

## **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, processes or services alternatives and initial demonstration or pilot projects, provided that these same projects cannot be converted or used for industrial application or commercial exploitation. It does not include routine or periodic alterations to existing products, production lines, manufacturing processes, services, and other on-going operations even though those alterations may represent improvements.

**“General framework of regional development”** means that regional subsidy programmes are part of an internally consistent and generally applicable regional development policy and that regional development subsidies are not granted in isolated geographical points having no, or virtually no, influence on the development of a region.

**“Usual price”** is a price which corresponds to prevailing market conditions in the country where the goods or services are obtained, i.e. country in which the goods are bought, including the price, quality, availability, market access, transportation and other circumstances of purchase or sale.

**“Interested person”** is an exporter, foreign producer, or importer of the products which is the subject-matter of investigation, or commercial or business association which represents the majority of producers, exporters or importers of such product; every domestic producer of the like product or commercial or business association which represents majority of producers of the like product in the Republic, and Government or other state body of the exporting country or state of the origin of the product which is the subject-matter of investigation;

**“Confidential information”** is every information whose communication to the public would represent significant advantage for competitor or could cause damage to person who has produces such information or for person from whom the information is gathered, as well as any information which parties to the investigating procedure provide as confidential, and

**“Increased imports”** is the real increase of imports (increase in absolute terms) or increase of the market share at the market which is decreasing, even where the quantity of imports is not increasing (increase in relative terms).

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## **PART TWO**

### **CONDITIONS AND PROCEDURES FOR ISSUANCE OF A LICENSE**

#### **Control List**

##### **Article 3**

(1) Export, import and transit licenses are issued for the goods under the licensing regime established by the Decision on Control List for Export, Import and Transit of Goods.

(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.

#### **Competent authority for issuance of a license**

##### **Article 4**

An application for issuance of export, import or transit license shall be submitted in written form to the administrative body competent for foreign trade affairs, and/or other competent administrative bodies in accordance with Article 22, paragraph 3 of the Law [hereinafter referred to as: the competent authority].

#### **Content of application for issuance of a license**

##### **Article 5**

(1) Application for issuance of a license for export, import and transit of goods shall contain data on the applicant and goods, including the following:

1. name and type of goods;
2. tariff code, and/or tariff codes of goods;
3. quantity of goods in measurement units;
4. value of goods expressed in euros (total and singular);
5. nomination of the exporting country;
6. nomination of the country of origin of goods;
7. information on person being an exporter and/or importer of goods (name, firm, address, person identification number and/or registration number, work permit in accordance with special regulation of competent ministries and phone number) and
8. proof on title on art, cultural, historical or archeological treasures, as well as proof that the author and/or holder of copyright is informed of the destination of the exported artifact.

- (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.
- (3) Decision on request for issuance of an automatic license can be issued as a note on the sample of the request submitted.

**PART THREE**  
**PROCEDURES FOR APPLICATION OF PROTECTIVE MEASURES**  
**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**

Normal value is the price paid for product assigned to free trade at the exporting country market, or other value determined according to relevant WTO agreements and EU regulations.

When the product subject to examination according to this Decree is not sold at the exporting country market within the free trade framework, or when such a sale, due to market size or low sale volume, does not provide for objective comparison, normal value is determined comparing to sale of a similar product assigned to the representative third country market or based on production costs based value of goods in the country of origin, increased for the actual amount of profit, as well as administrative, general and sale costs.

**Minimum level of sale**

**Article 10**

Sale of a similar product assigned to free trade at the exporting country market referred to in Article 9, paragraph 1 of this Decree, is considered to be enough for determination of normal value if such a sale represents at least 5% of the sale of the product subject to determination of normal value at the market of the Republic.

Exceptionally, lower ratio of sale in the Republic may be used for determination of the normal value if the evidence demonstrate that such level is nonetheless of sufficient magnitude to provide for a proper comparison for the purposes of normal value determination.

**Determination of normal value**

**Article 11**

(1) Sale of a similar product at the exporting country market, or export to third country, at the prices lower than normal value, does not have to be taken into consideration when determining normal value, unless the occurrence of such a trade is identified:

(1) Over a longer period of time, by which one year period is usually meant, but which cannot be shorter than six month:

(~~1~~)(2) For significant quantities, i.e. in cases when weighted average sale price determined in transaction subject to examination aimed to determination of normal value is lower than weighted average costs per product unit or when the sale volume at the prices lower than costs per product unit represents at least 20% of total quantity sold in transactions subject to examination aimed to determination of normal value..

