

FOREIGN TRADE LAW

Published in the *Službeni glasnik RS*, No. 101/05 of 21 November 2005

PART ONE

BASIC PROVISIONS

Scope of the Law

Article 1

- (1) This Law shall regulate foreign trade in conformity with the World Trade Organisation rules and the European Union regulations.
- (2) Foreign trade in some goods or services may be regulated by law in conformity with the World Trade Organisation rules and the European Union regulations.

Article 2

- (1) Foreign trade shall mean cross-border trade in goods and services.
- (2) For the purposes of this Law, the following shall be regarded as direct investment abroad: establishing companies, branches or representative offices abroad, purchasing of parts or shares in the capital of a foreign company, recapitalisation of a foreign company and any other form of investment by a domestic person into the capital of a foreign legal entity in order to participate in the management of the foreign person's business.
- (3) For the purposes of this Law, the following shall be regarded as capital projects abroad: designing, construction and finishing works, engineering and other works on buildings abroad.

Freedom of Foreign Trade

Article 3

- (1) Foreign trade shall be free and without any restrictions.
- (2) Direct investments abroad and execution of capital projects abroad shall be free and without any restrictions.
- (3) The trading of goods existing abroad, as well as the provision of services abroad, in which a domestic person is participating, shall be free.
- (4) For the purposes of this Law, a restriction shall mean any violation of the freedom of foreign trade, including a prohibition, quantitative restriction, condition or permit (nonpecuniary restriction), as well as any other enactment or act of the government having such purpose or producing such effect, including also the imposition of an additional pecuniary burden (pecuniary restriction) on foreign trade, though excluding the import charges imposed by the customs regulations.
- (5) The freedom of foreign trade, direct investment abroad and execution of capital projects abroad may be restricted only under the conditions provided by this Law.
- (6) In the performance of the foreign trade transactions referred to in this Article, legal entities and sole proprietors shall have the same right to conduct business as in the case of domestic legal transactions (commercial competence).
- (7) In the performance of the foreign trade transactions referred to in this Article, individuals shall have the same rights as those in domestic legal transactions.
- (8) The transfer of ownership of the goods under customs surveillance shall be free and it shall not affect the duty to pay import customs duty and other charges provided by customs regulations.
- (9) In the performance of foreign trade transactions, legal entities, sole proprietors and individuals shall be at liberty to regulate their relations as they see fit, in compliance with the law applicable to their relations and the regulations the application of which cannot be evaded by the choice of applicable law (dealing with the protection of competition, protection of consumers, etc.).

Permissible Restrictions on Foreign Trade

Article 4

- (1) Permissible restrictions shall be provided, applied and interpreted in compliance with the rules of the World Trade Organisation and the regulations of the European Union.
- (2) Legal acts that are not in keeping with this Law and are intended to restrict the freedom of foreign trade or result in it or to protect domestic goods, services and persons, shall be null and void.
- (3) A restriction on foreign trade shall be permissible only in the following cases:
 - 1) If such restriction is explicitly provided by this Law;
 - 2) If such restriction is necessary for the purpose of achieving the purposes of the restrictions provided by this Law;
 - 3) If the degree, scope and duration of such restriction are proportionate to the purposes of that restriction and are reduced to the smallest possible extent for the achievement of the purposes of restriction permitted under this Law.
- (4) The purpose or consequence of any restriction permissible under this Law may not be the disruption of competition among participants in foreign trade.
- (5) Non-pecuniary restrictions may be provided or applied only if it is not possible to achieve the purpose of the restrictions provided by this Law with the means of pecuniary restrictions.
- (6) Unless otherwise provided by this Law, any restriction shall come into force upon the expiration of a term that may not be shorter than 30 days from the date of its publication in the Sluzbeni glasnik Republike Srbije.
- (7) Any restriction shall be removed or its degree or scope be reduced or the nonpecuniary restriction be substituted with a pecuniary one, when the reasons for its application cease to exist or when circumstances change.

Competence for the Imposition of Restrictions

Article 5

The Government of the Republic of Serbia (hereinafter referred to as: the Government) may impose restrictions at the recommendation of the ministry responsible for foreign economic relations (hereinafter referred to as: the Ministry).

Article 6

- (1) The Government shall determine the goods and services that are subject to restrictions.
- (2) The list of goods and services referred to in paragraph 1 of this Article shall be published in the Official Gazette of the Republic of Serbia.
- (3) At the request of any interested party, the Ministry shall give information on the application of the provisions of this Law.

Persons in Foreign Trade

Article 7

- (1) For the purposes of this Law, a domestic person shall mean any legal entity which according to the regulations of the Republic of Serbia (hereinafter referred to as: the Republic) is based in the Republic and any individual who is a resident of the Republic.
- (2) For the purposes of this Law, foreign person shall mean the following:
 - 1) Any legal entity which is based abroad;
 - 2) Any foreign individual;
 - 3) Any domestic citizen whose residence is abroad, or one who has been residing abroad for longer than a year.

Most Favoured Nation Treatment

Article 8

- (1) The most favoured nation treatment shall mean the application of the most

favourable terms in foreign trade in conformity with Article I of the General Agreement on Trade and Tariffs (GATT) with a country enjoying such treatment under an international agreement or by decision of the Government.

(2) The most favourable terms referred to in paragraph 1 of this Article shall not include also the terms granted for the purposes of facilitating the local border trade or on the basis of a free-trade or customs union agreement, as well as on the basis of transitional agreements on the formation of free-trade zones or customs unions.

Branch and Representative Office of a Foreign Person

Article 9

(1) The branch and representative office of a foreign legal entity or some other business (hereinafter referred to as: the founder) shall be entered at the request of its founder, in the register of legal entities and/or companies in compliance with the Republic regulations dealing with entry in that register.

(2) For the purposes of this Law:

1) A branch shall mean a detached legally dependent organisational part of its founder, which is conducting in the territory of the Republic, on a permanent basis, the business its founder is registered for in the country of its registration. The capacity to contract of a branch may not be greater than that of its founder, and it shall operate in conformity with the regulations of the Republic and have the status of a domestic person;

2) A representative office shall mean a detached legally dependent organisational part of its founder, which is performing in the territory of the Republic preliminary and preparatory operations to the conclusion of contracts, but shall not have its own capacity to conclude contracts, except those necessary for its own operation.

