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Committee on Anti-Dumping Practices
Committee on Subsidies and Countervailing Measures
Committee on Safeguards

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NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLES 18.5, 32.6 AND 12.6 OF THE AGREEMENTS

EL SALVADOR

Supplement

The following communication, dated and received on 28 November 2022, is being circulated at the request of the delegation of El Salvador.

Pursuant to Article 18.5 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Article 32.6 of the Agreement on Subsidies and Countervailing Measures and Article 12.6 of the Agreement on Safeguards, please find attached the text of the Regulations implementing the Special Law on Trade Defence, published in Official Journal No. 172, Vol. 416, of 18 September 2017.

REGULATIONS IMPLEMENTING THE SPECIAL LAW ON TRADE DEFENCE

CHAPTER I
General Provisions

Purpose

Art. 1.- The purpose of the provisions established in these Regulations is to develop and ensure the implementation of the rules contained in the Special Law on Trade Defence, in order to fulfil the objectives thereof.

Scope

Art. 2.- These Regulations shall apply to all imports originating in and/or consigned from both WTO Members and non-Members by natural or legal persons, when such imports may cause injury or the threat of injury to a domestic industry or the retardation of the establishment of such an industry.

They shall also apply to all investigations into unfair trade practices and safeguard measures that are conducted under the Special Law on Trade Defence.

CHAPTER II
Special Substantive and Procedural Rules on Unfair Trade Practices

Unfair trade practices

Art. 3.- The provisions of this Chapter shall apply to dumping and subsidization practices, in accordance with the provisions of Titles II, III and VI of the Special Law on Trade Defence.

Like domestic product

Art. 4.- Pursuant to Article 4(i) of the Special Law on Trade Defence, "like domestic product" shall be understood to mean a product that is identical, i.e. alike in all respects, to the product under investigation.

If the examination of likeness leads to a determination that there is no identical product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under investigation shall be considered a like product. In examining likeness, the investigating authority may take into account:

(a) the raw materials and other inputs used in producing the product;
(b) the production process;
(c) the physical characteristics and appearance of the product;
(d) the end use or final destination of the product;
(e) the substitutability of the product with the product under investigation;
(f) the tariff classification; and/or
(g) any other factor deemed relevant by the investigating authority.

This list is not exhaustive, and none of these factors, either on their own or together with others, will necessarily be sufficient to provide decisive guidance.

Examination of likeness in investigations into unfair trade practices

Art. 5.- The product under investigation shall be subject to two separate examinations for the purpose of comparing likeness and these shall be undertaken on the basis of the criteria defined in the preceding Article. The first examination shall be undertaken in order to determine the margin of dumping and shall consist of a comparison between the product under investigation and the like product in the market of the exporting country. The second examination shall make a comparison between the product under investigation and the like domestic product.

Verification of the degree of support for and opposition to the application for the initiation of an investigation into unfair trade practices

Art. 6.- The investigating authority shall verify the degree of support for, or opposition to, the application for the initiation of an investigation submitted by or on behalf of the domestic industry, in accordance with Articles 47 and 49 of the Special Law on Trade Defence. To that end, the investigating authority may send notifications to domestic producers who, within five days from the day following receipt of the notification, shall express in writing their support for, or opposition to, the application. If no reply is received within the specified period, this shall indicate that there has been no expression of interest on the part of the domestic producer concerned.

Notification of interest in participating in an investigation into unfair trade practices

Art. 7.- Any party with a legitimate interest in an investigation into unfair trade practices, as provided for in Article 4(f)(7) of the Special Law on Trade Defence, may inform the investigating authority in writing of its interest in participating in the investigation, within 15 days following the publication in the Official Journal of the resolution initiating the investigation.

SECTION I

Dumping

Non-market economy countries

Art. 8.- "Non-market economy country" shall be understood to mean a country in which the government determines economic activity mainly through a central planning mechanism.

In a "non-market" economy, the goals of production, prices, costs, allocation of investment, raw materials, labour, international trade and the majority of other economic factors are determined under a national economic plan formulated by a central planning authority.

Determination of the normal value in non-market economy countries

Art. 9.- In the case of imports originating in non-market economy countries, the normal value shall be determined on the basis of the comparable price, in the ordinary course of trade, at which the like product is sold for domestic consumption in a third country with a market economy (substitute country) or, failing that, for export, or on the basis of the price actually paid or payable in El Salvador for the like product, as duly adjusted.

The product used to determine the normal value must originate in the substitute country. When the normal value is determined according to the export price in a substitute country, that price shall be related to a market other than El Salvador.

For the purpose of selecting and evaluating the relevance of selecting a particular country with a market economy from which to obtain the normal value, the investigating authority shall take into account, *inter alia*, the following criteria:

1. Production processes in the substitute country and non-market economy country.
2. The scale of production.
3. The product quality.

