

# Gas Regulation

in 29 jurisdictions worldwide

# 2014

Contributing editors: David Tennant and Jennifer Davis



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**Gas Regulation 2014**

**Contributing editors:**  
**David Tennant and Jennifer Davis**  
**Dentons UKMEA LLP**

*Getting the Deal Through* is delighted to publish the fully revised and updated 2014 edition of *Gas Regulation*, a volume in our series of annual reports, which provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 29 jurisdictions featured. New jurisdictions this year include Colombia, the European Union, Ghana, Myanmar, Norway and Turkey. The publication also benefits from a new Global Overview authored by David Tennant and Jennifer Davis at Dentons UKMEA LLP.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are always referring to the latest print edition or to the online version at [www.GettingTheDealThrough.com](http://www.GettingTheDealThrough.com).

*Getting the Deal Through* gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. *Getting the Deal Through* would also like to extend special thanks to contributing editors David Tennant and Jennifer Davis of Dentons UKMEA LLP for his assistance with this volume.

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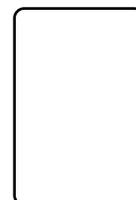
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# Colombia

**Alvaro J Rodriguez**

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## Description of domestic sector

- 1 Describe the domestic natural gas sector, including the natural gas production, liquefied natural gas (LNG) storage, pipeline transportation, distribution, commodity sales and trading segments and retail sales and usage.

Colombia's proven natural gas reserves for 2012 stood at approximately 5.7TCF, up from 4.4TCF in 2008.

Average daily domestic production of gas for 2012 was 2,968MCFD, of which roughly 940MCFD was supplied to domestic markets and 186MCFD to Venezuela. Exports are expected to end in June 2014, to be replaced by imports from Venezuela under existing contractual arrangements between the two countries.

Production comes mainly from the Ballena-Chuchupa fields in the Guajira region, and the Apiay, Cusiana and Cupiagua fields in the Llanos Orientales and Piedemonte Llanero regions.

Under normal climatic conditions, the industrial and commercial sector is the largest consumer of natural gas in the country (33 per cent), followed by the power generation sector (26 per cent) (which may from time to time become the largest consumer due to the El Niño phenomenon), the refining sector (17 per cent), the residential sector (15 per cent), and natural gas vehicles and others.

Gas is transported from the Caribbean coast (Guajira, Magdalena fields) and the Llanos region to the rest of the country by means of two major trunk pipeline systems operated by TGI (Interior) and Promigas (Caribbean).

There are currently no LNG projects in the country, but two projects – one for export and another for import – are being considered. We refer to these in more detail below.

- 2 What percentage of the country's energy needs is met directly or indirectly with natural gas and LNG? What percentage of the country's natural gas needs is met through domestic production and imported production?

In 2012, approximately 24.21 per cent of Colombian energy needs was met directly by natural gas. Colombia currently does not import natural gas or LNG, so the country's gas needs are met completely through domestic production. As indicated in question 1, this may change as a result of proposed imports from Venezuela as of September 2014.

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## Government policy

- 3 What is the government's policy for the domestic natural gas sector and which bodies set it?

The government has centred its domestic natural gas sector policy on securing gas supply by:

- stimulating private investment;
- creating price and trade mechanisms to encourage exploration and production;
- promoting gas import alternatives; and

- establishing mechanisms that will encourage competition and mitigate market concentration.

The bodies that set this policy are:

