

**TITLE IV**  
**TRADE AND TRADE-RELATED MATTERS**  
**CHAPTER 1**  
*National treatment and market access for goods*  
**Section 1**  
**Common provisions**

*Article 25*

**Objective**

The Parties shall progressively establish a free trade area over a transitional period of a maximum of 10 years starting from the entry into force of this Agreement <sup>(1)</sup>, in accordance with the provisions of this Agreement and in conformity with Article XXIV of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as "GATT 1994").

*Article 26*

**Scope and coverage**

1. The provisions of this Chapter shall apply to trade in goods <sup>(2)</sup> originating in the territories of the Parties.
2. For the purposes of this Chapter, 'originating' means qualifying under the rules of origin set out in Protocol I to this Agreement (Concerning the Definition of the Concept 'Originating Products' and Methods of Administrative Cooperation).

**Section 2**

**Elimination of customs duties, fees and other charges**

*Article 27*

**Definition of customs duties**

For the purposes of this Chapter, a 'customs duty' includes any duty or charge of any kind imposed on, or in connection with, the import or export of a good, including any form of surtax or surcharge imposed on, or in connection with, such import or export. A 'customs duty' does not include any:

- (a) charge equivalent to an internal tax imposed consistently with Article 32 of this Agreement;
- (b) duties imposed consistently with Chapter 2 (Trade Remedies) of Title IV of this Agreement;
- (c) fees or other charges imposed consistently with Article 33 of this Agreement.

## *Article 28*

### **Classification of goods**

The classification of goods in trade between the Parties shall be that set out in each Party's respective tariff nomenclature in conformity with the Harmonised System of the International Convention on the Harmonised Commodity Description and Coding System of 1983 (hereinafter referred to as the "HS") and subsequent amendments thereto.

## *Article 29*

### **Elimination of customs duties on imports**

1. Each Party shall reduce or eliminate customs duties on originating goods of the other Party in accordance with the Schedules set out in Annex I-A to this Agreement (hereinafter referred to as the 'Schedules').

Without prejudice to the first subparagraph, for worn clothing and other worn articles falling within the Ukrainian customs code 6309 00 00, Ukraine will eliminate customs duties on imports in accordance with the conditions set out in Annex I-B to this Agreement.

2. For each good, the base rate of customs duties to which the successive reductions are to be applied under paragraph 1 of this Article shall be that specified in Annex I to this Agreement.

3. If, at any moment following the date of entry into force of this Agreement, a Party reduces its applied most-favoured-nation (hereinafter referred to as 'MFN') customs duty rate, such duty rate shall apply as base rate if and for as long as it is lower than the customs duty rate calculated in accordance with that Party's Schedule.

4. Five years after the entry into force of this Agreement, at the request of either Party, the Parties shall consult one another in order to consider accelerating and broadening the scope of the elimination of customs duties on trade between themselves. A decision of the Association Committee meeting in Trade configuration as set out in Article 465 of this Agreement (hereinafter referred to also as the "Trade Committee") on the acceleration or elimination of a customs duty on a good shall supersede any duty rate or staging category determined pursuant to their Schedules for that good.

## *Article 30*

### **Standstill**

Neither Party may increase any existing customs duty, or adopt any new customs duty, on a good originating in the territory of the other Party. This shall not preclude that either Party may:

- (a) raise a customs duty to the level established in its Schedule following a unilateral reduction; or
- (b) maintain or increase a customs duty as authorised by the Dispute Settlement Body (hereinafter referred to as the "DSB") of the World Trade Organization

(hereinafter referred to as the "WTO").

### *Article 31*

#### **Customs duties on exports**

1. Parties shall not institute or maintain any customs duties, taxes or other measures having an equivalent effect imposed on, or in connection with, the exportation of goods to the territory of each other.
2. Existing customs duties or measures having equivalent effect applied by Ukraine, as listed in Annex I-C to this Agreement, shall be phased out over a transitional period in accordance with the Schedule included in Annex I-C to this Agreement. In the case of an update to the Ukrainian customs code, commitments made under the Schedule in Annex I-C to this Agreement shall remain in force based on correspondence of description of the goods. Ukraine may introduce safeguard measures for export duties as set out in Annex I-D to this Agreement. Such safeguard measures shall expire at the end of the period specified for that good in Annex I-D to this Agreement.

### *Article 32*

#### **Export subsidies and measures of equivalent effect**

1. Upon entry into force of this Agreement, no Party shall maintain, introduce or reintroduce export subsidies or other measures with equivalent effect on agricultural goods destined for the territory of the other Party.
2. For the purposes of this Article, "export subsidies" shall have the meaning assigned to that term in Article 1(e) of the Agreement on Agriculture, contained in Annex 1A to the WTO Agreement (hereinafter referred to as the "Agreement on Agriculture"), including any amendment of that Article of that Agreement on Agriculture.

### *Article 33*

#### **Fees and other charges**

Each Party shall ensure, in accordance with Article VIII of GATT 1994 and its interpretative notes, that all fees and charges of whatever nature other than customs duties or other measures referred to in Article 27 of this Agreement, imposed on, or in connection with, the import or export of goods are limited in amount to the approximate cost of services rendered and do not represent an indirect protection of domestic goods or taxation of imports or exports for fiscal purposes.

**Section 3**  
**Non-Tariff measures**

*Article 34*

**National treatment**

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994, including its interpretative notes. To this end, Article III of GATT 1994 and its interpretative notes are incorporated into and made an integral part of this Agreement.

*Article 35*

**Import and export restrictions**

No Party shall adopt or maintain any prohibition or restriction or any measure having an equivalent effect on the import of any good of the other Party or on the export or sale for export of any good destined for the territory of the other Party, except as otherwise provided in this Agreement or in accordance with Article XI of GATT 1994 and its interpretative notes. To this end, Article XI of GATT 1994 and its interpretative notes are incorporated into, and made an integral part of, this Agreement.

**Section 4**  
**Specific provisions related to goods**

*Article 36*

**General exceptions**

Nothing in this Agreement shall be construed in such a way as to prevent the adoption or enforcement by any Party of measures in accordance with Articles XX and XXI of GATT 1994 and its interpretative notes, which are hereby incorporated into and made an integral part of this Agreement.

**Section 5**  
**Administrative cooperation and coordination with other countries**

*Article 37*

**Special provisions on administrative cooperation**

1. The Parties agree that administrative cooperation is essential for the implementation and control of the preferential treatment granted under this Chapter and underline their commitment to combating irregularities and fraud in customs matters related to the import, export, and transit of goods and their placement under any other customs regime or procedure, including measures of prohibition, restriction and control.
2. Where a Party, on the basis of objective documented information, experiences a failure by the other Party to provide administrative cooperation and/or verify the existence of irregularities or fraud under this Chapter, the Party concerned may

temporarily suspend the relevant preferential treatment of the product(s) concerned in accordance with this Article.

3. For the purposes of this Article, failure to provide administrative cooperation in investigating customs irregularities or fraud shall mean, *inter alia*:

- (a) a repeated failure to respect the obligations to verify the originating status of the product(s) concerned;
- (b) a repeated refusal or undue delay in carrying out and/or communicating the results of subsequent verification of the proof of origin;
- (c) a repeated refusal or undue delay in obtaining authorisation to conduct administrative cooperation missions to verify the authenticity of documents or accuracy of information relevant to the granting of the preferential treatment in question.

For the purposes of this Article, a finding of irregularities or fraud may be made, *inter alia*, where there is a rapid increase, without satisfactory explanation, in imports of goods exceeding the usual level of production and export capacity of the other Party that is linked to objective information concerning irregularities or fraud.

4. The application of a temporary suspension shall be subject to the following conditions:

- (a) The Party which has, on the basis of objective information, made a finding of failure to provide administrative cooperation and/or of irregularities or fraud stemming from the other Party shall, without undue delay, notify the Trade Committee of its finding together with the objective information and enter into consultations within the Trade Committee, on the basis of all relevant information and objective findings, with a view to reaching a solution which is acceptable to both Parties. During the period of consultations referred to above, the product(s) concerned shall enjoy the preferential treatment.
- (b) Where the Parties have entered into consultations within the Trade Committee as referred to in point (a) and have failed to agree on an acceptable solution within three months of the first meeting of the Trade Committee, the Party concerned may temporarily suspend the relevant preferential treatment of the product(s) concerned. Such temporary suspension shall be notified to the Trade Committee without undue delay.
- (c) Temporary suspensions under this Article shall be limited to what is necessary to protect the financial interests of the Party concerned. Each temporary suspension shall not exceed six months. However, a temporary suspension may be renewed. Temporary suspensions shall be notified immediately after their adoption to the Trade Committee. They shall be subject to periodic consultations within the Trade Committee, in particular with a view to their termination as soon as the conditions for their application cease to exist.

5. At the same time as the notification to the Trade Committee under paragraph 4(a) of this Article, the Party concerned should publish a notice to importers in its sources of official information. The notice to importers should indicate for the product

concerned that there is a finding, on the basis of objective information, of a failure to provide administrative cooperation and/or of irregularities or fraud.

#### *Article 38*

### **Management of administrative errors**

In the event of error by the competent authorities in the proper management of the preferential system at export, and in particular in the application of the provisions of the Protocol to this Agreement concerning the definition of originating products and methods of administrative cooperation, where this error leads to consequences in terms of import duties, the Party facing such consequences may request that the Trade Committee examine the possibility of adopting any appropriate measure with a view to resolving the situation.

#### *Article 39*

### **Agreements with other countries**

1. This Agreement shall not preclude the maintenance or establishment of customs unions, free trade areas or arrangements for frontier traffic except insofar as they conflict with trade arrangements provided for in this Agreement.
2. Consultations between the Parties shall take place within the Trade Committee concerning agreements establishing customs unions, free trade areas or arrangements for frontier traffic and, where requested, on other major issues relating to their respective trade policies with third countries. In particular, in the event of a third country acceding to the European Union, such consultations shall take place in order to ensure that account will be taken of the mutual interests of the EU Party and Ukraine as stated in this Agreement.

## ***CHAPTER 2***

### ***Trade remedies***

#### **Section 1**

### **Global safeguard measures**

#### *Article 40*

### **General provisions**

1. The Parties confirm their rights and obligations under Article XIX of GATT 1994 and the Agreement on Safeguards contained in Annex 1A to the WTO Agreement (hereinafter referred to as the "Agreement on Safeguards"). The EU Party retains its rights and obligations under Article 5 of the Agreement on Agriculture, contained in Annex 1A to the WTO Agreement (hereinafter referred to as the "Agreement on Agriculture"), except for agricultural trade subject to preferential treatment under this Agreement.

2. The preferential rules of origin established under Chapter 1 (National Treatment and Market Access for Goods) of Title IV of this Agreement shall not apply to this Section.

#### *Article 41*

### **Transparency**

1. The Party initiating a safeguard investigation shall notify the other Party of such initiation by sending an official notification to the other Party, if the latter has a substantial economic interest.
2. For the purposes of this Article, a Party shall be considered as having a substantial economic interest when it is among the five largest suppliers of the imported product during the most recent three-year period of time, measured in terms of either absolute volume or value.
3. Notwithstanding Article 40 of this Agreement and without prejudice to Article 3.2 of the Agreement on Safeguards, at the request of the other Party, the Party initiating a safeguard investigation and intending to apply safeguard measures shall provide immediately *ad hoc* written notification of all the pertinent information leading to the initiation of a safeguard investigation and imposition of safeguard measures, including where relevant, on the provisional findings and on the final findings of the investigation as well as offer the possibility for consultations to the other Party.

#### *Article 42*

### **Application of measures**

1. When imposing safeguard measures, the Parties shall endeavour to impose them in a way that least affects their bilateral trade.
2. For the purposes of paragraph 1 of this Article, if one Party considers that the legal requirements for the imposition of definitive safeguard measures are met, the Party intending to apply such measures shall notify the other Party and give the possibility to hold bilateral consultations. If no satisfactory solution is reached within 30 days of the notification, the importing Party may adopt the appropriate measures to remedy the problem.

#### *Article 43*

### **Developing country**

To the extent that Ukraine qualifies as a developing country <sup>(3)</sup> for the purposes of Article 9 of the Agreement on Safeguards, it will not be subject to any safeguard measures applied by the EU Party, in so far as the conditions set out in Article 9 of that Agreement are fulfilled.

## Section 2 Safeguard measures on passenger cars

### *Article 44*

#### Safeguard measures on passenger cars

1. Ukraine may apply a safeguard measure in the form of a higher import duty on passenger cars originating <sup>(4)</sup> in the EU Party under tariff heading 8703 (hereinafter referred to as the "product"), as defined in Article 45 of this Agreement, in accordance with the provisions of this Section, if each of the following conditions is met:
  - (a) if, as a result of the reduction or elimination of a customs duty under this Agreement, the product is being imported into the territory of Ukraine in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause serious injury to a domestic industry producing a like product;
  - (b) if the aggregate volume (in units) <sup>(5)</sup> of imports of the product in any year exceeds the trigger level set out in its Schedule included in Annex II to this Agreement; and
  - (c) if the aggregate volume of imports of the product into Ukraine (in units) <sup>(6)</sup> for the last 12-month period ending not earlier than the penultimate month before Ukraine invites the EU Party for consultations in line with paragraph 5 of this Article exceeds the trigger percentage set out in the Schedule of Ukraine in Annex II of all new registrations <sup>(7)</sup> of passenger cars in Ukraine for the same period.
2. The duty under paragraph 1 of this Article shall not exceed the lesser of the prevailing MFN applied rate, or the MFN applied rate of duty in effect on the day immediately preceding the date this Agreement enters into force, or the tariff rate set out in the Schedule of Ukraine in Annex II to this Agreement. The duty can only be applied for the remainder of that year, as defined in Annex II to this Agreement.
3. Without prejudice to paragraph 2 of this Article, the duties Ukraine applies under paragraph 1 of this Article shall be set according to the Schedule of Ukraine in Annex II to this Agreement.
4. Any supplies of the product in question which were *en route* on the basis of a contract entered into before the additional duty is imposed under paragraphs 1 to 3 of this Article shall be exempt from any such additional duty. However, such supplies will be counted in the volume of imports of the product in question during the following year for the purpose of meeting the conditions set out in paragraph 1 of this Article for that year.
5. Ukraine shall apply any safeguard measure in a transparent manner. To this end, Ukraine shall, as soon as possible, provide written notification to the EU Party of its intention to apply such a measure and provide all the pertinent information, including the volume (in units) of imports of the product, the total volume (in units) of imports of passenger cars of any source and the new registrations of passenger cars in Ukraine for the period referred to in paragraph 1 of this Article. Ukraine shall invite the EU Party for consultations as far in advance of taking such measure as practicable in



order to discuss this information. No measure shall be adopted for 30 days following the invitation for consultations.

6. Ukraine may apply a safeguard measure only following an investigation by its competent authorities in accordance with Articles 3 and 4(2)(c) of the Agreement on Safeguards and to this end, Articles 3 and 4(2)(c) of the Agreement on Safeguards are incorporated into and made part of this Agreement, *mutatis mutandis*. Such investigation must prove that as a result of the reduction or elimination of a customs duty under this Agreement, the product is being imported into the territory of Ukraine in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause serious injury to a domestic industry producing a like product.

7. Ukraine shall immediately notify the EU Party in writing of the initiation of an investigation as described in paragraph 6 of this Article.

8. During the investigation Ukraine shall comply with the requirements of Article 4.2(a) and (b) of the Agreement on Safeguards and to this end, Article 4.2(a) and (b) of the Agreement on Safeguards is incorporated into and made part of this Agreement, *mutatis mutandis*.

9. The relevant factors relating to the injury determination in Article 4.2(a) of the Agreement on Safeguards shall be evaluated for at least three consecutive periods of 12 months, i.e. a minimum of three years in total.

10. The investigation shall also evaluate all known factors, other than increased preferential imports under this Agreement, that at the same time may be causing injury to the domestic industry. Increased imports of a product originating in the EU Party shall not be considered to be the result of the elimination or reduction of a customs duty, if imports of the same product from other sources have increased to a comparable extent.

11. Ukraine shall inform the EU Party and all other interested parties in writing of the findings and reasoned conclusions of the investigation well in advance of the consultations referred to in paragraph 5 of this Article with a view to reviewing the information arising from the investigation and exchanging views on the proposed measures during the consultations.

12. Ukraine shall ensure that the statistics on passenger cars that are used as evidence for such measures are reliable, adequate and publicly accessible in a timely manner. Ukraine shall provide without delay monthly statistics on the volume (in units) of imports of the product, the total volume (in units) of imports of passenger cars of any source and the new registrations of passenger cars in Ukraine.

13. Notwithstanding paragraph 1 of this Article during the transition period, the provisions of paragraphs 1(a) and 6 to 11 of this Article shall not apply.

14. Ukraine shall not apply a safeguard measure under this Section during year one. Ukraine shall not apply or maintain any safeguard measure under this Section or continue any investigation to that effect after year 15.

15. The implementation and operation of this Article may be the subject of discussion and review in the Trade Committee.

## Article 45

### Definitions

For the purposes of this Section and Annex II to this Agreement:

1. "the product" means only passenger cars originating in the EU Party and falling under tariff heading 8703 in accordance with the rules of origin established in Protocol I to this Agreement concerning the definition of the concept of 'originating products' and methods of administrative cooperation;
2. "serious injury" shall be understood in accordance with Article 4.1(a) of the Agreement on Safeguards. To this end, Article 4.1(a) is incorporated into and made part of this Agreement, *mutatis mutandis*;
3. "like product" shall be understood to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which although not alike in all respects, has characteristics closely resembling those of the product under consideration;
4. "transition period" means a 10-year period beginning on the date this Agreement enters into force. The transition period will be extended for three more years, if before the end of the year 10, Ukraine has presented a reasoned request to the Trade Committee referred to in Article 465 of this Agreement and the Trade Committee has discussed it;
5. "year one" means the 12-month period beginning on the date of entry into force of this Agreement;
6. "year two" means the 12-month period beginning on the first anniversary of the entry into force of this Agreement;
7. "year three" means the 12-month period beginning on the second anniversary of the entry into force of this Agreement;
8. "year four" means the 12-month period beginning on the third anniversary of the entry into force of this Agreement;
9. "year five" means the 12-month period beginning on the fourth anniversary of the entry into force of this Agreement;
10. "year six" means the 12-month period beginning on the fifth anniversary of the entry into force of this Agreement;
11. "year seven" means the 12-month period beginning on the sixth anniversary of the entry into force of this Agreement;
12. "year eight" means the 12-month period beginning on the seventh anniversary of the entry into force of this Agreement;
13. "year nine" means the 12-month period beginning on the eighth anniversary of the entry into force of this Agreement;
14. "year ten" means the 12-month period beginning on the ninth anniversary of the

entry into force of this Agreement;

15. "year eleven" means the 12-month period beginning on the tenth anniversary of the entry into force of this Agreement;
16. "year twelve" means the 12-month period beginning on the eleventh anniversary of the entry into force of this Agreement;
17. "year thirteen" means the 12-month period beginning on the twelfth anniversary of the entry into force of this Agreement;
18. "year fourteen" means the 12-month period beginning on the thirteenth anniversary of the entry into force of this Agreement;
19. "year fifteen" means the 12-month period beginning on the fourteenth anniversary of the entry into force of this Agreement.

### **Section 3**

#### **Non-cumulation**

##### *Article 45 bis*

#### **Non-cumulation**

Neither Party may apply, with respect to the same product, at the same time:

- (a) a safeguard measure in accordance with Section 2 (Safeguard Measures on Passenger Cars) of this Chapter; and
- (b) a measure under Article XIX of GATT 1994 and the Agreement on Safeguards.

### **Section 4**

#### **Anti-dumping and countervailing measures**

##### *Article 46*

#### **General provisions**

1. The Parties confirm their rights and obligations under Article VI of GATT 1994, the Agreement on Implementation of Article VI of GATT 1994, contained in Annex 1A to the WTO Agreement (hereinafter referred to as the "Anti-Dumping Agreement") and the Agreement on Subsidies and Countervailing Measures, contained in Annex 1A to the WTO Agreement (hereinafter referred to as the "SCM Agreement").
2. The preferential rules of origin established under Chapter 1 (National Treatment and Market Access for Goods) of Title IV of this Agreement shall not apply to this Section.

##### *Article 47*

#### **Transparency**

1. The Parties agree that anti-dumping and countervailing measures should be used in full compliance with the requirements under the Anti-Dumping Agreement and the SCM Agreement respectively and should be based on a fair and transparent system.
2. After receipt by a Party's competent authorities of a properly documented anti-dumping application with respect to imports from the other Party, and no later than 15 days before initiating an investigation, the Party shall provide written notification to the other Party of receipt of the application.
3. Without prejudice to Article 6.5 of the Anti-Dumping Agreement and Article 12.4 of the SCM Agreement, the Parties shall ensure, immediately after the imposition of provisional measures, if any, and before final determination is made, full and meaningful disclosure of all essential facts and considerations which form the basis for the decision to apply measures. Disclosure shall be made in writing and allow interested parties sufficient time to make their comments. After final disclosure, interested parties shall be given at least 10 days to make their comments.
4. Provided it does not unnecessarily delay the conduct of the investigation and in accordance with a Party's internal legislation concerning investigation procedures, each interested party shall be granted the possibility to be heard in order to express its views during anti-dumping and anti-subsidy investigations.

#### *Article 48*

#### **Consideration of public interest**

Anti-dumping or countervailing measures may not be applied by a Party where, on the basis of the information made available during the investigation, it can clearly be concluded that it is not in the public interest to apply such measures. The public interest determination shall be based on an appreciation of all the various interests taken as a whole, including the interests of the domestic industry and of users, consumers and importers to the extent that they have provided relevant information to the investigating authorities.

#### *Article 49*

#### **Lesser duty rule**

Should a Party decide to impose a provisional or definitive anti-dumping or countervailing duty, the amount of such duty shall not exceed the margin of dumping or countervailable subsidies, but it should be less than the margin if such a lesser duty would be adequate to remove the injury to the domestic industry.

#### *Article 50*

#### **Application of measures and reviews**

1. Provisional anti-dumping or countervailing measures may be applied by the Parties only if a preliminary determination has shown the existence of dumping or subsidy causing injury to a domestic industry.
2. Before imposing a definitive anti-dumping or countervailing duty, the Parties shall explore the possibility of applying constructive remedies, due consideration being

given to the special circumstances of each case. Without prejudice to the relevant provisions of each Party's internal legislation, the Parties should give preference to price undertakings, to the extent that they have received adequate offers by exporters and that the acceptance of these offers is not considered impractical.

3. Upon receiving a duly substantiated request made by an exporter for a review of anti-dumping or countervailing measures in force, the Party that has imposed the measure shall examine such a request in an objective and expeditious manner and shall inform the exporter of the results of the examination as soon as possible.

**Section 5**  
**Consultations**  
*Article 50 bis*  
**Consultations**

1. A Party shall afford the other Party, at the latter's request, the opportunity for consultation concerning specific issues that may arise regarding the application of trade remedies. Those issues may concern, but are not limited to, the methodology followed to calculate margins of dumping, including various adjustments, the use of statistics, the development of imports, the determination of injury and the application of the lesser duty rule.

2. Consultations shall take place as soon as possible and normally within 21 days of the request.

3. Consultations under this Section shall be held without prejudice to, and in full compliance with, the provisions of Article 41 and Article 47 of this Agreement.

**Section 6**  
**Institutional provisions**

*Article 51*

**Dialogue on trade remedies**

1. Parties have agreed to establish an expert-level Dialogue on Trade Remedies as a forum for cooperation in trade remedies matters.

2. The Dialogue on Trade Remedies shall be conducted with the aim of:

- (a) enhancing a Party's knowledge and understanding of the other Party's trade remedy laws, policies and practices;
- (b) examining the implementation of this Chapter;
- (c) improving cooperation between the Parties' authorities having responsibility for trade remedies matters;
- (d) discussing international developments in the area of trade defence;
- (e) cooperating on any other trade remedies matter.

3. The Dialogue on Trade Remedies meetings shall be held on *ad hoc* basis upon request by either Party. The agenda of each such meeting shall be jointly agreed in advance.

**Section 7**  
**Dispute settlement**

*Article 52*

**Dispute settlement**

Chapter 14 (Dispute Settlement) of Title IV of this Agreement shall not apply to Sections 1, 4, 5, 6 and 7 of this Chapter.

**CHAPTER 3**  
***Technical barriers to trade***

*Article 53*

**Scope and definitions**

1. This Chapter applies to the preparation, adoption and application of technical regulations, standards, and conformity assessment procedures as defined in the Agreement on Technical Barriers to Trade, contained in Annex 1A to the WTO Agreement (hereinafter referred to as the "TBT Agreement") that may affect trade in goods between the Parties.
2. Notwithstanding paragraph 1 of this Article, this Chapter does not apply to sanitary and phytosanitary measures as defined in Annex A of the Agreement on the Application of Sanitary and Phytosanitary Measures, contained in Annex 1A to the WTO Agreement (hereinafter referred to as the "SPS Agreement"), nor to purchasing specifications prepared by public authorities for their own production or consumption requirements.
3. For the purposes of this Chapter, the definitions of Annex I to the TBT Agreement shall apply.

*Article 54*

**Affirmation of the TBT Agreement**

The Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement, which is hereby incorporated into, and made part of, this Agreement.

*Article 55*

**Technical cooperation**

1. The Parties shall strengthen their cooperation in the field of technical regulations, standards, metrology, market surveillance, accreditation and conformity assessment procedures with a view to increasing mutual understanding of their respective systems and facilitating access to their respective markets. To this end, they may establish regulatory dialogues at both horizontal and sectoral levels.
2. In their cooperation, the Parties shall seek to identify, develop and promote trade-facilitating initiatives which may include, but are not limited to:
  - (a) reinforcing regulatory cooperation through the exchange of information, experience and data; scientific and technical cooperation, with a view to improving the quality of their technical regulations, standards, testing, market surveillance, certification, and accreditation, and making efficient use of regulatory resources;
  - (b) promoting and encouraging cooperation between their respective organisations, public or private, responsible for metrology, standardisation, testing, market surveillance, certification and accreditation;
  - (c) fostering the development of the quality infrastructure for standardisation, metrology, accreditation, conformity assessment and the market surveillance system in Ukraine;
  - (d) promoting Ukrainian participation in the work of related European organisations;
  - (e) seeking solutions to trade barriers that may arise;
  - (f) coordinating their positions in international trade and regulatory organisations such as the WTO and the United Nations Economic Commission for Europe (hereinafter referred to as "UN-ECE").

#### *Article 56*

##### **Approximation of technical regulations, standards, and conformity assessment**

1. Ukraine shall take the necessary measures in order to gradually achieve conformity with EU technical regulations and EU standardisation, metrology, accreditation, conformity assessment procedures and the market surveillance system, and undertakes to follow the principles and practices laid down in relevant EU Decisions and Regulations <sup>(8)</sup>.
2. With a view to reaching the objectives set out in paragraph 1, Ukraine shall, in line with the timetable in Annex III to this Agreement:
  - (i) incorporate the relevant EU *acquis* into its legislation;
  - (ii) make the administrative and institutional reforms that are necessary to implement this Agreement and the Agreement on Conformity Assessment and Acceptance of Industrial Products (hereinafter referred to as the "ACAA") referred to in Article 57 of this Agreement; and
  - (iii) provide the effective and transparent administrative system required for the implementation of this Chapter.

3. The timetable in Annex III to this Agreement shall be agreed and maintained by the Parties.
4. After this Agreement enters into force, Ukraine shall provide the EU Party once a year with reports on the measures taken in accordance with this Article. Where actions listed in the timetable in Annex III to this Agreement have not been implemented within the applicable time frame, Ukraine shall indicate a new timetable for the completion of such action.
5. Ukraine shall refrain from amending its horizontal and sectoral legislation listed in Annex III to this Agreement, except in order to align such legislation progressively with the corresponding EU *acquis*, and to maintain such alignment.
6. Ukraine shall notify the EU Party of any such changes in its national legislation.
7. Ukraine shall ensure that its relevant national bodies participate fully in the European and international organisations for standardisation, legal and fundamental metrology, and conformity assessment including accreditation in accordance with its area of activity and the membership status available to it.
8. Ukraine shall progressively transpose the corpus of European standards (EN) as national standards, including the harmonised European standards, the voluntary use of which shall be presumed to be in conformity with legislation listed in Annex III to this Agreement. Simultaneously with such transposition, Ukraine shall withdraw conflicting national standards, including its application of interstate standards (GOST/ГОСТ), developed before 1992. In addition, Ukraine shall progressively fulfil the other conditions for membership, in line with the requirements applicable to full members of the European Standardisation Organisations.

#### *Article 57*

##### **Agreement on Conformity Assessment and Acceptance of Industrial Products**

1. The Parties agree to add an ACAA as a Protocol to this Agreement, covering one or more sectors listed in Annex III to this Agreement once they have agreed that the relevant Ukrainian sectoral and horizontal legislation, institutions and standards have been fully aligned with those of the EU.
2. The ACAA will provide that trade between the Parties in goods in the sectors that it covers shall take place under the same conditions as those applying to trade in such goods between the Member States of the European Union.
3. Following a check by the EU Party and agreement on the state of alignment of relevant Ukrainian technical legislation, standards and infrastructure, the ACAA shall be added as a Protocol to this Agreement by agreement between the Parties according to the procedure for amending this Agreement, covering such sectors from the list in Annex III to this Agreement as are considered to be aligned. It is intended that the ACAA will ultimately be extended to cover all the sectors listed in Annex III to this Agreement, in accordance with the aforementioned procedure.
4. Once the sectors on the list have been covered by the ACAA, the Parties, by mutual agreement and in accordance with the procedure for amending this Agreement, undertake to consider extending its scope to cover other industrial sectors.



5. Until a product is covered under the ACAA, the relevant existing legislation of the Parties shall apply to it, taking into account the provisions of the TBT Agreement.

#### *Article 58*

##### **Marking and labelling**

1. Without prejudice to Articles 56 and 57 of this Agreement, with respect to technical regulations relating to labelling or marking requirements, the Parties reaffirm the principles of Article 2.2 of the TBT Agreement whereby such requirements are not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade. For this purpose, such labelling or marking requirements shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks that non-fulfilment would create.
2. In particular, regarding mandatory marking or labelling, the Parties agree that:
  - (a) they will endeavour to minimise their requirements for marking or labelling, except as required for the adoption of the EU *acquis* in this area and for marking and labelling for the protection of health, safety, or the environment, or for other reasonable public policy purposes;
  - (b) a Party may determine the form of labelling or marking, but shall not require the approval, registration or certification of labels; and
  - (c) the Parties retain the right to require the information on a label or marks to be in a specific language.

#### **CHAPTER 4**

##### ***Sanitary and phytosanitary measures***

#### *Article 59*

##### **Objective**

1. The objective of this Chapter is to facilitate trade in commodities covered by sanitary and phytosanitary measures between the Parties, whilst safeguarding human, animal and plant life or health, by:
  - (a) ensuring full transparency as regards sanitary and phytosanitary measures applicable to trade;
  - (b) approximating Ukraine's laws to those of the EU;
  - (c) recognising the animal and plant health status of the Parties and applying the principle of regionalisation;
  - (d) establishing a mechanism for the recognition of equivalence of sanitary or phytosanitary measures maintained by a Party;
  - (e) further implementing the principles of the SPS Agreement;
  - (f) establishing mechanisms and procedures for trade facilitation; and

- (g) improving communication and cooperation between the Parties on sanitary and phytosanitary measures.
2. This Chapter also aims at reaching a common understanding between the Parties concerning animal welfare standards.

#### *Article 60*

### **Multilateral obligations**

The Parties re-affirm their rights and obligations under the SPS Agreement.

#### *Article 61*

### **Scope**

This Chapter shall apply to all sanitary and phytosanitary measures of a Party that may, directly or indirectly, affect trade between the Parties, including the measures listed in Annex IV to this Agreement.

