹⁵⁸ The Law specifies the amounts in terms of monthly minimum urban salaries (SMU): public bidding, 635 SMUs; public bidding by invitation, from 80 to 635 SMUs; free bidding, less than 80 SMUs provided there is a comparison of quality and price between at least three bidders (this requirement does not apply to procurement or contracting that does not exceed the equivalent of 10 SMUs). In February 2009, the monthly minimum urban salary was US\$207.60.

understandable way; the bidder must know in advance how bids are to be evaluated and what procedure will be followed to establish the order of the bidders. For the financial evaluation, minimum values have to be determined for the indicators to be evaluated depending on the type of goods, services or works required. Bids are opened in public. The bidding or competition conditions must allow equal treatment, under the same conditions, for all parties interested in taking part in the process, without any clauses that are discriminatory or benefit one of the bidders to the detriment of the others. In bidding or competition by invitation, any bidder may participate, even if he is not registered or has not publicly been invited to bid.

179. Pursuant to the legislation, each of the contracting methods provided in the Law allows the participation of both national and foreign contractors. Nevertheless, if when assessing which is the best offer it transpires that there is no difference in the price and compliance with the criteria laid down in the conditions between goods produced in El Salvador and those produced abroad, the bid evaluation commission must give preference to the Salvadoran bid. In the case of contracting covered by FTAs which contain provisions on government procurement, the procedures laid down in the agreement in question apply.

180. The Law provides that each UACI must keep a register of all the contracting carried out over the previous ten years so that it can be evaluated and monitored by the competent bodies and authorities.

181. Information on all contracts can be found on COMPRASAL's web page.¹⁵⁹ According to information for the year 2008, 154 entities participated in COMPRASAL by publishing invitations to tender and compete, 250 entities published their annual procurement programme and 129 published their free contracting procedures. The authorities' objective is to be able to develop a government procurement system that acts as a business centre bringing together supply and demand for works, goods and services in the interests of contractors and suppliers, without any geographical limits. The information module (MODDIV) available to the public since October 2005 contains information on government procurement and contracting.

182. Invitations to tender or compete and the contracts awarded must be published in national newspapers and, moreover, for those entities with Internet access, they may be published on the COMPRASAL system. Institutions belonging to COMPRASAL must publish their invitations on this system. The information contained in procurement documents is available to the public after award of the contract has been notified.

183. Pursuant to the Law, the results of any contracting must be notified to interested parties at the latest within 72 business hours of the relevant decision and entities belonging to COMPRASAL must publish decisions on the system. Interested parties may lodge an appeal for review in writing within five working days of the date following the notification. A decision on the appeal has to be taken by the same official to whom the appeal was submitted within 15 working days following its acceptance, on the basis of the recommendation to be made by a special high-level commission appointed by this official.

184. El Salvador's contracting policy is incorporated in an annual plan, known as the Annual Policy for Procurement and Contracting by Government Institutions, which must be approved by the Council of Ministers.¹⁶⁰ The Ministry of Finance, through the UNAC, must ensure compliance with this policy, the overall objective of which is to help ensure that government institutions procure and

¹⁵⁹ <http://www.comprasal.gob.sv>

¹⁶⁰ The plan for 2008 can be viewed on the Ministry of Finance website at: <http://www.mh.gob.sv/moddiv/HTML/docs/politica2008.pdf>

contract in a systematic, transparent, efficient and appropriate way, making rational use of resources and guaranteeing equitable free competition. The annual procurement and contracting policy serves as a model document that allows the various institutions to engage in procurement. To meet the provisions in the annual policy, each UACI draws up its annual procurement and contracting plan, which it transmits to the UNAC and publishes using widely disseminated communications media, including COMPRASAL and each institution's webpage. This annual plan may be amended in the course of the financial year in the light of changes in work programmes or budgetary adjustments caused by institutional priorities or contingencies.

185. Government procurement is one of the areas in which El Salvador and its preferential partners have undertaken reciprocal commitments. Under the free trade agreements signed with Chile, Colombia, the Dominican Republic and Panama, El Salvador undertook to give suppliers originating in the contracting countries national treatment for the procurement of goods and services covered by these agreements.¹⁶¹ There are also provisions on government procurement in the CAFTA-DR framework.