Services of Foreign Persons

Article 10

Foreign persons may provide services in the territory of the Republic in conformity with the regulations dealing with the provision of various services.

Administrative Charges and Administrative Lawsuit

Article 11

(1) For the purposes of this Law, the provisions of the law governing the general administrative proceedings shall apply to the issuance of individual administrative acts, unless otherwise provided by this Law.

(2) An administrative lawsuit may be initiated against a decision referred to in paragraph 1 of this Article.

Confidentiality of Information

Article 12

(1) Any information obtained in conformity with this Law shall be deemed official secret

(2) The information referred to in paragraph 1 of this Article may not be published or disclosed to third parties without the express consent given in writing by the persons to which they relate, except when the competent authority is bound to do so pursuant to law.

Administrative Fees

Article 13

(1) At the recommendation of the Ministry, the Government may levy an administrative fee for the administrative services provided by the authorities and/or persons to which public authorisations have been conveyed to persons engaged in foreign trade, only if so is necessary to cover the actual cost of providing administrative services.

(2) The administrative fees referred to in paragraph 1 of this Article may not:

1) Be greater than the actual cost of the services provided;

- 2) Stand for indirect protection of domestic persons, goods or services.
- (3) The funds collected pursuant to this Article shall be regarded as the revenue of the Republic Budget.

PART TWO
FOREIGN TRADE IN GOODS
CHAPTER I
IMPORTING AND EXPORTING

Definition

Article 14

- (1) The exporting of goods shall mean the taking out, dispatching and/or delivering of goods from the territory of the Republic to the territory of another country in conformity with the Republic customs regulations.
- (2) The importing of goods shall mean the bringing in and delivering of goods from the territory of another country in the territory of the Republic in conformity with the Republic customs regulations.

National Treatment

Article 15

- (1) The regulations applicable to domestic persons shall apply to the foreign persons who are importing goods in or exporting goods from the territory of the Republic.
- (2) The regulations applicable to domestic goods shall apply to imported goods, with the exception of the regulations for establishing the domestic origin of goods.
- (3) For the purposes of paragraph 2 of this Article, domestic goods shall mean the goods originating from the Republic pursuant to the regulations for establishing the origin of goods.

CHAPTER II
QUANTITATIVE RESTRICTIONS AND PERMITS

1. Quantitative Restrictions

Definition

Article 16

- (1) A quantitative restriction shall mean the maximum total amount of certain goods, determined by value or quantity, that may be exported or imported within a set period of time, including also an import or export ban.
- (2) A quantitative restriction shall be allocated in quotas.
- (3) A quota shall mean a share in the quantitative restriction allotted to a certain person or a group of persons.

Conditions for Imposition

Article 17

- (1) A quantitative restriction on exports may be imposed only as follows:
 - 1) In the case of a critical shortages of essential goods or the need for removing the of consequences of such shortages, or
 - 2) For the purpose protecting non-renewable natural recourses, if the export restriction is applied parallel to a restriction on domestic production or consumption.
- (2) A quantitative restriction may be imposed on imports as a measure of protection:
 - 1) Against excessive importing, pursuant to Articles 55 through 64 of this Law, or
 - 2) Of the balance of payments, pursuant to Articles 65 and 66 of this Law.

Quota Allocation

Article 18

- (1) Based on a public call for submission of applications for the allocation of quotas, the Ministry shall allocate quotas to various persons on the conditions that include the

following ones in particular:

- 1) An economically justifiable quantity of goods covered by the quota;
 - 2) Utilisation rate of the quotas allocated earlier, and
 - 3) Possibility of the quota being allocated to persons who have not been allocated quotas in the past.
- (2) The quotas shall be allocated in the order of receipt of applications for them, within 15 days from the date on which the applicant had submitted the required documents.
- (3) The quota allocating decision shall include the terms of quota allocation, as well as the term within which the quota may be utilised, which may not be longer than six months, and the way in which the Ministry is to be notified about the utilisation of the quota.
- (4) The number of deliveries in the term within which the quota may be utilised shall not be a limited one.
- (5) If a person fails to utilise a quota in accordance with the terms referred to in paragraph 3 of this Article, the Ministry may act as follows:
- 1) Revoke the quota allocating decision, and
 - 2) Allocate the quota to a person who is next on the list of persons who had responded to the public call and who had not been allocated a quota.

Exclusive Right

Article 19

- (1) An allocated quota shall be non-transferable.
- (2) The person who has not been allocated a quota may not use a quota that has been allocated to another person.

2. Permits

Definition

Article 20

A permit shall mean a document that is issued on request for the import, transit or export of goods.

Import Permit

Article 21

Import permits may be introduced for the following purposes exclusively:

- 1) Protection of public morals;
- 2) Protection of the life and health of people, animals and plants;
- 3) Protection of national security;
- 4) Protection of the environment and natural resources; or
- 5) Enforcement of special rules of gold and silver trading.

Transit Permit

Article 22

Transit permits may be introduced for the following purposes exclusively:

- 1) Protection of the life and health of people, animals and plants;
- 2) Protection of national security; or
- 3) Protection of the environment.

Export Permit

Article 23

Export permits may be introduced for the following purposes exclusively:

- 1) Protection of artistic, historical and archaeological wealth;
- 2) Protection of natural rarities and endangered flora and fauna species;
- 3) Protection of national security;
- 4) Protection of non-renewable natural resources; or
- 5) Enforcement of special rules of gold and silver trading.

Permit Issuing Procedure

Article 24

- (1) Applications for permits shall be filed with the Ministry.
- (2) The following shall be attached to an application referred to in paragraph 1 of this Article:
 - 1) An excerpt from the register or an excerpt dealing with a registered datum, if the applicant is subject to registration, and
 - 2) Evidence of the fulfilment of requirements for the issuance of permit.
- (3) An application for a permit may not be rejected because of minor deficiencies of the documents, which do not affect the basic data contained in the application.
- (4) The Government may set in greater detail the conditions for the permit issuance procedure, in keeping with the World Trade Organisation rules and the European Union regulations.