#### *Article 62*

### **Definitions**

For the purposes of this Chapter, the following definitions shall apply:

1. "sanitary and phytosanitary measures" means measures as defined in paragraph 1 of Annex A to the SPS Agreement, falling within the scope of this Chapter;
2. "animals" means terrestrial and aquatic animals, as defined in the Terrestrial Animal Health Code or the Aquatic Animal Health Code of the World Organisation for Animal Health (hereinafter referred to as the "OIE") accordingly;
3. "animal products" means products of animal origin, including aquatic animal products, as defined in the Terrestrial Animal Health Code and the Aquatic Animal Health Code of the OIE;
4. "animal by-products not intended for human consumption" means animal products as listed in Annex IV-A, Part 2 (II) to this Agreement;
5. "plants" means living plants and specified living parts thereof, including seeds:
  - (a) fruit, in the botanical sense, other than those preserved by deep freezing;
  - (b) vegetables, other than those preserved by deep freezing;
  - (c) tubers, corms, bulbs, rhizomes;
  - (d) cut flowers;
  - (e) branches with foliage;
  - (f) cut trees retaining foliage;
  - (g) plant tissue cultures;

- (h) leaves, foliage;
  - (i) live pollen; and
  - (j) bud-wood, cuttings, scions.
6. "plant products" means products of plant origin, unprocessed or having undergone simple preparation in so far as these are not plants, set out in Annex IV-A, Part 3 to this Agreement;
  7. "seeds" means seeds in the botanical sense, intended for planting;
  8. "pests (harmful organisms)" means any species, strain or biotype of plant, animal or pathogenic agent injurious to plants or plant products;
  9. "protected zones" mean, in the case of the EU Party, zones within the meaning of Article 2(1)(h) of Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into Community of organisms harmful to plants or plant products and against their spread within the Community or any successor provision (hereinafter referred to as "Directive 2000/29/EC");
  10. "animal disease" means a clinical or pathological manifestation of an infection in animals;
  11. "aquaculture disease" means clinical or non-clinical infection with one or more of the aetiological agents of the diseases referred to in the Aquatic Animal Health Code of the OIE;
  12. "infection in animals" means the situation where animals maintain an infectious agent with or without the presence of clinical or pathological manifestation of an infection;
  13. "animal welfare standards" means standards for the protection of animals as developed and applied by the Parties and, as appropriate, in line with the OIE standards and falling within the scope of this Agreement;
  14. "appropriate level of sanitary and phytosanitary protection" means the appropriate level of sanitary and phytosanitary protection as defined in paragraph 5 of Annex A to the SPS Agreement;
  15. "region" means, as regards animal health, zones or regions as defined in the Terrestrial Animal Health Code of the OIE, and for aquaculture as defined in the International Aquatic and Animal Health Code of the OIE, on the understanding that as regards the territory of the EU Party its specificity shall be taken into account, recognising the EU Party as an entity;
  16. "pest-free area" means an area in which a specific pest does not occur as demonstrated by scientific evidence and in which, where appropriate, this condition is being officially maintained;
  17. "regionalisation" means the concept of regionalisation as described in Article 6 of the SPS Agreement;

18. "consignment" means a quantity of animal products of the same type, covered by the same certificate or document, conveyed by the same means of transport, consigned by a single consignor and originating in the same exporting country or part of such country. A consignment may be composed of one or more lots;
19. "consignment of plants or plant products" means a quantity of plants, plant products and/or other articles being moved from one country to another and covered, when required, by a single phytosanitary certificate (a consignment may be composed of one or more commodities or lots);
20. "lot" means a number or units of a single commodity, identifiable by its homogeneity of composition and origin, and forming part of a consignment;
21. "equivalence for trade purposes" (hereinafter referred to as "equivalence") means the situation where the importing Party shall accept the sanitary or phytosanitary measures of the exporting Party as equivalent, even if these measures differ from its own, if the exporting Party objectively demonstrates to the importing Party that its measures achieve the importing Party's appropriate level of sanitary or phytosanitary protection;
22. "sector" means the production and trade structure for a product or category of products in a Party;
23. "sub-sector" means a well-defined and controlled part of a sector;
24. "commodities" means animals and plants, or categories thereof, or specific products and other objects being moved for trade or other purposes, including those referred to in points 2 to 7 of this Article;
25. "specific import authorisation" means a formal prior authorisation by the competent authorities of the importing Party addressed to an individual importer as a condition for import of a single consignment or multiple consignments of a commodity from the exporting Party, within the scope of this Agreement;
26. "working days" means week days except Sunday, Saturday and public holidays in one of the Parties;
27. "inspection" means the examination of any aspect of feed, food, animal health and animal welfare in order to verify that such aspect(s) comply with the legal requirements of feed and food law and animal health and animal welfare rules;
28. "plant health inspection" means official visual examination of plants, plant products or other regulated objects to determine if pests are present and/or to determine compliance with phytosanitary regulations;
29. "verification" means checking, by examination and the consideration of objective evidence, whether specified requirements have been fulfilled.

### *Article 63*

#### **Competent authorities**

The Parties shall inform each other about the structure, organisation, and division of competences of their competent authorities during the first meeting of the Sanitary and Phytosanitary Management Sub-Committee (hereinafter referred to as the "SPS Sub-Committee") referred to in Article 74 of this Agreement. The Parties shall inform each other of any change concerning such competent authorities, including contact points.

#### *Article 64*

### **Regulatory approximation**

1. Ukraine shall approximate its sanitary and phytosanitary and animal welfare legislation to that of the EU as set out in Annex V to this Agreement.
2. The Parties shall cooperate on legislative approximation and capacity-building.
3. The SPS Sub-Committee shall regularly monitor implementation of the approximation process, set out in Annex V to this Agreement, in order to provide the necessary recommendations on approximation measures.
4. Not later than three months after the entry into force of this Agreement, Ukraine shall submit to the SPS Sub-Committee a comprehensive strategy for the implementation of this Chapter, divided into priority areas that relate to measures, as defined in Annex IV-A, Annex IV-B and Annex IV-C to this Agreement, facilitating trade in one specific commodity or group of commodities. The strategy shall serve as the reference document for the implementation of this Chapter and it will be added to Annex V to this Agreement (°).

#### *Article 65*

### **Recognition for trade purposes of animal health and pest status and regional conditions**

1. As regards animal diseases and infections in animals (including zoonosis), the following shall apply:
  - (a) The importing Party shall recognise for trade purposes, the animal health status of the exporting Party or its regions as determined by the exporting Party in accordance with Annex VII Part A to this Agreement, with respect to animal diseases specified in Annex VI-A to this Agreement;
  - (b) Where a Party considers that it has, for its territory or a region, a special status with respect to a specific animal disease, other than those listed in Annex VI-A to this Agreement, it may request recognition of this status in accordance with the criteria laid down in Annex VII Part C to this Agreement. The importing Party may request guarantees in respect of imports of live animals and animal products, which are appropriate to the agreed status of the Parties;
  - (c) The status of the territories or regions, or the status in a sector or sub-sector of the Parties related to the prevalence or incidence of an animal disease other than listed in Annex VI-A to this Agreement, or infections in animals, and/or the associated risk, as appropriate, as defined by OIE, is recognised by the Parties as the basis for

trade between them. The importing Party may request guarantees in respect of imports of live animals and animal products which are appropriate to the defined status in accordance with the recommendations of OIE, as appropriate.

- (d) Without prejudice to Articles 67, 69 and 73 of this Agreement, and unless the importing Party raises an explicit objection and requests supporting or additional information or consultations and/or verification, each Party shall take, without undue delay, the necessary legislative and administrative measures to allow trade on the basis of points (a), (b) and (c) of this paragraph.
2. As regards pests, the following shall apply:
    - (a) The Parties recognise for trade purposes their pest status in respect of pests specified in Annex VI-B to this Agreement;
    - (b) Without prejudice to Articles 67, 69 and 73 of this Agreement, and unless the importing Party raises an explicit objection and requests supporting or additional information or consultations and/or verification, each Party shall take, without undue delay, the necessary legislative and administrative measures to allow trade on the basis of point (a) of this paragraph.
  3. The Parties recognise the concept of regionalisation and PFAs as specified in the relevant Food and Agriculture Organization/International Plant Protection Convention of 1997 and International Standards for Phytosanitary Measures (hereinafter referred to as "ISPM") of the Food and Agriculture Organization, and of protected zones according to Directive 2000/29/EC, which they agree to apply to trade between them.
  4. The Parties agree that regionalisation decisions for animal and fish diseases listed in Annex VI-A, and for pests listed in Annex VI-B to this Agreement, shall be taken in accordance with the provisions of Annex VII Part A and B to this Agreement.
  5. (a) As regards animal diseases, and in accordance with Article 67 of this Agreement, the exporting Party seeking recognition of its regionalisation decision by the importing Party shall notify its measures with full explanations and supporting data for its determinations and decisions. Without prejudice to Article 68 of this Agreement, and unless the importing Party raises an explicit objection and requests additional information or consultations and/or verification within 15 working days of receipt of the notification, the regionalisation decision so notified shall be deemed to be accepted;
    - (b) The consultations referred to in point (a) of this paragraph shall take place in accordance with Article 68(3) of this Agreement. The importing Party shall assess the additional information within 15 working days of receipt of the additional information. The verification referred to in point (a) shall be carried out in accordance with Article 71 of this Agreement and within 25 working days of receipt of the request for verification.
  6. (a) As regards pests, each Party shall ensure that trade in plants, plant products and other objects takes account, as appropriate, of the pest status in an area recognised as a protected zone or as a PFA by the other Party. A Party seeking recognition of its PFA by the other Party shall notify its measures and, upon request, provide full explanation and supporting data for its establishment and maintenance, as guided by the relevant ISPMs

as the Parties deem appropriate. Without prejudice to Article 73 of this Agreement, and unless a Party raises an explicit objection and requests additional information or consultations and/or verification within three months of the notification, the regionalisation decision for PFAs so notified shall be deemed to be accepted;

- (b) The consultations referred to in point (a) shall take place in accordance with Article 68(3) of this Agreement. The importing Party shall assess the additional information within three months of receipt of the additional information. The verification referred to in point (a) shall be carried out in accordance with Article 71 of this Agreement and within 12 months of receipt of the request for verification, taking into account the biology of the pest and the crop concerned.

7. After finalisation of the procedures described in paragraphs 4 to 6 of this Article, and without prejudice to Article 73 of this Agreement, each Party shall take, without undue delay, the necessary legislative and administrative measures to allow trade on that basis.

The Parties commit themselves to engaging in further discussions with a view to implementing the principle of compartmentalisation referred to in Annex XIV to this Agreement.

#### *Article 66*

#### **Determination of equivalence**

1. Equivalence may be recognised in respect of:
  - (a) an individual measure; or
  - (b) a group of measures; or
  - (c) a system applicable to a sector, sub-sector, commodities or group of commodities.
2. In the determination of equivalence, the Parties shall follow the process set out in paragraph 3 of this Article. This process shall include the objective demonstration of equivalence by the exporting Party and the objective assessment of this demonstration by the importing Party. This may include an inspection or verification.
3. Upon a request by the exporting Party concerning recognition of equivalence, as set out in paragraph 1 of this Article, the Parties shall without delay and no later than three months following receipt by the importing Party of such request, initiate the consultation process which includes the steps set out in Annex IX to this Agreement. However, if multiple requests are made by the exporting Party, the Parties, at the request of the importing Party, shall agree within the SPS Sub-Committee referred to in Article 74 of this Agreement on a time schedule in which they shall initiate and conduct the process referred to in this paragraph.
4. When legislative approximation is achieved as a result of the monitoring referred to in Article 64(3) of this Agreement, this fact shall be deemed to be a request by Ukraine to initiate the process of recognition of equivalence of relevant measures, as set out in paragraph 3 of this Article.

5. Unless otherwise agreed, the importing Party shall finalise the determination of equivalence referred to in paragraph 3 of this Article within 360 days of receipt from the exporting Party of the request, including a dossier demonstrating the equivalence, except for seasonal crops when it is justifiable to delay the assessment to permit verification during a suitable period of growth of a crop.
6. The importing Party determines equivalence as regards plants, plant products and other objects in accordance with relevant ISPMs, as appropriate.
7. The importing Party may withdraw or suspend equivalence, on the basis of any amendment by one of the Parties, of measures affecting equivalence, provided that the following procedures are followed:
  - (a) In accordance with Article 67(2) of this Agreement, the exporting Party shall inform the importing Party of any proposal for amendment of its measures for which equivalence of measures is recognised and the likely effect of the proposed measures on the equivalence which has been recognised. Within 30 working days of receipt of this information, the importing Party shall inform the exporting Party whether or not equivalence would continue to be recognised on the basis of the proposed measures;
  - (b) In accordance with Article 67(2) of this Agreement, the importing Party shall inform the exporting Party of any proposal for amendment of its measures on which recognition of equivalence has been based and the likely effect of the proposed measures on the equivalence which has been recognised. Should the importing Party not continue to recognise equivalence, the Parties may agree on the conditions to re-initiate the process referred to in paragraph 3 of this Article on the basis of the proposed measures.
8. The recognition, suspension or withdrawal of equivalence rests solely with the importing Party acting in accordance with its administrative and legislative framework. That Party shall provide to the exporting Party in writing full explanations and supporting data used for the determinations and decisions covered by this Article. In case of non-recognition, suspension or withdrawal of equivalence, the importing Party shall indicate to the exporting Party the required conditions on the basis of which the process referred to in paragraph 3 may be reinitiated.
9. Without prejudice to Article 73 of this Agreement, the importing Party may not withdraw or suspend equivalence before the proposed new measures of either Party enter into force.
10. Where equivalence is formally recognised by the importing party, on the basis of the consultation process as set out in Annex IX to this Agreement, the SPS Sub-Committee shall, in accordance with the procedure set out in Article 74(2) of this Agreement, declare recognition of equivalence in trade between the Parties. The decision shall also provide for the reduction of physical checks at the frontiers, simplified certificates and pre-listing procedures for the establishments as appropriate. The status of the equivalence shall be listed in Annex IX to this Agreement.
11. When laws are approximated, the equivalence determination takes place on that basis.



## *Article 67*

### **Transparency and exchange of information**

1. Without prejudice to Article 68 of this Agreement, the Parties shall cooperate to enhance mutual understanding of their official control structure and mechanisms tasked with the application of SPS measures and their respective performance. This can be achieved, amongst others, through reports of international audits when these are made public and the Parties can exchange information on the results of these audits or other information, as appropriate.
2. In the framework of approximation of legislation as referred to in Article 64 or of determination of equivalence as referred to in Article 66 of this Agreement, the Parties shall keep each other informed of legislative and other procedural changes adopted in the areas concerned.
3. In this context, the EU Party shall inform Ukraine well in advance of changes to the EU Party legislation to allow Ukraine to consider amending its legislation accordingly.

The necessary level of cooperation should be reached in order to facilitate transmission of legislative documents at the request of one of the Parties.

To this effect, each Party shall notify the other Party of its contact points. The Parties shall also notify each other of any changes to this information.

## *Article 68*

### **Notification, consultation and facilitation of communication**

1. Each Party shall notify the other Party in writing within two working days, of any serious or significant public, animal or plant health risk, including any food control emergencies or situations where there is a clearly identified risk of serious health effects associated with the consumption of animal or plant products and in particular of:
  - (a) any measures affecting regionalisation decisions as referred to in Article 65 of this Agreement;
  - (b) the presence or evolution of any animal disease listed in Annex VI-A or of the regulated pests on the list contained in Annex VI-B to this Agreement;
  - (c) findings of epidemiological importance or important associated risks with respect to animal diseases and pests which are not listed in Annex VI-A and Annex VI-B to this Agreement or which are new animal diseases or pests; and
  - (d) any additional measures going beyond the basic requirements applicable to the respective measures taken by the Parties to control or eradicate animal diseases or pests or to protect public or plant health and any changes in prophylactic policies, including vaccination policies.
2. (a) Notifications shall be made in writing to the contact points referred to in Article 67(3) of this Agreement.

(b) Notification in writing means notification by mail, fax or e-mail. Notifications shall only be sent between the contact points referred to in Article 67(3) of this Agreement.

3. Where a Party has serious concerns regarding a risk to public, animal or plant health, consultations regarding the situation shall, at the Party's request, take place as soon as possible and, in any case, within 15 working days. In such situations, each Party shall endeavour to provide all the information necessary to avoid a disruption in trade, and to reach a mutually acceptable solution compatible with the protection of public, animal or plant health.

4. Upon request by a Party, consultations regarding animal welfare shall take place as soon as possible and, in any case, within 20 working days of notification. In such situations, each Party shall endeavour to provide all the requested information.

5. Upon request by a Party, consultations as referred to in paragraphs 3 and 4 of this Article, shall be held by video or audio conference. The requesting Party shall ensure the preparation of the minutes of the consultation, which shall be formally approved by the Parties. For the purposes of such approval, Article 67(3) of this Agreement shall apply.

6. A mutually applied rapid alert system and early warning mechanism for any veterinary or phytosanitary emergency will start at a later stage after Ukraine implements the necessary legislation in this field and creates the conditions for the proper on-the-spot functioning of such mechanisms.

## *Article 69*

### **Trade conditions**

#### 1. General import conditions

(a) For any commodity covered by Annex IV-A and Annex IV-C(2) to this Agreement, the Parties agree to apply general import conditions. Without prejudice to the decisions taken in accordance with Article 65 of this Agreement, the import conditions of the importing Party shall be applicable to the total territory of the exporting Party. Upon entry into force of this Agreement and in accordance with Article 67 of this Agreement, the importing Party shall inform the exporting Party of its sanitary and phytosanitary import requirements for commodities referred to in Annex IV-A and Annex IV-C(2) to this Agreement. This information shall include, as appropriate, the models for the official certificates or declarations or commercial documents, as prescribed by the importing Party.

(b) (i) For the notification by the Parties of amendments or proposed amendments of the conditions referred to in paragraph 1 of this Article, they shall comply with the provisions of the SPS Agreement and subsequent decisions as regards the notification of measures. Without prejudice to Article 73 of this Agreement, the importing Party shall take into account the transport time between the Parties to establish the date of entry into force of the amended conditions referred to in paragraph 1(a).

- (ii) If the importing Party fails to comply with these notification requirements, it shall continue to accept the certificate or attestation guaranteeing the previously applicable conditions until 30 days after entry into force of the amended import conditions.

## 2. Import conditions after recognition of equivalence

- (a) Within 90 days of the adoption of a decision on recognition of equivalence, the Parties shall take the necessary legislative and administrative measures to implement the recognition of equivalence in order to allow on that basis trade between them of commodities referred to in Annex IV-A and Annex IV-C(2) to this Agreement in sectors and sub-sectors where applicable, for which all respective sanitary and phytosanitary measures of the exporting Party are recognised as equivalent by the importing Party. For these commodities, the model of the official certificate or official document required by the importing Party may, at that stage, be replaced by a certificate drawn up pursuant to Annex XII.B to this Agreement;
- (b) For commodities in sectors or sub-sectors, where applicable, for which some but not all measures are recognised as equivalent, trade shall continue on the basis of compliance with the conditions referred to in paragraph 1(a). Upon request by the exporting Party, paragraph 5 of this Article shall apply.

3. From the date of entry into force of this Agreement, the commodities referred in Annex IV-A and Annex IV-C(2) to this Agreement shall not be subject to import authorisation.

Any entry into force of this Agreement earlier than 31 December 2013 shall not have any impact on the Comprehensive Institutional-Building assistance.

4. For conditions affecting trade in the commodities referred to in paragraph 1(a), upon request by the exporting Party, the Parties shall enter into consultations within the SPS Sub-Committee in accordance with Article 74 of this Agreement, in order to agree on alternative or additional import conditions of the importing Party. Such alternative or additional import conditions may, where appropriate, be based on measures of the exporting Party recognised as equivalent by the importing Party. If agreed, the importing Party shall take the necessary legislative and/or administrative measures to allow import on that basis, within 90 days of the decision of the SPS Sub-Committee.

## 5. List of establishments, conditional approval

- (a) For the import of animal products referred to in Annex IV-A, Part 2 to this Agreement, upon a request by the exporting Party accompanied by appropriate guarantees, the importing Party shall provisionally approve processing establishments referred to in Annex VIII(2.1) to this Agreement which are situated in the territory of the exporting Party, without prior inspection of individual establishments. Such approval shall be consistent with the conditions and provisions set out in Annex VIII to this Agreement. Unless additional information is requested, the importing Party shall take the necessary legislative and/or administrative measures to allow import on that basis within 30 working days of

receipt of the request and relevant guarantees by the importing Party.

The initial list of establishments shall be approved in accordance with the procedure set out in Annex VIII to this Agreement.

- (b) For the import of animal products referred to in paragraph 2(a), the exporting Party shall inform the importing Party of its list of establishments meeting the importing Party's requirements.
6. Upon request by a Party, the other Party shall provide necessary explanations and supporting data for the determinations and decisions falling within the scope of this Article.

#### *Article 70*

### **Certification procedure**

1. For purposes of certification procedures and the issuing of certificates and official documents, the Parties agree on the principles set out in Annex XII to this Agreement.
2. The SPS Sub-Committee referred to in Article 74 of this Agreement may agree on rules to be followed in case of electronic certification, withdrawal or replacement of certificates.
3. In the framework of approximated legislation, as referred to in Article 64 of this Agreement, the Parties will agree on common models of certificates where applicable.

#### *Article 71*

### **Verification**

1. In order to maintain confidence in the effective implementation of the provisions of this Chapter, each Party shall have the right:
  - (a) to verify, in accordance with the guidelines of Annex X to this Agreement, all or part of the total control programme of the other Party's authorities or other measures where applicable. The expenses of such verification shall be borne by the Party carrying out the verification;
  - (b) from a date to be determined by the Parties, to receive, at its request from the other Party, information about all or part of that Party's total control programmes and reports concerning the results of the controls carried out under that programme;
  - (c) for laboratory tests relating to the commodities of Annex IV-A and Annex IV-C(2) to this Agreement, upon request, and where applicable, to participate in the periodical inter-comparative test programme for specific tests organised by the reference laboratory of the other Party. The expenses of such participation shall be borne by the participating Party.
2. Either Party may share the results of the verifications referred to in subparagraph 1(a) of this Article with third parties and make the results publicly available as may be required by provisions applicable to either Party. Confidentiality provisions applicable

to either Party shall be respected in such sharing and/or publication of the results, where appropriate.

3. The SPS Sub-Committee referred to in Article 74 of this Agreement may modify, by means of a decision, Annex X to this Agreement, taking due account of relevant work carried out by international organisations.

4. The results of verification may contribute to measures referred to in Articles 64, 66 and 72 of this Agreement by the Parties or one of the Parties.

#### *Article 72*

##### **Import checks and inspection fees**

1. The Parties agree that import checks on the import by the importing Party of consignments from the exporting Party shall respect the principles set out in Annex XI, Part A to this Agreement. The results of these checks may contribute to the verification process referred to in Article 71 of this Agreement.

2. The frequency of physical import checks applied by each Party are set out in Annex XI, Part B to this Agreement. A Party may amend these frequencies within its competences and in accordance with its internal legislation, as a result of progress made in accordance with Articles 64, 66 and 69 of this Agreement, or as a result of verifications, consultations or other measures provided for in this Agreement. The SPS Sub-Committee referred to in Article 74 of this Agreement shall, by decision, amend Annex XI, Part B of this Agreement accordingly.

3. Inspection fees may only cover the costs incurred by the competent authority for performing import checks. The fees shall be calculated on the same basis as fees charged for the inspection of similar domestic products.

4. The importing Party shall, at the request of the exporting Party, inform it of any amendments, including the reasons for these amendments, concerning the measures affecting import checks and inspection fees and of any significant changes in the administrative conduct of such checks.

5. From a date to be determined by the SPS Sub-Committee referred to in Article 74 of this Agreement, the Parties may agree on the conditions to approve each other's controls as laid down in Article 71(1)(b) with a view to adapting and reciprocally reducing, where applicable, the frequency of physical import checks for the commodities referred to in Article 69(2) of this Agreement.

From that date the Parties may reciprocally approve each other's controls for certain commodities and, consequently, reduce or replace the import checks for these commodities.

6. The conditions required for approval of the adaptation of import checks shall be included in Annex XI to this Agreement by the procedure referred to in Article 74(6) of this Agreement.

#### *Article 73*

##### **Safeguard measures**

1. Should the importing Party take, within its territory, measures to control any cause likely to constitute a serious hazard or risk to human, animal or plant health, the exporting Party, without prejudice to paragraph 2 of this Article, shall take equivalent measures to prevent the introduction of the hazard or risk into the territory of the importing Party.
2. On the basis of serious public, animal or plant health grounds, the importing Party may take provisional measures necessary for the protection of public, animal or plant health. For consignments in transport between the Parties, the importing Party shall consider the most suitable and proportionate solution in order to avoid unnecessary disruption to trade.
3. The Party adopting measures under paragraph 2 of this Article shall inform the other Party no later than one working day following the date of adoption of the measures. Upon request by either Party, and in accordance with Article 68(3) of this Agreement, the Parties shall hold consultations regarding the situation within 15 working days of the notification. The Parties shall take due account of any information provided through such consultations and shall endeavour to avoid unnecessary disruption to trade, taking into account, where applicable, the outcome of the consultations provided for in Article 68(3) of this Agreement.

#### *Article 74*

##### **Sanitary and Phytosanitary Management (SPS) Sub-Committee**

1. The Sanitary and Phytosanitary Management (SPS) Sub-Committee is hereby established. The SPS Sub-Committee shall meet within three months of the entry into force of this Agreement and, thereafter, upon request of either Party or at least once a year. If agreed by the Parties, a meeting of the SPS Sub-Committee may be held by video or audio-conference. The SPS Sub-Committee may also address issues out of session, by correspondence.
2. The SPS Sub-Committee shall have the following functions:
  - (a) to monitor the implementation of this Chapter and consider any matter relating to this Chapter, and examine all matters which may arise in relation to its implementation;
  - (b) to review the Annexes to this Chapter, in particular in the light of progress made under the consultations and procedures provided for under this Chapter;
  - (c) in the light of the review provided for in subparagraph (b) of this paragraph or as otherwise provided in this Chapter, to modify, by means of a decision, Annexes IV to XIV to this Agreement; and
  - (d) in the light of the review provided for in subparagraph (b) of this paragraph, to give opinions and make recommendations to other bodies as defined in the Institutional, General and Final Provisions of this Agreement.
3. The Parties agree to establish technical working groups, where appropriate, consisting of expert-level representatives of the Parties, which shall identify and address technical and scientific issues arising from the application of this Chapter.

When additional expertise is required, the Parties may establish ad hoc groups, including scientific groups. Membership of such ad hoc groups need not be restricted to representatives of the Parties.

4. The SPS Sub-Committee shall regularly report to the Trade Committee established under Article 465 of this Agreement on its activities and decisions taken within its competence.

5. The SPS Sub-Committee shall adopt its working procedures at its first meeting.

6. Any decision, recommendation, report or other action by the SPS Sub-Committee or any group established by the SPS Sub-Committee, relating to the authorisation of imports, exchange of information, transparency, recognition of regionalisation, equivalence and alternative measures, and any other issue covered by paragraphs 2 and 3, shall be adopted by consensus between the Parties.

## ***CHAPTER 5*** ***Customs and trade facilitation***

### *Article 75*

#### **Objectives**

The Parties acknowledge the importance of customs and trade facilitation matters in the evolving bilateral trade environment. The Parties agree to reinforce cooperation in this area with a view to ensuring that the relevant legislation and procedures, as well as the administrative capacity of the relevant administrations, fulfil the objectives of effective control and support facilitation of legitimate trade as a matter of principle.

The parties recognise that utmost importance shall be given to legitimate public policy objectives including trade facilitation, security and prevention of fraud and a balanced approach to them.

### *Article 76*

#### **Legislation and procedures**

1. The Parties agree that their respective trade and customs legislation, as a matter of principle, shall be stable and comprehensive, and that provisions and procedures shall be proportionate, transparent, predictable, non-discriminatory, impartial and applied uniformly and effectively and shall inter alia:

- (a) protect and facilitate legitimate trade through effective enforcement of, and compliance with, legislative requirements;
- (b) avoid unnecessary or discriminatory burdens on economic operators, prevent fraud and provide further facilitation for economic operators having a high level

of compliance;

- (c) apply a single administrative document for the purposes of customs declarations;
  - (d) lead to greater efficiency, transparency and simplification of customs procedures and practices at the border;
  - (e) apply modern customs techniques, including risk assessment, post clearance controls and company audit methods in order to simplify and facilitate the entry and release of goods;
  - (f) aim at reducing costs and increasing predictability for economic operators, including small and medium-sized companies;
  - (g) without prejudice to the application of objective risk-assessment criteria, ensure the non-discriminatory application of requirements and procedures applicable to imports, exports and goods in transit;
  - (h) apply the international instruments applicable in the field of customs and trade including those developed by the World Customs Organization (hereinafter referred to as the "WCO") (Framework of Standards to Secure and Facilitate Global Trade of 2005, Istanbul Convention on temporary admission of 1990, HS Convention) of 1983, the WTO (e.g. on Valuation), the UN (TIR Convention of 1975, 1982 Convention on harmonization of frontier controls of goods), as well as EC guidelines such as the Customs Blueprints;
  - (i) take the necessary measures to reflect and implement the provisions of the Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures of 1973;
  - (j) provide for advance binding rulings on tariff classification and rules of origin. The Parties ensure that a ruling may be revoked or annulled only after notification to the affected operator and without retroactive effect unless the rulings have been made on the basis of incorrect or incomplete information;
  - (k) introduce and apply simplified procedures for authorised traders according to objective and non-discriminatory criteria;
  - (l) set rules that ensure that any penalties imposed for the breach of customs regulations or procedural requirements are proportionate and non-discriminatory and, in their application, do not result in unwarranted and unjustified delays;
  - (m) apply transparent, non-discriminatory and proportionate rules in respect of the licensing of customs brokers.
2. In order to improve working methods, as well as to ensure non-discrimination, transparency, efficiency, integrity and accountability of operations, the Parties shall:
- (a) take further steps towards the reduction, simplification and standardisation of data and documentation required by customs and other agencies;
  - (b) simplify requirements and formalities wherever possible, in respect of the prompt release and clearance of goods;



- (c) provide effective, prompt and non-discriminatory procedures guaranteeing the right of appeal against customs' and other agencies' administrative actions, rulings and decisions affecting the goods submitted to customs. Such procedures for appeal shall be easily accessible, including to small or medium-sized enterprises and any costs shall be reasonable and commensurate with costs in providing for appeals. The Parties shall also take steps to ensure that where a disputed decision is the subject of an appeal, goods are normally released and duty payments may be left pending, subject to any safeguarding measures judged necessary. Where required, this should be subject to the provision of a guarantee, such as a surety or deposit;
  - (d) ensure that the highest standards of integrity be maintained, in particular at the border, through the application of measures reflecting the principles of the relevant international conventions and instruments in this field, in particular the WCO Revised Arusha Declaration (2003) and the EC Blueprint on Customs ethics (2007).
3. The Parties agree to eliminate:
- (a) any requirements for the mandatory use of customs brokers;
  - (b) any requirements for the mandatory use of pre-shipment inspections or destination inspection.
4. Provisions on transit
- (a) For the purposes of this Agreement, the transit rules and definitions as set out in the WTO provisions (Article V of GATT 1994, and related provisions, including any clarification or improvement resulting from the Doha Round negotiations on trade facilitation) shall apply. These provisions also apply when the transit of goods begins or ends in the territory of a Party (inland transit).
  - (b) The Parties shall pursue the progressive interconnectivity of their respective customs transit systems, with a view to Ukraine participating in the future in the common transit system set out in the Convention of 20 May 1987 on a common transit procedure.
  - (c) The Parties shall ensure cooperation and coordination between all relevant authorities and agencies in their territories in order to facilitate traffic in transit and promote cooperation across borders. Parties shall also promote cooperation between authorities and the private sector in relation to transit.

#### *Article 77*

### **Relations with the business community**

The Parties agree:

- (a) to ensure that their respective legislation and procedures are transparent and made publicly available, as far as possible through electronic means, together with the justification for them. There should be a consultation mechanism in place and a

reasonable time period between the publication of new or amended provisions and their entry into force;

- (b) on the need for timely and regular consultations with trade representatives on legislative proposals and procedures relating to customs and trade issues. To this end, mechanisms for appropriate and regular consultation between administrations and the business community shall be established by each Party;
- (c) to make publicly available relevant notices of an administrative nature, including agency requirements and entry procedures, hours of operations and operating procedures for customs offices at ports and border crossing points, and points of contact for information enquiries;
- (d) to foster cooperation between operators and relevant administrations via the use of non-arbitrary and publicly accessible procedures, such as Memoranda of Understanding based, in particular, on those promulgated by the WCO;
- (e) to ensure that their respective customs and related requirements and procedures continue to meet the legitimate needs of the trading community, follow best practices, and remain the least trade-restrictive possible.

#### *Article 78*

#### **Fees and charges**

The Parties shall prohibit administrative fees having an equivalent effect to import or export duties and charges.

With regard to all fees and charges of whatever character imposed by the customs authorities of each Party, including fees and charges for tasks undertaken by another instance on behalf of the said authorities, on or in connection with import or export and without prejudice to the relevant Articles in Chapter 1 (National Treatment and Market Access for Goods) of Title IV of this Agreement, the Parties agree that:

- (a) fees and charges may only be imposed for services provided outside of appointed hours and in places other than those referred to in customs regulations, at the request of the declarant in connection with the import or export in question or for any formality required for undertaking such import or export;
- (b) fees and charges shall not exceed the cost of the service provided;
- (c) fees and charges shall not be calculated on an ad valorem basis;
- (d) information on fees and charges shall be published. This information shall include the reason for the fee or charge for the service provided, the authority responsible, the fees and charges that will be applied, and when and how payment is to be made.

The information on fees and charges shall be published via an officially designated medium, and where feasible and possible, on an official website;

- (e) new or amended fees and charges shall not be imposed until information on them is published and made readily available.

## *Article 79*

### **Customs valuation**

1. The Agreement on the Implementation of Article VII of GATT 1994 contained in Annex 1A to the WTO Agreement, including any subsequent amendments, shall govern the customs valuation of goods in trade between the Parties. Its provisions are hereby incorporated into, and made part of, this Agreement. Minimum customs values shall not be used.
2. The Parties shall cooperate with a view to reaching a common approach to issues relating to customs valuation.

## *Article 80*

### **Customs cooperation**

The Parties shall strengthen cooperation to ensure implementation of the objectives of this Chapter, striking a reasonable balance between simplification and facilitation and effective control and security. To this end, the Parties will use, where appropriate, the EC Customs Blueprints as a benchmarking tool.

In order to ensure compliance with the provisions of this Chapter, the Parties shall inter alia:

- (a) exchange information concerning customs legislation and procedures;
- (b) develop joint initiatives relating to import, export and transit procedures, as well as work towards ensuring that an effective service is provided to the business community;
- (c) cooperate on the automation of customs and other trade procedures;
- (d) exchange, where appropriate, relevant information and data subject to respect of confidentiality of sensitive data and personal data protection;
- (e) exchange information and/or enter into consultations with a view to establishing where possible, common positions in international organisations in the field of customs such as the WTO, the WCO, the UN, the United Nations Conference on Trade And Development and the United Nations Economic Commission for Europe;
- (f) cooperate in the planning and delivery of technical assistance, in particular to facilitate customs and trade facilitation reforms in line with the relevant provisions of this Agreement;
- (g) exchange best practices in customs operations focusing in particular on intellectual property rights enforcement, especially in relation to counterfeit products;
- (h) promote coordination between all border agencies, both internally and across borders, to facilitate border-crossing processes and enhance control, taking into account joint border controls where feasible and appropriate;

- (i) mutually recognise, where relevant and appropriate, authorised traders and customs controls. The scope of this cooperation, the implementation and the practical arrangements shall be decided by the Customs Sub-Committee provided for in Article 83 of this Agreement.

