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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**

MONTENEGRO

The following communication, dated 10 September 2013, is being circulated at the request of the Delegation of Montenegro.

With reference to Article 18.5 of the Agreement on Implementation of Article VI of the GATT 1994, Article 32.6 of the Agreement on Subsidies and Countervailing Measures, and Article 12.6 of the Agreement on Safeguards, the Government of Montenegro notifies the Committees on Anti-Dumping Practices, Subsidies and Countervailing Measures, and Safeguards, that these Agreements were incorporated in national law by Act Number 01-622/2 of 26 April 2004, published in the Official Gazette No. 28 on 29 April 2004; Amendments to the Law on Trade, Act Number 01-772/2 of 11 June 2007, published in the Official Gazette No. 37 on 19 June 2007 and Decree for the implementation of Law on Foreign Trade Act Number 02-4452 of 8 July 2004 published in the Official Gazette No. 52 of 2 August 2004; Amendments to the Decree for the implementation of Law on Foreign Trade Act Number 03-4946 of 28 June 2007 published in the Official Gazette No. 44 of 23 July 2007. The copy of the Revised Act is enclosed.

Montenegro has no other specific laws and/or regulations relevant to these Agreements.

UNOFFICIAL TRANSLATION

FOREIGN TRADE LAW

RM Official Gazette, No. 28/04, 37/07

SECTION ONE

GENERAL PROVISIONS

Article 1 Scope of Application

This Law shall regulate foreign trade.

Article 2 Definitions

When used in this Law, the following terms shall have the meaning specified below:

- 1) "*Foreign trade*" shall mean any trade, economic activity, commerce, contracts, transactions and other activities involving the movement of goods, other tangible property, intangible assets, property rights, or services between the Republic and countries or territories outside the Republic
- 2) "*National Treatment*"
 - with respect to goods shall mean that imported goods shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products; shall be accorded treatment no less favorable than that accorded to like products of domestic origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use, and that no such taxes, internal charges, laws, regulations or requirements shall be applied so as to afford protection to domestic production.
 - with respect to services shall mean that foreign services and service suppliers, in respect of all measures affecting the supply of services, shall receive treatment no less favourable than that accorded to domestic like services and service suppliers
- 3) "*Most-Favored-Nation treatment*"
 - shall mean treatment that, with respect to imports from or exports to a foreign country or territory, with respect to customs duties and charges of any kind imposed in connection with importation or exportation or on the international transfer of payments for imports or exports, and with respect to the manner of application of such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to internal taxes and charges of any kind, and with respect to all requirements affecting internal sale, offering for sale, purchase, transportation, distribution or use, is no less favorable than similar treatment accorded to like product imports from or exports to any other foreign country or territory.
 - with respect to services shall mean treatment to services and service suppliers of any country that is no less favourable than that accorded to like services and service suppliers of any other country.
- 4) "*Person*" shall mean any natural or legal person.

- 5) "*Domestic Person*" shall mean:
- a. any natural person who is domiciled or usually resident in the Republic of Montenegro (hereinafter referred to as: the Republic;
 - b. any legal person that has its corporate domicile in the Republic of Montenegro; and
 - c. any division or representative office of a foreign legal person in the Republic of Montenegro that
 - is registered in accordance with the law of the Republic;
 - actually conducts its business at its registered address in the Republic; and
 - maintains separate books and operating records at such address.
- 6) "*Foreign person*" shall mean:
- a. any natural person who is domiciled or usually resident outside of the Republic; and
 - b. any legal person that has its corporate domicile outside of the Republic
- 7) "*Goods*" shall mean any movable tangible articles or assets, but not securities, commercial papers or cash.
- 8) "*Export of Goods*" shall mean the transport or delivery of goods from the territory of the Republic to a foreign country or territory in accordance with the customs legislation.
- 9) "*Import*" shall mean the transportation or delivery of goods or services from any foreign country or territory into the territory of the Republic in accordance with the customs legislation.
- 10) "*Transit*" shall mean transportation of goods through the Territory of the Republic without such goods entering the regular commerce of the Republic in accordance with the customs legislation.
- 11) "*Restrictive Measure*" shall mean any prohibition, quantitative restriction, special charge (other than a tariff, internal tax, or charge for a service actually rendered), condition, license, approval or any other measure imposed by any State Authority having a restrictive effect on Foreign Trade, but shall not include technical regulations.
- 12) "*Quantitative restriction*" shall mean the highest total value or maximum quantity of certain goods, that may be exported or imported within the prescribed period of time, including the ban on export or import.
- 13) "*Quota*" shall mean a share in the total value or quantity of exports or imports allocated to certain person or group of persons (exporters or importers).
- 14) "*License*" shall mean a permission or authority, granted by a State Authority in the administrative procedure, upon an application of an interested person, that is a prior condition for importation or exportation.
- 15) "*State Authority*" shall mean any executive authority, public institution, ministry, agency, or any other governmental authority that exercises legislative, executive or judicial powers.

Article 3 General Principles

- (1) Foreign Trade shall be unrestricted except as otherwise provided by this Law.
- (2) All persons may conduct Foreign Trade in accordance with their legal and commercial capacities, and in accordance with relevant legislation regulating commercial activities.
- (3) Any legal act administrative authority creating restrictions on foreign trade contrary to the provisions of this Law shall be null and void.
- (4) Formalities conducted in accordance with the provisions of this Law shall not be administered in such a manner as to have a restrictive effect on foreign trade, or to provide disguised protection to domestic products.

Article 4 Right to Establish Restrictive Measures

The Government of the Republic of Montenegro (hereinafter referred to as: the Government) shall be the only State Authority competent to establish a Restrictive Measure.

Article 5 Criteria to Establish Restrictive Measures

- (1) The Government may establish a Restrictive Measure only:
 - 1) when specifically authorized by this Law;
 - 2) when such Restrictive Measure is necessary to achieve a purpose specified by this Law; and
 - 3) when the type and scope of such Restrictive Measures are limited to the minimum necessary to achieve such purpose.
- (2) A Restrictive Measure referred to in paragraph 1 of this Article must be abolished, or the applicable scope thereof reduced, as and insofar as the reasons justifying its existence cease to exist or upon a change of the conditions of its application.

Article 6 Transparency

- (1) Unless otherwise specifically provided for in this Law, no Restrictive Measure may take effect until at least 30 days have elapsed since its publication in the "Official Gazette of the Republic of Montenegro."
- (2) The state authority competent for foreign trade (hereinafter referred to as the competent authority) shall provide information regarding the implementation of this Law upon the written request of any interested Person.
- (3) The Government shall, by a specific decision, establish, maintain and make public an Export and Import Control List containing information on goods whose Import and Export are unrestricted, as well as information on goods whose Import or Export are subject to any restrictions under this Law.

Article 7 Rights of Appeal

- (1) The law that governs general administrative procedure shall be applicable to all procedures conducted in accordance with this Law, unless otherwise prescribed by the provisions of this Law.

- (2) Competent Authority referred to in Article 6, paragraph 2 of this Law decides in administrative procedures pursuant this Law.
- (3) An appeal may be lodged against decision referred to in paragraph 2 of this Article.
- (4) There shall be a right of judicial review against decision enacted in appeal procedure referred to in paragraph 3 of this Article.

