

# FREE TRADE AGREEMENT BETWEEN THE EFTA STATES AND UKRAINE

Iceland, the Principality of Liechtenstein, the Kingdom of Norway, the Swiss Confederation (hereinafter referred to as the "EFTA States"), on the one part, and Ukraine, on the other, hereinafter each individual State referred to as "a Party" or collectively referred to as "the Parties":

RECOGNISING the common wish to strengthen the links between the EFTA States on the one part and Ukraine on the other by establishing close and lasting relations;

RECALLING their intention to participate actively in the process of economic integration and expressing their preparedness to cooperate in seeking ways and means to strengthen this process;

REAFFIRMING their commitment to democracy, human rights and fundamental political and economic freedoms in accordance with their obligations under international law, including principles and objectives set out in the United Nations Charter and the Universal Declaration of Human Rights;

REAFFIRMING their commitment to economic and social development, the protection of health and safety, and the respect for the fundamental rights of workers, including the principles set out in the relevant International Labour Organisation (ILO) Conventions;

AIMING to create new employment opportunities, and improve health and living standards in their respective territories;

DESIRING to create favourable conditions for the development and diversification of trade between them and for the promotion of commercial and economic cooperation in areas of common interest on the basis of equality, mutual benefit, non-discrimination and international law;

RECOGNISING the importance of trade facilitation in promoting efficient and transparent procedures to reduce costs and to ensure predictability for the trading communities of the Parties;

DETERMINED to promote and further strengthen the multilateral trading system, building on their respective rights and obligations under the Marrakesh Agreement establishing the World Trade Organisation (hereinafter referred to as "the WTO") and the other agreements negotiated thereunder, thereby contributing to the harmonious development and expansion of world trade;

DETERMINED to implement this Agreement with the objectives to preserve and protect the environment and to ensure the use of natural resources in accordance with the objective of sustainable development;

AFFIRMING their commitment to the rule of law, to prevent and combat corruption in international trade and investment and to promote the principles of transparency and good governance;

ACKNOWLEDGING the significance of responsible corporate conduct and its contribution to sustainable economic development and affirming their support to efforts for the promotion of relevant international standards;

CONVINCED that this Agreement will enhance the competitiveness of their firms in global markets and create conditions encouraging economic, trade and investment relations between them;

HAVE DECIDED, in pursuit of the above, to conclude the following Agreement (hereinafter referred to as "this Agreement"):

## Chapter 1. General Provisions

### Article 1.1. Objectives

1. The Parties hereby establish a free trade area by means of this Agreement and the complementary agreements on agriculture, concurrently concluded between Ukraine and each individual EFTA State.

2. The objectives of this Agreement, which is based on trade relations between market economies, are:

(a) to achieve the liberalisation of trade in goods, in conformity with Article XXIV of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the "GATT 1994");

(b) to achieve the liberalisation of trade in services, in conformity with Article V of the General Agreement on Trade in Services (hereinafter referred to as the "GATS");

(c) to substantially increase investment opportunities in the free trade area;

(d) to achieve further liberalisation on a mutual basis of the government procurement markets of the Parties;

(e) to promote competition in their economies, particularly as it relates to economic relations between the Parties;

(f) to ensure adequate and effective protection of intellectual property rights; and

(g) to contribute, by the removal of barriers to trade and investment, to the harmonious development and expansion of world trade.

## **Article 1.2. Trade Relations Governed by this Agreement**

1. This Agreement shall apply to trade relations between, on the one side, the individual EFTA States and, on the other side, Ukraine, but not to the trade relations between individual EFTA States, unless otherwise provided for in this Agreement.

2. As a result of the customs union established by the Treaty of 29 March 1923 between Switzerland and the Principality of Liechtenstein, Switzerland shall represent the Principality of Liechtenstein in matters covered thereby.

## **Article 1.3. Relation to other International Agreements**

1. The Parties confirm their rights and obligations under the Marrakesh Agreement establishing the WTO, the other agreements negotiated under the WTO to which they are a party, and any other international agreement to which they are a party.

2. This Agreement shall not preclude the maintenance or establishment of customs unions, free trade areas, arrangements for frontier trade and other preferential agreements insofar as they do not have the effect of altering the trade arrangements provided for in this Agreement.

3. When a Party enters into a customs union or free trade agreement with a third party it shall, upon request by any other Party, be prepared to enter into consultations with the requesting Party.

## **Article 1.4. Territorial Application**

1. Without prejudice to the Protocol on Rules of Origin, this Agreement shall apply:

(a) to the land territory, internal waters, and the territorial sea of a Party, and the air-space above the territory of a Party, in accordance with international law; as well as

(b) beyond the territorial sea, with respect to measures taken by a Party in the exercise of its sovereign right or jurisdiction in accordance with international law.

2. This Agreement shall not apply to the Norwegian territory of Svalbard, with the exception of trade in goods.

## **Article 1.5. Central, Regional and Local Government**

Each Party shall ensure within its territory the observance of all obligations and commitments under this Agreement by its respective central, regional and local governments and authorities, and by non-governmental bodies in the exercise of governmental powers delegated to them by central, regional and local governments or authorities.

## **Article 1.6. Transparency**

1. The Parties shall publish or otherwise make publicly available their laws, regulations, judicial decisions, administrative rulings of general application and their respective international agreements that may affect the operation of this Agreement.

2. The Parties shall promptly respond to specific questions and provide, upon request, information to each other on matters referred to in paragraph 1. They are not required to disclose confidential information.

## **Chapter 2. Trade In Goods**

### **Article 2.1. Scope**

1. This Chapter applies to the following products traded between the Parties:

(a) all products classified under Chapters 25 to 97 of the Harmonized Commodity Description and Coding System (HS), excluding the products listed in Annex I;

(b) processed agricultural products specified in Annex II, with due regard to the arrangements provided for in that Annex; and

(c) fish and other marine products as provided for in Annex III.

2. Ukraine and each EFTA State have concluded agreements on trade in agricultural products on a bilateral basis. These agreements form part of the instruments establishing a free trade area between the EFTA States and Ukraine.

### **Article 2.2. Rules of Origin and Methods of Administrative Cooperation**

The Protocol on Rules of Origin lays down the rules of origin and methods of administrative cooperation.

### **Article 2.3. Customs Duties on Imports**

1. Upon entry into force of this Agreement, the Parties shall abolish all customs duties on imports of products originating in an EFTA State or in Ukraine covered by paragraph 1 of Article 2.1, except as otherwise provided for in Annex IV. No new customs duties on imports shall be introduced.

2. A customs duty includes any duty or charge of any kind imposed in connection with the importation or exportation of a product, including any form of surtax or surcharge in connection with such importation or exportation, but does not include any charge imposed in conformity with Articles III and VIII of the GATT 1994.

### **Article 2.4. Customs Duties on Exports**

1. Upon entry into force of this Agreement, the Parties shall eliminate customs duties on exports of products covered by paragraph 1 of Article 2.1 to the other Parties; except as provided for in paragraph 2 of this Article. No new customs duties on exports shall be introduced on products exported from the customs territory of one Party into the customs territory of another Party.

2. Customs duties on exports to the EFTA States of products originating in Ukraine shall be gradually reduced in accordance with the commitments of Ukraine within the WTO.

3. If, after the entry into force of this Agreement, Ukraine lowers or eliminates its duties on exports to the European Union, it shall accord to the EFTA States no less favourable treatment.

