

# COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 19.07.1994

94/0185 (CNS)

Proposal for

COUNCIL DECISION

**ON THE CONCLUSION BY THE EUROPEAN COMMUNITY OF THE  
INTERIM AGREEMENT BETWEEN THE EUROPEAN COMMUNITY, THE  
EUROPEAN COAL AND STEEL COMMUNITY AND THE EUROPEAN  
ATOMIC ENERGY COMMUNITY, OF THE ONE PART, AND UKRAINE,  
OF THE OTHER PART,  
ON TRADE AND TRADE-RELATED MATTERS**

(presented by the Commission)

Draft

COMMISSION DECISION

**CONCERNING THE CONCLUSION ON BEHALF OF THE EUROPEAN COAL  
AND STEEL COMMUNITY OF THE INTERIM AGREEMENT BETWEEN THE  
EUROPEAN COMMUNITY, THE EUROPEAN COAL AND STEEL  
COMMUNITY AND THE EUROPEAN ATOMIC ENERGY COMMUNITY, OF  
THE ONE PART, AND UKRAINE, OF THE OTHER PART, ON TRADE AND  
TRADE-RELATED MATTERS**

## Explanatory memorandum

1. The attached proposal for Decisions constitute the legal instrument for the conclusion by the European Community of the Interim Agreement between the European Community, Euratom and the European Coal and Steel Community, on the one hand, and Ukraine, on the other.
2. Pending ratification of the Partnership and Cooperation Agreement with Ukraine, signed on 14 June 1994, the Commission has, in accordance with the negotiating directives adopted by the Council on 13 June 1994, negotiated an Interim Agreement with Ukraine.
3. The Interim Agreement providing for provisional implementation of the part of the Partnership and Cooperation Agreement on trade and trade-related measures was initialed in Luxembourg on 14 June 1994, and will be concluded for the period ending with the entry into force of the Partnership and Cooperation Agreement.
4. The Interim Agreement suspends, as far as Ukraine is concerned, the trade provisions of the Agreement on Trade and Commercial and Economic Cooperation signed on 18 December 1989 between the European Economic Community and the European Atomic Energy Community, of the one part, and Union of Soviet Socialist Republics, of the other part.
5. The procedures for signing and concluding the Agreement differ between the EC and ECSC.

The Agreement will be concluded as follows :

- the Council, after consulting Parliament, will conclude the Agreement on behalf of the European Community under Article 113 of the EC Treaty by adopting the Decisions contained in Annex I;
  - the Commission will conclude the Agreement on behalf of the ECSC by adopting the Decisions contained in Annex II in accordance with Article 95 of the ECSC Treaty, with the unanimous assent of the Council and following consultation of the Consultative Committee.;
  - the Commission will conclude the Agreement on behalf of Euratom after the Council has approved it in accordance with the second paragraph of Article 101 of the Euratom treaty;
6. The Interim Agreement should be signed as soon as possible in order to entry into force before the end of 1994.
  7. The Commission accordingly asks the Council to adopt the proposals contained in Annex I and to give its assent to the decisions under Annex II.

## ANNEX I

Proposal for a Council Decision concerning the conclusion by the European Community of the Interim Agreement between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, on the one part, and Ukraine, of the other part, on trade and trade-related matters.

Proposal for  
COUNCIL DECISION

OF .....

**ON THE CONCLUSION BY THE EUROPEAN COMMUNITY OF THE  
INTERIM AGREEMENT BETWEEN THE EUROPEAN COMMUNITY, THE  
EUROPEAN COAL AND STEEL COMMUNITY AND THE EUROPEAN  
ATOMIC ENERGY COMMUNITY, OF THE ONE PART, AND UKRAINE,  
OF THE OTHER PART,  
ON TRADE AND TRADE-RELATED MATTERS**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 in conjunction with Article 228 (2) first sentence thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas, pending the entry into force of the Partnership and Cooperation Agreement signed in Luxembourg on 14 June 1994, it is necessary to approve the Interim Agreement between the European Community, the European Atomic Energy Community and the European Coal and Steel Community, of the one part, and Ukraine, of the other part, on trade and trade-related matters signed in ..... on .....

HAS DECIDED AS FOLLOWS :

**Article 1**

The Interim Agreement between European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and Ukraine, of the other part, on trade and trade-related matters, together with the Protocol and the declarations, are hereby approved on behalf of the European Community.

These texts are attached to this Decision.

**Article 2**

The President of the Council shall give the notification provided for in Article 36 of the Interim Agreement on behalf of the European Community.

Done at Brussels,

## ANNEX II

Draft Commission Decision concerning the conclusion on behalf of the European Coal and Steel Community of the Interim Agreement between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and Ukraine, of the other part, on trade and trade-related matters.

Draft  
COMMISSION DECISION  
OF .....