- Congress, which issues laws in accordance with article 150 of the Colombian Political Constitution.
- The Ministry of Mines and Energy (the MME), which is responsible for adopting the government's policies on the exploration, production, transportation, processing and distribution of minerals and hydrocarbons; and the development of the mining and energy sectors. Among other things, the MME determines the order of priority for the supply of natural gas to the various sectors in certain extraordinary circumstances such as severe supply restrictions, and authorises and generally establishes the government's policies for natural gas exports.
- The Energy and Gas Regulatory Commission (CREG), which is an administrative body comprised of the following members: the minister of mines and energy, the minister of finance and public credit, the director of the National Planning Department and five independent technical experts appointed by the president. CREG's principal purpose is to ensure that companies in the sector provide economically efficient and high-quality energy and gas-related services. CREG fulfils this purpose by, inter alia, issuing resolutions applicable to the provision of energy-related services, promoting competition through open and non-discriminatory access to and use of the transportation and distribution networks, and establishing the tariff structure for the provision of energy and gas-related services.
- The National Hydrocarbons Agency (the ANH), which is an administrative body created in 2003 to manage Colombia's hydrocarbon reserves and implement the oil and gas exploration and exploitation policies.
- The Mining and Energy Planning Unit (UPME), which is a special administrative unit of the MME responsible for developing and updating the National Energy Plan and the National Electric Reference Expansion Plans. UPME is also responsible for forecasting the overall energy requirements of Colombia; planning and developing ways and means to satisfy such energy requirements, including the development of alternative sources of energy; and establishing programmes to conserve and optimise the use of energy. CREG uses UPME's forecasts, among other things, for the tariff-setting and adjustment process.

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## Regulation of natural gas production

- 4 What is the ownership and organisational structure for production of natural gas (other than LNG)? How does the government derive value from natural gas production?

Under articles 332 and 360 of the Constitution, the subsoil and non-renewable natural resources (including hydrocarbons) are property of the Colombian state.

Private parties may explore for and produce hydrocarbons, subject to the payment of royalties and certain other economic benefits to the state. The royalties payable for the production of hydrocarbons are determined by law.

The ANH selects contractors, and awards areas for the exploration and production of hydrocarbons, in accordance with specific terms and conditions currently stipulated in Agreement 004 of 2012. The contractual modalities under which it assigns such areas are exploration and production contracts (E&P contracts) and technical evaluation agreements (TEAs).

As previously indicated, the government derives value from natural gas production by collecting royalties and other fees on production, as well as direct and indirect taxes, most notably income tax and value added tax.

Royalties vary between 8 and 25 per cent of production. If the area has produced more than 5 million barrels and the WTI price exceeds a reference price set out in the contract and updated every year, the ANH receives an additional windfall payment. The ANH may also receive an additional royalty if bid by the contractor in a competitive bidding process.

For gas fields on land or located offshore at depths equal to or less than 1,000 feet, the royalties applicable are 80 per cent of the royalties applied to onshore light and semi-light crude fields. For gas fields located offshore at depths greater than 1,000 feet, the royalty is 60 per cent of the royalties applicable to onshore light and semi-light oil fields.

Unconventional hydrocarbons such as shale gas pay 60 per cent of the royalties applicable to onshore light and semi-light crude fields.

**5** Describe the statutory and regulatory framework and any relevant authorisations applicable to natural gas exploration and production.

Under a TEA, the contractor has the right to conduct a technical evaluation of the awarded block (which includes the right to shoot seismic and conduct other studies, but not to drill exploration wells), and may convert the TEA into an E&P contract covering all or part of the area.

Under an E&P contract, parties have an exclusive contractual right to explore the area for a period of six years in the case of conventional resources, and up to nine years in the case of unconventional resources. Following a discovery, the holder has the right to propose an evaluation plan and declare commerciality of the relevant field. Once this declaration has been made, that particular field will enter into production for a period of up to 24 years for conventional E&P contracts and up to 30 years for unconventional E&P contracts.

Pursuant to applicable technical regulations, E&P companies must produce hydrocarbons at an efficient rate approved by the MME. Gas flaring is, in principle, prohibited, except for uneconomic gas (subject to MME approval) or for safety reasons.

The drilling of exploration and production wells requires an environmental licence issued by the Ministry of Environment and Sustainable Development based on an environmental impact assessment prepared by the applicant.

**Regulation of natural gas pipeline transportation and storage**

**6** Describe in general the ownership of natural gas pipeline transportation, and storage infrastructure.

The Colombian natural gas pipeline system connects the main gas production fields in La Guajira, Llanos Orientales and Magdalena, with the largest consumption and distribution areas in Colombia.

The two trunk natural gas transportation systems in Colombia are the TGI pipeline system, which accounts for approximately 56 per cent of the total length of the national pipeline system, and the

Promigas pipeline system, which accounts for approximately 35 per cent. The remainder of the Colombian pipeline system is accounted for by other smaller, privately owned natural gas transportation companies.