Calculation of anti-dumping duties

Art. 10.- Pursuant to Article 63 of the Special Law on Trade Defence and whenever the information so permits and the characteristics of the investigation so allow, the investigating authority shall examine whether the establishment of a duty less than the total dumping margin would be sufficient to eliminate the injury to the domestic industry, for which it may take into account the following aspects:

(a) The price of the imported product in the domestic market as compared to the price of the like domestic product.
(b) The prices at which the product is sold in the domestic market.
(c) The impact of the measures on the domestic market.

Notifications to the World Trade Organization in dumping investigations

Art. 11.- Pursuant to Article 34 of the Special Law on Trade Defence, the investigating authority shall promptly notify to the WTO Committee on Anti-Dumping Practices the resolution initiating an investigation, as well as all anti-dumping measures adopted, whether preliminary or final.

SECTION II

Subsidies

Period of investigation for subsidy calculations

Art. 12.- The period of investigation (POI) for the purpose of subsidy calculations shall be determined in accordance with the first paragraph of Article 53 of the Special Law on Trade Defence.

Methodological approach to calculating the rate of subsidization

Art. 13.- In calculating the total rate of subsidization of the investigated product for a given foreign producer or exporter, a rate of subsidization of that product for the producer or exporter shall be calculated for each investigated subsidy or subsidy programme. The sum of the resulting per subsidy or per programme rates shall be the total rate of subsidization of the product for that producer or exporter.

The following methodology shall be applied in calculating the rate of subsidization:

Total *ad valorem* subsidization rate = ∑ TSav*i*

Where:
∑ TSav*i*= the sum of the *ad valorem* subsidization rates for a producer or exporter in the investigation period ***i***.

To calculate the rate of subsidization of the investigated product for a foreign producer or exporter from a given investigated subsidy or subsidy programme, the investigating authority shall first determine the total subsidy amount(s) received by that producer or exporter from the subsidy or programme in question and the date(s) of receipt thereof.

Second, the investigating authority shall determine the portion of the total subsidy amount that is attributable to the subsidy POI.

Third, the investigating authority shall determine the total value during the subsidy POI of the relevant sales of the foreign producer or exporter to which the subsidy POI amount can be attributed.

SUM= ΣPE*i* - ΣPES*i*

Where:
SUM= Subsidy amount per currency unit in investigation period **i**.
PE*i*= Unsubsidized export price in investigation period **i**, net of the deductions and offsets specified in Article 16 of these Regulations.

PES*i* = Subsidized export price in investigation period **i**.

Fourth, the investigating authority shall calculate the *ad valorem* rate of subsidization from the subsidy or programme by dividing the subsidy POI amount by the relevant sales value identified in the previous paragraph and multiplying the result by one hundred.

SAV= (ΣSi * 100) **/** ΣVi

Where:
SAV= *Ad valorem* subsidization rate.

∑Si= The sum of all subsidization rates in investigation period **i**, net of the deductions and offsets specified in Article 16 of these Regulations.

∑Vi= The sum of all sales in investigation period **i**.

Individual calculation of the amount of subsidization

Art. 14.- The investigating authority shall determine an individual amount of subsidization for each known foreign producer or exporter concerned of the product under investigation.

Notwithstanding the previous paragraph, in cases where the number of exporters, producers, importers or types of products involved is so large as to make it impracticable to determine an individual subsidization amount for each known foreign producer or exporter concerned of the investigated product, the investigating authority may limit its examination to a reasonable number of interested parties or investigated products by using samples which are statistically valid on the basis of information available to this authority at the time of the selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated.

Any selection of exporters, producers, importers or types of products made under this Article shall be chosen after consultation with the exporters, producers or importers concerned.

In cases where the investigating authority has limited its examination as provided for in the previous paragraphs, the investigating authority shall nevertheless determine an individual subsidization amount for any foreign producer or exporter who voluntarily submits the necessary information in time for that information to be considered during the course of the investigation.

Notwithstanding the previous paragraph, where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the investigating authority and prevent the timely completion of the investigation, the investigating authority may decline to determine individual subsidization amounts on the basis of such voluntary responses and limit its examination to the exporters and producers in the sample.

Determination of the total subsidy amount received

Art. 15.- The total subsidy amount, calculated in terms of the benefit to the recipient, shall be determined by the investigating authority on the basis of an appropriate methodology corresponding to the form of subsidy involved.

Deductions and offsets

Art. 16.- In determining the total subsidy amount received by the recipient foreign producer or exporter under an investigated subsidy or programme, or the total *ad valorem* subsidization rate of the product under investigation for that recipient, the following elements shall be deducted, as appropriate:

(a) any application fee, or other costs necessarily incurred in order to qualify for, or to obtain, the subsidy;
(b) export taxes, duties or other charges levied on the export of the product to El Salvador, specifically intended to offset the subsidy or subsidies.

Subsidy amount attributable to the subsidy POI

Art. 17.- The subsidy or subsidy programme amount attributable to the subsidy POI shall be the total subsidy or subsidy programme amount received by the recipient during that period.