**CONCERNING THE CONCLUSION ON BEHALF OF THE EUROPEAN COAL AND STEEL COMMUNITY OF THE INTERIM AGREEMENT BETWEEN THE EUROPEAN COMMUNITY, THE EUROPEAN COAL AND STEEL COMMUNITY AND THE EUROPEAN ATOMIC ENERGY COMMUNITY, OF THE ONE PART, AND UKRAINE, OF THE OTHER PART, ON TRADE AND TRADE-RELATED MATTERS**

(../.../ECSC)

THE EUROPEAN COMMISSION,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular the first paragraph of Article 95 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community and in particular the second paragraph of Article 101 thereof,

Whereas, pending the entry into force of the Partnership and Cooperation Agreement signed in Luxembourg on 14 June 1994, it is necessary to approve the Interim Agreement between the European Community, the European Atomic Energy Community and the European Coal and Steel Community, of the one part, and Ukraine, of the other part, on trade and trade-related matters signed in ..... on .....

Whereas the conclusion of the Interim Agreement is necessary to attain the objectives of the Community set out in particular in Articles 2 and 3 of the Treaty establishing the European Coal and Steel Community and whereas the Treaty did not make provision for all the cases covered by this Decision;

Having consulted the Consultative Committee and with the assent of the Council,

HAS DECIDED AS FOLLOWS :

**Article 1**

The Interim Agreement between European Community, Euratom and the European Coal and Steel Community, of the one part, and Ukraine, of the other part, on trade and trade-related matters, together with the Protocol and the declarations, are hereby approved on behalf of the European Coal and Steel Community.

These texts are attached to this Decision.

**Article 2**

The President of the Commission shall give the notification provided for in Article 36 of the Interim Agreement on behalf of Euratom and the European Coal and Steel Community.

Done at Brussels,

## FINAL ACT

The plenipotentiaries of the EUROPEAN COMMUNITY, EUROPEAN ATOMIC ENERGY COMMUNITY and the EUROPEAN COAL AND STEEL COMMUNITY, hereinafter referred to as "the Community", of the one part, and

the plenipotentiaries of UKRAINE, of the other part,

meeting at ..... on ..... for the signature of the Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and Ukraine, of the other part, hereinafter referred to as the Agreement, have adopted the following texts :

the Interim Agreement and the Protocol on mutual assistance in customs matters.

The plenipotentiaries of the Community and the plenipotentiaries of Ukraine have adopted the texts of the Joint declarations listed below and annexed to this Final Act :

Joint Declaration on Article 10 of the Agreement

Joint Declaration on Article 11 of the Agreement

Joint Declaration on Article 18 of the Agreement

Joint Declaration on Article 31 of the Agreement

The plenipotentiaries of the Community have taken note of the declaration listed below and annexed to this Final Act :

Declaration by Ukraine concerning the protection of intellectual, industrial and commercial property rights.

Done at Brussels on

For the Council and the European Commission

For Ukraine

## **INTERIM AGREEMENT**

### **ON TRADE AND TRADE RELATED MATTERS BETWEEN THE EUROPEAN COMMUNITY, THE EUROPEAN COAL AND STEEL COMMUNITY AND THE EUROPEAN ATOMIC ENERGY COMMUNITY OF THE ONE PART AND UKRAINE OF THE OTHER PART**

The EUROPEAN COMMUNITY, the EUROPEAN COAL AND STEEL COMMUNITY AND THE EUROPEAN ATOMIC ENERGY COMMUNITY, hereinafter referred to as "THE COMMUNITY"

of the one part,

and UKRAINE

of the other part,

Whereas an Agreement on Partnership and Cooperation between the European Communities and Member States, of the one part and Ukraine of the other part was signed on 14 June 1994;

Whereas the aim of the Partnership and Cooperation Agreement is to strengthen and widen the relations established previously, notably by the Agreement on Trade and Commercial and Economic Cooperation between the European Communities and USSR signed on 18 December 1989;

Whereas it is necessary to ensure the rapid development of trade relations between the Parties;

Whereas to this end it is necessary to implement as speedily as possible, by means of an Interim Agreement, the provisions of the Partnership and Cooperation Agreement concerning trade and trade-related matters;

Whereas the said provisions should, accordingly, provisionally replace the trade provisions of the Trade and Commercial and Economic Cooperation Agreement;

Whereas it is necessary to ensure that pending the entry into force of the Partnership and Cooperation Agreement and the establishment of the Cooperation Council, the Joint Committee set up under the Agreement on Trade and Commercial and Economic Cooperation may exercise the powers assigned by the Partnership and Cooperation Agreement to the Cooperation Council;

Whereas these powers are necessary in order to implement the Interim Agreement;

Have decided to conclude this Agreement and to this end have designated as their plenipotentiaries;



THE EUROPEAN COMMUNITY :

THE EUROPEAN COAL AND STEEL COMMUNITY :

THE EUROPEAN ATOMIC ENERGY COMMUNITY :

UKRAINE :

Who, having exchanged their Full Powers, found in good and due form,

Have agreed as follows :

**TITLE I : GENERAL PRINCIPLES**

**[PCA Ukraine : Title I]**

**Article 1**

**[PCA Ukraine : Article 2]**

Respect for the democratic principles and human rights as defined in particular in the Helsinki Final Act and the Charter of Paris for a New Europe, as well as the principles of market economy, including those enunciated in the documents of the ECSC Bonn Conference, underpin the internal and external policies of the Parties and constitute an essential element of partnership and of the present Agreement.

