

30 Annex - External relations

**233. DECREE ON IMPLEMENTATION OF THE FOREIGN
TRADE LAW**

Pursuant to Article 19, Article 24 paragraph 2 and Article 34 paragraph 2 of The Foreign Trade Law (Official Gazette of the Republic of Montenegro, 28/04), at its session held on 8 July 2004, the Government of Montenegro adopted the following

DECREE

ON IMPLEMENTATION OF THE FOREIGN TRADE LAW

PART ONE

GENERAL PROVISIONS

Subject matter

Article 1

This Decree shall regulate in more detail the conditions and procedures for issuing import licenses, export licenses, and licenses for transit of goods and application of safeguard measures.

Definitions

Article 2

For the purposes of this Decree, the following terms shall have the following meanings:

“License” is a document being a prior condition for import or export, i.e. transit of goods, which is issued in the administrative proceedings upon an application of a person that fulfils the conditions prescribed by the Foreign Trade Law (Official Gazette of the Republic of Montenegro, 28/04) (hereinafter referred to as: the Law) and this Decree;

“Like Product” is a product that is identical to the product under consideration, or has characteristics closely resembling those of the product under consideration;

“Export Price” is the price actually paid, or payable for goods 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 gaining new knowledge, development of new products, processes or services, or a survey providing a significant improvement of the existing products, processes or services;

“Pre-competitive Development Activity” is the translation of industrial research findings into a plan, draft or a project for new, modified or improved products, processes or services whether intended for sale or consumption, including the creation of the first prototype. This term implies the conceptual formulation and design of alternative products, processes or services alternatives and the initial demonstration i.e. 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 programs 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 Party" is an exporter, foreign producer, or importer of any goods that are the subject of an investigation, or commercial or business association representing the majority of producers, exporters or importers of such a product; every domestic producer of the like product or commercial or business association representing the majority of producers of the like product in the Republic, and the Government or other state body of the exporting country or country of the origin of goods that are the subject of an investigation;

"Confidential Information" is any information or data, the disclosure of which could provide a significant advantage for the competitor or could cause harm to a person who has submitted the information, or a person who has disclosed the information, as well as any information provided as a confidential data by participants to the investigation, and

"Excessive Import" implies the real increase of imports (absolute increase) or increase of the market share in a decreasing market, even when the increase in import is not recorded (relative increase).

PART TWO

CONDITIONS AND PROCEDURES FOR ISSUING LICENSES

Control List

Article 3

Export, import and transit licenses shall be granted for the goods under the licensing regime provided by the Decision on the Export, Import and Transit Control List.

Provisions of this Decree on Granting Export/Import Licenses shall be accordingly applied to the issuance of the transit license for goods subject to licensing regime.

Competent Authority for the Issuance of Licenses

Article 4

An export, import and/or transit license application form shall be submitted in writing to a state administration 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 the License Application Form

Article 5

The export, import and/or transit license application form shall contain general information regarding the applicant and the goods, including the following:

1. the name and type of goods;
2. tariff code i.e. tariff codes of goods;
3. quantity of goods in measurement units;
4. value of goods expressed in euros (total and per unit);
5. the country of import;
6. the country of origin of goods;
7. information on exporter and/or importer of goods (name, address, company/person identification number, work permit in accordance with special regulations of the competent ministries and the phone number) and
8. Certificate of possession of an artistic, cultural or historical treasure, as well as the copyright certificate i.e. a certificate proving that the author i.e. holder of copyright is informed of the destination of the exported item.

A special expert commission formed by the Ministry of Culture shall assess the value of goods recognized as artistic, cultural, historical or archaeological treasures.

The applicant shall pay an evaluation fee for goods recognized as artistic, cultural, historical or archaeological treasures.

The Ministry of Culture shall determine the amount of fee to be paid for evaluation of goods recognized as artistic, cultural, historical or archeological treasures.

The export, import and/or transit license application form may contain other information that the applicant considers should be of interest when considering the application.

Together with the application form, the applicant shall also submit a receipt indicating the payment of the administrative fee.

Additional Data

Article 6

The competent authority may request the applicant to file additional data or documents, depending on the type of goods and conditions that goods must fulfill.

If the applicant has been granted the import license for goods in question during previous term, the competent authority may request the applicant to provide the proof of use of the previously granted license i.e. granted licenses.

Form of Issuance of a License

Article 7

The competent authority shall grant a license.