Competence for Permit Issuing

Article 25

- (1) The Ministry shall decide on the applications for permits.
- (2) Where necessary, the Ministry shall obtain the opinions of other authorities, organisations, institutions and associations, which shall present their opinions within the deadline set by the Ministry.
- (3) Notwithstanding the provision of paragraph 1 of this Article:
 - 1) The ministry responsible for protection of human health shall decide on the applications for import or export permits for narcotics, medical aids and medicines;
 - 2) The ministry responsible for protection of the environment shall decide on the applications for import or export permits for the substances that are detrimental to the ozone layer, endangered and protected species of wild flora and fauna, and permits for importing, exporting and transiting of hazardous materials, waste and sources of ionising radiation;
 - 3) The ministry responsible for protection of the health of plants and animals shall decide on the applications for import permits for animals and products of plant and animal origin, as well as goods that can communicate pests or diseases to people, animals or plants;
 - 4) The ministry responsible for cultural affairs shall decide on the applications for import permits for items of artistic, historical and archaeological importance.
- (4) The decisions on the issuance of permits shall be rendered in the order of receipt of applications, within 15 days from the date on which the applicants had filed the required documents.
- (5) Notwithstanding the provision of paragraph 4 of this Article, the waste import and export permits shall be issued within 60 days from the date on which the applicants had filed the required documents.

Contents of a Permit

Article 26

- (1) Any permit shall contain a pronouncement and rationale and it may be issued for one or several kinds of goods.
- (2) Notwithstanding the provision of paragraph 1 of this Article:
 - 1) In the case of goods of plant or animal origin, plants and animals and other goods that can communicate diseases or pests that can endanger the life and health of people, plants and animals, the permit may be issued for only one kind of goods;
 - 2) In the case of goods of artistic, historical and archaeological importance, the permit may be issued for each object individually; if several objects make up a single package, one permit in which each object is listed and described may be issued.

Validity of a Permit

Article 27

- (1) The validity of a permit may not run for more than six months from the date of issue.

(2) The number of deliveries for the duration of validity of a licence shall not be limited.

Rejection of the Application for Permit

Article 28

A decision rejecting an application for permit shall include an explanation and be rendered in writing within the term referred to in Article 25, paragraphs 4 and 5, of this Law.

Revocation of Permit

Article 29

(1) The competent ministry may revoke a permit in the following cases:

- 1) If following the issuance of the permit, it is not possible to import, export or transit the goods for which the permit has been issued, in conformity with law;
- 2) If the person to whom the permit has been issued violates the conditions or terms on which the permit was issued;
- 3) If the provisions of this Law or other regulations or the FTL Government Approved have been violated in the permit issuance procedure;
- 4) If the permit issuing decision was issued on the basis of incorrect data.

(2) In the event of occurrence of the circumstances referred to in paragraphs 1 and 2 of this Article, the person whose permit has been revoked may not be issued new permits within three years from the date of revocation of permit.

(3) In a case referred to in paragraph 1, item 1, of this Article, the permit for the goods paid for and not delivered may not be revoked, unless the import, export or transit of such goods cannot be carried out because of extraordinary circumstances.

(4) The extraordinary circumstances referred to in paragraph 3 of this Article shall mean in particular the occurrence of pests and animal and plant diseases in the Republic or the country exporting the agricultural products, the export and/or import of which imposes an unacceptable risk to the health of people, animals and plants.

Monitoring the Issued Permits

Article 30

(1) The competent ministry shall keep a record of issued permits and monitor the fulfilment of the conditions and terms laid down in the permits.

(2) The Government may set in greater detail the conditions for keeping the records referred to in paragraph 1 of this Article.

CHAPTER III

SPECIAL CONDITIONS

Special Competence

Article 31

(1) If a contract, a domestic or foreign regulation or an international agreement provides that the goods that are to be exported, imported or transited have to be provided with documents, the competence for the issuance or verification of which is not stated, such documents shall be issued and/or verified by the authority or some other person duly authorised by the Government at the Ministry's recommendation.

(2) At the recommendation of the Ministry, the Government may set the way of issuing and verifying the documents referred to in paragraph 1 of this Article.

Sanitary, Veterinary and Phyto-sanitary Requirements

Article 32

The exporting, importing and transiting of goods shall be subject to the fulfilment of sanitary, veterinary and phyto-sanitary requirements, if so is provided by law.

Codes of Practice, Standards and Regulations for Putting Goods on the Market

Article 33

- (1) Imported goods shall be up to the requirements of the codes of practice and regulations for being put on the market as applicable in the Republic.
- (2) Compliance with standards is not a requirement for importing goods.
- (3) Any goods that are not the subject matter of legal transactions in the Republic may not be imported or exported.
- (4) For the purposes of this Law, the codes of practice shall provide the obligatory criteria for putting goods on the market, for the purpose of protecting the security, life, health and safety of people, plants and animals, as well as for the purpose of protecting the environment. The codes of practice shall be applicable regardless of the origin of goods and they shall cover the properties, technical specifications, terminology, symbols, packaging and marking, as well as the process or method of production of goods.
- (5) For the purposes of this Law, a standard shall set out the properties of goods, which are not obligatory for putting the goods on the market.

PART THREE PROTECTIVE MEASURES

Kinds

Article 34

- (1) The Government may impose the following protective measures
 - 1) Anti-dumping measures;
 - 2) Countervailing measures;
 - 3) Measures of protection against excessive importing;
 - 4) Measures of safeguarding the balance-of-payments equilibrium.
- (2) For the purposes of this Law, an anti-dumping and/or countervailing measure shall mean an anti-dumping and/or countervailing duty and any other measure that is in keeping with the Agreement on the Application of Article IV of the General Agreement on Tariffs and Trade (GATT) and the World Trade Agreement on Subsidies and Countervailing Measures.
- (3) The Government may set in greater detail the conditions for the application of protective measures, in keeping with the World Trade Organisation rules and the European Union regulations.

1. ANTI-DUMPING AND COUNTERVAILING DUTIES

1) Anti-dumping Duties

Definition

Article 35

- (1) An anti-dumping duty shall mean a special duty levied on imported goods for the purpose of eliminating the consequences of dumping.
- (2) For the purposes of this Law, dumping shall mean the importing of goods in the Republic at a price that is lower than the normal one, whereby:
 - 1) Damage is caused or could be caused to the existing domestic production, or
 - 2) Domestic production is retarded considerably.
- (3) For the purposes of this Law:
 - 1) “Normal value” shall mean the price of identical or similar goods on the market of the country from which they are being exported, which is formed in the usual course of trade in that country and which includes the manufacturing, administrative, sale and general costs;
 - 2) “Domestic production” shall mean the total collective output of domestic producers of identical or similar goods, which makes up the best portion of the total domestic output in such goods;
 - 3) “Similar goods” shall mean goods that are not completely identical, but whose characteristics are substantially similar to the characteristics of the ones constituting the subject matter of importing or those, which according to their characteristics can substitute those

constituting the subject matter of importing to a substantial extent.