186. A recent joint study by the World Bank and the Inter-American Development Bank highlighted the significant improvement represented by the LACAP over the previous procurement law inasmuch as it comprehensively standardizes the regulations on public sector procurement and promotes competition in an open and transparent manner. Nevertheless, the report emphasized that, in spite of all these efforts, consolidation of the procurement processes established by the Law had not been accomplished to the same degree in all public agencies, particularly certain municipalities. The report recommends a strategic implementation plan to consolidate modernization of the public procurement process in a coordinated and effective manner.¹⁶²

187. Among the recommendations in the report are the need to join efforts to ensure that the UNAC has the resources and capacity required to carry out its functions and to modernize government procurement. It also recommends that the UACI be strengthened and that a strategy be developed for an electronic procurement system, laying special emphasis on transparency, by setting up a management information system that covers all government procurement-related information.

(vi) Protection of intellectual property

188. All the aspects covered in the TRIPS Agreement are regulated in El Salvador. During the period under review, El Salvador extended the term of copyright protection from 50 to 70 years, as well as the term of patent protection for pharmaceuticals, and amended its legislation to bring it into line with its international commitments. Improvements were also made as regards enforcement.

189. The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) was incorporated into El Salvador's legislation through ratification of the Marrakesh Agreement and came into force in El Salvador on 1 January 2000. El Salvador is a member of the World Intellectual Property Organization (WIPO) and has signed several international agreements on the protection of intellectual property rights (IPRs) (Table III.8). El Salvador does not,

¹⁶¹ Chapter XII of the Free-Trade Agreement between Central America and the Dominican Republic; Chapter 16 of the Free-Trade Agreement between Central America and Chile; and Chapter 16 of the Free-Trade Agreement between Central America and Panama.

¹⁶² World Bank and Inter-American Development Bank (2006), *Republic of El Salvador: Country Procurement Assessment Report*, Report No. 29315-SV, May 2006. Viewed at: http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2007/10/05/00310607_20071005102117/Rendered/INDEX/2931150Voptmzd.text

however, participate in some other WIPO-administered treaties.¹⁶³ During the period under review, El Salvador signed four new international treaties, all of which had come into force by the end of 2008.¹⁶⁴

Table III.8
Intellectual property treaties in force in El Salvador, 2009

International treaty	Date of ratification
Convention establishing the World Intellectual Property Organization (WIPO)	September 1979
Copyright and related rights	
Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention, 1961)	June 1979
Berne Convention for the Protection of Literary and Artistic Works	February 1994
Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms (Geneva Convention, 1971)	February 1979
WIPO Performances and Phonograms Treaty (WPPT, 1996)	May 2002
WIPO Copyright Treaty (WCT, 1996)	March 2002
Trademark Law Treaty	November 2008
Trademarks and other distinctive signs	
Paris Convention for the Protection of Industrial Property	February 1994
Patents, industrial designs and utility models	
Paris Convention for the Protection of Industrial Property	August 1998
Patent Cooperation Treaty	August 2006
Other	
Budapest Treaty (Deposit of Microorganisms)	August 2006
Nairobi Treaty (Protection of the Olympic Symbol)	October 1984
Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite	July 2008

Source: WIPO.

190. The provisions in the TRIPS Agreement have been incorporated into El Salvador's legislation (Table III.9). In some cases, including copyright, El Salvador gives rights that exceed the minimum periods laid down in the Agreement. The main changes to Salvadoran intellectual property legislation during the period under review concern the amendments introduced by Legislative Decrees Nos. 912 and 913 of 14 December 2005, as well as Legislative Decrees Nos. 985 and 986 of 17 March 2006.

191. The Law on uniform procedures for the submission, examination and registration or filing of instruments in the registers of real estate and mortgages, corporate property, commerce, and intellectual property, enacted by Decree No. 257 of 17 June 2004, harmonized the procedures to be carried out for the various registers administered by the CNR when submitting, examining, registering, filing or withdrawing instruments that must be registered or filed in such offices.

192. El Salvador has notified the Members of the WTO of its laws and regulations on IPRs and has provided information on its national enforcement system. In 2000, the TRIPS Council examined El Salvador's legislation on IPRs.¹⁶⁵ During the period under review, the WTO was notified of the Law on Trademarks and Other Distinctive Signs.¹⁶⁶

¹⁶³ For example, the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, and the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration.

