

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 trade, economic activity, commerce, contracts, transactions and other activities involving the movement of goods, other tangible property, intangible assets, property rights, 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.

11) *Restrictive Measure*

- (1) The Government may establish a Restrictive Measure only:
 - 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 and 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 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

Article 8 Confidentiality

Any information obtained in the course of the appropriate procedure administered pursuant to the provisions of this Law, including any court proceedings, shall be considered confidential and shall not be disclosed without the express consent in writing of persons providing such information, except where the competent authority is obliged, or authorized to do so.

Article 9 Fees for Services

- (1) No fees may be imposed in connection with imports or exports except as are clearly related to and necessary to compensate for services actually rendered. Any fees collected in connection with foreign trade shall be limited in amount to the approximate cost of services rendered and shall 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 the Republic of Montenegro.

Article 10 Dispute Resolution

- (1) Participants in foreign trade may agree on the applicable law to their transactions and choice of competent court or arbitral tribunal.
- (2) Where the applicable law or the forum for dispute resolution was not agreed by the parties, 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 in which one party to the dispute is the Government of Montene8c(h).5(nt.8(sput)-0ic)-5. 117-.1(od/TT6 1 T-5. 117-.1(

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 competent authority shall give public notice by specific decision of the total quantity or value of goods permitted to be imported or exported pursuant this Law during a specified period of time, and of any change in such quantity or value.

Article 17
Allocation of Quotas

- (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

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.

Article 20
Allowable Criteria for Import and Transit Licenses

The Government may require Import or Transit licenses only when it is necessary to:

- 1) protect human, animal or plant life or health;
- 2) protect national security;
- 3) protect environment or exhaustible natural resources;
- 4) protect public morals;
- 5) protect intellectual property rights; or
- 6) enforce any special rules related to gold and silver.

Article 21
Criteria for Export Licenses

The Government may require Export licenses only when it is necessary to:

- 1) protect national treasures of artistic, cultural , historic or archaeological value;
- 2) protect endangered species or plants;
- 3) protect national security;
- 4) protect environment or exhaustible natural resources;
- 5) protect intellectual property rights; or
- 6) enforce any special rules for trade in gold and silver.

Article 22
Authority to Grant Licenses

(1) The competent authority shall be the sole authority competent to decide upon

(4) Exceptionally to the provision of paragraph 3 of this Article:

- 1) in the case of agricultural goods and other goods that may carry a pest or disease that can cause significant harm to the health or life of plants or animals in the Republic, the license shall be issued for a single type of goods;
- 2) in the case of artistic, cultural, historical and archeological artifacts the license shall be issued for each particular article or a single license for more articles if they constitute one consignment.

Article 25
Procedural Errors

- (1) An application for issuance of a license shall not be refused for procedural documentation errors that do not alter the basic data contained therein.
- (2) A decision to refuse issuance of a license must be provided to the applicant in writing with the rationale for such decision.

Article 26
Cancellation of Licenses

- (1)

Article 27
Duration of Licenses

- (1) License shall be valid for the period specified in the license up to a maximum period of one year. The number of shipments during such period shall not be limited.
- (2) The competent authority keep the register on issued licenses.
- (3) The competent authority shall prescribed content and the manner of keeping the registry about issued licenses.

CHAPTER III

SPECIAL

Article 30
Technical Regulations

- (1) Imported goods shall comply with technical regulations applicable in the Republic.
- (2) Technical regulations, within the meaning of paragraph 1 of this Article, establish mandatory criteria for placing goods into circulation for the purpose of protection of national security, health and life of humans, plants and animals, and environmental protection. Technical regulations shall apply regardless of origin of goods and may encompass characteristics, technical specifications, terminology, symbols, packaging, marking, as well as the process and method of production of goods.
- (3) Compliance with standards that are not incorporated in technical regulations shall not be required.

SECTION THREE

FOREIGN TRADE IN SERVICES

Article 31
Scope

- (1) For the purposes of this Law, foreign trade in services shall mean the supply of services:
 - 1) from the territory of the Republic into the territory of any other country, and from the territory of any other country into the territory of the Republic;
 - 2) by a domestic person to a foreign person on the territory of The Republic;
 - 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" 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-favored nation treatment shall be accorded to services supplied by foreign persons in the Republic as required by international agreements binding on the Republic, and otherwise as the Government may decide.

Article 33
National Treatment

National treatment shall be accorded to foreign persons supplying services in the Republic as required by international agreements binding on the Republic, and otherwise in accordance with the legislation that regulates supply of the particular service.