#### *Article 81*

### **Mutual administrative assistance in customs matters**

Notwithstanding Article 80 of this Agreement, the administrations of the Parties shall provide mutual administrative assistance in customs matters in accordance with the provisions laid down in Protocol II to this Agreement on Mutual Administrative Assistance in Customs Matters.

#### *Article 82*

### **Technical assistance and capacity-building**

The Parties shall cooperate with a view to providing technical assistance and capacity-building for the implementation of trade facilitation and customs reforms.

#### *Article 83*

### **Customs Sub-Committee**

The Customs Sub-Committee is hereby established. It shall report on its activities to the Association Committee in its configuration under Article 465(4) of this Agreement. The function of the Customs Sub-Committee shall include regular consultations and monitoring of implementation and administration of this Chapter, including the issues of customs cooperation, cross-border customs cooperation and management, technical assistance, rules of origin, and trade facilitation, as well as mutual administrative assistance in customs matters.

The Customs Sub-Committee shall *inter alia*:

- (a) see to the proper functioning of this Chapter and of Protocols 1 and 2 to this Agreement;
- (b) decide measures and practical arrangements for implementing this Chapter and Protocols 1 and 2 to this Agreement including on exchange of information and data, mutual recognition of customs controls and trade partnership programmes, and mutually agreed benefits;
- (c) exchange views on any points of common interest, including future measures and the resources for them;
- (d) make recommendations where appropriate; and
- (e) adopt its internal rules of procedures.

#### *Article 84*

### **Approximation of customs legislation**

Gradual approximation to the EU customs legislation as laid down in the EU and international standards shall be carried out, as set out in Annex XV to this Agreement.

**CHAPTER 6**  
***Establishment, trade in services and electronic commerce***  
**Section 1**  
**General provisions**

*Article 85*

**Objective, scope and coverage**

1. The Parties, reaffirming their respective rights and obligations under the WTO Agreement, hereby lay down the necessary arrangements for the progressive reciprocal liberalisation of establishment and trade in services and for cooperation on electronic commerce.
2. Government procurement is dealt with by Chapter 8 (Government Procurement) of Title IV of this Agreement and nothing in this Chapter shall be construed in such a way as to impose any obligation with respect to government procurement.
3. Subsidies are dealt with in Chapter 10 (Competition) of Title IV of this Agreement and the provisions of this Chapter shall not apply to subsidies granted by the Parties.
4. Each Party shall retain the right to regulate and to introduce new regulations to meet legitimate policy objectives, provided they are compatible with this Chapter.
5. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.  
Without prejudice to the provisions on movement of persons set out in Title III (Justice Freedom and Security) of this Agreement, nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of natural persons, and to ensure their orderly movement across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Party under the terms of this Chapter <sup>(10)</sup>.

*Article 86*

**Definitions**

For the purposes of this Chapter:

1. "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
2. "measures adopted or maintained by a Party" means measures taken by:
  - (a) central, regional or local governments and authorities; and
  - (b) non-governmental bodies in the exercise of powers delegated by central, regional or

local governments or authorities;

3. "natural person of a Party" means a national of an EU Member State or a national of Ukraine according to the respective legislation;
4. "legal person" means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
5. "legal person of the EU Party" or "legal person of Ukraine" means:  
a legal person set up in accordance with the laws of a Member State of the European Union or of Ukraine respectively, and having its registered office, central administration, or principal place of business in the territory to which the Treaty on the Functioning of the European Union applies or in the territory of Ukraine, respectively;  
Should this legal person have only its registered office or central administration in the territory to which the Treaty on the Functioning of the European Union applies or in the territory of Ukraine respectively, it shall not be considered as a legal person of the EU Party or a legal person of Ukraine respectively, unless its operations possess a real and continuous link with the economy of the EU Party or of Ukraine, respectively;
6. Notwithstanding the preceding paragraph, shipping companies established outside the EU Party or Ukraine and controlled by nationals of a Member State of the European Union or of Ukraine, respectively, shall also be beneficiaries of the provisions of this Agreement, if their vessels are registered in accordance with their respective legislation, in that Member State or in Ukraine and carry the flag of a Member State or of Ukraine;
7. "subsidiary" of a legal person of a Party means a legal person which is effectively controlled by another legal person of that Party <sup>(1)</sup>;
8. "branch" of a legal person means a place of business not having legal personality which:
  - (a) has the appearance of permanency such as the extension of a parent body;
  - (b) has a management structure; and
  - (c) is materially equipped to negotiate business with third parties so that the latter, although knowing that there will if necessary be a legal link with the parent body, the head office of which is abroad, do not have to deal directly with such parent body but may transact business at the place of business constituting the extension;
9. "establishment" means:
  - (a) as regards legal persons of the EU Party or of Ukraine, the right to take up and pursue economic activities by means of setting up, including the acquisition of, a legal person and/or create a branch or a representative office in Ukraine or in the EU Party

respectively;

(b) as regards natural persons, the right of natural persons of the EU Party or of Ukraine to take up and pursue economic activities as self-employed persons, and to set up undertakings, in particular companies, which they effectively control.

10. "investor" means any natural or legal person of a Party that seeks to perform or performs an economic activity through setting up an establishment;
11. "economic activities" includes activities of an industrial, commercial and professional character and activities of craftsmen and do not include activities performed in the exercise of governmental authority;
12. "operations" means the pursuit of economic activities;
13. "services" includes any service in any sector except services supplied in the exercise of governmental authority;
14. "services and other activities performed in the exercise of governmental authority" are services or activities which are performed neither on a commercial basis nor in competition with one or more economic operators;
15. "cross-border supply of services" means the supply of a service:
  - (a) from the territory of a Party into the territory of the other Party;
  - (b) in the territory of a Party to a service consumer of the other Party.
16. "service supplier" of a Party means any natural or legal person of a Party that seeks to supply or supplies a service, including through an establishment;
17. "key personnel" means natural persons employed within a legal person of one Party other than a non-profit organisation and who are responsible for the setting-up or the proper control, administration and operation of an establishment.

"Key personnel" comprise business visitors responsible for setting up an establishment and intra-corporate transfers.

- (a) "Business visitors" means natural persons working in a senior position who are responsible for setting up an establishment. They do not engage in direct transactions with the general public and do not receive remuneration from a source located within the host Party;
- (b) "Intra-corporate transferees" means natural persons who have been employed by a legal person of one Party or have been partners in it (other than as majority shareholders) for at least one year and who are temporarily transferred to an establishment in the territory of the other Party. The natural person concerned must belong one of the following categories:
  - (i) Managers:

Persons working in a senior position within a legal person who primarily direct the management of the establishment, receiving general supervision or direction

principally from the board of directors or stockholders of the business or their equivalent, including:

- directing the establishment or a department or sub-division thereof;
- supervising and controlling the work of other supervisory, professional or managerial employees;
- having the authority personally to recruit and dismiss personnel or recommend recruiting and dismissing personnel or take other related-actions.

(ii) Specialists:

Persons working within a legal person, who possess uncommon knowledge essential to the establishment's production, research equipment, techniques or management. In assessing such knowledge, account will be taken not only of knowledge specific to the establishment, but also whether the person has a high level of qualification for a type of work or trade requiring specific technical knowledge, including membership of an accredited profession.

18. "graduate trainees" means natural persons of a Party who have been employed by a legal person of that Party for at least one year, possess a university degree and are temporarily transferred to an establishment in the territory of the other Party for career development purposes or to obtain training in business techniques or methods <sup>(12)</sup>;
19. "business services sellers" means natural persons who are representatives of a service supplier of one Party seeking entry into and temporary stay in the territory of the other Party for the purpose of negotiating the sale of services or entering into agreements to sell services for that service supplier. They do not engage in making direct sales to the general public and do not receive remuneration from a source located within the host Party;
20. "contractual services suppliers" means natural persons employed by a legal person of one Party which has no establishment in the territory of the other Party and which has concluded a bona fide contract <sup>(13)</sup> to supply services with a final consumer in the latter Party requiring the presence on a temporary basis of its employees in that Party in order to fulfil the contract to provide services;
21. "independent professionals" means natural persons engaged in the supply of a service and established as self-employed in the territory of a Party who have no establishment in the territory of the other Party and who have concluded a bona fide contract <sup>(13)</sup> to supply services with a final consumer in the latter Party requiring their presence on a temporary basis in that Party in order to fulfil the contract to provide services.

## **Section 2 Establishment**

### *Article 87*

#### **Scope**



This Section applies to measures adopted or maintained by the Parties affecting establishment <sup>(14)</sup> in respect of all economic activities with the exception of:

- (a) mining, manufacturing and processing <sup>(15)</sup> of nuclear materials;
- (b) production of or trade in arms, munitions and war material;
- (c) audio-visual services;
- (d) national maritime cabotage <sup>(16)</sup>, and
- (e) domestic and international air transport services <sup>(17)</sup>, whether scheduled or un-scheduled, and services directly related to the exercise of traffic rights, other than:
  - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
  - (ii) the selling and marketing of air transport services;
  - (iii) computer reservation system (hereinafter referred to as "CRS") services;
  - (iv) ground handling services;
  - (v) airport operation services.

#### *Article 88*

##### **National treatment and Most Favourable Nation treatment**

1. Subject to reservations listed in Annex XVI-D to this Agreement, Ukraine shall grant, upon entry into force of this Agreement:

- (i) as regards the establishment of subsidiaries, branches and representative offices of legal persons of the EU Party, treatment no less favourable than that accorded to its own legal persons, branches and representative offices or to any third-country legal persons, branches and representative offices, whichever is the better;
- (ii) as regards the operation of subsidiaries, branches and representative offices of legal persons of the EU Party in Ukraine, once established, treatment no less favourable than that accorded to its own legal persons, branches and representative offices; or to any third-country legal persons, branches and representative offices, whichever is the better <sup>(18)</sup>.

2. Subject to reservations listed in Annex XVI-A to this Agreement, the EU Party shall grant, upon entry into force of this Agreement:

- (i) as regards the establishment of subsidiaries, branches and representative offices of legal persons of Ukraine, treatment no less favourable than that accorded by the EU Party to its own legal persons, branches and representative offices or to any third-country legal persons, branches and representative offices, whichever is the better;
- (ii) as regards the operation of subsidiaries, branches and representative offices of legal persons of Ukraine in the EU Party, once established, treatment no less favourable than that accorded to its own legal persons, branches and representative offices; or to any third-country legal persons, branches and

representative offices, whichever is the better <sup>(19)</sup>.

3. Subject to reservations listed in Annexes XVI-A and XVI-D to this Agreement, the Parties shall not adopt any new regulations or measures which introduce discrimination as regards the establishment of legal persons of the EU Party or of Ukraine on their territory or in respect of their operation, once established, by comparison with their own legal persons.

#### *Article 89*

##### **Review**

1. With a view to progressively liberalising the establishment conditions, the Parties shall regularly review the establishment legal framework <sup>(20)</sup> and the establishment climate, consistent with their commitments under international agreements.

2. In the context of the review referred to in paragraph 1 of this Article, the Parties shall assess any obstacles to establishment that have been encountered and shall undertake negotiations to address such obstacles, with a view to deepening the provisions of this Chapter and to including investment protection provisions and investor-to-state dispute settlement procedures.

#### *Article 90*

##### **Other agreements**

Nothing in this Chapter shall be taken to limit the rights of investors of the Parties to benefit from any more favourable treatment provided for in any existing or future international agreement relating to investment to which a Member State of the European Union and Ukraine are parties.

#### *Article 91*

##### **Standard of treatment for branches and representative offices**

1. The provisions of Article 88 of this Agreement do not preclude the application by a Party of particular rules concerning the establishment and operation in its territory of branches and representative offices of legal persons of the other Party not incorporated in the territory of the first Party, which are justified by legal or technical differences between such branches and representative offices as compared to branches and representative offices of companies incorporated in its territory or, as regards financial services, for prudential reasons.

2. The difference in treatment shall not go beyond what is strictly necessary as a result of such legal or technical differences or, as regards financial services, for prudential reasons.

#### **Section 3**

##### **Cross-Border supply of services**

#### *Article 92*

##### **Scope**

This Section applies to measures of the Parties affecting the cross border supply of all services sectors with the exception of:

- (a) audio-visual services <sup>(21)</sup>;
- (b) national maritime cabotage <sup>(22)</sup>; and
- (c) domestic and international air transport services <sup>(23)</sup>, whether scheduled or un-scheduled, and services directly related to the exercise of traffic rights other than:
  - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
  - (ii) the selling and marketing of air transport services;
  - (iii) CRS services;
  - (iv) ground handling services;
  - (v) airport operation services.

### *Article 93*

#### **Market access**

1. With respect to market access through the cross-border supply of services, each Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for in the specific commitments contained in Annexes XVI-B and XVI-E to this Agreement.
2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in Annex XVI-B and XVI-E to this Agreement, are defined as:
  - (a) limitations on the number of services suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
  - (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
  - (c) limitations on the total number of service operations or on the total quantity of service output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test.

### *Article 94*

#### **National treatment**

1. In the sectors where market access commitments are inscribed in Annexes XVI-B and XVI-E to this Agreement, and subject to any conditions and qualifications set out therein, each Party shall grant to services and service suppliers of the other Party, in respect of all measures affecting the cross-border supply of services, treatment no less favourable than that it accords to its own like service and services suppliers.

2. A Party may meet the requirement of paragraph 1 of this Article by according to services and service suppliers of the other Party either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of the other Party.

4. Specific commitments assumed under this Article shall not be construed in such a way as to require any Party to compensate for inherent competitive disadvantages which result from the foreign character of the relevant services or services suppliers.

#### *Article 95*

##### **Lists of commitments**

1. The sectors liberalised by each of the Parties pursuant to this Chapter and, by means of reservations, the market access and national treatment limitations applicable to services and services suppliers of the other Party in those sectors are set out in lists of commitments contained in Annexes XVI-B and XVI-E to this Agreement.

2. Without prejudice to the Parties' rights and obligations as they exist or may arise under the Council of Europe's Convention on Transfrontier Television of 1989 and European Convention on Cinematographic Co-Production of 1992, lists of commitments in Annexes XVI-B and XVI-E to this Agreement do not include commitments on audio-visual services.

#### *Article 96*

##### **Review**

With a view to progressive liberalisation of the cross-border supply of services between the Parties, the Trade Committee shall regularly review the lists of commitments referred to in Article 95 of this Agreement. This review shall take into account the level of advancement as regards the transposition, implementation and enforcement of the EU *acquis* referred to in Annex XVII to this Agreement and resultant impact on the elimination of remaining obstacles to cross-border supply of services between the Parties.

#### **Section 4**

##### **Temporary presence of natural persons for business purposes**

#### *Article 97*

##### **Scope**

This Section applies to measures of the Parties concerning the entry into and temporary stay <sup>(24)</sup> in their territory of categories of natural persons providing services as defined in Article 86 (17) to (21) of this Agreement.

## *Article 98*

### **Key personnel**

1. A legal person of the EU Party or a legal person of Ukraine shall be entitled to employ, or have employed by one of its subsidiaries, branches and representative offices established in the territory of Ukraine or of the EU Party respectively, in accordance with the legislation in force in the host country of establishment, employees who are nationals of the Member States of the European Union and of Ukraine respectively, provided that such employees are key personnel as defined in Article 86 of this Agreement who are employed exclusively by legal persons, subsidiaries, branches and representative offices. The residence and work permits of such employees shall only cover the period of such employment. The entry and temporary stay of such employees shall be for a period of up to three years.
2. The entry into and temporary presence within the territory of the EU Party or Ukraine of natural persons of Ukraine and of the EU Party respectively shall be permitted, when these natural persons are representatives of legal persons and are business visitors within the meaning of Article 86(17)(a) of this Agreement. Notwithstanding paragraph 1 of this Article, the entry and temporary stay of business visitors shall be for a period of up to 90 days in any 12-month period.

## *Article 99*

### **Graduate trainees**

A legal person of the EU Party or a legal person of Ukraine shall be entitled to employ, or have employed by one of its subsidiaries, branches and representative offices established in the territory of Ukraine or of the EU Party respectively, in accordance with the legislation in force in the host country of establishment, graduate trainees who are nationals of the Member States of the European Union and of Ukraine respectively, provided that they are employed exclusively by legal persons, subsidiaries, branches and representative offices. The temporary entry and stay of graduate trainees shall be for a period of up to one year.

## *Article 100*

### **Business services sellers**

Each Party shall allow the temporary entry and stay of business services sellers for a period of up to 90 days in any 12-month period.

## *Article 101*

### **Contractual services suppliers**

1. The Parties reaffirm their respective obligations arising from their commitments under the General Agreement on Trade in Services of 1994 (hereinafter referred to as "GATS") as regards the entry and temporary stay of contractual services suppliers.
2. For every sector listed below, each Party shall allow the supply of services in their territory by contractual services suppliers of the other Party, subject to the conditions specified in paragraph 3 of this Article and in Annexes XVI-C and XVI-F to this

Agreement on reservations on contractual service suppliers and independent professionals:

- (a) Legal services
- (b) Accounting and bookkeeping services
- (c) Taxation advisory services
- (d) Architectural services, urban planning and landscape architectural services
- (e) Engineering services, integrated engineering services
- (f) Computer and related services
- (g) Research and development services
- (h) Advertising
- (i) Management consulting services
- (j) Services related to management consulting
- (k) Technical testing and analysis services
- (l) Related scientific and technical consulting services
- (m) Maintenance and repair of equipment in the context of an after-sales or after-lease services contract
- (n) Translation services
- (o) Site investigation work
- (p) Environmental services
- (q) Travel agencies and tour operator services
- (r) Entertainment services

3. The commitments undertaken by the Parties are subject to the following conditions:

- (a) The natural persons must be engaged in the supply of a service on a temporary basis as employees of a juridical person, which has obtained a service contract not exceeding twelve months;
- (b) The natural persons entering the other Party should be offering such services as employees of the juridical person supplying the services for at least the year immediately preceding the date of submission of an application for entry into the other Party. In addition, the natural persons must possess, at the date of submission of an application for entry into the other Party, at least three years professional experience <sup>(25)</sup> in the sector of activity which is the subject of the contract;
- (c) The natural persons entering the other Party must possess:

- (i) a university degree or a qualification demonstrating knowledge of an equivalent level <sup>(26)</sup>; and
  - (ii) professional qualifications where this is required to exercise an activity pursuant to the laws, regulations or legal requirements of the Party where the service is supplied.
- (d) The natural person shall not receive remuneration for the provision of services in the territory of the other Party other than the remuneration paid by the legal person employing the natural person;
- (e) The entry and temporary stay of natural persons within the Party concerned shall be for a cumulative period of not more than six months or, in the case of Luxembourg, twenty-five weeks in any twelve month period or for the duration of the contract, whichever is less;
- (f) Access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract and does not confer entitlement to exercise the professional title of the Party where the service is provided;
- (g) The number of persons covered by the service contract shall not be larger than necessary to fulfil the contract, as it may be requested by the laws, regulations or other legal requirements of the Party where the service is supplied;
- (h) Other discriminatory limitations, including on the number of natural persons in the form of economic needs tests, as specified in Annexes XVI-C and XVI-F to this Agreement on reservations on contractual service suppliers and independent professionals.

## *Article 102*

### **Independent professionals**

1. The Parties reaffirm their respective obligations arising from their commitments under the GATS as regards the entry and temporary stay of independent professionals.
2. For every sector listed below, the Parties shall allow the supply of services in their territory by independent professionals of the other Party, subject to the conditions specified in paragraph 3 of this Article and in Annexes XVI-C and XVI-F to this Agreement on reservations on contractual service suppliers and independent professionals.
  - (a) Legal services
  - (b) Architectural services, urban planning and landscape architecture
  - (c) Engineering and integrated engineering services
  - (d) Computer and related services
  - (e) Management consulting services and services related to management consulting
  - (f) Translation services

3. The commitments undertaken by the Parties are subject to the following conditions:

- (a) The natural persons must be engaged in the supply of a service on a temporary basis as self-employed persons established in the other Party and must have obtained a service contract for a period not exceeding 12 months;
- (b) The natural persons entering the other Party must possess, at the date of submission of an application for entry into the other Party, at least six years professional experience in the sector of activity which is the subject of the contract;
- (c) The natural persons entering the other Party must possess:
  - (i) a university degree or a qualification demonstrating knowledge of an equivalent level <sup>(27)</sup>; and
  - (ii) professional qualifications where this is required to exercise an activity pursuant to the law, regulations or other legal requirements of the Party where the service is supplied.
- (d) The entry and temporary stay of natural persons within the Party concerned shall be for a cumulative period of not more than six months or, in the case of Luxembourg, 25 weeks in any twelve-month period or for the duration of the contract, whichever is less.
- (e) Access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract; it does not confer entitlement to use the professional title of the Party where the service is provided.;
- (f) Other discriminatory limitations, including on the number of natural persons in the form of economic needs tests, which are specified in Annexes XVI-C and XVI-F to this Agreement on reservations on contractual service suppliers and independent professionals.

**Section 5**  
**Regulatory framework**  
**Sub-section 1**  
**Domestic regulation**

*Article 103*

**Scope and definitions**



1. The following disciplines apply to measures by the Parties relating to licensing that affect:

- (a) cross-border supply of services;
- (b) establishment in their territory of legal and natural persons defined in Article 86 of this Agreement; or
- (c) temporary stay in their territory of categories of natural persons defined in Article 86(17) to (21) of this Agreement.

2. In the case of cross-border supply of services, these disciplines shall only apply to sectors for which the Party has undertaken specific commitments and to the extent that these specific commitments apply. In the case of establishment, these disciplines shall not apply to sectors to the extent that a reservation is listed in accordance with Annexes XVI-A and XVI-D to this Agreement. In the case of temporary stay of natural persons, these disciplines shall not apply to sectors for which a reservation is listed in accordance with Annexes XVI-C and XVI-F to this Agreement.

3. These disciplines do not apply to measures to the extent that they constitute limitations subject to scheduling under Articles 88, 93 and 94 of this Agreement.

4. For the purposes of this Section:

- (a) "Licensing" means the process through which a service supplier or an investor is in effect required to take steps in order to obtain from a competent authority a decision concerning the authorisation to supply a service, including through establishment, or concerning the authorisation to establish in an economic activity other than services, including a decision to amend or renew such authorisation.
- (b) "Competent authority" means any central, regional or local government and authority or non-governmental body in the exercise of powers delegated by central or regional or local governments or authorities, which takes a decision concerning licensing.
- (c) "Licensing procedures" shall mean the procedures to be followed as a part of licensing.

#### *Article 104*

#### **Conditions for licensing**

1. Licensing shall be based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary manner.

2. The criteria referred to in paragraph 1 of this Article shall be:

- (a) proportionate to a legitimate public policy objective;
- (b) clear and unambiguous;
- (c) objective;
- (d) pre-established;

- (e) made public in advance;
  - (f) transparent and accessible.
3. A licence shall be granted as soon as it is established, in the light of an appropriate examination, that the conditions for obtaining a licence have been met.
  4. Article 286 of this Agreement shall apply to provisions of this Chapter.
  5. Where the number of licences available for a given activity is limited because of the scarcity of available natural resources or technical capacity, the Parties shall apply a selection procedure to potential candidates which provides full guarantees of impartiality and transparency, including, in particular, adequate publicity about the launch, conduct and completion of the procedure.
  6. Subject to the provisions specified by this Article, in establishing the rules for the selection procedure, the Parties may take into account legitimate public policy objectives, including considerations of health, safety, the protection of the environment and preservation of cultural heritage.

#### *Article 105*

#### **Licensing procedures**

1. Licensing procedures and formalities shall be clear, made public in advance and be such as to provide the applicants with a guarantee that their application will be dealt with objectively and impartially.
2. Licensing procedures and formalities shall be as simple as possible and shall not unduly complicate or delay the provision of the service. Any licensing fees <sup>(28)</sup> which the applicants may incur as a result of their application shall be reasonable and proportionate to the cost of the licensing procedures in question.
3. Licensing procedures and formalities shall provide applicants with a guarantee that their application will be processed within a reasonable period which is made public in advance. The period shall run only from the time when all documentation has been received by the competent authorities. When justified by the complexity of the issue, the time period may be extended, by the competent authority, for a reasonable time. The extension and its duration shall be duly motivated and shall be notified to the applicant before the original period has expired.
4. In the case of an incomplete application, the applicant shall be informed as quickly as possible of the need to supply any additional documentation. In this case, the period referred to in paragraph 3 of this Article may be suspended by the competent authorities, until all documentation has been received by the competent authorities.
5. If an application for a licence is rejected, the applicant should be informed without undue delay. In principle, the applicant shall, upon request, be informed of the reasons for rejection of the application and of the timeframe for an appeal against the decision.

#### **Sub-section 2**

## **Provisions of general application**

### *Article 106*

#### **Mutual recognition**

1. Nothing in this Chapter shall prevent a Party from requiring that natural persons must possess the necessary qualifications and/or professional experience specified in the territory where the service is supplied, for the sector of activity concerned.
2. The Parties shall encourage the relevant professional bodies in their respective territories to provide recommendations on mutual recognition to the Trade Committee, for the purpose of fulfilment, in whole or in part, by investors and service suppliers of the criteria applied by each Party for the authorisation, licensing, operation and certification of investors and service suppliers and, in particular, professional services.
3. On receipt of a recommendation as referred to in paragraph 2 of this Article, the Trade Committee shall, within a reasonable time, review the recommendation with a view to determining whether it is consistent with this Agreement.
4. When, in conformity with the procedure set out in paragraph 3 of this Article, a recommendation as referred to in paragraph 2 of this Article has been found to be consistent with this Agreement and there is a sufficient level of correspondence between the relevant regulations of the Parties, the Parties shall, with a view to implementing that recommendation, negotiate, through their competent authorities, an agreement on the mutual recognition of requirements, qualifications, licences and other regulations.
5. Any such agreement shall be in conformity with the relevant provisions of the WTO Agreement and, in particular, Article VII of the GATS.

### *Article 107*

#### **Transparency and disclosure of confidential information**

1. Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application or international agreements which pertain to or affect this Agreement. Each Party shall also establish one or more enquiry points to provide specific information to investors and services suppliers of the other Party, upon request, on all such matters. The Parties shall notify each other of their enquiry points within three months of entry into force of this Agreement. Enquiry points need not be depositories of laws and regulations.
2. Nothing in this Agreement shall require any Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest or which would prejudice legitimate commercial interests of particular enterprises, whether public or private.

### **Sub-section 3 Computer services**

## *Article 108*

### **Understanding on computer services**

1. To the extent that trade in computer services is liberalised in accordance with Sections 2, 3 and 4 of this Chapter and taking into account the fact that computer and related services enable the provision of other services by both electronic and other means, the Parties shall distinguish between an enabling service and the content or core services that is being delivered electronically in such a way that the content or core service is not classified as a computer and related service, as defined in paragraph 2 of this Article.

2. Computer and related services shall mean services defined in the United Nations Code CPC 84 including both basic services and functions or combinations of basic services, regardless of whether they are delivered via a network, including the Internet.

Basic services are all services that provide:

- (a) consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, support, technical assistance, or management of or for computers or computer systems; or
- (b) computer programs defined as the set of instructions required to make computers work and communicate (in and of themselves), plus consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, adaptation, maintenance, support, technical assistance, and management or use of or for computer programs; or
- (c) data processing, data storage, data hosting or database services; or
- (d) maintenance and repair services for office machinery and equipment, including computers; or
- (e) training services for staff of clients, related to computer programs, computers or computer systems, and not elsewhere classified.

### **Sub-section 4**

### **Postal and courier services**

## *Article 109*

### **Scope and definitions**

1. This Sub-section sets out the principles of the regulatory framework for all postal and courier services liberalised in accordance with Sections 2, 3 and 4 of this Chapter.

2. For the purpose of this Sub-section and of Sections 2, 3 and 4 of this Chapter:

- (a) a "licence" means an authorisation, granted to an individual supplier by a regulatory authority, which is required before carrying out the activity of supplying a given service;
- (b) "universal service" means the permanent provision of a postal service of specified quality at all points in the territory of a Party at affordable prices for all users.

#### *Article 110*

##### **Prevention of anti-competitive practices in the postal and courier sector**

Appropriate measures shall be maintained or introduced for the purpose of preventing suppliers who, alone or together, have the ability to affect materially the terms of participation (having regard to price and supply) in the relevant market for postal and courier services as a result of use of their position in the market, from engaging in or continuing anti-competitive practices.

#### *Article 111*

##### **Universal service**

Any Party has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Party.

#### *Article 112*

##### **Licences**

1. Three years after the entry into force of this Agreement, a licence may only be required for services which are within the scope of the universal service.
2. Where a licence is required, the following shall be made publicly available:
  - (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence; and
  - (b) the terms and conditions of licences.
3. The reasons for denial of a licence shall be made known to the applicant upon request and an appeal procedure through an independent body will be established by each Party. Such a procedure will be transparent, non-discriminatory, and based on objective criteria.

#### *Article 113*

##### **Independence of the regulatory body**

The regulatory body shall be legally separate from and not accountable to any supplier of postal and courier services. The decisions of and the procedures used by the regulatory body shall be impartial with respect to all market participants.

## *Article 114*

### **Regulatory approximation**

1. The Parties recognise the importance of the approximation of Ukraine's existing legislation to that of the European Union. Ukraine shall ensure that its existing laws and future legislation will be gradually made compatible with the EU *acquis*.
2. Such approximation will start on the date of signing of this Agreement, and will gradually extend to all the elements of the EU *acquis* referred to in Annex XVII to this Agreement.

### **Sub-section 5**

### **Electronic communications**

## *Article 115*

### **Scope and definitions**

1. This Sub-section sets out the principles of the regulatory framework for all electronic communication services liberalised pursuant to Sections 2, 3 and 4 of this Chapter excluding broadcasting.
2. For the purposes of this Sub-section and Sections 2, 3 and 4 of this Chapter:
  - (a) "electronic communication services" means all services that consist of the transmission and reception of electro-magnetic signals and are normally provided for remuneration, excluding broadcasting, which does not cover the economic activity consisting in the provision of content that requires telecommunications for its transport. Broadcasting is defined as the uninterrupted chain of transmission required for the distribution of television and radio programme signals to the general public, but does not cover contribution links between operators;
  - (b) "public communication network" means an electronic communication network used wholly or mainly for the provision of publicly available electronic communication services;
  - (c) "electronic communication network" means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, and electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;
  - (d) a "regulatory authority" in the electronic communication sector means the body or bodies charged with the regulation of electronic communication mentioned in this Chapter;
  - (e) a service supplier shall be deemed to have "significant market power" if, either individually or jointly with others, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to

an appreciable extent independently of competitors, customers and ultimately consumers;

- (f) "interconnection" means the physical and/or logical linking of public communication networks used by the same or a different service supplier in order to allow the users of one service supplier to communicate with users of the same or another service supplier, or to access services provided by another service supplier. Services may be provided by the parties involved or other parties who have access to the network. Interconnection is a specific type of access implemented between public network operators;
- (g) "universal service" means the set of services of specified quality that is made available to all users in the territory of a Party regardless of their geographical location and at an affordable price; its scope and implementation are decided by each Party;
- (h) "access" means the making available of facilities and/or services, to another service supplier, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communication services. It covers, *inter alia*, access to network elements and associated facilities, which may involve the connection of equipment by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop), access to physical infrastructure including buildings, cable ducts, and masts; access to relevant software systems including operational support systems, access to numbering translation or systems offering equivalent functionality, access to fixed and mobile networks, in particular for roaming, access to conditional access systems for digital television services, access to virtual network services;
- (i) "end-user" means a user not providing public communication networks or publicly available electronic communication services;
- (j) "local loop" means the physical circuit connecting the network termination point at the subscriber's premises to the main distribution frame or equivalent facility in the fixed public communication network.

## *Article 116*

### **Regulatory authority**

1. The Parties shall ensure that regulatory authorities for electronic communication services are legally distinct and functionally independent from any service supplier of electronic communication services. If a Party retains ownership or control of a service supplier providing public communication networks or services, such Party shall ensure the effective structural separation of the regulatory function from activities associated with ownership or control.

2. The Parties shall ensure that the regulatory authority is sufficiently empowered to regulate the sector. The tasks to be undertaken by a regulatory authority shall be made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body.
3. The Parties shall ensure that the decisions of and the procedures used by the regulatory authorities are impartial with respect to all market participants and transparent.
4. The regulatory authority shall have the power to carry out an analysis of the indicative list of relevant product and service markets included in the Annexes <sup>(29)</sup> to this Agreement. Where the regulatory authority is required to determine under Article 118 of this Agreement whether to impose, maintain, amend or withdraw obligations, it shall determine on the basis of a market analysis whether the relevant market is effectively competitive.
5. Where the regulatory authority determines that a relevant market is not effectively competitive, it shall identify and designate service suppliers with significant market power on that market and shall impose, maintain or amend specific regulatory obligations referred to in Article 118 of this Agreement as it is appropriate. Where the regulatory authority concludes that the market is effectively competitive it shall not impose or maintain any of the regulatory obligations referred to in Article 118 of this Agreement.
6. The Parties shall ensure that a service supplier affected by the decision of a regulatory authority shall have a right to appeal against that decision to an appeal body that is independent of the parties involved in the decision. The Parties shall ensure that the merits of the case are duly taken into account. Pending the outcome of any such appeal, the decision of the regulator shall stand, unless the appeal body decides otherwise. Where the appeal body is not judicial in character, written reasons for its decision shall always be given and its decisions shall also be subject to review by an impartial and independent judicial authority. Decisions taken by appeal bodies shall be effectively enforced.
7. The Parties shall ensure that where the regulatory authorities intend to take measures related to any of the provisions of this Sub-section and which have a significant impact on the relevant market, they give the interested parties the opportunity to comment on the draft measure within a reasonable period of time. Regulators shall publish their consultation procedures. The results of the consultation procedure shall be made publicly available except in the case of confidential information.
8. The Parties shall ensure that service suppliers providing electronic communication networks and services provide all the information, including financial information, necessary for regulatory authorities to ensure conformity with the provisions of this Sub-section or decisions made in accordance with this Sub-section. These service suppliers shall provide such information promptly on request and to the timescales and level of detail required by the regulatory authority. The information requested by the regulatory authority shall be proportionate to the performance of that task. The regulatory authority shall give the reasons justifying its request for information.



