

15 Annex - Energy

62. FOREIGN TRADE LAW

Pursuant to Article 88 item 2 of the Constitution of the Republic of Montenegro I hereby issue the

DECREE PROMULGATING THE FOREIGN TRADE LAW
(Official Gazette of Montenegro 28/04 of 29 April 2004, 37/07 of 19 June 2007)

I hereby promulgate the Foreign Trade Law passed by the Parliament of the Republic of Montenegro at the second sitting of the first ordinary session in 2004 on 21 October 2004.

No 01-622/2

Podgorica, 26 April 2004

The President of the Republic of Montenegro

Filip Vujanović

FOREIGN TRADE LAW
PART ONE
GENERAL PROVISIONS

Subject matter

Article 1

This Law regulates foreign trade in goods and services.

Definitions

Article 2

For the purpose of this Law, the following terms mean as specified below:

- 1) foreign trade is any form of trade, economic activity, 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
 - in relation to goods means that imported goods are subject to the same measures as the like domestic goods, i.e. imported goods are subject to the treatment that is not less favorable than the treatment of domestic goods;
 - in relation to services means that measures affecting services that originate from a foreign country or territory, or suppliers of such services may not be less favourable than the measures applied to providing of like services by domestic persons;
- 3) most-favored-nation treatment
 - in relation to goods implies that goods imported from one country or territory enjoy the treatment that is not less favorable than the treatment of like goods imported from any other country or territory;
 - in relation to services implies the treatment of services originating from one country or territory, and suppliers of such services that is not less favourable than that accorded to like services and service suppliers of any other country;
- 4) Person means any natural or legal person;
- 5) domestic person means:

- a. any natural person with permanent or temporary residence in the territory of the Republic of Montenegro (hereinafter referred to as: the Republic);
 - b. any legal person headquartered in the territory of the Republic of Montenegro;
 - c. any division 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
 - keeps separate business books at such address;
- 6) foreign person means:
- a. any natural person with residence outside of the Republic;
 - b. any legal person headquartered outside of the Republic;
- 7) goods means any movable tangible articles or assets, but not securities, commercial papers or cash;
- 8) export of goods means 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 means the transport 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 means the transport 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 means any limitation, quantitative restriction, special charge (other than tariff, internal tax, or administrative fee for a service actually rendered), condition, license, approval or any other measure imposed by any state authority having a restrictive effect on foreign trade, with the exception of technical regulations;
- 12) quantitative restriction means the highest total volume or 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 means a share in the total volume or quantity of exports or imports allocated to a certain person or group of persons (exporters or importers);
- 14) license means an approval granted in the administrative procedure, upon an application of an interested person, that is a condition precedent for import or export;
- 15) state authority means any executive authority, public institution, ministry, agency, or any other governmental authority that exercises legislative, executive or judicial powers.

General principles

Article 3

- (1) Foreign trade is free and may be restricted only in accordance with the conditions prescribed by this Law.
- (2) Any person 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 of an administrative authority restricting 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 provide disguised protection to domestic products.

Authority competent to establish restrictive measures

Article 4

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.

Criteria to establish restrictive measures

Article 5

- (1) The Government shall establish a restrictive measure only:
 - 1) when specifically prescribed by this Law;
 - 2) when such a restrictive measure is necessary to achieve a purpose specified by this Law;
 - 3) when the type and scope of such restrictive measures are limited to the minimum necessary to achieve such purpose.
- (2) The restrictive measure referred to in paragraph 1 of this Article shall 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.

Transparency

Article 6

No restrictive measures may enter into force until at least 30 days have elapsed since its publication in the Official Gazette of the Republic of Montenegro, unless otherwise specifically provided for in this Law.

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.

- (1) 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 in accordance with the provisions of this Law.