4. A customs duty on exports includes any duty or charge of any kind imposed in connection with the exportation of a product, including any form of surtax or surcharge in connection with such exportation, but does not include any charge imposed in conformity with Articles VIII of the GATT 1994.

### **Article 2.5. Basic Duties**

1. The basic duty, to which the successive reductions set out in this Agreement are to be applied for imports between the Parties, shall be the most-favoured-nation (hereinafter referred to as the "MFN") rate of duty applied on 1 January 2009.

2. If before, by or after entry into force of this Agreement, any tariff reduction is applied on an erga omnes basis, such reduced duties shall replace the basic duties referred to in paragraph 1 as from the date when such reductions are applied, or from the entry into force of this Agreement, if this is later.

3. Reduced duties calculated in accordance with paragraph 1 of this Article shall be applied rounded to the first decimal place or, in the case of specific duties, to the second decimal place.

## **Article 2.6. Import and Export Restrictions**

The rights and obligations of the Parties in respect of export and import restrictions shall be governed by Article XI of the GATT 1994, which is hereby incorporated into and made part of this Agreement.

## **Article 2.7. Internal Taxation and Regulations**

1. The Parties commit themselves to apply any internal taxes and other charges and regulations in accordance with Article III of the GATT 1994 and other relevant WTO Agreements.
2. Exporters may not benefit from repayment of internal taxes in excess of the amount of indirect taxation imposed on products exported to the territory of one of the Parties.

## **Article 2.8. Sanitary and Phytosanitary Measures**

1. The rights and obligations of the Parties in respect of sanitary and phytosanitary measures shall be governed by the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.
2. The Parties shall exchange names and addresses of contact points with sanitary and phytosanitary expertise in order to facilitate communication and the exchange of information.

## **Article 2.9. Technical Regulations**

1. The rights and obligations of the Parties in respect of technical regulations, standards and conformity assessment shall be governed by the WTO Agreement on Technical Barriers to Trade (hereinafter referred to as "the TBT Agreement").
2. Without prejudice to paragraph 1, the Parties agree to hold consultations where a Party considers that another Party has taken measures not in conformity with the TBT Agreement which are likely to create, or have created, an obstacle to trade, in order to find an appropriate solution in conformity with the TBT Agreement.

## **Article 2.10. Trade Facilitation**

To facilitate trade between the EFTA States and Ukraine, the Parties shall:

- (a) simplify, to the greatest extent possible, procedures for trade in goods and related services;
- (b) promote the cooperation of the Parties in multilateral fora in order to enhance their participation in the development and implementation of international conventions and recommendations on trade facilitation; and
- (c) cooperate on trade facilitation within the framework of the Joint Committee, in accordance with the provisions set out in Annex V.

## **Article 2.11. Sub-committee on Rules of Origin, Customs Procedures and Trade Facilitation**

1. With reference to Articles 2.2 and 2.10, a Sub-Committee of the Joint Committee on Rules of Origin, Customs Procedures and Trade Facilitation (hereinafter referred to as "the Sub-Committee") is hereby established.
2. The mandate of the Sub-Committee is set out in Annex VI.

## **Article 2.12. State Trading Enterprises**

The rights and obligations of the Parties in respect of state trading enterprises shall be governed by Article XVII of the GATT 1994 and the Understanding on the Interpretation of Article XVII of the GATT 1994, which are hereby incorporated into and made part of this Agreement.

## **Article 2.13. Subsidies and Countervailing Measures**

1. The rights and obligations of the Parties relating to subsidies and countervailing measures shall be governed by Articles VI and XVI of the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures, except as provided for in

paragraph 2.

2. Before an EFTA State or Ukraine, as the case may be, initiates an investigation to determine the existence, degree and effect of any alleged subsidy in Ukraine or in an EFTA State, as provided for in Article 11 of the WTO Agreement on Subsidies and Countervailing Measures, the Party considering initiating an investigation shall notify in writing the Party whose goods are subject to investigation and allow for a 60 day period with a view to finding a mutually acceptable solution. The consultations shall take place in the Joint Committee if any Party so requests within 30 days from the receipt of the notification.

## **Article 2.14. Anti-dumping**

1. A Party shall not apply anti-dumping measures, as provided for under Article VI of the GATT 1994 and the WTO Agreement on Implementation of Article VI of the GATT 1994 in relation to products originating in another Party.

2. Five years after the date of entry into force of this Agreement, the Parties may in the Joint Committee review the operation of paragraph 1. Thereafter the Parties may conduct biennial reviews of this matter in the Joint Committee.

## **Article 2.15. Global Safeguard Measures**

This Agreement does not confer any additional rights or impose any additional obligations on the Parties with regard to actions taken pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards, except that a Party taking a safeguard measure under Article XIX of GATT 1994 and the WTO Agreement on Safeguards shall, to the extent consistent with the obligations under the WTO Agreements, exclude imports of an originating good from another Party if such imports are not a substantial cause of serious injury or threat thereof.

## **Article 2.16. Bilateral Safeguard Measures**

1. Where, as a result of the reduction or elimination of a customs duty under this Agreement, any product originating in a Party is being imported into the territory of another Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to constitute a substantial cause of serious injury or threat thereof to the domestic industry of like or directly competitive products in the territory of the importing Party, the importing Party may take bilateral safeguard measures to the minimum extent necessary to remedy or prevent the injury, subject to the provisions of paragraphs 2 to 10.

2. Bilateral safeguard measures shall only be taken upon clear evidence that increased imports have caused or are threatening to cause serious injury pursuant to an investigation in accordance with the procedures laid down in Articles 3 and 4 of the WTO Agreement on Safeguards.

3. The Party intending to take a bilateral safeguard measure under this Article shall immediately, and in any case before taking a measure, make notification to the other Parties. The notification shall contain all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, a precise description of the product involved and the proposed measure, as well as the proposed date of introduction, expected duration and timetable for the progressive removal of the measure. A Party that may be affected by the bilateral safeguard measure shall be offered compensation in the form of substantially equivalent trade liberalisation in relation to the imports from any such Party.

4. If the conditions set out in paragraph 1 are met, the importing Party may take measures consisting in:

(a) suspending the further reduction of any rate of customs duty provided for under this Agreement for the product; or

(b) increasing the rate of customs duty for the product to a level not to exceed the lesser of:

(i) the MFN rate of duty applied at the time the action is taken; or

(ii) the MFN rate of duty applied on the day immediately preceding the date of the entry into force of this Agreement.

5. Bilateral safeguard measures shall be taken for a period not exceeding one year. In very exceptional circumstances, after review by the Joint Committee, measures may be taken up to a total maximum period of three years. No bilateral safeguard measures shall be applied to the import of a product which has previously been subject to such a measure.

6. The Joint Committee shall, within 30 days from the date of notification, examine the information provided under paragraph 3 in order to facilitate a mutually acceptable resolution of the matter. In the absence of such resolution, the importing Party may adopt a measure pursuant to paragraph 4 to remedy the problem, and, in the absence of mutually

agreed compensation, the Party against whose product the measure is taken may take compensatory action. The bilateral safeguard measure and the compensatory action shall be immediately notified to the other Parties. In the selection of the bilateral safeguard measure and the compensatory action, priority must be given to the measure which least disturbs the functioning of this Agreement. The compensatory action shall normally consist of suspension of concessions having substantially equivalent trade effects or concessions substantially equivalent to the value of the additional duties expected to result from the bilateral safeguard measure. The Party taking compensatory action shall apply the action only for the minimum period necessary to achieve the substantially equivalent trade effects and in any event, only while the bilateral safeguard measure under paragraph 4 is being applied.

