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THE REGULATION ON IMPLEMENTATION OF THE FOREIGN TRADE LAW

PART ONE

GENERAL PROVISIONS

Subject-matter of the Regulation

Article 1

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

Definitions

Article 2

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

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

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

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

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

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

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

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

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

PART TWO

CONDITIONS AND PROCEDURES FOR ISSUANCE OF A LICENSE

Control List

Article 3

- (1) Export, import and transit licenses shall be issued for the goods under the licensing regime established by the Decision on Control List for Export, Import and Transit of Goods.
- (2) Provisions on licensing procedures of import and/or export of goods of this Regulation shall apply mutatis mutandis to issuance of licenses for transit of goods which are under the licensing regime

Competent authority for issuance of a license

Article 4

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

Content of Application for Issuance of a License

Article 5

- (1) Application for issuance of a license for export, import and transit of goods shall contain data on the applicant and goods, including the following:
 1. name and type of goods;
 2. tariff code, and/or tariff codes of goods;
 3. quantity of goods in measurement units;
 4. value of goods expressed in euros (total and singular);
 5. nomination of the exporting country;
 6. nomination of the country of origin of goods;
 7. information on person being an exporter and/or importer of goods (name, firm, address, person identification number and/or registration number, work permit in accordance with special regulation of competent ministries and phone number) and

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

Additional Data

Article 6

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

Form of Issuance of a License

Article 7

- (1) The license shall be issued by the competent authority.
- (2) The competent authority shall decide on the application for issuance of a license in a form of decision.
- (3) A decision to issue an automatic license may take a form of note on the copy of the application submitted.

PART THREE

PROCEDURES FOR APPLICATION OF PROTECTIVE MEASURES

CHAPTER ONE

ANTIDUMPING AND COUNTERVAILING MEASURES

Determination of Dumping

Article 8

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

Normal Value of Goods

Article 9

- (1) Normal value shall be the price paid for a product when destined for the free trade at the market of the exporting country, or other value determined in accordance with relevant WTO agreements and EU regulations.
- (2) When the product that is subject to an investigation in accordance with this Regulation is not sold in the free circulation in the market of the exporting country, or when such sales do not allow objective comparison due to market size or low sales, normal value shall be determined by comparison with the like product intended for sale in the market of the representative third country, 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 Sale

Article 10

- (1) Sales of a like product destined for the free trade 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.
- (2) Exceptionally, lower ratio of sale in the Republic may be used for determination of the normal value if the evidence demonstrate that such level is nonetheless of

sufficient magnitude to provide for a proper comparison for the purposes of normal value determination.

Determination of a Normal Value

Article 11

- (1) Sales of a 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 the occurrence of such a trade has been identified:
 - 1) within an extended period of time, which should normally be one year but in no case be less than six months;
 - 2) in substantial quantities, i.e. when it has been established that the weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average per unit costs, or that the volume of sales below per unit costs represents not less than 20 per cent of the volume sold in transactions under consideration for the determination of the normal value.
- (2) Expenses referred to in Article 9 of this Regulation shall be calculated, as a rule, based on available accounting records of the exporter, and/or producer.
- (3) When calculating expenses, all available data on the structure of expenses shall be used, including data on the structure of expenses in the previous period of time, which are supplied by exporter and/or producer.
- (4) When the amount of expenses is not supplied by the exporter and/or producer, they shall be determined on the basis of:
 - 1) data on the amount of expenses usually incurred by the seller or exporter in production or sale of the like product in the market of the exporting country or country of origin, or on the basis of the weighted average of the amounts incurred and realized by other exporters or producers subject to investigation in accordance with this Regulation; or
 - 2) in any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same category in the domestic market of the country of origin.

Determination of the Export Price

Article 12

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

Determination of the Margin of Dumping

Article 13

- (1) Export price and normal value shall be compared for the purposes of determination of dumping, taking into account the same level of trade and with respect to sales made at as nearly as possible the same time.
- (2) Comparison of export price and normal value shall be conducted in accordance with basic characteristics of the export procedure in question, and especially taking into account the following:
 - 1) Physical characteristics;
 - 2) Import charges and indirect taxes;
 - 3) **Terms of sale, discounts, rebates and quantities;**
 - 4) Level of trade;
 - 5) Transport, insurance, handling, loading and ancillary costs;
 - 6) Packing costs;
 - 7) The amount of credit granted for the sale, provided that it is a factor taken into account in the determination of the sale price;
 - 8) After-sales costs (guarantees, technical assistance and maintenance);
 - 9) Commissions paid in respect of the sales;
 - 10) Currency conversions (using the rate of exchange on the date of sale);
 - 11) **Profits.**