Article 8 Confidential Information

- (1) Any information which is by nature confidential, or which is provided on a confidential basis by parties to any procedure administered under this Law shall, if good cause is shown, be treated as such.
- (2) Information which is by nature confidential referred to in paragraph 1 of this Article shall include information whose disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a party supplying the information or upon a party from whom the information has been acquired.
- (3) The authority administering the proceedings or its officials shall not reveal any information received pursuant to this Law and any implementing regulation thereof for which confidential treatment has been requested by its supplier, without specific permission from the supplier.

Article 9 Fees for Services

- (1) No fees may be imposed in connection with imports or exports except as are clearly related to and necessary to compensate for services actually rendered. Any fees collected in connection with foreign trade shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a means of obtaining revenue for fiscal purposes.
- (2) The Government shall issue a schedule of fees for services that are routinely and regularly provided in connection with Foreign Trade.
- (3) The funds collected pursuant to paragraph 1 of this Article shall be revenue of the budget of the Republic of Montenegro.

Article 10 Dispute Resolution

- (1) Participants in foreign trade may agree on the applicable law to their transactions and choice of competent court or arbitral tribunal.
- (2) Where the applicable law or the forum for dispute resolution was not agreed by the parties, it shall be determined in accordance with the general principles of private international law.
- (3) In the case referred to in paragraph 2 of this Article, where a dispute arises in which one party to the dispute is the Government of Montenegro or a state authority, a party that is a Foreign Person may submit such dispute for settlement before the Additional Facility of the International Center for the Settlement of Investment Disputes (ICSID), subject to and in accordance with its Rules.
- (4) Until the Convention of International Center for Settling Investment Disputes (ICSID) is acceded domestic and foreign arbitrations may apply additional rules of ICSID Convention applicable to countries that did not accede to the ICSID Convention.

SECTION TWO

FOREIGN TRADE IN GOODS

CHAPTER I

IMPORT AND EXPORT

Article 11

Right to Import and Export Goods

Subject to their status under relevant legislation and to the provisions of this Law and other legislation enacted pursuant to this Law, any Person may import or export goods, including but not limited to:

- 1) goods intended for sale, inward or outward processing, or any other commercial transaction, subject to legislation that regulates commercial activities;
- 2) goods intended for own use of legal entities, personal or family use; and
- 3) goods necessary to perform professional activities (entrepreneurs, farmers and natural persons conducting professional activities or providing services).

Article 12

National Treatment

- (1) Foreign persons conducting Import or Export of goods in accordance with the provisions of this Law shall be accorded treatment equal to that accorded to domestic persons.
- (2) Imported goods shall be entitled to National Treatment.

Article 13

Most Favored Nation Treatment

- (1) Imported and Exported goods shall be accorded Most-Favored Nation treatment as required by international agreements binding on the Republic, and otherwise as the Government may decide.
- (2) Most-Favored Nation treatment referred to in paragraph 1 of this Article need not reflect advantages accorded to an adjacent country or territory in order to facilitate frontier traffic, nor advantages granted pursuant to a bilateral or multilateral free trade area or customs union agreement, or pursuant to an interim agreement intended to advance the formation of a free trade area or a customs union.

Article 14

Prohibited Imports

- (1) Goods shall not be Imported or Transited if trade in such goods is banned under the legislation of the Republic.
- (2) The Government may ban imports, temporary imports or transit of goods if circulation of such goods is banned under the legislation of the country of export, of origin, or of destination of such goods.

CHAPTER II

QUANTITATIVE RESTRICTIONS AND LICENSING

1. QUANTITATIVE RESTRICTIONS

Article 15 Requirements

- (1) The Government may impose Quantitative Restrictions on exports only:
 - 1) in case of critical shortages of products essential to the Republic, or for the relief of consequences of such shortages; or
 - 2) in order to protect exhaustible natural resources, if export restrictions are applied simultaneously with restrictions on domestic production or consumption.
- (2) The Government may impose Quantitative Restrictions on Imports as a safeguard measure pursuant Articles 44-50 of this Law.

Article 16 Notice of Quantity

The competent authority shall give public notice by specific decision of the total quantity or value of goods permitted to be imported or exported pursuant this Law during a specified period of time, and of any change in such quantity or value.

Article 17 Allocation of Quotas

- (1) The competent authority shall allocate any quotas on the basis of a public invitation to submit requests for allocation of quotas.
- (2) Public invitation has to be published at least 8 days before the allocation of quotas.
- (3) The competent authority shall allocate quotas on the basis of objective and rational criteria and conditions, defined in the notice of public bid, which shall not have a protective purpose or competition distorting effect, including *inter alia*:
 - 1) the economically justified quantities of goods under quota;
 - 2) the performance of the applicant in utilizing previously allocated quotas;
 - 3) allocating quotas to persons previously not having been allocated quotas.
- (4) Decisions on quota allocation shall specify conditions to be fulfilled by the persons receiving quotas, including the time, not exceeding one year, during which the quota must be used.
- (5) The competent authority may revoke a decision on quota allocation and allocate the quota to another person, if the person being allocated a quota does not use the quota in accordance with the public bid referred to in paragraph 1 of this Article.
- (6) The number of shipments during the period of validity of the quota shall not be limited.
- (7) The importer shall be free to choose the supplying country and the exporter shall be free to choose the destination country.

Article 18
Quotas Not Transferable

A Person who has been allocated a quota may not transfer such quota to another Person, nor allow its use by other Person.

2. LICENSES

Article 19
General Rule

- (1) The Government may, in accordance with the provisions of this Law, require licenses for the Import, Export, or Transit of certain goods, which shall be based on objective and rational criteria, conditions and procedures.
- (2) The Government may prescribe licenses for administrative or statistical purposes (hereinafter referred to as: automatic license) making sure that such a license does not restrict foreign trade. The system of automatic licenses shall remain in effect for as long as the circumstances which gave rise to its introduction prevail and as long as its underlying administrative purposes cannot be achieved in a more appropriate way.

Article 20
Allowable Criteria for Import and Transit Licenses

The Government may require Import or Transit licenses only when it is necessary to:

- 1) protect human, animal or plant life or health;
- 2) protect national security;
- 3) protect environment or exhaustible natural resources;
- 4) protect public morals;
- 5) protect intellectual property rights; or
- 6) enforce any special rules related to gold and silver.

Article 21
Criteria for Export Licenses

The Government may require Export licenses only when it is necessary to:

- 1) protect national treasures of artistic, cultural, historic or archaeological value;
- 2) protect endangered species or plants;
- 3) protect national security;
- 4) protect environment or exhaustible natural resources;
- 5) protect intellectual property rights; or
- 6) enforce any special rules for trade in gold and silver.

Article 22
Authority to Grant Licenses

- (1) The competent authority shall be the sole authority competent to decide upon applications for Import, Transit or Export licenses.
- (2) When deciding upon applications referred to paragraph 1 of this Article, the competent authority may consult other relevant state bodies if necessary.
- (3) Exceptionally to the provision of paragraph 1 of this Article:
 - 1) The State Authority competent for cultural matters shall decide upon applications for licenses for the Export of artifacts of artistic, cultural, historical and archeological value;

- 2) The State Authority competent for the protection of animal and plant health shall decide on applications for licenses for the Import of animals, plant and animal products and other goods that may carry or transmit pests, animal disease or zoonoses to plants, animals and humans; and
- 3) The State Authority competent for environmental protection shall decide on applications for licenses for the Import, Transit or Export of hazardous waste, as well and rare plant and animal species.
- 4) The State Authority competent for health protection shall decide on applications for licenses for the Import medicines, medical devices and other goods that may be used for medicinal purposes.