7. Upon the termination of the bilateral safeguard measure, the rate of customs duty shall be the rate which would have been in effect but for the measure.

8. In critical circumstances, where delay in the introduction of a bilateral safeguard measure in accordance with this Article would cause damage which would be difficult to repair, a Party may take a provisional bilateral safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports constitute a substantial cause of serious injury, or threat thereof, to the domestic industry. The Party intending to take such a measure shall immediately notify the other Parties thereof. Within 30 days of the date of the notification, the procedures set out in paragraphs 2 to 6, including for compensatory action, shall be initiated. Any compensation shall be based on the total period of application of the provisional bilateral safeguard measure and of the bilateral safeguard measure.

9. Any provisional bilateral safeguard measure shall be terminated within 200 days at the latest. The period of application of any such provisional bilateral safeguard measure shall be counted as part of the duration of the bilateral safeguard measure set out in paragraph 5 and any extension thereof. Any tariff increases shall be promptly refunded if the investigation described in paragraph 2 does not result in a finding that the conditions of paragraph 1 are met.

10. Five years after the date of entry into force of this Agreement, the Parties shall review in the Joint Committee whether there is need to maintain the possibility to take bilateral safeguard measures between them. If the Parties decide, after the first review, to maintain such possibility, they shall thereafter conduct biennial reviews of this matter in the Joint Committee.

## **Article 2.17. General Exceptions**

The rights and obligations of the Parties in respect of general exceptions shall be governed by Article XX of the GATT 1994, which is hereby incorporated into and made part of this Agreement.

## **Article 2.18. Security Exceptions**

The rights and obligations of the Parties in respect of security exceptions shall be governed by Article XXI of the GATT 1994, which is hereby incorporated into and made part of this Agreement.

## **Article 2.19. Balance-of-payments**

1. The Parties shall endeavour to avoid the imposition of restrictive measures for balance of payments purposes.

2. A Party in serious balance of payments difficulties, or under imminent threat thereof, may, in accordance with the conditions established under the GATT 1994 and the WTO Understanding on the Balance of Payments Provisions of the GATT 1994, adopt trade restrictive measures, which shall be of limited duration and nondiscriminatory, and may not go beyond what is necessary to remedy the balance of payments situation.

3. The Party introducing a measure under this Article shall promptly notify the other Parties thereof.

# **Chapter 3. Trade In Services**

## **Article 3.1. Scope and Coverage**

1. This Chapter applies to measures by Parties affecting trade in services. It applies to all services sectors.

2. In respect of air transport services, this Chapter shall not apply to measures affecting air traffic rights or measures affecting services directly related to the exercise of air traffic rights, except as provided for in paragraph 3 of the GATS Annex on Air Transport Services. The definitions of paragraph 6 of the GATS Annex on Air Transport Services are hereby incorporated and made part of this Chapter.

3. Articles 3.4, 3.5 and 3.6 shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.

## **Article 3.2. Incorporation of Provisions from the GATS**

Wherever a provision of this Chapter provides that a provision of the GATS is incorporated into and made part of this Chapter, the meaning of the terms used in the GATS provision shall be understood as follows:

- (a) "Member" means Party;
- (b) "Schedule" means a Schedule referred to in Article 3.17 and contained in Annex VII; and
- (c) "specific commitment" means a specific commitment in a Schedule referred to in Article 3.17.

## **Article 3.3. Definitions**

For the purpose of this Chapter:

- (a) the following definitions of Article I of the GATS are incorporated into and made part of this Agreement:
  - (i) "trade in services";
  - (ii) "services"; and
  - (iii) "a service supplied in the exercise of governmental authority";
- (b) "measures by Parties" means measures taken by the Parties as defined in Article I paragraph 3 (a) (i) and (ii) of the GATS;
- (c) "service supplier" means any person that supplies, or seeks to supply, a service; (1)
- (d) "natural person of another Party" means a natural person who, under the legislation of that other Party, is:
  - (i) a national of that other Party who resides in the territory of any WTO Member; or
  - (ii) a permanent resident of that other Party who resides in the territory of any Party, if that other Party accords substantially the same treatment to its permanent residents as to its nationals in respect of measures affecting trade in services. For the purpose of the supply of a service through presence of natural persons (Mode 4), this definition covers a permanent resident of that other Party who resides in the territory of any Party or in the territory of any WTO Member;
- (e) "juridical person of another Party" means a juridical person which is either:
  - (i) constituted or otherwise organised under the law of that other Party, and is engaged in substantive business operations in the territory of:
    - (aa) any Party; or
    - (bb) any Member of the WTO and is owned or controlled by natural persons of that other Party or by juridical persons that meet all the conditions of subparagraph (i) (aa); or
  - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
    - (aa) natural persons of that other Party; or
    - (bb) juridical persons of that other Party identified under subparagraph (e) (i);
- (f) the following definitions of Article XXVIII of the GATS are hereby incorporated into and made part of this Chapter:
  - (i) "measure";
  - (ii) "supply of a service";
  - (iii) "measures by Members affecting trade in services";
  - (iv) "commercial presence";
  - (v) "sector" of a service;

- (vi) "service of another Member";
- (vii) "monopoly supplier of a service";
- (viii) "service consumer";
- (ix) "person";
- (x) "juridical person";
- (xi) "owned", "controlled" and "affiliated"; and
- (xii) "direct taxes".

(1) Where the service is not supplied or sought to be supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such commercial presence be accorded the treatment provided for service suppliers under this Chapter. Such treatment shall be extended to the commercial presence through which the service is supplied or sought to be supplied and need not be extended to any other parts of the service supplier located outside the territory where the service is supplied or sought to be supplied.

### **Article 3.4. Most-favoured-nation Treatment**

1. Without prejudice to measures taken in accordance with Article VII of the GATS, and except as provided for in its List of MFN Exemptions contained in Annex VIII, a Party shall accord immediately and unconditionally, in respect of all measures affecting the supply of services, to services and service suppliers of another Party treatment no less favourable than the treatment it accords to like services and service suppliers of any non-party.
2. Treatment granted under other existing or future agreements concluded by one of the Parties and notified under Article V or Article V bis of the GATS shall not be subject to paragraph 1.
3. If a Party concludes or amends an agreement of the type referred to in paragraph 2, it shall notify the other Parties without delay and endeavour to accord to the other Parties treatment no less favourable than that provided under that agreement. The former Party shall, upon request by any other Party, negotiate the incorporation into this Agreement of a treatment no less favourable than that provided under the former agreement.
4. The rights and obligations of the Parties in respect of advantages accorded to adjacent countries shall be governed by paragraph 3 of Article II of the GATS, which is hereby incorporated into and made part of this Chapter.

### **Article 3.5. Market Access**

Commitments on market access shall be governed by Article XVI of the GATS, which is hereby incorporated into and made part of this Chapter.

### **Article 3.6. National Treatment**

Commitments on national treatment shall be governed by Article XVII of the GATS, which is hereby incorporated into and made part of this Chapter.

### **Article 3.7. Additional Commitments**

Additional commitments shall be governed by Article XVIII of the GATS, which is hereby incorporated into and made part of this Chapter.