- (3) Comparison of the export price with the normal value for the purpose of determining the margin of dumping during the investigation shall be made by comparison of the weighted average normal value to weighted average export price or by comparison of individual export prices from all comparable export transactions.
- (4) Notwithstanding the provision of paragraph 3 of this Article, normal value determined based on the weighted average can be compared to the prices from individual export transactions, if the competent authority:
 - 1) Determines that export prices differ significantly among different buyers, 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.
- (5) Where the products are not imported directly from the country of origin but rather exported to the Republic from an intermediate country, the price at which the products are sold from the country of export to the Republic shall be compared with the comparable price in the country of export. The comparison can be made with the price in the country of origin, 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 them in the country of export.

DETERMINATION OF THE EFFECTS OF SUBSIDIES

Determination of Subsidies

Article 14

- (1) Existence of the subsidized import shall be investigated and determined by the competent authority.
- (2) Subsidy shall be deemed to exist when there is 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, on non-market criteria;
 - 4) A state body makes payments to a funding mechanism or entrusts or directs other persons to carry out one or more of the type of functions referred to in

items 1, 2 and 3 of this Article which would normally be vested in that state body.

Specific Subsidies

Article 15

- (1) Countervailing measures for offsetting the effects of subsidies with respect to imported goods in questions may be applied only with respect to specific subsidies, i.e. subsidies intended to a specific enterprise or industry or group of enterprises (hereinafter referred to: as “certain enterprises”).
- (2) Subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex 1 to the WTO Agreement on Subsidies and Countervailing Measures, and the subsidies, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings as well as subsidies contingent upon the use of domestic over imported goods, shall always be considered specific.
- (2) 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

- (1) The following subsidies shall not be subject to countervailing measures:
 - 1) Assistance for research activities conducted by businesses or by higher education or research establishments on a contract basis with firms, if such assistance covers not more than 75% of the costs of industrial research or 50% of the costs of pre-competitive development activity;
 - 2) Assistance to disadvantaged regions within the territory of the country of origin and/or export, given pursuant to a general framework of regional development, and

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

Recipients of Non-actionable Subsidies

Article 17

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

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

Calculation of Specific Subsidies

Article 18

- (1) The amount of specific (actionable) subsidies shall be determined according to the amount of the benefit conferred to the recipient during the subsidizing period which is the subject matter of the investigation. Calculation shall be made, as a rule, on the basis of data for the last business year of the subsidy recipient.
- (2) If data referred to in paragraph 1 of this Article are not available, the basis for calculation may represent other available financial or relevant data, for the period not shorter than six month before initiation of investigation procedure.
- (3) The amount of subsidy shall be determined per unit of the subsidized product exported to the Republic.
- (4) The amount of subsidy may be deduced for the amount of:
 - 1) costs necessarily incurred in order to qualify for, or to obtain, the subsidy;
 - 2) export taxes, duties or other charges levied on the export of the product to the Republic specifically intended to offset the subsidy;
- (5) Where the subsidy is not granted by reference to the quantities manufactured, produced, exported or transported the amount of subsidy shall be determined by allocating the value of the subsidy, as appropriate, over the level of production, sales or exports of the products concerned during the investigation period for subsidization.

DETERMINATION AND APPLICATION OF ANTIDUMPING AND COUNTERVAILING MEASURES

Examination of the Impact on the Industry

Article 19

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

- 1) The fact that an industry is still in the process of recovering from the effects of past subsidization or dumping;
- 2) The magnitude of margin of dumping or the amount of subsidies;
- 3) Actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity;
- 4) Factors affecting the prices on the domestic market;

- 5) Actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments.

Material Injury From Dumped or Subsidized Imports

Article 20

- (1) A determination of a threat of material injury shall be based on facts, and/or change in circumstances which is clearly foreseen, and imminent.
- (2) Factors used to determine the existence of the threat of material injury shall include *inter alia*:
 - 1) significant rate of increase of dumped or subsidized imports into 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 therefrom.