(4) If the goods referred to in paragraph 2 of this Article are not on sale in the country from which they are being exported, the normal value shall be fixed by making comparisons with the following:

1) Price of such goods of the same degree of fabrication or sale, which is being exported in approximately the same period to a third country, the market conditions of which are comparable to those existing in the Republic, or

2) Producer price of such goods in the country of origin, if such price is representative, plus the reasonable usual administrative, sale and general costs and profit.

(5) In establishing the existence of dumping and determining the normal value, all differences in sale terms, including all differences that affect the price structure, shall be taken into account.

Anti-Dumping Duty Rate

Article 36

(1) The anti-dumping duty shall be levied at a rate that is sufficient to make good the damage done, but not higher than the dumping margin.

(2) The dumping margin shall mean the difference between the normal value of goods and the price at which such goods are exported to the Republic.

2) Countervailing Duties

Definition

Article 37

(1) A countervailing duty is a special duty levied on imported goods for the purpose of eliminating the consequences of any subsidy granted by the country of origin of goods or the country exporting them, indirectly or directly, for the production or export of such goods to the Republic.

(2) For the purposes of this Law, a subsidy shall mean a special, indirect or direct financial contribution of the country of origin of goods or the country exporting them, in favour of the person who is producing or exporting such goods to the Republic indirectly or directly.

(3) The financial contribution referred to in paragraph 2 of this Article shall mean the following in particular:

1) Direct transfer of government funds (donations, loans, share capital increases, etc.) or direct taking on of obligations (assumption of debts, giving guarantees for loans, etc.);

2) Government's waiver of a public revenue falling due or non-collection of such revenue (customs duties, taxes, tax incentives, etc.);

3) Government's contribution to the export promotion funds;

4) Production or procurement of goods or provision of services by the Government, other than those for general infrastructure purposes (road construction, gas supply and distribution networks, etc.);

5) Entrusting to or instructing other persons to perform any of the operations referred to in items 1 through 4 of this paragraph;

6) Incentive conditional on successful exporting or use of domestic goods in production instead of imported ones.

(4) The financial contribution referred to in paragraph 2 of this Article shall be deemed special if it is granted as follows:

1) Only to one person or a group of persons, including the financial contribution granted to only one person or a group of persons on the basis of geographic position of such persons, but not also the contribution that is automatically granted to all persons referred to in paragraph 2 of this Article, on the basis of the criteria provided by law;

2) Only to a certain number of persons on the basis of the criteria provided by law, or

3) Largely only to a certain number of persons on the basis of the criteria provided by law (in practice).

(5) For the purposes of this Law, the exemption of such goods from the tax that is

payable on them, when they are to be put on the domestic market or the refund of such tax, shall not be deemed a subsidy.

Countervailing Duty Rate

Article 38

The countervailing duty shall be levied at the rate that is sufficient to make good the consequences of importing the goods involved, but not in excess of the full subsidy.

3) Conditions and Competence for Levying Anti-dumping and Countervailing Duties

Article 39

(1) The Government may levy the anti-dumping and/or countervailing duties, if the existence of the following is established on the basis of an investigation conducted in conformity with this Law:

- 1) Dumping or subsidising,
- 2) Substantial damage caused to domestic production or possibility of such damage being caused, and
- 3) Causality between dumping and subsidising on the one side and substantial damage or possibility of substantial damage being caused, on the other.

(2) For the purposes of paragraph 1, item 2, of this Article, substantial damage or hazard of such damage:

- 1) Shall be deemed existent, if the importing of the goods involved has brought about or could bring about a decline in domestic production, a decline in the sale of domestic goods, share of the market, profits, productivity, yield on investment, capacity utilisation rate, actual or possible effect on marketing, a decrease in stocks, employment, wages and economic growth, as well as smaller opportunities for obtaining capital or investments;.
- 2) Shall be determined on the basis of all economic factors and particularly on the basis of actual or possible decreases in the quantity of sold goods, profits, market share, productivity, investment profitability, production capacity utilization rate, cash flow, investment, employment, economic growth, financial capacity and prices, as well as increased dumping margin.

(3) The causality referred to in paragraph 1, item 3, of this Article shall be deemed existent particularly in the following cases:

- 1) If the importing of dumped or subsidised goods has increased substantially in relation to the average imports in the three years preceding the period in which the dumped or subsidised goods are being imported, or the period for which data are existent, and
- 2) If the prices of such imported goods are much lower than those of similar domestic goods and such import has caused the price of similar domestic goods to fall considerably or has prevented the price of domestic goods from increasing, which otherwise would have happened.

(4) Should an investigation show that substantial damage is also owed to other causes, not only to dumping and subsidised imports, the damage owed to other causes may not constitute the grounds for levying the countervailing and/or anti-dumping duties.

(5) The other causes referred to in paragraph 4 of this Article shall include the following ones in particular:

- 1) Quantity and price of the goods not imported on a dumping or subsidy basis;
- 2) Fallen demand or changes in the forms of consumption;
- 3) Disrupted competition between domestic and foreign producers;
- 4) Upgrading of the technology of the producers of imported goods;
- 5) Domestic exporting performance and productivity.

(6) If the imports of certain kinds of goods originating from several countries are being investigated at the same time, the cumulative effect of such imports may be appraised, if it is found that:

- 1) The dumping margin and/or financial contribution from each country individually amount to less than two per cent of the export price of goods;

- 2) The share of imports from each country individually amounts to more than three percent of the total import of the same or similar goods in the Republic or if the total share of such goods from these countries is greater than seven per cent of the total imports of the same or similar goods in the Republic, and
- 3) The appraisal of the cumulative effect of such imports is suited to the terms of competition between the producers of the identical or similar imported goods and the terms of competition between the producers of the same or similar imported goods and domestic goods.