**TITLE II : TRADE IN GOODS**

**[PCA Ukraine : Title III]**

**Article 2**

**[PCA Ukraine : Article 8]**

1. The Parties shall accord to one another most-favoured-nation treatment according to Article 1, paragraph 1 of the GATT.
2. The provisions of paragraph 1 shall not apply to:
  - (a) advantages granted with the aim of creating a customs union or a free-trade area or pursuant to the creation of such a union or area;
  - (b) advantages granted to particular countries in accordance with the General Agreement on Tariffs and Trade and with other international arrangements in favour of developing countries;
  - (c) advantages accorded to adjacent countries in order to facilitate frontier traffic.

**Article 3**  
**[PCA Ukraine : Article 9]**

1. The parties agree that the principle of freedom of transit of goods is an essential condition of attaining the objectives of this Agreement.

In this connection each Party shall provide for unrestricted transit via or through its territory of goods originating in the customs territory or destined for the customs territory of the other Party.

2. The rules described in Article V, paragraphs 2, 3, 4 and 5 of the GATT are applicable between the two Parties.
3. The rules contained in this Article are without prejudice to any special rules relating to specific sectors, in particular such as transport, or products agreed between the Parties.

**Article 4**  
**[PCA Ukraine : Article 9bis]**

The provisions of Article 2, paragraph 1 and Article 3, paragraph 2 shall not apply, during a transitional period expiring on the 31.12.1998 or the accession of Ukraine to GATT, whichever is earlier, to advantages defined in Annex I granted by Ukraine to other Independent States as from the day preceding the date of entry into force of the Agreement.

**Article 5**  
**[PCA Ukraine : Article 10]**

Without prejudice to the rights and obligations stemming from international conventions on the temporary admission of goods which bind both Parties, each Party shall furthermore grant the other Party exemption from import charges and duties on goods admitted temporarily, in the instances and according to the procedures stipulated by any other international convention on this matter binding upon it, in conformity with its legislation. Account shall be taken of the conditions under which the obligations stemming from such a convention have been accepted by the Party in question.

**Article 6**  
**[PCA Ukraine : Article 11]**

Goods originating in Ukraine and the Community respectively shall be imported into the Community and Ukraine respectively free of quantitative restrictions without prejudice to the provisions of Articles 10, 13, 14 and annex II, and to the provisions of Articles 77, 81, 244, 249 and 280 of the Acts of Accession of Spain and Portugal to the European Community.

**Article 7**  
**[PCA Ukraine : Article 11bis]**

1. The products of the territory of one Party imported into the territory of the other Party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products.
2. Moreover, these products shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provision of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.

**Article 8**  
**[PCA Ukraine : Article 11ter]**

The following Articles of the GATT shall be applicable mutatis mutandis between the two Parties.

- (i) Article VII, paragraphs 1, 2, 3, 4a, 4b, 4d, 5;
- (ii) Article VIII;
- (iii) Article IX;
- (iv) Article X.

**Article 9**  
**[PCA Ukraine : Article 12]**

Goods shall be traded between the Parties at market-related prices.

**Article 10**  
**[PCA Ukraine : Article 13]**

1. Where any product is being imported into the territory of one of the Parties in such increased quantities and under such conditions as to cause or threaten to cause substantial injury to domestic producers of like or direct competitive products, the Community or Ukraine, whichever is concerned, may take appropriate measures in accordance with the following procedures and conditions.
2. Before taking any measures, or in cases to which paragraph 4 applies as soon as possible thereafter, the Community or Ukraine as the case may be shall supply the Joint Committee with all relevant information with a view to seeking a solution acceptable to both Parties.

3. If, as a result of the consultations, the Parties do not reach agreement within 30 days of referral to the Joint Committee on actions to avoid the situation, the Party which requested consultations shall be free to restrict imports of the products concerned to the extent and for such time as is necessary to prevent or remedy the injury, or to adopt other appropriate measures.
4. In critical circumstances where delay would cause damage difficult to repair, the Parties may take the measures before the consultations, on the condition that consultations shall be offered immediately after taking such action.
5. In the selection of measures under this Article, the Parties shall give priority to those which cause least disturbance to the achievement of the aims of this Agreement.

#### Article 11

#### [PCA Ukraine : Article 13bis]

Nothing in this Title, and in Article 10 in particular shall prejudice or affect in any way the taking, by either Party, of anti-dumping or countervailing measures in accordance with Article VI of the GATT, the Agreement on implementation of Article VI of the GATT, the Agreement on interpretation and application of Articles VI, XVI and XXIII of the GATT or related internal legislation.

In respect of anti-dumping or subsidies investigations, each Party agrees to examine submissions by the other Party and to inform the interested parties concerned of the essential facts and considerations on the basis of which a final decision is to be made. Before definitive anti-dumping and countervailing duties are imposed, the Party shall do the utmost to bring about a constructive solution to the problem.

#### Article 12

#### [PCA Ukraine : Article 15]

The Agreement shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of natural resources; the protection of national treasures of artistic, historic or archaeological value or the protection of intellectual, industrial and commercial property or rules relating to gold and silver. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties.