Application for Initiation of the Investigating Proceedings

Article 21

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

Prior Notification on Initiation of Investigation Proceedings

Article 22

After the receipt of a properly documented application and before the initiation of an investigation, the Competent Authority shall notify of the submitted application:

- 1) In cases of alleged dumping: the government of the country of export of the concerned product;
- 2) In cases of alleged subsidized import - the government of the country of origin and/or export which shall be invited for consultations with the aim of clarifying the situation and arriving at a mutually agreed solution.

Rejection of the Request

Article 23

- (1) When the application for initiation of procedure for investigation of dumping or subsidized imports does not contain sufficient evidence, the competent authority may, within 8 days of the receipt of application request from the applicant to submit necessary evidence and set a period of time for such corrections.
- (2) The competent authority shall reject the request for initiation of the investigation procedure when it determines that there is no sufficient evidence of dumping or subsidies and of causal injury.

Termination of the Proceedings

Article 24

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

Conditions for Termination and/or Continuation of Proceedings

Article 25

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

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

Notification of Initiation of the Proceedings

Article 26

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

Notification of Interested Persons

Article 27

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

Activities in the Investigation Proceedings

Article 28

- (1) In carrying out an investigation, the Competent Authority may:

- 1) seek evidence and information it deems to be necessary for the investigation;
 - 2) examine and verify the data supplied by the interested parties;
 - 3) where necessary, carry out investigation and inspection; and
 - 4) inspect any records kept by the importers, exporters, traders, agents, producers, trade organizations and associations.
- (2) For the purpose of verification of the information received or collecting new ones, the competent authority can conduct the activities referred to in paragraph 1 of this Article, if it obtains a consent of:
- 1) a person to which the activities relate;
 - 2) the competent authority where the activities will take place.
- (3) The competent authority shall prepare the summary of non-confidential information on the results of the activities referred to in paragraphs 1 and 2 of this Article, which may be, subject to restrictions referred to in Article 8 of the Law, made available to the applicant.

Restrictions on Investigation Proceedings

Article 29

- (1) As a rule, the competent authority shall determine an individual margin of dumping or the amount of subsidy, as the case may be, for each exporter identified or manufacturer of the product subject to investigation.
- (2) In cases where the number of applications, exporters, producers, importers or types of products involved is so large as to make determination of an individual margin of dumping or the amount of subsidy referred to in paragraph 1 of this Article impracticable, the competent authority may, upon consultations and the consent of interested exporters, producers or importers limit the examination to:
 - 1) a reasonable number of interested parties or products by using samples which are statistically valid on the basis of 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.
- (3) In cases where the examination has been limited in accordance with paragraph 2 of this Article, an individual margin of dumping may nevertheless be determined for any exporter or producer not initially selected who submits the necessary information in time for that information to be considered, 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 Regulation.

- (4) Any exporter whose goods are subject to a definitive countervailing duty but who was not actually investigated for reasons other than a refusal to cooperate, 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

- (1) If the interested person refuses access to, or otherwise does not provide necessary information within a period determined in notification referred to in [Article 26, paragraph 1, item 1](#) of this Regulation, the competent authority shall conduct the investigation on the basis of the facts available..
- (2) When determining the amount of the normal value or the value of the subsidy, the competent authority may check information from other available sources, besides information referred to in paragraph 1 of this Article.

Confidential Information

Article 31

- (1) Any information received by the Competent Authority in accordance with the Law and this Regulation shall be used only for the purposes for which it has been requested.
- (2) Parties to the investigation proceedings providing confidential information must furnish non-confidential summary thereof, containing sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence.
- (3) Notwithstanding provisions of paragraph 2 of this Article parties to the investigation proceedings may indicate that such information is not susceptible of summary, in which case a statement of the reasons why summarization is not possible must be provided.
- (4) 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 generalized or summary form, such information may be disregarded unless it can be satisfactorily demonstrated from appropriate sources that the information is correct.
- (5) A decision of the Competent Authority to reject the request for the confidentiality must have a rationale.

Disclosure of General Information
Article 31 a)

- (1) Provisions of Article 8 of the Law and Article 31 of this Regulation 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 Regulation are based, or disclosure of the evidence relied on in so far as is necessary to explain those reasons in any court proceedings.
- (2) In case of any disclosure referred to in paragraph 1 of this Article the Competent Authority shall not disclose confidential information or any other directly related information.

Disclosure of Information to Parties to the Investigation Proceedings
Article 31 b)

- (1) Within the limits imposed by Article 8 of the Law, the Competent Authority shall promptly make available evidence presented in writing by one party to other parties participating in the investigation proceedings.
- (2) The Competent Authority shall whenever practicable provide timely opportunities for all parties participating in the investigation proceedings to see all non-confidential summary information used by the Competent Authority in an investigation that is relevant to the presentation of their cases.