## *Article 117*

### **Authorisation to provide electronic communication services**

1. The Parties shall ensure that the provision of services is authorised, as much as possible, following mere notification and/or registration.
2. The Parties shall ensure that a licence can be required to address issues of attributions of numbers and frequencies. The terms and conditions for such licences shall be made publicly available.
3. The Parties shall ensure that where a licence is required:
  - (a) all the licensing criteria and a reasonable period of time normally required to reach a decision concerning an application for a licence are made publicly available;
  - (b) the reasons for the denial of a licence are made known in writing to the applicant upon request;
  - (c) the applicant of a licence is able to seek recourse before an appeal body in case that a licence is unduly denied;
  - (d) licence fees <sup>(30)</sup> required by any Party for granting a licence do not exceed the administrative costs normally incurred in the management, control and enforcement of the applicable licences. Licence fees for the use of radio spectrum and numbering resources are not subject to the requirements of this paragraph.

## *Article 118*

### **Access and interconnection**

1. The Parties shall ensure that any service supplier authorised to provide electronic communication services has the right and obligation to negotiate interconnection with other providers of publicly available electronic communications networks and services. Interconnection should in principle be agreed on the basis of commercial negotiation between the legal persons concerned.
2. The Parties shall ensure that service suppliers that acquire information from another service supplier during the process of negotiating interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.
3. The Parties shall ensure that upon the finding in accordance with Article 116 of this Agreement that a relevant market, including those in the attached Annexes to this Agreement, is not effectively competitive, the regulatory authority has the power to impose on the service supplier designated as having significant market power one or more of the following obligations in relation to interconnection and/or access:
  - (a) obligation of non-discrimination to ensure that the operator applies equivalent conditions in equivalent circumstances to other service suppliers providing equivalent services, and provides services and information to others under the same conditions and of the same quality as it provides for its own services, or those of its subsidiaries or partners;
  - (b) obligation on a vertically integrated company to make transparent its wholesale

prices and its internal transfer prices, where there is a requirement for non-discrimination or for prevention of unfair cross-subsidy. The regulatory authority may specify the format and accounting methodology to be used;

- (c) obligations to meet reasonable requests for access to, and use of, specific network elements and associated facilities including unbundled access to the local loop, *inter alia*, in situations where the regulatory authority considers that denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, or would not be in the end-user's interest;
- (d) obligation to provide specified services on a wholesale basis for resale by third parties; to grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services; to provide co-location or other forms of facility sharing, including cable duct, building or mast sharing; to provide specified services needed to ensure interoperability of end-to-end services to users, including facilities for intelligent network services; to provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services; to interconnect networks or network facilities.

Regulatory authorities may attach conditions including fairness, reasonableness and timeliness to the obligations included under points (c) and (d) of this paragraph;

- (e) obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection and/or access, in situations where a market analysis indicates that a lack of effective competition means that the operator concerned might sustain prices at an excessively high level, or apply a price squeeze, to the detriment of end-users;

Regulatory authorities shall take into account the investment made by the operator and allow him a reasonable rate of return on adequate capital employed.

- (f) obligation to publish the specific obligations imposed on a service supplier by the regulatory authority identifying the specific product/service and geographical markets. Up-to-date information, provided that it is not confidential and does not comprise business secrets is to be made publicly available in a manner that guarantees all interested parties easy access to that information;
- (g) obligations of transparency requiring operators to make public specified information and in particular, where an operator has obligations of non-discrimination, the regulator may require that operator to publish a reference offer, which shall be sufficiently unbundled to ensure that service suppliers are not required to pay for facilities which are not necessary for the service requested, giving a description of the relevant offerings broken down into components according to market needs, and the associated terms and conditions including prices.

4. The Parties shall ensure that a service supplier requesting interconnection with a service supplier designated as having significant market power shall have recourse, either at any time or after a reasonable period of time which has been made publicly known, to an independent domestic body, which may be a regulatory body as referred to in Article 115(2)(d) of this Agreement, to resolve disputes regarding terms and conditions for interconnection and/or access.

#### *Article 119*

##### **Scarce resources**

1. The Parties shall ensure that any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, shall be carried out in an objective, proportionate, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands shall be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

2. The Parties shall ensure the effective management of radio frequencies for telecommunications services in their territory with a view to ensuring effective and efficient use of the spectrum. Where demand for specific frequencies exceeds their availability, appropriate and transparent procedures shall be followed for the assignment of these frequencies in order to optimize their use and facilitate the development of competition.

3. The Parties shall ensure that the assignment of national numbering resources and the management of national numbering plans are entrusted to the regulatory authority.

4. Where public or local authorities retain ownership or control of service suppliers operating public communications networks and/or services, effective structural separation needs to be ensured between the function responsible for granting the rights of way from activities associated with ownership or control.

#### *Article 120*

##### **Universal service**

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain.

2. Such obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, objective and non-discriminatory way. The administration of such obligations shall also be neutral with respect to competition and be not more burdensome than necessary for the kind of universal service defined by the Party.

3. The Parties shall ensure that all service suppliers should be eligible to ensure universal service and no service supplier shall be a priori excluded. The designation shall be made through an efficient, transparent, objective and non-discriminatory mechanism. Where necessary, Parties shall assess whether the provision of universal service represents an unfair burden on organisations(s) designated to provide universal service. Where justified on the basis of such calculation, and taking into

account the market benefit if any which accrues to an organisation that offers universal service, regulatory authorities shall determine whether a mechanism is required to compensate the service supplier(s) concerned or to share the net cost of universal service obligations.

4. The Parties shall ensure that:

- (a) directories of all subscribers <sup>(31)</sup> are available to users, whether printed or electronic, or both, and are updated on a regular basis, and at least once a year;
- (b) organisations that provide the services referred to in paragraph (a) apply the principle of non-discrimination to the treatment of information that has been provided to them by other organisations.

#### *Article 121*

### **Cross-border provision of electronic communication services**

The Parties shall not adopt or maintain any measure restricting the cross-border provision of electronic communication services.

#### *Article 122*

### **Confidentiality of information**

Each Party shall ensure the confidentiality of electronic communication and related traffic data by means of a public electronic communication network and publicly available electronic communication services without restricting trade in services.

#### *Article 123*

### **Disputes between service suppliers**

1. The Parties shall ensure that in the event of a dispute arising between service suppliers of electronic communication networks or services in connection with rights and obligations referred to in this Chapter, the regulatory authority concerned shall, at the request of either Party, issue a binding decision to resolve the dispute in the shortest possible timeframe and in any case within four months.
2. The decision of the regulatory authority shall be made available to the public, having regard to the requirements of business confidentiality. The parties concerned shall be given a full statement of the reasons on which it is based.
3. When such a dispute concerns the cross-border provision of services, the regulatory authorities concerned shall co-ordinate their efforts in order to bring about a resolution of the dispute.

#### *Article 124*

### **Regulatory approximation**

1. The Parties recognise the importance of the approximation of Ukraine's existing legislation to that of the European Union. Ukraine shall ensure that its existing laws and future legislation will be gradually made compatible with the EU *acquis*.

2. Such approximation will start on the date of signing of this Agreement, and will gradually extend to all the elements of the EU *acquis* referred to in Annex XVII to this Agreement.

## **Sub-section 6 Financial services**

### *Article 125*

#### **Scope and definitions**

1. This Sub-section sets out the principles of the regulatory framework for all financial services liberalised pursuant to Sections 2, 3 and 4 of this Chapter.

2. For the purposes of this Sub-section and of Sections 2, 3 and 4 of this Chapter:

(a) "financial service" means any service of a financial nature offered by a financial service supplier of a Party. Financial services include the following activities:

(i) Insurance and insurance-related services

1. direct insurance (including co-insurance):

(a) life;

(b) non-life.

2. reinsurance and retrocession;

3. insurance intermediation, such as brokerage and agency; and

4. services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

(ii) Banking and other financial services (excluding insurance):

1. acceptance of deposits and other repayable funds from the public;

2. lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;

3. financial leasing;

4. all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

5. guarantees and commitments;

6. trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

(a) money market instruments (including cheques, bills, certificates of deposit);

(b) foreign exchange;

(c) derivative products including, but not limited to, futures and options;

- (d) exchange rate and interest rate instruments, including products such as swaps and forward rate agreements;
  - (e) transferable securities;
  - (f) other negotiable instruments and financial assets, including bullion.
7. participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
  8. money broking;
  9. asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
  10. settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
  11. provision and transfer of financial information, and financial data processing and related software;
  12. advisory, intermediation and other auxiliary financial services concerning all the activities listed in subparagraphs (1) to (11), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.
- (b) "financial service supplier" means any natural or legal person of a Party that seeks to provide or provides financial services. The term "financial service supplier" does not include a public entity.
- (c) "public entity" means:
1. a government, central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, which is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
  2. a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.
- (d) "new financial service" means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, which is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party.

#### *Article 126*

#### **Prudential carve-out**

1. Each Party may adopt or maintain measures for prudential reasons, such as:

- (a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier;
  - (b) ensuring the integrity and stability of a Party's financial system.
2. These measures shall not be more burdensome than necessary to achieve their aim, and shall not discriminate against financial service suppliers of the other Party in comparison to its own like financial service suppliers.
  3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.
  4. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.

#### *Article 127*

#### **Effective and transparent regulation**

1. Each Party shall make its best endeavours to provide in advance to all interested persons any measure of general application that the Party proposes to adopt in order to allow such persons an opportunity to comment on the measure. Such measure shall be provided:
  - (a) by means of an official publication; or
  - (b) in other written or electronic form.
2. Each Party shall make available to all interested persons its requirements for completing applications relating to the supply of financial services.

On the request of an applicant, the concerned Party shall inform the applicant of the status of its application. If the concerned Party requires additional information from the applicant, it shall notify the applicant without undue delay.

Each Party shall make its best endeavours to ensure that internationally agreed standards for regulation and supervision in the financial services sector and for the fight against tax evasion and avoidance are implemented and applied in its territory. Such internationally agreed standards are, *inter alia*, the Basel Committee's "Core Principle for Effective Banking Supervision", the International Association of Insurance Supervisors' "Insurance Core Principles", the International Organisation of Securities Commissions' "Objectives and Principles of Securities Regulation", the OECD's "Agreement on exchange of information on tax matters" the G20 "Statement on Transparency and exchange of information for tax purposes" and the Financial Action Task Force's "Forty Recommendations on Money Laundering" and "Nine Special Recommendations on Terrorist Financing".

The Parties also take note of the Ten Key Principles for Information Exchange promulgated by the Finance Ministers of the G7 Nations, and will take all steps necessary to try to apply them in their bilateral contacts.

## *Article 128*

### **New financial services**

Each Party shall permit a financial service supplier of the other Party established in the territory of that Party to provide any new financial service of a type similar to those services that the Party would permit its own financial service suppliers to provide under its domestic law in like circumstances. A Party may determine the juridical form through which the service may be provided and may require authorisation for the provision of the service. Where such authorisation is required, a decision shall be made within a reasonable time and the authorisation may only be refused for the reasons set out in Article 126 of this Agreement.

## *Article 129*

### **Data processing**

1. Each Party shall permit a financial service supplier of the other Party to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required in the ordinary course of business of such financial service supplier.
2. Each Party shall adopt adequate safeguards for the protection of privacy and fundamental rights and the freedom of individuals, in particular with regard to the transfer of personal data.

## *Article 130*

### **Specific exceptions**

1. Nothing in this Chapter shall be construed in such a way as to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out, as provided by the Party's domestic regulation, by financial service suppliers in competition with public entities or private institutions.
2. Nothing in this Agreement applies to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.
3. Nothing in this Chapter shall be construed in such a way as to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services for the account of, or with the guarantee or using the financial resources of the Party, or its public entities.

## *Article 131*

### **Self-regulatory organisations**

When a Party requires membership of or participation in, or access to, any self-regulatory body, securities or futures exchange or market, clearing agency, or any other organisation or association, in order for financial service suppliers of the other



Party to supply financial services on an equal basis with financial service suppliers of the Party, or when the Party provides directly or indirectly such entities, privileges or advantages in supplying financial services, the Party shall ensure observance of the obligations under Articles 88 and 94 of this Agreement.

#### *Article 132*

### **Clearing and payment systems**

Under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to the Party's lender of last resort facilities.

#### *Article 133*

### **Regulatory approximation**

1. The Parties recognise the importance of the approximation of Ukraine's existing legislation to that of the European Union. Ukraine shall ensure that its existing laws and future legislation will be gradually made compatible with the EU *acquis*.

2. Such approximation will start on the date of signing of this Agreement, and will gradually extend to all the elements of the EU *acquis* referred to in Annex XVII to this Agreement.

#### **Sub-section 7**

### **Transport services**

#### *Article 134*

### **Scope**

This Sub-section sets out the principles regarding the liberalisation of transport services pursuant to Sections 2, 3 and 4 of this Chapter.

#### *Article 135*

### **International maritime transport**

1. This Agreement applies to international maritime transport between the ports of Ukraine and of the Member States of the European Union and between the ports of the Member States of the European Union. It also applies to trades between the ports of Ukraine and third countries and between the ports of the Member States of the European Union and third countries.

2. This Agreement shall not apply to domestic maritime transport between the ports of Ukraine or between the ports of individual Member States of the European Union. Notwithstanding the previous sentence, the movement of equipment, such as empty containers, not being carried as cargo against payment between the ports of Ukraine or between the ports of individual Member States of the European Union shall be regarded as a part of international maritime transport.

3. For the purposes of this Sub-section and Sections 2, 3 and 4 of this Chapter:

- (a) "international maritime transport" includes door to door and multi-modal transport operations, which is the carriage of goods using more than one mode of transport, involving a sea-leg, under a single transport document, and to this effect direct contracting with providers of other modes of transport;
- (b) "maritime cargo handling services" means activities exercised by stevedore companies, including terminal operators, but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:
  - (i) the loading/discharging of cargo to/from a ship;
  - (ii) the lashing/unlashing of cargo;
  - (iii) the reception/delivery and safekeeping of cargoes before shipment or after discharge;
- (c) "customs clearance services" (alternatively "customs house brokers' services") means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity;
- (d) "container station and depot services" means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing/stripping, repairing and making them available for shipments;
- (e) "maritime agency services" means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:
  - (i) marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information;
  - (ii) acting on behalf of the companies organising the call of the ship or taking over cargoes when required.
- (f) "freight forwarding services" means the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information.
- (g) "feeder services" means the pre- and onward transport of international cargoes by sea, in particular containerised, between ports located in a Party.

4. Each Party shall grant to vessels flying the flag of the other Party or operated by service suppliers of the other Party treatment no less favourable than that accorded to its own vessels, or those of any third country, whichever are the better, with regard to, *inter alia*, access to ports, the use of infrastructure and services of ports, and the

use of maritime auxiliary services <sup>(32)</sup>, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading.

5. The Parties shall apply effectively the principle of unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis.

6. In applying the principles of paragraphs 4 and 5 of this Article, the Parties shall, upon entry into force of this Agreement:

- (a) not introduce cargo sharing arrangements in future agreements with third countries concerning maritime transport services, including dry and liquid bulk and liner trade, and terminate such cargo sharing arrangements in the case they exist in previous agreements; and
- (b) abolish or abstain from implementing any administrative, technical, or other measures, which could constitute an indirect restriction and have discriminatory effects against nationals or companies of the other Party in the supply of services in international maritime transport.

7. Each Party shall permit international maritime transport service suppliers of the other Party to have establishments in its territory under conditions of establishment and operation no less favourable than those accorded to its own service suppliers or those of any third country, whichever are the better. In accordance with the provisions of Section 2 of this Chapter, in respect of the activities of such establishments, each Party shall permit the service suppliers of the other Party, in accordance with its laws and regulations, to engage in economic activities, such as, but not limited to:

- (a) publishing, marketing and sales of maritime transport and related services, from quotation to invoicing, on their own account or on behalf of other service suppliers of international maritime transport, through direct contact with customers;
- (b) provision of business information by any means, including computerised information systems and electronic data interchange (subject to any non-discriminatory restrictions concerning telecommunications);
- (c) preparation of documentation concerning transport and customs and other documents related to the origin and character of what is being transported;
- (d) organising the call of vessels or taking delivery of cargoes on their own account or on behalf of other service suppliers of international maritime transport;
- (e) setting up of any business arrangement with any locally established shipping agency, including participation in the company's stock and the appointment of personnel recruited locally or recruited from abroad subject to the relevant provisions of this Agreement;
- (f) purchase and use, on their own account or on behalf of their customers (and the resale to their customers), of transport services by all modes, including inland waterways, road and rail, and services auxiliary to all modes of transport, necessary for the supply of an integrated transport service;

(g) owning the equipment necessary for conducting economic activities.

8. Each Party shall make available to service suppliers of international maritime transport of the other Party on reasonable and non-discriminatory terms and conditions the following services at the port: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, shore-based operational services essential to ship operations, including communications, water and electrical supplies, emergency repair facilities, anchorage, berth and berthing services.

9. Each Party shall allow services suppliers of international maritime transport of the other Party to provide international maritime transport services involving a sea-leg in the inland waterways of the other Party.

10. Each Party shall allow services suppliers of international maritime transport of the other Party to have use of, on a non-discriminatory basis and on agreed terms between the companies concerned, feeder services between the ports of Ukraine or between the ports of individual Member States of the European Union that are provided by the service suppliers of maritime transport registered in the former Party.

11. This Agreement shall not affect the application of the maritime agreements concluded between Ukraine and the Member States of the European Union for issues falling outside the scope of this Agreement. If this Agreement is less favourable on certain issues than existing agreements between individual Member States of the European Union and Ukraine, the more favourable provisions shall prevail without prejudice to EU Party obligations and taking into account the Treaty on the Functioning of the European Union. The provisions of this Agreement replace those of previous bilateral agreements concluded between Member States of the European Union and Ukraine, if the latter provisions are either inconsistent with the former except for the situation referred to in the preceding sentence, or identical to them. Provisions of existing bilateral agreements not covered by this Agreement shall continue to apply.

#### *Article 136*

### **Road, rail and inland waterways transport**

1. With a view to assuring a coordinated development and progressive liberalisation of transport between the Parties adapted to their reciprocal commercial needs, the conditions of mutual market access in road, rail and inland waterways transport shall be dealt with by possible future special road, rail and inland waterways transport agreements.

2. Prior to the conclusion of the agreements referred to in paragraph 1 of this Article, the Parties shall not render the conditions of mutual market access more restrictive between the Parties as compared to the situation existing on the day preceding the day of entry into force of this Agreement.

3. The provisions of existing bilateral agreements which are not covered by future possible agreements referred to in paragraph 1 of this Article shall continue to apply.

### *Article 137*

#### **Air transport**

1. With a view to ensuring a coordinated development and progressive liberalisation of transport between the Parties adapted to their reciprocal commercial needs, the conditions of mutual market access in air transport should be dealt in accordance with the EU-Ukraine Common Aviation Area Agreement (hereinafter referred to as the "CAA").
2. Prior to the conclusion of the CAA, the Parties shall not take any measures or actions which are more restrictive or discriminatory as compared with the situation existing prior to the entry into force of this Agreement.

### *Article 138*

#### **Regulatory approximation**

Ukraine shall adapt its legislation, including administrative, technical and other rules, to that of the EU Party existing at any time in the field of international maritime transport insofar as it serves to achieve the objectives of liberalisation, mutual access to the markets of the Parties, and the movement of passengers and of goods. This approximation will start on the date of signing of the Agreement, and will gradually extend to all the elements of the EU *acquis* referred to in Annex XVII to this Agreement.

#### **Section 6**

#### **Electronic commerce**

### *Article 139*

#### **Objective and principles**

1. The Parties, recognising that electronic commerce increases trade opportunities in many sectors, agree to promote the development of electronic commerce between them, in particular by co-operating on the issues raised by electronic commerce under the provisions of this Chapter.
2. The Parties agree that the development of electronic commerce must be fully compatible with the highest international standards of data protection, in order to ensure the confidence of users of electronic commerce.
3. The Parties agree that electronic transmissions shall be considered as the provision of services, within the meaning of Section 3 (Cross-border supply of services) of this Chapter, which cannot be subject to customs duties.

### *Article 140*

#### **Regulatory aspects of electronic commerce**

1. The Parties shall maintain a dialogue on regulatory issues raised by electronic commerce, which will inter alia address the following issues:
  - (a) the recognition of certificates of electronic signatures issued to the public and the facilitation of cross-border certification services,

- (b) the liability of intermediary service providers with respect to the transmission or storage of information,
  - (c) the treatment of unsolicited electronic commercial communications,
  - (d) the protection of consumers within the ambit of electronic commerce,
  - (e) any other issue relevant to the development of electronic commerce.
2. Such cooperation can take the form of exchange of information on the Parties' respective legislation on these issues as well as on the implementation of such legislation.

## **Section 7 Exceptions**

### *Article 141*

#### **General exceptions**

1. Without prejudice to general exceptions set out in Articles 472 of this Agreement, the provisions of this Chapter and of Annexes XVI-A, XVI-B, XVI-C, XVI-D, XVI-E, XVI-F and XVII to this Agreement are subject to the exceptions contained in this Article.
2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on establishment or cross-border supply of services, nothing in this Chapter shall be construed in such a way as to prevent the adoption or enforcement by any Party of measures:
  - (a) necessary to protect public security or public morals or to maintain public order;
  - (b) necessary to protect human, animal or plant life or health;
  - (c) relating to the conservation of exhaustible natural resources if such measures are applied in conjunction with restrictions on domestic investors or on the domestic supply or consumption of services;
  - (d) necessary for the protection of national treasures of artistic, historic or archaeological value;
  - (e) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
    - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
    - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

- (iii) safety.
  - (f) inconsistent with Article 88(1) and Article 94 of this Agreement, provided that the difference in treatment is aimed at ensuring the effective or equitable imposition or collection of direct taxes in respect of economic activities, investors or services suppliers of the other Party <sup>(33)</sup>.
3. The provisions of this Chapter and of Annexes XVI-A, XVI-B, XVI-C, XVI-D, XVI-E, XVI-F and XVII to this Agreement shall not apply to the Parties' respective social security systems or to activities in the territory of each Party, which are connected, even occasionally, with the exercise of official authority.

#### *Article 142*

#### **Taxation measures**

The MFN treatment granted in accordance with the provisions of this Chapter shall not apply to the tax treatment that Parties are providing or will provide in future on the basis of agreements between the Parties designed to avoid double taxation.

#### *Article 143*

#### **Security exceptions**

1. Nothing in this Agreement shall be construed in such a way as:
  - (a) to require any Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
  - (b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:
    - (i) connected with the production of or trade in arms, munitions or war material;
    - (ii) relating to economic activities carried out directly or indirectly for the purpose of provisioning a military establishment;
    - (iii) relating to fissionable and fusionable materials or the materials from which they are derived; or
    - (iv) taken in time of war or other emergency in international relations; or
  - (c) to prevent any Party from taking any action in pursuance of obligations it has accepted for the purpose of maintaining international peace and security.

### **CHAPTER 7**

#### ***Current payments and movement of capital***

#### *Article 144*

#### **Current payments**

The Parties undertake to impose no restrictions and shall allow, in freely convertible currency, in accordance with the provisions of Article VIII of the Articles of the Agreement of the IMF, any payments and transfers on the current account of balance of payments between the Parties.

#### *Article 145*

### **Capital movements**

1. With regard to transactions on the capital and financial account of balance of payments, from the entry into force of this Agreement, the Parties shall ensure the free movement of capital relating to direct investments <sup>(34)</sup> made in accordance with the laws of the host country, to investments made in accordance with the provisions of Chapter 6 (Establishment, Trade in Services and Electronic Commerce) of Title IV of this Agreement and to the liquidation or repatriation of such invested capitals and of any profit stemming therefrom.
2. With regard to other transactions on the capital and financial account of balance of payments, from the entry into force of this Agreement and without prejudice to other provisions of this Agreement the Parties shall ensure:
  - (a) the free movement of capital relating to credits related to commercial transactions or to the provision of services in which a resident of one of the Parties is participating;
  - (b) the free movement of capital relating to portfolio investments and financial loans and credits by the investors of the other Party.
3. Ukraine undertakes to complete the liberalisation of transactions on the capital and financial account of balance of payments equivalent to the liberalisation in the EU Party prior to the granting of internal market treatment in the area of financial services under Article 4(3) of Annex XVII to this Agreement. A positive assessment of the Ukrainian legislation on capital movements, its implementation and continued enforcement conducted in line with the principles outlined in Article 4(3) of Annex XVII to this Agreement is a necessary precondition of any decision by the Trade Committee to grant internal market treatment with respect to financial services.
4. Without prejudice to other provisions of this Agreement, the Parties shall not introduce any new restrictions on the movement of capital and current payments between residents of the EU Party and Ukraine and shall not make the existing arrangements more restrictive.

#### *Article 146*

### **Safeguard measures**

Without prejudice to other provisions of this Agreement, where, in exceptional circumstances, payments or movements of capital between the Parties cause, or threaten to cause, serious difficulties for the operation of exchange rate policy or monetary policy <sup>(35)</sup> in one or more Member States of the European Union or Ukraine, the Parties concerned may take safeguard measures with regard to movements of capital between the EU Party and Ukraine for a period not exceeding six months if



such measures are strictly necessary. The Party adopting the safeguard measure shall inform the other Party forthwith of the adoption of such measure and shall present, as soon as possible, a schedule for its removal.

#### *Article 147*

### **Facilitation and further liberalization provisions**

1. The Parties shall consult each other with a view to facilitating the movement of capital between the Parties in order to promote the objectives of this Agreement.
2. During the first four years following the date of entry into force of this Agreement, the Parties shall take measures permitting the creation of the necessary conditions for the further gradual application of EU Party rules on the free movement of capital.
3. By the end of the fifth year following the date of entry into force of this Agreement, the Trade Committee shall review the measures taken and shall determine the modalities for further liberalisation.

## ***CHAPTER 8*** ***Public procurement***

#### *Article 148*

### **Objectives**

The Parties recognise the contribution of transparent, non-discriminatory, competitive and open tendering to sustainable economic development and set as their objective the effective, reciprocal and gradual opening of their respective procurement markets.

This Chapter envisages mutual access to public procurement markets on the basis of the principle of national treatment at national, regional and local level for public contracts and concessions in the traditional sector as well as in the utilities sector. It provides for the progressive approximation of the public procurement legislation in Ukraine with the EU public procurement *acquis*, accompanied with an institutional reform and the creation of an efficient public procurement system based on the principles governing public procurement in the EU Party and the terms and definitions set out in Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (hereinafter referred to as "Directive 2004/18/EC") and Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (hereinafter referred to as "Directive 2004/17/EC").

#### *Article 149*

### **Scope**

1. This Chapter applies to works, supplies and services public contracts, as well as works, supplies and services contracts in the utilities sectors and works and services concessions.

2. This Chapter applies to any contracting authority and any contracting entity which meets the definitions of the EU public procurement *acquis* (hereinafter both referred to as the "contracting entities"). It covers also bodies governed by public law and public undertakings in the field of utilities such as state-owned enterprises carrying out the relevant activities and private undertakings operating on the basis of special and exclusive rights in the field of utilities.

3. This Chapter applies to contracts above value thresholds set out in Annex XXI-P:

The calculation of the estimated value of a public contract shall be based on the total amount payable, net of Value Added Tax. When applying these thresholds, Ukraine will calculate and convert these values into its own national currency, using the exchange rate of its National Bank.

These value thresholds shall be revised regularly every two years, beginning in the first even year following the entry into force of the Agreement, based on the average daily value of the Euro, expressed in Special Drawing Rights, over the 24 months terminating on the last day of August preceding the revision with effect from January 1. The value of the thresholds thus revised shall, where necessary, be rounded down to nearest thousand Euro. The revision of the thresholds shall be adopted by the Trade Committee according to the procedure defined in Title VII (Institutional General and Final Provisions) of this Agreement.

#### *Article 150*

##### **Institutional background**

1. The Parties shall establish or maintain an appropriate institutional framework and mechanisms necessary for the proper functioning of the public procurement system and the implementation of the relevant principles.

2. In the framework of the institutional reform, Ukraine shall designate in particular:

(a) a central executive body responsible for economic policy tasked with guaranteeing a coherent policy in all areas related to public procurement. Such a body shall facilitate and coordinate the implementation of this Chapter and guide the process of legislative approximation

(b) an impartial and independent body tasked with the review of decisions taken by contracting authorities or entities during the award of contracts. In this context, "independent" means that that body shall be a public authority which is separate from all contracting entities and economic operators. There shall be a possibility to subject the decisions taken by this body to judicial review.

3. The Parties shall ensure that decisions taken by the authorities responsible for the review of complaints shall be effectively enforced.

#### *Article 151*

## **Basic standards regulating the award of contracts**

1. No later than six months from the entry into force of this Agreement, the Parties shall comply with a set of basic standards for the award of all contracts as stipulated in paragraphs 2 to 15 of this Article. These basic standards derive directly from the rules and principles of public procurement, as regulated in the EU public procurement *acquis*, including the principles of non-discrimination, equal treatment, transparency and proportionality.
2. The Parties shall ensure that all intended procurements are published in an appropriate media in a manner that is sufficient:
  - (a) to enable the market to be opened up to competition; and
  - (b) to allow any interested economic operator to have appropriate access to information regarding the intended procurement prior to the award of the contract and to express its interest in obtaining the contract.
3. The publication shall be appropriate to the economic interest of the contract to economic operators.
4. The publication shall contain at least the essential details of the contract to be awarded, the criteria for qualitative selection, the award method, the contract award criteria and any other additional information that the economic operators reasonably need to make a decision on whether to express their interest in obtaining the contract.
5. All contracts shall be awarded through transparent and impartial award procedures that prevent corruptive practices. This impartiality shall be ensured especially through the non-discriminatory description of the subject-matter of the contract, equal access for all economic operators, appropriate time-limits and a transparent and objective approach.
6. When describing the characteristics of the required work, supply or service, the contracting entities shall use general descriptions of performance and functions and international, European or national standards.
7. The description of the characteristics required of a work, supply or service should not refer to a specific make or source, or a particular process, or to trade-marks, patents, types or a specific origin or production unless such a reference is justified by the subject-matter of the contract and accompanied by the words 'or equivalent'. Preference shall be given to the use of general descriptions of performance or functions.
8. Contracting entities shall not impose conditions resulting in direct or indirect discrimination against the economic operators of the other Party, such as the requirement that economic operators interested in the contract must be established in the same country, region or territory as the contracting entity.

Notwithstanding the above, in cases where it is justified by the specific circumstances of the contract, the successful applicant may be required to establish certain business infrastructure at the place of performance.

9. The time-limits for expression of interest and for submission of offers shall be sufficiently long to allow economic operators from the other Party to make a meaningful assessment of the tender and prepare their offer.

10. All participants must be able to know the applicable rules, selection criteria and award criteria in advance. These rules must apply equally to all participants.

11. Contracting entities may invite a limited number of applicants to submit an offer, provided that:

(a) this is done in a transparent and non-discriminatory manner; and

(b) the selection is based only on objective factors such as the experience of the applicants in the sector concerned, the size and infrastructure of their businesses or their technical and professional abilities.

In inviting a limited number of applicants to submit an offer, account should be taken of the need to ensure adequate competition.

12. Contracting entities may use negotiated procedures only in exceptional defined cases when the use of such a procedure effectively does not distort competition.

13. Contracting entities may use qualification systems only on condition that the list of qualified operators is compiled by means of a sufficiently advertised, transparent and open procedure. Contracts falling within the scope of such systems shall be awarded also on a non-discriminatory basis.

14. The Parties shall ensure that contracts are awarded in a transparent manner to the applicant who has submitted the economically most advantageous offer or the offer with the lowest price, based on the tender criteria and the procedural rules established and communicated in advance. The final decisions are to be communicated to all applicants without undue delay. Upon request of an unsuccessful applicant, reasons must be provided in sufficient detail to allow a review of the decision.

15. The Parties shall ensure that any person having or having had an interest in obtaining a particular contract and who has been, or risks, being harmed by an alleged infringement is entitled to effective, impartial judicial protection against any decision of the contracting entity related to the award of that contract. The decisions taken in the course and at the end of such review procedure shall be made public in a manner that is sufficient to inform all interested economic operators.

## *Article 152*

### **Planning of legislative approximation**

1. Prior to the commencement of legislative approximation, Ukraine shall submit to the Trade Committee a comprehensive roadmap for the implementation of this Chapter with time schedules and milestones which should include all reforms in terms of legislative approximation and institutional capacity building. This roadmap shall comply with the phases and time Schedules set out in Annex XXI-A to this Agreement.

2. The roadmap shall cover all aspects of the reform and the general legal framework for the implementation of public procurement activities, in particular: legislative approximation for public contracts, contracts in the utilities sector, works concessions and review procedures, and strengthening of the administrative capacity at all levels including review bodies and enforcement mechanisms.

3. Following a favourable opinion by the Trade Committee, this roadmap shall be considered as the reference document for the implementation of this Chapter. The European Union will make its best efforts in assisting Ukraine in the implementation of the roadmap.

### *Article 153*

#### **Legislative approximation**

1. Ukraine shall ensure that its existing and future legislation on public procurement will be gradually made compatible with the EU public procurement *acquis*.

2. Legislative approximation shall be carried out in consecutive phases as set out in Annex XXI-A and Annexes XXI-B to XXI-E, XXI-G, XXI-H, and XXI-J to this Agreement. Annexes XXI-F and XXI-I to this Agreement identify non-mandatory elements that need not be transposed, whereas Annexes XXI-K to N to this Agreement identify elements of the EU *acquis* that remain outside the scope of legislative approximation. In this process, due account shall be taken of the corresponding case law of the European Court of Justice and the implementing measures adopted by the European Commission as well as, if this should become necessary, of any modifications of the EU *acquis* occurring in the meantime. The implementation of each phase shall be evaluated by the Trade Committee, and, following a positive assessment by that the Trade Committee, be linked to the reciprocal granting of market access as set out in Annex XXI-A to this Agreement. The European Commission shall notify without undue delay Ukraine of any modifications of the EU *acquis*. It will provide appropriate advice and technical assistance for the purpose of implementing such modifications.