Article 23

Time Limits to Decide on License Applications

- (1) The period for processing applications for Import, Transit, or Export licenses shall not exceed 15 days as of the day of application if applications are considered as and when received, i.e. on a first-come first-served basis.
- (2) Such period shall not exceed 30 days if all applications are considered simultaneously, where such period shall begin to run on the day following the closing date of the announced application period.

Article 24

Conditions for Licenses

- (1) Licenses issued shall specify conditions to be fulfilled by the licensee and the rationale.
- (2) Detailed conditions for issuance of import, export or transit of certain goods shall be specified by the Government.
- (3) Licenses may be issued for one or more types of goods.
- (4) Exceptionally to the provision of paragraph 3 of this Article:
 - 1) in the case of agricultural goods and other goods that may carry a pest or disease that can cause significant harm to the health or life of plants or animals in the Republic, the license shall be issued for a single type of goods;
 - 2) in the case of artistic, cultural, historical and archeological artifacts the license shall be issued for each particular article or a single license for more articles if they constitute one consignment.

Article 25

Procedural Errors

- (1) An application for issuance of a license shall not be refused for procedural documentation errors that do not alter the basic data contained therein.
- (2) A decision to refuse issuance of a license must be provided to the applicant in writing with the rationale for such decision.

Article 26

Cancellation of Licenses

- (1) Once issued, the issuing authority may cancel a license only if:
 - 1) A decision was made to prohibit the Import or Export of goods subject to such license, in accordance with the provisions of this Law, after the license has been issued;

- 2) A license holder violates the conditions of a license;
 - 3) A license was issued in violation of this Law or other relevant legislation; or
 - 4) A decision was based on incorrect information or it has been obtained by deceit.
- (2) In cases referred to in paragraph 1, subparagraph 1 of this Article, the license shall not be cancelled for quantities of goods that have been paid for, but not delivered except in the case of urgent circumstances.
- (3) Urgent circumstances referred to in paragraph 2 of this Article include *inter alia* an outbreak of an animal or plant disease or pest in the Republic, in the case of export of susceptible agricultural goods, or, in the case of import, in the foreign country from which such goods are to be imported, that could cause an unacceptable level of health risk to the human, animal or plant population.

Article 27

Duration of Licenses

- (1) License shall be valid for the period specified in the license up to a maximum period of one year. The number of shipments during such period shall not be limited.
- (2) The competent authority shall maintain the register of issued licenses.
- (3) The competent authority shall prescribe content and the manner of keeping the registry about issued licenses.

Article 27 a)

- (1) An automatic license shall be issued immediately on receipt of a request to the extent administratively feasible, but within a maximum of 10 working days. Automatic license may also be issued in a form of a note on the copy of the application submitted, which contains a specific filing number.
- (2) An automatic license shall be issued to each and every applicant who submits the request at any time prior to placing the goods in the appropriate customs procedure accompanied with the proof of payment of a fee for issuing the license, if such fee is payable under the provisions in force.
- (3) An automatic license shall be valid for a period of one year, automatically extendable upon the request of the license holder. Number of validity extensions shall not be limited.

CHAPTER III

SPECIAL REQUIREMENTS

Article 28

Certifications

- (1) Where a contract, domestic or foreign legislation, or international agreement requires that goods being Exported or Imported should be accompanied by certain certificates or certified documents whose issue or certification is not within the purview of a specific authority, such certificates and documents shall be issued or certified by the agency designated by the Government.
- (2) The Government shall establish the manner of issuance of certificates and certification of documents referred to in paragraph 1 of this Article.

Article 29
Veterinary, Sanitary and Phytosanitary Requirements

- (1) Import, Transit and Export of animals, plants, animal and plant products, and other goods that may carry or transmit pests and disease that may endanger the health of humans and animals, may be prohibited from specific countries or territories thereof based on international recommendations and guidelines, available scientific evidence and the animal and plant health status of such countries or territories relative to that of the Republic.
- (2) Import, Transit and Export of goods shall be subject to relevant veterinary, sanitary and phytosanitary requirements prescribed for particular type of goods, in accordance with the law.

Article 30
Technical Regulations

- (1) Conformity with technical regulations applicable in the Republic may be prescribed as a condition for import of goods.
- (2) Technical regulations, within the meaning of paragraph 1 of this Article, establish mandatory criteria for placing goods into circulation for the purpose of protection of national security, health and life of humans, plants and animals, and environmental protection. Technical regulations shall apply regardless of origin of goods and may encompass characteristics, technical specifications, terminology, symbols, packaging, marking, as well as the process and method of production of goods.
- (3) Conformity with standards cannot be prescribed as a condition for import of goods, except where the standard is an integral part of the technical regulation referred to in paragraph 1 of this Article.

SECTION THREE

FOREIGN TRADE IN SERVICES

Article 31
Scope

- (1) For the purposes of this Law, foreign trade in services shall mean the supply of services:
 - 1) from the territory of the Republic into the territory of any other country, and from the territory of any other country into the territory of the Republic;
 - 2) by a domestic person to a foreign person on the territory of The Republic;
 - 3) by a domestic person through a commercial presence in the territory of any other country, or by a foreign person through commercial presence in the territory of The Republic; and
 - 4) by a domestic natural person in the territory of any other country, and by a foreign natural person in the territory of the Republic.
- (2) For the purpose of paragraph 1, subparagraph 3 of this Article "commercial presence" shall mean any type of business or professional form of organization.
- (3) Services supplied in the exercise of governmental authority shall not be considered as services within the meaning of paragraph 1 of this article.

Article 32
Most Favored Nation Treatment

Most-favored nation treatment shall be accorded to services supplied by foreign persons in the Republic as required by international agreements binding on the Republic, and otherwise as the Government may decide.

Article 33
National Treatment

National treatment shall be accorded to foreign persons supplying services in the Republic as required by international agreements binding on the Republic, and otherwise in accordance with the legislation that regulates supply of the particular service.

SECTION FOUR
SPECIAL TRADE MEASURES

Article 34
General Provision

- (1) The Government may, in accordance with the provisions of Articles 35-50 of this Law, restrict imports or exports of goods through the introduction of the following special trade measures.
 - 1) anti-dumping duties,
 - 2) countervailing duties, and
 - 3) safeguard measures.
- (2) The Government shall establish the procedure and terms of the implementation of the special trade measures referred to in paragraph 1 of this Article, taking into consideration provisions of relevant WTO agreements and EU legislation.

1. ANTI-DUMPING AND COUNTERVAILING DUTIES

Article 35
Definitions

When used in Articles 35-43, the following terms shall have the meaning specified below:

- 1) "*Anti-Dumping Duty*" shall mean a special duty imposed on importation of goods in order to offset the effects of dumping.
- 2) "*Dumping*" shall mean importation of goods into the Republic at less than their normal value, under conditions that cause or threaten to cause material injury to an industry established in the Republic or materially retards the establishment of an industry in the Republic.
- 3) "*Normal Value*" shall be (a) the comparable price for the like product when destined for consumption in the exporting country, in the ordinary course of trade; or (b) if the goods are not sold in the market of the exporting country, either (i) the highest comparable price for the like product for export to any third country with market conditions comparable to those of the Republic or (ii) the cost of production of such goods in the country of origin increased by a reasonable amount for administrative, selling and general costs and for profits.
- 4) "*Countervailing Duty*" shall mean a special duty imposed on importation of goods in order to offset the effects of any subsidy bestowed, directly or indirectly, in the country of origin or export, for production or export of such goods to the Republic.