### **Article 3.8. Domestic Regulation**

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
2. Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier of another Party, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent



of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

3. Where authorisation is required by a Party for the supply of a service, the competent authorities of that Party shall, within a reasonable period of time after the submission of an application is considered complete under that Party's domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of that Party shall provide, without undue delay, information concerning the status of the application.

4. Each Party shall provide for adequate procedures to verify the competence of professionals of any other Party.

### **Article 3.9. Recognition**

1. For the purpose of the fulfilment of its relevant standards or criteria for the authorisation, licensing or certification of service suppliers, each Party shall give due consideration to any requests by another Party to recognise the education or experience obtained, requirements met, or licences or certifications granted in that other Party. Such recognition may be based upon an agreement or arrangement with that other Party, or otherwise be accorded autonomously.

2. Where a Party recognises, by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted, in the territory of a non-party, that Party shall afford another Party adequate opportunity to negotiate its accession to such an agreement or arrangement, whether existing or future, or to negotiate a comparable agreement or arrangement with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for another Party to demonstrate that the education or experience obtained, requirements met, or licences or certifications granted in the territory of that other Party should also be recognised.

3. Any such agreement or arrangement or autonomous recognition shall be in conformity with the relevant provisions of the WTO Agreement, in particular paragraph 3 of Article VII of the GATS.

### **Article 3.10. Movement of Natural Persons**

1. This Article applies to measures affecting natural persons who are service suppliers of a Party, and natural persons of a Party who are employed by a service supplier of a Party, in respect of the supply of a service.

2. 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 nationality, residence or employment on a permanent basis.

3. Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment.

4. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of another Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons 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 a specific commitment. (2)

(2) The sole fact of requiring a visa for natural persons shall not be regarded as nullifying or impairing benefits under a specific commitment.

### **Article 3.11. Transparency**

The rights and obligations of the Parties in respect of transparency shall be governed by paragraphs 1 and 2 of Article III and by Article III bis of the GATS, which are hereby incorporated into and made part of this Chapter.

### **Article 3.12. Monopolies and Exclusive Service Suppliers**

The rights and obligations of the Parties in respect of monopolies and exclusive service suppliers shall be governed by paragraphs 1, 2 and 5 of Article VIII of the GATS, which are hereby incorporated into and made part of this Chapter.

### **Article 3.13. Business Practices**

The rights and obligations of the Parties in respect of business practices shall be governed by Article IX of the GATS, which is hereby incorporated into and made part of this Chapter.

### **Article 3.14. Payments and Transfers**

1. Except under the circumstances envisaged in Article 3.15, a Party shall not apply restrictions on international transfers and payments for current transactions with another Party.
2. Nothing in this Chapter shall affect the rights and obligations of the Parties under the Articles of the Agreement of the International Monetary Fund (hereinafter referred to as the "IMF"), including the use of exchange actions which are in conformity with the Articles of the Agreement of the IMF, provided that a Party shall not impose restrictions on capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 3.15 or at the request of the IMF.

### **Article 3.15. Restrictions to Safeguard the Balance of Payments**

1. The Parties shall endeavour to avoid the imposition of restrictions to safeguard the balance of payments.
2. Any restriction to safeguard the balance of payments adopted or maintained by a Party under and in conformity with Article XII of the GATS shall apply under this Chapter.

### **Article 3.16. Exceptions**

The rights and obligations of the Parties in respect of general exceptions and security exceptions shall be governed by Article XIV and paragraph 1 of Article XIV bis of the GATS, which are hereby incorporated into and made part of this Chapter.

### **Article 3.17. Schedules of Specific Commitments**

1. Each Party shall set out in a schedule the specific commitments it undertakes under Articles 3.5, 3.6 and 3.7. With respect to sectors where such commitments are undertaken, each Schedule shall specify:
  - (a) terms, limitations and conditions on market access;
  - (b) conditions and qualifications on national treatment;
  - (c) undertakings relating to additional commitments referred to in Article 3.7; and
  - (d) where appropriate, the time-frame for implementation of such commitments and the date of entry into force of such commitments.
2. Measures inconsistent with both Articles 3.5 and 3.6 shall be dealt with as provided for in paragraph 2 of Article XX of the GATS.
3. The Parties' Schedules of specific commitments are set out in Annex VII.

### **Article 3.18. Modification of Schedules**

The Parties shall, upon written request by a Party, hold consultations to consider any modification or withdrawal of a specific commitment in the requesting Party's Schedule of specific commitments. The consultations shall be held within three months after the requesting Party made its request. In the consultations, the Parties shall aim to ensure that a general level of mutually advantageous commitments no less favourable to trade than that provided for in the Schedule of specific commitments prior to such consultations is maintained. Modifications of Schedules are subject to the procedures set out in Articles 8 and 10.5.

### **Article 3.19. Review**

With the objective of further liberalising trade in services between them, in particular eliminating substantially all remaining discrimination within a period of ten years, the Parties shall review at least every other year, or more frequently if so agreed, their Schedules of specific commitments and their Lists of MFN Exemptions, taking into account in particular any autonomous liberalisation and on-going work under the auspices of the WTO. The first such review shall take place no later than three years after the entry into force of this Agreement.

### **Article 3.20. Annexes**

The following Annexes form an integral part of this Chapter:

- Annex VII (Schedules of Specific Commitments);
- Annex VIII (Lists of MFN Exemptions);
- Annex IX (Financial Services); and
- Annex X (Telecommunications Services).

## **Chapter 4. Investment**

### **Article 4.1. Scope and Coverage**

1. This Chapter shall apply to investments in the territory of one Party by an investor of another Party, which constitute, or are related to, a direct investment. It shall not apply to investments in the services sectors covered by Chapter 3 (3).
2. This Chapter shall apply to investments irrespective of whether they have been made prior to or after the entry into force of this Agreement. It shall however not apply to disputes arising out of events which occurred prior to the entry into force of the Agreement.
3. The provisions of this Chapter shall be without prejudice to the interpretation or application of the rights and obligations under any other international agreement relating to investment or taxation to which Ukraine and one or several EFTA States are parties.

(3) For the avoidance of doubt, it is confirmed that services specifically exempted from the scope of Chapter 3 (air traffic rights) are considered to be covered services sectors, and therefore do not fall under the scope of the Investment Chapter.

### **Article 4.2. Definitions**

For the purposes of this Chapter,

- (a) "direct investment" means participation of an investor in an enterprise, consisting of at least 10 per cent ownership, whether direct or indirect, of the total vote-entitled shares in that enterprise. "Indirect ownership" refers to the total of vote-entitled shares that is attributable to an investor in accordance with the relevant provisions to the definition of "direct investment" by the IMF;
- (b) "enterprise of a Party" means any legal person or any other entity, constituted or otherwise organised under the law of a Party, that is engaged in business operations in the territory of the same or any other Party;
- (c) "investment" means every kind of asset, including but not limited to: any form of equity or other participation in an enterprise; claims to money and claims to performance; intellectual property rights; rights conferred pursuant to law or under contract, such as concessions, licenses and permits; and any rights on movable and immovable property;
- (d) "investment activities" means the establishment, acquisition, expansion, management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of an investment;
- (e) "investment of an investor of a Party" means an investment that is owned or controlled, either directly or indirectly, by an investor of that Party;
- (f) "investor of a Party" means:
  - (i) a natural person having the nationality of, or permanent residence in, a Party in accordance with its applicable law; or
  - (ii) a legal person or any other entity constituted or organised under the applicable law of a Party, and engaged in substantive business operations in any Party, whether or not for profit, and whether private or government owned or controlled; that is making or has made an investment in the territory of another Party.
- (g) "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form.

