



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.11.1996  
COM(96) 613 final

96/0299 (ACC)

Proposal for a

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 THE REPUBLIC  
OF AZERBAIJAN, 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 AND THE EUROPEAN ATOMIC ENERGY  
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  
THE REPUBLIC OF AZERBAIJAN, OF THE OTHER PART, ON TRADE AND  
TRADE-RELATED MATTERS**



## Explanatory memorandum

1. The attached proposals for Decisions constitute the legal instrument for the conclusion of the Interim Agreement between the European Community, the European Atomic Energy Community and the European Coal and Steel Community, on the one hand, and the Republic of Azerbaijan, on the other.
2. Pending ratification of the Partnership and Cooperation Agreement with the Republic of Azerbaijan, signed in Luxembourg on 22 April 1996, the Commission has, in accordance with the negotiating directives adopted by the Council on 18 July 1994, negotiated an Interim Agreement with the Republic of Azerbaijan.
3. The Interim Agreement providing for provisional implementation of the part of the Partnership and Cooperation Agreement on trade and trade-related measures was initialled in Brussels on 20 September 1996, and will be concluded for the period ending with the entry into force of the Partnership and Cooperation Agreement.
4. The Interim Agreement replaces, as far as the Republic of Azerbaijan is concerned, the relevant 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, the ECSC and the EAEC.

The Agreement will be concluded as follows :

- the Council, will conclude the Agreement on behalf of the European Community under Article 113, in conjunction with Article 228 (2), first sentence of the EC Treaty by adopting the Decision attached at I;
  - the Commission will conclude the Agreement on behalf of the European Coal and Steel Community by adopting the Decision attached at 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 the European Atomic Energy Community by adopting the Decision attached at II, in accordance with the second paragraph of Article 101 of the EAEC Treaty, with the approval of the Council acting by qualified majority.
6. The Commission accordingly requests the Council to adopt the proposal attached at I and to give its assent and approval to the decision attached at II.

**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, of the one part, and the Republic of Azerbaijan, of the other part, on trade and trade-related matters.**

A

2

Proposal for

COUNCIL DECISION  
OF .....

96/0299 (ACC)

**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 THE REPUBLIC OF AZERBAIJAN, OF THE OTHER PART,  
ON TRADE AND TRADE-RELATED MATTERS  
(...../EC)**

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,

Whereas, pending the entry into force of the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other part, signed in Luxembourg on 22 April 1996, it is necessary to approve on behalf of the European Community, 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 the Republic of Azerbaijan, of the other part,

HAS DECIDED AS FOLLOWS :

**Article 1**

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 the Republic of Azerbaijan, of the other part, together with its Annexes, 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 is hereby authorised to designate the persons empowered to sign the Interim Agreement on behalf of the European Community.

**Article 3**

The President of the Council shall give the notification provided for in Article 32 of the Interim Agreement on behalf of the European Community.

Done at Brussels,



3

**Draft Commission Decision concerning the conclusion on behalf of the European Coal and Steel Community and of the European Atomic Energy 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 the Republic of Azerbaijan, 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 AND THE EUROPEAN ATOMIC ENERGY 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 THE REPUBLIC OF AZERBAIJAN, OF THE OTHER PART, ON TRADE AND TRADE-RELATED MATTERS**

(../.../ECSC/EAEC)

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 between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan of the other part, signed in Luxembourg on 22 April 1996, it is necessary to approve the Interim Agreement between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and the Republic of Azerbaijan, of the other part, on trade and trade-related matters initialled on 20 September 1996,

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 and approval of the Council,

HAS DECIDED AS FOLLOWS :

**Article 1**

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

These texts are attached to this Decision.

**Article 2**

The President of the European Commission is hereby authorised to designate the persons empowered to sign the Interim Agreement on behalf of the European Coal and Steel Community and the European Atomic Energy Community.

**Article 3**

The President of the Commission shall give the notification provided for in Article 32 of the Interim Agreement on behalf of the European Coal and Steel Community and the European Atomic Energy Community.