The competent authority shall decide on the license application in a form of a decision.

A decision to issue an automatic license may have a form of a note taken on the copy of the application submitted.

PART THREE

PROCEDURES FOR APPLICATION OF SAFEGUARD 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 less than their normal value.

Normal Value of Goods

Article 9

Normal value shall be the price at which product is sold or offered for sale in the principal markets of the country from which it is exported, or other value determined in accordance with relevant WTO agreements and EU regulations.

When the product, that is subject to an investigation in accordance with this Decree, is not sold in the ordinary course of trade in the market of the exporting country, or when such sales do not allow a proper comparison due to the market size or low sales, normal value shall be determined by comparison with the price of like product sold at third-country markets, or by comparison with the costs of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

Minimum Level of Trade

Article 10

Sales of the like product in the market of the exporting country referred to in Article 9, paragraph 1 of this Decree, shall be considered to be sufficient to determine a normal value if such a sale

represents at least 5% of the sale of the product subject to determination of normal value in the market of the Republic.

Exceptionally, lower level of trade in the Republic may be used for determination of the normal value, if that level of trade is proven to be sufficient to provide a proper comparison for the purposes of the normal value determination.

Determination of a Normal Value

Article 11

Sales of the like product in the market of the exporting country or export to a third country at the prices lower than normal value do not have to be taken into consideration when determining the normal value, unless such a trade has occurred:

- 1) within an extended period of time, which is usually considered to be one year but not less than six months;
- 2) in substantial quantities, i.e. when the weighted average per unit price of the sales under consideration for the determination of normal value is less than the weighted average per unit cost of production for such sales, or when the volume of such sales represents 20 percent or more of the volume of sales under consideration for the determination of normal value,

Costs referred to in Article 9 of this Decree shall be calculated, as a rule, based on available accounting records of the exporter i.e. producer.

When calculating costs, all available data on the structure of costs shall be used, including data on the structure of costs in the previous period of time, which are submitted by an exporter i.e. producer.

When the costs are not submitted by the exporter i.e. producer, they shall be determined on the following basis:

1. data on the amount incurred and realized by exporter or producer in connection with the production and 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 actual amounts incurred and realized by other exporters or producers that are subject to the investigation or review in accordance with this Decree; or
2. based on any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by exporters or producers of the same category products in the market of the country of origin.

Determination of Export Price

Article 12

Export price paid by an importer shall be determined or calculated on the basis of price at which the imported goods are first resold to an independent buyer.

Export price shall include normal value, transportation and selling expenses, including duties and taxes incurred during importation.

In cases where there is no export price or when the competent authority determines that the export price is unreliable due to an association or compensatory arrangement between the exporter and the importer or a third party, the following alternative method may be used to determine the export price:

1. on the basis of the price at which the imported products are first resold as imported in an independent buyer, or
2. On any other reasonable basis, if the products are not resold to an independent buyer or not resold as imported, taking into account costs of import, including duties and taxes incurred between the import and resale at the market of the Republic, as well as profits accrued by the importer.

Determination of the Margin of Dumping

Article 13

The 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.

The comparison between the export price and the 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 duties and indirect taxes;
3. Terms and conditions of sale, discounts, rebates and quantities;
4. Level of trade;
5. Transport, insurance, handling, loading and ancillary costs;
6. Packaging costs;
7. The amount of credit granted for the sale, if the sale price has been affected;
8. Post-sale costs (guarantees, technical assistance and maintenance);
9. Commissions paid in respect of the sales;
10. Conversion of currency (valid rate of exchange on the date of sale);
11. Profits.

Comparison of the export price with the normal value for the purpose of determining the margin of dumping during the investigation phase shall be made by comparison of the weighted average normal value with a weighted average export price or by a comparison of normal value and export prices on a transaction to transaction basis.

Notwithstanding the provision of paragraph 3 of this Article, the normal value calculated on a weighted average basis may be compared to the prices of individual export transactions, if the competent authority:

- 1) Determines that export prices differ significantly among different purchasers, regions or time periods; and
- 2) Provides an explanation as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.

Where the products are not imported directly from the country of origin but 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 determined in the country of origin, if:

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 the product in the country of export.

DETERMINATION OF THE EFFECTS OF SUBSIDIES

Determination of Subsidies

Article 14

The existence of the subsidized import shall be investigated and determined by the competent authority.