### **Article 4.3. General Treatment**

Each Party shall accord to investors of the other Party, and their investments, treatment in accordance with international law, including fair and equitable treatment and full protection and security.

#### **Article 4.4. National Treatment**

Each Party shall, subject to Article 4.11 and the reservations set out in Annex XI, accord to investors of the other Party and their investments treatment no less favourable than it accords, in like situations, to its own investors and their investments with respect to investment activities in its territory.

#### **Article 4.5. Most Favoured Nation Treatment**

1. Except as provided for in Annex XII, each Party shall accord to investors of the other Party and their investments treatment no less favourable than that it accords, in like situations, to investors of any non-party and to their investments with respect to investment activities in its territory.
2. If a Party accords preferential treatment to investments of investors of any third State by virtue of a free trade agreement, customs union, common market or any other economic integration agreement, it shall not be obliged to accord such treatment to investments of investors of the other Party. The same applies with respect to treatment accorded by a Party by virtue of any investment protection agreement or agreement on avoidance of double taxation.
3. If a Party, after the entry into force of this Agreement, has granted to a non-party by virtue of an agreement as referred to in paragraph 2, treatment more favourable than that provided for by this Agreement, it shall consider a request by another Party to incorporate into this Agreement the more beneficial treatment granted to the non-party.

#### **Article 4.6. Access to Courts**

Each Party shall in its territory accord to investors of another Party treatment no less favourable than the treatment which it accords to its own investors or investors of a non-party with respect to the jurisdiction of its courts as well as its administrative tribunals and agencies, both in pursuit and in defence of investors' rights.

#### **Article 4.7. Key Personnel**

1. The Parties shall, subject to their laws and regulations relating to the entry, stay and work of natural persons, examine in good faith requests by investors of another Party, and key personnel who are employed by such investors or by investments, to enter and remain temporarily in their territories in order to engage in activities connected with the management, maintenance, use, enjoyment, expansion or disposal of relevant investments, including the provision of advice or key technical services.
2. The Parties shall, subject to their laws and regulations, permit investors of the other Party and their investments, to employ any key person of the investor's or the investment's choice regardless of nationality and citizenship provided that such key person has been permitted to enter, stay and work in the territory of the other Party and that the employment concerned conforms to the terms, conditions and time limits of the permission granted to such key person.
3. The Parties shall, subject to their laws and regulations, grant temporary entry and stay and provide any necessary confirming documentation to the spouse and minor children of a natural person who has been granted temporary entry, stay and authorisation to work in accordance with paragraphs 1 and 2. The spouse and minor children shall be admitted for the period of the stay of that person.

#### **Article 4.8. Right to Regulate**

1. Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure consistent with this Chapter that is in the public interest, such as measures to meet health, safety or environmental concerns or reasonable measures for prudential purposes.
2. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor of a Party or a non-party.

#### **Article 4.9. Transparency**

Laws, regulations, judicial decisions and administrative rulings of general application made effective by any Party, and agreements in force between Parties, which affect matters covered by this Chapter shall be published promptly, or otherwise made publicly available, in such a manner as to enable Parties and investors to become acquainted with them. The provisions of this Article shall not require any Party to disclose information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of any investor.

## **Article 4.10. Trade Related Investment Measures**

The Parties reaffirm their commitments to the WTO Agreement on Trade-Related Investment Measures (hereinafter referred to as the "TRIMs") and hereby incorporate the provisions of TRIMs, as part of this Agreement.

## **Article 4.11. Reservations**

1. National treatment as provided for under Article 4.4 shall not apply to:

(a) any reservation that is listed by a Party in Annex XI;

(b) an amendment to a reservation covered by paragraph (a) to the extent that the amendment does not decrease the conformity of the reservation with Article 4.4;

(c) any new reservation adopted by a Party, and incorporated into Annex XI which does not affect the overall level of commitments of that Party under this Agreement; to the extent that such reservations are inconsistent with Article 4.4.

2. As part of the reviews provided for in Article 4.15 the Parties undertake to review the status of the reservations set out in Annex XI with a view to reducing the reservations or removing them.

3. A Party may, at any time, either upon the request of another Party or unilaterally, remove, in whole or in part, its reservations set out in Annex XI by written notification to the other Parties.

4. A Party may, at any time, incorporate a new reservation into Annex XI in accordance with paragraph 1 (c) of this Article by written notification to the other Parties. On receiving such written notification, the other Parties may request consultations regarding the reservation. On receiving the request for consultations, the Party incorporating the new reservation shall enter into consultations with the other Parties.

## **Article 4.12. Payments and Transfers**

1. Except under the circumstances envisaged in Article 4.13, a Party shall not apply restrictions on current payments and capital movements relating to direct investments covered by this Chapter.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties under the Articles of the Agreement of the IMF, including the use of exchange actions which are in conformity with the said Articles, provided that a Party does not impose restrictions on capital transactions inconsistent with its obligations under this Chapter.

## **Article 4.13. Restrictions to Safeguard the Balance-of-payments**

1. The Parties shall endeavor to avoid the imposition of restrictions to safeguard the balance of payments.

2. The rights and obligations of the Parties in respect of such restrictions shall be governed by paragraphs 1 to 3 of Article XII of the GATS, which are hereby incorporated into and made part of this Chapter, mutatis mutandis.

3. A Party adopting or maintaining such restrictions shall promptly notify the Joint Committee.

## **Article 4.14. Exceptions**

The rights and obligations of the Parties in respect of general exceptions shall be governed by Article XIV of the GATS, which is hereby incorporated into and made part of this Chapter, mutatis mutandis.

## **Article 4.15. Review Clause**

The EFTA States and Ukraine affirm their commitment to review the investment framework and the flow of investment between their territories consistent with their commitments in international investment agreements not later than three

years after the entry into force of this Agreement and in regular intervals thereafter.

## **Chapter 5. Protection of Intellectual Property**

### **Article 5. Protection of Intellectual Property**

1. The Parties shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property rights, and provide for measures for the enforcement of such rights against infringement thereof, counterfeiting and piracy, in accordance with the provisions of this Article, Annex XIII and the international agreements referred to therein.
2. The Parties shall accord to each other's nationals treatment no less favourable than that they accord to their own nationals. Exemptions from this obligation must be in accordance with the substantive provisions of Articles 3 and 5 of the WTO Agreement of 15 April 1994 on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as "the TRIPS Agreement").
3. The Parties shall grant to each other's nationals treatment no less favourable than that accorded to nationals of any other State. Exemptions from this obligation must be in accordance with the substantive provisions of the TRIPS Agreement, in particular Articles 4 and 5 thereof.
4. The Parties agree, upon request of any Party to the Joint Committee, to review the provisions on the protection of intellectual property rights contained in the present Article and in Annex XIII, with a view to further improving the levels of protection and to avoiding or remedying trade distortions caused by actual levels of protection of intellectual property rights.

## **Chapter 6. Government Procurement**

### **Article 6.1. Objective**

The Parties shall ensure the reciprocal and effective opening of their government procurement markets, in accordance with the provisions of this Chapter and its Annexes, in order to maximize competitive opportunities for suppliers and make government spending more efficient.