Rights of appeal

Article 7

- (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) The competent authority referred to in Article 6 paragraph 2 of this Law makes decisions in administrative procedures pursuant this Law.
- (3) An appeal may be lodged against the decision referred to in paragraph 2 of this Article.
- (4) Administrative dispute may be initiated against the decision pronounced in respect of the appeal referred to in paragraph 3 of this Article.

Confidential information

Article 8

- (1) Any information which is confidential by its nature, or which is provided on a confidential basis by parties to any procedure administered pursuant to this Law shall, if good cause is shown, be treated as such.
- (2) The information confidential by its nature referred to in paragraph 1 of this Article shall include information whose disclosure would be of significant advantage to a competitor or would have a significantly adverse effect upon the party to the procedure supplying the information or upon

the party from whom the information has been acquired.

- (3) The authority administering the proceedings or its officials shall not disclose any information received pursuant to this Law or any of its implementing regulations for which confidential treatment has been requested by its supplier, without an explicit approval by the supplier.

Administrative fees

Article 9

- (1) No administrative fees may be imposed in connection with imports or exports except if they are required to compensate for services actually rendered. Any fees charged shall be limited in amount to the approximate cost of services rendered and shall not represent indirect protection to domestic products or a means for collecting fiscal revenues.
- (2) The Government shall establish the amount of fees to be charged 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 the revenue of the budget of the Republic.

Dispute resolution

Article 10

- (1) Participants in foreign trade may agree on the law applicable to their transactions and choice of competent court or arbitral tribunal.
- (2) Where the applicable law or the forum for dispute resolution has not been agreed, i.e. the jurisdiction for dispute resolution, 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 with the Government of Montenegro or a state authority as one party to the dispute, a party that is a foreign person may submit such dispute for settlement before the Additional Facility of the International Centre for the Settlement of Investment Disputes (ICSID), in accordance with the rules of such Center.
- (4) Until the Convention of International Centre for Settlement of Investment Disputes (ICSID) is acceded, domestic and foreign arbitrations may apply additional rules of ICSID Convention applicable to countries that have not signed the ICSID Convention.

PART TWO

FOREIGN TRADE IN GOODS

TITLE I

IMPORT AND EXPORT

Right to import and export goods

Article 11

Subject to the conditions prescribed by 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, i.e. objects intended for personal, family or own needs of legal entities;
- 3) goods necessary to perform professional activities (entrepreneurs, farmers and natural persons conducting professional activities or providing services).

National treatment

Article 12

- (1) Foreign persons importing or exporting 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.

Most favored nation treatment

Article 13

- (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.

Most favored nation treatment referred to in paragraph 1 of this Article includes neither advantages accorded to an adjacent country or territory in order to facilitate border 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.

Prohibited imports

Article 14

- (1) The goods whose trade is banned pursuant to the legislation of the Republic may not be the subject of import, temporary import or transit in the territory of the Republic.
- (2) The Government may ban imports, temporary imports or transit of goods if trade of such goods is banned under the legislation of the country of export, origin, or destination of such goods.

TITLE II

QUANTITATIVE RESTRICTIONS AND LICENSING

1. QUANTITATIVE RESTRICTIONS

Requirements for imposition

Article 15

- (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;
 - 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 against excessive imports pursuant to the provisions of Articles 44-50 of this Law.

Notice of quantitative restrictions

Article 16

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

Allocation of quotas

Article 17

- (1) The competent authority shall allocate any export or import quotas on the basis of a public invitation to submit applications for allocation of quotas. The public invitation must be published at least 8 days before the allocation of quotas.
- (2) The competent authority shall allocate quotas on the basis of objective and rational criteria and conditions, defined in the public invitation, which shall not have a protective purpose or competition distorting effect, including but not being limited to:

- 1) the economically justified quantities of goods under quota;
 - 2) the performance of the applicant in utilizing previously allocated quotas;
 - 3) possibility for allocating quotas to persons previously not having been allocated quotas.
- (3) Decisions on quota allocation shall specify conditions under which the quota has been allocated, including the time during which the quota must be used but which shall not exceed one year.
- (4) If the person being allocated a quota fails to use the quota in accordance with the conditions referred to in paragraph 3 of this Article, the competent authority may revoke a decision on quota allocation and allocate the quota to another person, pursuant to the public invitation referred to in paragraph 1 of this Article.
- (5) The number of shipments during the period of validity of the quota shall not be limited.
- (6) The importer shall be free to choose the supplying country and the exporter shall be free to choose the destination country.