Done at Brussels,

11

6

## **FINAL ACT**

The plenipotentiaries of 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

the plenipotentiaries of THE REPUBLIC OF AZERBAIJAN, 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 the Republic of Azerbaijan, 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 the Republic of Azerbaijan have adopted the texts of the Joint declarations listed below and annexed to this Final Act :

Joint Declaration concerning Title II of the Agreement

Joint Declaration concerning Article 7 of the Agreement

Joint Declaration concerning Article 8 of the Agreement

Joint Declaration concerning Article 15 of the Agreement

Joint Declaration concerning Article 28 of the Agreement

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

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

Done at Brussels on

For the European Community, the European Coal and Steel Community and the European Atomic Energy Community

For the Republic of Azerbaijan

## **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 THE REPUBLIC OF AZERBAIJAN 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 THE REPUBLIC OF AZERBAIJAN

of the other part,

Whereas an Agreement on Partnership and Cooperation between the European Communities and their Member States, of the one part and the Republic of Azerbaijan of the other part was signed on 22 April 1996;

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 Economic Community, the European Atomic Energy Community, and the 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, replace the relevant 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, which 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 :

THE REPUBLIC OF AZERBAIJAN :

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

Have agreed as follows :

**TITLE I : GENERAL PRINCIPLES**

**[PCA Azerbaijan : Title I]**

**Article 1**

**[PCA Azerbaijan : Article 2]**

Respect for democracy, principles of international law and human rights as defined in particular in the United Nations Charter, 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 CSCE Bonn Conference, underpin the internal and external policies of the Parties and constitute an essential element of partnership and of this Agreement.

**TITLE II : TRADE IN GOODS**

**[PCA Azerbaijan : Title III]**

**Article 2**

**[PCA Azerbaijan : Article 9]**

1. The Parties shall accord to one another most-favoured-nation treatment in all areas in respect of :

- customs duties and charges applied to imports and exports, including the method of collecting such duties and charges;
- provisions relating to customs clearance, transit, warehouses and transshipment;
- taxes and other internal charges of any kind applied directly or indirectly to imported goods;
- methods of payment and the transfer of such payments related to trade in goods;
- the rules relating to the sale, purchase, transport, distribution and use of goods on the domestic market.

2

9

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 WTO rules and with other international arrangements in favour of developing countries;
  - (c) advantages accorded to adjacent countries in order to facilitate frontier traffic.
3. The provisions of paragraph 1 shall not apply, during a transitional period expiring on the date of the Republic of Azerbaijan acceding to the WTO or on the 31.12.1998, whichever is earlier, to advantages defined in Annex I granted by the Republic of Azerbaijan to other states which have emerged from the dissolution of the USSR.

### **Article 3**

#### **[PCA Azerbaijan : Article 10]**

1. The Parties agree that the principle of free transit is an essential condition of attaining the objectives of this Agreement.

In this connection each Party shall secure 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 the Article V, paragraphs 2, 3, 4 and 5 of the GATT are applicable between the 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, or to the provisions of Article 21.

### **Article 4**

#### **[PCA Azerbaijan : Article 11]**

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 5**

#### **[PCA Azerbaijan : Article 12]**

1. Goods originating in the Republic of Azerbaijan shall be imported into the Community free of quantitative restrictions without prejudice to the provisions of Articles 7, 10 and 11 of this Agreement.
2. Goods originating in the Community shall be imported into the Republic of Azerbaijan free of all quantitative restrictions and measures of equivalent effect, without prejudice to Articles 7, 10 and 11 of this Agreement.

**Article 6**  
**[PCA Azerbaijan : Article 13]**

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

**Article 7**  
**[PCA Azerbaijan : Article 14]**

1. Where any product is being imported into the territory of one of the Parties in such increased quantities or under such conditions as to cause or threaten to cause injury to domestic producers of like or directly competitive products, the Community or the Republic of Azerbaijan, 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 the Republic of Azerbaijan 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 as provided for in Title IV.
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.
6. Nothing in this Article 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 related on interpretation and application of Articles VI, XVI and XXIII of the GATT or related internal legislation.

