

## **FOREIGN TRADE LAW**

### **PART ONE**

#### **BASIC PROVISIONS**

##### **Subject matter**

###### **Article 1**

This Law shall regulate foreign trade in goods and services.

##### **Exceptions to the application**

###### **Article 1a**

This Law does not apply to foreign trade in arms, military equipment and dual – use goods, which is governed by special regulations.

##### **Definitions**

###### **Article 2**

For the purpose of this Law, the following terms shall have the following meanings:

- 1) "Foreign trade" shall mean any trade, economic activity, contracts, transactions and other activities involving the movement of goods, other tangible and intangible assets and property rights, and services between the territory of Montenegro and countries or territories outside the territory of Montenegro;
- 2) "National treatment" with respect to goods shall mean that imported goods shall be subject to the measures applied to like domestic goods or that imported goods have the treatment not less favourable than the treatment of domestic goods;
- 3) "Most-Favoured-Nation treatment" with respect to goods shall mean that the goods imported from a one country or territory shall enjoy the treatment not less favourable than the treatment accorded to like goods imported from any other country or territory;
- 4) "Person" shall mean any natural or legal person;
- 5) "Domestic person" shall mean:
  - a) any natural person who is domiciled or usually resident in Montenegro
  - b) any legal person that has its corporate domicile in Montenegro;
  - c) a division of a foreign company in the territory of Montenegro that
    - 1) is registered in accordance with regulations;
    - 2) actually conducts its business at its registered address in Montenegro;and

- 3) maintains separate business books at such address.
- 6) "Foreign person" shall mean:
  - a) any natural person who is domiciled outside of the territory of Montenegro;
  - b) any legal entity that has its corporate domicile outside of the territory of Montenegro.
- 7) "Goods" shall mean any tangible, movable article, but not securities, business documents or cash;
- 8) "Export of goods" shall mean the transportation or delivery of goods from the territory of Montenegro to a foreign country or a foreign territory in accordance with the customs regulations, unless a regulation which regulates foreign trade in arms, military equipment and dual-use goods provides otherwise;
- 9) "Import of goods" shall mean the transportation or delivery of goods from another country or another territory into the territory of Montenegro in accordance with the customs regulations, unless a regulation which regulates foreign trade in arms, military equipment and dual-use goods provides otherwise;
- 10) "Transit" shall mean transfer of goods through the customs territory of Montenegro without placing such goods on the market in the Republic in accordance with the customs legislation;
- 11) "Restrictive measure" shall mean any prohibition or restriction, special charge (other than tariffs, internal tax, or administrative charges for services rendered), condition, license, approval or any other measure imposed by any State Authority having a restrictive effect on foreign trade, but shall not include technical regulations;
- 12) "Quantitative restriction" shall mean the maximum value or quantity of certain goods that can be exported or imported within stipulated period, including a prohibition on exports or imports;
- 13) "Quota" shall mean a share in the total value or quantity of exports or imports allocated to a certain person or a group of persons (exporters or importers);
- 14) "License" shall mean a permission granted in the administrative procedure, upon an application of an interested person, which is a precondition for import, export and transit;
- 15) "State authority" shall mean any executive authority, public institution, ministry, agency, or any other governmental authority that exercises legislative, executive or judicial powers.

**Core Principles**  
**Article 3**

- (1) Foreign trade shall be unrestricted and may be restricted only under the conditions provided by this Law.
- (2) All persons may conduct foreign trade in accordance with their legal and commercial capacities, and in accordance with the legislation regulating commercial activities.
- (3) Any legal act of an administrative authority creating restrictions on foreign trade contrary to the provisions of this Law shall be null and void.
- (4) The transfer of title to the goods placed under customs supervision shall be free and shall not affect the obligation to pay import duties and other obligations arising from customs regulations.
- (5) Procedures conducted in accordance with the provisions of this Law may not be implemented in such a manner as to have a restrictive effect on foreign trade, or to provide disguised protection to domestic products.