Notwithstanding the previous paragraph, where the total subsidy amounts are allocated over a multi-year period, the subsidy POI amount shall be the portion of the total subsidy amount of benefits allocated to that period.

Allocable subsidies

Art. 18.- Allocable subsidies are those subsidies for which the subsidy amount may be allocated over the average useful life of the recipient's operational assets. Such subsidies shall meet one or more of the following requirements:

(a) Have been provided for the purpose of purchasing fixed assets;
(b) Be non-recurring;
(c) Be oriented toward future production; and
(d) Be transferred forward in the recipient's accounting records.

Notwithstanding the above, small value grants, representing up to 0.5% of the recipient firm's relevant sales during the subsidy POI, shall be attributed in full to the year of receipt ("expensed").

The investigating authority shall determine the subsidy amount to be attributed to the subsidy POI from an allocable subsidy by dividing the total subsidy amount by the number of years of average useful life of the recipient's operational assets, using the following formula:

SD= S*i*/n*i*

Where:
SD= The amount of the allocable subsidy.
S*i*= Total subsidy amount for assets *i*.
n*i*= Total number of years over which, according to the table selected, the assets *i* will depreciate.

Where the number of years between the date of receipt of the subsidy and the subsidy POI is greater than the average useful life of the assets, no subsidy amount shall be attributed to the subsidy POI.

The allocation prescribed in this Article shall be performed by dividing the subsidy amount over the number of years in the allocation period and attributing the resulting amount to the subsidy POI.

Notwithstanding the provisions of the previous paragraphs, in the case of subsidies provided through long-term loans (i.e. with maturity of longer than one year), the allocation period shall be the life of the loan, and the methodology to be followed to calculate the subsidy POI amount shall be defined in accordance with the third paragraph of Article 30 of these Regulations.

Except as otherwise provided in these Regulations, the date on which the subsidy POI amount from an allocable subsidy shall be deemed to have been received shall be the anniversary date of the original date of receipt of the subsidy.

Average useful life of assets

Art. 19.- In order to determine the allocation period for a given foreign producer or exporter, the investigating authority shall calculate the average useful life of that producer's or exporter's assets as the ratio of the total average book value of its physical, depreciable assets to its average annual depreciation expense over the most recent five-year period. For the above calculation, accounting data shall be preferred to tax depreciation data.

Where the investigating authority finds, on the basis of relevant evidence, that a subsidy is tied to the purchase of a particular asset, the investigating authority may use the average useful life of the asset to which the subsidy is tied as the allocation period of that subsidy.

Sales to which the subsidy POI amount is attributable

Art. 20.- The sales to which the subsidy POI amount shall be allocated shall be the recipient's total sales during that period, unless the investigating authority finds, on the basis of relevant evidence, that the subsidy amount received by a foreign producer or exporter is tied to or benefits a particular portion of the recipient's products or sales.

Tied subsidies

Art. 21.- Where the Investigating Authority finds, on the basis of relevant evidence, that a subsidy amount received by a foreign producer or exporter is tied to or benefits a particular portion of the recipient's production or sales, the investigating authority shall attribute the subsidy amount to the value of the relevant corresponding sales of the recipient during the subsidy POI. In identifying these relevant corresponding sales, the investigating authority shall take into account the following:

(a) in the case of subsidies tied to the recipient's overall exports or export efforts, the relevant sales for attribution of the subsidy amount shall be the recipient's total export sales value during the subsidy POI;
(b) in the case of subsidies tied to production or sale of a particular product, the relevant sales for attribution of the subsidy amount shall be the recipient's total sales value of that product during the subsidy POI;
(c) in the case of subsidies tied to a particular market, the relevant sales for attribution of the subsidy amount shall be the recipient's total sales value to that market during the subsidy POI;
(d) in the case of subsidies tied exclusively to production and/or sale of products, or for particular markets, no subsidy amount shall be attributed to those exports, other than exports of the investigated product to El Salvador.

Calculation of the *ad valorem* rate of subsidization

Art. 22.- The investigating authority shall calculate the *ad valorem* rate of subsidization for a foreign producer or exporter of the investigated product, from a given subsidy or subsidy programme, by dividing the subsidy POI amount determined by the appropriate value of sales and multiplying the result by one hundred.

Calculation of the total *ad valorem* subsidy rate

Art. 23.- The investigating authority shall calculate the total *ad valorem* subsidy rate for a foreign producer or exporter of the investigated product by summing the *ad valorem* subsidy rates calculated for that producer or exporter for each of the subsidies or subsidy programmes investigated.

High-inflation countries

Art. 24.- In the case of allocable subsidies in high-inflation countries, the investigating authority may adjust the *ad valorem* subsidy rate taking inflation into account. If such an adjustment is made, it shall be performed by converting both the total subsidy amount and the value of sales for the POI into the same currency at constant values, using the following exchange rates:

(a) for the total subsidy amount, the exchange rate shall be the official rate on the date of receipt of the subsidy;
(b) for the value of sales during the subsidy POI, the exchange rate shall be the average official exchange rate for that period. In cases where there are substantial variations in sales volumes over the subsidy POI, this average rate may be weighted by the sales volume in appropriate sub-periods of the POI.

