

FOREIGN TRADE LAW

SECTION ONE

GENERAL PROVISIONS

Article 1 Scope of Application

This Law shall regulate foreign trade.

Article 2 Definitions

When used in this Law, the following terms shall have the meaning specified below:

- 1) "Foreign trade" shall mean any tradeeconomic activity, commerce, contracts, transactions and other activities involving the movement of goods, other tangible property, intangible assets, property ~~to~~ or services between the Republic and countries or territories outside the Republic
- 2) "National Treatment"
 - with respect to goods shall mean that imported goods shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to

- imposed in connection with importation or exportation or on the international transfer of payments for imports or exports, and with respect to the manner of application of such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to internal taxes and charges of any kind, and with respect to all requirements affecting internal sale, offering for sale, purchase, transportation, distribution or use, is no less favorable than similar treatment accorded to like product imports from or exports to any other foreign country or territory.
- with respect to services shall mean treatment to services and service suppliers of any country that is no less favourable than that accorded to like services and service suppliers of any other country.
- 4) "Person" shall mean any natural or legal person.
 - 5) "Domestic Person" shall mean:
 - a. any natural person who is domiciled or usually resident in the Republic of Montenegro (hereinafter referred to as: the Republic);
 - b. any legal person that has its corporate domicile in the Republic of Montenegro; and
 - c. any division or representative office of a foreign legal person in the Republic of Montenegro that
 - is registered in accordance with the law of the Republic;
 - actually conducts its business at its registered address in the Republic; and
 - maintains separate books and operating records at such address.
 - 6) "Foreign person" shall mean:
 - a. any natural person who is domiciled or usually resident outside of the Republic; and
 - b. any legal person that has its corporate domicile outside of the Republic
 - 7) "Goods" shall mean any movable tangible articles or assets, but not securities, commercial papers or cash.
 - 8) "Export of Goods" shall mean the transport or delivery of goods from the territory of the Republic to a foreign country or territory in accordance with the customs legislation.
 - 9) "Import" shall mean the transportation or delivery of goods or services from any foreign country or territory into the territory of the Republic in accordance with the customs legislation.
 - 10) "Transit" shall mean transportation of goods through the Territory of the Republic without such goods entering the regular commerce of the Republic in accordance with the customs legislation.

- 1) when specifically authorized by this Law;
 - 2) when such Restrictive Measure is necessary to achieve a purpose specified by this Law; and
 - 3) when the type and scope of such Restrictive Measures are limited to the minimum necessary to achieve such purpose.
- (2) A Restrictive Measure referred to in paragraph 1 of this Article must be abolished, or the applicable scope thereof reduced, ~~as~~ insofar as the reasons justifying its existence cease to exist or upon a change of the conditions of its application.

Article 6 Transparency

- (1) Unless otherwise specifically provided for in this Law, no Restrictive Measure may take effect until at least 30 days have ~~passed~~ elapsed since its publication in the "Official Gazette of the Republic of Montenegro."
- (2) The state authority competent for foreign trade (hereinafter referred to as the competent authority) shall provide information regarding the implementation of this Law upon the written request of any interested Person.
- (3) The Government shall, by a specific decision, establish, maintain and make public an Export and Import Control List containing information on goods whose Import and Export are unrestricted, as well as information on goods whose Import or Export are subject to any restrictions under this Law.

Article 7 Rights of Appeal

- (1) The law that governs general administrative procedure shall be applicable to all procedures conducted in accordance with this Law, unless otherwise prescribed by the provisions of this Law.
- (2) Competent Authority referred to in Article 6, paragraph 2 of this Law decides in administrative procedures pursuant this Law.
- (3) An appeal may be lodged against decision referred to in paragraph 2 of this Article.
- (4) There shall be a right of judicial review against decision enacted in appeal procedure referred to in paragraph 3 of this Article

- (4) Until the Convention of International Center for Settling Investment Disputes (ICSID) is acceded domestic and foreign arbitrations may apply additional rules of ICSID Convention applicable to countries that did not accede to the ICSID Convention.