TGI is controlled by Empresa de Energía de Bogotá, which is in turn controlled by the Capital District of Bogota. However, as a public utility company, its gas transportation activities are governed by private law, despite its being a government-owned entity. Promigas is a privately owned company.

There is no significant gas storage infrastructure in the country; however, regulations envisage the possibility of storage services being provided by transporters or third parties, provided that the transporter is not the owner of the stored gas.

**7** Describe the statutory and regulatory framework and any relevant authorisations applicable to the construction, ownership, operation and interconnection of natural gas transportation pipelines, and storage.

Law 142 of 1994 (Law 142) created the current framework for gas and other public utility services, and established a system of open, non-discriminatory access to the Colombian natural gas transportation system and to distribution networks.

Under the current system, the government does not award concessions to provide natural gas transportation services; therefore, any industry participant can enter the natural gas transportation market through the construction of a natural gas pipeline system.

As a result, there is no term limitation established by the government for the provision of these services, and the assets used in the provision of the service are not owned by the state but by the company providing it.

Law 142 also determines that exceptionally, for reasons of social interest and to allow the expansion of service coverage to the population with limited resources, the MME may award (and has awarded) exclusive service areas for domestic distribution of gas.

Companies that provide public services, whether private or government-owned, are also subject to regulations issued by the relevant regulatory commission and to the oversight of the Superintendence of Domestic Public Services.

In addition, CREG Resolution 071 of 1999, as amended, created the Gas Transportation Regulations or Code (the RUT), which sets forth specific operative and commercial rules in connection with the natural gas transportation system, such as the establishment of best practices and quality standards for the transportation of natural gas.

The RUT also includes rules directed at ensuring open access to the national gas transportation system to all agents in the gas transportation sector. Pursuant to these rules, the owner of the transportation asset must allow connection if technically feasible and provided that the interested party meets the costs of such connection. If access is not provided, the regulations establish mechanisms to impose access.

**8** How does a company obtain the land rights to construct a natural gas transportation or storage facility?

Natural gas transportation is considered a public interest activity; therefore, the lands necessary for such activity must bear all legal rights of way to carry out such activities.

In principle, the transportation company and the owner should agree the terms of the compensation to be paid for the necessary rights. Failing such agreement, Law 1274 of 2009 establishes an expeditious procedure for the judicial determination of the compensation to be paid for the rights of way.

**9** How is access to the natural gas transportation system and storage facilities arranged? How are tolls and tariffs established?

As indicated above, natural gas transportation is subject to the principle of open access. Access is normally arranged by means of interconnection agreements. Typically, the transporter agrees to operate and maintain the customer's interconnection facilities in exchange for a fee that varies from case to case depending on the activities to be performed and the size and complexity of the interconnection.

The remuneration of the transport service is based on a scheme of passage charges, calculated as the sum of the individual charges for each segment of trunk pipelines according to the physical flow of gas plus a stamp charge for branch pipelines.

Transportation companies and their customers agree on the natural gas transportation rates they wish to apply to their contracts. These rates may be freely negotiated for interruptible contracts, but must be subject to the maximum regulated rates established by CREG for firm contracts.

In the case of firm contracts, based on information reported by the transportation company, CREG approves, for each segment of the pipeline:

- a series of pairs of maximum fixed and variable charges to remunerate the transporter's investment, from which the parties to a given transportation contract must choose those they wish to apply to their contract; and
- a fixed charge to remunerate management, operation and maintenance expenses.

These maximum charges are valid for five years.

**10** Can customers, other natural gas suppliers or an authority require a pipeline or storage facilities owner or operator to expand its facilities to accommodate new customers? If so, who bears the costs of interconnection or expansion?

No. While customers have the right to connect to existing pipelines or infrastructure and operators may not reject such connection, operators are not required to expand their facilities to accommodate a particular customer.

**11** Describe any statutory and regulatory requirements applicable to the processing of natural gas to extract liquids and to prepare it for pipeline transportation.