**Exceptions to application of core principles**  
**Article 3a)**

The provisions of this Law shall apply to the introduction or application of restrictive measures that affect international trade in goods, in order to:

- 1) protect public morals;
- 2) protect life and health of humans, animals or plants;
- 3) import or export gold or silver;
- 4) protect intellectual property rights;
- 5) undertake foreign trade in goods produced in organisations for execution of criminal sanctions;
- 6) protect artistic, historic or archaeological treasure;
- 7) protect exhaustible natural resources if such measures are applied in conjunction with restrictions on domestic production or consumption;
- 8) fulfil obligations under international commodity agreements which is in accordance with the criteria submitted to WTO members or which was submitted to WTO members, and the WTO members have raised no objections;
- 9) restrict exports of raw materials produced in Montenegro, necessary to provide the domestic processing industry with the necessary quantities of such raw materials at a time when the domestic market price of such materials fell below the world market prices, provided that such restrictions do not result in an increase in exports or protection of domestic industries;
- 10) acquire or distribute products, due to their scarcity, provided that all countries are entitled to an equitable share in the supply of such products and to the extent that such measures shall be terminated when the reasons for which they were introduced cease to exist, or

- 11) provide protection for security reasons if the measures:
- refer to the fissile materials or materials used for production thereof,
  - relate to trade in arms, ammunition and war material, as well as trade in other items and materials that are directly or indirectly intended to supply the armed forces,
  - are undertaken in time of war or other emergencies in international relations, or
  - are undertaken to meet the obligations under the Charter of the United Nations in terms of maintaining international peace and security.

The measures referred to in paragraph 1 of this Article must not cause unfair discrimination or a disguised restriction on trade.

**Competent authority for establishing restrictive measures**  
**Article 4**

The Government of Montenegro (hereinafter referred to as the "Government") shall be competent to establish restrictive measures.

**Conditions for establishing restrictive measures**  
**Article 5**

- (1) The Government shall establish a restrictive measure only:
- 1) if expressly provided for in this Law;
  - 2) if such restrictive measure is necessary to achieve the objectives of restrictive measures provided for in this Law;
  - 3) if the type and scope of application of such restrictive measure are limited to the minimum necessary to achieve the 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 introduction cease to exist or upon a change of the conditions of its application.

**Transparency**  
**Article 6**

- (1) No restrictive measure may take effect until at least 30 days have elapsed since its publication in the "Official Gazette of Montenegro", unless otherwise provided for in this Law
- (2) The state authority competent for foreign trade (hereinafter referred to as the "competent authority") shall provide information regarding the implementation of this Law upon the written request of any interested Person.

- (3) The Government shall, by a specific decision, establish, update and make public the Export and Import Control List containing information on the goods whose import and export are unrestricted, as well as information on the goods whose import and export are subject to any restrictions under provisions of this Law.

**Right of appeal**  
**Article 7**

- (1) The provisions of the law governing general administrative procedure shall be applicable to all procedures conducted in accordance with this Law, unless otherwise prescribed by this Law.
- (2) An appeal may be lodged against the decision referred to in paragraph 1 of this Article.
- (3) An administrative dispute may be instituted against the decision enacted in the appeal procedure referred to in paragraph 2 of this Article

**Confidential Information**  
**Article 8**

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

**Administrative charges**  
**Article 9**

- (1) Administrative charges in connection with imports and exports may be prescribed only if they are necessary to compensate for services actually rendered. The amount of administrative charge may not exceed the approximate real cost of services rendered and may not represent an indirect protection to domestic products or a means of obtaining revenue for fiscal purposes.
- (2) The Government shall issue a schedule of fees for services that are routinely and regularly provided in connection with foreign trade.

- (3) The funds collected pursuant to paragraph 1 of this Article shall be revenue of the budget of Montenegro.

**Dispute resolution**  
**Article 10**

- (1) Participants in foreign trade may agree on the applicable law and choice of competent court or arbitral tribunal.
- (2) Where the applicable law or the forum for dispute resolution was not agreed, 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 from a business activity in which one party is the Government or a state authority, a party that is a foreign person may submit such dispute for settlement before the Additional Facility of the International Centre for Settlement of Investment Disputes (ICSID), subject to and in accordance with its Rules.