Quotas not transferable

Article 18

A person who has been allocated a quota may not transfer such quota to another person, or allow another person to use such quota.

2. LICENSING

General rule

Article 19

- (1) The Government may, pursuant to this Law, prescribe licenses required for 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) taking into account not to restrict foreign trade thereby. 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.

Allowable criteria for import and transit licenses

Article 20

The Government may prescribe 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 trade in gold and silver.

Criteria for export licenses

Article 21

The Government may prescribe export licenses only when it is necessary to:

- 1) protect national treasures of artistic, cultural, historic or archaeological value;
- 2) protect endangered wildlife species;

- 3) protect national security;
- 4) protect environment or exhaustible natural resources;
- 5) protect intellectual property rights;
- 6) enforce any special rules for trade in gold and silver.

Authority to grant licenses

Article 22

- (1) The competent authority shall make decisions upon applications for import, transit or export licenses.
- (2) When deciding upon the applications referred to in paragraph 1 of this Article, the opinions of other relevant state authorities may be obtained if necessary.
- (3) Notwithstanding 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 plants and animals, plant and animal products and other goods that may carry or transmit pests, animal disease or zoonoses that may threaten the health of animals or humans;
 - 3) the state authority competent for environmental protection shall decide on applications for licenses for the import, transit or export of hazardous waste, and rare plant and animal species.
 - 4) the state authority competent for health protection shall decide on applications for licenses for the import of medications, medical devices and other goods used for medicinal purposes.

Time limits to decide on license applications

Article 23

- (1) The period for processing applications for import, transit or export licenses may not exceed 15 days from 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.

Conditions for licenses

Article 24

- (1) Licenses shall specify conditions to be fulfilled by the licensee and the rationale.
- (2) Detailed conditions for issuance of licenses for import, export or transit of certain goods shall be specified by the Government.
- (3) Licenses may be issued for one or several types of goods.
- (4) Notwithstanding 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 several articles if they constitute one consignment.

Procedural errors

Article 25

- (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.

Revocation of licenses

Article 26

- (1) The issuing authority may revoke an issued license if:
 - 1) A decision has been made to prohibit the import or export of goods subject to such license, pursuant to this Law, upon the issuance of the license;
 - 2) A license holder violates the conditions of the license;
 - 3) A license has been issued in violation of this Law or other relevant legislation;
 - 4) A decision has been based on incorrect information or deceit.
- (2) In the cases referred to in paragraph 1 item 1 of this Article, the license shall not be revoked for contracted quantities of goods that have already been paid for, but not yet delivered, except in the case of an outbreak of an animal or plant disease or pest in the Republic in the case of export of agricultural goods, or, in the case of import of agricultural goods 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.

License validity period

Article 27

- (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 keep the register on issued licenses.
- (3) The competent authority shall prescribe the content and the manner of keeping the register of issued licenses.

Article 27 a)

- (1) An automatic license shall be issued immediately upon the receipt of an application, to the extent administratively feasible, but no later than 10 working days from the application date. 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 application 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 the period of one year, and shall be automatically extended upon the request of the license holder for another one-year period. Number of validity extensions shall not be limited.

TITLE III

SPECIAL REQUIREMENTS

Certificates

Article 28

- (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 body 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.

Veterinary, sanitary and phytosanitary requirements

Article 29

- (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, pursuant to the law.

Technical regulations

Article 30

- (1) Compliance 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 encompass characteristics, technical specifications, terminology, symbols, packaging, marking, as well as the process and method of production of goods.
- (3) Compliance with standards may not 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.