**Article 8**  
**[PCA Azerbaijan : Article 15]**

The Parties undertake to consider development of the provisions in this Agreement on trade in goods between them, as circumstances allow, including the situation arising from the accession of the Republic of Azerbaijan to the World Trade Organisation. The Joint Committee referred to in Article 17 may make recommendations on such developments to the Parties which could be put into effect, where accepted, by virtue of agreement between the Parties in accordance with their respective procedures.

**Article 9**

**[PCA Azerbaijan : Article 16]**

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 10**

**[PCA Azerbaijan : Article 17]**

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, initialled on 18 December 1995 and applied provisionally since 1st January 1996.

**Article 11**

**[PCA Azerbaijan : Article 18]**

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 5.
2. A contact group on coal and steel matters shall be set up, comprising representatives of the Community on the one hand, and representatives of the Republic of Azerbaijan 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 12**

**[PCA Azerbaijan : Article 19]**

Trade in nuclear materials will be conducted in accordance with the provisions of the Treaty establishing the European Atomic Energy Community. If necessary, trade in nuclear materials shall be subject to the provisions of a specific Agreement to be concluded between the European Atomic Energy Community and the Republic of Azerbaijan.

**TITLE III:**  
**PAYMENTS, COMPETITION AND OTHER ECONOMIC PROVISIONS**  
**[PCA Azerbaijan : Title IV]**

**Article 13**  
**[PCA Azerbaijan : Article 41 (1)]**

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

**Article 14**  
**[PCA Azerbaijan : Article 43 (4)]**

The Parties agree to examine ways to apply their respective competition laws on a concerted basis in such cases where trade between them is affected.

**Article 15**  
**[PCA Azerbaijan : Article 42 (1)]**

Pursuant to the provisions of this Article and of Annex II, the Republic of Azerbaijan 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 II, including comparable means of enforcing such rights.

**Article 16**

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

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

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

#### **Article 17**

The Joint Committee set up by the Agreement on Trade and Commercial and Economic Cooperation signed between the European Economic Community and the USSR on 18 December 1989 shall perform the duties assigned to it by this Agreement until the Cooperation Council provided for in Article 81 of the Partnership and Cooperation Agreement is established.

#### **Article 18**

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 Parties.

#### **Article 19**

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

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

#### **Article 20**

### **[PCA Azerbaijan : Article 89]**

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 the Republic of Azerbaijan;
  - 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 21**  
**[PCA Azerbaijan : Article 90]**

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 in the control of dual use industrial goods and technologies.

**Article 22**  
**[PCA Azerbaijan : Article 91]**

1. In the fields covered by this Agreement and without prejudice to any special provisions contained therein :
  - the arrangements applied by the Republic of Azerbaijan 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 the Republic of Azerbaijan shall not give rise to any discrimination between Azerbaijani nationals, or Azerbaijani 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 23**  
**[PCA Azerbaijan : Article 92]**

1. Each Party 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, either Party may notify the other of the appointment of a conciliator; the other Party must then appoint a second conciliator within two months.

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.

4. The Joint Committee may establish rules of procedure for dispute settlement.

**Article 24**  
**[PCA Azerbaijan : Article 93]**

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 7, 23 and 28.

**Article 25**  
**[PCA Azerbaijan : Article 94]**

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

**Article 26**  
**[PCA Azerbaijan : Article 96]**

Insofar as matters covered by this Agreement are covered by the 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 27**

1. This Agreement shall be applicable until the entry into force of the Partnership and Cooperation Agreement signed on 22 April 1996.
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 28**  
**[PCA Azerbaijan : Article 98]**

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 29**  
**[PCA Azerbaijan : Article 99]**

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

**Article 30**  
**[PCA Azerbaijan : Article 101]**

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 the Republic of Azerbaijan.

**Article 31**

This Agreement is drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Italian, Spanish, Swedish, Greek, Portuguese, and Azerbaijani languages, each of these texts being equally authentic.

**Article 32**

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 that the procedures referred to in the first paragraph have been completed.