Subsidy shall imply any financial contribution by a government of the country of origin or export or its bodies, notably 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 under 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 activities referred to in items 1, 2 and 3 of this Article which would normally be vested in that state body.

Specific Subsidies

Article 15

Countervailing measures taken to offset the adverse effects of subsidies with respect to imported goods in question may be applied only with respect to specific subsidies, i.e. if subsidy is specific

to an enterprise or industry or group of enterprises (hereinafter referred to: as “certain enterprises”).

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, that are associated to actual or anticipated exportation or export earnings as well as subsidies contingent upon the use of domestic over imported goods, shall always be treated as specific subsidies.

The competent authority, when determining specific subsidies, may on its own judgment investigate other factors, notably:

1. use of a subsidy program by a limited number of certain enterprises;
2. predominant use of a subsidy by certain enterprises;
3. the length of time during which the subsidy program has been in operation; and
4. 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

The following subsidies shall not be subject to countervailing measures:

1. Assistance for research activities conducted by businesses or by higher education or research institutions on a contract basis with enterprises, if such assistance does not exceed 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 firms.

Subsidy shall not be deemed specific if the authority competent for granting subsidies, or legislation pursuant to which the granting authority acts, 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. Objective criteria mean criteria or conditions which are neutral, which do not favour certain enterprises over others, and which are economic in nature (e.g. number of employees or the size of enterprise).

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, for the purpose of this Decree, where:

1. provision of equity 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 taken from the market. If the expenses of the loan granted by the state body are lower than expenses of the commercial loan, such difference shall be considered as a benefit conferred;
3. There is no difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government and the amount that the firm would pay on a commercial loan in the absence of the government guarantee. If the expenses of the loan granted and guaranteed by the state body are lower than expenses of the commercial loan granted in the absence of the government guarantee, such difference shall be considered as a benefit conferred, and
4. the purchase of goods or services is made at prices below those prevailing in the market or purchase of goods is made at prices higher than those prevailing in the market.

Calculation of the Amount of Specific Subsidies

Article 18

The amount of specific (actionable) subsidies shall be calculated according to the amount of the benefit conferred on 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 recipient's data for the last calendar year.

If data referred to in paragraph 1 hereof are not available, the basis for calculation may represent other available financial or relevant data, for the period not shorter than six month before the initiation of investigation procedure.

The amount of subsidy shall be determined per unit of the subsidized product exported to the Republic.

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 in the Republic specifically intended to offset the subsidy;

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 domestic producers of such product 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 subsidy;
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

Determination of a threat of material injury shall be based on facts, and/or change in circumstances which are clearly foreseen, and imminent.

Factors used to determine the existence of the threat of material injury shall include *inter alia*:

1. A significant increase in dumped or subsidized imports indicating the likelihood of substantially increased importation in the Republic;
2. sufficient freely disposable, or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased subsidized exports into the Republic, taking into account the availability of other export markets to absorb any additional exports;
3. impact of import prices of the goods on depression or suppression of domestic prices and/or increased demand for further imports in the Republic;
4. inventories of the product being investigated; and
5. in case of investigation of subsidized imports, nature of the subsidy or subsidies in question and the trade effects likely to arise thereof.

Initiation of an Investigation

Article 21

An application to initiate an investigation shall contain sufficient evidence of the existence of dumped or subsidized imports as well as the injury resulting thereof, and the causal link between the dumped and/or subsidized imports and the alleged injury.

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 the 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

Article 22

Upon 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 dumped imports: the government of the country of export of the concerned product;
2. In cases of alleged subsidized imports - 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.

Rejection of the Request

Article 23

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

The competent authority shall reject the request for initiation of the investigation when there is no sufficient evidence to establish the existence of dumping or subsidization and injury.

Termination of the Proceedings

Article 24

The competent authority shall not propose to the Government the imposition of anti-dumping and/or countervailing duty if during the investigation procedure it is determined that 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.

The margin of dumping shall be considered *de minimis* if the margin is less than 2 per cent of the export price of goods, whereas the amount of the subsidy shall be considered *de minimis* if the subsidy is less than 1 per cent *ad valorem*.