### **Article 6.2. Scope**

This Chapter applies to measures of a Party regarding "covered procurement". For the purposes of this Chapter, "covered procurement" means procurement for governmental purposes of goods and services, as defined in Article 1 of Annex XIV, or any combination thereof, as specified in Article 2 of Annex XIV and in Annex XV.

### **Article 6.3. Procurement Systems**

The Parties shall ensure that their procurement systems are in conformity with, and that their procuring entities adhere to, the provisions set out in Annex XIV and Annex XV.

### **Article 6.4. National Treatment and Non-discrimination**

1. With respect to any measure regarding covered procurement, each Party shall ensure that its procuring entities, shall accord immediately and unconditionally to the goods and services of any other Party and to the suppliers of any other Party offering such goods or services, treatment no less favourable than the treatment accorded to domestic goods, services and suppliers.
2. With respect to any measure regarding covered procurement, a Party shall ensure that its procuring entities shall not:
  - (a) treat a locally established supplier less favourably than another locally established supplier on the basis of degree of foreign affiliation or ownership; nor
  - (b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of any other Party.

### **Article 6.5. Conduct of Procurement**

A Party shall ensure that its procuring entities shall conduct covered procurement in a transparent and impartial manner that:

(a) is consistent with this Chapter, using methods such as open tendering, selective tendering and limited tendering, as specified in Articles 11 to 13 of Annex XIV;

(b) avoids conflicts of interest; and

(c) prevents corrupt practices.

## **Article 6.6. Rules of Origin**

For purposes of covered procurement, no Party may apply rules of origin that are different from the rules of origin the Party applies at the same time in the normal course of trade.

## **Article 6.7. Offsets**

With regard to covered procurement, a Party shall ensure that its procuring entities, shall not seek, take account of, impose, or enforce any offset.

## **Article 6.8. Publication of Procurement Information**

1. Each Party shall promptly publish any measure of general application regarding covered procurement and any modification to this information, in an officially designated electronic and/or paper medium that is widely disseminated and remains readily accessible to the public.

2. Each Party shall, on request, provide to any other Party an explanation relating to such information.

## **Article 6.9. Information Technology**

1. The Parties shall, to the extent possible, endeavour to use electronic means of communication to permit efficient dissemination of information on government procurement, particularly as regards tender opportunities offered by entities, while respecting the principles of transparency and non-discrimination.

2. When conducting covered procurement by electronic means, a procuring entity shall:

(a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and

(b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

## **Article 6.10. Cooperation**

1. The Parties recognise the importance of cooperation with a view to achieving a better understanding of their respective government procurement systems, as well as a better access to their respective markets, in particular for small business suppliers.

2. The Parties shall endeavour to cooperate in the area of government procurement by exchanging experience and information about best practices and regulatory frameworks.

3. Technical assistance could be provided upon a duly motivated request.

## **Article 6.11. General Exceptions**

1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition, or war materials, or to procurement indispensable for national security or for national defence purposes.

2. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction to trade between the Parties, nothing in this

Chapter shall be construed to prevent a Party from adopting or maintaining measures necessary to protect public morals, order or safety, human, animal or plant life or health or intellectual property; or relating to goods or services of persons with disabilities, of philanthropic institutions or of prison labour.

## **Article 6.12. Modifications and Rectifications to Coverage**

1. A Party may modify or rectify its coverage under Annex XIV or Annex XV provided that:

(a) it notifies the other Parties in writing;

(b) it offers at the same time adequate compensatory adjustments to maintain a level of coverage comparable to that existing prior to the modification, except as provided in paragraph 2; and

(c) no Party objects in writing within 45 days following the date of notification. The Parties may agree to extend the deadline pending completion of their internal procedures.

2. A Party need not provide compensatory adjustments when the Parties agree that the proposed modification covers a procuring entity over which a Party has effectively eliminated its control or influence. When a Party objects to the assertion that such government control or influence has been effectively eliminated, the objecting Party may request further information or consultations with a view to clarifying the nature of any government control or influence and reaching agreement on the procuring entity's continued coverage.

3. Amendments pursuant to this Article shall enter into force 45 days following the date of the circulation of the notification or upon expiration of the agreed time for objections to the notification. The Party having requested the modification or rectification shall notify the Depositary of the modification or rectification.

## **Article 6.13. Further Negotiations**

In case a Party offers, in the future, a third party additional advantages with regard to its respective government procurement market access coverage agreed under this Chapter and Annexes XIV and XV it shall agree, upon request of any other Party, to enter into negotiations with a view to extending the coverage on a reciprocal basis.

# **Chapter 7. Competition**

## **Article 7. Rules of Competition Concerning Undertakings**

1. The following practices are incompatible with the proper functioning of this Agreement in so far as they may affect trade between an EFTA State and Ukraine:

(a) agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition in the territory of each Party;

(b) abuse by one or more undertakings of a dominant position in the territory of each Party.

2. The provisions of paragraph 1 shall also apply to the activities of public undertakings, and undertakings to which the Parties grant special or exclusive rights, in so far as the application of these provisions does not obstruct the performance, in law or in fact, of the particular public tasks assigned to them.

3. Nothing in paragraph 2 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.

4. The provisions of paragraphs 1 and 2 shall not be construed so as to create any direct obligations for undertakings.

5. The Parties recognize the importance of cooperation and consultations with the aim of putting an end to anti-competitive practices as outlined in paragraphs 1 and 2 or their adverse effects on trade. The Parties may conduct such cooperation and consultations through their competent authorities. Cooperation shall include the exchange of pertinent information that is available to the Parties. No Party shall be required to disclose information that is confidential according to its law.

6. To foster understanding between the Parties, or to address any matter arising under this Chapter, and without prejudice to the autonomy of each Party to develop, maintain and enforce its competition policy and legislation, a Party may request consultations within the Joint Committee. This request shall indicate the reasons for the consultations. Consultations in



accordance with Article 9.3 shall be held promptly with a view to reaching a conclusion consistent with the objectives set forth in this Chapter. The Parties concerned shall give to the Joint Committee all the support and information needed.

7. With the exception of the right for consultations in accordance with paragraph 6, no Party may have recourse to dispute settlement under this Agreement for any matter arising under this Article.

## **Chapter 8. Institutional Provisions**

### **Article 8. The Joint Committee**

1. The Parties hereby establish the Ukraine-EFTA Joint Committee. It shall be composed of representatives of the Parties, which shall be headed by Ministers or by senior officials delegated by them for this purpose.

2. The Joint Committee shall:

(a) supervise and review the implementation of this Agreement, inter alia by means of a comprehensive review of the application of the provisions of this Agreement, with due regard to any specific reviews provided for in this Agreement;

(b) keep under review the possibility of further removal of barriers to trade and other restrictive measures concerning trade between Ukraine and the EFTA States;

(c) oversee the further development of this Agreement;

(d) supervise the work of all sub-committees and working groups established under this Agreement;

(e) endeavour to resolve disputes that may arise regarding the interpretation or application of this Agreement; and

(f) consider any other matter that may affect the operation of this Agreement.

3. The Joint Committee may decide to set up such sub-committees and working groups as it considers necessary to assist it in accomplishing its tasks. Except where otherwise provided for in this Agreement, the sub-committees and working groups shall work under a mandate established by the Joint Committee.

4. The Joint Committee shall take decisions as provided for in this Agreement, and may make recommendations, by consensus.