Section III

Calculation methodology and guidelines for certain types of subsidies

Guidelines for certain types of subsidies

Art. 25.- The provisions of Section III, Chapter II of these Regulations, refer to the methodologies and guidelines to be taken into account for certain types of subsidies, without prejudice to this, other types of subsidies may be identified, depending on the corresponding investigation.

Grants

Art. 26.- In the case of a grant, of which no portion of the value is repaid to the government, the total subsidy amount shall be the amount of the grant, determined in accordance with the provisions of Articles 15 and 16 of these Regulations. The investigating authority shall consider the date of receipt of the subsidy to be the date of receipt of the grant.

The investigating authority shall determine the amount of a grant that is attributable to the subsidy POI in accordance with the provisions of Article 18 of these Regulations.

Calculating subsidy amounts from government loans

Art. 27.- A government loan shall be deemed to confer a benefit to the extent that there is a difference between the amount that the recipient pays in interest and any other charges or costs on the government loan, and the amount the recipient would have paid on a comparable commercial loan which it did or could have obtained on the market. In this case, the benefit shall be the difference between these two amounts.

In the case of deferred principal or interest payments, the deferred principal and interest amounts shall be considered an interest-free loan.

If all or part of a loan found to confer a benefit is forgiven or defaulted on, the amount not repaid shall be considered a grant, received on the date of default.

Short-term loans

Art. 28.- In the case of a government-provided short-term loan, the investigating authority shall use as the basis of the comparison referred to in the preceding Article a comparable loan that the recipient has received from a private commercial lender at a similar point in time, for a similar amount, with a similar repayment period.

Where the recipient has not agreed a similar commercial loan that can be used as the basis for comparison, the investigating authority may use instead a comparable private loan to a firm in a similar financial situation, if possible in the same sector of the economy.

The date of receipt of the subsidy shall be the date on which the recipient makes a payment or, in the absence of such a payment, the date on which the payment would have been due on the comparator commercial loan.

Short-term loans shall be all loans with a maturity of less than one year.

Debt forgiveness

Art. 29.- When a government assumes or forgives a firm's debt obligation, the benefit shall be equal to the amount of the principal and/or interest that the government has assumed or forgiven. If a government receives shares in a firm in return for eliminating or reducing the firm's debt obligations, the investigating authority shall determine the existence of a benefit in accordance with the provisions of Article 33 of these Regulations.

The date of receipt of the subsidy shall be the date on which the debt or interest was assumed or forgiven.

Long-term loans

Art. 30.- In the case of a government-provided long-term loan, the investigating authority shall use, as the basis of the comparison provided for in Article 27 of these Regulations, a loan of comparable amount, maturity, and type, that the investigated firm has received from a private commercial lender during the year in which the terms of the government loan were established.

Where the recipient has not agreed a similar commercial loan that can be used as the basis for comparison, the investigating authority may use instead a comparable private loan to a firm in a similar financial situation, if possible in the same sector of the economy.

In the case of long-term loans, the subsidy benefits shall be deemed to arise on a year-by-year basis over the life of the loan, in accordance with the provisions of the fifth paragraph of Article 18 of these Regulations. The benefits thus calculated for the subsidy POI shall be attributed to that period.

The dates of receipt of the subsidy shall be the dates on which the recipient makes payments, or in the absence of such payments, the dates on which payments would have been due on the comparable commercial loan.

Repayable grants and contingent liability loans

Art. 31.- Repayable grants and contingent liability loans (loans that are not payable until the occurrence of a specified future event) shall be treated as a series of short-term loans during the period before any repayment is made. The methodology used to calculate the amount of the subsidy for short-term loans shall be that described in Article 28 of these Regulations. In the event of a determination that such a grant or loan shall not be repaid, the outstanding balance of the grant or loan as of that date shall be treated as a grant received on the date on which the obligation to repay was extinguished.

Loan guarantees

Art. 32.- A government-facilitated loan guarantee shall be deemed to confer a benefit where there is a difference between the amount that the recipient of the guarantee pays in interest and any other charges or costs on the guaranteed loan and the amount that the firm would pay on a comparable commercial loan absent the government guarantee. In this case, the benefit shall be the difference between these two amounts, adjusted for any differences in fees.

In the case of a loan guarantee, the subsidy shall be considered to have been received on the date on which the recipient makes a loan repayment, or in the absence of such repayment, on the date on which payment would have been made on the comparator commercial loan. The benefits from loan guarantees attributable to the subsidy POI shall be determined in accordance with the relevant provisions of Article 28 or Article 30 of these Regulations, depending on the maturity of the guaranteed loan.