The gas to be injected into the national transportation system must meet certain quality standards defined in the RUT, including liquid content. It is the shipper's responsibility to ensure that the gas meets these standards, and the transporter has the right to refuse to receive the gas if it does not conform to the quality standards.

**12** Describe the contractual regime for transportation and storage.

Pursuant to Decree 2100 of 2011 and CREG Resolution 089 of 2013, there are both primary and secondary markets for transportation capacity and, in an effort to make the markets more liquid by standardising contracts, the regulations prescribe the types of contracts that agents may enter into.

In both the primary and secondary markets for transportation capacity, a shipper and a carrier or transporter may enter into:

- firm transportation contracts;
- conditional firmness transportation contracts;
- transportation purchase options;
- contingency transportation contracts; and
- interruptible transportation contracts.

These contracts must include standard force majeure, excusable event, outage, breach/default, compensation and price adjustment clauses established in the regulations.

No take or pay contracts are permitted.

The regulations limit participation in these markets to certain agents, which are essentially producers, traders, importers and unregulated users.

### Regulation of natural gas distribution

**13** Describe in general the ownership of natural gas distribution networks.

Natural gas distribution is a domestic public utility or service regulated by Law 142. Under this Law, gas distribution services may be provided by state or privately owned companies. Currently, there are approximately 30 gas distribution companies in the country (mostly privately owned or publicly traded) that supply gas in 714 municipalities (67 per cent of the total number of municipalities in Colombia).

**14** Describe the statutory and regulatory structure and authorisations required to operate a distribution network. To what extent are gas distribution utilities subject to public service obligations?

As indicated above, natural gas distribution as a domestic public service or utility is governed by Law 142 and other regulations issued from time to time by CREG, the Ministry of Mines and other competent authorities. See questions 3 and 7 for a brief description of the applicable legal and institutional framework.

**15** How is access to the natural gas distribution grid organised? Describe any regulation of the prices for distribution services. In which circumstances can a rate or term of service be changed?

Typically, gas distribution networks in each municipality are owned by dominant distributors who are required by regulation to allow interconnection by other distributors with their facilities and access to their sales, transportation and storage services on a non-discriminatory basis, unless such interconnection does not conform to the technical standards of the Gas Distribution Code, or is deemed uneconomical. The distributor's right to refuse interconnection or access to services is subject to review by the regulator.

Distribution companies will charge different rates to unregulated users (consumers of more than 100,000 cubic feet/day) and to regulated users.

The tariff rate charged to unregulated users includes:

- freely negotiated gas prices; plus
- transportation charges, if applicable; plus
- a connection charge; plus
- a distribution charge for the use of the relevant distribution network, which includes a fixed charge and a variable charge; plus
- a regulated commercialisation rate or margin.

The distribution charge for each network is approved by CREG and remunerates the distributors for the infrastructure necessary to bring supplies from the delivery point of the national transportation system to the point of delivery to the customer. It comprises a variable and a fixed component.

The tariff rate charged to regulated users is approved by CREG for each relevant market (typically one or more municipalities) and comprises:

- a variable charge that includes the average monthly cost of gas purchased to serve regulated users; plus
- applicable transportation charges (regulated); plus
- the distribution charge referred to above.

A similar formula applies for sales of natural gas for vehicles.

**16** May the regulator require a distributor to expand its system to accommodate new customers? May the regulator require the distributor to limit service to existing customers so that new customers can be served?

No. The regulator cannot require a distributor to expand its system or limit service to existing customers so new customers can be served.

**17** Describe the contractual regime in relation to natural gas distribution.

Gas distribution contracts are adhesion contracts under which the regulated or unregulated user abides by a uniform conditions contract published by the distribution company for each particular market it serves.

Unregulated users may freely negotiate the price and certain other special commercial conditions, but they are bound by the uniform contract in all other respects.

Although the clauses of the uniform contract are set by the distributor, the law prohibits a large number of clauses that are presumed abusive.

### Regulation of natural gas sales and trading

**18** What is the ownership and organisational structure for the supply and trading of natural gas?

Producers, traders and distributors of gas may be government or privately owned, and the only requirement is that they must be organised as a public utility company and take the form of a stock corporation or, in the case of government-owned entities, an industrial and commercial state enterprise.