Notification Before a Final Decision

Article 32

The Competent Authority shall, not later than 30 days before final determination is made on the existence of dumping and/or subsidy, inform all interested persons of the essential facts under consideration which form the basis for the decision.

Voluntary Undertakings

Article 33

- (1) Where a preliminary affirmative determination of dumping or subsidization and consequent injury has been made, an investigation may be terminated without the imposition of provisional or definitive antidumping or countervailing duties upon

acceptance of satisfactory voluntary undertakings by an interested person, approved by the Competent Authority, under which:

- 1) In cases of dumped import the exporter concerned undertakes to raise its prices or to cease exports in question at dumped prices so that the Competent Authority is satisfied that the injurious effect of the dumping is eliminated in such manner.
- 2) In cases of subsidized import:
 - the government of the country of export agrees to eliminate or limit the subsidy or take other measures concerning its effects; or
 - the exporter undertakes to raise its prices so that the Competent Authority is satisfied that the injurious effect of the subsidy is eliminated in such manner.
- (2) Price increases under paragraph 1 shall not exceed an amount of dumping margin or the amount of subsidies respectively, but can be less, if such lesser increases would be adequate to remove the injury.
- (3) A voluntary undertaking may be suggested by the competent authority to the exporter.
- (4) The fact that an exporter did 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 shall be continued if required by exporters or by decision of the Competent Authority.

Imposition of Antidumping and/or Countervailing Duty

Article 35

- (1) The decision on imposition of antidumping or countervailing duties shall specify the type and the rate of the duty applicable, tariff line and tariff code of the product, country of origin and/or country of export and duration of the application.
- (2) The decision referred to in paragraph 1 of this Article shall also specify any supplier or suppliers subject to the measure.
- (3) If a provisional duty referred to in Article 41 of the Law is applied, imposition of the antidumping and/or countervailing duty and/or proposal for determination of a definitive duty shall be made not later than 30 days before the time period for the application of the provisional duty elapses.

- (4) Anti-dumping or countervailing duties shall be imposed on an *ad valorem* basis simultaneously with the customs duties.
- (5) No product shall be subject to both anti-dumping and countervailing duties.
- (6) Any decision of the Competent Authority to impose antidumping or countervailing duties shall have 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

Six months before the expiration of the period set out for the application of anti-dumping and/or countervailing duties, a public notice of impending expiry shall be published in the "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 Serious Injury in the Case of Increased Imports

Article 38

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

Determination of Serious Injury

Article 39

- (1) Safeguard measures shall be imposed if it is determined in the investigation procedure that increased imports of a certain product have caused or are threatening to cause serious injury to a domestic industry.
- (2) In the investigation to determine whether the existence or threat of serious injury the competent authority shall evaluate all relevant factors, in particular:
 - 1) the rate and amount of the increase in imports of the product concerned in absolute and relative quantities and values with respect to domestic production and consumption
 - 2) prices of the imported goods, especially if there has been a significant decrease of the price compared to the price of competitive product
 - 3) impact to the domestic production expressed in the following:
 - change of share of the domestic market taken by increased imports
 - changes in the level of sales, production, productivity, capacity utilization, profits and losses, and impact of the increased imports on employment in specific production activity;
 - the impact of import to the supply of the domestic market and the increased level of dependence from imports;
 - reduction of price of the same goods, equally competitive, or prevention of raise of prices that would normally occur; and
 - increase of supplies of the imported goods at the domestic market.
- (3) Factors referred to in paragraph 1 of this Regulation must demonstrate the existence of the direct causal link between increased imports and the effect to domestic production.

Content of a Decision to Initiate Proceedings

Article 40

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

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

Report on the State of Domestic Industry

Article 41

- (1) Based on the facts gathered and evidence obtained the competent authority shall prepare a report on the state of domestic industry, especially with respect whether the

increased imports are causing serious injury or there is a threat thereof and proposal for possible imposition of safeguard measure,

- (2) The report referred to in paragraph 1 of this Article the competent authority shall submit to the government.
- (3) Provisions of Article 31 of this Regulation shall apply *mutatis mutandis* to the issue of confidentiality of information gathered in the investigation procedure.

Termination of the Proceedings

Article 42

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

PART FOUR

FINAL PROVISION

Entering into Force

Article 43

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