Upon its entry into force, and as far as relations between the Republic of Azerbaijan and the Community are concerned, this Agreement shall replace Article 2, Article 3, except for the fourth indent thereof, and Articles 4 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.

## LIST OF DOCUMENTS ATTACHED

**Annex I** Indicative list of advantages granted by the Republic of Azerbaijan to the Independent States in accordance with Article 2(3).

**Annex II** Intellectual, industrial and commercial property conventions referred to in Article 15.

Protocol on mutual assistance in customs matters between administrative authorities.

## **ANNEX I**

### **Advantages granted by the Republic of Azerbaijan to the Independent States in accordance with Article 2 (3)**

1. No import duties are applied.
2. No export duties are applied with respect to goods delivered under annual bilateral interstate trade and cooperation arrangements, within the nomenclature stipulated therein.
3. No VAT is applied on import.
4. No excise duties are applied on import.

## ANNEX II

### **Intellectual, Industrial and Commercial Property conventions referred to in Article 15**

1. Community acts referred to in Article 15.
  - 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 topographics 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 the Republic of Azerbaijan, 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 any legal or regulatory provisions applicable in the territory of the Parties governing the import, export, transit of goods and their placing under any customs procedure, including measures of prohibition, restriction and control;
- b) "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;
- c) "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;
- d) "personal data", shall mean all information relating to an identified or identifiable individual.

## ARTICLE 2

### Scope

1. The Parties shall assist each other, in the areas within their jurisdiction, in the manner and under the conditions laid down in this Protocol, in preventing, detecting and investigating operations in breach of customs legislation.
2. Assistance in customs matters, as provided for in this Protocol, shall apply 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 authorities, 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 which may enable it to ensure that customs legislation is correctly applied, including information regarding operations noted or planned which are or could be in breach of 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, within the framework of its laws, take the necessary steps to ensure that a special watch is kept on :
- (a) natural or legal persons of whom there are reasonable grounds for believing that they are breaching or have breached customs legislation;
  - (b) places where goods are stored in a way that gives grounds for suspecting that they are intended to supply operations in breach of customs legislation;
  - (c) movements of goods notified as possibly giving rise to breaches of customs legislation;
  - (d) means of transport for which there are reasonable grounds for believing that they have been, are or might be used in operations in breach of customs legislation.

#### ARTICLE 4

##### Spontaneous assistance

The Parties shall provide each other, as far as their national laws, rules and other legal instruments allow, with assistance without prior request if they consider that to be necessary for the correct application of customs legislation, particularly when they obtain information pertaining to :

- operations which are or appear to be in breach of such legislation and which may be of interest to the other Party;
- new means or methods employed in carrying out such operations;
- goods known to be subject to breaches of customs legislation.
- natural or legal persons of whom there are reasonable grounds for believing that they are or have been in breach of customs legislation
- means of transport for which there are reasonable grounds for believing that they have been, are or might be used in operations in breach 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 cases, Article 6(3) shall apply as far as the request itself is concerned.

## ARTICLE 6

### Form and substance of requests for assistance

1. Requests pursuant to this Protocol shall be made in writing. They shall be accompanied by the documents necessary to enable compliance with 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 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 who are 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 that authority.
4. If a request does not meet the formal requirements, its correction or completion may be requested; precautionary measures may, however, be ordered.

## ARTICLE 7

### Execution of requests

1. In order to comply with a request for assistance, the requested authority shall proceed, within the limits of 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. This provision shall also apply to the administrative department to which the request has been addressed by the requested authority when the latter cannot act on its own.
2. Requests for assistance shall be executed in accordance with the laws, rules and other legal instruments of the requested Party.
3. Duly authorized officials of a Party may, with the agreement of the other Party involved and subject to 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 operations which are or may be in breach of customs legislation which the applicant authority needs for the purposes of this Protocol.