¹⁶⁴ These are: the Patent Cooperation Treaty (1970), which came into force in August 2006; the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1980), which also came into force in August 2006; the Trademark Law Treaty (1994), in force since November 2008; and the Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Brussels Convention), in force since July 2008.

¹⁶⁵ The questions put to El Salvador and the corresponding replies in connection with this examination appear in WTO document IP/Q/SLV/1 of 18 August 2000.

¹⁶⁶ WTO document IP/N/1/SLV/I/6 of 18 August 2004.

193. El Salvador has notified the WTO that DATCO in the Ministry of the Economy is the contact point specified in Article 69 of the TRIPS Agreement.¹⁶⁷

194. The Ministry of the Economy is responsible for drafting and implementing Salvadoran intellectual property policies. The Intellectual Property Register, which comes under the CNR, a decentralized institution belonging to the Ministry of the Economy pursuant to Executive Decree No. 6 of June 1999, is responsible for monitoring protection of IPRs and for keeping the registers of trademarks and other distinctive signs, patents and copyright.¹⁶⁸ The Directorate of Intellectual Property in the Ministry of the Economy is responsible at the administrative level for identifying and deciding on all matters relating to patents, utility models, industrial designs, the registration of trademarks, trade names, advertising expressions or slogans, emblems, appellations of origin and geographical indications, as well as for matters relating to copyright and related rights. Any objections to the registration of distinctive commercial signs are sent to the Directorate.

195. El Salvador has also undertaken commitments on IPRs in the various free trade agreements it has signed, notably CAFTA-DR, the agreement between Central America and the Dominican Republic, the agreement between Mexico and the Republics of El Salvador, Guatemala and Honduras, as well as the free trade agreement between Central America and Panama.

196. The Intellectual Property Law (LPI) and the Law on Trademarks and Other Distinctive Signs (LMOSD) are El Salvador's principal legislation on IPRs. Legislative Decree No. 912 of 14 December 2005, the reforms of the Law on the Promotion and Protection of Intellectual Property, and Legislative Decree No. 985 of 17 March 2006, introduced amendments to El Salvador's legislation, including the extension of the terms of protection for copyright and related rights, which increased from the author's lifetime plus 50 years to the lifetime plus 70 years (for the benefit of the author) (for the owners). In addition, the provisions of the WIPO Copyright Treaty (1996) and the WIPO Performances and Phonograms Treaty (1996) have been implemented in order to give authors, performers and producers of phonograms adequate protection of their rights in the light of new technology. The term of protection for industrial designs was also changed from a renewable term of five years to a non-renewable term of ten years to make it consistent with that in the TRIPS Agreement (Table III.9).

Table III.9
Summary of protection of IPRs in El Salvador, 2009

Legislation	Term	Scope
Copyright and related rights		
Intellectual Property Law, Legislative Decree No. 604 of 15 July 1993; Implementing Regulations for the Law on the Promotion and Protection of Intellectual Property, Executive Decree No. 35 of 28 September 1994; Reforms to the Law on the Promotion and Protection of Intellectual Property, Legislative Decree No. 912 of 14 December 2005 and Legislative Decree No. 985 of 17 March 2006.	Protection is granted throughout the lifetime of the author plus 70 years after his death. Computer programs, collective and audiovisual works are protected for 70 years as of the date of their disclosure.	Scope: Artistic, literary and audiovisual works and computer programs. The copyright holder's economic rights include the right to authorize or prohibit distribution to the public of the original or copies of the works, whether by sale, rental, hire, loan or any other manner. Special provisions apply to computer programs and databases, audiovisual and three-dimensional works of art, musical compositions and newspaper articles. Protection is given irrespective of any registration formality. El Salvador does not provide any exceptions or exemptions from national treatment for foreigners publishing their works in El Salvador. The Law applies indiscriminately to Salvadorans and foreigners.

¹⁶⁷ WTO document IP/N/3/Rev.10 of 16 May 2008.