3. The Parties agree that the Trade Committee shall only proceed to the evaluation of a subsequent phase once the measures to implement the previous phase have been carried out and approved according to the modalities set out in paragraph 2 of this Article.

4. The Parties shall ensure that those aspects and areas of public procurement which are not covered by this Article shall comply with the principles of transparency, non-discrimination and equal treatment as set out in Article 151 of this Agreement.

### *Article 154*

#### **Market access**

1. The Parties agree that the effective and reciprocal opening of their respective markets shall be attained gradually and simultaneously. During the process of legislative approximation, the extent of the market access mutually granted shall be linked to the progress made in this process as stipulated in Annex XXI-A to this Agreement.

2. The decision to proceed to a further phase of market opening shall be made on the basis of an assessment of the quality of the legislation adopted as well as its practical implementation. Such assessment shall be carried out regularly by the Trade Committee.

3. Insofar as a Party has, according to Annex XXI-A to this Agreement, opened its procurement market to the other Party, the EU Party shall grant access to contract award procedures to Ukrainian companies - whether established or not in the EU Party - pursuant to EU public procurement rules under treatment no less favourable than that accorded to EU Party companies; Ukraine shall grant access to contract award procedures for EU Party companies - whether established or not in Ukraine - pursuant to national procurement rules under treatment no less favourable than that accorded to Ukrainian companies.

4. After the implementation of the last phase in the process of legislative approximation, the Parties will examine the possibility to mutually grant market access with regard to procurements even below the value thresholds set out in Article 149(3) of this Agreement.

5. Finland reserves its position with regard to the Aland Islands.

#### *Article 155*

#### **Information**

1. The Parties shall ensure that contracting entities and economic operators are well informed about public procurement procedures, including through the publication of all relevant legislation and administrative rulings.

2. The Parties shall ensure the effective dissemination of information on tendering opportunities.

#### *Article 156*

#### **Cooperation**

1. The Parties shall enhance their cooperation through exchange of experience and information relating to their best practices and regulatory frameworks.

2. The EU Party shall facilitate the implementation of this Chapter, including through technical assistance where appropriate. In line with the provisions on financial cooperation in Title VI (Financial Co-operation, with Anti-fraud Provisions) of this Agreement, specific decisions on financial assistance shall be taken through the relevant EU funding mechanisms and instruments.

3. An indicative list of issues for cooperation is included in Annex XXI-O to this Agreement.

### **CHAPTER 9**

#### ***Intellectual property***

#### **Section 1**

#### **General provisions**

## *Article 157*

### **Objectives**

The objectives of this Chapter are to:

- (a) facilitate the production and commercialisation of innovative and creative products in the Parties; and
- (b) achieve an adequate and effective level of protection and enforcement of intellectual property rights.

## *Article 158*

### **Nature and scope of obligations**

1. The Parties shall ensure the adequate and effective implementation of the international treaties dealing with intellectual property to which they are parties including the Agreement on Trade-related Aspects of Intellectual Property Rights, contained in Annex 1C to the WTO Agreement (hereinafter referred to as the "TRIPS Agreement"). The provisions of this Chapter shall complement and further specify the rights and obligations between the Parties under the TRIPS Agreement and other international treaties in the field of intellectual property.
2. For the purposes of this Agreement, intellectual property rights embody copyright, including copyright in computer programs and in databases, and rights related to copyright, rights related to patents including patents for bio-technological inventions, trade-marks, trade names in so far as these are protected as exclusive property rights in the domestic law concerned, designs, layout-designs (topographies) of integrated circuits, geographical indications, including designations of origin, indications of source, plant varieties, protection of undisclosed information and protection against unfair competition as referred to in Article 10 *bis* of the Paris Convention for the Protection of Industrial Property (1967) (hereinafter referred to as the "Paris Convention").

## *Article 159*

### **Transfer of technology**

1. The Parties agree to exchange views and information on their domestic and international practices and policies affecting transfer of technology. This shall in particular include measures to facilitate information flows, business partnerships, and licensing and subcontracting deals on a voluntary basis. Particular attention shall be paid to the conditions necessary to create an adequate enabling environment for technology transfer in the host countries, including issues such as the relevant legal framework and development of human capital.
2. The Parties shall ensure that the legitimate interests of the intellectual property right holders are protected.

## *Article 160*

## **Exhaustion**

The Parties shall be free to establish their own regime for exhaustion of intellectual property rights, subject to the provisions of the TRIPS Agreement.

## **Section 2**

### **Standards concerning intellectual property rights**

#### **Sub-section 1**

#### **Copyright and related rights**

#### *Article 161*

#### **Protection granted**

The Parties shall comply with:

- (a) Articles 1 to 22 of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961) (hereinafter referred to as the "Rome Convention");
- (b) Articles 1 to 18 of the Berne Convention for the Protection of Literary and Artistic Works (1886, last amended in 1979) (hereinafter referred to as the "Berne Convention");
- (c) Articles 1 to 14 of the World Intellectual Property Organisation (hereinafter referred to as the 'WIPO') Copyright Treaty (1996) (hereinafter referred to as the "WCT"); and
- (d) Articles 1 to 23 of the WIPO Performances and Phonograms Treaty (1996).

#### *Article 162*

#### **Duration of authors' rights**

1. The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for 70 years after his/her death, irrespective of the date when the work is lawfully made available to the public.
2. In the case of a work of joint authorship, the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.
3. In the case of anonymous or pseudonymous works, the term of protection shall run for 70 years after the work is lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his/her identity, or if the author discloses his/her identity during the period referred to in the first sentence, the term of protection applicable shall be that laid down in paragraph 1.
4. Where a work is published in volumes, parts, instalments, issues or episodes and the term of protection runs from the time when the work was lawfully made available to the public, the term of protection shall run for each such item separately.



5. In the case of works for which the term of protection is not calculated from the death of the author or authors and which have not been lawfully made available to the public within 70 years of their creation, the protection shall terminate.

#### *Article 163*

##### **Duration of protection of cinematographic or audiovisual works**

1. The principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors. The Parties shall be free to designate other co-authors.
2. The term of protection of cinematographic or audiovisual works shall expire not less than 70 years after the death of the last of a group of specified persons to survive, whether or not these persons are designated as co-authors. This group should at a minimum include the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic or audiovisual work.

#### *Article 164*

##### **Duration of related rights**

1. The rights of performers shall expire not less than 50 years after the date of the performance. However, if a fixation of the performance is lawfully published or lawfully communicated to the public within this period, the rights shall expire not less than 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier.
2. The rights of producers of phonograms shall expire not less than 50 years after the fixation is made. However, if the phonogram has been lawfully published within this period, the said rights shall expire not less than 50 years from the date of the first lawful publication. If no lawful publication has taken place within the period mentioned in the first sentence, and if the phonogram has been lawfully communicated to the public within this period, the said rights shall expire 50 years from the date of the first lawful communication to the public.
3. The rights of producers of the first fixation of a film shall expire not less than 50 years after the fixation is made. However, if the film is lawfully published or lawfully communicated to the public during this period, the rights shall expire not less than 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier. The term "film" shall designate a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.
4. The rights of broadcasting organisations shall expire not less than 50 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.

#### *Article 165*

##### **Protection of previously unpublished works**

Any person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work, shall benefit from a protection equivalent to the economic rights of the author. The term of protection of such rights shall be 25 years from the time when the work was first lawfully published or lawfully communicated to the public.

#### *Article 166*

### **Critical and scientific publications**

The Parties may also protect critical and scientific publications of works which have come into the public domain. The maximum term of protection of such rights shall be 30 years from the time when the publication was first lawfully published.

#### *Article 167*

### **Protection of photographs**

Photographs which are original in the sense that they are the author's own intellectual creation shall be protected in accordance with Article 162 of this Agreement. Parties may provide for the protection of other photographs.

#### *Article 168*

### **Cooperation on collective management of rights**

The Parties recognise the necessity of establishing agreements between their respective collecting societies for the purpose of mutually ensuring easier access to and delivery of content between the territories of the Parties, as well as ensuring mutual transfer of royalties for use of the Parties' works or other protected subject matter. The Parties recognise the need for their respective collecting societies achieve a high level of rationalisation and transparency with respect to the execution of their tasks.

#### *Article 169*

### **Fixation right**

1. For the purpose of this Article, fixation means the embodiment of sounds and images, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device.
2. The Parties shall provide performers with the exclusive right to authorise or prohibit the fixation of their performances.
3. The Parties shall provide broadcasting organisations with the exclusive right to authorise or prohibit the fixation of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite.

4. A cable distributor shall not have the right provided for in paragraph 2 where it merely retransmits by cable the broadcasts of broadcasting organisations.

#### *Article 170*

### **Broadcasting and communication to the public**

1. For the purposes of this Article:
  - (a) "broadcasting" means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite; and transmission of encrypted signals, where the means for decrypting are provided to the public by the broadcasting organisation or with its consent;
  - (b) "communication to the public" means the transmission to the public by any medium, otherwise than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram. For the purposes of paragraph 3, "communication to the public" includes making the sounds or representations of sounds fixed in a phonogram audible to the public.
2. The Parties shall provide performers with the exclusive right to authorise or prohibit the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.
3. The Parties shall provide performers and producers of phonograms with the right to a single equitable remuneration if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public, and ensure that this remuneration is shared among the relevant performers and phonogram producers. The Parties may, in the absence of agreement between the performers and phonogram producers, lay down the conditions as to the sharing of this remuneration among them.
4. The Parties shall provide broadcasting organisations with the exclusive right to authorise or prohibit re-broadcasting of their broadcasts by wireless means, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

#### *Article 171*

### **Distribution right**

1. The Parties shall provide authors, in respect of the original of their works or of copies thereof, with the exclusive right to authorise or prohibit any form of distribution to the public by sale or otherwise.
2. The Parties shall provide the exclusive right to make available to the public, by sale or otherwise, the objects indicated in subparagraphs (a) to (d) of this paragraph, including copies thereof:
  - (a) for performers, in respect of fixations of their performances;

- (b) for phonogram producers, in respect of their phonograms;
- (c) for producers of the first fixation of films, in respect of the original and copies of their films;
- (d) for broadcasting organisations, in respect of fixations of their broadcasts as set out in Article 169(3) of this Agreement.

#### *Article 172*

#### **Limitations**

1. Parties may provide for limitations on the rights referred to in Articles 169, 170 and 171 of this Agreement in respect of:
  - (a) private use;
  - (b) use of short excerpts in connection with the reporting of current events;
  - (c) ephemeral fixation by a broadcasting organisation by means of its own facilities and for its own broadcasts;
  - (d) use solely for the purposes of teaching or scientific research.
2. Notwithstanding paragraph 1, Parties may provide for the same kinds of limitations with regard to the protection of performers, producers of phonograms, broadcasting organisations and producers of the first fixations of films, as they provide for in connection with the protection of copyright in literary and artistic works. However, compulsory licences may be provided for only to the extent to which they are compatible with the Rome Convention.
3. The limitations set out in paragraphs 1 and 2 of this Article shall be applied only in certain special cases which do not conflict with a normal exploitation of the subject matter and do not unreasonably prejudice the legitimate interests of the right holder.

#### *Article 173*

#### **Reproduction right**

The Parties shall provide for the exclusive right to authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part:

- (a) for authors, of their works;
- (b) for performers, of fixations of their performances;
- (c) for phonogram producers, of their phonograms;
- (d) for the producers of the first fixations of films, in respect of the original and copies of their films;
- (e) for broadcasting organisations, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite.

## *Article 174*

### **Right of communication to the public of works and right of making available to the public other subject-matter**

1. The Parties shall provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.
2. The Parties shall provide for the exclusive right to authorise or prohibit the making available of works to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them, namely:
  - (a) for performers, of fixations of their performances;
  - (b) for phonogram producers, of their phonograms;
  - (c) for the producers of the first fixations of films, of the original and copies of their films;
  - (d) for broadcasting organisations, of fixations of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite.
3. Both Parties agree that the rights referred to in paragraphs 1 and 2 shall not be exhausted by any act of communication to the public or making them available to the public as set out in this Article.

## *Article 175*

### **Exceptions and limitations**

1. The Parties shall provide that temporary acts of reproduction referred to in Article 173 of this Agreement, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable:
  - (a) transmission in a network between third parties by an intermediary; or
  - (b) lawful useof a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 173.
2. Where the Parties provide for an exception or limitation to the right of reproduction provided for in Article 173, they may provide similarly for an exception or limitation to the right of distribution provided for in Article 171(1) of this Agreement to the extent justified by the purpose of the authorised act of reproduction.
3. The Parties may provide for exceptions and limitations to the rights set out in Articles 173 and 174 of this Agreement only in certain special cases which do not conflict with normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the right holder.

## *Article 176*

### **Protection of technological measures**

1. The Parties shall provide adequate legal protection against the circumvention of any effective technological measures which the person concerned carries out in the knowledge, or with reasonable grounds for knowing, that he/she is pursuing that objective.
2. The Parties shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which:
  - (a) are promoted, advertised or marketed for the purpose of circumvention of; or
  - (b) have only a limited commercially significant purpose or use other than to circumvent; or
  - (c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of, any effective technological measures.
3. For the purposes of this Section, the expression "technological measures" means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject-matter, which are not authorised by the right holder of any copyright or any right related to copyright as provided for by each Party's legislation. Technological measures shall be deemed "effective" where the use of a protected work or other subject matter is controlled by the right holders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective.
4. Where Parties provide for limitations to the rights set out in Articles 172 and 175 of this Agreement, they may also ensure that right holders make available to a beneficiary of an exception or limitation the means of benefiting from that exception or limitation to the extent necessary to benefit from that exception or limitation and where that beneficiary has legal access to the protected work or subject matter concerned.
5. The provisions of Article 175(1) and (2) of this Agreement shall not apply to works or other subject-matter made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.

## *Article 177*

### **Protection of rights management information**

1. The Parties shall provide for adequate legal protection against any person knowingly performing without authority any of the following acts:
  - (a) the removal or alteration of any electronic rights-management information;

- (b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject-matter protected under this Agreement from which electronic rights-management information has been removed or altered without authority,

if such person knows, or has reasonable grounds to know, that by so doing he is inducing, enabling, facilitating or concealing an infringement of any copyright or any rights related to copyright as provided by the law of the relevant Party.

2. For the purposes of this Agreement, the expression "rights-management information" means any information provided by right holders which identifies the work or other subject-matter referred to in Sub-section 1, the author or any other right holder, or information about the terms and conditions of use of the work or other subject-matter, and any numbers or codes that represent such information.

The first paragraph shall apply when any of these items of information is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject-matter referred to in Sub-section 1.

#### *Article 178*

##### **Right holders and subject matter of rental and lending right**

1. The Parties should provide the exclusive right to authorise or prohibit rental and lending for the following:
  - (a) the author in respect of the original and copies of his/her work;
  - (b) the performer in respect of fixations of his/her performance;
  - (c) the phonogram producer in respect of his/her phonograms;
  - (d) the producer of the first fixation of a film in respect of the original and copies of his film.
2. These provisions shall not cover rental and lending rights in relation to buildings and to works of applied art.
3. The Parties may derogate from the exclusive right provided for in paragraph 1 in respect of public lending, provided that at least authors obtain remuneration for such lending. The Parties shall be free to determine this remuneration, taking account of their cultural promotion objectives.
4. Where the Parties do not apply the exclusive lending right provided for in this Article as regards phonograms, films and computer programs, they shall introduce, at least for authors, remuneration.
5. The Parties may exempt certain categories of establishments from the payment of the remuneration referred to in paragraphs 3 and 4.

#### *Article 179*

##### **Unwaivable right to equitable remuneration**

1. Where an author or performer has transferred or assigned his/her rental right concerning a phonogram or an original or copy of a film to a phonogram or film producer, that author or performer shall retain the right to obtain equitable remuneration for the rental.
2. The right to obtain equitable remuneration for rental cannot be waived by authors or performers.
3. The administration of the right to obtain equitable remuneration may be entrusted to collecting societies representing authors or performers.
4. The Parties may regulate whether and to what extent administration by collecting societies of the right to obtain equitable remuneration may be imposed, as well as the question from whom this remuneration may be claimed or collected.

#### *Article 180*

### **Protection of computer programmes**

1. The Parties shall protect computer programmes, by copyright, as literary works within the meaning of the Berne Convention. For the purposes of this provision, the term "computer programmes" shall include their preparatory design material.
2. Protection in accordance with this Agreement shall apply to the expression in any form of a computer programme. Ideas and principles which underlie any element of a computer programme, including those which underlie its interfaces, are not protected by copyright under this Agreement.
3. A computer programme shall be protected if it is original in the sense that it is the author's own intellectual creation. No other criteria shall be applied to determine its eligibility for protection.

#### *Article 181*

### **Authorship of computer programmes**

1. The author of a computer programme shall be the natural person or group of natural persons that has created the programme or, where the legislation of the Parties permits, the legal person designated as the right holder by that legislation.
2. In respect of a computer programme created by a group of natural persons jointly, the exclusive rights shall be owned jointly.
3. Where collective works are recognised by the legislation of the Parties, the person considered by the legislation of the Parties to have created the work shall be deemed to be its author.
4. Where a computer programme is created by an employee in the execution of his/her duties or following the instructions given by his/her employer, the employer exclusively shall be entitled to exercise all economic rights in the programme so created, unless otherwise provided by contract.

#### *Article 182*

### **Restricted acts relating to computer programmes**



Subject to the provisions of Articles 183 and 184 of this Agreement, the exclusive rights of the right holder within the meaning of Article 181, shall include the right to carry out or to authorise:

- (a) permanent or temporary reproduction of a computer programme by any means and in any form, in part or in whole. Insofar as acts of loading, displaying, running, transmission or storage of the computer programme necessitate such reproduction, those acts shall be subject to authorisation by the right holder;
- (b) the translation, adaptation, arrangement and any other alteration of a computer programme and the reproduction of the results thereof, without prejudice to the rights of the person who alters the programme;
- (c) any form of distribution to the public, including the rental, of the original computer programme or of copies thereof.

### *Article 183*

#### **Exceptions to the restricted acts relating to computer programs**

1. In the absence of specific contractual provisions, the acts referred to in Article 182(a) and (b) of this Agreement shall not require authorisation by the right holder where they are necessary for the use of the computer programme by the lawful acquirer in accordance with its intended purpose, including for error correction.
2. The making of a back-up copy by a person having a right to use the computer programme may not be prevented by contract insofar as it is necessary for that use.
3. The person having a right to use a copy of a computer programme shall be entitled, without the authorisation of the right holder, to observe, study or test the functioning of the programme in order to determine the ideas and principles which underlie any element of the programme if such person does so while performing any of the acts of loading, displaying, running, transmitting or storing the programme which he or she is entitled to do.

### *Article 184*

#### **Decompilation**

1. The authorisation of the right holder shall not be required where reproduction of the code and translation of its form within the meaning of Article 182 (a) and (b) are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer programme with other programmes, provided that the following conditions are met:
  - (a) these acts are performed by the licensee or by another person having a right to use a copy of a programme, or on their behalf by a person authorised to do so;
  - (b) the information necessary to achieve interoperability has not previously been readily available to the persons referred to in subparagraph (a) of this paragraph; and
  - (c) these acts are confined to the parts of the original programme which are necessary

to achieve interoperability.

2. The provisions of paragraph 1 shall not permit the information obtained through its application:

- (a) to be used for goals other than to achieve the interoperability of the independently created computer programme;
- (b) to be given to others, except when necessary for the interoperability of the independently created computer programme; or
- (c) to be used for the development, production or marketing of a computer programme substantially similar in its expression, or for any other act which infringes copyright.

3. In accordance with the provisions of the Berne Convention, this Article may not be interpreted in such a way as to allow its application to be used in a manner which unreasonably prejudices the right holder's legitimate interests or conflicts with a normal exploitation of the computer programme.

#### *Article 185*

##### **Protection of databases**

1. For the purposes of this Agreement, "database" shall mean a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means.
2. Protection under this Agreement shall not apply to computer programs used in the making or operation of databases accessible by electronic means.

#### *Article 186*

##### **Object of protection**

1. In accordance with Sub-section 1, databases which, by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation shall be protected as such by copyright. No other criteria shall be applied to determine their eligibility for that protection.
2. The copyright protection of databases provided for in Sub-section 1 shall not extend to their contents and shall be without prejudice to any rights subsisting in those contents themselves.

#### *Article 187*

##### **Database authorship**

1. The author of a database shall be the natural person or group of natural persons who created the base or, where the legislation of the Parties so permits, the legal person designated as the right holder by legislation.
2. Where collective works are recognised by the legislation of the Parties, the economic rights shall be owned by the person holding the copyright.

3. In respect of a database created by a group of natural persons jointly, the exclusive rights shall be owned jointly.

#### *Article 188*

##### **Restricted acts relating to databases**

In respect of the expression of a database which is protectable by copyright, the author of the database shall have the exclusive right to carry out or to authorise:

- (a) temporary or permanent reproduction by any means and in any form, in whole or in part;
- (b) translation, adaptation, arrangement and any other alteration;
- (c) any form of distribution to the public of the database or copies thereof;
- (d) any communication, display or performance to the public;
- (e) any reproduction, distribution, communication, display or performance to the public of the results of the acts referred to in subparagraph (b).

#### *Article 189*

##### **Exceptions to restricted acts relating to databases**

1. Performance by the lawful user of a database or a copy thereof of any of the acts listed in Article 188 of this Agreement which is necessary for purposes of access to the contents of the database and normal use of the contents by the lawful user shall not require the authorisation of the author of the database. Where the lawful user is authorised to use only part of the database, this provision shall apply only to that part.

2. The Parties shall have the option of providing for limitations on the rights set out in Article 188 in the following cases:

- (a) in the case of reproduction for private purposes of a non-electronic database;
- (b) where there is use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;
- (c) where there is use for purposes of public security or for the purposes of an administrative or judicial procedure;
- (d) where other exceptions to copyright are traditionally authorised by each Party, without prejudice to subparagraphs (a), (b) and (c).

3. In accordance with the Berne Convention, this Article may not be interpreted in such a way as to allow its application in a manner which unreasonably prejudices the right holder's legitimate interests or conflicts with normal exploitation of the database.

#### *Article 190*

##### **Resale right**

1. The Parties shall provide, for the benefit of the author of an original work of art, a resale right, to be defined as an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.
2. The right referred to in paragraph 1 shall apply to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art.
3. The Parties may provide in accordance with their legislation that the right referred to in paragraph 1 shall not apply to acts of resale where the seller has acquired the work directly from the author less than three years before that resale and where the resale price does not exceed a certain minimum amount.
4. The royalty shall be payable by the seller. The Parties may provide that one of the natural or legal persons referred to in paragraph 2 other than the seller shall alone be liable or shall share liability with the seller for payment of the royalty.

#### *Article 191*

### **Broadcasting of programmes by satellite**

Each Party shall provide the author with an exclusive right to authorise the communication of copyright works to the public by satellite.

#### *Article 192*

### **Cable retransmission**

Each Party shall ensure that when programmes from the other Party are retransmitted by cable in their territory the applicable copyright and related rights are observed and that such retransmission takes place on the basis of individual or collective contractual agreements between copyright owners, holders of related rights and cable operators.

### **Sub-section 2**

### **Trade-Marks**

#### *Article 193*

### **Registration procedure**

1. The EU Party and Ukraine shall provide for a system for the registration of trade-marks in which any refusal by the relevant trade-mark administration to register a trade-mark is duly reasoned. The reasons for the refusal shall be communicated in writing to the applicant, who will have the opportunity to contest such refusal and to appeal a final refusal before judicial authorities. The EU Party and Ukraine shall also introduce the possibility to oppose trade-mark applications. Such opposition proceedings shall be adversarial. The EU Party and Ukraine shall provide a publicly available electronic database of trade-mark applications and trade-mark registrations.

2. The Parties shall provide for grounds for refusal or invalidity of a trade-mark registration. The following shall not be registered or if registered shall be liable to be declared invalid:

- (a) signs which cannot constitute a trade-mark;
- (b) trade-marks which are devoid of any distinctive character;
- (c) trade-marks consisting exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service;
- (d) trade-marks consisting exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade;
- (e) signs which consist exclusively of:
  - (i) the shape that results from the nature of the goods themselves; or
  - (ii) the shape of the goods which is necessary to obtain a technical result; or
  - (iii) the shape which gives substantial value to the goods;
- (f) trade-marks which are contrary to public policy or to accepted principles of morality;
- (g) trade-marks which are of such a nature as to deceive the public, for instance as to the nature, quality or geographical origin of the goods or service;
- (h) trade-marks which have not been authorised by the competent authorities and are to be refused or invalidated pursuant to Article 6 *ter* of the Paris Convention.

3. The Parties shall provide for grounds for refusal or invalidity concerning conflicts with earlier rights. A trade-mark shall not be registered or, if registered, shall be liable to be declared invalid:

- (a) if it is identical to an earlier trade-mark, and the goods or services for which the trade-mark is applied for or is registered are identical to the goods or services for which the earlier trade-mark is protected;
- (b) if because of its identity with, or similarity to, the earlier trade-mark and the identity or similarity of the goods or services covered by the trade-marks, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade-mark.

4. The Parties may also provide for other grounds for refusal or invalidity concerning conflicts with earlier rights.

#### *Article 194*

### **Well-known trade-marks**

The Parties shall cooperate with the aim of making protection of well-known trade-marks, as referred to in Article 6 *bis* of the Paris Convention and in Article 16.2 and 16.3 of the TRIPS Agreement, effective.

#### *Article 195*

##### **Rights conferred by a trade-mark**

The registered trade-mark shall confer on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having his/her consent from using in the course of trade:

- (a) any sign which is identical to the trade-mark in relation to goods or services which are identical with those for which the trade-mark is registered;
- (b) any sign where, because of its identity to, or similarity to, the trade-mark and the identity or similarity of the goods or services covered by the trade-mark and the sign, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association between the sign and the trade-mark.

#### *Article 196*

##### **Exceptions to the rights conferred by a trade-mark**

1. The Parties shall provide for the fair use of descriptive terms, including geographical indications, as a limited exception to the rights conferred by a trade-mark, provided that such limited exceptions take account of the legitimate interests of the owner of the trade-mark and of third parties. Under the same conditions, the Parties may provide for other limited exceptions.

2. A trade-mark shall not entitle the proprietor to prohibit a third party from using, in the course of trade:

- (a) his/her own name or address;
- (b) indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of a service, or other characteristics of goods or services;
- (c) the trade-mark where it is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts, provided he/she uses it in accordance with honest practices in industrial or commercial matters.

3. A trade-mark shall not entitle the proprietor to prohibit a third party from using, in the course of trade, an earlier right which only applies in a particular locality if that right is recognised by the laws of the Parties in question and within the limits of the territory in which it is recognised.

#### *Article 197*

##### **Use of trade-marks**

1. If, within five years of the date of completion of the registration procedure, the proprietor has not put a trade-mark to genuine use in connection with the goods or

services in respect of which it is registered in the relevant territory, or if such use has been suspended during an uninterrupted period of five years, the trade-mark shall be subject to the sanctions provided for in this Sub-section, unless there are proper reasons for non-use.

2. The following shall also constitute use within the meaning of paragraph 1:
  - (a) use of the trade-mark in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered;
  - (b) affixing of the trade-mark to goods or to the packaging thereof solely for export purposes.
3. Use of a trade-mark with the consent of the proprietor or by any person who has authority to use a collective mark or a guarantee or certification mark shall be deemed to constitute use by the proprietor within the meaning of paragraph 1.

#### *Article 198*

#### **Grounds for revocation**

1. The Parties shall provide that a trade-mark shall be liable to revocation if, within a continuous period of five years, it has not been put to genuine use in the relevant territory in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use; however, no person may claim that the proprietor's rights in a trade-mark should be revoked where, during the interval between expiry of the five-year period and filing of the application for revocation, genuine use of the trade-mark has been started or resumed; the commencement or resumption of use within a period of three months preceding the filing of the application for revocation which began at the earliest on expiry of the continuous period of five years of non-use, shall, however, be disregarded where preparations for the commencement or resumption occur only after the proprietor becomes aware that the application for revocation may be filed.
2. A trade-mark shall also be liable to revocation if, after the date on which it was registered:
  - (a) in consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a product or service in respect of which it is registered;
  - (b) in consequence of the use made of it by the proprietor of the trade-mark or with his/her consent in respect of the goods or services for which it is registered, it is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

#### *Article 199*

#### **Partial refusal, revocation or invalidity**

Where grounds for refusal of registration or for revocation or invalidity of a trade-mark exist in respect of only some of the goods or services for which that trade-mark has been applied for or registered, refusal of registration or revocation or invalidity shall cover those goods or services only.

## *Article 200*

### **Term of protection**

The duration of protection available in the EU Party and Ukraine following the date of filing of an application shall amount to at least 10 years. The right holder may have the term of protection renewed for further periods of 10 years.

## **Sub-section 3 Geographical indications**

### *Article 201*

#### **Scope of the Sub-section**

1. This Sub-section applies to the recognition and protection of geographical indications originating in the territories of the Parties.
2. Geographical indications of a Party to be protected by the other Party shall only be subject to this Agreement if covered by the scope of the legislation referred to in Article 202 of this Agreement.

### *Article 202*

#### **Established geographical indications**

1. Having examined the Ukrainian legislation listed in Annex XXII-A Part A to this Agreement, the EU Party concludes that these laws meet the elements laid down in Annex XXII-A Part B to this Agreement.
2. Having examined the EU Party's legislation listed in Annex XXII-A Part A to this Agreement, Ukraine concludes that these laws meet the elements laid down in Annex XXII-A Part B to this Agreement.
3. Ukraine, after having completed an objection procedure in accordance with the criteria set out in Annex XXII-B to this Agreement and after having examined the geographical indications for the agricultural products and foodstuffs of the EU Party listed in Annex XXII-C to this Agreement and the geographical indications for wines, aromatised wines and spirit drinks of the EU Party listed in Annex XXII-D to this Agreement, which have been registered by the EU Party under the legislation referred to in paragraph 2, shall protect those geographical indications according to the level of protection laid down in this Sub-section.
4. The EU Party, after having completed an objection procedure in accordance with the criteria set out in Annex XXII-B to this Agreement and after having examined the geographical indications for the wines, aromatised wines and spirit drinks of Ukraine listed in Annex XXII-D to this Agreement, which have been registered by Ukraine under the legislation referred to in paragraph 1, shall protect those geographical indications according to the level of protection laid down in this Sub-section.

### *Article 203*



### **Addition of new geographical indications**

1 The Parties agree on the possibility of adding new geographical indications to be protected in Annexes XXII-C and XXII-D to this Agreement in accordance with Article 211 (3) of this Agreement after having completed the objection procedure and having examined the geographical indications as referred to in Article 202(3) and (4) of this Agreement to the satisfaction of both Parties.

2. A Party shall not be required to protect as a geographical indication a name that conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead the consumer as to the true origin of the product.

### *Article 204*

#### **Scope of protection of geographical indications**

1. The geographical indications listed in Annexes XXII-C and XXII-D to this Agreement, including those added pursuant to Article 203 of this Agreement, shall be protected against:

- (a) any direct or indirect commercial use of a protected name for comparable products not compliant with the product specification of the protected name, or in so far as such use exploits the reputation of a geographical indication;
- (b) any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated, transcribed, transliterated or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation", "flavour", "like", or similar;
- (c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, in advertising material or documents relating to the product concerned, and on the packing of the product in a container liable to convey a false impression as to its origin;
- (d) any other practice liable to mislead the consumer as to the true origin of the product.

2. Protected geographical indications shall not become generic in the territories of the Parties.

3. If geographical indications are wholly or partially homonymous, protection shall be granted to each indication provided that it has been used in good faith and with due regard for local and traditional usage and the actual risk of confusion. Without prejudice to Article 23 of the TRIPS Agreement, the Parties shall mutually decide the practical conditions of use under which the homonymous geographical indications will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled. A homonymous name which misleads the consumer into believing that products come from another territory shall not be registered even if the name is accurate as far as the actual territory, region or place of origin of the product in question is concerned.

4. Where a Party, in the context of negotiations with a third country, proposes to protect a geographical indication of the third country, and the name is homonymous

with a geographical indication of the other Party the latter shall be informed and be given the opportunity to comment before the name is protected.

5. Nothing in this Agreement shall oblige a Party to protect a geographical indication of the other Party which is not or ceases to be protected in its country of origin. The Parties shall notify each other if a geographical indication ceases to be protected in its country of origin. Such notification shall take place in accordance with Article 211(3) of this Agreement.

6. Nothing in this Agreement shall prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

#### *Article 205*

### **Right of use of geographical indications**

1. The commercial use of a name protected under this Agreement for agricultural products, foodstuffs, wines, aromatised wines or spirit drinks conforming to the corresponding specification is open to any entity.
2. Once a geographical indication is protected under this Agreement, the use of such protected name shall not be subject to any registration of users or further charges.

#### *Article 206*

### **Relationship with trade-marks**

1. The Parties shall refuse to register or shall invalidate a trade-mark that corresponds to any of the situations referred to in Article 204(1) of this Agreement in relation to a protected geographical indication for like products, provided an application to register the trade-mark is submitted after the date of application for registration of the geographical indication in the territory concerned.
2. For geographical indications referred to in Article 202 of this Agreement, the date of application for registration shall be the date of entry into force of this Agreement.
3. For geographical indications referred to in Article 203 of this Agreement, the date of application for registration shall be the date of the transmission of a request to the other Party to protect a geographical indication.
4. The Parties shall have no obligation to protect a geographical indication pursuant to Article 203 of this Agreement where, in the light of a reputed or well-known trade-mark, protection is liable to mislead consumers as to the true identity of the product.
5. Without prejudice to paragraph 4 of this Article, the Parties shall protect geographical indications also where a prior trade-mark exists. Prior trade-mark shall mean a trade-mark, the use of which corresponds to one of the situations referred to in Article 204(1) of this Agreement, which has been applied for, registered or established by use, if that possibility is provided for by the legislation concerned, in the territory of one of the Parties before the date on which the application for protection of the geographical indication is submitted by the other Party under this Agreement. Such trade-mark may continue to be used and renewed notwithstanding

the protection of the geographical indication, provided that no grounds for the trade-mark's invalidity or revocation exist in the legislation on trade-marks of the Parties.