**PART TWO**

**FOREIGN TRADE IN GOODS**

**TITLE I**

**IMPORT AND EXPORT**

**Right to Import and Export Goods**  
**Article 11**

- 1) Any person may import or export goods under the conditions provided for in this Law.
- 2) Regulations that apply to the export and import shall also apply to temporary exports and imports unless otherwise provided by special regulations.

**National Treatment**  
**Article 12**

- (1) Foreign persons conducting import and export of goods in accordance with the provisions of this Law shall be treated as domestic persons.
- (2) Imported goods shall enjoy national treatment.

**Most-favoured-nation treatment**  
**Article 13**

- (1) Imported and exported goods shall be accorded the most-favoured-nation treatment as required by international agreements binding on Montenegro, or on the basis of the Government's decision.
- (2) The most-favoured-nation treatment referred to in paragraph 1 of this Article shall not include advantages accorded to an adjacent country or territory in order to facilitate frontier trade, nor advantages granted pursuant to a bilateral or multilateral free trade area or customs union agreement, or pursuant to interim agreements regarding the formation of a free trade area or a customs union.

**Article 14**

**TITLE II**

**QUANTITATIVE RESTRICTIONS AND LICENSING**

**1. QUANTITATIVE RESTRICTIONS**

**Conditions for introduction**

**Article 15**

- (1) The Government may temporarily introduce quantitative restrictions on exports in order to prevent critical shortages of essential products in Montenegro, or to mitigate the effects of such shortages in Montenegro;
- (2) The Government may temporarily introduce quantitative restrictions on imports as:
  - 1) a measure to provide protection from excessive imports in accordance with the provisions of Art. 44-50 of this Law, and
  - 2) a measure to protect the balance of payments in accordance with Article 50a of this Law.

**Notice of quantitative restriction**

**Article 16**

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

**Allocation of Quotas**

**Article 17**

- (1) The competent authority shall allocate export and import quotas on the basis of a public call to submit requests for allocation of quotas, which shall be published on

website of the competent authority. The public call must be published not later than eight days prior to allocation of quotas.

- (2) The competent authority shall decide on allocation of quotas in accordance with objective and rational criteria and conditions defined in the public call, which may not have as an objective or consequence competition distorting effect, including:
  - 1) the economically justified quantities of goods under quota;
  - 2) the performance of the applicant in utilizing previously allocated quotas;
  - 3) possible allocation of quotas to persons previously not having been allocated quotas.
- (3) Decision on quota allocation shall include conditions under which a quota shall be allocated, and the period, not exceeding one year, during which the quota must be used.
- (4) If the person who has been 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 the decision on quota allocation and allocate the quota to another person, in accordance with the public call 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, nor allow another person to use such quota.

## **2. LICENCES**

### **Basic Rule**

#### **Article 19**

- (1) The Government may, in accordance with this Law, prescribe licences for the import, export or transit of certain goods, on the basis of objective and rational criteria, conditions and procedures.
- (2) The Government may prescribe licenses for administrative or statistical purposes (hereinafter referred to as the "automatic licence") making sure that such a licence does not restrict foreign trade. The system of automatic licences shall remain in effect for as long as the circumstances which gave rise to its introduction prevail and as long



as its underlying administrative purposes cannot be achieved in a more appropriate way.

#### **Article 20**

Deleted.

#### **Article 21**

Deleted.

### **Competent authority for issuing licences**

#### **Article 22**

- (1) The competent authority shall decide upon applications for import, transit or export licences.
- (2) When deciding upon applications referred to paragraph 1 of this Article, the competent authority may consult other relevant state bodies if necessary.
- (3) Without prejudice to paragraph 1 of this Article:
  - 1) the state administration authority competent for cultural matters shall decide upon applications for licences for the export of artefacts of artistic, cultural, historical and archaeological value;
  - 2) the state administration authority competent for the protection of animal and plant health shall decide on applications for licences for the import of plants and animals, plant and animal products and other goods that may carry or transmit organisms which are harmful to plants and cause diseases, and zoonoses which may endanger the health of animals and humans;
  - 3) the state administration authority competent for environmental protection shall decide on applications for licenses for the import, transit or export of hazardous waste, as well as of rare plant and animal species;
  - 4) The State Authority competent for health protection shall decide on applications for licenses for the Import medicines, medical devices and other goods that may be used for medicinal purposes.