¹⁶⁸ CNR online information. Viewed at: http://www.cnr.gob.sv/quienes_somos.aspx

Legislation	Term	Scope
Patents Intellectual Property Law, Legislative Decree No. 604 of 15 July 1993; Implementing Regulations for the Law on the Promotion and Protection of Intellectual Property, Executive Decree No. 35 of 28 September 1994; Reforms to the Law on the Promotion and Protection of Intellectual Property, Legislative Decree No. 912 of 14 December 2005 and Legislative Decree No. 985 of 17 March 2006.	Protection gives the inventor or applicant exclusive rights within El Salvador for a non-renewable term of 20 years as of the date of filing of the application in the Intellectual Property Register of the CNR.	Scope: The LPI provides for the right to obtain protection for an invention, utility model or industrial design, an invention meaning any product or process applicable in practice to the solution of a specific technical problem. An invention may be patented if it is new, represents an inventive step and is capable of industrial application. Contractual licences for working a patent only have legal effects against third parties if they have been registered. The following may not be patented: discoveries, scientific theories and mathematical methods; economic plans, principles or methods for advertising or business, those pertaining to purely mental or intellectual activities or to games; methods for treatment of the human or animal body by surgery, therapy or diagnosis; except for products intended to put any of these methods into practice; and inventions whose publication or industrial or commercial application would be contrary to public order or morality.
Industrial designs and utility models The same legislation as that for patents.	10 years as of the date of filing the application, non-renewable.	Industrial designs are protected on the basis of the provisions in the LPI and amendments thereto. Such protection does not exclude or affect protection that may be available to such designs under other legal provisions, in particular those relating to copyright. There is no protection for industrial designs which are not considered to be new, that is to say, merely differ in minor or secondary respects from other earlier designs or merely refer or apply to another category of products; protection is not granted either to designs whose disclosure would be contrary to public order or morality.
Layout-designs of integrated circuits There is no relevant national legislation.		
Trademarks Law on Trademarks and Other Distinctive Signs, Legislative Decree No. 868 of 6 June 2002; Legislative Decree No. 913 of 14 December 2005, Legislative Decree No. 986 of 17 March 2006.	The right to exclusive use of a trademark is granted for 10 years and may be renewed indefinitely for successive 10-year periods.	Any visually perceptible proprietary, figurative or three-dimensional sign capable of distinguishing products or services. The owner of a trademark is entitled to oppose registration of an identical or similar sign, to prevent its use and to request the authorities to prohibit or suspend imports of products that make use of such signs.
Geographical indications Law on Trademarks and Other Distinctive Signs, Legislative Decree No. 868 of 6 June 2002; amended by Legislative Decree No. 913 of 14 December 2005, Legislative Decree No. 986 of 17 March 2006.	10 years.	
Undisclosed information (including test data) The LPI defines and protects industrial or trade secrets and test data. The protection applies whether or not the secrets are fixed on a material medium and no registration is required.	Indefinitely in the case of industrial or trade secrets. In the case of test data, protection is given through a legal provision which determines time limits for protection, 5 years for pharmaceuticals and 10 years for agricultural chemicals. Undisclosed information is protected if it complies with the requirements of Article 181-A of the LPI.	The submission of undisclosed information is required by the competent administrative authority as a condition for approving the marketing of pharmaceuticals or agricultural chemicals that use new chemical substances. Criteria are laid down for the protection of such data against unfair commercial use and against disclosure. There are exceptions regarding disclosure when the authority deems it necessary to protect the public or when measures have been taken to ensure that the data are protected against unfair commercial use. If any undisclosed information regarding safety and effectiveness submitted to an authority in order to obtain marketing approval is disclosed by the said authority, such information shall continue to be protected against any unfair commercial use.

Legislation	Term	Scope
New varieties of plants Intellectual Property Law, Legislative Decree No. 604 of 15 July 1993; Implementing Regulations for the Law on the Promotion and Protection of Intellectual Property, Executive Decree No. 35 of 28 September 1994; Reforms to the Law on the Promotion and Protection of Intellectual Property, Legislative Decree No. 912 of 14 December 2005 and Legislative Decree No. 985 of 17 March 2006.	20 years.	In the special case of new plant varieties, the criteria of an inventive step and capable of industrial application must be met.

Source: WTO Secretariat.