- 5) "*Subsidy*" shall mean any direct or indirect financial or other contribution by a government of the country of origin or export or its bodies, by which a benefit is conferred to a manufacturer or exporter, except where the financial contribution in question is a non-actionable subsidy in accordance with the relevant WTO agreements.
- 6) "*Domestic Industry*" shall mean domestic producers as a whole of the like products or those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except in the case referred to in Article 37, paragraph 3 of this Law.
- 7) "*Like Product*" shall mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

Article 36 Criteria for Application

- (1) The Government may levy an anti-dumping or countervailing duty only where it has been established on the basis of investigations conducted pursuant to the provisions of this Law that:
 - 1) there has been a significant increase in dumped or subsidized imports compared to the level of domestic production or consumption; and
 - 2) there has been significant price undercutting by the dumped or subsidized imports compared with the price of the like domestic product or the prices of such imported products have depressed to a significant degree the price of the like product or have prevented that price from increasing as it would otherwise have done; and
 - 3) as a result, Material Injury is caused to the domestic industry or there is a threat of such injury to the domestic industry.
- (2) Countervailing or anti-dumping duties shall not be levied if investigations show that the main factors causing injury to the domestic industry are factors other than subsidized or dumped imports.
- (3) The Anti-Dumping Duty shall not exceed the lesser of the amount necessary to remove the injury to the domestic industry or the amount of the full margin of dumping, i.e. the difference between the Normal Value of goods and the price for such goods when intended for exports to the Republic.
- (4) The Countervailing Duty shall not exceed the lesser of the amount necessary to remove the injury to the domestic industry or the full amount of subsidy.

Article 37 Investigating Procedure

- (1) The competent authority shall conduct an investigation on the basis of a written application made by, or on behalf of the domestic industry.
- (2) The application shall be considered to have been made by or on behalf of the domestic industry if it is submitted by:
 - 1) domestic producers whose total output accounts for more than 25% of the total domestic production of the like product;
 - 2) total collective output of producers referred to in item 1 of this paragraph constitutes more than 50 per cent of the total production of the like product produced by that

portion of the domestic producers making the application, expressing either support for or opposition to the application

- (3) Producers related to importers or exporters of the subsidized or dumped products or producers who import such products themselves, must not be treated as a part of a domestic industry.
- (4) The competent authority shall examine the application referred to in paragraph 1 of this Article and determine whether an investigation should be initiated.
- (5) Notwithstanding provisions of paragraph 1 of this Article if there is sufficient evidence on dumping or subsidy, material injury and a causal link, the competent authority may initiate an investigation ex officio.
- (6) The competent authority shall not provide information on any request submitted to initiate an investigation. The competent authority shall notify the decision to initiate an investigation and any subsequent phases in the procedure.
- (7) The investigation shall be concluded within one year after its initiation.

Article 38 Application

The application for initiation of an investigation shall be accompanied by all necessary evidence, including *inter alia*:

- 1) description of the product;
- 2) information regarding the applicants' share in total volume of the domestic production of the product referred to in item 1 of this Article;
- 3) the names of the exporting countries, each known exporter or foreign producer, and a list of the importers of the product referred to in item 1 of this Article; and
- 4) information on the existence of dumping, and/or subsidization, injury to domestic production caused by the dumped or subsidized imports and causal link between dumped or subsidized imports and the injury.

Article 39 Interested Parties

- (1) Interested parties, including industrial users of a product subject to investigation and representative consumer organizations, may participate in the investigation and defend their interests, and shall have the right:
 - 1) to meet those parties with adverse interests;
 - 2) to present their views orally;
 - 3) to have at their disposal any relevant non-confidential information.
- (2) The competent authority shall, before a final determination on dumping and/or subsidizing is made, inform all interested parties of the essential facts under consideration, which form the basis for initiation of investigation procedure whether to apply definitive measures and invite their opinions within the period of 30 days, and subsequent to its expiration, shall make a decision.

**Article 40
Decision**

The Government shall, where the existence of dumping or subsidizing was confirmed,, decide whether anti-dumping or countervailing duties should be levied.

**Article 41
Provisional Measures**

- (1) The Government may apply provisional measures after the expiry of 60 days from the day of initiation of the investigation if it was determined that:
 - 1) both the existence of dumping and/or subsidizing and of injury to the domestic industry are probable;
 - 2) delay would cause damage which it would be difficult to repair. and
 - 3) interested parties have been given an opportunity to submit data necessary for protection of their interests.
- (2) Provisional measures referred to in paragraph 1 of this Article shall be applied if:
 - 1) the existence of dumping or subsidy and the material injury for the domestic industry has been determined;
 - 2) the delay would cause damage which it would be difficult to repair; and
 - 3) parties to the procedure and other interested parties have been given an opportunity to submit data necessary for protection of their interests.
- (3) Any Decision on application of provisional measures shall be published in the Official Gazette of the Republic of Montenegro.
- (4) The application of provisional measures shall not exceed six months in the case of antidumping duties, and four months in the case of countervailing duties.

**Article 42
Collection and Reimbursement of Duty**

- (1) If the definitive amount of anti-dumping or countervailing duty is higher than the provisional duty paid or the amount estimated for the purpose of the security, the difference shall not be collected.
- (2) If upon completion of investigation proceedings dumping or subsidizing is not found to exist or the definitive duty is lower than the provisional duty paid or the amount of the security, the difference shall be reimbursed without delay.

**Article 43
Duration**

- (1) An anti-dumping or countervailing duty shall remain in force for as long as necessary to remedy an injury, but not exceeding 4 years from its imposition.
- (2) During the period referred to in paragraph 1 of this Article, the competent authority shall review the need for the continued imposition of the duty in accordance with the provisions on investigation procedure of this Law.
- (3) When the review referred to in paragraph 2 of this Article indicates that because of the termination of antidumping or countervailing duty, dumping, subsidy or the causal injury to

the domestic industry would be unlikely to continue or recur, the Government shall abolish the antidumping or countervailing duty, as the case may be.

2. SAFEGUARD MEASURES

Article 44 Criteria for Application

- (1) The Government may apply measures in order to remedy the injury and distortions to domestic industry caused by increased imports (hereinafter referred to as: Safeguard Measures) if under the provisions of Articles 45-51 it has been determined that imports of a particular product within a period of time are being imported in such increased quantities, either absolutely or relative to domestic production under conditions as to causes or threaten to cause serious injury to the domestic industry of same or like product.
- (2) "Domestic industry" referred to in paragraph 1 of this Article shall be the producers of the identical, like or directly competitive products whose collective output constitutes major proportion of the total domestic production of such products in the Republic.
- (3) "Serious Injury" referred to in paragraph 1, subparagraph 2 of this Article shall mean a significant overall impairment in the position of a domestic industry.
- (4) Safeguard measures shall be applied to importation of all products referred to in paragraph 1 of this Article irrespective of their country of origin or the country of exportation.