**19** To what extent are natural gas supply and trading activities subject to government oversight?

Domestic trading and supply activities are subject to extensive regulations, as previously mentioned.

Additionally, it should be noted that, pursuant to CREG Resolution 089 of 2013, producers are required to sell their natural gas through auctions in the primary market if, according to UPME's estimations (published every year), demand for natural gas is expected to exceed supply in at least three of the following five years. Conversely, they may sell their gas directly (for a period expressly specified by CREG and which shall not exceed 10 working days) if gas supply is projected to exceed demand in at least three of the following five years.

Prices are free for all fields, except the Opon field.

**20** How are physical and financial trades of natural gas typically completed?

All contracts in the natural gas primary market require physical delivery. Contracts must be in writing and must conform to the contract types set out in the regulations and summarised in question 12.

**21** Must wholesale and retail buyers of natural gas purchase a bundled product from a single provider? If not, describe the range of services and products that customers can procure from competing providers.

No. There are separate primary and secondary markets for natural gas, transportation and storage services. They are not bundled.

For supply or transportation, customers can negotiate firm contracts, conditional firmness contracts, purchase options, contingency contracts and interruptible contracts.

### Regulation of LNG

**22** What is the ownership and organisational structure for LNG, including liquefaction and export facilities and receiving and regasification facilities?

There is currently no specific regulatory framework for LNG in Colombia. Potential LNG projects are therefore subject to the generally applicable regulations in connection with natural gas exports (summarised in question 19) and environmental licensing procedures.

**23** Describe the regulatory framework and any relevant authorisations required to build and operate LNG facilities.

Under existing regulations, an LNG project would essentially require the following permits:

- an environmental licence for the terminal and pipelines that conduct gas to such terminal;
- a port concession to be granted by the Colombian National Infrastructure Agency; and
- certain permits to be issued by the General Maritime Director of the Ministry of Defence.

**24** Describe any regulation of the prices and terms of service in the LNG sector.

Pursuant to CREG Resolutions 106, 139 and 182 of 2011, the government has established mechanisms for thermal power generators wishing to obtain a reliability charge for the availability of their generation assets to the national interconnected power system to support their firm energy obligations to such system.

In addition, by means of CREG Resolution 062 of 2013, the government has created economic incentives for thermal power generators using imported natural gas to cover out-of-merit security generation.

### Mergers and competition

**25** Which government body may prevent or punish anti-competitive or manipulative practices in the natural gas sector?

According to Law 1340 of 2009, the Superintendence of Industry and Commerce (SIC) is the only competition authority in Colombia. Therefore, SIC is the government body that investigates, prevents and punishes all anti-competitive or manipulative practices in the natural gas sector. On the other hand, CREG is the authority that regulates the gas sector, including all the regulations related to the promotion of competition in the gas market.

**26** What substantive standards does that government body apply to determine whether conduct is anti-competitive or manipulative?

In Colombia, the substantive standards that determine whether a conduct is anti-competitive or manipulative are set forth in Law 155 of 1959, Decree 2153 of 1992 and Law 1340 of 2009. Law 155 of 1959 establishes a general prohibition that forbids all agreements that may restrict the production, distribution, supply or consumption of commodities, products or services and, in general, prohibits all practices, procedures or systems that restrict competition in the market or that may determine unfair prices.

Decree 2153 of 1992 has a catalogue of conducts that are deemed anti-competitive, including anti-competitive agreements, unilateral acts and abuses of dominant power.

**27** What authority does the government body have to preclude or remedy anti-competitive or manipulative practices?

SIC is the government body that has the authority to investigate, penalise and impose sanctions on those that carry out anti-competitive or manipulative conduct.

**28** Does any government body have authority to approve or disapprove mergers or other changes in control over businesses in the sector or acquisition of production, transportation or distribution assets?

SIC is the government body that has the authority to approve or disapprove mergers. In Colombia, all transactions or mergers that meet certain criteria should be submitted to the prior approval of SIC.