The calculation principles set forth in this Article also shall apply to credit guarantees.

Equity infusions

Art. 33.- Government provision of equity shall be deemed to confer a benefit where the government's investment decision can be regarded as inconsistent with the usual investment practice of private investors in the territory of the country where the equity infusion is made.

An equity infusion shall be inconsistent with usual investment practice if the price paid by a government for newly issued shares is greater than the price paid by private investors for the same, or a similar form of, shares, at that time. The amount of the subsidy shall be the difference between the price per share paid by the government and the price per share paid by the private investor, multiplied by the number of shares purchased by the government.

In calculating the foregoing, the following formula shall be applied:

$SAK = (PE_i - PM_i) * n_i$

Where:
SAK = Amount of the equity infusion subsidy.
PE*i* = Price paid by the State for equity shares of issue *i* under investigation.
PM*i* = (Market) price actually paid by private investors for equity shares of issue *i* under investigation.
n*i* = Total number of shares actually purchased by the State of issue *i* under investigation.

If there is no market price for shares of the firm receiving the equity infusion at the time that the government purchases its shares, or if this market price is not representative of the usual investment practice, the investigating authority shall examine whether the government had, at that time, a realistic expectation of a reasonable rate of return on the equity infusion within a reasonable period. In performing this analysis, the investigating authority may request and examine any studies or analyses considered by the government in deciding to provide the equity infusion.

If the investigating authority determines that the government's decision to invest in the firm receiving the equity infusion was inconsistent with usual investment practice, the investigating authority may determine that the equity infusion constitutes a subsidy in the form of a grant or an interest-free loan, taking into account the financial situation of the recipient and any other relevant information and circumstances.

The amount of the subsidy shall be reduced to take into account any dividends or income paid to the government during the subsidy POI. Once it has been determined under the above methodology that the equity infusion constitutes a subsidy, the amount of the subsidy shall be calculated on a case-by-case basis, in accordance with the applicable provisions of these Regulations.

The date of receipt of the subsidy shall be the date of receipt of the equity infusion.

Direct taxes, indirect taxes and import charges

Art. 34.- For the purposes of these Regulations, the following definitions shall apply:

(a) Direct taxes: taxes on wages, profits, interest, income, fees or royalties and any other form of income, as well as real estate taxes.
(b) Indirect taxes: sales, consumption, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges.
(c) Import charges: tariffs, other duties and other fiscal charges not mentioned in this Article that are levied on imports.

Exemption, remission or forgiveness of direct taxes

Art. 35.- The exemption, remission or forgiveness of direct taxes constitutes a subsidy in the amount of the difference between the amount of taxes exempted, remitted or not collected and the amount that the company otherwise would have paid, absent the exemption, remission or forgiveness. The date of receipt of the subsidy shall be the date on which the taxes exempted, remitted or forgiven would otherwise have been due.

Tax deferrals

Art. 36.- In the case of a deferred payment of direct taxes, indirect taxes, import duties and charges, and similar fiscal charges, the investigating authority shall consider such tax deferral a government loan in the amount of the taxes deferred, and shall calculate the amount of any resulting subsidy in accordance with Articles 27, 28 and 30 of these Regulations, as appropriate, depending on whether the deferral is for less than one year or for one year or more. Tax deferral shall not constitute a subsidy if the government collects an appropriate commercial rate of interest on the deferred amount.

Exemption from indirect taxes or import charges

Art. 37.- In the case of a full or partial exemption from indirect taxes or import charges, the investigating authority shall calculate the amount of any resulting subsidy as the difference between the amount of indirect taxes or import charges paid by a firm and the amount that would otherwise have been paid by the firm, absent the exemption. The date of receipt of the subsidy shall be the date on which the firm would have had to pay the exempted tax or charge.

Rebate or remission of indirect taxes or import charges

Art. 38.- In the case of a full or partial rebate or remission of indirect taxes or import charges, the investigating authority shall determine the amount of any resulting subsidy as the net amount of the taxes or charges paid after the rebate or remission, compared with the amount that would otherwise have been paid, absent the rebate or remission. The date of receipt of the subsidy shall be the date of receipt of the rebate or remission.

Provision of goods or services

Art. 39.- The provision of goods or services by a government shall be determined to confer a benefit where the provision is made for less than adequate remuneration. The adequacy of remuneration in the country of provision shall be determined in relation to prevailing market conditions for the good or service in question in the country of provision, including price, quality, availability, marketability, transportation and other conditions of purchase or sale.

When determining the adequacy of remuneration the investigating authority shall first take into account the price for the good or service in actual market transactions by private suppliers in the country of their provision. If this price cannot be quantified, the authority may calculate the adequacy of remuneration on the basis of whether the price paid to the government is sufficient to cover total costs, including selling, general and administrative expenses, to provide the goods or services supplied, plus a reasonable amount for profit, or such other reasonable basis as may be determined.