SECTION FOUR
SPECIAL TRADE MEASURES

Article 34
General Provision

- (1) The Government may, in accordance with the provisions of Articles 35-50 of this Law, restrict imports or exports of goods through the introduction of the following special trade measures.
 - 1) anti-dumping duties,
 - 2) countervailing duties, and
 - 3) safeguard measures.
- (2) The Government shall establish the procedure and terms of the implementation of the special trade 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

Article 35
Definitions

When used in Articles 35-43, the following terms shall have the meaning specified below:

- 1) “*Anti-Dumping Duty*” shall mean a special duty imposed on importation of goods in order to offset the effects of dumping.
- 2) “*Dumping*” shall mean importation of goods into the Republic at less than their normal value, under conditions that cause or threaten to cause material injury to

an industry established in the Republic or materially retards the establishment of an industry in the Republic.

- 3) “*Normal Value*” shall be (a) the comparable price for the like product when destined for consumption in the exporting country, in the ordinary course of trade; or (b) if the goods are not sold in the market of the exporting country, either (i) the highest comparable price for the like product for export to any third country with market conditions comparable to those of the Republic or (ii) the cost of production of such goods in the country of origin increased by a reasonable amount for administrative, selling and general costs and for profits.
- 4) “*Countervailing Duty*” shall mean a special duty imposed on importation 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 the Republic.
- 5) “*Subsidy*” shall mean any direct or indirect financial or other contribution by a government of the country of origin or export or its bodies, by which a benefit is conferred to a manufacturer or exporter, except where the financial contribution in question is a non-actionable subsidy in accordance with the relevant WTO agreements.
- 6) “*Material Injury*” shall mean a significant decline of profits in the domestic industry.

Article 36 Criteria for Application

- (1) The Government may levy an anti-dumping or countervailing duty only 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; and
 - 2) there has been significant price undercutting by the dumped or subsidized imports compared with the price of the like domestic product or the prices of such imported products 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; and
 - 3) as a result, Material Injury is caused to the domestic industry or there is a threat

(3) The Anti-Dumping Duty shall not exceed the lesser of the amount necessary to remove the injury to the domestic industry or the amount of the full margin of dumping, i.e. the difference between the Normal Value of goods and the price for such goods when intended for exports to the Republic.

(4)

- (3) the names of the exporting countries, each known exporter or foreign producer, and a list of the importers of the product referred to in item 1 of this Article; and
- (4) information on the existence of dumping, and/or subsidization, injury to domestic production caused by the dumped or subsidized imports and causal link between dumped or subsidized imports and the injury.

Article 39

Interested Parties

- (1) All interested parties, including industrial consumers of the product subject to investigation and representative organizations of consumers, shall be given an opportunity to participate in the investigation procedure in order to protect their interests.
- (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 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) The provisional measures referred to in paragraph 1 of this Article may take form of:
 - 1) Provisional antidumping or countervailing duty, or
 - 2) security, in the amount equal the provisionally estimated anti-dumping or countervailing duty.
- (3) Any Decision on application of provisional measures shall be published in the Official Gazette of the Republic of Montenegro.

conditions as to causes or threaten to cause serious injury to the domestic industry of same or like product.

- (2) The “domestic industry” referred to in paragraph 12 of this Article shall mean the producers of the same or like products operating within the territory of the Republic whose collective output constitutes more than 50% of the total domestic production of such products.
- (3) "Serious Injury" referred to in paragraph 1, subparagraph 2 of this Article shall mean a significant overall impairment in the position of a domestic industry.
- (4) Safeguard measures shall be applied to importation of all products referred to in paragraph 1 of this Article irrespective of th

- (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 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 pa

- (3) The duration of any provisional safeguard measure shall be calculated in the total duration of the measures referred to in Article 47.

SECTION FIVE

SUPERVISION

Article 51 Supervision of Enforcement

Enforcement of this Law and regulations enacted passed on this Law within competencies established by this Law shall be supervised by the State Authority competent for foreign trade, the State Authority competent for cultural affairs, the State Authority competent for the protection of health of plants and animals, the State Authority competent for environmental protection and the, State Authority competent for human health protection.

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 into effect shall be completed pursuant to the provisions in effect on the day this Law came into effect.

Article 54

All offence and commercial offence proceedings that have been initiated for offences and commercial offences, based on the offences prescribed by the provisions of the Law on Foreign Trade (“FRY Official Gazette”, No. 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 Law came into effect.

Article 55

The regulations necessary for application of this Law shall be passed not later than six months after the day this Law comes into effect.

Article 56

On the day this Law comes into effect, Decree on Foreign Trade (“RM Official Gazette” No. 33/00, 44/00), the Law on Foreign Trade Transactions (“FRY Official Gazette” No. 46/92, 49/92, 16/93, 24/94, 28/96, 29/97) applied in accordance with the Decree on Foreign Trade, and any provisions enacted based on that Law or Decree shall cease to be enforced.

Article 57

This Law shall come into force on the eighth day from the day of its publishing in the “Official Gazette of the Republic of The Republic of Montenegro”, and shall be effective immediately.