#### Article 13

#### [PCA Ukraine : Article 16]

This Title II shall not apply to trade in textile products falling under chapters 50 to 63 of the Combined Nomenclature. Trade in these products shall be governed by a separate agreement, initialed on 5th May 1993 and applied provisionally since 1st January 1993.

**Article 14**  
**[PCA Ukraine : Article 17]**

1. Trade in products covered by the Treaty establishing the European Coal and Steel Community shall be governed by the provisions of this Title II, with the exception of Article 6 and upon entry into force, by the provisions of an agreement on quantitative arrangements concerning exchanges of ECSC steel products.
2. A contact group on coal and steel matters is set up, comprising representatives of the Community on the one hand, and representatives of Ukraine on the other.

The contact group shall exchange, on a regular basis, information on all coal and steel matters of interest to the Parties.

**Article 15**  
**[PCA Ukraine : Article 18]**

Trade in nuclear materials shall be subject to the provisions of a specific Agreement to be concluded between the European Atomic Energy Community and Ukraine.

**TITLE III : PAYMENTS, COMPETITION AND OTHER ECONOMIC**  
**PROVISIONS**

**[PCA Ukraine : Titles V and VII]**

**Article 16**  
**[PCA Ukraine : Article 41]**

1. The Parties undertake to authorize, in freely convertible currency, any payments on the current account of balance of payments between residents of the Community and of Ukraine connected with the movement of goods, made in accordance with the provisions of the present Agreement.

**Article 17**  
**[PCA Ukraine : Article 41bis]**

1. The parties agree to work to remedy or remove, through the application of their competition laws or otherwise, restrictions on competition by enterprises or caused by State intervention insofar as they may affect trade between the Community and the Ukraine.
2. In order to attain the objectives mentioned in paragraph 1:
  - 2.1. The Parties shall ensure that they have and enforce laws addressing restrictions on competition by enterprises within their jurisdiction.
  - 2.2. The Parties shall refrain from granting State aids favouring certain undertakings or the production of goods other than primary products as defined in the General Agreement on Tariffs and Trade, or the provision of services, which distort or threaten to distort competition insofar as they affect trade between the Community and the Ukraine.

- 2.3. Upon request by one Party, the other Party shall provide information on its aid schemes or on particular individual cases of State aid. No information needs to be provided which is covered by legislative requirements of the Parties on professional or commercial secrets.
- 2.4. In the case of State monopolies of a commercial character, the Parties declare their readiness, as from the fourth year from the date of entry into force of their Agreement, to ensure that there is no discrimination between nationals of the Parties regarding the conditions under which goods are procured or marketed.
- 2.5. In the case of public undertakings or undertakings to which Member States of the European Union or the Ukraine grant exclusive rights, the Parties declare their readiness, as from the fourth year from the date of entry into force of this Agreement, to ensure that there is neither enacted nor maintained any measure distorting trade between the Community and the Ukraine to an extent contrary to the Parties' respective interests. This provision shall not obstruct the performance, in law or fact, of the particular tasks assigned to such undertakings.
- 2.6. The period defined in paragraphs 2.4 and 2.5 may be extended by agreement of the Parties.
3. Consultations may take place within the Joint Committee at the request of the Community or Ukraine on the restrictions or distortions of competition referred to in paragraphs 1 and 2 and on the enforcement of their competition rules, subject to limitations imposed by laws regarding disclosure of information, confidentiality and business secrecy. Consultations may also comprise questions on the interpretation of paragraphs 1 and 2.
4. The Parties with experience in applying competition rules shall give full consideration to providing other Parties, upon request and within available resources, technical assistance for the development and implementation of competition rules.
5. The above provisions in no way affect the Parties' rights to apply adequate measures, notably those referred to in Article 11, in order to address distortions of trade in goods or services.

**Article 18**  
**[PCA Ukraine : Article 42]**

Pursuant to the provisions of this Article and of Annex III, Ukraine shall continue to improve the protection of intellectual, industrial and commercial property rights in order to provide, by the end of the fifth year after the entry into force of the Agreement for a level of protection similar to that provided in the Community by Community acts, in particular the ones referred to in Annex III, including comparable means of enforcing such rights.

**Article 19**

Mutual assistance between administrative authorities in customs matters of the Parties shall take place in accordance with the protocol annexed to the agreement.

## **TITLE IV : INSTITUTIONAL, GENERAL AND FINAL PROVISIONS**

### **[PCA Ukraine : Title XI]**

#### **Article 20**

The Joint Committee set up by the Agreement on Trade and Commercial and Economic Cooperation signed between the European Economic Community and USSR on 18 December 1989 shall perform the duties assigned to it by this Agreement until the Cooperation Council provided for in Article 85 of the Partnership and Cooperation Agreement is established.

#### **Article 21**

The Joint Committee may, for the purposes of attaining the objectives of the Agreement, make recommendations in the cases provided for therein.

It shall draw up its recommendations by agreement between the two Parties.

#### **Article 22**

##### **[PCA Ukraine : Article 81]**

When examining any issue arising within the framework of this Agreement in relation to a provision referring to an article of the GATT, the Joint Committee shall take into account to the greatest extent possible the interpretation that is generally given to the article of the GATT in question by the Contracting Parties to the GATT.