(~~1~~)(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.

(~~2~~)(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.

(~~3~~)(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. Terms of sale, discounts, 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);
  11. Profit gained..
- (3) Comparison of the export price and normal value aimed to determination of dumping margin during examination procedure is performed in comparison of the weighted average normal value to weighted average export price or comparing individual export prices from all comparable export transactions.

(4) Exceptionally from the provision of the paragraph 3 of this article, normal value determined based on the weighted average can be compared to the prices from individual export transactions, if competent authority:

1) Confirms that the export prices significantly differ depending on the buyer, region or period in which transaction occurred; and

2) Explains the reasons due to which such differences cannot be adequately taken into consideration when comparing weighted average prices to weighted average prices, i.e. prices from individual transactions to prices from individual transactions.

(5) 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 origin. The comparison can be made with the price in the country of origin, in cases where

- 1) The products are merely transshipped 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.

## **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 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) A state body purchases goods, supplies goods or services, on non-market criteria;
- 4) A state body makes payments to a funding mechanism or entrusts or directs other persons to carry out one or more of the type of functions referred to in items 1, 2 and 3 of this Article which would normally be vested in that state body.

### **Specific subsidies**



### **Article 15**

- (1) Countervailing measures for offsetting the effects of subsidies with respect to imported goods in questions may be applied only with respect to specific subsidies, i.e. subsidies intended to a specific enterprise or industry or group of enterprises (hereinafter referred to: as “certain enterprises”).
- (2) Subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex 1 to the WTO Agreement on Subsidies and Countervailing Measures, and the subsidies, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings as well as subsidies contingent upon the use of domestic over imported goods, shall always be considered specific.
- (3) Competent authority, when determining specific subsidies, may on its own judgment investigate other factors, and especially:
  - a) use of a subsidy program by a limited number of certain enterprises;
  - b) predominant use of a subsidy by certain enterprises;
  - c) the length of time during which the subsidy program has been in operation; and
  - 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 guaranties 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**

##### **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 are clearly predictable, or which will certainly followis koje se jasno mogu predvidjeti, odnosno koje će nesumnjivo nastupitiunquestionable and direct.

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(2) Činiodi na osnovu kojihFactors based on which risk from serious damage is determined also include se utvrđuje postojanje opasnosti od nastanka znatne štete uključuju i:

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1) Significant acceleration of dumped or subsidized import, znatno ubrzanje dampinškog ili subvencionisanog uvoza which indicates probability of significantly increased import in the Republic koje ukazuje na vjerovatnoću značajno povećanog uvoza u Republiku;

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2) Sufficiently available capacitiesdovoljne slobodno raspoložive kapacitete, or forthcoming and certain significant increase of the exporter's capacity which indicates ili predstojeće i nesumnjivo znatno povećanje kapaciteta izvoznika koje ukazuje probability of significantly increased import in the Republic,na vjerovatnoću značajno povećanog uvoza u Republiku, when the possibility that the other export markets take over additional quantities is also taken into accountpri čemu se u obzir uzima i mogućnost drugih izvoznih tržišta da preuzmu dodatne količine;

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3) Impact of the prices at which the goods are imported on reduction or prevention of increase of domestic prices, i.e. impact on uticaj cijena po kojima se roba uvozi na smanjenje ili sprječavanje povećanja domaćih cijena, odnosno uticaj naincrease of demand for additional import in the Republic povećanje tražnje za dodatnim uvozom u Republiku;

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4) Stocks of the products subject to examination procedureszalihe proizvoda koje su predmet postupka ispitivanja; and;

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—in case of subsidized import examination procedure, u slučaju postupka ispitivanja subvencionisanog uvoza, type of subsidy or subsidies, vrstu subvencije, odnosno subvencija, and consequences that can affect trade. i posljedice koje mogu nastati po trgovinu

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(1)Existence of material injury may also be determined on the basis of the following factors:

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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;

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2)Available capacity, or expected substantial increase in capacity of the exporter indicating the likelihood of substantially increased subsidized imports to the Republic;

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- 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.~~

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### 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 the situation and arriving at a mutually agreed solution.