SECTION TWO

FOREIGN TRADE IN GOODS

CHAPTER I

IMPORT AND EXPORT

Article 11

Right to Import and Export Goods

Subject to their status under relevant legislation and to the provisions of this Law and other legislation enacted pursuant to this Law, any Person may import or export goods, including but not limited to:

- 1) goods intended for sale, inward or outward processing, or any other commercial transaction, subject to legislation that regulates commercial activities;
- 2) goods intended for own use of legal entities, personal or family use; and
- 3) goods necessary to perform professional activities (entrepreneurs, farmers and natural persons conducting professional activities or providing services).

Article 12

National Treatment

- (1) Foreign persons conducting Import or Export of goods in accordance with the provisions of this Law shall be accorded treatment equal to that accorded to domestic persons.
- (2) Imported goods shall be entitled to National Treatment.

Article 13

Most Favored Nation Treatment

- (1) Imported and Exported goods shall be accorded Most-Favored Nation treatment as required by international agreements binding on the Republic, and otherwise as the Government may decide.

- (2) Most-Favored Nation treatment referred to in paragraph 1 of this Article need not reflect advantages accorded to an adjacent country or territory in order to facilitate frontier traffic, nor advantages granted pursuant to a bilateral or multilateral free trade area or customs union agreement, or pursuant to an interim agreement intended to advance the formation of a free trade area or a customs union.

Article 14
Prohibited Imports

- (1) Goods shall not be Imported or Transited if trade in such goods is banned under the legislation of the Republic.
- (2) The Government may ban imports, temporary imports or transit of goods if circulation of such goods is banned under the legislation of the country of export, of origin, or of destination of such goods.

CHAPTER II

QUANTITATIVE RESTRICTIONS AND LICENSING

1. QUANTITATIVE RESTRICTIONS

Article 15
Requirements

- (1) The Government may impose Quantitative Restrictions on exports
- 1)

- (1) The competent authority shall allocate any quotas on the basis of a public invitation to submit requests for allocation of quotas.
- (2) Public invitation has to be published at least 8 days before the allocation of quotas.
- (3) The competent authority shall allocate quotas on the basis of objective and rational criteria and conditions, defined in the notice of public bid, which shall not have a protective purpose or competition distorting effect, including ~~inter~~ alia:
 - 1) the economically justified quantities of goods under quota;
 - 2) the performance of the applicant ~~initiating~~ previously allocated quotas;
 - 3) allocating quotas to persons previously not having been allocated quotas.
- (4) Decisions on quota allocation shall specify conditions to be fulfilled by the persons receiving quotas, including the time, ~~not~~ exceeding one year, during which the quota must be used.
- (5) The competent authority may revoke a decision on quota allocation and allocate the quota to another person, if the person being allocated a quota does not use the quota in accordance with the public bid referred to in paragraph 1 of this Article.
- (6) The number of shipments during the period of validity of the quota shall not be limited.
- (7) The importer shall be free to choose the supplying country and the exporter shall be free to choose the destination country.

Article 18 Quotas Not Transferable

A Person who has been allocated a quota may ~~transfer~~ not transfer such quota to another Person, nor allow its use by other Person.

2. LICENSES

Article 19 General Rule

- (1) The Government may, in accordance with the provisions of this Law, require licenses for the Import, Export, or Transit of certain goods, which shall be based on objective and rational criteria, conditions and procedures.

- (1) The competent authority shall be the sole authority competent to decide upon applications for Import, Transit or Export licenses.
- (2) When deciding upon applications referred to paragraph 1 of this Article, the competent authority may consult other relevant state bodies if necessary.
- (3) Exceptionally to the provision of paragraph 1 of this Article:
 - 1) The State Authority competent for cultural matters shall decide upon applications for licenses for the Export of artifacts of artistic, cultural, historical and archeological value;
 - 2) The State Authority competent for the protection of animal and plant health shall decide on applications for licenses for the Import of animals, plant and animal products and other goods that may carry transmit pests, animal disease or zoonoses to plants, animals and humans; and
 - 3) The State Authority competent for environmental protection shall decide on applications for licenses for the Import, Transit or Export of hazardous substances, hazardous waste, radioactive materials, ozone-depleting substances, controlled substances, and other goods.

Article 27
Duration of Licenses

(1)

Veterinary, Sanitary and Phytosanitary Requirements

- (1) Import, Transit and Export of animals, plants, animal and plant products, and other goods that may carry or transmit pests and disease that may endanger the health of humans and animals, may be prohibited from specific countries or territories thereof

- 3) by a domestic person through commercial presence in the territory of any other country, or by a foreign person through commercial presence in the territory of The Republic; and
- 4) by a domestic natural person in the territory of any other country, and by a foreign natural person in the territory of the Republic.