#### *Article 207*

### **Enforcement of protection**

The Parties shall enforce the protection provided for in Articles 204 to 206 of this Agreement by appropriate action by their authorities including at the customs border. They shall also enforce such protection at the request of an interested party.

#### *Article 208*

### **Temporary measures**

1. Products which were produced and labelled in conformity with national law before this Agreement entered into force but which do not comply with the requirements of this Agreement, may continue to be sold until stocks run out.

2. Products which were produced and labelled, in conformity with domestic law, with the geographical indications listed in paragraphs 3 and 4 below after this Agreement entered into force and before the termination of the periods referred to in paragraphs 3 and 4 below, but which do not comply with the requirements of this Agreement, may continue to be sold in the territory of the Party where the product originated until stocks run out.

3. For a transitional period of 10 years from the entry into force of this Agreement, the protection pursuant to this Agreement of the following geographical indications of the EU Party shall not preclude these geographical indications from being used in order to designate and present certain comparable products originating in Ukraine:

- (a) Champagne,
- (b) Cognac,
- (c) Madeira,
- (d) Porto,
- (e) Jerez /Xérès/ Sherry,
- (f) Calvados,
- (g) Grappa,
- (h) Anis Português,
- (i) Armagnac,
- (j) Marsala,
- (k) Malaga,
- (l) Tokaj.

4. For a transitional period of seven years from the entry into force of this Agreement, the protection, pursuant to this Agreement, of the following geographical indications of the EU Party shall not preclude these geographical indications from being used in order to designate and present certain comparable products originating in Ukraine:

- (a) Parmigiano Reggiano,
- (b) Roquefort,
- (c) Feta

#### *Article 209*

##### **General rules**

1. The importation, exportation and commercialisation of any product referred to in Articles 202 and 203 of this Agreement shall be conducted in compliance with the laws and regulations applying in the territory of the Party in which the products are placed on the market.
2. Any matter arising from product specifications of registered geographical indications shall be dealt with in the GI Sub-Committee established pursuant to Article 211 of this Agreement.
3. The registration of geographical indications protected under this Agreement may only be cancelled by the Party in which the product originates.
4. A product specification referred to in this Sub-section shall be that which is approved, including any amendments also approved, by the authorities of the Party in whose territory the product originates.

#### *Article 210*

##### **Cooperation and transparency**

1. The Parties shall, either directly or through the GI Sub-Committee established pursuant to Article 211 of this Agreement, maintain contact on all matters related to the implementation and functioning of this Agreement. In particular, a Party may request from the other Party information relating to product specifications and their modification, and contact points for control provisions.
2. Each Party may make publicly available the product specifications or a summary thereof and contact points for control provisions corresponding to geographical indications of the other Party protected pursuant to this Agreement.

#### *Article 211*

##### **Sub-Committee on Geographical Indications**

1. The Sub-Committee on Geographical Indications (GI Sub-Committee) is hereby established. It shall report on its activities to the Association Committee in its configuration under Article 465(4) of this Agreement. The GI Sub-Committee shall consist of representatives of the EU and Ukraine with the purpose of monitoring the development of this Agreement and of intensifying their co-operation and dialogue on geographical indications.

2. The GI Sub-Committee shall adopt its decisions by consensus. It shall determine its own rules of procedure. It shall meet at the request of either of the Parties, alternatively in the European Union and in Ukraine, at a time and a place and in a manner (which may include by videoconference) mutually determined by the Parties, but no later than 90 days after the request.

3. The GI Sub-Committee shall also see to the proper functioning of this Sub-section and may consider any matter related to its implementation and operation. In particular, it shall be responsible for:

- (a) amending Annex XXII-A Part A to this Agreement, as regards the references to the law applicable in the Parties;
- (b) amending Annex XXII-A Part B to this Agreement, as regards the elements for registration and control of geographical indications;
- (c) amending Annex XXII-B to this Agreement, as regards the criteria to be included in the objection procedure;
- (d) modifying Annexes XXII-C and XXII-D to this Agreement as regards geographical indications;
- (e) exchanging information on legislative and policy developments on geographical indications and any other matter of mutual interest in the area of geographical indications;
- (f) exchanging information on geographical indications for the purpose of considering their protection in accordance with this Agreement.

#### **Sub-section 4 Designs**

##### *Article 212*

#### **Definition**

For the purposes of this Agreement:

- (a) "design" means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation;
- (b) "product" means any industrial or handicraft item, including inter alia parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs;

- (c) "complex product" means a product which is composed of multiple components that can be replaced, permitting disassembly and reassembly of the product.

*Article 213*

**Requirements for protection**

1. The EU Party and Ukraine shall provide for the protection of independently created designs that are new and have individual character.
2. A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and to have individual character:
  - (a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter; and
  - (b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and individual character.
3. A design shall be considered to be new if no identical design has been made available to the public:
  - (a) in the case of an unregistered design, before the date on which the design for which protection is claimed has first been made available to the public;
  - (b) in the case of a registered design, before the date of filing of the application for registration of the design for which protection is claimed, or, if priority is claimed, the date of priority.

Designs shall be deemed to be identical if their features differ only in immaterial details.

4. A design shall be considered to have individual character if the overall impression it produces on an informed user differs from the overall impression produced on such a user by any other design which has been made available to the public:
  - (a) in the case of an unregistered design, before the date on which the design for which protection is claimed has first been made available to the public;
  - (b) in the case of a registered design, before the date of filing of the application for registration of the design for which protection is claimed, or, if priority is claimed, the date of priority.

In assessing individual character, the degree of freedom of the designer in developing the design shall be taken into consideration.

5. This protection shall be provided by registration, and shall confer exclusive rights upon their holders in accordance with the provisions of this Article. Unregistered designs made available to the public shall confer the same exclusive rights, but only if the contested use results from copying the protected design.
6. A design shall be deemed to have been made available to the public if it has been published following registration or otherwise, or exhibited, used in trade or otherwise

disclosed, except where these events could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the territory in which protection is claimed, before the date of filing of the application for registration or, if priority is claimed, the date of priority. In the case of unregistered design protection, a design shall be deemed to have been made available to the public if it has been published, exhibited, used in trade or otherwise disclosed in such way that, in the normal course of business, these events could reasonably have become known to the circles specialised in the sector concerned, operating within the territory in which protection is claimed.

A design shall not, however, be deemed to have been made available to the public for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality.

7. Disclosure shall not be taken into consideration for the purpose of applying paragraphs 3 and 4 of this Article if a design for which protection is claimed under a registered design right has been made available to the public:

- (a) by the designer, his/her successor in title, or a third person as a result of information provided or action taken by the designer, or his/her successor in title; and
- (b) during the twelve-month period preceding the date of filing of the application or, if priority is claimed, the date of priority.

8. Paragraph 7 of this Article shall also apply if a design has been made available to the public as a consequence of an abuse in relation to the designer or his/her successor in title.

#### *Article 214*

### **Term of protection**

1. The duration of protection available in the EU Party and Ukraine following registration shall amount to at least five years. The right holder may have the term of protection renewed for one or more periods of five years each, up to a total term of 25 years from the date of filing.

2. The duration of protection available in the EU Party and Ukraine for unregistered designs shall amount to at least three years as from the date on which the design was made available to the public in the territory of one of the Parties.

#### *Article 215*

### **Invalidity or refusal of registration**

1. The EU Party and Ukraine may only provide that a design is refused for registration or declared invalid after registration on substantive grounds in the following cases:

- (a) if the design does not correspond to the definition under Article 212(a) of this Agreement;

- (b) if it does not fulfil the requirements of Article 213 and Article 217 (paragraphs 3, 4 and 5) of this Agreement;
- (c) if, by virtue of a court decision, the right holder is not entitled to the design;
- (d) if the design is in conflict with a prior design which has been made available to the public after the date of filing of the application or, if priority is claimed, the date of priority of the design, and which is protected from a date prior to the said date by a registered design or an application for a design;
- (e) if a distinctive sign is used in a subsequent design, and the law of the Party concerned governing that sign confers on the right holder of the sign the right to prohibit such use;
- (f) if the design constitutes an unauthorised use of a work protected under the copyright law of the Party concerned;
- (g) if the design constitutes an improper use of any of the items listed in Article 6 *ter* of the Paris Convention or of badges, emblems and escutcheons other than those covered by the said Article 6 *ter* and which are of particular public interest in the territory of a Party.

This paragraph is without prejudice to the right of the Parties to set formal requirements for design applications.

2. A Party may provide, as an alternative to invalidity, that a design, which may be invalidated for the reasons set out in paragraph 1 of this Article, may be limited in its use.

#### *Article 216*

#### **Rights conferred**

The holder of a protected design shall at least have the exclusive right to use it and to prevent third parties not having his/her consent from using it, in particular to make, offer, put on the market, import, export or use a product in which the design is incorporated or to which it is applied, or stocking such a product for those purposes.

#### *Article 217*

#### **Exceptions**

1. The rights conferred by a design right upon registration shall not be exercised in respect of:

- (a) acts done privately and for non-commercial purposes;
- (b) acts done for experimental purposes;
- (c) acts of reproduction for the purposes of making citations or of teaching, provided that such acts are compatible with fair trade practice and do not unduly prejudice the normal exploitation of the design, and that mention is made of the source.



2. In addition, the rights conferred by a design right upon registration shall not be exercised in respect of:
- (a) the equipment on ships and aircraft registered in another country when these temporarily enter the territory of the Party concerned;
  - (b) the importation by the Party concerned of spare parts and accessories for the purpose of repairing such craft;
  - (c) the execution of repairs on such craft.
3. A design right shall not subsist in features of appearance of a product which are solely dictated by its technical function.
4. A design right shall not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function.
5. A design right shall not subsist in a design which is contrary to public policy or to accepted principles of morality.

#### *Article 218*

### **Relationship to copyright**

A design protected by a design right registered in a Party in accordance with this Sub-section shall also be eligible for protection under the law of copyright of that Party as from the date on which the design was created or fixed in any form. The extent to which, and the conditions under which, such protection is conferred, including the level of originality required, shall be determined by each Party.

### **Sub-section 5**

#### **Patents**

#### *Article 219*

### **Patents and public health**

1. The Parties recognise the importance of the Declaration on the TRIPS Agreement and Public Health, adopted on 14 November 2001 (hereinafter referred to as the "Doha Declaration") by the Ministerial Conference of the WTO. In interpreting and implementing the rights and obligations under this Chapter, the Parties shall ensure consistency with the Doha Declaration.
2. The Parties shall contribute to the implementation of, and shall respect, the Decision of the WTO General Council of 30 August 2003 on paragraph 6 of the Doha Declaration.

## *Article 220*

### **Supplementary protection certificate**

1. The Parties recognise that medicinal and plant protection products protected by a patent in their respective territory may be subject to an administrative authorisation procedure before being put on their market. They recognise that the period that elapses between the filing of the application for a patent and the first authorisation to place the product on their respective market, as defined for that purpose by the relevant legislation, may shorten the period of effective protection under the patent.
2. The Parties shall provide for a further period of protection for a medicinal or plant protection product which is protected by a patent and which has been subject to an administrative authorisation procedure, that period being equal to the period referred to in paragraph 1, reduced by a period of five years.
3. In the case of medicinal products for which paediatric studies have been carried out, and the results of those studies are reflected in the product information, the Parties shall provide for a further six-month extension of the period of protection referred to in paragraph 2 of this Article.

## *Article 221*

### **Protection of biotechnological inventions**

1. Parties shall protect biotechnological inventions under national patent law. They shall, if necessary, adjust their patent law to take account of the provisions of this Agreement. This Article shall be without prejudice to the obligations of the Parties pursuant to international agreements, and in particular the TRIPS Agreement and the Convention on Biological Diversity of 1992 (hereinafter referred to as the "CBD").
2. For the purposes of this Sub-section:
  - (a) "biological material" means any material containing genetic information and capable of reproducing itself or being reproduced in a biological system;
  - (b) "microbiological process" means any process involving or performed upon or resulting in microbiological material.
3. For the purposes of this Agreement: inventions which are new, which involve an inventive step and which are susceptible of industrial application shall be patentable even if they concern a product consisting of or containing biological material or a process by means of which biological material is produced, processed or used.

Biological material which is isolated from its natural environment or produced by means of a technical process may be the subject of an invention even if it previously occurred in nature.

An element isolated from the human body or otherwise produced by means of a technical process, including the sequence or partial sequence of a gene, may constitute a patentable invention, even if the structure of that element is identical to that of a natural element. The industrial application of a sequence or a partial sequence of a gene must be disclosed in the patent application.

4. The following shall not be patentable:

- (a) plant and animal varieties;
- (b) essentially biological processes for the production of plants or animals;
- (c) the human body, at the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene.

Inventions which concern plants or animals shall be patentable if the technical feasibility of the invention is not confined to a particular plant or animal variety. Subparagraph (b) of this paragraph shall be without prejudice to the patentability of inventions which concern a microbiological or other technical process or a product obtained by means of such a process.

5. Inventions shall be considered unpatentable where their commercial exploitation would be contrary to public policy or public morality; however, exploitation shall not be thus deemed contrary merely because it is prohibited by law or regulation. The following, in particular, shall be considered unpatentable:

- (a) processes for cloning human beings;
- (b) processes for modifying the germ line genetic identity of human beings;
- (c) uses of human embryos for industrial or commercial purposes;
- (d) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes.

6. The protection conferred by a patent on a biological material possessing specific characteristics as a result of an invention shall extend to any biological material derived from that biological material through propagation or multiplication in an identical or divergent form and possessing those same characteristics.

7. The protection conferred by a patent on a process that enables a biological material possessing specific characteristics to be produced as a result of an invention shall extend to biological material directly obtained through that process and to any other biological material derived from the directly obtained biological material through propagation or multiplication in an identical or divergent form and possessing those same characteristics.

8. The protection conferred by a patent on a product containing or consisting of genetic information shall extend to all material, save as provided in paragraph 4(c) of this Article, in which the product is incorporated and in which the genetic information is contained and performs its function.

9. The protection referred to in paragraphs 7 and 8 of this Article shall not extend to biological material obtained from the propagation or multiplication of biological material placed on the market in the territory of the Parties by the holder of the patent or with his/her consent, where the multiplication or propagation necessarily results

from the application for which the biological material was marketed, provided that the material obtained is not subsequently used for other propagation or multiplication.

10. By way of derogation from paragraphs 7 and 8 of this Article, the sale or any other form of commercialisation of plant propagating material to a farmer by the holder of the patent or with his/her consent for agricultural use implies authorisation for the farmer to use the product of his/her harvest for propagation or multiplication by him/her on his/her own farm. The extent and conditions of this derogation shall correspond to the conditions provided for in the Parties' national laws, regulations and practices concerning plant variety rights.

By way of derogation from paragraphs 7 and 8 of this Article, the sale or any other form of commercialisation of breeding stock or other animal reproductive material to a farmer by the holder of the patent or with his/her consent implies authorisation for the farmer to use the protected livestock for an agricultural purpose. This includes making the animal or other animal reproductive material available for the purposes of pursuing agricultural activity but not sale within the framework or for the purpose of a commercial reproduction activity. The extent and the conditions of the derogation provided for above shall be determined by national laws, regulations and practices.

11. The Parties shall provide for compulsory cross-licensing in the following cases:

- (a) where a breeder cannot acquire or exploit a plant variety right without infringing a prior patent, he/she may apply for a compulsory licence for non-exclusive use of the invention protected by the patent inasmuch as the licence is necessary for the exploitation of the plant variety to be protected, subject to payment of an appropriate royalty. The Parties shall provide that, where such a licence is granted, the holder of the patent will be entitled to a cross-licence on reasonable terms to use the protected variety;
- (b) where the holder of a patent concerning a biotechnological invention cannot exploit it without infringing a prior plant variety right, he/she may apply for a compulsory licence for non-exclusive use of the plant variety protected by that right, subject to payment of an appropriate royalty. The Parties shall provide that, where such a licence is granted, the holder of the variety right will be entitled to a cross-licence on reasonable terms to use the protected invention.

12. Applicants for the licences referred to in paragraph 11 of this Article must demonstrate that:

- (a) they have applied unsuccessfully to the holder of the patent or of the plant variety right to obtain a contractual licence;
- (b) the plant variety or the invention constitutes significant technical progress of considerable economic interest compared with the invention claimed in the patent or the protected plant variety.

#### *Article 222*

### **Protection of data submitted to obtain an authorisation to put a medicinal product on the market**

1. The Parties shall implement a comprehensive system to guarantee the confidentiality, non-disclosure and non-reliance of data submitted for the purpose of obtaining an authorisation to put a medicinal product on the market.
2. For that purpose, when a Party requires the submission of test data or studies concerning the safety and efficacy of a medicinal product prior to granting approval for the marketing of such product, the Party shall not, for a period of at least five years from the date of the first approval in that Party, permit other applicants to market the same or a similar product, on the basis of the marketing approval granted to the applicant which had provided the test data or studies, unless the applicant which had provided the test data or studies has given consent. During such period, the test data or studies submitted for the first approval will not be used for the benefit of any subsequent applicant aiming to obtain a marketing approval for a medicinal product, except when the consent of the first applicant is given.
3. Ukraine shall undertake to align its legislation concerning data protection for medicinal products with that of the EU at a date to be decided by the Trade Committee.

#### *Article 223*

#### **Data protection on plant protection products**

1. The Parties shall determine safety and efficacy requirements before authorising the placing on the market of plant protection products.
2. The Parties shall recognise a temporary right to the owner of a test or study report submitted for the first time to achieve a marketing authorisation for a plant protection product. During such period, the test or study report will not be used for the benefit of any other person aiming to obtain a marketing authorisation for a plant protection product, except when the explicit consent of the first owner is given. This right will be hereinafter referred to as "data protection".
3. The Parties shall determine the conditions to be fulfilled by the test or study report.
4. The period of data protection should be at least 10 years starting from the date of the first authorisation in the Party concerned. The Parties may decide to provide an extension of the period of protection for low-risk plant protection products. In such a situation, the period can be extended to 13 years.
5. The Parties may decide that those periods shall be extended for each extension of authorisation for minor uses <sup>(36)</sup>. In such a situation, the total period of data protection may in no case exceed 13 years or, for low-risk plant protection products, 15 years.
6. A test or study shall also be protected if it was necessary for the renewal or review of an authorisation. In those cases, the period for data protection shall be 30 months.
7. Rules to avoid duplicative testing on vertebrate animals will be laid down by the Parties. Any applicant intending to perform tests and studies involving vertebrate animals shall take the necessary measures to verify that those tests and studies have not already been performed or initiated.

8. A new applicant and the holder or holders of the relevant authorisations shall make every effort to ensure that they share tests and studies involving vertebrate animals. The costs of sharing the test and study reports shall be determined in a fair, transparent and non-discriminatory way. A new applicant is only required to share in the costs of information he/she is required to submit to meet the authorisation requirements.

9. Where the new applicant and the holder or holders of the relevant authorisations of plant protection products cannot reach agreement on the sharing of test and study reports involving vertebrate animals, the new applicant shall inform the Party.

10. Failure to reach agreement shall not prevent the Party concerned from using the test and study reports involving vertebrate animals for the purpose of the application of the new applicant.

11. The holder or holders of the relevant authorisation shall have a claim on the new applicant for a fair share of the costs incurred by him/her. The Party concerned may direct the parties involved to resolve the matter by formal and binding arbitration administered under national law.

## **Sub-section 6** **Topographies of semiconductor products**

### *Article 224*

#### **Definition**

For the purposes of this Sub-section:

(a) "semiconductor product" shall mean the final or an intermediate form of any product:

consisting of a body of material which includes a layer of semiconducting material; and having one or more other layers composed of conducting, insulating or semiconducting material, the layers being arranged in accordance with a predetermined three-dimensional pattern; and intended to perform, exclusively or together with other functions, an electronic function;

(b) the "topography" of a semiconductor product shall mean a series of related images, however fixed or encoded;

representing the three-dimensional pattern of the layers of which a semiconductor product is composed; and in which series, each image has the pattern or part of the pattern of a surface of the semiconductor product at any stage of its manufacture;

(c) "commercial exploitation" means the sale, rental, leasing or any other method of commercial distribution, or an offer for these purposes. However, for the purposes of Article 227 of this Agreement, commercial exploitation shall not include exploitation under conditions of confidentiality to the extent that no further distribution to third parties occurs.

### *Article 225*

## **Requirements for protection**

1. The Parties shall protect the topographies of semiconductor products by adopting legislative provisions conferring exclusive rights in accordance with the provisions of this Article.
2. The Parties shall provide for the protection of the topography of a semiconductor in so far as it satisfies the conditions that it is the result of its creator's own intellectual effort and is not commonplace in the semiconductor industry. Where the topography of a semiconductor product consists of elements that are commonplace in the semiconductor industry, it shall be protected only to the extent that the combination of such elements, taken as a whole, fulfils the abovementioned conditions.

### *Article 226*

#### **Exclusive rights**

1. The exclusive rights referred to in Article 225 (1) of this Agreement shall include the right to authorise or prohibit any of the following acts:
  - (a) reproduction of a topography in so far as it is protected under Article 225 (2) of this Agreement;
  - (b) commercial exploitation or the importation for that purpose of a topography or of a semiconductor product manufactured by using the topography.
2. The exclusive rights referred to in paragraph 1 (a) of this Article shall not apply to reproduction for the purpose of analysing, evaluating or teaching the concepts, processes, systems or techniques embodied in the topography or the topography itself.
3. The exclusive rights referred to in paragraph 1 of this Article shall not extend to any such act in relation to a topography meeting the requirements of Article 225(2) of this Agreement and created on the basis of an analysis and evaluation of another topography, carried out in conformity with paragraph 2 of this Article.
4. The exclusive rights to authorise or prohibit the acts specified in paragraph 1 (b) of this Article shall not apply to any such act committed after the topography or the semiconductor product has been lawfully put on the market.

### *Article 227*

#### **Term of protection**

The exclusive rights shall amount to at least 10 years from when the topography is first commercially exploited anywhere in the world or, where registration is a condition for the coming into existence or continuing application of the exclusive rights, 10 years from the earlier of the following dates:

- (a) the end of the calendar year in which the topography is first commercially exploited anywhere in the world;
- (b) the end of the calendar year in which the application for registration has been filed in due form.

#### **Sub-section 7**

## **Other provisions**

### *Article 228*

#### **Plant varieties**

The Parties shall co-operate to promote and reinforce the protection of plant varieties rights in accordance with the International Convention for the Protection of New Varieties of Plants of 1961 as revised in Geneva on 10 November 1972, 23 October 1978 and 19 March 1991, including the optional exception to the breeder's right as referred to in Article 15.2 of the said Convention.

### *Article 229*

#### **Genetic resources, traditional knowledge and folklore**

1. Subject to their domestic legislation, the Parties shall respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity, and promote their wider application with the involvement and approval of the holders of such knowledge, innovations and practices and encourage equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices.
2. The Parties recognise the importance of taking appropriate measures, subject to national legislation, to preserve traditional knowledge and agree to continue working towards the development of internationally agreed *sui generis* models for the legal protection of traditional knowledge.
3. The Parties agree that the intellectual property provisions of this Sub-section and the CBD shall be implemented in a mutually supportive way.
4. The Parties agree to regularly exchange views and information on relevant multilateral discussions.

## **Section 3**

### **Enforcement of intellectual property rights**

#### *Article 230*

#### **General obligations**

1. Both Parties reaffirm their commitments under the TRIPS Agreement and in particular its Part III, and shall provide for the following complementary measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights <sup>(37)</sup>. These measures, procedures and remedies shall be fair and equitable, and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.



2. These measures and remedies shall also be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

#### *Article 231*

### **Entitled applicants**

1. The Parties shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this Section and in Part III of the TRIPS Agreement:

- (a) the holders of intellectual property rights in accordance with the provisions of the applicable law;
- (b) all other persons authorised to use those rights, in particular licensees, in so far as permitted by and in accordance with the provisions of the applicable law;
- (c) professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law.

2. The Parties may recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this Section and in Part III of the TRIPS Agreement, intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law.

#### **Sub-section 1**

### **Civil measures, procedures and remedies**

#### *Article 232*

### **Presumption of authorship or ownership**

The Parties shall recognise that for the purposes of applying the measures, procedures and remedies provided for in this Agreement:

- (a) for the author of a literary or artistic work, in the absence of proof to the contrary, to be regarded as such, and consequently to be entitled to institute infringement proceedings, it shall be sufficient for his/her name to appear on the work in the usual manner;
- (b) the provision under point (a) of this Article shall apply *mutatis mutandis* to the holders of rights related to copyright with regard to their protected subject matter.

#### *Article 233*

### **Evidence**

1. The judicial authorities of the Parties shall have the authority, where a party has presented reasonably available evidence sufficient to support its claims and has in

substantiating its claims, specified evidence which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject to conditions which ensure the protection of confidential information.

2. Under the same conditions, the Parties shall take such measures as are necessary, in the case of an infringement of an intellectual property right committed on a commercial scale, to enable the competent judicial authorities to order, where appropriate and following an application, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

#### *Article 234*

### **Measures for preserving evidence**

1. The Parties shall ensure that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, on application by a party who has presented reasonably available evidence to support the claim that his/her intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information. Such measures may include the detailed description, with or without the taking of samples, or the physical seizure of the alleged infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto. Those measures shall be taken, if necessary without the other party being heard, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed.

2. The Parties shall ensure that the measures to preserve evidence are revoked or otherwise cease to have effect, upon request of the defendant, without prejudice to the damages which may be claimed, if the applicant does not institute, within a reasonable period, proceedings leading to a decision on the merits before the competent judicial authority.

#### *Article 235*

### **Right to information**

1. The Parties shall ensure that, in the context of proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order that information on the origin and distribution networks of the goods or services which infringe an intellectual property right be provided by the infringer and/or any other person who:

- (a) was found in possession of the infringing goods on a commercial scale;
- (b) was found to be using the infringing services on a commercial scale;
- (c) was found to be providing on a commercial scale services used in infringing

activities;

or

(d) was indicated by the person referred to in subparagraphs (a), (b) or (c) of this paragraph as being involved in the production, manufacture or distribution of the goods or the provision of the services.

2. The information referred to in paragraph 1 of this Article shall, as appropriate, comprise:

(a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers;

(b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

3. Paragraphs 1 and 2 of this Article shall apply without prejudice to other statutory provisions which:

(a) grant the right holder rights to receive fuller information;

(b) govern the use in civil or criminal proceedings of the information communicated pursuant to this Article;

(c) govern responsibility for misuse of the right of information;

(d) afford an opportunity for refusing to provide information which would force a person referred to in paragraph 1 of this Article to admit to his/her own participation or that of his/her close relatives in an infringement of an intellectual property right, or

(e) govern the protection of confidentiality of information sources or the processing of personal data.

### *Article 236*

#### **Provisional and precautionary measures**

1. The Parties shall ensure that the judicial authorities may, at the request of the applicant issue an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis, and subject, where appropriate, to a recurring penalty payment where provided for by domestic law, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder. An interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right.

2. An interlocutory injunction may also be issued to order the seizure or delivery up of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.
3. In the case of an infringement committed on a commercial scale, the Parties shall ensure that, if the applicant demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets. To that end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.
4. The Parties shall ensure that the provisional measures referred to in paragraphs 1, 2 and 3 of this Article may, in appropriate cases, be taken without the defendant having been heard, in particular where any delay would cause irreparable harm to the right holder. In that event, the Parties shall be so informed without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable time after notification of the measures, whether those measures shall be modified, revoked or confirmed.
5. The Parties shall ensure that the provisional measures referred to in paragraphs 1, 2 and 3 of this Article are revoked or otherwise cease to have effect, upon request of the defendant, if the applicant does not institute, within a reasonable period, proceedings leading to a decision on the merits of the case before the competent judicial authority.
6. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by those measures.

#### *Article 237*

#### **Corrective measures**

1. The Parties shall ensure that the competent judicial authorities may order, at the request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the recall from the channels of commerce, the definitive removal from the channels of commerce or the destruction of goods that they have found to be infringing an intellectual property right. If appropriate, the competent judicial authorities may also order destruction of materials and implements principally used in the creation or manufacture of those goods.

2. The judicial authorities shall order that those measures shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

#### *Article 238*

#### **Injunctions**

The Parties shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement. Where provided for by domestic law, non-compliance with an injunction shall, where appropriate, be subject to a recurring penalty payment, with a view to ensuring compliance. The Parties shall also ensure that right holders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right.

#### *Article 239*

#### **Alternative measures**

The Parties may provide that, in appropriate cases and at the request of the person liable to be subject to the measures provided for in Article 237 and/or Article 238 of this Agreement, the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in Article 237 and/or Article 238 of this Agreement if that person acted unintentionally and without negligence, if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

#### *Article 240*

#### **Damages**

1. The Parties shall ensure that when the judicial authorities set damages:
  - (a) they shall take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement; or
  - (b) as an alternative to subparagraph (a) of this paragraph, they may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.
2. Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, the Parties may lay down that the judicial authorities may order in favour of the injured party the recovery of profits or the payment of damages which may be pre-established.

#### *Article 241*

## **Legal costs**

The Parties shall ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall as a general rule be borne by the unsuccessful party, unless this would be contrary to the principle of equity.

### *Article 242*

## **Publication of judicial decisions**

The Parties shall ensure that, in legal proceedings instituted for infringement of an intellectual property right, the judicial authorities may order, at the request of the applicant and at the expense of the infringer, appropriate measures for disseminating the information concerning the decision, including displaying the decision and publishing it in full or in part. The Parties may provide for other additional publicity measures which are appropriate to the particular circumstances, including prominent advertising.

### *Article 243*

## **Administrative procedures**

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in the relevant provisions of this Sub-section.

## **Sub-section 2**

### **Liability of intermediary service providers**

### *Article 244*

## **Use of intermediaries' services**

Both Parties recognise that the services of intermediaries may be used by third parties for infringement-related activities. To ensure the free movement of information services and at the same time enforce intellectual property rights in the digital environment, each Party shall provide for the measures set out in this Sub-section in respect of intermediary service providers. This Sub-section only applies to liability that could result from infringements in the field of intellectual property rights, in particular copyright <sup>(38)</sup>.

### *Article 245*

## **Liability of intermediary service providers: "Mere conduit"**

1. Where an information society service that is provided consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, the Parties shall ensure that the service provider is not liable for the information transmitted, on condition that the provider:

- (a) does not initiate the transmission;

- (b) does not select the receiver of the transmission; and
  - (c) does not select or modify the information contained in the transmission.
2. The acts of transmission and of provision of access referred to in paragraph 1 of this Article include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for such transmission.
- 3 This Article shall not affect the possibility for a court or administrative authority, in accordance with the Parties legal systems, to require the service provider to terminate or prevent an infringement.

#### *Article 246*

##### **Liability of intermediary service providers: "Caching"**

1. Where an information society service that is provided consists of the transmission in a communication network of information provided by a recipient of the service, the Parties shall ensure that the service provider is not liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service at their request, on condition that:
- (a) the provider does not modify the information;
  - (b) the provider complies with conditions on access to the information;
  - (c) the provider complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
  - (d) the provider does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and
  - (e) the provider acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.
2. This Article shall not affect the possibility for a court or administrative authority, in accordance with Parties' legal systems, of requiring the service provider to terminate or prevent an infringement.

#### *Article 247*

##### **Liability of intermediary service providers: "Hosting"**

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, the Parties shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service, on condition that:

- (a) the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or
  - (b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.
2. Paragraph 1 of this Article shall not apply when the recipient of the service is acting under the authority or the control of the provider.
  3. This Article shall not affect the possibility for a court or administrative authority, in accordance with the Parties' legal systems, to require the service provider to terminate or prevent an infringement, nor does it affect the possibility of the Parties establishing procedures governing the removal or disablement of access to information.

#### *Article 248*

##### **No general obligation to monitor**

1. The Parties shall not impose, on providers of services covered by Articles 245, 246 and 247 of this Agreement, a general obligation to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.
2. The Parties may establish obligations for information society service providers promptly to inform the competent public authorities of alleged illegal activities undertaken or information provided by recipients of their service or obligations to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements.

#### *Article 249*

##### **Transitional period**

Ukraine shall fully implement the obligations of this Sub-section within 18 months of entry into force of this Agreement.

##### **Sub-section 3 Other provisions**

#### *Article 250*

##### **Border measures**

1. For the purposes of this provision, "goods infringing an intellectual property right" means:
  - (a) "counterfeit goods", namely:
    - (i) goods, including packaging, bearing without authorisation a trade-mark which is identical to a trade-mark duly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trade-mark, and which



thereby infringes the trade-mark holder's rights;

- (ii) any trade-mark symbol (logo, label, sticker, brochure, instructions for use or guarantee document), even if presented separately, on the same conditions as apply to the goods referred to in subparagraph (i);
  - (iii) packaging materials bearing the trade-marks of counterfeit goods, presented separately, on the same conditions as apply to the goods referred to in subparagraph (i);
- (b) "pirated goods", namely goods which are or contain copies made without the consent of the holder, or of a person duly authorised by the holder in the country of production, of a copyright or related right or design right, regardless of whether it is registered in domestic law;
- (c) goods which, according to the law of the Party in which the application for customs action is made, infringe:
- (i) a patent;
  - (ii) a supplementary protection certificate
  - (iii) a plant variety right;
  - (iv) a design;
  - (v) a geographical indication.