5. The Joint Committee shall meet within two years of the entry into force of this Agreement. Thereafter, it shall meet whenever necessary upon mutual agreement but normally every two years. Its meetings shall be chaired jointly by Ukraine and one of the EFTA States. The Joint Committee shall establish its rules of procedure.

6. Each Party may request at any time, through a notice in writing to the other Parties, that a special meeting of the Joint Committee be held. Such a meeting shall take place within 30 days of receipt of the request, unless the Parties agree otherwise.

7. The Joint Committee may decide to amend the Annexes and Protocols to this Agreement. Such amendment enters into force as set forth in the amending decision taken by the Joint Committee.

## **Chapter 9. Dispute Settlement**

### **Article 9.1. Scope and Coverage**

1. The provisions of this Chapter shall apply with respect to the settlement of any disputes concerning the interpretation or application of this Agreement, except as otherwise provided in this Agreement.

2. Disputes regarding the same matter arising under both this Agreement and the WTO Agreement may be settled in either forum at the discretion of the complaining Party (4). The forum thus selected shall be used to the exclusion of the other.

3. For purposes of paragraph 2, 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 WTO Dispute Settlement Understanding, whereas dispute settlement proceedings under this Agreement are deemed to be initiated upon a request for arbitration pursuant to paragraph 1 of Article 9.4.

4. Before a Party initiates dispute settlement proceedings under the WTO Agreement against another Party, that Party shall notify all other Parties of its intention.

(4) In this Chapter, the terms "Party", "Party to the dispute", "complaining Party" and "Party complained against" can denote one or more Parties.

## **Article 9.2. Good Offices, Conciliation or Mediation**

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the Parties so agree. They may begin and be terminated at any time. They may continue while procedures of an arbitration panel established in accordance with this Chapter are in progress.
2. Proceedings involving good offices, conciliation and mediation shall be confidential and without prejudice to the Parties' rights in any other proceedings.

## **Article 9.3. Consultations**

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to reach a mutually satisfactory resolution of any matter raised in accordance with this Article.
2. A Party may request in writing consultations with another Party if it considers that a measure or other matter is inconsistent with this Agreement. The Party requesting consultations shall at the same time notify the other Parties in writing thereof. The Party to which the request is made shall reply to the request within 10 days after the date of its receipt. Consultations shall take place in the Joint Committee unless the Parties making and receiving the request for consultations agree otherwise.
3. Consultations shall commence within 30 days from the date of receipt of the request for consultations. Consultations on urgent matters, including those on perishable goods, shall commence within 15 days from the receipt of the request for consultations. If the Party to which the request is made does not reply within 10 days or does not enter into consultations within 30 days from the date of receipt of the request for consultations, or within 15 days for urgent matters, the Party making the request is entitled to request the establishment of an arbitration panel in accordance with Article 9.4.
4. The parties to the dispute shall provide sufficient information to enable a full examination of how the measure or other matter is inconsistent with this Agreement and treat any confidential or proprietary information exchanged in the course of consultations in the same manner as the Party providing the information.
5. The consultations shall be confidential and without prejudice to the rights of the Parties in any further proceedings.
6. The parties to the dispute shall inform the other Parties of any mutually agreed resolution of the matter.

## **Article 9.4. Establishment of Arbitration Panel**

1. If the consultations referred to in Article 9.3 fail to settle a dispute within 60 days, or 30 days in relation to urgent matters, including those on perishable goods, after the date of the receipt of the request for consultations by the Party complained against, it may be referred to an arbitration panel by means of a written request from the complaining Party to the Party complained against. A copy of this request shall be communicated to the other Parties so that they may determine whether to participate in the dispute.
2. The request for arbitration shall identify the specific measure or other matter at issue and provide a brief summary of the legal basis of the complaint.
3. The arbitration panel shall comprise three members who shall be nominated in accordance with the "Optional Rules for Arbitrating Disputes between Two States of the Permanent Court of Arbitration", effective 20 October 1992 (hereinafter referred to as "the Optional Rules"). The date of establishment of the arbitration panel shall be the date on which the Chairperson is appointed.
4. Unless the parties to the dispute otherwise agree within 20 days from the date of receipt of the request for the establishment of the arbitration panel, the terms of reference for the arbitration panel shall be:

"To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 9.4 and to make findings of law and fact together with the reasons therefor, as well as recommendations, if any, for the resolution of the dispute and the implementation of the ruling."

5. Where more than one Party requests the establishment of an arbitration panel relating to the same matter or where the request involves more than one defending Party, and whenever feasible, a single arbitration panel should be established to examine complaints relating to the same matter.

6. A Party which is not a party to the dispute shall be entitled, on delivery of a written notice to the parties to the dispute, to make written submissions to the arbitration panel, receive written submissions, including annexes, from the parties to the dispute, attend hearings and make oral statements.

## **Article 9.5. Procedures of the Arbitration Panel**

1. Unless otherwise specified in this Agreement or agreed between the parties to the dispute, the procedures of the arbitration panel shall be governed by the Optional Rules.

2. The arbitration panel shall examine the matter referred to it in the request for the establishment of an arbitration panel in the light of the relevant provisions of this Agreement interpreted in accordance with rules of interpretation of public international law.

3. Unless the parties to the dispute agree otherwise, the hearings of the arbitration panel shall take place in Geneva. The language of any proceeding shall be English. The hearings of the arbitration panel shall be open to the public unless the parties to the dispute agree otherwise.

4. There shall be no ex parte communications with the arbitration panel concerning matters under its consideration.

5. A Party's written submissions, written versions of oral statements and responses to questions put by an arbitration panel, shall, at the same time as it is submitted to the arbitration panel, be transmitted by that Party to the other party to the dispute and any other Party that has delivered a notice pursuant to paragraph 6 of Article 9.4.

6. The Parties shall treat as confidential the information submitted by any other Party to the arbitration panel which that Party has designated as confidential.

7. Decisions of the arbitration panel shall be taken by a majority of its members. Any member may furnish separate opinions on matters not unanimously agreed. The arbitration panel may not disclose which members are associated with majority or minority opinions.

## **Article 9.6. Arbitration Panel Reports**

1. The arbitration panel should, as a general rule, submit an initial report containing its findings and ruling to the parties to the dispute not later than 90 days from the date of establishment of the arbitration panel. In no case should it do so later than five months from this date. A party to the dispute may submit written comments to the arbitration panel on its initial report within 14 days of receipt of the report. The arbitration panel shall present to the parties to the dispute a final report within 30 days of their receipt of the initial report.

2. The final report, as well as any ruling under Articles 9.8 and 9.9, shall be communicated to the Parties. The reports shall be made public, unless the parties to the dispute decide otherwise.

3. Any ruling of the arbitration panel under any provision of this Chapter shall be final and binding upon the parties to the dispute.

## **Article 9.7. Suspension or Termination of Arbitration Panel Proceedings**

1. Where the parties to the dispute agree, an arbitration panel may suspend its work at any time for a period not exceeding 12 months. If the work of an arbitration panel has been suspended for more than 12 months, the arbitration panel's authority for considering the dispute shall lapse unless the parties to the dispute agree otherwise.

2. A complaining Party may withdraw its complaint at any time before the final report has been issued. Such withdrawal is without prejudice to its right to introduce a new complaint regarding the same issue at a later point in time.

3. The parties to the dispute may agree at any time to terminate the proceedings of an arbitration panel established under this Agreement by jointly notifying the Chairperson of that arbitration panel.