(2) For the purpose of paragraph 1, subparagraph 3 of this Article "commercial presence"

1.ANTI-DUMPING AND COUNTERVAILING DUTIES

Article 35 Definitions

When used in Articles 35-43,

(3) Producers related to importers or exporters of the subsidized or dumped products or producers who import such products themselves, must not be treated as a part of a domestic industry.

(4)

consideration, which form the basis for initiation of investigation procedure whether to apply definitive measures and invite their opinions within the period of 30 days, and subsequent to its expiration, shall make a decision

Article 40

Decision

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

Article 41

Provisional Measures

- (1) The Government may apply provisional measures after the expiry of 60 days from the day of initiation of the investigation if it was determined that:
 - 1) both the existence of dumping and/or subsidizing and of injury to the domestic industry are probable;
 - 2) delay would cause damage which it would be difficult to repair. and
 - 3) interested parties have been given an opportunity to submit data necessary for protection of their interests.
- (2) Provisional measures referred to in paragraph 1 of this Article shall be applied if:
 - 1) the existence of dumping or subsidy and the material injury for the domestic industry has been determined;
 - 2) the delay would cause damage which it would be difficult to repair; and
 - 3) parties to the procedure and other interested parties have been given an opportunity to submit data necessary for protection of their interests.
- (3) Any Decision on application of provisional measures shall be published in the Official Gazette of the Republic of Montenegro.
- (4) The application of provisional measures shall not exceed six months in the case of antidumping duties, and four months in the case of countervailing duties.

Article 42

Collection and Reimbursement of Duty

- (1) If the definitive amount of anti-dumping or countervailing duty is higher than the provisional duty paid or the amount estimated for the purpose of the security, the difference shall not be collected.
- (2) If upon completion of investigation proceedings dumping or subsidizing is not found to exist or the definitive duty is lower than the provisional duty paid or the amount of the security, the difference shall be reimbursed without delay

Article 43
Duration

- (1) An anti-dumping or countervailing duty shall remain in force for as long as necessary to remedy injury, but not exceeding 4 years from its imposition.
- (2) During the period referred to in paragraph 1 of this Article, the competent authority shall review the need for the continued imposition of such measures on the domestic industry if under the provisions of Articles 45-51 it has been determined that imports of a particular product are causing injury to the domestic industry.

- (2) The decision on initiation of an investigation shall be published in the Official Gazette of the Republic of Montenegro.

Article 46 Form

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

Article 47 Duration

- (1) Safeguard measure shall remain in force for as long as necessary to remedy an injury, but not exceeding 4 years from its imposition.
- (2) Exceptionally to the provisions of paragraph 1 of this Article the period of application may be extended provided that the Government has determined, in conformity with the procedures set out in this Chapter, that the safeguard measure continues to be necessary and that there is evidence that the industry is adjusting.
- (3) Safeguard measure that was extended in accordance with provisions of paragraph 2 of this Article shall not be more restrictive than it was before the extension.
- (4) The total period of application of a safeguard measure shall not exceed eight years

Article 48 Liberalization

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

Article 49
Application of the Safeguard Measure

- (1) A safeguard measure shall not be applied to the importation of a product that has been previously subject to such measure, before the expiry of a period of time equal to the period of application of such previously applied measure. In any event, such period may not be shorter than two years.
- (2) Exceptionally to the provisions of the paragraph 1 of this Article, the Government may re-apply safeguard measure against the importation of a product, with a duration of 180 days or less, after one year has elapsed if such safeguard measure has not been applied to the same product more than twice in the preceding five-year period.

Article 50
Provisional Safeguard Measures

- (1) The Government may introduce a provisional safeguard measure, for a period not exceeding 200 days, in the form of tariff increase, if the evidence clearly shows that:
 - 1) increased imports have caused or are threatening to cause serious injury to the domestic industry, and
 - 2) delay in introducing safeguard m.4961t in-4.9jy di9(of)7-6(f)-2.7tic51.3(u)4949691(t 92vi5t69

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SECTION SIX

FINAL PROVISIONS

Article 52

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

Article 53

Procedures related to foreign trade that have been initiated before the day this Law comes