2. The Parties shall, unless otherwise provided for in this Sub-section, adopt procedures <sup>(39)</sup> to enable a right holder who has valid grounds for suspecting that the importation, exportation, re-exportation, entry into or exit from the customs territory, placement under a suspensive procedure or placement in a free zone or a free warehouse of goods infringing an intellectual property right may take place, to lodge an application in writing with the competent authorities, administrative or judicial, for suspension by the customs authorities of the release into free circulation or the detention of such goods.

3. The Parties shall provide that when the customs authorities, in the course of their actions and before an application has been lodged by a right holder or granted, have sufficient grounds for suspecting that goods infringe an intellectual property right, they may suspend the release of the goods or detain them in order to enable the right holder to submit an application for action in accordance with the previous paragraph.

4. Any rights or duties established in Section 4 of Part III of the TRIPS Agreement concerning the importer shall be also applicable to the exporter or to the holder of the goods.

5. The Parties shall cooperate with a view to the provision of technical assistance and capacity building for the implementation of this Article.

6. Ukraine shall fully implement the obligation of this Article within three years of entry into force of this Agreement.

## **Codes of conduct and forensic cooperation**

The Parties shall encourage:

- (a) the development by trade or professional associations or organisations of codes of conduct aimed at contributing towards the enforcement of intellectual property rights;
- (b) the submission to the competent authorities of the Parties of draft codes of conduct and of any evaluations of the application of these codes of conduct.

### *Article 252*

#### **Cooperation**

1. The Parties agree to cooperate with a view to supporting implementation of the commitments and obligations undertaken under this Chapter.

2. Subject to the provisions of Title V (Economic and Sector Co-operation) and in line with the provisions of Title VI (Financial Cooperation, with Anti-Fraud Provisions) of this Agreement, areas of co-operation include, but are not limited to, the following activities:

- (a) exchange of information on the legal framework concerning intellectual property rights and relevant rules of protection and enforcement; exchange of experiences in the EU Party and Ukraine concerning legislative progress;
- (b) exchange of experiences in the EU Party and Ukraine concerning enforcement of intellectual property rights;
- (c) exchange of experiences in the EU Party and Ukraine concerning central and sub-central enforcement by customs, police, administrative and judiciary bodies; co-ordination to prevent exports of counterfeit goods, including with other countries;
- (d) capacity-building; exchange and training of personnel;
- (e) promotion and dissemination of information on intellectual property rights in, *inter alia*, business circles and civil society; public awareness of consumers and right holders;
- (f) enhancement of institutional co-operation, for example between intellectual property offices;
- (g) actively promoting awareness and education of the general public about intellectual property rights policies: formulating effective strategies to identify key audiences and creating communication programmes to increase consumer and media awareness of the impact of intellectual property violations, including the risk to health and safety and the connection with organised crime.

3. Without prejudice and as a complement to paragraphs 1 and 2 of this Article, the Parties agree to maintain an effective dialogue on intellectual property issues ("IP Dialogue"), which will report to the Trade Committee, to address topics relevant to the protection and enforcement of intellectual property rights covered by this Chapter, and also any other relevant issue.

**CHAPTER 10**  
**Competition**  
**Section 1**  
**Antitrust and mergers**

*Article 253*

**Definitions**

For the purposes of this Section:

1. "competition authority" means:
  - (a) for the EU Party, the European Commission; and
  - (b) for Ukraine the Anti-Monopoly Committee of Ukraine.
2. "competition laws" means:
  - (a) for the EU Party, Articles 101, 102 and 106 of the Treaty on the Functioning of the European Union, Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EU Merger Regulation), and their implementing regulations and amendments;
  - (b) for Ukraine, Law No 2210-III of 11 January 2001 (with amendments) and its implementing regulations and amendments. In the event of conflict between a provision of Law No 2210-III and another substantive provision on competition Ukraine shall ensure that the former shall prevail to the extent of the conflict; as well as
  - (c) any changes that the abovementioned instruments may undergo after the entry into force of this Agreement.
3. Terms used in this Section are further explained in Annex XXIII.

*Article 254*

**Principles**

The Parties recognise the importance of free and undistorted competition in their trade relations. The Parties acknowledge that anti-competitive business practices and transactions have the potential to distort the proper functioning of markets and generally undermine the benefits of trade liberalisation. They therefore agree that the following practices and transactions, as specified in their respective competition laws, are inconsistent with this Agreement, in so far as they may affect trade between the Parties:

- (a) agreements, concerted practices and decisions by associations of undertakings, which have the object or effect of impeding, restricting, distorting or substantially lessening competition in the territory of either Party;

- (b) the abuse by one or more undertakings of a dominant position in the territory of either Party; or;
- (c) concentrations between undertakings, which result in monopolization or a substantial restriction of competition in the market in the territory of either Party.

#### *Article 255*

#### **Implementation**

1. The EU Party and Ukraine shall maintain competition laws which effectively address the practices and transactions referred to in Article 254(a) (b) and (c).
2. The Parties shall maintain authorities responsible, and appropriately equipped, for the effective enforcement of the competition laws set out in paragraph 1 of this Article.
3. The Parties recognise the importance of applying their respective competition laws in a transparent, timely and non-discriminatory manner, respecting the principles of procedural fairness and rights of defence. Each Party in particular shall ensure that:
  - (a) before a competition authority of one of the Parties imposes a sanction or remedy against any natural or legal person for violating its competition law, it affords the person the right to be heard and to present evidence within a reasonable time to be defined in the respective competition laws of the Parties after it has communicated to the natural or legal person concerned its provisional conclusions as to the existence of the violation; and
  - (b) a court or other independent tribunal established under that Party's laws imposes or, at the person's request, reviews any such sanction or remedy.
4. Upon request of a Party, each Party shall make available to the other Party public information concerning enforcement activities of its competition laws and legislation related to the obligations covered by this Section.
5. The competition authority shall adopt and publish a document explaining the principles to be used in the setting of any pecuniary sanctions imposed for infringements of the competition laws.
6. The competition authority shall adopt and publish a document explaining the principles used in the assessment of horizontal mergers.

#### *Article 256*

#### **Approximation of law and enforcement practice**

Ukraine shall approximate its competition laws and enforcement practices to the part of the EU *acquis* as set out below:

1. Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

Timetable: Article 30 of the Regulation shall be implemented within three years of the entry into force of this Agreement.

2. Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EU Merger Regulation).

Timetable: Articles 1 and Article 5(1) and (2) of the Regulation shall be implemented within three years of the entry into force of this Agreement.

Article 20 shall be implemented within three years of the entry into force of this Agreement

3. Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices.

Timetable: Articles 1, 2, 3, 4, 6, 7 and 8 of the Regulation shall be implemented within three years of the entry into force of this Agreement.

4. Commission Regulation (EC) No 772/2004 of 27 April 2004 on the application of Article 81 (3) of the Treaty to categories of technology transfer agreements.

Timetable: Articles 1, 2, 3, 4, 5, 6, 7 and 8 of the Regulation shall be implemented within three years of the entry into force of this Agreement.

#### *Article 257*

##### **Public enterprises and enterprises entrusted with special or exclusive rights**

1. With respect to public enterprises and enterprises entrusted with special or exclusive rights:

(a) neither Party shall enact or maintain in force any measure contrary to the principles contained in Articles 254 and Article 258(1) of this Agreement; and

(b) the Parties shall ensure that such enterprises are subject to the competition laws referred to in Article 253(2) of this Agreement

insofar as the application of the above-mentioned competition laws and principles does not obstruct the performance, in law or in fact, of the particular tasks assigned to the enterprises in question.

2. Nothing in the previous paragraph shall be construed as preventing a Party from establishing or maintaining a public enterprise, entrusting enterprises with special or exclusive rights or maintaining such rights.

#### *Article 258*

##### **State monopolies**

1. Each Party shall adjust state monopolies of a commercial character within five years of the entry into force of this Agreement, so as to ensure that no discriminatory measures regarding the conditions under which goods are procured and marketed exist between natural and legal persons of the Parties.

2. Nothing in this Article shall prejudice the rights and obligations of the Parties under Chapter 8 (Public Procurement) of Title IV of this Agreement.

3. Nothing in paragraph 1 shall be construed as preventing a Party from establishing or maintaining a state monopoly.

#### *Article 259*

### **Exchange of information and enforcement cooperation**

1. The Parties recognise the importance of co-operation and co-ordination between their respective competition authorities to further enhance effective competition law enforcement, and to fulfil the objectives of this Agreement through the promotion of competition and the curtailment of anti-competitive business conduct or anti-competitive transactions.

2. To this end, the competition authority of a Party may inform the competition authority of the other Party of its willingness to cooperate with respect to enforcement activity. This cooperation shall not prevent the Parties from taking independent decisions.

3. With a view to facilitating the effective application of their respective competition laws, the competition authorities of the Parties may exchange information including on legislation and enforcement activities, within the limits imposed by their respective legislations and taking into account their essential interests.

#### *Article 260*

### **Consultations**

1. Each Party shall, at the request of the other Party, enter into consultations regarding representations made by the other Party, to foster mutual understanding or to address specific matters that arise under this Section. The requesting Party shall indicate how the matter affects trade between the Parties.

2. The Parties shall promptly discuss, at the request of either Party, any questions arising from the interpretation or application of this Section.

3. To facilitate discussion of the matter that is the subject of the consultations, each Party shall endeavour to provide relevant non-confidential information to the other Party, within the limits imposed by their respective legislations and taking into account their essential interests.

#### *Article 261*

No Party may have recourse to dispute settlement under Chapter 14 (Dispute Settlement) of Title IV of this Agreement with respect to any issue arising under this Section, with the exception of Article 256 of this Agreement.

## **Section 2 State aid**

#### *Article 262*

### **General principles**

1. Any aid granted by Ukraine or the Member States of the European Union through state resources which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the proper functioning of this Agreement insofar as it may affect trade between the Parties.
2. However, the following shall be compatible with the proper functioning of this agreement:
  - (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
  - (b) aid to make good the damage caused by natural disasters or exceptional occurrences.
3. Moreover, the following may be considered to be compatible with the proper functioning of this Agreement:
  - (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
  - (b) aid to promote the execution of an important project in the common European interest <sup>(40)</sup> or to remedy a serious disturbance in the economy of one of the Member States of the European Union or Ukraine;
  - (c) aid to facilitate the development of certain economic activities or of certain economic areas where such aid does not adversely affect trading conditions contrary to the interests of the Parties;
  - (d) aid to promote culture and heritage conservation where such aid does not adversely affect trading conditions contrary to the interests of the Parties;
  - (e) aid to achieve objectives allowed under the EU horizontal block exemption regulations and horizontal and sectoral state aid rules granted in line with the conditions set out therein;
  - (f) aid for investment to comply with the mandatory standards of the EU directives listed in Annex XXIX to Chapter 6 (Environment) of Title V of this Agreement, within the implementation period provided for therein, and involving adaptation of plant and equipment to meet the new requirements, can be authorised up to the level of 40 % gross of the eligible costs.
4. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Section, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Parties.

Terms used in this Section are further explained in Annex XXIII.

## **Transparency**

1. Each Party shall ensure transparency in the area of state aid. To this end, each Party shall notify annually to the other Party the total amount, types and the sectoral distribution of state aid which may affect trade between the Parties. Respective notifications should contain information concerning the objective, form, the amount or budget, the granting authority and where possible the recipient of the aid. For the purposes of this Article, any aid below the threshold of EUR 200.000 per undertaking over a period of three years does not need to be notified. Such notification is deemed to have been provided if it is sent to the other Party, or if the relevant information is made available on a publicly accessible internet website, by 31 December of the subsequent calendar year.
2. Upon request by a Party, the other Party shall provide further information on any state aid scheme and particular individual cases of state aid affecting trade between the Parties. The Parties shall exchange this information taking into account the limitations imposed by the requirements of professional and business secrecy.
3. The Parties shall ensure that financial relations between public authorities and public undertakings are transparent, so that the following emerge clearly:
  - (a) public funds made available directly or indirectly (for example through the intermediary of public undertakings or financial institutions) by public authorities to the public undertakings concerned;
  - (b) the use to which these public funds are actually put into.
4. The Parties shall moreover ensure that the financial and organisational structure of any undertaking that enjoys a special or exclusive right granted by Ukraine or the Member States of the European Union or is entrusted with the operation of a service of general economic interest, that receives public service compensation in any form whatsoever in relation to such service, is correctly reflected in separate accounts, so that the following emerge clearly:
  - (a) the costs and revenues associated with all products or services in respect of which a special or exclusive right is granted to an undertaking or all services of general economic interest with which an undertaking is entrusted and, on the other hand, each other separate product or service in respect of which the undertaking is active;
  - (b) full details of the methods by which costs and revenues are assigned or allocated to different activities. These methods shall operate on the basis of accounting principles of causality, objectivity, transparency and consistency, according to internationally recognised accounting methodologies such as activity based costing, and be based on audited data.
5. Each Party shall ensure that the provisions of this Article are applied within five years of the entry into force of this Agreement.

*Article 264*

## **Interpretation**



The Parties agree that they will apply Article 262, Article 263(3) or Article 263(4) of this Agreement using as sources of interpretation the criteria arising from the application of Articles 106, 107 and 93 of the Treaty on the Functioning of the European Union, including the relevant jurisprudence of the Court of Justice of the European Union, as well as relevant secondary legislation, frameworks, guidelines and other administrative acts in force in the European Union.

#### *Article 265*

### **Relationship with WTO**

These provisions are without prejudice to the right of the Parties to apply trade remedies or other appropriate action against a subsidy or have recourse to dispute settlement in accordance with the relevant WTO provisions.

#### *Article 266*

### **Scope**

The provisions of this Section shall apply to goods and to those services which have been listed in Annex XVI to Chapter 6 (Establishment, Trade in Services and Electronic Commerce) of Title IV of this Agreement, in accordance with the mutually agreed decision on market access, with the exception of subsidies to products covered by Annex 1 to the WTO Agreement on Agriculture and other subsidies covered by the Agreement on Agriculture.

#### *Article 267*

### **Domestic system of state aid control**

To comply with the obligations of Articles 262 to 266 of this Agreement:

1. Ukraine shall in particular adopt national state aid legislation, and establish an operationally independent authority which is entrusted with the powers necessary for the full application of Article 262 of this Agreement within three years of the entry into force of this Agreement. This authority shall have, inter alia, the powers to authorise state aid schemes and individual aid grants in conformity with the criteria referred to in Articles 262 and 264 of this Agreement as well as the powers to order the recovery of state aid that has been unlawfully granted. Any new aid granted in Ukraine must be consistent with the provisions of Articles 262 and 264 of this Agreement within one year of the date of establishment of the authority.
2. Ukraine shall establish, within five years of the entry into force of this Agreement, a comprehensive inventory of aid schemes instituted before the establishment of the authority referred to in paragraph 1 and shall align such aid schemes with the criteria referred to in Articles 262 and 264 of this Agreement within a period of no more than seven years from the entry into force of this Agreement.
3. (a) For the purposes of applying Article 262 of this Agreement, the Parties recognise that during the first five years after the entry into force of this Agreement, any public aid granted by Ukraine shall be assessed taking into account the fact that Ukraine shall be

regarded as an area identical to those areas of the European Union described in Article 107(3)(a) of the Treaty on the Functioning of the European Union.

- (b) Within four years of the entry into force of this Agreement, Ukraine shall submit to the European Commission its gross domestic product *per capita* figures harmonised at NUTS II level. The authority referred to in paragraph 1 of this Article and the European Commission shall then jointly evaluate the eligibility of the regions of Ukraine as well as the maximum aid intensities in relation thereto in order to draw up the regional aid map on the basis of the relevant EU guidelines.

## **CHAPTER 11**

### ***Trade-Related energy***

#### *Article 268*

#### **Definitions**

For the purposes of this Chapter, and without prejudice to the provisions set out in Chapter 5 (Customs and Trade Facilitation) of Title IV of this Agreement:

1. "energy goods" means natural gas (HS code 27.11), electrical energy (HS code 27.16) and crude oil (HS code: 27.09);
2. "fixed infrastructure" means any transmission or distribution network, Liquefied Natural Gas facility and storage facility, as defined in Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity (hereinafter referred to as "Directive 2003/54/EC") and Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas (hereinafter referred to as "Directive 2003/55/EC");
3. "transit" means transit, as described in Chapter 5 (Customs and Trade Facilitation) of Title IV of this Agreement, of energy goods through a fixed infrastructure or oil pipeline;
4. "transport" means transmission and distribution, as defined in Directive 2003/54/EC and Directive 2003/55/EC, and the carriage or conveyance of oil through pipelines;
5. "unauthorised taking" means any activity consisting in unlawful taking of energy goods from fixed infrastructure.

#### *Article 269*

#### **Domestic regulated prices**

1. The price for the supply of gas and electricity to industrial consumers shall be determined solely by supply and demand.

2. By way of derogation from paragraph 1 of this Article, the Parties may impose in the general economic interest <sup>(41)</sup> an obligation on undertakings which relates to the price of supply of gas and electricity, (hereinafter referred to as "regulated price").

3. The Parties shall ensure that this obligation is clearly defined, transparent, proportionate, non-discriminatory, verifiable and of limited duration. In applying this obligation, the Parties shall also guarantee equality of access to consumers for other undertakings.

4. Where the price, at which gas and electricity are sold on the domestic market, is regulated, the Party concerned shall ensure that the methodology underlying the calculation of the regulated price is published prior to the entry into force of the regulated price.

#### *Article 270*

##### **Prohibition of dual pricing**

1. Without prejudice to the possibility to impose domestic regulated prices consistently with paragraphs 2 and 3 of Article 269 of this Agreement, neither Party or a regulatory authority thereof, shall adopt or maintain a measure resulting in a higher price for exports of energy goods to the other Party than the price charged for such goods when intended for domestic consumption.

2. The exporting Party shall at the request of the other Party provide evidence that a different price for the same energy goods sold on the domestic market and for export does not result from a measure prohibited by paragraph 1 of this Article.

#### *Article 271*

##### **Customs duties and quantitative restrictions**

1. Customs duties and quantitative restrictions on the import and export of energy goods and all measures having equivalent effect shall be prohibited between the Parties. This prohibition shall also apply to customs duties of a fiscal nature.

2. Paragraph 1 shall not preclude quantitative restrictions or measures having equivalent effect, justified on grounds of public policy or public security; protection of human, animal or plant life or health, or the protection of industrial and commercial property. Such restrictions or measures shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties.

#### *Article 272*

##### **Transit**

The Parties shall take the necessary measures to facilitate transit, consistent with the principle of freedom of transit, and in accordance with Article V.2, V.4 and V.5 of GATT 1994 and Articles 7.1 and 7.3 of the Energy Charter Treaty of 1994, which are incorporated into and made part of this Agreement.

#### *Article 273*

## **Transport**

As regards transport of electricity and gas, and in particular third-party access to fixed infrastructure, the Parties shall adapt their legislation, as referred to in Annex XXVII to this Agreement and in the Energy Community Treaty of 2005, in order to ensure that the tariffs, published prior to their entry into force, the capacity allocation procedures and all other conditions are objective, reasonable and transparent and shall not discriminate on the basis of origin, ownership or destination of the electricity or gas.

### *Article 274*

#### **Cooperation on infrastructure**

The Parties shall endeavour to facilitate the use of gas transmission infrastructure and gas storage facilities and shall consult or coordinate, as appropriate, with each other on infrastructure developments. The Parties shall cooperate on matters related to trade in natural gas, sustainability and security of supply.

With a view to further integrate markets of energy goods, each Party shall take into account the energy networks and capacities of the other Party when developing policy documents regarding demand and supply scenarios, interconnections, energy strategies and infrastructure development plans.

### *Article 275*

#### **Unauthorised taking of energy goods**

Each Party shall take all necessary measures to prohibit and address the unauthorised taking of energy goods transited or transported through its area.

### *Article 276*

#### **Interruption**

1. Each Party shall ensure that transmission system operators take the necessary measures to:
  - (a) minimise the risk of accidental interruption, reduction or stoppage of transit and transport;
  - (b) expeditiously restore the normal operation of such transit or transport, which has been accidentally interrupted, reduced or stopped.
2. A Party through whose territory energy goods transit or are transported shall not, in the event of a dispute over any matter involving the Parties or one or more entities subject to the control or jurisdiction of one of the Parties, interrupt or reduce, permit any entity subject to its control or jurisdiction, including a state trading enterprise, to interrupt or reduce, or require any entity subject to its jurisdiction to interrupt or reduce the existing transport or transit of energy goods, except where this is specifically provided for in a contract or other agreement governing such transit or transport, prior to the conclusion of a dispute resolution procedure under the relevant contract.

3. The Parties agree that a Party shall not be held liable for an interruption or reduction pursuant to this Article where that Party is in an impossibility to supply, transit or transport energy goods as a result of actions attributable to a third country or an entity under the control or jurisdiction of a third country.

#### *Article 277*

##### **Regulatory authority for electricity and gas**

1. A regulatory authority shall be legally distinct and functionally independent from any public or private entity, and sufficiently empowered to ensure effective competition and the efficient functioning of the market.
2. The decisions of and the procedures used by a regulatory authority shall be impartial with respect to all market participants.
3. An operator affected by any decision of a regulatory authority shall have the right to appeal against that decision to an appeal body which is independent of the parties involved. Where the appeal body is not judicial in character, written reasons for its decision shall always be given and its decisions shall also be subject to review by an impartial and independent judicial authority. Decisions taken by appeal bodies shall be effectively enforced.

#### *Article 278*

##### **Relationship with the Energy Community Treaty**

1. In the event of a conflict between the provisions of this Section and the provisions of the Energy Community Treaty of 2005 or the provisions of the EU legislation made applicable under the Energy Community Treaty of 2005, the provisions of the Energy Community Treaty of 2005 or the provisions of the relevant EU legislation made applicable under the Energy Community Treaty of 2005 shall prevail to the extent of such conflict.
2. In implementing this Section, preference shall be given to the adoption of legislation or other acts which are consistent with the Energy Community Treaty of 2005 or are based on the legislation applicable to this sector in the EU. In the event of a dispute as regards this Section, legislation or other acts which meet these criteria shall be presumed to conform to this Section. In assessing whether the legislation or other acts meet these criteria, any relevant decision taken under Article 91 of the Energy Community Treaty of 2005 shall be taken into account.
3. Neither Party shall utilise the dispute settlement provisions of this Agreement in order to allege a violation of the provisions of the Energy Community Treaty.

#### *Article 279*

##### **Access to and exercise of the activities of prospecting, exploring for and producing hydrocarbons**

1. Each Party <sup>(42)</sup> has, in accordance with international law including the United Nations Convention on the Law of the Sea of 1982, full sovereignty over hydrocarbon resources located in its territory as well as in its archipelagic and territorial waters in

addition to sovereign rights for the purposes of exploring and exploiting hydrocarbon resources located in its exclusive economic zone and continental shelf.

2. Each Party retains the right to determine the areas within its territory as well as in its archipelagic and territorial waters, exclusive economic zone and continental shelf to be made available for the exercise of the activities of prospecting, exploring for and producing hydrocarbons.

3. Whenever an area is made available for the exercise of these activities, each Party shall ensure that entities, as regards access to and exercise of these activities, are treated on an equal basis.

4. Each Party may require an entity, which has been granted an authorisation for the exercise of the activities of prospecting, exploring for and producing hydrocarbons, to pay a financial contribution or a contribution in hydrocarbons. The detailed arrangements of such contribution shall be fixed in such a way so as not to interfere in the management process and decision-making of entities.

#### *Article 280*

#### **Licensing and licensing conditions**

1. Parties shall take the necessary measures to ensure that licences, through which an entity is entitled to exercise, on its own behalf and at its own risk, the right to prospect or explore for or produce hydrocarbons in a geographical area, are granted following a published procedure and invite potentially interested applicants to submit applications by means of a notice.

2. The notice shall specify the type of licence, the relevant geographical area or part thereof and the proposed date or time limit for granting a licence.

3. Article 104 and Article 105 of this Agreement shall apply to the licensing conditions and the licensing authorisation procedure.

### ***CHAPTER 12***

#### ***Transparency***

#### *Article 281*

#### **Definitions**

For the purposes of this Chapter:

1. "Measures of general application" include laws, regulations, judicial decisions, procedures and administrative rulings of general application and any other general or abstract act, interpretation or other requirement that may have an impact on any matter covered by this Agreement. It does not include a ruling that applies to a particular person; and

2. "Interested person" means any natural or legal person that may be subject to any

rights or duties under measures of general application, within the meaning of Article 282 of this Agreement.

#### *Article 282*

### **Objective and scope**

1. Cognisant of the impact which their respective regulatory environment may have on trade between them, the Parties shall establish and maintain an effective and predictable regulatory environment for economic operators doing business in their territory, especially small ones, due account being taken of the requirements of legal certainty and proportionality.
2. The Parties, reaffirming their respective commitments under the WTO Agreement hereby lay down clarifications and improved arrangements for transparency, consultation, and better administration of measures of general application, insofar as these may have an impact on any matter covered by this Agreement.

#### *Article 283*

### **Publication**

1. Each Party shall ensure that measures of general application:
  - (a) are promptly published or are otherwise made readily available to interested persons, in a non-discriminatory manner, via an officially designated medium, and where feasible and possible, electronic means, in such manner as to enable interested persons and the other Party to become acquainted with them;
  - (b) provide an explanation of the objective of and rationale for such measure; and
  - (c) allow for sufficient time between publication and entry into force of such measure except where this is not possible because of an emergency.
2. Each Party shall:
  - (a) endeavour to publish in advance any proposal to adopt or amend any measure of general application, including an explanation of the objective of and rationale for the proposal;
  - (b) provide reasonable opportunities for interested persons to comment on such proposed measure, allowing, in particular, for sufficient time for such opportunities; and
  - (c) endeavour to take into account the comments received from interested persons with respect to such proposed measure.

#### *Article 284*

### **Enquiries and contact points**

1. Each Party shall maintain or establish appropriate mechanisms for responding to enquiries from any interested person regarding any measures of general application which are proposed or in force, and how they would be applied in general.

In particular, in order to facilitate communication between the Parties on any matter covered by this Agreement, each Party shall designate a contact point. Upon request of either Party, the contact point shall indicate the office or official responsible for the matter and shall provide the required support to facilitate communication with the requesting Party.

Enquiries may be addressed through such mechanisms established under this Agreement.

2. The Parties recognise that a response as provided for in paragraph 1 of this Article may not be definitive or legally binding but will be for information purposes only, unless otherwise provided in the internal law and regulations of the Parties.

3. Upon request by the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure of general application that the requesting Party considers might affect the implementation of this Agreement, regardless of whether the requesting Party has been previously notified of that measure.

4. Each Party shall maintain or establish appropriate mechanisms for interested persons tasked with seeking to effectively resolve problems for interested persons of the other Party that may arise from the application of any measures of general application and administrative proceedings as mentioned in Article 285 of this Agreement. Such mechanisms should be easily accessible, time-bound, result-oriented, and transparent. They shall be without prejudice to any appeal or review procedures which Parties establish or maintain. They shall also be without prejudice to the Parties' rights and obligations under Chapter 14 (Dispute Settlement) and Chapter 15 (Mediation) of Title IV of this Agreement.

#### *Article 285*

#### **Administrative proceedings**

Each Party shall administer in a consistent, impartial, and reasonable manner all measures of general application referred to in Article 281 of this Agreement. To this end, in applying those measures to particular persons, goods, services or establishments of the other Party in specific cases, each Party shall:

- (a) endeavour to provide interested persons of the other Party, that are directly affected by a proceeding and in accordance with the Party's procedures, with reasonable notice when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in controversy;
- (b) afford such interested persons a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and
- (c) ensure that its procedures are based on, and in accordance with, its domestic law.

#### *Article 286*



## **Review and appeal**

1. Each Party shall establish or maintain courts or other independent tribunals, including, where relevant, quasi-judicial or administrative tribunals, or procedures for the purpose of the prompt review and, where warranted, correction of administrative action in areas covered by this Agreement. Such courts, tribunals or procedures shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.
2. Each Party shall ensure that, in any such courts, tribunals or procedures, the parties to the proceeding are provided with the right to:
  - (a) a reasonable opportunity to support or defend their respective positions; and
  - (b) a decision based on the evidence and submissions of record or, where required by the Party's law, the record compiled by the administrative authority.
3. Subject to appeal or further review as provided in its domestic law, each Party shall ensure, that such decision shall be implemented by, and shall govern the practice of, the office or authority competent with respect to the administrative action at issue.

### *Article 287*

#### **Regulatory quality and performance and good administrative behaviour**

1. The Parties agree to cooperate in promoting regulatory quality and performance, including through exchange of information and best practices on their respective regulatory reform processes and regulatory impact assessments.
2. The Parties subscribe to the principles of good administrative behaviour, and agree to cooperate in promoting them, including through exchange of information and best practices.

### *Article 288*

#### **Non-discrimination**

Each Party shall apply to interested persons of the other Party transparency standards no less favourable than those accorded to its own interested persons.

### **CHAPTER 13**

#### ***Trade and sustainable development***

### *Article 289*

#### **Context and objectives**

1. The Parties recall Agenda 21 on Environment and Development of 1992, the Johannesburg Plan of Implementation on Sustainable Development of 2002 and the internationally agreed policy agendas in the employment and social policy fields, in particular the International Labour Organization (hereinafter referred to as the "ILO")

Decent Work Agenda and the 2006 Ministerial declaration of the UN Economic and Social Council on Full Employment and Decent Work. The Parties reaffirm their commitment to promoting the development of international trade, in such a way as to contribute to the objective of sustainable development and to ensuring that this objective is integrated and reflected at every level of their trade relationship.

2. To this end, the Parties recognise the importance of taking fully into account the economic, social and environmental best interests of not only their respective populations but also future generations and shall ensure that economic development, environmental and social policies are mutually supportive.

#### *Article 290*

##### **Right to regulate**

1. Recognising the right of the Parties to establish and regulate their own levels of domestic environmental and labour protection and sustainable development policies and priorities, in line with relevant internationally recognised principles and agreements, and to adopt or modify their legislation accordingly, the Parties shall ensure that their legislation provides for high levels of environmental and labour protection and shall strive to continue to improve that legislation.

2. As a way to achieve the objectives referred to in this Article, Ukraine shall approximate its laws, regulations and administrative practice to the EU *acquis*.

#### *Article 291*

##### **Multilateral labour standards and agreements**

1. The Parties recognise full and productive employment and decent work for all as key elements for trade in the context of globalisation. The Parties reaffirm their commitments to promote the development of trade in a way that is conducive to full and productive employment and decent work for all, including men, women and young people.

2. The Parties shall promote and implement in their laws and practices the internationally recognised core labour standards, namely:

- (a) the freedom of association and the effective recognition of the right to collective bargaining;
- (b) elimination of all forms of forced or compulsory labour;
- (c) effective abolition of child labour; and
- (d) elimination of discrimination in respect of employment and occupation.

3. The Parties reaffirm their commitment to effectively implement the fundamental and priority ILO Conventions that they have ratified, and the ILO 1998 Declaration on Fundamental Rights and Principles at Work. The Parties will also consider ratification and implementation of other ILO Conventions that are classified as up to date by the ILO.

4. The Parties stress that labour standards should not be used for protectionist trade purposes. The Parties note that their comparative advantage should in no way be called into question.

#### *Article 292*

### **Multilateral environmental agreements**

1. The Parties recognise the value of international environmental governance and agreements as a response of the international community to global or regional environmental problems.
2. The Parties reaffirm their commitment to the effective implementation in their laws and practices of the multilateral environmental agreements to which they are party.
3. Nothing in this Agreement shall limit the rights of a Party to adopt or maintain measures to implement the multilateral environmental agreements to which it is a Party. Such measures shall not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade.
4. The Parties shall ensure that environmental policy shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.
5. The Parties shall cooperate in order to promote the prudent and rational utilisation of natural resources in accordance with the objective of sustainable development with a view to strengthening the links between the Parties' trade and environmental policies and practices.

#### *Article 293*

### **Trade favouring sustainable development**

1. The Parties reaffirm that trade should promote sustainable development in all its dimensions. The Parties recognise the beneficial role that core labour standards and decent work can have on economic efficiency, innovation and productivity, and they highlight the value of greater coherence between trade policies, on the one hand, and employment and social policies on the other.
2. The Parties shall strive to facilitate and promote trade and foreign direct investment in environmental goods, services and technologies, sustainable renewable-energy and energy-efficient products and services, and eco-labelled goods, including through addressing related non-tariff barriers.
3. The Parties shall strive to facilitate trade in products that contribute to sustainable development, including products that are the subject of schemes such as fair and ethical trade schemes, as well as those respecting corporate social responsibility and accountability principles.

#### *Article 294*

### **Trade in forest products**

In order to promote the sustainable management of forest resources, Parties commit to work together to improve forest law enforcement and governance and promote trade in legal and sustainable forest products.

#### *Article 295*

### **Trade in fish products**

Taking into account the importance of ensuring responsible management of fish stocks in a sustainable manner as well as promoting good governance in trade, the Parties undertake to work together by:

- (a) taking effective measures to monitor and control fish and other aquatic resources;
- (b) ensuring full compliance with applicable conservation and control measures, adopted by Regional Fisheries Management Organisations as well as cooperating with and within Regional Fisheries Management Organisations as widely as possible; and
- (c) introducing inter alia trade measures to combat illegal, unreported and unregulated fishing.

#### *Article 296*

### **Upholding levels of protection**

1. A Party shall not fail to effectively enforce its environmental and labour laws, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties.
2. A Party shall not weaken or reduce the environmental or labour protection afforded by its laws to encourage trade or investment, by waiving or otherwise derogating from, or offering to waive or otherwise derogate from, its laws, regulations or standards, in a manner affecting trade or investment between the Parties.

#### *Article 297*

### **Scientific information**

The Parties recognise the importance, when preparing, adopting and implementing measures aimed at protecting the environment, public health and social conditions that affect trade between the Parties, of taking account of scientific and technical information, and relevant international standards, guidelines or recommendations.

#### *Article 298*

### **Review of sustainability impacts**

The Parties commit to reviewing, monitoring and assessing the impact of the implementation of this Title on sustainable development through their respective

participative processes and institutions, as well as those set up under this Agreement, for instance, through trade-related sustainability impact assessments.

