

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,

CONDITIONS AND PROCEDURES FOR ISSUANCE OF A LICENSE

Control List

Article 3

- (1) Licenses for export and import of goods shall be issued for goods which are under licensing regime for import and export under the Decision on control list for export and import.
- (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.

self lib r Article 3

A62(p of.4(m)a.9(r)-3o.2(e)4 f7(9)3.8(10.69(r)-s)1re)9.gi.[(A6)7.3)-[(Lic610.ns)5f7(9) (Lic61x.3)--.8

(2)

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 of goods shall mean the usual price which in the free circulation is calculated for the like product at the market of the exporting country, or other value determined in accordance with relevant WTO agreement and EU regulation,
- (2) Normal value of goods shall be determined by application of the usual price and minimum level of sale at the market of the exporting country.
- (3) When the product which is a subject-matter of investigation in accordance with this Regulation, is not sold at the market of the exporting country in the free circulation, or when such sales does not allow objective comparison due to market size or low sales, normal value shall be determined based on representative sale price of the like

Article 11

- (1) Sales of the like product in the domestic market of the exporting country, or export sales to a third country, at prices below normal value, may be disregarded in determining normal value, only if it is determined that such sales are made during the period of time longer than six months.
- (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 3mai-hs02R2(r)-3.17htyg2iadent du11

Determination of the effects of subsidies

Determination of subsidies

Article 14

Existence of the subsidies import shall be investigated and determined by the competent authority.

Subsidy shall be deemed to exist when there is any **financial or other contribution** by a government of the country of origin or export or its bodies, and especially 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)

- d) 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 expanses 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)

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 unquestionable and direct.
- (2) Existence of material injury may also be determined on the basis of the following factors:
 - 1) A significant increase of dumped or subsidized imports, especially if the imports are increased in absolute terms or in relation to production or consumption in the Republic;
 - 2) Available capacity, or expected substantial increase in capacity of the exporter indicating the likelihood of substantially increased subsidized imports to the Republic;
 - 3) Impact of dumped and./or subsidized imports to prices, especially if it has significantly impacted the level of prices in the Republic; and
 - 4) negative influence on the industry which is expressed in real and potential economic indicators such as e.g. lower level of sales, market share, productivity, profits, or in the negative influence at the business, employment,

salaries, liquidity, level of prices, inventories of products subject to investigation and similar.

Application for initiation of the investigating procedure

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.
 - 1) 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 procedure

Article 22

- (1) 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

- (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

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 27 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

Any information received by the Competent Authority shall be used only for the purposes for which it has been requested, and shall not be disclosed without specific written permission of the party submitting it.

Notification before a final decision

Article 32

- (1) The Competent Authority shall, not later than 15 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) An investigation may be terminated without the imposition of provisional or definitive antidumping and/or countervailing duties upon acceptance of satisfactory **voluntary undertakings by 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.

Continuation of the investigation procedure

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.

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

- change of share of the domestic market taken by increased imports
-

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”.