#### **Article 23**

##### **[PCA Ukraine : Article 85]**

1. Within the scope of this Agreement, each Party undertakes to ensure that natural and legal persons of the other Party have access free of discrimination in relation to its own nationals to the competent courts and administrative organs of the Parties to defend their individual rights and their property rights, including those concerning intellectual, industrial and commercial property.
2. Within the limits of their respective powers, the Parties :
  - shall encourage the adoption of arbitration for the settlement of disputes arising out of commercial and cooperation transactions concluded by economic operators of the Community and those of Ukraine;
  - agree that where a dispute is submitted to arbitration, each Party to the dispute may, except where the rules of the arbitration centre chosen by the Parties provide otherwise, choose its own arbitrator, irrespective of his nationality, and that the presiding third arbitrator or the sole arbitrator may be a citizen of a third state;
  - will recommend their economic operators to choose by mutual consent the law applicable to their contracts;
  - shall encourage recourse to the arbitration rules elaborated by the United Nations Commission on International Trade Law (Uncitral) and to arbitration by any centre of a state signatory to the Convention on Recognition and Enforcement of Foreign Arbitral Awards done at New York on 10th June 1958.

**Article 24**  
**[PCA Ukraine : Article 86]**

Nothing in the Agreement shall prevent a Party from taking any measures:

- (a) which it considers necessary to prevent the disclosure of information contrary to its essential security interests;
- (b) which relate to the production of, or trade in arms, munitions or war materials or to research, development or production indispensable for defence purposes, provided that such measures do not impair the conditions of competition in respect of products not intended for specifically military purposes;
- (c) which it considers essential to its own security in the event of serious internal disturbances affecting the maintenance of law and order, in time of war or serious international tension constituting threat of war or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security.
- (d) which it considers necessary to respect its international obligations and commitments on the control of dual use industrial goods and technologies.

**Article 25**  
**[PCA Ukraine : Article 87]**

1. In the fields covered by this Agreement and without prejudice to any special provisions contained therein:
  - the arrangements applied by Ukraine in respect of the Community shall not give rise to any discrimination between the Member States, their nationals or their companies or firms;
  - the arrangements applied by the Community in respect of Ukraine shall not give rise to any discrimination between Ukrainian nationals, or its companies or firms.
2. The provisions of Paragraph 1 are without prejudice to the right of the Parties to apply the relevant provisions of their fiscal legislation to tax payers who are not in identical situations as regards their place of residence.

**Article 26**  
**[PCA Ukraine : Article 88]**

1. Each of the two Parties may refer to the Joint Committee any dispute relating to the application or interpretation of this Agreement.
2. The Joint Committee may settle the dispute by means of a recommendation.
3. In the event of it not being possible to settle the dispute in accordance with paragraph 2 of this Article, either Party may notify the other of the appointment of an conciliator; the other Party must then appoint a second conciliator within two months. For the application of this procedure, the Community and the Member States shall be deemed to be one Party to the dispute.

The Joint Committee shall appoint a third conciliator.

The conciliators recommendations shall be taken by majority vote. Such recommendations shall not be binding upon the Parties.



**Article 27**  
**[PCA Ukraine : Article 89]**

The Parties agree to consult promptly through appropriate channels at the request of either party to discuss any matter concerning the interpretation or implementation of this Agreement and other relevant aspects of the relations between the Parties.

The provisions of this Article shall in no way affect and are without prejudice to Articles 10, 11, 26 and 31.

**Article 28**  
**[PCA Ukraine : Article 90]**

Treatment granted to Ukraine hereunder shall in no case be more favourable than that granted by the Member States to each other.

**Article 29**  
**[PCA Ukraine : Article 92]**

Insofar as matters covered by this Agreement are covered by the European Energy Charter Treaty and Protocols thereto, such Treaty and Protocols shall upon entry into force apply to such matters but only to the extent that such application is provided for therein.

**Article 30**

1. This Agreement shall be applicable until the entry into force of the Partnership and cooperation Agreement signed on 14 June 1994.
2. Either Party may denounce this Agreement by notifying the other Party. This Agreement shall cease to apply six months after the date of such notification.

**Article 31**  
**[PCA Ukraine : Article 94]**

1. The Parties shall take any general or specific measures required to fulfil their obligations under the Agreement. They shall see to it that the objectives set out in the Agreement are attained.
2. If either Party considers that the other Party has failed to fulfil an obligation under the Agreement, it may take the appropriate measures. Before so doing, except in cases of special urgency, it shall supply the Joint Committee with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties.

In the selection of these measures, priority must be given to those which least disturb the functioning of the Agreement. These measures shall be notified immediately to the Joint Committee if the other Party so requests.

### Article 32

Annexes I, II, III and the Protocol on mutual assistance between administrative authorities in customs matters shall form an integral part of this Agreement.

### Article 33

#### [PCA Ukraine : Article 97]

This Agreement shall apply, on the one hand, to the territories in which the treaties establishing the European Community, the European Atomic Energy Community and the European Coal and Steel Community are applied and under the conditions laid down in those Treaties and, on the other hand, to the territory of Ukraine.