### **Time limits to decide on licence applications**

#### **Article 23**

- (1) The period for deciding on applications for import, transit or export licences may not exceed 30 days as of the day of application if applications are considered as and when received.

- (2) If a number of licence application are considered simultaneously, the period for deciding thereon may not exceed 60 days following the expiry of the application period.

**Conditions for issuance of licences**  
**Article 24**

- (1) A licence shall contain the conditions to be fulfilled by the licensee and the rationale.
- (2) Detailed conditions for issuance of licences for import, export or transit of certain goods shall be specified by the Government.
- (3) Licences may be issued for one or more types of goods.
- (4) Without prejudice to paragraph 3 of this Article, in the case of artistic, cultural, historical and archaeological artefacts, the licence shall be issued for each particular artefact or a single licence for more artefacts if they constitute a single consignment.

**Procedural errors**  
**Article 25**

- (1) An application for issuance of a licence may not be refused due to procedural errors in the application which do not alter the basic data contained therein.
- (2) A decision to refuse issuance of a licence shall be provided to the applicant in writing.

**Cancellation of licences**  
**Article 26**

- (1) The issuing authority may cancel a licence if:
  - 1) a decision was made to prohibit the import or export of goods which are the subject of such licence, in accordance with this Law, after the licence has been issued;
  - 2) a licensee violates the conditions of the licence;
  - 3) a licence was issued in violation of the provisions of this Law or other regulations;
  - 4) a decision was based on incorrect information or deceit.
- (2) In the case referred to in paragraph 1 item 1 of this Article, a licence may not be cancelled for already contracted quantities of goods that have been paid for but not delivered, except in the case of occurrence of pests, animal or plant diseases in Montenegro, in the case of export of agricultural products, or in the case of import of

agricultural products in the exporting country, that could cause an unacceptable health risk to humans, animals and plants.

**Validity of licences**  
**Article 27**

- (1) A licence shall be issued for the period of maximum one year. The number of shipments during such period shall not be limited.
- (2) Without prejudice to paragraph 1 of this Article, if the implementation of import, export and transit lasts longer than one year, the competent authority may determine the validity period of the licence through the deadline for the completion of the work specified in the contract, but not longer than three years. The number of shipments during this period shall not be limited.
- (3) The competent authority shall maintain the register of issued licences.
- (4) The competent authority shall prescribe content and the manner of keeping the registry about issued licences.

**Article 27 a)**

- (1) An automatic licence shall be issued immediately on receipt of an application, to the extent possible, but not later than 10 working days from the day of receipt of the application. Automatic licence may also be issued as a note on a copy of the application submitted, which contains a specific reference number.
- (2) An automatic licence 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 licence, if such fee is payable under the provisions in force.
- (3) An automatic licence shall be valid for a period of one year, automatically extendable for the subsequent one-year period upon the request of the licence holder. Number of validity extensions shall not be limited.

**Reporting on restrictive constraints**  
**Article 27b**

- (1) The state administration authority responsible for customs affairs (hereinafter referred to as the "customs authority") shall report by the end of the first quarter of the current year to the competent authority on the data on exports and imports of goods under restrictive constraints in the previous year.
- (2) The form and content of the report referred to in paragraph 1 of this Article shall be prescribed by the competent authority.

## **TITLE III**

### **SPECIAL CONDITIONS**

#### **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 certificates or certified documents the issue or certification of which is not within the purview of a specific authority, such certificates shall be issued and documents shall be certified by the authority designated by the Government.
- (2) The Government shall prescribe the manner of issuance of certificates and certification of documents referred to in paragraph 1 of this Article.