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#### Odbijanje zahtjeva ~~Period of time~~ Rejection of request

#### Article 23

- (1) When the application for initiation of procedure for investigation of dumping or subsidized imports does not contain sufficient evidence, the competent authority may, within 8 days of the receipt of application request from applicant to submit necessary evidence and set a period of time for such corrections.

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~~Competent authority rejects the request for initiation of the examination procedure. Nadležni organ odbija zahtjev za pokretanje postupka ispitivanja when it is determined that there are no enough evidence of dumping or subsidies, kada utvrdi da nema dovoljno dokaza o postojanju dampainga ili subvencije, i.e. damage caused by dumping or subsidiization, odnosno štete prouzrokovane dampaingom ili subvencijom.~~

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## Termination of the proceedings

### Article 24

- (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;

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- 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 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 their request, provided the confidentiality of information is secured.

### Activities in the Investigation Procedure

#### Article 28

In carrying out an investigation, the Competent Authority may:

- 1) Seek evidence and information it deems to be necessary for the investigation;
- 2) Examine and verify the data supplied by the interested parties;
- 3) Where necessary, carry out investigation and inspection; and
- 4) Inspect the records kept by the importers, exporters, traders, agents, producers, trade organizations and associations.

For the purpose of verification of the data received or collecting new ones, U cilju provjere dobijenih podataka ili pribavljanja novih, competent authority can conduct the activities nadležni organ može sprovoditi aktivnosti iz stava referred to in paragraph 1 of this article if 1 ovog člana ukoliko:

- 1) Obtain the approval of the persons to which pribavi saglasnost lica na koje se aktivnosti odnose the activities refer;
- 2) Obtain the approval of the competent state authority pribavi saglasnost nadležnog organa države u kojoj in which the activities will be conducted će se aktivnosti sprovoditi.

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Competent authority ~~Nadležni organ~~ will prepare summary of the data on the result of the activities referred to in paragraphs 1 and 2 of this article which, ~~će o rezultatima aktivnosti iz st. 1 i 2 ovog člana pripremiti sažete prikaze podataka koji,~~ in addition to restrictions referred to in article 8 of the Law ~~uz ograničenja iz člana 8 Zakona nijesu povjerljivog karaktera~~ are not confidential for the persons to which the data refer, ~~za lica na koje se podaci odnose,~~ and which can be made available to applicant. ~~može ih učiniti dostupnim i podnosiocu zahtjeva.~~

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## Restrictions on Investigation Procedure

### Article 29

As a rule, competent authority defines individual dumping margin ~~Nadležni organ, po pravilu, utvrđuje individualnu dampinšku maržu,~~ i.e. amount of subsidy for each exporter identified, or manufacturer of the product subject to examination. ~~odnosno iznos subvencije za svakog poznatog izvoznika, odnosno proizvođača proizvoda koji je predmet postupka ispitivanja.~~

In cases when the requests, exporters or importers, product types or transactions are so numerous that ~~U slučajevima kada je broj zahtjeva, izvoznika ili uvoznika, vrsta proizvoda ili transakcija veliki, tako da~~ makes determination of an individual dumping margin, i.e. amount of subsidy from paragraph 1 of this article practically impossible, ~~utrdivanje individualne dampinške marže, odnosno iznosa subvencije iz stava 1 ovog člana čini praktično nemogućim,~~ competent authorities may, upon consultations and approval of the interested exporters, producers or importers, restrict examination procedure to ~~nadležni organ može, uz konsultacije i saglasnost zainteresovanih izvoznika, proizvođača odnosno uvoznika, da postupak ispitivanja ograniči na:~~

1. realistic number of interested persons or products ~~realan broj zainteresovanih lica ili proizvođača~~ causing statistically appropriate sample, obtained based on the data available within sample selection period, or ~~korišćenjem statistički valjanog uzorka, dobijenog na osnovu podataka raspoloživih u vrijeme odabira uzorka, ili~~
2. ~~naiveći~~ dominant part of the volume of export from the exporting country which is possible to examine in the given circumstances. ~~dio izvoza iz države izvoznice koji je moguće ispitati u datim okolnostima.~~