### Article 34

#### [PCA Ukraine : Article 97 bis]

The Secretary-General of the Council of the European Union shall be the depositary of this Agreement.

### Article 35

#### [PCA Ukraine : Article 98]

This original of the Agreement, of which the Danish, Dutch, English, French, German, Italian, Spanish, Greek, Portuguese and Ukrainian languages are equally authentic, shall be deposited with the Secretary-General of the Council of the European Union.

### Article 36

#### [PCA Ukraine : Article 99]

This Agreement will be approved by the Parties in accordance with their own procedures.

This Agreement shall enter into force on the first day of the second month following the date on which the Parties notify the Secretary-General of the Council of the European Union that the procedures referred to in this paragraph have been completed.

Upon its entry into force, and as far as relations between Ukraine and the Community are concerned, this Agreement shall replace Articles 2 to 16 of the Agreement between the European Economic Community, the European Atomic Energy Community and the Union of Soviet Socialist Republics on trade and economic and commercial cooperation signed in Brussels on 18 December 1989.

## ANNEX I

Indicative list of advantages granted by Ukraine to the Independent States in accordance with Article 4.

1. Armenia, Belarus, Estonia, Georgia, Kazakhstan, Lithuania, Moldova, Turkmenistan, Russia  
No import duties are implemented.  
No export duties are implemented as regards goods delivered under clearing and interstate agreements within the volumes stipulated in these agreements.  
No VAT is applied on export and import. No excise is applied on export.  
All Independent States - export quotas for deliveries of products under annual interstate trade and cooperation agreements are opened in the same way as for deliveries for state needs.
2. Armenia, Belarus, Estonia, Georgia, Kazakhstan, Lithuania, Moldova, Turkmenistan, -  
Payments could be made in roubles  
Russia - payments could be made in roubles or karbovanets.  
All Independent States - special system of non-commercial operations, including payments resulting from these operations.
3. All Independent States - special system of current payments.
4. All Independent States - special price system in trade with some raw materials and semi-finished products.
5. All Independent States - special conditions of transit.
6. All Independent States - special conditions of customs procedures.

## **ANNEX II**

### **Exceptional measures which derogate from the provisions of Article 6**

1. Exceptional measures which derogate from the provisions of Article 6 may be taken by Ukraine in the form of quantitative restrictions on a non-discriminatory basis.
2. These measures may only concern infant industries, or certain sectors undergoing restructuring or facing serious difficulties, particularly where these difficulties produce important social problems.
3. The total value of imports of the products which are subject to these measures may not exceed 15 % of total imports from the Community during the last year, prior to the introduction of any quantitative restrictions for which statistics are available.
4. These measures may only be applied during a transitional period ending 31st December 1998 unless parties agree otherwise, or when Ukraine becomes a contracting Party to GATT whichever is earlier.
5. Ukraine shall inform the Joint Committee of any measures it intends to take under the terms of the present annex, and, at the request of the Community, consultations shall be held in the Joint Committee on such measures and the sectors to which they apply before they enter into force.

### ANNEX III

#### Intellectual, Industrial and Commercial Property conventions (Article 18)

1. Community acts referred to in Article 18.
  - First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks.
  - Council Directive 87/54/EEC of 16 December 1986 on the legal protection of topographies of semi-conductor products.
  - Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs.
  - Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products.
  - Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.
  - Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission.
  - Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights.
  - Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property.
2. If problems in the area of intellectual, industrial and commercial property as addressed in the above Community acts and affecting trading conditions were to occur, urgent consultations will be undertaken, at the request of the Community or Ukraine, with a view to reaching mutually satisfactory solutions.

**PROTOCOL**  
**ON MUTUAL ASSISTANCE**  
**BETWEEN ADMINISTRATIVE AUTHORITIES**  
**IN CUSTOMS MATTERS**

## Article 1

### Definitions

For the purposes of this Protocol :

- a) "customs legislation" shall mean provisions applicable in the territories of the Parties and governing the import, export, transit of goods and their placing under any customs procedure, including measures of prohibition, restriction and control and adopted by the said Parties;
- b) "customs duties" shall mean all duties, taxes, fees or any other charges which are levied and collected in the territories of the Parties, in application of customs legislation, but not including fees and charges which are limited in amount to the approximate costs of services rendered;
- c) "applicant authority", shall mean a competent administrative authority which has been appointed by a Party for this purpose and which makes a request for assistance in customs matters;
- d) "requested authority", shall mean a competent administrative authority which has been appointed by a Party for this purpose and which receives a request for assistance in customs matters;
- e) "contravention", shall mean any violation of the customs legislation as well as any attempted violation of such legislation.

## Article 2

### Scope

1. The Parties shall assist each other, within their competences, in the manner and under the conditions laid down in this Protocol, in ensuring that customs legislation is correctly applied, in particular by the prevention, detection and investigation of contraventions of this legislation.
2. Assistance, in customs matters, as provided for in this Protocol, applies to any administrative authority of the Parties which is competent for the application of this Protocol. It shall not prejudice the rules governing mutual assistance in criminal matters. Nor shall it cover information obtained under powers exercised at the request of the judicial authority, unless those authorities so agree.