#### **Export and import of rough diamonds Article 28a)**

- 1) Export of rough diamonds from Montenegro shall be accompanied by a certificate issued by the competent authority and certified by the customs authority.
- 2) Import of rough diamonds may be carried out if accompanied by a certificate issued by the competent authority of the exporting country.
- 3) The conditions for foreign trade in rough diamonds shall be provided in a regulation which shall be passed by the Government.

#### **Veterinary, sanitary and phytosanitary conditions Article 29**

- (1) Import, transit and export of animals, plants, animal or plant products, and other goods that may carry or transmit pests and diseases that may endanger the health of animals, plants and humans from a specific country or a part thereof may be prohibited on the basis of international standards, recommendations and guidelines, available scientific evidence, and on the basis of the health status of animals and plants in such country or a part thereof relative to that of Montenegro.
- (2) Import, transit and export of goods shall be subject to fulfilment of veterinary, sanitary and phytosanitary conditions, if prescribed for particular type of goods, in accordance with the law.

#### **Technical regulations Article 30**

- (1) Conformity with technical regulations applicable in Montenegro may be prescribed as a condition for import of goods.

- (2) Technical regulations, within the meaning of paragraph 1 of this Article, shall establish mandatory criteria for placing goods into circulation for the purpose of protection of security, life, health and safety of humans, plants and animals, and for environmental protection. Technical regulations shall apply regardless of origin of goods and encompass characteristics, technical specifications, terminology, symbols, packaging, labelling, as well as the process or method of production of goods.
- (3) Conformity with standards may not be prescribed as a condition for import of goods, except where the standard is a 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 purpose of this Law, foreign trade in services shall mean the supply of services:
  - 1) from the territory of Montenegro into the territory of any other country, and from the territory of any other country into the territory of Montenegro;
  - 2) by a domestic person to a foreign person in the territory of Montenegro, or by a foreign person to a domestic person in the territory of any other country;
  - 3) by a domestic person through a commercial presence in any other country, or by a foreign person through commercial presence in the territory of Montenegro;
  - 4) by a domestic natural person in the territory of any other country, and by a foreign natural person in the territory of Montenegro.
- (2) Within the meaning of paragraph 1 item 3 of this Article "commercial presence" shall mean any type of business or professional form of organization.
- (3) Services supplied in the exercise of governmental authority shall not be considered as services within the meaning of paragraph 1 of this Article.

##### **Most-favoured-nation treatment**

##### **Article 32**

The most-favoured-nation treatment shall be accorded to services or service providers from any foreign country or territory, as required by international agreements binding on Montenegro.

**National treatment**  
**Article 33**

National treatment shall be accorded to services and service providers from any foreign country or territory, as required by international agreements binding on Montenegro, or in accordance with the legislation that regulates supply of the particular service.

**PART FOUR**

**PROTECTION MEASURES**

**General provision**  
**Article 34**

- (1) The Government may introduce protection measures on import or export of goods in accordance with the provisions of Art. 35-50 of this Law, as follows:
  - 1) anti-dumping duties,
  - 2) countervailing duties,
  - 3) safeguard measures,
  - 4) measures to protect the balance of payments.
- (2) The Government shall establish the detailed conditions and procedure for the implementation of the special measures referred to in paragraph 1 of this Article, taking into consideration provisions of relevant WTO agreements and EU legislation.

**1. ANTI-DUMPING AND COUNTERVAILING DUTIES**

**Definitions**  
**Article 35**

Within the meaning of the provisions of Art. 35-43, individual terms shall have the following meanings:

- 1) "Dumping" shall mean import of goods into Montenegro at the price which is below the normal value of such goods, which causes or threatens to cause material injury to an industry established in Montenegro or materially retards the establishment of an industry.
- 2) "Anti-dumping duty" shall mean a special duty imposed on import of goods in order to offset the effects of dumping.
- 3) "Normal value" shall mean (a) the comparable price for the like product when exported to an appropriate third country, under condition that such price is representative, when the product which is subject to an investigation under this Law is not sold in the market of the exporting country within free trade; or when such sale due to market size or low level of sale does not allow objective

comparison, normal value is determined by comparison with the sale of the like product intended to the market of a representative third country or on the basis of the value of goods that is determined on the basis of the cost of production of such goods in the country of origin increased by a reasonable amount of profit, administrative, general and selling expenses.