The amount of the subsidy shall be the difference between the price paid by the firm for the government-provided goods or services and the adequate remuneration determined by the investigating authority. The date of receipt of the subsidy shall be the date on which the firm pays or, in the absence of payment, would have had to pay for the government-provided goods or services.

Purchase of goods

Art. 40.- The purchase of goods by a government shall be deemed to confer a benefit where the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the good in question in the country of its purchase, including price, quality, availability, marketability, transportation and other conditions of purchase or sale.

When determining the adequacy of remuneration, the investigating authority shall first take into account the price for the good charged by the investigated firm in actual market sales to private purchasers in the country of purchase. If this price cannot be determined, the investigating authority may calculate the adequacy of remuneration by examining whether other firms in that country have sold the same good on comparable terms and conditions to private purchasers.

In cases where no such comparator price is available, the investigating authority may determine the adequacy of remuneration on the basis of whether the price paid by the government is sufficient to cover the investigated firm's total cost of the good, including selling, general and administrative expenses, plus a reasonable amount for profit.

The amount of the subsidy shall be the difference between the price paid by the government for the goods purchased and the adequate remuneration determined by the investigating authority. The date of receipt of the subsidy shall be the date on which the government pays for the goods purchased.

Worker-related subsidies

Art. 41.- In the case of government assistance to workers, a benefit shall be deemed to exist where the assistance relieves the employer firm of an obligation that it otherwise would incur. The date of receipt of the subsidy shall be the date on which the government payment is made that relieves the firm of the relevant obligation.

Prior-stage cumulative indirect taxes

Art. 42.- For purposes of these Regulations, the term "prior-stage cumulative indirect taxes" shall mean multi-staged taxes levied on goods or services used directly or indirectly in making a product, where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production of the product are used in a succeeding stage of production thereof.

Inputs consumed in the production process

Art. 43.- For the purposes of these Regulations, the term "inputs consumed in the production process" shall mean inputs physically incorporated, such as basic electricity and water services, in addition to telecommunications, fuels and oil used in the production process, and catalysts which are consumed in the course of their use to obtain a product.

Exemption or remission of indirect taxes, other than cumulative indirect taxes

Art. 44.- In the case of the exemption or remission of indirect taxes, other than prior-stage cumulative indirect taxes, in respect of the production and distribution of an exported product, a subsidy shall be deemed to exist only where it is determined that the amount of the exemption or remission exceeds the amount levied with respect to the production and distribution of the like product when sold for domestic consumption.

The date of receipt of the subsidy shall be the date on which the excessive amount was remitted or the exempted taxes were otherwise due.

Exemption or remission of cumulative indirect taxes

Art. 45.- In the case of the exemption or remission of prior-stage cumulative indirect taxes in respect of an exported product, a subsidy shall be deemed to exist only where it is determined that the amount of the exemption or remission exceeds the amount of such taxes levied on inputs consumed in the production process, as provided for in Article 43 of these Regulations, making normal allowance for waste. The provisions of Annex II to the WTO Agreement on Subsidies and Countervailing Measures shall be followed in making this determination.

The date of receipt of the subsidy shall be the date on which the excessive amount was remitted or the exempted taxes were otherwise due.

Remission or drawback of import charges in respect of exported products

Art. 46.- In the case of the remission or drawback of import charges in respect of an exported product, a subsidy shall be deemed to exist only where it is determined that the amount of the remission or drawback exceeds the amount of import charges on imported inputs that are consumed in the production process, making normal allowance for waste.

In determining the amount of the subsidy in the case of remission or drawback of import charges in respect of inputs consumed in the production of an exported product, the investigating authority shall take into account the provisions in Article 43 of these Regulations and Annex II to the WTO Agreement on Subsidies and Countervailing Measures.

The date of receipt of the subsidy shall be the date on which the excessive amount was remitted or drawn back.

The provisions of this Article shall also apply to cases of substitution drawback, where a firm uses a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them. In this case, a subsidy shall be deemed to exist where:

(i) the import and the corresponding export operations did not both take place within a time period of not more than two years; or
(ii) the amount drawn back exceeds the amount of the import charges levied initially on the imported inputs for which drawback is claimed.

In cases of substitution drawback, the investigating authority shall follow the provisions of Annex III to the WTO Agreement on Subsidies and Countervailing Measures.

Notifications to the World Trade Organization in subsidy investigations

Art. 47.- Pursuant to Article 35 of the Special Law on Trade Defence, the investigating authority shall promptly notify to the WTO Committee on Subsidies and Countervailing Measures the resolution initiating an investigation, as well as all measures, whether preliminary or final, adopted with respect to countervailing duties.

CHAPTER III
Special Substantive and Procedural Rules on the Application of Safeguard Measures

Safeguard measures

Article 48.- The provisions of this Chapter shall apply to safeguard measures, in accordance with the provisions of Titles II, IV and VII of the Special Law on Trade Defence.

