

FOREIGN TRADE LAW

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

Confidential Information

Article 8

- (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.