4) Investigation Procedure

Institution of the Investigation Procedure

Article 40

(1) The Ministry shall conduct the investigation procedure as follows:

- 1) *Ex officio*, if there is evidence of dumping and/or subsidised importing, causality and damage, or
- 2) On the basis of a request made in writing by domestic producers or persons duly authorised by them.

(2) Domestic producers shall be deemed to have made the request in the following cases:

- 1) If the request has been made by them or the persons duly authorised by them or if the request is supported by domestic producers whose collective domestic output is greater than 25% of the total domestic production of the identical or similar goods, and
- 2) If the total collective domestic production referred to in item 1 of this paragraph is greater than 50% of the output in the goods subjected to investigation of the domestic producers making the request, supporting the request or opposing the request.

(3) Domestic producers of the kind of goods subjected to investigation, who are associated with the persons who are importing/exporting the subsidised or dumped goods in/from of the Republic or the persons who are at the same time the producers and importers of such goods, shall not be regarded as the domestic producers referred to in paragraph 1, item 2, of this Article.

(4) Domestic producers who are associated with the persons who are importing/exporting the subsidised or dumped goods in/from the Republic pursuant to paragraph 3 of this Article shall mean the following domestic producers:

- 1) Those who have indirect or direct control over the persons who are importing/exporting the subsidised or dumped goods in/from the Republic;
- 2) Those who are indirectly or directly controlled by the persons who are importing/exporting subsidised or dumped goods in/from the Republic;
- 3) Those who are indirectly or directly controlled by a third party which controls at the same time the persons who are importing/exporting subsidised or dumped goods in/from the Republic, or
- 4) Those who share indirect or direct control with the persons who are importing/exporting subsidised or dumped goods in/from the Republic over a third party, when it is reasonably suspected that such connection could provoke a conduct that differs from that shown by non-associated domestic producers.

(5) The applicant shall present the required evidence and information together with the request for the institution of investigation, including the following ones in particular:

- 1) Information on the applicant and its share in the domestic producers' total output. The request presented on behalf of domestic producers shall also include a list of all known domestic producers of the goods for which the investigation is requested, as well as information relating to the quantity and value of domestic output in the same or similar goods;
- 2) Information on the goods for which the institution of investigation is requested;
- 3) Country or countries of origin or export and information on any person who is known to be importing/exporting the goods involved in/from the Republic or producing the goods involved abroad;
- 4) Prices of such goods, particularly in the country of origin or export;
- 5) Information on any change in the quantity for which the investigation is requested,

impact of the import of such goods on the price of similar goods on domestic market and impact of such import on domestic producers;

- 6) Evidence of dumping or subsidizing;
- 7) Evidence of causality; and
- 8) Evidence of the damage done.

Preliminary Procedure

Article 41

- (1) The Ministry shall notify the Government of any presented request, existence of dumping or subsidised imports, causality and damage done.
- (2) The Government shall notify the government of the country from which the goods involved are being exported, as well as interested domestic and foreign persons, of the evidence of the dumped or subsidised goods being imported, causality and damage done.
- (3) In the case of importing of subsidised goods, the Government shall consult with the government of the exporting country of the goods involved, prior to starting the investigation, with a view to establishing its readiness to modify its policy of subsidising.
- (4) The Ministry shall examine the presented requests, evidence of the import of dumped or subsidised goods being imported, causality and damage done and notify the Government of the necessity to institute investigations.
- (5) Having completed the preliminary procedure, the Government shall decide whether to institute an investigation or not.

Investigation Procedure

Article 42

- (1) Pursuant to the Government decision referred to in Article 41, paragraph 5, of this Law, the Ministry shall institute the investigation procedure.
- (2) If necessary, the Ministry may obtain the opinions of other authorities, organisations, associations and establishments in the investigation procedure.

Article 43

- (1) Interested persons, particularly the ones using the goods involved in production, as well as the representative consumer organizations, may take part in the investigation procedure for the purpose of protecting their interests.
- (2) On request, any interested person shall be:
 - 1) Given a copy of the presented request, with any supplements thereto;
 - 2) Allowed to examine the evidence and information collected in the investigation procedure.

Article 44

For the purpose of checking on the collected information or obtaining new information, the Ministry may cooperate with foreign authorities, establishments, associations and persons.

Article 45

- (1) Prior to rendering its decision establishing the existence of dumping or subsidising, the Ministry shall notify the parties to the procedure and interested persons of the important facts and call them to state their positions within 30 days from the date of notification.
- (2) Upon the expiration of the term referred to in paragraph 1 of this Article, the Ministry shall render a decision establishing the existence of dumping or subsidizing.

Article 46

- (1) Any person who is exporting dumped or subsidized goods to the territory of the Republic, may offer or assume the duty to increase the price of the goods subjected to investigation by the amount necessary to make the damage good.
- (2) The Ministry may not request the price to be increased in excess of the dumping margin or subsidy.

(3) Should the Ministry find that a price rise is instrumental to the elimination of the future consequences of dumping or subsidizing, it may discontinue or suspend the investigation procedure, *ex officio* or at the request of the person referred to in paragraph 1 of this Article.

(4) The Ministry may render a decision rejecting the request for discontinuation or suspension of the investigation procedure particularly when a large number of persons are importing/exporting the goods involved in/from the Republic and such decision shall be properly reasoned.

(5) A complaint may be filed with the Government against a decision referred to in paragraph 3 of this Article.

Article 47

(1) An investigation procedure that has been discontinued pursuant to Article 46, paragraph 3, of this Law may be carried on with as follows:

1) At the request of the person that has assumed the duty to raise the price;

2) At the request of the country from which the subsidised goods are exported; or

3) *Ex officio*.

(2) Should it be established in a case referred to in paragraph 1 of this Article that there is no dumping or subsidising that is causing substantial damage, the duty to raise the price shall cease, unless it is established that dumping or subsidising is not done because of the assumed duty to raise the price.

(3) Should it be established on completion of the investigation procedure that dumping or subsidising is being done and causing substantial damage, the assumed duty to raise the price shall apply.

(4) In a case referred to in paragraph 3 of this Article, the decision levying the antidumping or countervailing duty shall not apply to the goods of the person who has assumed the duty to raise the price.

Article 48

(1) The Ministry shall monitor the fulfillment of the duty to raise the price.

