

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.

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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

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

Additional data

Article 6

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

Form of issuance of a license

Article 7

- (1) The license shall be issued by the competent authority.
- (2) The competent authority shall decide on the application for issuance of a license in a form of decision.

PART THREE

PROCEDURES FOR APPLICATION OF PROTECTIVE MEASURES

CHAPTER ONE
ANTIDUMPING AND COUNTERVAILING MEASURES

Determination of dumping

Article 8

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 in accordance with basic characteristics of the export procedure in question, and especially taking into account the following:
 - 1) Physical characteristics;
 - 2) Import charges and indirect taxes;
 - 3) Discount, rebates and quantities;
 - 4) Level of trade;
 - 5) Transport, insurance, handling, loading and ancillary costs;
 - 6) Packing costs;
 - 7) The amount of credit granted for the sale, provided that it is a factor taken into account in the determination of the sale price;
 - 8) After-sales costs (guarantees, technical assistance and maintenance);
 - 9) Commissions paid in respect of the sales;
 - 10) Currency conversions (using the rate of exchange on the date of sale).
- (2) Comparison of export price and normal value for the purposes of determining margin of dumping during the investigation procedure shall be established on the basis of a comparison of a weighted average normal value with a weighted average of export prices of all comparable export transactions.
- (3) In the case where products are not imported directly from the country of origin but are exported to the Republic from an intermediate country, the price at which the products are sold from the country of export to the Republic shall be compared with the comparable price in the country of export. The comparison can be made with the price in the country of origin, in cases where
 - 1) The products are merely transhipped through the country of export, or
 - 2) Such products are not produced in the country of export, or
 - 3) There is no comparable price for them in the country of export.

- 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

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) the provision of goods or services or purchases of goods by a government is not made for less than adequate remuneration, or the purchase is made for more than adequate remuneration at the market.

Calculation of specific subsidies

Article 18

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

Determination and application of antidumping and countervailing measures

Examination of the impact on the industry

- (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 cont c-5.1(3.5(saop961 -1.1517 TD-.0c0 Tw()Tj-2.0977 -1.9(4 TD

- (2) The notification referred to in paragraph 1 of this Article shall be published in official Gazette of the Republic of Montenegro.

Notification of interested persons

Article 27

Notification on initiation of investigation procedure under Article 26 of this Regulation shall be submitted to the known exporters and authorities of the country of export and/or origin, and to other interested parties on th

Examination of Accuracy of Information

Article 30

- (1) If the interested person refuses access to, or otherwise does not provide necessary

- 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

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 RM Official Gazette.

Determination of origin of goods

Article 37

While determining the origin of goods for the purposes of imposing antidumping and/or countervailing duties, the general non-preferential rules of origin shall apply.

CHAPTER II

SAFEGUARD MEASURES

Threat of serious injury in the case of increased imports

Article 38

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

Determination of serious injury

Article 39

- (1) Safeguard measures shall be imposed if it is determined in the investigation procedure that increased imports of a certain product have caused or are threatening

- change of share of the domestic market taken by increased imports
- changes in the level of sales, production, productivity, capacity utilization, profits and losses, and impact of the increased imports on employment in specific production activity;
- the impact of import to the supply of the domestic market and the increased level of dependence from imports;
- reduction of price of the same goods, equally competitive, or prevention of raise of prices that would normally occur; and
- increase of supplies of the imported goods at the domestic market.

(3) Factors referred to in paragraph 1 of this Regulation must demonstrate the existence of the direct causal link between increased imports and the effect to domestic production.

Content of a decision to initiate proceedings

Article 40

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

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

Report on the state of domestic industry

Article 41

- 1) Based on the facts gathered and evidence obtained the competent authority shall prepare a report on the state of domestic industry, especially with respect whether the increased imports are causing serious injury or there is a threat thereof and proposal for possible imposition of safeguard measure,
- 2) The report referred to in paragraph 1 of this Article the competent authority shall submit to the government.
- 3) Provisions of Article 31 of this Regulation shall apply *mutatis mutandis* to the issue of confidentiality of information gathered in the investigation procedure.

Termination of the proceedings

Article 42

If on the basis of the conducted investigation procedure it is determined that there is no serious injury or threat thereof, the competent authority shall ex officio publish the decision on termination of the icdns i5e th cicc

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”.