## Article 3

### Assistance on request

1. At the request of the applicant authority, the requested authority shall furnish it with all relevant information to enable it to ensure that customs legislation is correctly applied, including information regarding operations noted or planned which contravene or would contravene such legislation.

2. At the request of the applicant authority, the requested authority shall inform it whether goods exported from the territory of one of the Parties have been properly imported into the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods.
3. At the request of the applicant authority, the requested authority shall take the necessary steps to ensure that a surveillance is kept on :
  - (a) natural or legal persons of whom there are reasonable grounds for believing that they are contravening or have contravened customs legislation;
  - (b) movements of goods notified as possibly giving rise to substantial contraventions of customs legislation;
  - (c) means of transport for which there are reasonable grounds for believing that they have been, are or may be used in the contravening of customs legislation.

#### Article 4

##### Spontaneous assistance

The Parties shall provide each other, in accordance with their laws, rules and other legal instruments, with assistance if they consider that to be necessary for the correct application of customs legislation, particularly when they obtain information pertaining to :

- operations which have contravened, contravene or would contravene such legislation and which may be of interest to other Parties;
- new means or methods employed in realizing such operations;
- goods known to be subject to substantial contravention of customs legislation.

#### Article 5

##### Delivery/Notification

At the request of the applicant authority, the requested authority shall in accordance with its legislation take all necessary measures

- in order to deliver all documents,
- to notify all decisions,

falling within the scope of this Protocol to an addressee, residing or established in its territory. In such a case Article 6, point 3 is applicable.



## Article 6

### Form and substance of requests for assistance

1. Requests pursuant to this Protocol shall be made in writing. Documents necessary for the execution of such requests shall accompany the request. When required because of the urgency of the situation, oral requests may be accepted, but must be confirmed in writing immediately.
2. Requests pursuant to paragraph 1 of this Article shall include the following information :
  - (a) the applicant authority making the request;
  - (b) the measure requested;
  - (c) the object of and the reason for the request;
  - (d) the laws, rules and other legal elements involved;
  - (e) indications as exact and comprehensive as possible on the natural or legal persons being the target of the investigations;
  - (f) a summary of the relevant facts and of the enquiries already carried out, except in cases provided for in Article 5.
3. Requests shall be submitted in an official language of the requested authority or in a language acceptable to such authority.
4. If a request does not meet the formal requirements, its correction or completion may be demanded ; the ordering of precautionary measures may, however, take place.

## Article 7

### Execution of requests

1. In order to comply with a request for assistance, the requested authority or, when the latter can not act on its own, the administrative department to which the request has been addressed by this authority, shall proceed, within its competence and available resources, as though it were acting on its own account or at the request of other authorities of that same Party, by supplying information already possessed, by carrying out appropriate enquiries or by arranging for them to be carried out.
2. Requests for assistance will be executed in accordance with the laws, rules and other legal instruments of the requested Party.
3. Duly authorised officials of a Party may, with the agreement of the other Party involved and within the conditions laid down by the latter, obtain from the offices of the requested authority or other authority for which the requested authority is responsible, information relating to the contravention of customs legislation which the applicant authority needs for the purposes of this Protocol.
4. Officials of a Party may, with the agreement of the other Party involved and within the conditions laid down by the latter, be present at enquiries carried out in the latter's territory.

## Article 8

### Form in which information is to be communicated

1. The requested authority shall communicate results of enquiries to the applicant authority in the form of documents certified copies of documents, reports and the like.
2. The documents provided for in paragraph 1 may be replaced by computerized information produced in any form for the same purpose.

## Article 9

### Exceptions to the obligation to provide assistance

1. The Parties may refuse to give assistance as provided for in this Protocol, where to do so would:
  - (a) be likely to prejudice sovereignty, public policy, security or other essential interests;  
or
  - (b) involve currency or tax regulations other than regulations concerning customs duties;  
or
  - (c) violate an industrial, commercial or professional secret.
2. Where the applicant authority asks for assistance which it would itself be unable to provide if so asked, it shall draw attention to that fact in its request. It shall then be left to the requested authority to decide how to respond to such a request.
3. If assistance is withheld or denied, the decision and the reasons therefore must be notified to the applicant authority without delay.

## Article 10

### Obligation to observe confidentiality

1. Any information communicated in whatsoever form pursuant to this Protocol shall be of a confidential nature. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to like information under the relevant laws of the Party which received it and the corresponding provisions applying to the Community authorities.
2. Nominative data shall not be transmitted whenever there are reasonable grounds to believe that the transfer or the use made of the data transmitted would be contrary to the basic legal principles of one of the Parties, and, in particular, if the person concerned would suffer undue disadvantages. Upon request, the receiving Party shall inform the furnishing Party of the use made of the information supplied and of the results achieved.
3. Nominative data may only be transmitted to customs authorities and, in the case of need for prosecution purposes, to public prosecution and judicial authorities. Other persons or authorities may obtain such information only upon previous authorisation by the furnishing authority.

4. The furnishing Party shall verify the accuracy of the information to be transferred. Whenever it appears that the information supplied was inaccurate or to be deleted, the receiving Party shall be notified without delay. The latter shall be obliged to carry out the correction or deletion.
5. Without prejudice to cases of prevailing public interest, the person concerned may obtain, upon request, information on the data stores and the purpose of this storage.