In cases when the examination is restricted according to paragraph 2 of this article, individual dumping margin ~~U slučajevima kada se ispitivanje ograničava u skladu sa stavom 2 ovog člana, pojedinačna dampinška marža~~ can be calculated by extension to exporters or producers who timely submitted necessary data, unless if individual examination would impose unjustifiable burden of the competent authority and prevent timely completion of examination procedure, ~~može se obračunati proširivanjem i na izvoznike ili proizvođače koji su blagovremeno dostavili potrebne podatke, osim ako bi pojedinačno ispitivanje predstavljalo neopravdano opterećenje nadležnog organa i spriječilo blagovremeno okončanje postupka ispitivanja,~~ according to deadlines stipulated by this Decree. ~~u skladu sa rokovima propisanim ovom uredbom.~~

(+) ~~Exporter whose goods is subject to payment of a final countervailing duty~~ ~~izvoznik čija roba podliježe plaćanju konačne kompenzatorne carine,~~ whose particular export was not subject

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~~to examination for any reason čiji konkretan izvoz nije bio predmet ispitivanja iz bilo kog razloga, unless he refused to cooperate or is entitled osim ukoliko je odbio saradnju, ima pravo nato reconsideration without delay in order to be determined an individual countervailing duty. preispitivanje bez odlaganja sa ciljom da mu se odredi individualna kompenzatorna carina. In cases where the number of applications, exporters or importers, types of product or transactions is large, the competent authority may, taking into account the opinion of interested persons, limit the investigation to:~~

~~1) A reasonable number of persons, products or transactions by using samples which are statistically valid on the basis of information available or;~~

~~2) The volume of the production, sales or exports which can reasonably be investigated within the time limit available.~~

~~(2) In cases where the examination has been limited under the provisions of paragraph 1 of this Article, an individual amount of subsidy or dumping margin shall be calculated for any exporter or producer not initially selected who submits the necessary information within the time limits provided for in this Regulation.~~

## **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 ~~iz člana~~ article 26, stav paragraph 1, tačk item 1 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**

~~All the data collected by the competent authority according to Svi podaci koje nadležni organ pribavi u skladu sa provisions of the Law and this Decree odredbama zakona i ove uredben can be used for the requested purpose exclusively. moгу se koristiti isključivo u svrhu za koju su traženi.~~

~~Participants in the examination procedure who submit confidential data are obliged to also submit the summary Učesnici u postupku ispitivanja koji dostavljaju povjerljive podatke imaju obavezu da dostave i sažeti prikaz of the data which are not confidential tih podataka koji nije povjerljivog karaktera, which contains enough details for understanding the essence of the data koji sadrži~~

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devoljno pojedinosti za razumijevanje suštine podataka koji su označeni kao povjerljivi designated as confidential.

Exceptionally from the provision of the paragraph 1 of this article, participants in the examination procedure may specify that such data are not suitable for brief presentation, izuzetno od odredbe stava 1 ovog člana, učesnici u postupku ispitivanja mogu naznačiti da takve podatke nije moguće sažeto prikazati, uz navođenje razloga indicating the reasons due to which such presentation is not feasible zbog kojih sačinjavanje sažetog prikaza nije moguće.

If a competent authority estimates that the request for respecting data confidentiality Ako nadležni organ ocijeni da zahtjev za poštovanje povjerljivosti podataka nije is not justifiable, and participant in the procedure opravdan, a učesnik u postupku koji dostavlja podatak which refuses to make the data available or to enable disclosure odbije da podatke učini dostupnim ili da omogući otkrivanje podataka of the data in general or brief form, such data is not taken into consideration, unless if accuracy of the data can be satisfactorily proved from another source. u opštem ili sažetom obliku, takav podatak se ne uzima u obzir, osim ako se može na zadovoljavajući način, iz drugih izvora, dokazati da je podatak tačan.

Decision by which a competent authority Odluka nadležnog organa kojom se odbija rejects the request for respecting confidentiality has to be accompanied by an explanation. zahtjev za poštovanje povjerljivosti mora da sadrži obrazloženje. 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.