Like product

Art. 49.- Pursuant to Article 5(g) of the Special Law on Trade Defence, "like product" shall be interpreted to mean a product that is identical, i.e. alike in all respects, to the product under investigation.

If the examination of likeness leads to a determination that there is no identical product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under investigation, shall be considered a like product. In examining likeness, the investigating authority may take into account:

(a) the raw materials and other inputs used in producing the product;
(b) the production process;
(c) the physical characteristics and appearance of the product;
(d) the end use or final destination of the product;
(e) the substitutability of the product with the product under investigation;
(f) the tariff classification; and/or
(g) any other factor deemed relevant by the investigating authority.

This list is not exhaustive, and none of these factors, either on their own or together with others, will necessarily be sufficient to provide decisive guidance.

Examination of likeness in safeguard investigations

Art. 50.- The product under investigation shall be subject to an examination of likeness or competition, which shall consist of a comparison between the product under investigation and the like or directly competitive product.

Content of the adjustment or readjustment plan

Art. 51.- Pursuant to Article 5(e) and Article 76 of the Special Law on Trade Defence, any adjustment or readjustment plan shall include, as a minimum, an identification of the circumstances to be overcome, the current circumstances so that the changes can be quantified, a planned scenario showing the circumstances overcome and a programme with the corresponding timetable for carrying out the action to be taken to achieve the necessary conversion. The plan shall also show that it is financially viable and that the domestic industry has the necessary economic or credit resources to implement it. Lastly, the plan shall identify the performance indicators which, in the opinion of the industry, are appropriate for measuring the implementation of the adjustment plan.

The investigating authority shall examine the adjustment plan and shall consider whether the proposal is realistic and sufficient. If it considers this not to be the case, it may give the domestic industry an opportunity to modify the plan, for which a period not exceeding 15 calendar days shall be given.

Factors for determining the existence of a threat of serious injury

Art. 52.- In order to determine a threat of serious injury caused by increased imports, and pursuant to Article 28 of the Special Law on Trade Defence, the following may be considered some of the imminent effects of the factors referred to in that Article:

(a) The possibility of an increase in imports due, *inter alia*, to the existence of a supply or sales contract, the award of a tender, an irrevocable offer or other similar contract.
(b) An increase in the export capacity of the country of origin as a result of increased utilization of plant capacity for the product investigated or an increase in inventories.
(c) The likelihood that the exports resulting from the increased potential capacity in the exporting country will be exported to the Salvadoran market. For the purposes of this analysis, the fall in prices, statistically valid estimations or other circumstances that may promote such exports may be taken into account.
(d) The existence of letters of credit for the payment abroad of imports of the product under investigation.

Notification of interest in participating in a safeguard investigation

Article 53.- Any party with a legitimate interest in a safeguard investigation, as provided for in Article 5(d) of the Special Law on Trade Defence, may inform the investigating authority in writing of its interest in participating in the investigation, within 20 days following the publication in the Official Journal of the resolution initiating the investigation.

Notifications to the World Trade Organization in safeguard investigations

Art. 54.- Pursuant to Article 34 of the Special Law on Trade Defence, the investigating authority shall immediately notify the WTO Committee on Safeguards upon:

(a) initiating an investigatory process relating to serious injury or threat thereof and the reasons for it;
(b) making a finding of serious injury or threat thereof caused by increased imports; and
(c) taking a decision to apply or extend a safeguard measure.

CHAPTER IV
Common Procedural Rules on Unfair Trade Practices and Safeguard Measures

Common procedural rules

Art. 55.- The provisions of this Chapter shall apply to investigations that seek to verify whether applying anti-dumping duties, countervailing duties or safeguard measures is appropriate, in accordance with the provisions of Titles V and IX of the Special Law on Trade Defence.

Submission of information relating to injury factors

Art. 56.- Accounting and financial information relating to the injury factors listed in Articles 24 and 27 of the Special Law on Trade Defence, in particular information referring to production, sales, inventories, prices, profits, installed capacity utilization and employment, shall be submitted signed by the public accountant or external auditor of the firm.

In order to assess the injury factors, the information shall be submitted in detail, preferably broken down into half-yearly periods.

Submission of prior written application

Art. 57.- Applications for the initiation of an investigatory process to verify whether applying anti-dumping duties, countervailing duties or safeguard measures is appropriate shall be drawn up in accordance with the requirements set out in the procedural manuals or guides provided by the investigating authority for this purpose.

Address for notifications

Art. 58.- In their first written representation, the interested parties shall clearly indicate an address within the jurisdiction of the investigating authority and an electronic means via which the authority can notify them of the resolutions it issues in the course of the investigation.

The electronic means indicated by the interested parties for this purpose shall allow the dispatch and receipt of notifications to be recorded. Notifications made by electronic means shall be considered made 24 hours after being sent, provided that there is evidence of their receipt.