## Article 11

### Use of information

1. Information obtained shall be used solely for the purposes of this Protocol and may be used within each Party for other purposes only with the prior written consent of the administrative authority which furnished the information and shall be subject to any restrictions laid down by that authority.
2. Paragraph 1 shall not impede the use of information in any judicial or administrative proceedings subsequently instituted for failure to comply with customs legislation.
3. The Parties may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with the provisions of this Protocol.

## Article 12

### Experts and witnesses

An official of a requested authority may be authorized to appear, within the limitations of the authorization granted, as expert or witness in judicial or administrative proceedings regarding the matters covered by this Protocol in the jurisdiction of another Party, and produce such objects, documents or authenticated copies thereof, as may be needed for the proceedings. The request for an appearance must indicate specifically on what matters and by virtue of what title or qualification the official will be questioned.

## Article 13

### Assistance expenses

The Parties shall waive all claims on each other for the reimbursement of expenses incurred pursuant to this Protocol, except, as appropriate, for expenses to experts and witnesses and to interpreters and translators who are not dependent upon public services.

## **Article 14**

### **Implementation**

1. The management of this Protocol shall be entrusted to the central customs authorities of Ukraine on the one hand and the competent services of the Commission of the European Communities and, where appropriate, the customs authorities of the Member States of the European Union on the other. They shall decide on all practical measures and arrangements necessary for its application, taking into consideration rules in the field of data protection. They may recommend to the competent bodies amendments which they consider be made to this Protocol.
2. The Parties shall consult each other and subsequently keep each other informed of the detailed rules of implementation which are adopted in accordance with the provisions of this Protocol.

## **Article 15**

### **Complementarity**

1. This Protocol shall complement and not impede the application of any agreements on mutual assistance which have been concluded or may be concluded between individual or several Member States of the European Union and Ukraine. Nor shall it preclude more extensive customs cooperation granted under such agreements.
2. Without prejudice to Article 11, these agreements do not prejudice Community provisions governing the communication between the competent services of the Commission and the customs authorities of the Member States of any information obtained in customs matters which could be of Community interest.

**JOINT DECLARATION CONCERNING ARTICLE 10**

The Community and Ukraine declare that the text of the safeguard clause does not grant GATT safeguard treatment.

## **JOINT DECLARATION CONCERNING ARTICLE 11**

It is understood that the provisions of Article 11 are neither intended to, nor shall slow down, hinder or impede the procedures provided for in the respective legislations of the Parties regarding anti-dumping and subsidies investigations.

**JOINT DECLARATION CONCERNING ARTICLE 18**

The Parties declare that the term "intellectual, industrial and commercial property" shall be translated into Ukrainian as "intelektualna vlasnist".

### **JOINT DECLARATION CONCERNING ARTICLE 31**

The Parties agree, for the purpose of its correct interpretation and its practical application, that the term "cases of special urgency" included in Article 31 of the Agreement mean cases of material breach of the Agreement by one of the Parties. A material breach of the Agreement consists in

a) repudiation of the Agreement not sanctioned by the general rules of international law

or

b) violation of the essential elements of the Agreement set out in Article 1.



**Unilateral declaration by Ukraine concerning the protection of intellectual, industrial and commercial property rights**

Ukraine declares that :

1. By the end of the fifth year after entry into force of the Agreement, Ukraine shall accede to the multilateral conventions on intellectual, industrial and commercial property rights referred to in Paragraph 2 of this declaration to which Member States of the Community are parties or which are de facto applied by Member States according to the relevant provisions contained in these conventions.
2. Paragraph 1 of this declaration concerns the following multilateral conventions:
  - Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971);
  - International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome, 1961);
  - Protocol relating to the Madrid Agreement concerning the International Registration of Marks (Madrid, 1989);
  - Nice Agreement concerning the International Classification of Goods and Services for the purposes of the Registration of Marks (Geneva 1977, amended 1979);
  - Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the purposes of Patent Procedures (1977, modified in 1980);
  - International Convention for the Protection of New Varieties of Plants (UPOV) (Geneva Act, 1978)
3. Ukraine shall make its best endeavours to accede, without undue delay, to the 1991 Act of the International Convention for the Protection of New Varieties of Plants (UPOV).
4. Ukraine confirm the importance it attaches to the obligations arising from the following multilateral conventions:
  - Paris Convention for the Protection of Industrial Property (Stockholm Act, 1967 and amended in 1979);
  - Madrid Agreement concerning the International Registration of Marks (Stockholm Act, 1967, and amended in 1979);
  - Patent Cooperation Treaty (Washington 1970, amended and modified in 1979 and 1984);
5. From the entry into force of this Agreement Ukraine shall grant to Community companies and nationals, in respect of the recognition and protection of intellectual, industrial and commercial property, treatment no less favourable than that granted by it to any third country under bilateral agreements.
6. The provisions of paragraph 5 shall not apply to advantages granted by Ukraine to any third country on an effective reciprocal basis or to advantages granted by Ukraine to another country of the former USSR.

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