TT

24

4. Officials of a Party may, with the agreement of the other Party involved and subject to 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 would:
  - (a) be likely to prejudice the sovereignty of the Republic of Azerbaijan or that of a Member State of the European Union which has been asked for assistance under this Protocol; or
  - (b) be likely to prejudice public policy, security or other essential interests, in particular in the cases referred to under Article 10 (2); or
  - (c) involve currency or tax regulations other than customs legislation; or
  - (d) violate an industrial, commercial or professional secret.
2. Where the applicant authority requests 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 refused, the decision and the reasons therefor must be notified to the applicant authority without delay.

#### ARTICLE 10

##### Information exchange and confidentiality

1. Any information communicated in whatsoever form pursuant to this Protocol shall be of a confidential or restricted nature, depending on the rules applicable in each of the Parties. 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 institutions.

2. Personal data may be exchanged only where the receiving Party undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the supplying Party.
3. Information obtained shall be used solely for the purposes of this Protocol. Where one of the Parties requests the use of such information for other purposes, it shall ask for the prior written consent of the authority which furnished the information. Moreover, it shall be subject to any restrictions laid down by that authority.
4. Paragraph 3 shall not impede the use of information in any judicial or administrative proceedings subsequently instituted for failure to comply with customs legislation. The competent authority which supplied that information shall be notified of such use.
5. 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 11

### Experts and witnesses

1. An official of a requested authority may be authorized to appear, within the limitations of the authorization granted, as an expert or witness in judicial or administrative proceedings regarding the matters covered by this Protocol in the jurisdiction of the other 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.
2. The authorized official shall enjoy the protection guaranteed by existing legislation to officials of the applicant authority on its territory.

## ARTICLE 12

### 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 public service employees.

## ARTICLE 13

### Application

1. The application of this Protocol shall be entrusted to the central customs authorities of the Republic of Azerbaijan on the one hand and the competent services of the European Commission 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 the rules in force in the field of data protection. They may recommend to the competent bodies amendments which they consider should 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 14

### Complementarity

Without prejudice to Article 10, any agreements on mutual assistance which have been concluded between one or more Member States of the European Union and the Republic of Azerbaijan shall 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 TITLE II**

All references to the GATT are to the text of the GATT as modified in 1994

**JOINT DECLARATION CONCERNING ARTICLE 7**

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

## **JOINT DECLARATION CONCERNING ARTICLE 8**

Until the Republic of Azerbaijan accedes to the WTO, the Parties shall hold consultations in the Joint Committee on their import tariff policies, including changes in tariff protection. In particular, such consultations shall be offered prior to the increase of tariff protection.

## **JOINT DECLARATION CONCERNING ARTICLE 15**

Within the limits of their respective competences, the Parties agree that for the purpose of the Agreement, intellectual, industrial and commercial property includes in particular copyright, including the copyright in computer programs, and neighbouring rights, the rights relating to patents, industrial designs, geographical indications, including appellations of origin, trademarks and service marks, topographies of integrated circuits as well as protection against unfair competition as referred to in Article 10 bis of the Paris Convention for the protection of Industrial Property and protection of undisclosed information on know-how.

## **JOINT DECLARATION CONCERNING ARTICLE 28**

1. The Parties agree, for the purpose of its correct interpretation and its practical application, that the term "cases of special urgency" included in Article 28 of the Agreement means 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.
2. The parties agree that the "appropriate measures" referred to in Article 28 are measures taken in accordance with international law. If a party takes a measure in a case of special urgency as provided for under Article 28, the other party may avail itself of the procedure relating to settlement of disputes.

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

The Republic of Azerbaijan declares that :

1. By the end of the fifth year after entry into force of the Agreement, the Republic of Azerbaijan 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, 1991)
3. The Republic of Azerbaijan 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).
4. From the entry into force of this Agreement the Republic of Azerbaijan 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.
5. The provisions of paragraph 4 shall not apply to advantages granted by the Republic of Azerbaijan to any third country on an effective reciprocal basis or to advantages granted by the Republic of Azerbaijan to another country of the former USSR.

ISSN 0254-1475

COM(96) 613 final

# DOCUMENTS

EN

11 02 12

---

Catalogue number : CB-CO-96-628-EN-C

ISBN 92-78-12866-X

---

Office for Official Publications of the European Communities

L-2985 Luxembourg

34