#### *Article 299*

##### **Civil society institutions**

1. Each Party shall designate and convene a new or existing Advisory Group on sustainable development with the task of advising on the implementation of this Chapter.
2. The Advisory Group comprises independent representative organisations of civil society in a balanced representation of employers and workers organisations, non-governmental organisations as well as other relevant stakeholders.
3. Members of the Advisory Group of each Party will meet at an open Civil Society Forum in order to conduct a dialogue encompassing sustainable development aspects of trade relations between the Parties. The Civil Society Forum will meet once a year unless otherwise agreed by the Parties. The Parties shall agree on the operation of the Civil Society Forum no later than one year after the entry into force of this Agreement.
4. The dialogue undertaken by the Civil Society Forum shall not prejudice the role of the Civil Society Platform, established under Article 469 of this Agreement, to exchange views on any issue concerning the implementation of this Agreement.
5. The Parties shall inform the Civil Society Forum on progress in implementation of this Chapter. The views, opinions or suggestions of the Civil Society Forum can be submitted to the Parties directly or through the Advisory Groups.

#### *Article 300*

##### **Institutional and monitoring mechanisms**

1. The Trade and Sustainable Development Sub-Committee is hereby established. It shall report on its activities to the Association Committee in its configuration under Article 465(4) of this Agreement. The Trade and Sustainable Development Sub-Committee shall comprise senior officials from within the administrations of each Party. It shall oversee the implementation of this Chapter, including the results of monitoring activities and impact assessments and shall discuss in good faith any problems arising from the application of this Chapter. It shall establish its own rules of procedure. It shall meet within a year of the entry into force of this Agreement and thereafter at least once a year.
2. Each Party shall designate a contact point within its administration in order to facilitate communication between the Parties on any matter covered by this Chapter.
3. The Parties may monitor the progress in implementing and enforcing measures covered by this Chapter. A Party may request the other Party to provide specific and reasoned information on the results of implementation of this Chapter.
4. A Party may request consultations with the other Party regarding any matter arising under this Chapter, by delivering a written request to the contact point of that

Party. The Parties agree to consult promptly through appropriate channels at the request of either Party.

5. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter and may seek advice, information or assistance from any person or body they deem appropriate in order to fully examine the matter at issue. The Parties shall take into account the activities of the ILO or relevant multilateral environmental organisations or bodies to which they are party.

6. If the Parties fail to resolve the matter through consultations, either Party may request that the Trade and Sustainable Development Sub-Committee be convened to consider the matter by delivering a written request to the contact point of the other Party. It shall convene promptly and endeavour to agree on a resolution of the matter, including, where appropriate, by consulting with governmental or non-governmental experts. The resolution of the Trade and Sustainable Development Sub-Committee shall be made public unless it otherwise decides.

7. For any matter arising under this Chapter, the Parties shall only have recourse to the procedures provided for in Articles 300 and 301 of this Agreement.

#### *Article 301*

#### **Group of Experts**

1. Unless the Parties otherwise agree, a Party may, after 90 days of the delivery of a request for consultations, under Article 300(4) of this Agreement, request that a Group of Experts be convened to examine the matter that has not been satisfactorily addressed through governmental consultations. Within 30 days of the request by a Party to convene the Group of Experts, following the request of either Party, the Trade and Sustainable Development Sub-Committee may be convened to discuss the matter. The Parties may present submissions to the Group. The Group may seek information and advice from either Party, the Advisory Group(s), or international organisations. The Group of Experts shall be convened within 60 days of a Party's request.

2. The Group that is selected in accordance with the procedures set out in paragraph 3 of this Article shall provide its expertise in implementing this Chapter. Unless the Parties otherwise agree, the Group shall, within 90 days of the last expert being selected, present to the Parties a report. The Parties shall make their best efforts to accommodate advice or recommendations of the Group on the implementation of this Chapter. The implementation of the recommendations of the Group shall be monitored by the Trade and Sustainable Development Sub-Committee. The report of the Group shall be made available to the Advisory Group(s) of the Parties. As regards confidential information and rules of procedure, the principles in Annex XXIV to Chapter 14 (Dispute Settlement) of Title IV of this Agreement, respectively, shall apply.

3. Upon the entry into force of this Agreement, the Parties shall agree on a list of at least 15 persons with expertise on the issues covered by this Chapter, of whom at least five shall be non-nationals of either Party who will serve as Chair of the Group. The experts shall be independent of, and not be affiliated with or take instructions from,

either Party or organisations represented in the Advisory Group(s). Each Party shall select one expert from the list of experts within 50 days of the date of receipt of a Party's request to establish the Group. If a Party fails to select its expert within such period, the other Party shall select from the list of experts a national of the Party that has failed to select an expert. The two selected experts shall agree on the chair who shall be chosen from the list of non-nationals experts.

#### *Article 302*

### **Cooperation on trade and sustainable development**

The Parties will work together on trade-related aspects of labour and environmental policies in order to achieve the objectives of this Agreement.

## **CHAPTER 14 <sup>(43)</sup>** ***Dispute settlement***

#### *Article 303*

### **Objective**

The objective of this Chapter is to avoid and settle, in good faith, any dispute between the Parties concerning the application of provisions of this Agreement referred to in Article 304 of this Agreement and to arrive at a mutually agreed solution wherever possible <sup>(44)</sup>.

#### *Article 304*

### **Scope**

The provisions of this Chapter apply in respect to any dispute concerning the interpretation and application of the provisions of Title IV of this Agreement except as otherwise expressly provided.

#### *Article 305*

### **Consultations**

1. The Parties shall endeavour to resolve any dispute regarding the interpretation and application of the provisions of this Agreement referred to in Article 304 of this Agreement by entering into consultations in good faith with the aim of reaching a mutually agreed solution.
2. A Party shall seek consultations by means of a written request to the other Party, copied to the Trade Committee, identifying the measure at issue and the provisions of this Agreement referred to in Article 304 of this Agreement that it considers applicable.

3. Consultations shall be held within 30 days of the date of receipt of the request and shall take place, unless the Parties agree otherwise, in the territory of the Party complained against. The consultations shall be deemed concluded within 30 days of the date of receipt of the request, unless both Parties agree to continue consultations. All confidential information disclosed during the consultations shall remain confidential.

4. Consultations on matters of urgency, including those regarding perishable or seasonal goods shall be held within 15 days of the date of submission of the request, and shall be deemed concluded 15 days after the date of the submission of the request.

5. Where consultations concern the transport of energy goods through networks and one Party views resolution of the dispute as urgent because of an interruption, in full or in part, of transport of natural gas, oil or electricity between Ukraine and the EU Party they shall be held within three days of the date of submission of the request and shall be deemed concluded three days after the date of the submission of the request unless both Parties agree to continue consultations. All confidential information disclosed during the consultations shall remain confidential.

6. If consultations are not held within the timeframes laid down in paragraph 3 of this Article or in paragraph 4 of this Article respectively, or if consultations have been concluded and no agreement has been reached on a mutually agreed solution, the complaining Party may request the establishment of an arbitration panel in accordance with Article 306 of this Agreement.

## **Section 1**

### **Arbitration procedure**

#### *Article 306*

#### **Initiation of the arbitration procedure**

1. Where the Parties have failed to resolve the dispute by recourse to consultations as provided for in Article 305 of this Agreement, the complaining Party may request the establishment of an arbitration panel.

2. The request for the establishment of an arbitration panel shall be made in writing to the Party complained against and the Trade Committee. The complaining Party shall identify in its request the specific measure at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly. In case the complaining Party requests the establishment of a panel with other than standard terms of reference, the written request shall include the proposed text of special terms of reference.

3. Unless the Parties agree otherwise within five days of the establishment of the panel the terms of reference of the arbitration panel shall be:

"to examine the matter referred to in the request for establishment of the arbitration panel, to rule on the compatibility of the measure in question with the provisions of



this Agreement referred to in Article 304 of this Agreement and to make a ruling in accordance with Article 310 of this Agreement."

#### *Article 307*

##### **Composition of the arbitration panel**

1. An arbitration panel shall be composed of three arbitrators.
2. Within 10 days of the date of submission of the request for the establishment of an arbitration panel to the Trade Committee, the Parties shall consult in order to reach an agreement on the composition of the arbitration panel.
3. In the event that the Parties are unable to agree on the composition of the arbitration panel within the time frame laid down in paragraph 2 of this Article, either Party may request the chair of the Trade Committee, or the chair's delegate, to select all three members by lot from the applicable list established under Article 323 of this Agreement, one among the individuals proposed by the complaining Party, one among the individuals proposed by the Party complained against and one among the individuals selected by the Parties to act as chairperson.
4. Where the Parties agree on one or more of the members of the arbitration panel, any remaining member or members shall be selected by the same procedure:
  - (a) if the Parties have agreed on two members of the arbitration panel, the remaining member shall be selected from the individuals selected by the Parties to act as chairperson;
  - (b) if the Parties have agreed on one member of the arbitration panel, one of the remaining members shall be selected from the individuals proposed by the complaining Party and one from the individuals proposed by the Party complained against.
5. The chair of the Trade Committee, or the chair's delegate, shall select the arbitrators within five days of the request referred to in paragraph 3. A representative of each Party is entitled to be present at the selection.
6. The date of establishment of the arbitration panel shall be the date on which the selection procedure is completed.
7. Should any of the lists provided for in Article 323 of this Agreement not be established at the time a request is made pursuant to paragraph 3 of this Article the three arbitrators shall be drawn by lot from the individuals which have been formally proposed by one or both of the Parties.
8. In respect of a dispute concerning Chapter 11 (Trade-related Energy) of Title IV of this Agreement which one Party considers to be urgent because of an interruption, in full or in part, of any transport of natural gas, oil, or electricity or a threat thereof, between Ukraine and the EU Party paragraph 3 of this Article shall apply without recourse to paragraph 2 of this Article, and the period in paragraph 5 of this Article shall be two days.

#### *Article 308*

## **Interim Panel Report**

1. The arbitration panel shall issue to the Parties an interim report setting out the findings of facts, the applicability of the relevant provisions and the basic rationale behind any findings and recommendations that it makes, within 90 days of the date of establishment of the arbitration panel. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel must notify the Parties and the Trade Committee in writing, stating the reasons for the delay and the date on which the panel plans to issue its interim report. Under no circumstances should the interim report be issued later than 120 days after the date of the establishment of the arbitration panel.
2. Any Party may submit a written request for the arbitration panel to review precise aspects of the interim report within 14 days of its issuance.
3. In cases of urgency, including those involving perishable or seasonal goods, the arbitration panel shall make every effort to issue its interim report and any Party may submit a written request for the arbitration panel to review precise aspects of the interim report, within half of the respective time frames under paragraphs 1 and 2 of this Article.
4. In respect of a dispute concerning Chapter 11 (Trade-related Energy) of Title IV of this Agreement which one Party considers to be urgent because of an interruption, in full or in part, of any transport of natural gas, oil or electricity, or a threat thereof, between Ukraine and the EU Party, the interim report shall be issued after 20 days and any request pursuant to paragraph 2 shall be made within five days of issuance of the written report. The arbitration panel may also decide to dispense with the interim report.
5. After considering any written comments by the Parties on the interim report, the arbitration panel may modify its report and make any further examination it considers appropriate. The final arbitration panel ruling shall include a discussion of the arguments made at the interim review stage.

### *Article 309*

#### **Conciliation for urgent energy disputes**

1. In respect of a dispute concerning Chapter 11 (Trade-related Energy) of Title IV of this Agreement which one Party considers to be urgent because of an interruption, in full or in part, of any transport of natural gas, oil, or electricity or a threat thereof, between Ukraine and the EU Party, either Party may request the chair of the panel to act as conciliator concerning any matter relating to the dispute by making a request to the panel.
2. The conciliator shall seek an agreed resolution of the dispute or seek agreement on a procedure to achieve such resolution. If within 15 days of his or her appointment the conciliator fails to secure such agreement, he or she shall recommend a resolution to the dispute or a procedure to achieve such resolution and shall decide on the terms and conditions to be observed from a specified date which he or she shall specify until the dispute is resolved.

3. The Parties and the entities under the control or jurisdiction of the Parties shall respect the recommendations on the terms and conditions made under paragraph 2 of this Article for three months following the conciliator's decision or until resolution of the dispute, whichever is earlier.
4. The conciliator shall respect the Code of Conduct for Arbitrators.

#### *Article 310*

##### **Arbitration panel ruling**

1. The arbitration panel shall notify its ruling to the Parties and to the Trade Committee within 120 days of the date of establishment of the arbitration panel. Where the arbitration panel considers that it cannot meet this deadline, the chairperson of the arbitration panel shall notify the Parties and the Trade Committee in writing, stating the reasons for the delay and the date on which the panel plans to conclude its work. Under no circumstances should the ruling be notified later than 150 days from the date of the establishment of the arbitration panel.
2. In cases of urgency, including those involving perishable or seasonal goods, the arbitration panel shall make every effort to notify its ruling within 60 days of the date of its establishment. Under no circumstances should it take longer than 75 days from its establishment. The arbitration panel may give a preliminary ruling within 10 days of its establishment on whether it deems the case to be urgent.
3. In respect of a dispute concerning Chapter 11 (Trade-related Energy) of Title IV of this Agreement which one Party considers to be urgent because of an interruption, in full or in part, of any transport of natural gas, oil or electricity or a threat thereof, between Ukraine and the EU Party, the arbitration panel shall notify its ruling within 40 days of the date of its establishment.

## **Section 2 Compliance**

#### *Article 311*

##### **Compliance with the arbitration panel ruling**

Each Party shall take any measure necessary to comply in good faith with the arbitration panel ruling, and the Parties will endeavour to agree on the period of time to comply with the ruling.

#### *Article 312*

### **Reasonable period of time for compliance**

1. No later than 30 days after the notification of the arbitration panel ruling to the Parties, the Party complained against shall notify the complaining Party and the Trade Committee of the time it considers it will require for compliance (hereinafter referred to as the "reasonable period of time").
2. If there is disagreement between the Parties on the reasonable period of time to comply with the arbitration panel ruling, the complaining Party shall, within 20 days of the notification under paragraph 1 of this Article, request in writing the original arbitration panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the other party and to the Trade Committee. The arbitration panel shall notify its ruling to the Parties and to the Trade Committee within 20 days of the date of submission of the request.
3. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures set out in Article 307 of this Agreement shall apply. The time limit for notifying the ruling shall be 35 days from the date of the submission of the request referred to in paragraph 2 of this Article.
4. The Party complained against will inform the complaining Party in writing of its progress to comply with the arbitration panel ruling at least one month before the expiry of the reasonable period of time.
5. The reasonable period of time may be extended by mutual agreement of the Parties.

### *Article 313*

#### **Review of any measure taken to comply with the arbitration panel ruling**

1. The Party complained against shall notify the complaining Party and the Trade Committee before the end of the reasonable period of time of any measure that it has taken to comply with the arbitration panel ruling.
2. In the event that there is disagreement between the Parties concerning the existence or the consistency of any measure notified under paragraph 1 with the Agreement, the complaining Party may request in writing the original arbitration panel to rule on the matter. Such a request shall identify the specific measure at issue and the provisions of the Agreement with which it considers that measure to be inconsistent, in a manner sufficient to present the legal basis for the complaint clearly. The arbitration panel shall notify its ruling within 45 days of the date of submission of the request.
3. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures set out in Article 307 of this Agreement shall apply. The time limit for notifying the ruling shall be 60 days from the date of submission of the request referred to in paragraph 2 of this Article.

### *Article 314*

#### **Remedies for urgent energy disputes**

1. In respect of a dispute concerning Chapter 11 (Trade-related Energy) of Title IV of this Agreement which one Party considers to be urgent because of an interruption, in full or in part, of any transport of natural gas, oil, or electricity or a threat thereof, between Ukraine and the EU Party the following specific provisions on remedies shall apply.
2. By way of derogation from Articles 311, 312 and 313 of this Agreement, the complaining Party may suspend obligations arising under this Agreement to a level equivalent to the nullification or impairment caused by a Party failing to bring itself into compliance with the Panel's findings within 15 days of their release. This suspension may take effect immediately. Such suspension may be maintained for no longer than three months, unless the Party complained against has not complied with the panel's report.
3. Should the Party complained against dispute the existence of a failure to comply or the level of suspension due to the failure to comply, it may initiate proceedings under Articles 315 or 316 of this Agreement which shall be examined on an expeditious basis. The complaining party shall be required to remove or adjust the suspension only once the Panel has ruled on the matter, and may maintain the suspension pending the proceedings.

#### *Article 315*

#### **Temporary remedies in case of non-compliance**

1. If the Party complained against fails to notify any measure taken to comply with the arbitration panel ruling before the expiry of the reasonable period of time, or if the arbitration panel rules that any measure notified under Article 313(1) of this Agreement is inconsistent with that Party's obligations under the provisions of the Agreement referred to in Article 304, the Party complained against shall, if so requested by the complaining Party, present an offer for temporary compensation.
2. If no agreement on compensation is reached within 30 days of the end of the reasonable period of time or of the arbitration panel ruling under Article 313 of this Agreement that a measure taken to comply is inconsistent with the provisions of this Agreement referred to in Article 304, the complaining Party shall be entitled, upon notification to the Party complained against and to the Trade Committee, to suspend obligations arising from any provision contained in the Chapter on the free-trade area at a level equivalent to the nullification or impairment caused by the violation. The complaining Party may implement the suspension at any moment after the expiry of 10 days after the date of the notification, unless the Party complained against has requested arbitration under paragraph 4 of this Article.
3. In suspending obligations, the complaining Party may choose to increase its tariff rates to the level applied to other WTO Members on a volume of trade to be determined in such a way that the volume of trade multiplied by the increase of the tariff rates equals the value of the nullification or impairment caused by the violation.
4. If the Party complained against considers that the level of suspension is not equivalent to the nullification or impairment caused by the violation, it may request in writing the original arbitration panel to rule on the matter. Such request shall be

notified to the complaining Party and to the Trade Committee before the expiry of the 10-day period referred to in paragraph 2 of this Article. The arbitration panel shall notify its ruling on the level of the suspension of obligations to the Parties and to the Trade Committee within 30 days of the date of submission of the request. Obligations shall not be suspended until the arbitration panel has notified its ruling, and any suspension shall be consistent with the arbitration panel ruling.

5. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures laid down in Article 307 of this Agreement shall apply. In such cases, the period for notifying the ruling shall be 45 days from the date of the submission of the request referred to in paragraph 4 of this Article.

6. The suspension of obligations shall be temporary and shall be applied only until any measure found to be inconsistent with the provisions of the Agreement referred to in Article 304 has been withdrawn or amended, so as to achieve conformity with the provisions of the Agreement referred to in Article 304, as established under Article 316, or until the Parties have agreed to settle the dispute.

#### *Article 316*

##### **Review of any measure taken to comply after the suspension of obligations**

1. The Party complained against shall notify the complaining Party and the Trade Committee of any measure it has taken to comply with the ruling of the arbitration panel and of its request for an end to the suspension of obligations applied by the complaining Party.

2. If the Parties do not reach an agreement on whether the notified measure brings the Party complained against into conformity with the provisions of the Agreement referred to in Article 304 of this Agreement within 30 days of the date of submission of the notification, the complaining Party may request in writing the original arbitration panel to rule on the matter. Such request shall be notified simultaneously to the Party complained against and to the Trade Committee. The arbitration panel ruling shall be notified to the Parties and to the Trade Committee within 45 days of the date of submission of the request. If the arbitration panel rules that the Party complained against has brought itself into conformity with the Agreement, or if the complaining Party does not, within 45 days of the submission of the notification referred to in paragraph 1 of this Article, request that the original arbitration panel rule on the matter, the suspension of obligations shall be terminated within 15 days of either the ruling of the arbitration panel or the end of the 45-day period.

3. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures laid down in Article 307 of this Agreement shall apply. The period for notifying the ruling shall in that case be 60 days from the date of the submission of the request referred to in paragraph 2 of this Article.

### **Section 3 Common provisions**

#### *Article 317*

### **Mutually agreed solution**

The Parties may reach a mutually agreed solution to a dispute under this Chapter at any time. They shall jointly notify the Trade Committee and the chairperson of the arbitration panel, where applicable, of any such solution. If the solution requires approval pursuant to the relevant domestic procedures of either party, the notification shall refer to this requirement, and the arbitration procedure shall be suspended. If such approval is not required, or upon notification of the completion of any such domestic procedures, the arbitration procedure shall be terminated.

#### *Article 318*

### **Rules of procedure**

1. Dispute settlement procedures under this Chapter shall be governed by the Rules of Procedure set out in Annex XXIV to this Agreement.
2. Any hearing of the arbitration panel shall be open to the public in accordance with the Rules of Procedure set out in Annex XXIV to this Agreement.

#### *Article 319*

### **Information and technical advice**

At the request of a Party, or upon its own initiative, the arbitration panel may obtain information from any source, including the Parties involved in the dispute, it deems appropriate for the arbitration panel proceeding. The arbitration panel also has the right to seek the relevant opinion of experts as it deems appropriate. Any information obtained in this manner must be disclosed to each of the Parties and submitted for their comments. Interested natural or legal persons established in the Parties' territories are authorised to submit *amicus curiae* briefs to the arbitration panel in accordance with the Rules of Procedure set out in Annex XXIV to this Agreement.

#### *Article 320*

### **Rules of interpretation**

Any arbitration panel shall interpret the provisions referred to in Article 304 of this Agreement in accordance with customary rules of interpretation of public international law, including those codified in the Vienna Convention on the Law of Treaties of 1969. Where an obligation under this Agreement is identical to an obligation under the WTO Agreement, the arbitration panel shall adopt an interpretation which is consistent with any relevant interpretation established in rulings of the WTO Dispute Settlement Body (hereinafter referred to as "DSB"). The rulings of the arbitration panel cannot add to or diminish the rights and obligations provided for in this Agreement.

#### *Article 321*

### **Arbitration panel decisions and rulings**

1. The arbitration panel shall make every effort to take any decision by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue

shall be decided by majority vote. However, in no case dissenting opinions of arbitrators shall be published.

2. Any ruling of the arbitration panel shall be binding on the Parties and shall not create any rights or obligations for natural or legal persons. The ruling shall set out the findings of fact, the applicability of the relevant provisions of the Agreement and the basic rationale behind any findings and conclusions that it makes. The Trade Committee shall make the arbitration panel rulings publicly available in their entirety unless it decides not to do so.

#### *Article 322*

### **Dispute settlement relating to regulatory approximation**

1. The procedures set out in this Article shall apply to disputes concerning the interpretation and application of a provision of this Agreement relating to regulatory approximation contained in Chapter 3 (Technical Barriers to Trade), Chapter 4 (Sanitary and Phytosanitary Measures), Chapter 5 (Customs and Trade Facilitation), Chapter 6 (Establishment, Trade in Services and Electronic Commerce), Chapter 8 (Public Procurement) or Chapter 10 (Competition), or which otherwise imposes upon a Party an obligation defined by reference to a provision of EU law.

2. Where a dispute raises a question of interpretation of a provision of EU law referred to in paragraph 1, the arbitration panel shall not decide the question, but request the Court of Justice of the European Union to give a ruling on the question. In such cases, the deadlines applying to the rulings of the arbitration panel shall be suspended until the Court of Justice of the European Union has given its ruling. The ruling of the Court of Justice of the European Union shall be binding on the arbitration panel.

### **Section 4 General provisions**

#### *Article 323*

### **Arbitrators**

1. The Trade Committee shall, no later than six months after the entry into force of this Agreement, establish a list of 15 individuals each who are willing and able to serve as arbitrators. Each of the Parties shall propose five individuals to serve as arbitrators. The two Parties shall also select five individuals that are not nationals of either Party and who shall act as chairperson to the arbitration panel. The Trade Committee shall ensure that the list is always maintained at this level.

2. The list established pursuant to paragraph 1 of this Article shall serve for the composition of arbitration panels in accordance with Article 307 of this Agreement. It shall comprise arbitrators with specialised knowledge or experience of law and international trade.

3. All arbitrators appointed to serve on an arbitration panel shall be independent, serve in their individual capacity and not take instructions from any organisation or



government, or be affiliated with the government of any of the Parties, and shall comply with the Code of Conduct set out in Annex XXV to this Agreement.

#### *Article 324*

##### **Relation with WTO obligations**

1. Recourse to the dispute settlement provisions of this Chapter shall be without prejudice to any action in the WTO framework, including dispute settlement action.
2. However, where a Party has, with regard to a particular measure, instituted a dispute settlement proceeding, either under Article 306(1) of this Agreement or under the WTO Agreement, it may not institute a dispute settlement proceeding regarding the same measure in the other forum until the first proceeding has been concluded. In addition, a Party shall not seek redress of an obligation which is identical under this Agreement and under the WTO Agreement in the two forums. In such case, once a dispute settlement proceeding has been initiated, the Party shall not bring a claim seeking redress of the identical obligation under the other Agreement to the other forum, unless the forum selected fails for procedural or jurisdictional reasons to make findings on the claim seeking redress of that obligation.
3. For the purposes of paragraph 2:
  - (a) dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes contained in Annex 2 of the WTO Agreement (hereinafter referred to as the "DSU") and are deemed to be concluded when the DSB adopts the Panel's report, and the Appellate Body's report as the case may be, under Articles 16 and 17.14 of the DSU; and
  - (b) dispute settlement proceedings under this Chapter are deemed to be initiated by a Party's request for the establishment of an arbitration panel under Article 306(1) of this Agreement and are deemed to be concluded when the arbitration panel issues its ruling to the Parties and to the Trade Committee.
4. Nothing in this Chapter shall preclude a Party from implementing the suspension of obligations authorised by the DSB. The WTO Agreement shall not be invoked to preclude a Party from suspending obligations under this Chapter.

#### *Article 325*

##### **Time limits**

1. All time limits laid down in this Chapter, including the limits for the arbitration panels to notify their rulings, shall be counted in calendar days, the first day being the day following the act or fact to which they refer.
2. Any time limit referred to in this Chapter may be extended by mutual agreement of the Parties.

#### *Article 326*

## **Modification of the Chapter**

The Trade Committee may decide to modify this Chapter, the Rules of Procedure for Arbitration set out in Annex XXIV to this Agreement and the Code of Conduct for Members of Arbitration Panels and Mediators set out in Annex XXV to this Agreement.

### ***CHAPTER 15*** ***Mediation mechanism***

#### *Article 327*

#### **Objective and scope**

1. The objective of this Chapter is to facilitate the finding of a mutually agreed solution through a comprehensive and expeditious procedure with the assistance of a mediator.
2. This Chapter shall apply to any measure falling under the scope of Chapter 1 of Title IV of this Agreement (National Treatment and Market Access for Goods) adversely affecting trade between the Parties.
3. This Chapter shall not apply to measures falling under Chapter 6 (Establishment, Trade in Services and Electronic Commerce), Chapter 7 (Current Payments and Movement of Capital), Chapter 8 (Public Procurement), Chapter 9 (Intellectual Property) and Chapter 13 (Trade and Sustainable Development) of this Agreement. The Trade Committee may, after due consideration, decide that this mechanism should apply to any of these sectors.

#### **Section 1**

#### **Procedure under the mediation mechanism**

#### *Article 328*

#### **Request for Information**

1. Before the initiation of the mediation procedure, a Party may request at any time information regarding a measure adversely affecting trade or investment between the Parties. The Party to which such request is made shall provide, within 20 days of the date of receipt of the request, a response containing its comments on the information contained in the request. Wherever possible, the request and the response shall be made in writing.
2. Where the responding Party considers that a response within 20 days is not practicable, it shall inform the requesting Party of the reasons for the delay, together with an estimate of the shortest period within which it will be able to provide its response.

#### *Article 329*

#### **Initiation of the procedure**

1. A Party may request, at any time, that the Parties enter into a mediation procedure. Such request shall be addressed to the other Party in writing. The request shall be sufficiently detailed to present clearly the concerns of the requesting Party and shall:

- (a) identify the specific measure at issue;
  - (b) provide a statement of the alleged adverse effects that the requesting Party believes the measure has, or will have, on trade or investment between the Parties; and
  - (c) explain how the requesting Party considers that those effects are linked to the measure.
2. The Party to which such request is addressed shall give sympathetic consideration to the request and accept or reject it in writing within 10 days of its receipt.

### *Article 330*

#### **Selection of the mediator**

1. Upon launch of the mediation procedure, the Parties shall endeavour to agree on a mediator no later than 15 days after the receipt of the reply to the request.
2. If the Parties cannot agree on the mediator within the established time frame, either Party may request the chair of the Trade Committee, or the chair's delegate, to draw the mediator by lot from the list established under Article 323 of this Agreement. Representatives of both Parties to the dispute shall be invited with due anticipation, to be present when lots are drawn. In any event, the lot shall be carried out with the Party/Parties that are present
3. The chair of the Trade Committee, or the chair's delegate, shall select the mediator within five working days of the request by either Party as referred to in paragraph 2.
4. Should the list provided for in Article 323 of this Agreement not be established at the time a request is made pursuant to paragraph 2 of this Article the mediator shall be drawn by lot from the individuals which have been formally proposed by one or both of the Parties.
5. The Parties may agree that the mediator shall be a national of one of the Parties.
6. The mediator shall assist, in an impartial and transparent manner, the Parties in bringing clarity to the measure and its possible trade effects, and in reaching a mutually agreed solution. The code of conduct set out in Annex XXV to this Agreement shall apply to mediators as provided for in that code. Rules 3 to 7 (notifications) and 41 to 46 (translation and calculation of time limits) of the Rules of Procedure set out in Annex XXIV to this Agreement shall also apply, *mutatis mutandis*.

### *Article 331*

#### **Rules of the mediation procedure**

1. Within 10 days of the appointment of the mediator, the Party having invoked the mediation procedure shall present, in writing, a detailed description of the problem to

the mediator and to the other Party, in particular of the operation of the measure at issue and its trade effects. Within 20 days of the date of delivery of this submission, the other Party may provide, in writing, its comments to the description of the problem. Either Party may include in its description or comments any information that it deems relevant.

2. The mediator may decide on the most appropriate way of bringing clarity to the measure concerned and its possible trade-related impact. In particular, the mediator may organise meetings between the Parties, consult the Parties jointly or individually, seek the assistance of or consult with relevant experts and stakeholders, and provide any additional support requested by the Parties. However, before seeking the assistance of or consulting with relevant experts and stakeholders, the mediator shall consult with the Parties.

3. The mediator may offer advice and propose a solution for consideration by the Parties which may accept or reject the proposed solution or may agree on a different solution. However, the mediator shall not advise or give comments on the consistency of the measure at issue with this Agreement.

4. The procedure shall take place in the territory of the Party to which the request was addressed or by mutual agreement in any other location or by any other means.

5. The Parties shall endeavour to reach a mutually agreed solution within 60 days of the appointment of the mediator. Pending a final agreement, the Parties may consider possible interim solutions, especially if the measure relates to perishable goods.

6. The solution may be adopted by means of a decision of the Trade Committee. Either Party may make such solution subject to the completion of any necessary internal procedures. Mutually agreed solutions shall be made publicly available. However, the version disclosed to the public may not contain any information that a Party has designated as confidential.

7. The procedure shall be terminated:

- (a) by the adoption of a mutually agreed solution by the Parties, on the date of adoption.
- (b) by a written declaration of the mediator, after consultation with the Parties, that further efforts at mediation would be to no avail;
- (c) by a written declaration of a Party after exploring mutually agreed solutions under the mediation procedure and after having considered any advice and proposed solutions by the mediator; or
- (d) at any stage of the procedure by mutual agreement of the Parties.

## **Section 2 Implementation**

### *Article 332*

#### **Implementation of a mutually agreed solution**

1. Where the Parties have agreed to a solution, each Party shall take the measures necessary to implement the mutually agreed solution within the agreed timeframe.
2. The implementing Party shall inform the other Party in writing of any steps or measures taken to implement the mutually agreed solution.
3. On request of the Parties, the mediator shall issue to the Parties, in writing, a draft factual report, providing a brief summary of:
  - (a) the measure at issue in these procedures;
  - (b) the procedures followed; and
  - (c) any mutually agreed solution reached as the final outcome of these procedures, including possible interim solutions.

The mediator shall provide the parties 15 days to comment on the draft report. After considering the comments of the parties submitted within that period, the mediator shall submit, in writing, a final factual report to the parties within 15 days. The factual report shall not include any interpretation of this Agreement.

### **Section 3 General provisions**

#### *Article 333*

#### **Relationship to dispute settlement**

1. The procedure under this mediation mechanism is not intended to serve as a basis for dispute settlement procedures under this Agreement or another agreement. A Party shall not rely on or introduce as evidence in such dispute settlement procedures, nor shall a panel take into consideration:
  - (a) positions taken by the other Party in the course of the mediation procedure;
  - (b) the fact that the other Party has indicated its willingness to accept a solution to the measure subject to mediation; or
  - (c) advice given or proposals made by the mediator.
2. The mediation mechanism is without prejudice to the Parties' rights and obligations under the provisions on Dispute Settlement.
3. Unless the Parties agree otherwise, and without prejudice to Article 331(6) of this Agreement, all steps of the procedure, including any advice or proposed solution, are confidential. However, any Party may disclose to the public that mediation is taking place.

#### *Article 334*

#### **Time limits**

Any time limit referred to in this Chapter may be modified by mutual agreement between the Parties involved in these procedures.

*Article 335*

**Costs**

1. Each Party shall bear its own expenses derived from the participation in the mediation procedure.
2. The Parties shall share jointly and equally the expenses derived from organisational matters, including the remuneration and expenses of the mediator, any assistant to the mediator and, in the event that the Parties are unable to agree on a common language, any costs associated with translation. Remuneration of the mediator shall be in accordance with that foreseen for the Chairperson of an arbitration Panel in paragraph 8 of Annex XXIV to this Agreement.

*Article 336*

**Review**

Five years after the date of entry into force of this Agreement, the Parties shall consult each other on the need to modify the mediation mechanism in light of the experience gained and the development of a corresponding mechanism in the WTO.