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#### Otkrivanje opštih podataka Disclosure of general data

##### Član Article 31 a)

Provisions of the article 8 of the Law and article 31 of this Decree Odredbe člana 8 Zakona i člana 31 ove uredbe does not prevent ne sprječavaju competent authority from publishing general data, nadležni organ da objavi opšte podatke and particularly the reasons and evidences a naročito razloge i dokaze based on which decisions according to provisions of the Law and this Decree are madena kojima se zasnivaju odluke koje donosi u skladu sa odredbama zakona i ove uredbe, in the extent nexessary for explanation of the reasons and evidences u mjeri potrebnoj za objašnjenje razloga i dokaza u in a potential procedure before the Court. eventualnom postupku pred sudom.

When publishing general data from paragraph 1 of this article, competent authority does not publish neither the data designated as confidential, nor the data directly related to the confidential ones. Prilikom objavljivanja opštih podataka iz stava 1, ovog člana nadležni organ ne objavljuje podatke koji su označeni kao povjerljivi kao ni podatke koji su u neposrednoj vezi sa povjerljivim podacima.

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#### Uvid u podatke Insight in the data of the participants in the examination procedure učesnika u postupku ispitivanja

##### Član Article 31 b)

In addition to restriction referred to in the article 8 of the Law, competent authority is ~~Nadležni organ dužan je da, uz ograničenje iz člana 8 Zakona~~obliged to enable participant in the examination procedure insight in the evidences submitted by the other participants in the procedure. ~~bez odlaganja omogućiti učesniku u postupku ispitivanja uvid u dokaze koje su dostavili drugi učesnici u postupku.~~

~~Nadležni organ omogućava učesnicima u postupku, kad god je to moguće, da blagovremeno izvrše uvid u sve sažete prikaze podataka koji nijesu povjerljivog karaktera od značaja za njihovo učešće u postupku, a koje nadležni organ koristi tokom postupka ispitivanja.~~

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### Notification before a final decision

#### Article 32

- (1) The Competent Authority shall, not later than ~~ed 30 dana~~30 days ~~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) ~~If a competent authority previously determine the occurrence of dumping or subsidiy, i.e. the damage caused by dumping or subsidy, examination procedure may be cancelled without determining provisional or final Ako nadležni organ prethodno utvrdi postojanje dampainga ili subvencije, odnosno štete nastale kao posledice dampainga ili subvencije, postupak ispitivanja može da bude obustavljen bez određivanja privremenih ili konačnih antidampinskih,~~antidumping or countervailing duties if an interested person voluntarily assumes the obligation ~~odnosno kompenzatornih carina ako zainteresovano lice dobrovoljno preuzme izvršenje obaveze, sa kojim seagreed with competent authority, in the following cases saglasi nadležni organ, i to:~~**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.

—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.

(2)

(3) Competent authority may propose the exporter to voluntarily assume the obligation.  
Nadležni organ može predložiti izvozniku da dobrovoljno preuzme izvršenje obaveze.

—The fact that the importer did not voluntarily assume the obligation Činjenica da izvoznik nije dobrovoljno preuzeo izvršenje obaveze cannot impact decision making process in the examination procedure. ne može uticati na odlučivanje u postupku ispitivanja.

(2)(4)

## 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.

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- (6) Decision of a competent authority which introduces antidumping or countervailing duty must be accompanied by an explanation including all the facts and legal reasons for introduction of the measure, Odluka nadležnog organa kojom se uvodi antidampinška ili kompenzatorna carina mora sadržati obrazloženje sa svim činjenicama i pravnim razlozima za uvođenje mjere, as well as the reasons for acceptance or rejection –kao i razloge za prihvatanje, odnosno odbijanje of the allegation tvrdnje ili zahtjeva or request učesnika u postupku of the participant in the procedure.

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### **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 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**

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### **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 to cause serious injury to a domestic industry.
- (2) In the investigation to determine whether the existence or threat of serious injury the competent authority shall evaluate all relevant factors, in particular:
  - 1) the rate and amount of the increase in imports of the product concerned in absolute and relative quantities and values with respect to domestic production and consumption
  - 2) prices of the imported goods, especially if there has been a significant decrease of the price compared to the price of competitive product
  - 3) impact to the domestic production expressed in the following:
    - 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 proceedings in the RM Official Gazette.

#### **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”.