(2) The person who has assumed the duty to raise the price shall make it possible for the Ministry to check on the information on the performance of the duty to raise the price.

Provisional Measures

Article 49

(1) At the recommendation made by the Ministry upon establishing that the assumed duty to raise the price is being violated, the Government may impose provisional measures.

(2) The Government may impose provisional measures upon the expiration of 60 days from the date of institution of the investigation procedure, provided that:

1) It establishes that the dumping or subsidising is probably being done and damage has been caused;

2) It establishes that the deferment of application of the anti-dumping and/or countervailing measures could produce harmful consequences that can be made good only with great difficulty; and

3) If it makes it possible for the parties to the procedure and interested persons to take part in the procedure, for the purpose of protecting their interests.

(3) The provisional measures referred to in paragraphs 1 and 2 of this Article may be as follows:

1) Provision of a security that is equal to the provisionally levied anti-dumping or countervailing duty calculated for the period referred to in paragraph 5 of this Article, or

2) A provisional anti-dumping or countervailing duty, if the Ministry finds that the provision of a security is not good enough.

(4) The decision imposing provisional measures shall be published in the Sluzbeni glasnik Republike Srbije and it may not come into force before the expiration of eight days from the date of its publication.

(5) Provisional measures shall stay in force for not more than six months from the

effective date of the decision levying the provisional anti-dumping duty or four months from the effective date of the decision levying the provisional countervailing duty.

Article 50

(1) If the final amount of anti-dumping or countervailing duty is greater than the amount paid or deposited pursuant to the decision imposing the provisional measures, the balance shall not be collectable.

(2) If on its completion, the investigation procedure shows that there has been no dumping and/or subsidising and if the final amount of the anti-dumping or countervailing duty paid is smaller than the amount paid on the basis of provisional measure, the amount paid or the balance shall be refunded without any delay.

Article 51

(1) A person who has not been importing/exporting goods that are subject to antidumping duty in/from the territory of the Republic for the duration of the investigation procedure and which is not associated with the persons who are importing/exporting the goods subject to this measure in/from the territory of the Republic, or with the producers of such goods, may request the Ministry to consider without any delay the justification for levying the anti-dumping duty on the goods it is importing/exporting, as well as to fix the requisite antidumping duty on that person's goods or to make that person's goods exempt from anti-dumping duty.

(2) A person whose goods are subject to countervailing duty, but who had not taken part in the investigation procedure, except for refusing to cooperate, may request the Ministry to levy without any delay a special countervailing duty on the goods imported/exported by it.

(3) Pending the decision on a request referred to in paragraphs 1 and 2 of this Article:

1) The anti-dumping and/or countervailing duties shall not apply to the goods imported by the applicant;

2) The Ministry may request the provision of security for collection of the antidumping and/or countervailing duties.

Completion of the Investigation Procedure

Article 52

The investigation procedure shall be completed within 12 months from the date of its institution.

Decision

Article 53

(1) On completion of the investigation procedure, the Ministry shall notify the Government of its finding as to the existence of dumping and/or subsidising.

(2) The notification referred to in paragraph 1 of this Article shall be published in the Sluzbeni glasnik Republike Srbije without any delay.

(3) The Government shall decide on the levying of anti-dumping and/or countervailing duties within 45 days from the date of publication of the decision referred to in paragraph 1 of this Article.

(4) The decision referred to in paragraph 3 of this Article shall be published in the Sluzbeni glasnik Republike Srbije.

Application of Measures

Article 54

(1) During the period of application of anti-dumping and/or countervailing duties, the Ministry shall look into the need for further application of anti-dumping and/or countervailing duties, pursuant to the provisions of this Law dealing with the investigation procedure.

(2) At the recommendation of the Ministry, the Government may abolish the antidumping and/or countervailing duties, if it finds that the reasons for levying the anti-dumping and/or countervailing duties have ceased to exist.

(3) The anti-dumping and/or countervailing duty, as well as the duty to raise the price pursuant to Article 46 of this Law and applied in conformity with Article 47, paragraphs 3 and 4, of this Law, shall remain in force for as long as it is necessary to make the damage good, but not for longer than five years:

1) From the date of levying the anti-dumping and/or countervailing duties, including the period of application of the provisional measure, or

2) If it has been decided pursuant to paragraph 1 of this Article for the anti-dumping and/or countervailing duties to apply as of the date of the latest decision of that kind.

(4) The Ministry may extend the period referred to in paragraph 3 of this Article in the following cases:

1) If the procedure referred to in paragraph 1 of this Article, which was started before the expiration of the terms referred to in paragraph 3 of this Article, has not been completed; and

2) If it is reasonably suspected that the dumping and/or subsidizing and damage are still existent.

(5) In a case referred to in Article 49, paragraph 1, of this Law, the anti-dumping and/or countervailing duties may also be levied on the goods imported up to 90 days preceding the effective date of the decision imposing the provisional measures, but not also on the goods imported over that period on the basis of the assumed duty to raise the price.

2. SAFEGUARDS AGAINST EXCESSIVE IMPORTING

Kinds

Article 55

The safeguards against excessive importing shall be as follows:

1) Quantitative restriction on the import of certain goods, or

2) Levying an extra charge on the import of certain goods.

Conditions

Article 56

(1) At the recommendation of the Ministry made upon completion of the investigation procedure, the Government may impose safeguards against excessive importing (hereinafter referred to as: the safeguards), for the purpose of removing the consequences of serious damage or the hazard of serious damage being done, if it finds that:

1) Imports in certain goods have been increased in relation to domestic production of the identical, similar or directly competitive goods;

2) Imports in certain goods are causing or threatening to cause serious damage to domestic production of the identical, similar or directly competitive goods, and

3) Increased imports are the direct cause of serious damage or hazard of serious damage, where the damage attributed to other causes is not taken into account.

(2) For the purposes of paragraph 1 of this Article:

1) "Serious damage" shall mean a significant and all-inclusive impairment of the position of domestic production, as established particularly on the basis of the following:

Increased importing of the goods involved;

Share of the increased imports in the Republic market, or

Decreases in the sales, output, productivity, capacity utilisation rate, wages and employment in the domestic producers of the goods involved.