PART THREE

FOREIGN TRADE IN SERVICES

Subject matter

Article 31

- (1) For the purposes of this Law, foreign trade in services means the supply of services:
 - 1) from the territory of the Republic into the territory of any other country, or 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;
 - 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 item 3 of this Article "commercial presence" means 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.

Most favored nation treatment

Article 32

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.

National treatment

Article 33

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.

TITLE FOUR

SAFEGUARD MEASURES

General provision

Article 34

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

1. ANTI-DUMPING AND COUNTERVAILING DUTIES

Definitions

Article 35

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

- 1) dumping means import of goods into the Republic at less than their normal value, under conditions that cause or threaten to cause material injury to the industry being established or materially retards its establishment;
- 2) anti-dumping duty means a special duty imposed on import of goods in order to offset the effects of dumping;
- 3) normal value means the price of identical goods in the market of the exporting country, in the ordinary course of trade, created under the free competition conditions, or if the goods are not sold in the market of the exporting country, the normal value shall be determined based on the price of such goods to be exported to any third country with market conditions comparable to those of the Republic or based on the cost of production of such goods in the country of origin increased by a reasonable amount for typical costs and profits;
- 4) countervailing duty means a special duty imposed on import 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 means 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 means domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major portion 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 means 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 the consideration.

Criteria for application

Article 36

- (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;
 - 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 which would have otherwise occurred;
 - 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 may not be levied if investigations find that the main factors causing injury to the domestic industry are factors other than subsidized or dumped imports.
- (3) The anti-dumping duty shall be determined in the amount sufficient to remove the injury and may not exceed the amount of the margin of dumping, i.e. the difference between the normal value and the price at which such goods are exported to the Republic.
- (4) The countervailing duty shall be determined in the amount sufficient for removal of the injury and may not exceed the full amount of subsidy.

Investigating procedure

Article 37

- (1) The competent authority shall conduct an investigation of dumping or subsidized import on the basis of a written application made by, or on behalf of a specific 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 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, need 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 application 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 procedure shall be completed within 12 months from its initiation.

Application

Article 38

The application for initiation of an investigation shall be accompanied by all necessary evidence, including but not limited to:

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

Interested parties

Article 39

- (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 to the procedure with opposing 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 the existence of 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 and invite them to come out with their opinions within the period of 30 days, and subsequent to its expiration, shall make a decision on the existence of dumping or subsidizing.

Decision

Article 40

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

Provisional measures

Article 41

- (1) The Government may apply the following provisional measures after the expiry of 60 days from the day of initiation of the investigation:
 - 1) provisional anti-dumping and/or countervailing duty;
 - 2) depositing guarantee equal in the amount to the determined provisional anti-dumping or countervailing duty;
- (2) Provisional measures referred to in paragraph 1 of this Article shall be applied if:

- 1) the existence of dumping or subsidy or material injury for the domestic industry has been determined;
 - 2) the delay in application of anti-dumping or countervailing measures would cause damage which it would be difficult to repair;
 - 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.

Collection and reimbursement of duty

Article 42

- (1) If the definitive amount of anti-dumping or countervailing duty is higher than the provisional duty paid or the amount deposited in accordance with the decision on imposition of a provisional measure, the difference shall not be charged.
- (2) If upon the completion of investigation proceedings dumping or subsidizing is not found to exist or the definitive amount of anti-dumping or countervailing duty is lower than the amount paid in accordance with the provisional measure, the paid amount, i.e. difference shall be reimbursed without delay.

Validity period

Article 43

- (1) An anti-dumping or countervailing duty shall remain in force for as long as necessary to remedy an injury, but not exceeding four 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 of this Law regulating investigation procedure.
- (3) When the review referred to in paragraph 2 of this Article indicates that because of the termination of anti-dumping or countervailing duty, the dumping, subsidy or the causal injury to the domestic industry would be unlikely to continue or recur, the Government shall abolish the anti-dumping or countervailing duty, as the case may be.