Article 45 Decision

- (1) A decision to apply safeguard measures shall be based on the results of the investigation initiated and conducted *ex officio* by the competent authority.
- (2) The decision on initiation of an investigation shall be published in the Official Gazette of the Republic of Montenegro.

Article 46 Form

- (1) Safeguard measures may take the form of quantitative restriction or tariff increase.
- (2) If a quantitative restriction is used as a safeguard measure, it shall not reduce the quantity of imports below the average level of imports in three representative years preceding such imports.
- (3) Safeguard measure shall apply only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment of the domestic industry.

Article 47 Duration

- (1) Safeguard measure shall remain in force for as long as necessary to remedy an injury, but not exceeding 4 years from its imposition.
- (2) Exceptionally to the provisions of paragraph 1 of this Article the period of application may be extended provided that the Government has determined, in conformity with the procedures set out in this Chapter, that the safeguard measure continues to be necessary and that there is evidence that the industry is adjusting.
- (3) Safeguard measure that was extended in accordance with provisions of paragraph 2 of this Article shall not be more restrictive than it was before the extension.

- (4) The total period of application of a safeguard measure shall not exceed eight years.

Article 48
Liberalization

- (1) Where the duration of a safeguard measure is more than one year, the Government shall progressively liberalize the measure.
- (2) Where the duration of a safeguard measure exceeds three years, the Government shall review the need for application of such measure not later than the mid-term of the period of application of measure.

Article 49
Application of the Safeguard Measure

- (1) A safeguard measure shall not be applied to the importation of a product that has been previously subject to such measure, before the expiry of a period of time equal to the period of application of such previously applied measure. In any event, such period may not be shorter than two years.
- (2) Exceptionally to the provisions of the paragraph 1 of this Article, the Government may re-apply safeguard measure against the importation of a product, with a duration of 180 days or less, after one year has elapsed if such safeguard measure has not been applied to the same product more than twice in the preceding five-year period.

Article 50
Provisional Safeguard Measures

- (1) The Government may introduce a provisional safeguard measure, for a period not exceeding 200 days, in the form of tariff increase, if the evidence clearly shows that:
- 1) increased imports have caused or are threatening to cause serious injury to the domestic industry, and
 - 2) delay in introducing safeguard measures would cause injury difficult to repair.
- (2) Any amounts collected pursuant to paragraph 1 of this Article shall be promptly refunded to the importers concerned if the subsequent investigation determines that increased imports have not caused or threatened to cause serious injury to a domestic industry.
- (3) The duration of any provisional safeguard measure shall be calculated in the total duration of the measures referred to in Article 47.

SECTION FIVE

SUPERVISION

Article 51
Supervision of Enforcement

Enforcement of this Law and regulations enacted passed on this Law within competencies established by this Law shall be supervised by the State Authority competent for foreign trade, the State Authority competent for cultural affairs, the State Authority competent for the protection of health of plants and animals, the State Authority competent for environmental protection and the, State Authority competent for human health protection.

SECTION SIX

FINAL PROVISIONS

Article 52

All rights related to foreign trade activities granted by individual legal acts or administrative decisions, which were not exercised entirely by the day this law enters into effect, may be exercised within the time limits set by such acts or decisions.

Article 53

Procedures related to foreign trade that have been initiated before the day this Law comes into effect shall be completed pursuant to the provisions in effect on the day this Law came into effect.

Article 54

All offence and commercial offence proceedings that have been initiated for offences and commercial offences, based on the offences prescribed by the provisions of the Law on Foreign Trade ("FRY Official Gazette", No. 46/92, 49/92, 16/93, 24/94, 28/96, 29/97) shall be completed pursuant to the provisions in effect on the day this Law came into effect.

Article 55

The regulations necessary for application of this Law shall be passed not later than six months after the day this Law comes into effect.

Article 56

On the day this Law comes into effect, Decree on Foreign Trade ("RM Official Gazette" No. 33/00, 44/00), the Law on Foreign Trade Transactions ("FRY Official Gazette" No. 46/92, 49/92, 16/93, 24/94, 28/96, 29/97) applied in accordance with the Decree on Foreign Trade, and any provisions enacted based on that Law or Decree shall cease to be enforced.

Article 57

This Law shall come into force on the eighth day from the day of its publishing in the "Official Gazette of the Republic of The Republic of Montenegro", and shall be effective immediately.

UNOFFICIAL TRANSLATION

**DECREE FOR THE IMPLEMENTATION OF
LAW ON FOREIGN TRADE**

RM Official Gazette, No. 52/04, 44/07

PART ONE

GENERAL PROVISIONS

Subject-matter of the Regulation

Article 1

This Regulation shall govern conditions and procedures for issuance of import licenses, export licenses, and licenses for transit of goods and application of protective measures.

Definitions

Article 2

For the purposes of this Regulation, the following terms shall have the meaning specified below:

"License" is a document being a prior condition for importation or exportation, and/or transit of goods which is issued in the administrative proceedings upon an application of an interested person which fulfills the conditions prescribed by the Foreign Trade Law (RM Official Gazette, No. 28/04) [hereinafter referred as: the Law] and this Regulation;

"Like product" is a product which is identical to the product under consideration, or, that has characteristics closely resembling those of the product under consideration;

"Export price" is the price actually paid, or payable for a product when sold for export from the exporting country to the Republic of Montenegro [hereinafter referred to as: the Republic];

"Industrial research" is a research or investigation aimed at discovery of new knowledge, with the objective that such knowledge may be useful in developing new products, processes or services, or in bringing about a significant improvement to existing products, processes or services.

"Pre-competitive development activity" is the translation of industrial research findings into a plan, blueprint or design for new, modified or improved products, processes or services whether intended for sale or use or not, including the creation of the first prototype. It may further include the conceptual formulation and design of products, processes or services alternatives and initial demonstration or pilot projects, provided that these same projects cannot be converted or used for industrial application or commercial exploitation. It does not include routine or periodic alterations to existing products, production lines, manufacturing processes, services, and other on-going operations even though those alterations may represent improvements.

"General framework of regional development" means that regional subsidy programmes are part of an internally consistent and generally applicable regional development policy and that regional development subsidies are not granted in isolated geographical points having no, or virtually no, influence on the development of a region.

"Usual price" is a price which corresponds to prevailing market conditions in the country where the goods or services are obtained, i.e. country in which the goods are bought, including the price, quality, availability, market access, transportation and other circumstances of purchase or sale.

"Interested person" is an exporter, foreign producer, or importer of the products which is the subject-matter of investigation, or commercial or business association which represents the majority of producers, exporters or importers of such product; every domestic producer of the like product or commercial or business association which represents majority of producers of the like product in the Republic, and Government or other state body of the exporting country or state of the origin of the product which is the subject-matter of investigation;

"Confidential information" is every information whose communication to the public would represent significant advantage for competitor or could cause damage to person who has produces such information or for person from whom the information is gathered, as well as any information which parties to the investigating procedure provide as confidential, and

"Increased imports" is the real increase of imports (increase in absolute terms) or increase of the market share at the market which is decreasing, even where the quantity of imports is not increasing (increase in relative terms).