2) "Hazard of serious damage" shall mean serious damage, the occurrence of which is certain on the basis of established facts;

3) "Domestic production" shall mean the joint production of domestic producers of the same, similar or directly competitive goods or of the domestic producers whose joint production of such goods accounts for more than 50% of the domestic output in such goods.

Investigation Procedure

Article 57

(1) If it is of the opinion that the circumstances referred to in Article 56 of this Law are

existent, the Ministry shall institute *ex officio* the investigation procedure for the purpose of establishing such circumstances.

(2) The Ministry shall notify the Government of the institution of the investigation procedure.

(3) The Government shall notify the competent World Trade Organisation authorities of the instituted investigation procedure and consult with them, pursuant to Article 12 of the World Trade Organisation Safeguard Agreement.

(4) If necessary, the Ministry shall obtain the opinion of other authorities, organisations, establishments and associations in the investigation procedure.

Article 58

(1) Having completed the investigation procedure, the Ministry shall notify the Government of the results of such investigation.

(2) The Government shall decide on the kind and duration of the safeguards against excessive importing.

Provisional Measures

Article 59

(1) At the recommendation of the Ministry made in emergencies, the Government may impose a provisional measure involving the levying of an extra import charge in the duration of up to 200 days, if the following has been established in the investigation procedure:

- 1) Increased imports have caused or are threatening to cause serious damage, and
- 2) Deferment would cause the onset of hardly removable harmful consequences.

(2) The provisional measure referred to in paragraph 1 of this Article shall come into force at least eight days upon its publication in the Sluzbeni glasnik Republike Srbije.

(3) Should it be found in the investigation procedure that increased imports have not caused or are not threatening to cause serious damage to domestic producers, the amount paid pursuant to paragraph 1 of this Article shall be refunded without any delay.

Quantitative Restriction

Article 60

(1) If a quantitative restriction is imposed as a protective measure, imports may not be restricted to a quantity that is smaller than the average quantity of goods imported in the three years preceding the period of excessive imports to which the investigation procedure applies or the period for which statistical data are existent, unless it has been established beyond any doubt that a higher level of protection is necessary to prevent or remove the consequences of serious damage.

(2) Should the Government find pursuant to the provisions of Articles 56 through 58 of this Law that a quantitative restriction distributed in quotas applicable to countries, not the goods exporting persons should be introduced as a protective measure, it should notify accordingly the country/countries having a special interest in exporting such goods to the Republic, for the purpose of reaching an agreement on the quota distribution.

(3) At the recommendation of the Ministry, the Government shall allocate to the country/countries with which the agreement referred to in paragraph 2 of this Article has not been reached within 30 days from the date of notification, a quota that is proportional to the share of such country/countries in the quantity or value of the goods involved in the period preceding the increased imports in the Republic.

(4) The decision referred to in paragraph 3 of this Article shall be rendered within 15 days from the date of expiration of the 30-day period from the date of service of notification.

(5) The provisions of paragraphs 2, 3 and 4 of this Article shall not apply in the following cases:

- 1) If the imports from some countries have been increased disproportionately in relation to the total increase in the import of the goods involved,
- 2) If the reasons for non-application are justifiable, or
- 3) If the conditions for quota allocation are equal for all persons who are

importing/exporting the goods involved in/from the Republic.

Application of Protective Measures

Article 61

- (1) Protective measures shall be applied to the import of all goods referred to in Article 56, paragraph 1, of this Law, regardless of the country of their origin.
- (2) Protective measures shall be applied only to the extent necessary to prevent or remove serious damage or to allow the domestic production to adjust to market conditions.

Article 62

- (1) A protective measure shall remain in force for as long as it is necessary to make the damage good, but for not longer than four years from its imposition, including also the period of application of the provisional protective measure.
- (2) Notwithstanding the provision of paragraph 1 of this Article, at the recommendation of the Ministry, the Government may extend the period of application of a protective measure, if it establishes the following:
 - 1) That the application of the protective measure is still necessary towards preventing or removing the consequences of serious damage, and
 - 2) That evidence exists of the domestic production getting adjusted to market conditions.
- (3) The total duration of the application of a protective measure may not be longer than eight years from the date of its imposition, including also the period of application of the provisional protective measure.
- (4) The protective measure the application of which has been extended pursuant to paragraphs 2 and 3 of this Article shall not be instrumental to the imposition of a higher degree of protection than that existing before the extension.

Article 63

- (1) The Government shall gradually reduce at regular intervals the degree of a protective measure that is being applied for longer than a year.
- (2) The Ministry shall go *ex officio* into the necessity of applying a protective measure which has been applied for longer than three years, no later than by the expiration of a half of the period for which that measure has been imposed.
- (3) The Government may revoke a protective measure or speed up the reduction of the degree of protection.

Article 64

- (1) A protective measure may not be imposed on the import of the goods that had already been subjected to such measure before the expiration of a period that is equal to the period of application of such measure.
- (2) The term referred to in paragraph 1 of this Article may not be shorter than two years.
- (3) Notwithstanding the provision of paragraph 2 of this Article, if the goods involved have not been subjected to a protective measure more than twice in the five years preceding the protective measure, a protective measure lasting not more than 180 days may be imposed after a year.

3. BALANCE OF PAYMENTS EQUILIBRIUM SAFEGUARDS

Conditions and Procedure

Article 65

- (1) At the recommendation of the Ministry, the Government may impose a quantitative import restriction for the purpose of safeguarding the balance of payments equilibrium, if so is necessary for the purpose of:
 - 1) Arresting a considerable decrease in the foreign exchange reserves or averting an immediate hazard of a considerable decrease in the foreign exchange reserves, or
 - 2) Increasing the very low foreign exchange reserves.
- (2) The Ministry shall establish the facts referred to in paragraph 1 of this Article on the

basis of the opinion of the National Bank of Serbia.

(3) The balance of payments equilibrium safeguards may neither be imposed nor applied for the purpose of protecting domestic producers.

Application

Article 66

(1) The balance of payments equilibrium safeguards shall be applied for as long as necessary, the safeguarding degree being gradually lowered with the improvement of the balance of payments.

(2) The balance of payments equilibrium safeguards shall not be applicable to the goods imported for the purpose of safeguarding the intellectual property rights.

(3) The Government may set more lenient conditions for application of the balance of payments equilibrium safeguards.