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

### **Criteria for Application Article 36**

- (1) The Government may levy an anti-dumping or countervailing duty 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 of such imported products compared with the price of the like domestic product or that such prices have depressed to a significant degree the price of the like product or have prevented that price from increasing as it would otherwise have done;
  - 3) as a result of such import, substantial material injury is caused to the domestic industry or there is a threat of such injury to the domestic industry.
- (2) If investigations show that a substantial material injury is caused by other factors as well, and not entirely by dumped or subsidized imports, such injury may not be the basis for introducing countervailing or anti-dumping duties.

- (3) The anti-dumping duty shall be established in the amount necessary to remove the injury and may not exceed the margin of dumping or the difference between the normal value of goods and the price at which such goods are exported to Montenegro.
- (4) The rate of countervailing duty shall be established in the amount necessary to remove the injury and may not exceed the full amount of subsidy.

**Investigating procedure**  
**Article 37**

- (1) The competent authority shall conduct an investigation as to the existence of dumping and subsidized import on the basis of a written application made by or on behalf of the domestic industry.
- (2) The application shall be considered to have been made by or on behalf of the domestic industry if it is submitted by:
  - 1) domestic producers whose total output accounts for more than 25% of the total domestic production of the like product;
  - 2) total collective output of producers referred to in item 1 of this paragraph constitutes more than 50% of the production by the domestic producers making the application, expressing either support for or opposition to the application.
- (3) Producers related to importers or exporters of the subsidized or dumped products or producers who import such products themselves, do not have to be considered a part of a domestic industry, and if producers are related to the exporters or are themselves exporters of products with allegedly lowered prices, the term "domestic industry" may be interpreted as referring to the rest of the producers.
- (4) Within the meaning of paragraph 3 of this Article, producers shall be considered as related to an exporter or an importer only if:
  - one of them controls the other one, directly or indirectly;
  - they are directly or indirectly controlled by a third person;
  - they jointly, directly or indirectly, control a third party, provided that there are grounds to suspect that the effect of the relationship is such that it causes concern with the producer to behave differently towards unrelated producers.
- (5) Within the meaning of paragraph 4 indent 1 of this Article, one producer shall be considered to control another producer if he can legally or operationally restrict or manage such producer.
- (6) The competent authority shall review the submitted application referred to in paragraph 1 of this Article and decide on initiating an investigating procedure.
- (7) Without prejudice to paragraph 1 of this Article, if there is sufficient evidence of dumping, or subsidy, injury and causal connection, the competent authority may initiate ex officio an investigating procedure."



- (8) The competent authority shall not notify the submitted application for initiation of an investigating procedure. The competent authority shall notify the initiation of the investigating procedure, and all subsequent phases of the procedure.
- (9) The investigating procedure shall be completed no later than 12 months from the day of initiation thereof.

### **Application Article 38**

The application for initiation of an investigation as to the existence of dumping or subsidized import shall be accompanied by the following evidence:

- 1) a description of the product, data on the applicant, scope and value of domicile production of the like product by the applicant, and if a written application is made on behalf of a domestic industry, the application shall state the industry on behalf of which the application is made and state all known domestic producers of the like products (or associations of domestic producers of the like products), and detailed information about the scope and value of domestic production of the like products relating to such producers;
- 2) a detailed description of the alleged dumping import, name of the country or countries of origin or export, information about any known exporter or a foreign producer, and a list of known importers of the particular product;
- 3) information about the prices at which the particular product is sold when intended for consumption at domicile market of the country or countries of origin or, where applicable, data on prices at which the product is sold from the country, or the country of origin or export to another country or countries, or the calculated value of the product, and data on export prices or, if necessary, on the prices at which the product is sold for the first time to an independent buyer in the territory of Montenegro;
- 4) information about changes to the scope of alleged dumping import, impact of such import on the prices of the like products on domestic market, and the consequences of the impact of import on domestic production, on the basis of relevant indicators of domestic production.