PART TWO

CONDITIONS AND PROCEDURES FOR ISSUANCE OF A LICENSE

Control List

Article 3

- (1) Licenses for export and import of goods shall be issued for goods which are under licensing regime for import and export under the Decision on control list for export and import.
- (2) Provisions on licensing procedures of import and/or export of goods of this Regulation shall apply mutatis mutandis to issuance of licenses for transit of goods which are under the licensing regime.

Competent authority for issuance of a license

Article 4

An application for issuance of export, import or transit license shall be submitted in written form to the administrative body competent for foreign trade affairs, and/or other competent administrative bodies in accordance with Article 22, paragraph 3 of the Law [hereinafter referred to as: the competent authority].

Content of application for issuance of a license

Article 5

- (1) Application for issuance of a license for export, import and transit of goods shall contain data on the applicant and goods, including the following:
 1. name and type of goods;
 2. tariff code, and/or tariff codes of goods;
 3. quantity of goods in measurement units;
 4. value of goods expressed in euros (total and singular);
 5. nomination of the exporting country;
 6. nomination of the country of origin of goods;
 7. information on person being an exporter and/or importer of goods (name, firm, address, person identification number and/or registration number, work permit in accordance with special regulation of competent ministries and phone number) and
 8. proof on title on art, cultural, historical or archeological treasures, as well as proof that the author and/or holder of copyright is informed of the destination of the exported artifact.

- (2) Evaluation of value of goods which represent art, cultural, historical or archeological treasures shall be conducted by special expert commission which shall be established by the ministry of culture.
- (3) The applicant shall pay a fee for evaluation of value of goods representing art, cultural, historical or archeological treasures.
- (4) The amount of fees to be paid for evaluation of value of goods representing art, cultural, historical or archeological treasures shall be determined by the ministry of culture.
- (5) The application for issuance of a license for export, import and transit of goods may contain other data and facts that applicant considers important for making a decision.
- (6) An application for issuance of a license shall be accompanied with the proof that administrative fee has been paid.

Additional data

Article 6

- (1) The competent authority may request the applicant to supply additional data or documents, depending on the type of goods and conditions which such goods need to fulfill.
- (2) If the applicant has been issued a license for import of goods in question in the previous term, the competent authority may request that proof on the usage of previously issued license and/or license be submitted.

Form of issuance of a license

Article 7

- (1) The license shall be issued by the competent authority.
- (2) The competent authority shall decide on the application for issuance of a license in a form of decision.

PART THREE

PROCEDURES FOR APPLICATION OF PROTECTIVE MEASURES

CHAPTER ONE

ANTIDUMPING AND COUNTERVAILING MEASURES

Determination of dumping

Article 8

Determination of dumping shall be conducted if the goods are imported in the Republic at the price lower than its normal value.

Normal value of goods

Article 9

- (1) Normal value of goods shall mean the usual price which in the free circulation is calculated for the like product at the market of the exporting country, or other value determined in accordance with relevant WTO agreement and EU regulation,

- (2) Normal value of goods shall be determined by application of the usual price and minimum level of sale at the market of the exporting country.
- (3) When the product which is a subject-matter of investigation in accordance with this Regulation, is not sold at the market of the exporting country in the free circulation, or when such sales does not allow objective comparison due to market size or low sales, normal value shall be determined based on representative sale price of the like product intended for export to any third country, or value of the goods which is determined base on the production and sale costs, administrative and other expanses and profits.

Minimum level of sale

Article 10

Minimum level of sale referred to in Article 9 of this Regulation, shall be deemed the amount of sales of the like product destined for consumption in the domestic market of the exporting country if such sales constitute 5 per cent or more of the sales of the product under consideration for determination of normal value of goods in the Republic.

Exceptionally, lower ratio of sale in the Republic may be used for determination of the normal value if the evidence demonstrate that such level is nonetheless of sufficient magnitude to provide for a proper comparison for the purposes of normal value determination.

Determination of normal value

Article 11

- (1) Sales of the like product in the domestic market of the exporting country, or export sales to a third country, at prices below normal value, may be disregarded in determining normal value, only if it is determined that such sales are made during the period of time longer than six months.
- (2) Expenses referred to in Article 9 of this Regulation shall be calculated, as a rule, based on available accounting records of the exporter, and/or producer.
- (3) When calculating expenses, all available data on the structure of expanses shall be used, including data on the structure of expanses in the previous period of time, which are supplied by exporter and/or producer.
- (4) When the amount of expenses is not supplied by the exporter and/or producer, they shall be determined on the basis of:
 - 1) data on the amount of expanses usually incurred by the seller or exporter in production or sale of the like product in the market of the exporting country or country of origin, or on the basis of the weighted average of the amounts incurred and realized by other exporters or producers subject to investigation in accordance with this Regulation; or
 - 2) in any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same category in the domestic market of the country of origin.

Determination of the Export price

Article 12

- (1) Export price which importer pays shall be determined on the basis of the price at which the imported goods are first resold in the condition as imported.

- (2) Export price shall include normal value of the goods, transportation and sale costs, including duties and taxes incurred during importation.
- (3) In cases where there is no export price or where it appears to the Competent Authority that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of:
 - 1) The price at which the imported goods are first resold in the condition as imported to an independent buyer, or
 - 2) On any other reasonable basis, if the products are not resold to an independent buyer or are not resold in the condition as imported, taking into account costs of import, including duties and taxes incurred between importation and resale at the market of the Republic, as well as profits accrued by the importer.

Determination of the margin of dumping

Article 13

- (1) Export price and normal value shall be compared for the purposes of determination of dumping, taking into account the same level of trade and with respect to sales made at as nearly as possible the same time.
- (2) Comparison of export price and normal value shall be conducted in accordance with basic characteristics of the export procedure in question, and especially taking into account the following:
 - 1) Physical characteristics;
 - 2) Import charges and indirect taxes;
 - 3) Discount, rebates and quantities;
 - 4) Level of trade;
 - 5) Transport, insurance, handling, loading and ancillary costs;
 - 6) Packing costs;
 - 7) The amount of credit granted for the sale, provided that it is a factor taken into account in the determination of the sale price;
 - 8) After-sales costs (guarantees, technical assistance and maintenance);
 - 9) Commissions paid in respect of the sales;
 - 10) Currency conversions (using the rate of exchange on the date of sale).
- (3) Comparison of export price and normal value for the purposes of determining margin of dumping during the investigation procedure shall be established on the basis of a comparison of a weighted average normal value with a weighted average of export prices of all comparable export transactions.
- (4) In the case where products are not imported directly from the country of origin but are exported to the Republic from an intermediate country, the price at which the products are sold from the country of export to the Republic shall be compared with the comparable price in the country of export. The comparison can be made with the price in the country of origin, in cases where
 - 1) The products are merely transshipped through the country of export, or
 - 2) Such products are not produced in the country of export, or
 - 3) There is no comparable price for them in the country of export.

Determination of the effects of subsidies

Determination of subsidies

Article 14

Existence of the subsidies import shall be investigated and determined by the competent authority.

Subsidy shall be deemed to exist when there is any **financial or other contribution** by a government of the country of origin or export or its bodies, and especially where:

- 1) A state body directly transfers funds (e.g. grants, loans, equity infusion) or accepts liabilities;
- 2) A state body does not collect or discharges debt due on the basis of public revenues;
- 3) A state body purchases goods, supplies goods or services, on non-market criteria;
- 4) A state body makes payments to a funding mechanism or entrusts or directs other persons to carry out one or more of the type of functions referred to in items 1, 2 and 3 of this Article which would normally be vested in that state body.