PART FOUR

PROVISIONAL REGIMES AND MEASURES

Article 67

Provisional regimes and measures shall be applied, if necessary, in support of the application of the provisions of other regulations affecting the foreign trade, until the date of the Republic's accession to the World Trade Organisation at the latest.

Article 68

(1) The Ministry may give its approval to a domestic person for paying or collecting in goods or services for the goods imported or exported by it, as well as foreign trade services, particularly in the case of the following:

1) Equipment, intermediates and raw materials intended for export-oriented production of goods and provision of services;

2) Goods that are not produced in the Republic or are produced in a quantity that is not sufficient to cover the domestic market demand;

3) Goods that are produced by outward and inward processing, in conformity with customs regulations, if collection is to be made in the goods being processed or in processed goods, and

4) Goods and/or services for which payment cannot be made or collected in some other way.

(2) The Government may provide in greater detail the terms of payment or collection in goods or services.

Article 69

The payment for goods located in the Republic and sold to a foreign person and delivered in the territory of the Republic may be collected in conformity with the regulations dealing with foreign exchange management.

Article 70

(1) Goods and services may be exported or imported free of payment as follows:

1) For advertising purposes;

2) If samples, designs or other technical documents accompanying the exported or imported goods are involved;

3) If samples, designs and other technical documents serving for participation in international public biddings are involved;

4) If the equipping of branch offices or branches or investments are involved;

5) If goods are being dispatched or received for humanitarian, scientific, educational, cultural, public health, ecological, welfare, sport, religious and other noncommercial purposes;

6) If goods are being dispatched or received as relief from the consequences of natural disasters, ecological accidents and other cases of Force Majeure;

- 7) For the purpose of performing contractual duties.
- (2) The Government may set in greater detail the conditions for exporting and importing without payment.

Article 71

A domestic person need not import the goods paid for in the following cases:

- 1) If the goods are located abroad and delivered abroad on the basis of a contract (sales, hire, leasing, etc.);
- 2) If the goods are brought into the country in the scope of some other procedure, in conformity with customs regulations (outward and inward processing, bonded warehousing, etc.).

Article 72

(1) With a view to upgrading the foreign trade and seeing to a more efficient application of this Law and other regulations affecting the foreign trade, the Government may impose the duty of keeping a record of or reporting on certain foreign trade transactions and set the contents of such records and reports.

(2) The purpose or consequence of the application of paragraph 1 of this Article shall not be an additional restriction on the freedom of foreign trade.

Article 73

(1) Having made a direct investment abroad, the domestic person concerned shall present to the Ministry, for record keeping purposes, an excerpt from the register in which such company, branch or representative office has been entered, together with a verified translation, as well as a report containing the following in particular:

- 1) Name and/or registered name of the domestic person concerned and its residence and/or registered address;
- 2) Registered name and address of the foreign company, branch or representative office;
- 3) Amount of investment, and
- 4) Personal data relating to the person responsible for operation of the foreign company, branch or representative office.

(2) The domestic person concerned shall present to the Ministry for record keeping purposes, with 30 days from the date of the status-related changes affecting the investment referred to in paragraph 1 of this Article or the date of cessation of operation of the company, branch or representative office abroad, a report on the changes made and an excerpt from the register in which that company, branch or representative office has been entered, together with a verified translation of it.

(3) The term referred to in paragraphs 1 and 2 of this Article shall run from the date of payment made on the basis of direct investment abroad.

(4) The domestic person concerned shall bring the profit stemming from investment abroad into the republic in conformity with the law governing the foreign exchange management, with the exception of the profit earmarked for further investing abroad.

Article 74

(1) The date of providing a service in the foreign trade domain shall be stipulated by a contract.

(2) The Ministry shall fix the date of provision of a service, unless such date is stipulated by or fixable on the basis of a contract.

PART FIVE

PENAL PROVISIONS

Article 75

(1) Any legal entity that fails to perform the duty to keep a record of or report on a foreign trade transaction as provided by Article 72, paragraph 1, of this Law, shall be fined

25,000 to 250,000 Dinars for offence.

(2) The responsible person in a legal entity for the offence referred to in paragraph 1 of this Article shall be fined 2,500 to 25,000 Dinars.

(3) Any sole proprietor shall be fined 12,500 to 125,000 Dinars for the offence referred to in paragraph 1 of this Article.

(4) Any individual shall be fined 2,500 to 25,000 Dinars for the offence referred to in paragraph 1 of this Article.

Article 76

(1) Any legal entity that fails to present to the Ministry a report pursuant to Article 73, paragraphs 1 and 2, of this Law shall be fined 25,000 to 250,000 Dinars for offence.

(2) The responsible person in a legal entity for the offence referred to in paragraph 1 of this Article shall be fined 2,500 to 25,000 Dinars.

(3) Any sole proprietor shall be fined 12,500 to 125,000 Dinars for the offence referred to in paragraph 1 of this Article.

(4) Any individual shall be fined 2,500 to 25,000 Dinars for the offence referred to in paragraph 1 of this Article.

PART SIX

TRANSITIONAL AND CONCLUDING PROVISIONS

Article 77

(1) The validity of the Foreign Trade Law (Sluzbeni list SRJ, Nos. 46/92, 16/93, 29/97, 59/98, 44/98, 44/99, 53/99, 73/00 and 23/01) and the regulations enacted on the basis of it shall run out on the effective date of this Law

(2) This Law shall apply to the administrative proceedings instituted in conformity with the Foreign Trade Law (Sluzbeni list SRJ, Nos. 46/92, 16/93, 29/97, 59/98, 44/98, 44/99, 53/99, 73/00 and 23/01) and on which the final decision has not been rendered by the starting date of application of this Law.

(3) The rights provided by individual acts on the basis of the Foreign Trade Law, which have not been exercised fully by the starting date of application of this Law, may be exercised within the time limits provided by such individual acts.

(4) The proceedings dealing with offences and economic violations that were started up prior to the starting date of application of this Law shall be completed in conformity with the provisions of this Law, if so is more favourable for their perpetrators.

(6) The proceedings dealing with offences and economic violations that were started up prior to the starting date of application of this Law, on the basis of the Foreign Trade Law, for the acts that are not provided as offences or economic violations by this Law, shall be suspended.

Article 78

This Law shall come into force on the eighth day upon its publication in the Sluzbeni glasnik Republike Srbije.