### **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 conflicting interests;
  - 2) to present their views of the facts orally;
  - 3) to have at their disposal any relevant non-confidential information.
- (2) The competent authority shall, before a final determination on dumping and/or subsidizing is made, inform all interested parties of the essential facts under

consideration, which form the basis for initiation of investigation procedure, and invite their opinions within the period of 30 days, and subsequent to its expiration, shall make a decision on dumping and/or subsidizing.

**Decision  
Article 40**

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

**Provisional Measures  
Article 41**

(1) Upon expiry of the period of 60 days from initiating of an investigative procedure, the Government may introduce the following provisional measures:

- 1) provisional anti-dumping or countervailing duties;
- 2) depositing a guarantee in the amount equal to the provisionally established antidumping or countervailing duties.

(2) The provisional measures referred to in paragraph 1 of this Article shall be introduced if:

- 1) the existence is established of dumping or subsidy and injury to a particular industry, and causal connection between such import and possible injuries;
- 2) delay in the application of anti-dumping or countervailing duties could cause damage which it would be difficult to repair;
- 3) parties to the procedure and 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 Montenegro.

(4) The provisional measures shall remain in force for not longer than 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 a provisional measure, the difference shall not be collected.

(2) If upon 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 provisional duty paid, the amount paid or the difference shall be reimbursed without delay.

**Duration**  
**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 5 years from its imposition.
- (2) During the period referred to in paragraph 1 of this Article, the competent authority shall review the need for the continued imposition of the duty in accordance with the provisions on investigation procedure of this Law.
- (3) When the review referred to in paragraph 2 of this Article indicates that because of the termination of antidumping or countervailing duty, dumping, subsidy or the causal injury to the domestic industry would be unlikely to continue or recur, the Government shall abolish the antidumping or countervailing duty.

**2. SAFEGUARD MEASURES**

**Criteria for Application**  
**Article 44**

- (1) The Government may apply safeguard measures (hereinafter referred to as the "safeguard measures") if it has been determined within the procedure conducted under the provisions of Art. 44-50 of this Law that a particular product is being imported in such increased quantities relative to domestic production that it causes or threatens to cause a serious injury to the domestic industry of the same or like product.
- (2) Domestic industry referred to in paragraph 1 of this Article shall be the producers of the identical, like or directly competitive products whose collective output constitutes major proportion of the total domestic production of such products in Montenegro.
- (3) Serious injury referred to in paragraph 1 of this Article shall mean a significant overall impairment in the position of a domestic industry.
- (4) Safeguard measures shall be applied to import of all products referred to in paragraph 1 of this Article irrespective of their country of origin or the country of export.

**Decision**  
**Article 45**

- (1) Competent authority shall initiate and implement ex officio an investigating procedure so as to establish the existence of a serious injury or a threat of a serious injury.
- (2) The decision on initiation of an investigating procedure shall be published in the Official Gazette of Montenegro.

- (3) The Report on findings and justified conclusions of implemented investigation shall be published by the competent authority in the Official Gazette of Montenegro.

**Form**  
**Article 46**

- (1) Safeguard measures may take the form of quantitative restriction or tariff increase.
- (2) If a quantitative restriction is used as a safeguard measure, it shall not reduce the quantity of imports below the average level of imports in three representative years preceding such imports.
- (3) Safeguard measure shall apply only to the extent necessary to prevent or remedy a serious injury and to 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 4 years from its imposition.
- (2) Without prejudice to paragraph 1 of this Article, the Government may extend the period of application of safeguard measure if it has been determined, in accordance with this Law, that the safeguard measure continues to be necessary and that there is evidence that the industry is adjusting.
- (3) The safeguard measure whose application was 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 may not exceed eight years.
- (5) A product originating from a developing country, which is a WTO member, may not be subject to application of the safeguard measure until the share of such country in the import of such product into Montenegro exceeds 3%, provided that developing countries, which are WTO members, with less than 3% share in import do not account for more than 9% of the total import of such product.
- (6) The Government may extend the period of application of the safeguard measure for the period of up to two years of maximum provided period referred to in Article 47 paragraph 4 of the Foreign Trade Law.