2. SAFEGUARD MEASURES AGAINST EXCESSIVE IMPORT

Criteria for application

Article 44

- (1) The Government may apply measures for protection against increased imports (hereinafter referred to as safeguard measures) if under the provisions of Articles 45-51 it has been determined that a particular product has been imported in increased quantities in relation to domestic production under conditions as to cause or threaten to cause serious injury to the domestic industry of the identical or like product.
- (2) The 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 a major portion of the total domestic production of such products in the Republic.
- (3) Serious injury referred to in paragraph 1 of this Article means a significant overall impairment in the position of a domestic industry.
- (4) Safeguard measures shall be applied to import of any products referred to in paragraph 1 of this Article irrespective of their country of origin or the country of export.

Decision

Article 45

- (1) The competent authority shall initiate and enforce the investigation procedure ex officio in order to establish the existence of a serious injury, or the threat of a serious injury.
- (2) The decision on initiation of an investigation procedure shall be published in the Official Gazette of the Republic of Montenegro.

Safeguard measure form

Article 46

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

Duration

Article 47

- (1) Safeguard measure shall remain in force for as long as necessary to remedy an injury, but not exceeding four years from its imposition.
- (2) Notwithstanding paragraph 1 of this Article the Government may extend the period of application if pursuant to this Law it has determined that the safeguard measure continues to be necessary and that there is evidence that the industry is adjusting.
- (3) The safeguard measure extended in accordance with paragraph 2 of this Article may 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.

Liberalization

Article 48

Where the duration of a safeguard measure exceeds one year, it shall be progressively liberalized.

Where a safeguard measure has been applied for the period exceeding three years, the Government shall review the need for application of such measure not later than the mid-term of the period for which the measure has been imposed.

Application

Article 49

- (1) A safeguard measure shall not be applied to the import 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, which may not be less than two years.
- (2) Notwithstanding the paragraph 1 of this Article, a safeguard measure with the duration of 180 days or less may be imposed 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.

Provisional safeguard measures

Article 50

- (1) The Government may impose a provisional safeguard measure, for a period not exceeding 200 days, in the form of tariff increase, if it has been clearly found in the investigation procedure that:
 - 1) increased imports have caused or are threatening to cause serious injury to the domestic industry;

2) the 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.

The duration of any provisional safeguard measure shall be included in the calculation of the application period of the safeguard measures referred to in Article 47 of this Law.

PART FIVE

SUPERVISION

Supervision of enforcement

Article 51

Enforcement of this Law and regulations passed based 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 the environmental protection and the state authority competent for human health protection.

PART SIX

FINAL PROVISIONS

Article 52

Any rights related to foreign trade activities granted by individual legal acts, which have not been fully exercised by the day this law enters into effect, may be exercised within the time limits set by such individual acts.

Article 53

Procedures related to foreign trade initiated before the day this Law enters into effect shall be completed pursuant to the provisions in effect prior the day this Law comes into effect.

Article 54

Any initiated misdemeanor proceedings and commercial offence proceedings conducted for misdemeanors or commercial offences envisaged by the Law on Foreign Trade Transactions (Official Gazette the Federal Republic of Yugoslavia 46/92, 49/92, 16/93, 24/94, 28/96, 29/97) shall be completed pursuant to the provisions in effect prior the day this Law comes 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 enters into force.

Article 56

On the day this Law comes into effect the Law on Foreign Trade Transactions (Official Gazette Official Gazette the Federal Republic of Yugoslavia 46/92, 49/92, 16/93, 24/94, 28/96, 29/97), the Decree on Foreign Trade (Official Gazette of the Republic of Montenegro 33/00, 44/00), and any provisions enacted based on the Law on Foreign Trade Transactions and the Decree on Foreign Trade shall be repealed.

Article 57

This Law shall enter into force on the eighth day following the day of its publication in the Official Gazette of the Republic of Montenegro.