Specific subsidies

Article 15

- (1) Countervailing measures for offsetting the effects of subsidies with respect to imported goods in questions may be applied only with respect to specific subsidies, i.e. subsidies intended to a specific enterprise or industry or group of enterprises (hereinafter referred to: as "certain enterprises").
- (2) Subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex 1 to the WTO Agreement on Subsidies and Countervailing Measures, and the subsidies, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings as well as subsidies contingent upon the use of domestic over imported goods, shall always be considered specific.
- (3) Competent authority, when determining specific subsidies, may on its own judgment investigate other factors, and especially:
 - a) use of a subsidy program by a limited number of certain enterprises;
 - b) predominant use of a subsidy by certain enterprises;
 - c) the length of time during which the subsidy program has been in operation; and
 - d) the extent of diversification of economic activities within the jurisdiction of the authority granting subsidies, as well as the manner in which discretion has been exercised by the granting authority.

Non-actionable subsidies

Article 16

- (1) The following subsidies shall not be subject to countervailing measures:
 - 1) Assistance for research activities conducted by businesses or by higher education or research establishments on a contract basis with firms, if such assistance covers not

more than 75% of the costs of industrial research or 50% of the costs of pre-competitive development activity;

- 2) Assistance to disadvantaged regions within the territory of the country of origin and/or export, given pursuant to a general framework of regional development, and
 - 3) Assistance to promote adaptation of existing facilities to new environmental requirements imposed by law and/or regulations which result in greater constraints and financial burden on businesses.
- (2) Subsidy shall not be deemed specific if the authority competent for granting subsidies, or legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of a subsidy, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to. mean criteria or conditions which are neutral, which do not favor certain enterprises over others, and which are economic in nature (e.g. number of employees or the size of enterprise).
- (3) Determination or change of generally applicable tax rates shall not be deemed to be a specific subsidy.

Recipients of non-actionable subsidies

Article 17

The benefits conferred to the recipient of subsidy shall not be considered as specific subsidy, within the meaning of this Regulation, where:

- 1) provision of equity capital by the state body is consistent with the usual investment practice of private investors in the territory of the country of origin and/or export;
- 2) There is no difference between the amount that the firm receiving the loan pays on the government loan and the amount the firm would pay on a comparable commercial loan which the firm could actually obtain on the market. If the expenses of the loan for which the state body guarantees are lower than expenses of the commercial loan for which the state body does not guaranty, such difference shall be considered as benefit conferred to the recipient;
- 3) There is no difference between the amount of a loan for which the state body guaranties and the amount of commercial loan for which the state body does not guaranty. If the expenses of the loan for which the state body guarantees are lower than expanses of the commercial loan for which the state body does not guaranty, such difference shall be considered as benefit conferred to the recipient; and
- 4) the provision of goods or services or purchases of goods by a government is not made for less than adequate remuneration, or the purchase is made for more than adequate remuneration at the market.

Calculation of specific subsidies

Article 18

- (1) The amount of specific (actionable) subsidies shall be determined according to the amount of the benefit conferred to the recipient during the subsidizing period which is the subject matter of the investigation. Calculation shall be made, as a rule, on the basis of data for the last business year of the subsidy recipient.
- (2) If data referred to in paragraph 1 of this Article are not available, the basis for calculation may represent other available financial or relevant data, for the period not shorter than six month before initiation of investigation procedure.

- (3) The amount of subsidy shall be determined per unit of the subsidized product exported to the Republic.
- (4) The amount of subsidy may be deduced for the amount of:
 - 1) costs necessarily incurred in order to qualify for, or to obtain, the subsidy;
 - 2) export taxes, duties or other charges levied on the export of the product to the Republic specifically intended to offset the subsidy;
- (5) Where the subsidy is not granted by reference to the quantities manufactured, produced, exported or transported the amount of subsidy shall be determined by allocating the value of the subsidy, as appropriate, over the level of production, sales or exports of the products concerned during the investigation period for subsidization.

Determination and application of antidumping and countervailing measures

Examination of the impact on the industry

Article 19

The examination of the impact of the dumped and subsidized imports on the industry suffering damage from such import shall include an evaluation of all relevant economic factors having a bearing on the state of the industry, including *inter alia*:

- 1) The fact that an industry is still in the process of recovering from the effects of past subsidization or dumping;
- 2) The magnitude of margin of dumping or the amount of subsidies;
- 3) Actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity;
- 4) Factors affecting the prices on the domestic market;
- 5) Actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments.

Material injury from dumped or subsidized imports

Article 20

- (1) A determination of a threat of material injury shall be based on facts, and/or change in circumstances which is unquestionable and direct.
- (2) Existence of material injury may also be determined on the basis of the following factors:
 - 1) A significant increase of dumped or subsidized imports, especially if the imports are increased in absolute terms or in relation to production or consumption in the Republic;
 - 2) Available capacity, or expected substantial increase in capacity of the exporter indicating the likelihood of substantially increased subsidized imports to the Republic;
 - 3) Impact of dumped and/or subsidized imports to prices, especially if it has significantly impacted the level of prices in the Republic; and
 - 4) negative influence on the industry which is expressed in real and potential economic indicators such as e.g. lower level of sales, market share, productivity, profits, or in

the negative influence at the business, employment, salaries, liquidity, level of prices, inventories of products subject to investigation and similar.

Application for initiation of the investigating procedure

Article 21

- (1) The application for initiation of an investigation shall contain sufficient evidence of the existence of dumping or subsidization as well as the injury resulting thereof, and a causal link between the dumped and/or subsidized imports and the alleged injury.
 - 1) In cases of any alleged dumping the application shall also contain the information on normal value of goods, sale price of goods in the market of the country of origin or third country, export price, as well as sale price of goods at which the product is first resold to an independent buyer in the territory of the Republic.

Prior notification on initiation of investigation procedure

Article 22

- (1) After the receipt of a properly documented application and before the initiation of an investigation, the Competent Authority shall notify of the submitted application:
 - 1) In cases of alleged dumping: the government of the country of export of the concerned product;
 - 2) In cases of alleged subsidized import - the government of the country of origin and/or export which shall be invited for consultations with the aim of clarifying the situation and arriving at a mutually agreed solution.

Period of time

Article 23

- (1) When the application for initiation of procedure for investigation of dumping or subsidized imports does not contain sufficient evidence, the competent authority may, within 8 days of the receipt of application request from applicant to submit necessary evidence and set a period of time for such corrections.

Termination of the proceedings

Article 24

- (1) The competent authority shall not propose to the Government the application of anti-dumping and/or countervailing duty if in the investigation procedure it is determined that the margin of dumping or the amount of subsidy is *de minimis*, or where the volume of dumped and/or subsidized imports, actual or potential, or the injury, is negligible.
- (2) The margin of dumping shall be considered to be *de minimis* if this margin is less than 2 per cent, expressed as a percentage of the export price, whereas the amount of the subsidy shall be considered to be *de minimis* if the subsidy is less than 1 per cent *ad valorem*.

Conditions for termination and/or continuation of proceedings

Article 25

If the competent authority determines in the investigation procedure that exports of dumped products from one particular country constitute less than 3% of the total imports of the like product in the Republic, it shall not propose to the Government the application of anti-dumping

and/or countervailing duty, except where the imports from more country collectively account for more than 7% of the total import of the like product in the Republic.