197. The LPI protects all literary, artistic and scientific works, irrespective of their mode or form of expression, provided that they are original, and it separates moral rights from economic rights. Contracts for theatrical and musical performances are protected. In general, the LPI provides that, in the case of copyright, the holder of the right is entitled to import, export or authorize the import or export of lawfully produced copies of his works and may also prevent their parallel import. El Salvador's legislation recognizes the principle of protection of copyright without any registration formality. It does not provide for any exceptions or exemptions from national treatment for foreigners who publish their works in El Salvador. The amendments introduced in 2005 and 2006 have added provisions that prohibit the infringement of codified programme-carrying satellite signals without the consent of their legitimate distributor and have included a new chapter in the LPI containing provisions on effective technological measures, including exceptions to protection in order to promote the transfer of technology.

198. The LPI provides for the right to obtain protection for an invention, utility model or industrial design. Industrial designs are protected pursuant to the LPI provisions for a term of ten years as of the date of filing the application, without any possibility of renewal. The 2005 amendment modified the special provisions in the LPI which determined a lesser term of protection, 15 years, for patents for pharmaceuticals, harmonizing the terms of protection with those in the TRIPS Agreement. The LPI also provides that the term of 20 years for patents may be extended if, for reasons attributable to the Registry, granting of the patent has been delayed over a certain number of years.

199. The LPI also allows for the granting of compulsory licences. A compulsory licence may be granted to work a patent in declared cases of emergency or national security and for as long as these persist, provided that this is necessary to meet the basic needs of the population. Such licences are neither transferable nor exclusive and are granted by the competent court, which determines adequate remuneration depending on the circumstances of each case. The scope of the licence, its term and the acts for which it is granted must be limited to the purposes for which it was granted. A compulsory licence is only granted in order to supply the domestic market. If the patent protects any semiconductor technology, a compulsory licence may only be granted for non-commercial public use or to remedy a practice declared to be anti-competitive during the procedure applicable. At the end of 2008, El Salvador had not granted any compulsory licences.

200. In September 2006, El Salvador accepted the amendment "Decision on the implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health", amending the TRIPS Agreement in order to give more flexibility to those countries that do not have the capacity to manufacture pharmaceuticals, allowing them to import patented medicines under compulsory licences.

201. New plant varieties can only be protected through patents. El Salvador has no special legislation on layout-designs of integrated circuits and directly applies the provisions in the TRIPS Agreement. The LPI defines and protects industrial or commercial secrets and test data. Regarding the provision in Article 39.3 of the TRIPS Agreement concerning pharmaceutical or agricultural chemical products for which undisclosed test or other data have been submitted, the origination of which involves a considerable effort, these data are protected against any unfair commercial use for a period of five years in the case of pharmaceutical products and ten years for agricultural chemical products, as of the date of approval for their sale in El Salvador. Such undisclosed information is protected against any disclosure, except where this is necessary to protect the public or measures are taken to guarantee protection of the data against any unfair commercial use.

202. Trademarks and other distinctive signs are protected under the LMOSD, which also protects geographical indications and appellations of origin. The holder of a licensing contract for a foreign trademark registered as such in the Register may prevent parallel imports for commercial purposes of the products covered by the trademark that is the subject of the licence. The amendments made to the LMOSD have seen the inclusion of recognition of sound, olfactive and certification marks as types of signs that may constitute trademarks. Provisions have also been included on the national entity responsible for administering domain names on the Internet at the upper level of the country code (.sv), in order to combat cybernetic piracy of trademarks. The provisions determine, *inter alia*, the obligation to settle disputes on the basis of the Uniform Domain Name Dispute Resolution Policy and to give public access on line to the database on registrations.

203. During the period under review, El Salvador has pursued its efforts to ensure compliance with IPR legislation, in particular through the Intellectual Property Unit in the Office of the Attorney-General of the Republic, the Directorate-General of Customs, the National Civilian Police Force and other bodies responsible for the enforcement of IPRs. The CNR's Intellectual Property Registry is responsible for administrative proceedings concerning enforcement of IPRs; civil proceedings are heard before the commercial courts.

204. Regarding enforcement, civil proceedings brought by owners of rights are heard before the commercial courts. Civil sanctions may consist of the following: immediate cessation of the infringing act; preventive embargo, withholding or deposit of the infringing objects; ban on importing the infringing products, materials or media; and compensation for damages.

205. According to the provisions in force, those infringing IPRs may be punished by terms of imprisonment of two to four years. In cases of aggravated infringement of copyright or related rights, the penalty may rise to six years of imprisonment.