Conditions for Termination and/or Continuation of Proceedings

Article 25

If, during the investigation procedure, the competent authority determines that the volume of subsidized imports account for less than 3% of the total imports of the like product in the Republic, it shall not propose to the Government the imposition 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 Procedure

Article 26

The notification of initiation of the investigation procedure to determine the existence of dumped or subsidized imports , shall contain:

1. The name of the exporting country or countries and the product under investigation;
2. The date of initiation of the investigation;
3. Evidence on the existence of dumping or subsidization;
4. Evidence on alleged injury;
5. The address where interested parties can file necessary information; and
6. The periods within which interested parties may submit information.

The notification referred to in paragraph 1 of hereof shall be published in the Official Gazette of the Republic of Montenegro.

Notification of Interested Parties

Article 27

A notice on an initiation of the investigation referred to in Article 26 of this Decree shall be submitted to the known exporters and authorities of the country of export and/or origin, and to other interested parties, at their request, providing the confidentiality of information.

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 submitted by the interested parties;
3. where necessary, carry out investigation and inspection; and
4. inspect any records kept by importers, exporters, traders, agents, producers, trade organizations and associations.

In order to verify the information received or to obtain additional information , the competent authority may conduct the activities referred to in paragraph 1 hereof, if it obtains the consent of:

- 1) parties concerned;

2) the competent authority where the activities will take place.

The competent authority shall prepare the summary of non-confidential information on the results of activities referred to in paragraphs 1 and 2 hereof, that may be, subject to restrictions referred to in Article 8 of the Law, made available to the applicant.

Restrictions on the Investigation Procedure

Article 29

As a rule, the competent authority shall determine an individual margin of dumping or the amount of subsidy for each known exporter or producer concerned of the product under investigation.

In cases where the number of exporters, producers, importers or types of products involved is so large as to make a determination of an individual margin of dumping or the amount of subsidy referred to in paragraph 1 hereof impracticable, the competent authority may, upon consultations and with the consent of interested exporters, producers or importers limit the investigation to:

1. a reasonable number of interested parties or products by using statistically valid samples based on the information available at the time of the selection, or
2. the largest percentage of the volume of the exports from the country in question which can reasonably be investigated.

In cases where the investigation is limited in accordance with paragraph 2 hereof, an individual margin of dumping may nevertheless be determined for any exporter or producer not initially selected who submits the necessary information in time, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the competent authority and prevent the timely completion of the investigation, in accordance with time limits prescribed by this Decree.

Any exporter whose goods are subject to a definitive countervailing duty but who was not actually investigated for reasons other than a refusal to co-operate, shall be entitled to a prompt review for the purpose of establishing an individual countervailing duty rate for that exporter.

Examination of Accuracy of Information

Article 30

If the interested party refuses access to, or otherwise does not provide necessary information within a period determined in notification referred to in Article 26, paragraph 1, item 1 of this Decree, the competent authority shall conduct the investigation on the basis of the facts available.

When determining the amount of the normal value or the amount of the subsidy, the competent authority may check information from other available sources, besides information referred to in paragraph 1 hereof.

Confidential Information

Article 31

Any information received by the competent authority in accordance with the Law and this Decree shall be used only for the purposes for which it has been requested.

Parties to the investigation providing confidential data shall also attach non-confidential data summaries, containing sufficient detail to allow a reasonable understanding of the substance of the information submitted as confidential.

Notwithstanding provisions of paragraph 2 hereof parties to the investigation may indicate that such information cannot be summarized, in which case a statement of the reasons why it is not possible to present a summary must be provided.

If the competent authority finds that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in a generalized or summary form, such information may be disregarded unless it can be satisfactorily demonstrated from appropriate sources that the information is correct.

A decision of the competent authority to reject the request for confidentiality shall include a rationale.

Disclosure of General Information

Article 31 a)

Provisions of Article 8 of the Law and Article 31 of this Decree shall not preclude the disclosure of general information by the competent authority and in particular of the reasons on which decisions taken pursuant the Law and this Decree are based, or disclosure of the evidence relied on in so far as is necessary to explain those reasons in any court proceedings.

In case of any disclosure referred to in paragraph 1 hereof the competent authority shall not disclose confidential information or any other directly related information.

Access to Data of Parties to the Investigation Procedure

Article 31 b)

Within the limits referred to in Article 8 of the Law, the competent authority shall grant a party participating in the investigation an access to the evidence filed by other parties to the investigation.

The competent authority shall whenever practicable provide timely opportunities for all parties participating in the investigation procedure to have access to all non-confidential summaries used by the competent authority in the investigation that are relevant to the presentation of their cases.