Notification of initiation of the proceedings

Article 26

- (1) The notification of initiation of the proceedings for investigation of the existence of dumped or subsidized imports, shall contain:
 - 1) The name of the exporting country or countries and the product involved;
 - 2) The date of initiation of the investigation;
 - 3) Evidence on the existence of dumping or subsidy;
 - 4) A summary of the factors on which the allegation of injury is based;
 - 5) The address to which representations by interested parties should be directed; and
 - 6) The time limits allowed to interested parties for making their views known.
- (2) The notification referred to in paragraph 1 of this Article shall be published in official Gazette of the Republic of Montenegro.

Notification of interested persons

Article 27

Notification on initiation of investigation procedure under Article 26 of this Regulation shall be submitted to the known exporters and authorities of the country of export and/or origin, and to other interested parties on their request, provided the of confidentiality of information is secured.

Activities in the Investigation Procedure

Article 28

In carrying out an investigation, the Competent Authority may:

- 1) Seek evidence and information it deems to be necessary for the investigation;
- 2) Examine and verify the data supplied by the interested parties;
- 3) Where necessary, carry out investigation and inspection; and
- 4) Inspect the records kept by the importers, exporters, traders, agents, producers, trade organizations and associations.

Restrictions on Investigation Procedure

Article 29

- (1) In cases where the number of applications, exporters or importers, types of product or transactions is large, the competent authority may, taking into account the opinion of interested persons, limit the investigation to:
 - 1) A reasonable number of persons, products or transactions by using samples which are statistically valid on the basis of information available or;
 - 2) The volume of the production, sales or exports which can reasonably be investigated within the time limit available.
- (2) In cases where the examination has been limited under the provisions of paragraph 1 of this Article, an individual amount of subsidy or dumping margin shall be calculated for any exporter or producer not initially selected who submits the necessary information within the time limits provided for in this Regulation.

Examination of Accuracy of Information

Article 30

- (1) If the interested person refuses access to, or otherwise does not provide necessary information within a period determined in notification referred to in Article 27 of this Regulation, the competent authority shall conduct the investigation on the basis of the facts available.
- (2) When determining the amount of the normal value or the value of the subsidy, the competent authority may check information from other available sources, besides information referred to in paragraph 1 of this Article.

Confidential Information

Article 31

Any information received by the Competent Authority shall be used only for the purposes for which it has been requested, and shall not be disclosed without specific written permission of the party submitting it.

Notification before a final decision

Article 32

- (1) The Competent Authority shall, not later than 15 days before final determination is made on the existence of dumping and/or subsidy, inform all interested persons of the essential facts under consideration which form the basis for the decision.

Voluntary undertakings

Article 33

- (1) An investigation may be terminated without the imposition of provisional or definitive antidumping and/or countervailing duties upon acceptance of satisfactory **voluntary undertakings by interested person**, approved by the Competent Authority under which:
 - 1) In cases of dumped import the exporter concerned undertakes to raise its prices or to cease exports in question at dumped prices so that the Competent Authority is satisfied that the injurious effect of the dumping is eliminated in such manner.
 - 2) In cases of subsidized import:
 - the government of the country of export agrees to eliminate or limit the subsidy or take other measures concerning its effects; or
 - the exporter undertakes to raise its prices so that the Competent Authority is satisfied that the injurious effect of the subsidy is eliminated in such manner.
- (2) Price increases under paragraph 1 shall not exceed an amount of dumping margin or the amount of subsidies respectively, but can be less, if such lesser increases would be adequate to remove the injury.

Continuation of the investigation procedure

Article 34

Despite the acceptance of undertakings, the investigation shall be continued if required by exporters or by decision of the Competent Authority.

Imposition of antidumping and/or countervailing duty

Article 35

- (1) The decision on imposition of antidumping or countervailing duties shall specify the type and the rate of the duty applicable, tariff line and tariff code of the product, country of origin and/or country of export and duration of the application.
- (2) The decision referred to in paragraph 1 of this Article shall also specify any supplier or suppliers subject to the measure.
- (3) If a provisional duty referred to in Article 41 of the Law is applied, imposition of the antidumping and/or countervailing duty and/or proposal for determination of a definitive duty shall be made not later than 30 days before the time period for the application of the provisional duty elapses.
- (4) Anti-dumping or countervailing duties shall be imposed on an *ad valorem* basis simultaneously with the customs duties.
- (5) No product shall be subject to both anti-dumping and countervailing duties.

Notification on expiry of period of application

Article 36

Six months before the expiration of the period set out for the application of anti-dumping and/or countervailing duties, a public notice of impending expiry shall be published in the RM Official Gazette.

Determination of origin of goods

Article 37

While determining the origin of goods for the purposes of imposing antidumping and/or countervailing duties, the general non-preferential rules of origin shall apply.

CHAPTER II

SAFEGUARD MEASURES

Threat of serious injury in the case of increased imports

Article 38

"Threat of serious injury" shall mean serious injury that is clearly imminent based on the facts, that could not be avoided, and that is a consequence of increased imports.

Determination of serious injury

Article 39

- (1) Safeguard measures shall be imposed if it is determined in the investigation procedure that increased imports of a certain product have caused or are threatening to cause serious injury to a domestic industry.
- (2) In the investigation to determine whether the existence or threat of serious injury the competent authority shall evaluate all relevant factors, in particular:

- 1) the rate and amount of the increase in imports of the product concerned in absolute and relative quantities and values with respect to domestic production and consumption
 - 2) prices of the imported goods, especially if there has been a significant decrease of the price compared to the price of competitive product
 - 3) impact to the domestic production expressed in the following:
 - change of share of the domestic market taken by increased imports
 - changes in the level of sales, production, productivity, capacity utilization, profits and losses, and impact of the increased imports on employment in specific production activity;
 - the impact of import to the supply of the domestic market and the increased level of dependence from imports;
 - reduction of price of the same goods, equally competitive, or prevention of raise of prices that would normally occur; and
 - increase of supplies of the imported goods at the domestic market.
- (3) Factors referred to in paragraph 1 of this Regulation must demonstrate the existence of the direct causal link between increased imports and the effect to domestic production.

Content of a decision to initiate proceedings

Article 40

Decision to initiate proceedings for determination of serious injury shall contain:

1. date of initiation of the procedure
2. data on goods under investigation
3. designation of goods, as well as the list of exporting countries subject to investigation.

Report on the state of domestic industry

Article 41

- (1) Based on the facts gathered and evidence obtained the competent authority shall prepare a report on the state of domestic industry, especially with respect whether the increased imports are causing serious injury or there is a threat thereof and proposal for possible imposition of safeguard measure,
- (2) The report referred to in paragraph 1 of this Article the competent authority shall submit to the government.
- (3) Provisions of Article 31 of this Regulation shall apply *mutatis mutandis* to the issue of confidentiality of information gathered in the investigation procedure.

Termination of the proceedings

Article 42

If on the basis of the conducted investigation procedure it is determined that there is no serious injury or threat thereof, the competent authority shall ex officio publish the decision on termination of the proceedings in the RM Official Gazette.

PART FOUR

FINAL PROVISION

Entering into force

Article 43

This Regulation shall come into force on the eighth day from the day of its publishing in the "Official Gazette of the Republic of Montenegro".