Updating of manuals or guides for submitting applications

Art. 59.- The Directorate for the Administration of Trade Agreements may update the procedural manuals or guides that firms are required to follow when preparing applications for the initiation of an investigation relating to unfair trade practices or safeguard measures, in accordance with the formalities established in Article 91 of the Special Law on Trade Defence.

CHAPTER V
National Trade Defence System

Call for the referral of private-sector candidates to sit on the System Committee

Art. 60.- The Minister of Economic Affairs shall send a communication to private entities dealing with industrial, export, commercial and agricultural matters, in accordance with Article 85 of the Special Law on Trade Defence, with a view to them drawing up shortlists of three candidates for System Committee membership.

Private entities shall have a period of 30 calendar days from when they receive the above-mentioned communication to send their shortlists of three candidates to the Minister of Economic Affairs.

A notice shall be published on the website of the Ministry of Economic Affairs informing the public that calls have been made for the referral of private-sector candidates to sit on the System Committee.

Selection of candidates for private-sector shortlists for System Committee membership

Art. 61.- Private entities, upon receiving the communication from the Minister of Economic Affairs requesting shortlists of three candidates for System Committee membership, shall circulate a notice among their associates inviting them to express their interest; if interested, associates shall send their curriculum vitae and any other documents required by the entity relating to participant suitability.

The board of directors of each entity shall establish the procedure for drawing up shortlists of the three candidates best suited to represent that entity in the System Committee. As part of this procedure, the Board of Directors shall ensure that the selection process is conducted in accordance with the principles of transparency and fairness among its associates.

Each private-sector entity shall publish, through available channels, a notice containing information on the candidate selection procedure conducted by that entity.

The proposed shortlists sent by private entities shall comprise three candidates and their respective alternates, who shall be over 30 years of age and of good repute, and have demonstrated professional experience and links with production sector development. In order to demonstrate compliance with the above-mentioned requirements, the proposing entity shall submit the following for each candidate:

(a) A copy of their single identity document and a tax identification number;
(b) A curriculum vitae, including a photograph;
(c) A police clearance certificate;
(d) A tax solvency certificate;
(e) Documents confirming the academic and professional experience described in the curriculum vitae.

The above-mentioned entities shall also attach certification of minute items or any other document demonstrating the selection of the proposed candidates.

Appointment of System Committee members

Art. 62.- The public entities forming part of the National Trade Defence System shall designate the regular member and the alternate who are to represent the institution in the System Committee within 30 calendar days of receiving the communication from the Minister of Economic Affairs requesting them to do so.

Members of the industrial, export, commercial and agricultural sectors forming part of the National Trade Defence System Committee shall be selected by the Minister of Economic Affairs within 30 calendar days of the Minister receiving the three-person shortlists proposed by the private entities related to the above-mentioned sectors. Once this selection has been made, the Minister of Economic Affairs shall notify the entities of the selection results.

The appointment of members to represent public and private entities in the System Committee shall be formalized during the first meeting of the Committee.

Representation

Art. 63.- Regular members who are unable to attend a meeting may send an alternate, provided that they notify the Minister of Economic Affairs sufficiently in advance and in writing before the meeting in question.

The alternate shall have the same rights and obligations as the regular member of the System Committee.

Term of membership

Art. 64.- Natural persons sitting on the System Committee as representatives of the private and public sectors shall remain members thereof for the period specified in the respective appointment agreement.

Confidentiality

Art. 65.- System Committee meetings shall not be open to the public unless otherwise decided.

Where confidential information is presented during a System Committee meeting, the regular members and/or alternates shall avoid disclosing such information.

Meeting sessions

Art. 66.- The System Committee shall hold regular meetings once every three months and special meetings whenever so required.

Regular meetings shall be convened at least five days in advance by the Committee Chair, and special meetings at least 48 hours in advance, also by the Committee Chair.

System Committee meetings may be convened electronically, provided that there is a record of the convening notice having been received.

The quorum required for meetings shall be five members.

Meeting agendas

Art. 67.- The System Committee Chair shall draw up a provisional agenda for the meeting, which shall be sent, together with the convening notice, with a view to the meeting taking place. However, if a member has an agenda item for the meeting in question, it shall provide advance notification of this item, in writing, after receiving the convening notice.

Minutes of meetings

Art. 68.- At the end of the meeting, minutes shall be drawn up recording the topics discussed and matters agreed upon, which, in turn, shall be approved by System Committee members.

The minutes shall include, among other information, the following:

(a) The agenda and documentation presented to the System Committee;
(b) The agreements adopted during the meeting;
(c) The recommendations made by the System Committee;
(d) A list of the regular members and alternates participating in the meeting.

Adoption of agreements

Art. 69.- Agreements adopted during a meeting shall be valid if approved by the majority of the System Committee members present at that meeting, on the basis of one vote per member; in the event of a tie, the Committee Chair shall have the casting vote.

Validity

Art. 70.- This Decree shall enter into force eight days after its publication in the Official Journal.

DONE AT THE OFFICE OF THE PRESIDENT: San Salvador, 14 September 2017.