Notice of a Preliminary Determination

Article 32

The competent authority shall, not later than 30 days before final determination of dumping and/or subsidizing is made, inform all interested parties of the essential facts under consideration which form the basis for the decision.

Voluntary Undertakings

Article 33

Where a preliminary affirmative determination of dumping or subsidization and consequent injury has been made, the investigation may be suspended without the assessment of provisional or final antidumping or countervailing duties upon the acceptance of voluntary undertakings by an interested party, approved by the competent authority, under which:

1. In cases of dumped imports, the exporter concerned undertakes to increase prices or to cease exports in question at dumped prices if the competent authority finds that the undertaking will eliminate the prejudicial effect of the dumping.
2. In cases of subsidized imports:
 - the government of the exporting country agrees to eliminate or reduce the subsidies or to take other measures with similar effects; or
 - the exporter voluntarily agrees to increase prices so that the competent authority is satisfied that the injurious effect of the subsidy is eliminated.

Price increases provided in accordance with paragraph 1 hereof shall not exceed an amount of dumping margin or the amount of subsidies respectively, but can be less than the margin of dumping if such increases would be adequate to remove the injury.

Voluntary undertakings may be suggested by the competent authority.

The fact that exporters do not accept a voluntary undertaking shall in no way prejudice the consideration of the case.

Continuation of the Investigation

Article 34

Despite the acceptance of undertakings, the investigation proceedings shall be continued if required by exporters or decided by the competent authority.

Imposition of Antidumping and/or Countervailing Duties

Article 35

The decision on imposition of antidumping or countervailing duties shall define the rate and the amount 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.

The decision referred to in paragraph 1 hereof shall also include the information on a supplier or suppliers subject to the measure.

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.

Anti-dumping or countervailing duties shall be calculated on an *ad valorem* basis and paid simultaneously with the import duties.

No product shall be subject to both anti-dumping and countervailing duties.

Any decision of the competent authority to impose antidumping or countervailing duties shall include a rationale, which shall provide all relevant information on matters of fact or law that have led to the imposition of measures, as well as the reasons for the acceptance or rejection of relevant arguments or claims made by parties participating in the proceedings.

Notification on Expiry of Period of Application

Article 36

Not later than six months prior to the expiration of the period set forth for the application of anti-dumping and/or countervailing duties, the competent authority shall issue a public notice of impending expiry in the Official Gazette of the Republic of Montenegro.

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 Injury

Article 38

"Threat of injury" shall imply a serious injury that, based on the facts, is clearly imminent and is a consequence of increased imports.

Determination of Injury

Article 39

Safeguard measures shall be imposed if it is determined in the investigation procedure that increased imports of a certain product have caused or threaten to cause serious injury to a domestic industry.

In determining whether serious injury is present, 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 in the price compared to the price of the competitive product
3. impact of the imports on the domestic industry demonstrated by relevant indicators:
 - change of market share taken by increased imports
 - changes in the level of sales, production, productivity, utilization of capacity, profits and losses, and the impact 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 a price rise that would normally occur; and
- increase of supplies of the imported goods at the domestic market.

Factors referred to in paragraph 1 of this Decree must demonstrate the existence of the direct causal link between increased imports and the effects to domestic production.

Content of a Decision to Initiate Investigation

Article 40

The decision to initiate the investigation for determination of serious injury shall:

1. specify the date of initiation of the procedure
2. specify the goods under investigation
3. specify the country/countries of export being investigated.

Report on the State of Domestic Industry

Article 41

Based on the facts gathered and evidence obtained, the competent authority shall prepare a report on the state of domestic industry, especially with respect to whether the increased imports are causing serious injury or there is a threat thereof and proposal for possible imposition of safeguard measures.

The competent authority shall submit the report referred to in paragraph 1 hereof to the Government.

Provisions of Article 31 of this Decree 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 it is determined that there is insufficient evidence on serious injury or threat thereof, the competent authority shall ex officio give notice of termination in the Official Gazette of the Republic of Montenegro to terminate the investigation.

PART FOUR

FINAL PROVISION

Entering into Force

Article 43

This Decree shall enter into force on the eighth day from the day of its publishing in the Official Gazette of the Republic of Montenegro.

No: 02-4452

Podgorica, 8 July 2004

Government of Montenegro

Prime Minister,

Milo Djukanovic