According to Law 1340 and Resolution 12193 of 2013, it is mandatory to inform the competition authority of any merger or acquisition if the following conditions are met:

- (i) the participating parties to the proposed operation engage in the same activities or participate in the same vertical value chain;
- (ii) the aggregate or individual annual operations revenue or assets of the participating parties in Colombia or abroad (including all other companies belonging to the same corporate structure of the intervening parties) exceeded 100,000 monthly minimum Colombia legal wages; and
- (iii) the participating parties have individual or joint participation of at least 20 per cent in the relevant market.

If conditions (i) and (ii) are met, but the joint market share in the relevant market is below 20 per cent, the transaction is deemed permitted, and therefore does not have to be cleared by SIC; however, the parties to the transaction have to give prior notice of the operation to SIC.

It is important to bear in mind that CREG has established some restrictions for merger control purposes in the natural gas sector. In this sense, in accordance with Resolution No. 057 of 1996 of CREG, the companies that carry out transportation activities of natural gas may not participate in activities related to the production or supply of natural gas, and vice versa.

In Colombia, mergers may be approved, rejected or approved with conditions by SIC.

On average, a merger control proceeding lasts from two to six months. However, there have been some cases in which SIC has only issued a decision after more than one year from the date of filing.

**29** In the purchase of a regulated gas utility, are there any restrictions on the inclusion of the purchase cost in the price of services?

According to Resolution 011 of 2003 of CREG, the price of gas (including the price of manufactured gases, natural gas and liquefied petroleum gas) for sale to unregulated users is determined on the basis of the tariff formula approved for each relevant market and distributor by CREG. Therefore, it is not possible to include the purchase cost in the prices charged to unregulated users.

**30** Are there any restrictions on the acquisition of shares in gas utilities? Do any corporate governance regulations or rules regarding the transfer of assets apply to gas utilities?

There are no such restrictions.

**International**

**31** Are there any special requirements or limitations on foreign companies acquiring interests in any part of the natural gas sector?

There are no such requirements or limitations.

**32** To what extent is regulatory policy affected by treaties or other multinational agreements?

Regulatory policy is not significantly affected by treaties or other multinational agreements, as the guiding principles of economic freedom, free enterprise and non-discrimination are already enshrined in the Constitution.

**33** What rules apply to cross-border sales or deliveries of natural gas?

With respect to exports, pursuant to Decree 2100 of 2011, producers and traders have the obligation to give priority to domestic gas demand.

However they may enter into natural gas export contracts without requiring government authorisation provided that the supply index (calculated as per Ministry of Mines Resolution 18704 of 2011) is eight years or more; and the national production potential is equal to or greater than the total current demand for the current year (as defined in the Resolution). The supply index for 2013 was 15.7 years.

The government has the right to interrupt exports when there is (exceptional) domestic market need for the gas, provided that the opportunity cost of the interrupted gas will be paid by the domestic market agent requiring the gas.

CREG Resolution 041 of 2013 established a methodology to calculate the opportunity cost of suspended gas exports considering two factors, namely: the price for gas not received with the suspension of exports (as agreed in the relevant export contract); and any compensation the producer must pay for having failed to meet its export contract obligations (as agreed in the relevant export contract).

CREG is in the process of defining the modalities for payment of this opportunity cost.



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**Transactions between affiliates**


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**34** What restrictions exist on transactions between a natural gas utility and its affiliates?

There are no particular restrictions for natural gas utilities. They are subject to the same rules applicable to other corporations, including:

- tax regulations that require that (for tax purposes) transactions between affiliates are conducted at arm's length;
- rules that make corporate officers liable for damages to shareholders, the company or third parties in the case of breaches of fiduciary duties; and
- competition regulations as set out above.

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**Update and trends**

The most important recent trends are the enactment of CREG Resolution 089 of 2013, together with CREG Resolutions 061 and 062 of 2013, which create incentives for thermal power generators to develop a LNG regasification plant to promote the reliability of gas supply during the El Niño phenomenon.

**35** Who enforces the affiliate restrictions and what are the sanctions for non-compliance?

Sanctions are enforced by the National Customs and Tax Authority, in the case of violations related to tax regulations, by the courts in the case of damages caused as a result of violation of fiduciary duties, and by SIC in the case of anti-competitive practices.

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