**Liberalization**  
**Article 48**

- (1) Where the duration of a safeguard measure is prescribed to last for more than one year, the safeguard measure shall be progressively liberalized in equal intervals

during the period of application, including the extended period of application of the safeguard measure.

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

#### **Application Article 49**

- (1) A safeguard measure may not be imposed on 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 shorter than two years.
- (2) Without prejudice to paragraph 1 of this Article, a safeguard measure with duration of maximum 180 days may be imposed after one year has elapsed if the product has not been subject to a safeguard measure more than twice in the preceding five-year period.

#### **Provisional measures Article 50**

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

### **3. MEASURES FOR THE PROTECTION OF THE BALANCE OF PAYMENTS**

#### **Provisional measures Article 50a)**

In the event of a difficulty in the balance of payments or an immediate risk of occurrence of such difficulty, the Government may introduce provisional measures with respect to import so as to protect the balance of payments, on proposal of the competent authority,

and on the basis of information and opinion received from the Central Bank of Montenegro.

## **PART FIVE**

### **SUPERVISION**

#### **Supervision of Enforcement**

##### **Article 51**

- (1) Enforcement of this Act and regulations enacted hereunder, within competencies established by this Act, shall be supervised by: the state administration authority competent for foreign trade, the state administration authority competent for cultural affairs, the state administration authority competent for the protection of health of plants and animals, the state administration authority competent for environmental protection and the state administration authority competent for health protection.
- (2) In performing the supervision referred to in paragraph 1 of this Article, authorized officers shall have the powers and obligations laid down by the Act on Inspection Supervision.

## **PART FIVE A**

### **PENALTY PROVISIONS**

#### **Article 51a**

- (1) A fine ranging between 1.000 EUR and 15.000 EUR shall be imposed for an offence on a legal entity if:
  - 1) fails to use the allocated quota in accordance with the conditions listed in the Decision on allocation of quota (Article 17 paragraph 3);
  - 2) transfers the allocated quota to another person or allows another person to use such quota (Article 18);
  - 3) exports rough diamonds without a certificate from the competent authority (Article 28 a paragraph 1);
  - 4) imports rough diamonds without a certificate issued by the competent authority of the exporting country (Article 28 a paragraph 2);
  - 5) states incorrect information in the application for initiating of an investigating procedure regarding the existence of dumping and subsidized import (Article 38).
- (2) The responsible person in a legal entity, domicile and foreign natural persons shall be fined with 100 EUR to 2.000 EUR for the offence referred to in paragraph 1 of this Article.
- (3) An entrepreneur shall be fined with 500 EUR to 6.000 EUR for the offences referred to in paragraph 1 of this Article.

## **PART SIX**

### **FINAL PROVISIONS**

#### **Article 52**

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

#### **Article 53**

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

#### **Article 54**

All offence and commercial offence proceedings that have been initiated for offences and commercial offences prescribed by the Law on Foreign Trade Transactions (Official Gazette of FRY 46/92, 49/92, 16/93, 24/94, 28/96, 29/97) shall be completed pursuant to the provisions in effect on the day this Act came into effect.

#### **Article 55**

The regulations necessary for the implementation of this Law shall be passed not later than six months from the day of entry into force of this Law .

#### **Article 55a**

Secondary legislation for the implementation of this Law shall be passed within six months from the day of entry into force of this Law.

#### **Article 56**

The Law on Foreign Trade Transactions (Official Gazette of FRY 46/92, 49/92, 16/93, 24/94, 28/96, 29/97), Decree on Foreign Trade (Official Gazette of RM 33/00, 44/00), and any provisions enacted under the Act on Foreign Trade Transactions and the Decree on Foreign Trade shall be repealed as from the date this Act is applied.

#### **Article 57**

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