4. An arbitration panel may, at any stage of the proceedings prior to release of the final report, propose that the parties to the dispute seek to settle the dispute amicably.

## **Article 9.8. Implementation of Final Report**

1. The Party concerned shall promptly comply with the ruling of the arbitration panel. If it is impracticable to comply immediately, the parties to the dispute shall endeavour to agree on a reasonable period of time to do so. In the absence of such agreement within 30 days from the date of the issuance of the final report, either party to the dispute may request the original arbitration panel to determine the length of the reasonable period of time, in light of the particular circumstances of the case. The ruling of the arbitration panel should be given within 30 days from that request.
2. The party to the dispute concerned shall notify the other party to the dispute of the measure adopted in order to comply with the ruling of the arbitration panel, as well as provide a detailed description of how the measure ensures compliance sufficient to allow the other party to the dispute to assess the measure.
3. In case of disagreement as to the existence of a measure complying with the ruling of the arbitration panel or to the consistency of that measure with the ruling of the arbitration panel, such dispute shall be decided by the same arbitration panel before compensation can be sought or suspension of benefits can be applied in accordance with Article 9.9. The ruling of the arbitration panel shall normally be rendered within 90 days.

## **Article 9.9. Compensation and Suspension of Benefits**

1. If the Party concerned fails to properly comply with the ruling in the final report within a reasonable period of time as provided for in paragraph 1 of Article 9.8, that Party shall, if so requested by the complaining Party, enter into consultations with a view to agreeing on a mutually acceptable compensation. If no such agreement has been reached within 20 days from the request, the complaining Party shall be entitled to suspend the application of benefits granted under this Agreement but only equivalent to those affected by the measure or matter that the arbitration panel has found to be inconsistent with this Agreement.
2. In considering what benefits to suspend, the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or matter that the arbitration panel has found to be inconsistent with this Agreement. The complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.
3. The complaining Party shall notify the other party to the dispute of the benefits which it intends to suspend, the grounds for such suspension and when suspension will commence, no later than 30 days before the date on which the suspension is due to take effect. Within 15 days from that notification, the Party complained against may request the original arbitration panel to rule on whether the benefits which the complaining Party intends to suspend are equivalent to those affected by the measure found to be inconsistent with this Agreement, and whether the proposed suspension is in accordance with paragraphs 1 and 2. The ruling of the arbitration panel shall be given within 45 days from that request. Benefits shall not be suspended until the arbitration panel has issued its ruling.
4. Compensation and suspension of benefits shall be temporary measures and shall only be applied by the complaining Party until the measure or matter found to be inconsistent with this Agreement has been withdrawn or amended so as to bring it into conformity with this Agreement, or until the parties to the dispute have resolved the dispute otherwise.
5. At the request of a party to the dispute, the original arbitration panel shall rule on the conformity with the final report of any implementing measures adopted after the suspension of benefits and, in light of such ruling, whether the suspension of benefits should be terminated or modified. The ruling of the arbitration panel shall be given within 30 days from the date of that request.

## **Article 9.10. Other Provisions**

1. Whenever possible, the arbitration panel referred to in Articles 9.8 and 9.9 shall comprise the same panellists who issued the final report. If a member of the original arbitration panel is unavailable, the appointment of a replacement panellist shall be conducted in accordance with the selection procedure for the original panellist.
2. Any time period mentioned in this Chapter may be modified by mutual agreement of the Parties involved.

## **Chapter 10. Final Provisions**

### **Article 10.1. Fulfilment of Obligations**

The Parties shall take any general or specific measures required to fulfil their obligations under this Agreement.

## **Article 10.2. Annexes, Protocols and Appendices**

The Annexes and Protocols to this Agreement, including their Appendices, are an integral part thereof.

## **Article 10.3. Evolutionary Clause**

The Parties shall review this Agreement in the Joint Committee within three years after the entry into force of this Agreement in light of further developments in international economic relations, inter alia in the framework of the WTO and free trade relations with third countries, and examine the possibility of developing and deepening their cooperation under this Agreement. After the first review they shall conduct biennial reviews of this matter in the Joint Committee, with due regard to any specific provisions relating to further liberalisation or review contained in this Agreement.

## **Article 10.4. Sustainable Development**

The Parties shall review this Agreement in the Joint Committee within three years after the entry into force of this Agreement in light of developments in the field of trade and sustainable development.

## **Article 10.5. Amendments**

1. The Parties may agree on any amendment to this Agreement. Amendments to this Agreement other than those referred to in paragraph 7 of Article 8 shall, after consideration by the Joint Committee, be submitted to the Parties for ratification, acceptance or approval.
2. Unless otherwise agreed by the Parties, amendments shall enter into force on the first day of the third month following the deposit of the last instrument of ratification, acceptance or approval.
3. The text of the amendments as well as the instruments of ratification, acceptance or approval shall be deposited with the Depositary.

## **Article 10.6. Accession**

1. Any State, becoming a Member of the EFTA, may accede to this Agreement, provided that the Joint Committee approves its accession, on terms and conditions to be agreed upon by the Parties. The instrument of accession shall be deposited with the Depositary.
2. In relation to an acceding State, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument of accession, or the approval of the terms of accession by the existing Parties, whichever is later.

## **Article 10.7. Withdrawal and Expiration**

1. Each Party may withdraw from this Agreement by means of a written notification to the Depositary. The withdrawal shall take effect six months after the date on which the notification is received by the Depositary.
2. If Ukraine withdraws, this Agreement shall expire when its withdrawal becomes effective.
3. Any EFTA State which withdraws from the Convention establishing the European Free Trade Association shall, ipso facto on the same day as the withdrawal takes effect, cease to be a Party to this Agreement.

## **Article 10.8. Entry Into Force**

1. This Agreement is subject to ratification, acceptance or approval in accordance with the respective domestic legal requirements of the Parties. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.
2. This Agreement shall enter into force on the first day of the third month following the date on which Ukraine and at least one EFTA State have deposited their instruments of ratification, acceptance or approval with the Depositary.
3. In relation to an EFTA State depositing its instrument of ratification, acceptance or approval after this Agreement has entered into force, the Agreement shall enter into force on the first day of the third month following the deposit of its

instrument of ratification, acceptance or approval.

4. This Agreement shall not enter into force between an EFTA State and Ukraine, unless the complementary Agreement on Agriculture between that EFTA State and Ukraine enters into force simultaneously. It shall remain in force as long as the complimentary agreement remains in force between those Parties.

## **Article 10.9. Depositary**

The Government of Norway shall act as Depositary.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Agreement. Done at Reykjavik, this 24th day of June 2010, in one original. The Depositary shall transmit certified copies to all the Parties.

For Iceland

For Ukraine

For the Principality of Liechtenstein

For the Kingdom of Norway

For the Swiss Confederation

## **ANNEX XI. REFERRED TO IN ARTICLE 4.11. RESERVATIONS**

### **APPENDIX 1. TO ANNEX XI REFERRED TO IN ARTICLE 4.11 RESERVATIONS BY UKRAINE UKRAINE**

Sector: Agriculture

Sub-sector: Land ownership for agricultural purposes

Legal source or authority of the measure: Land Code of Ukraine dated 25.10.2001 № 2768-III.

Succinct description of the measure: Foreign citizens and stateless persons are not entitled:

(i) to acquire ownership of land intended for agricultural purposes;

(ii) to free acquisition of land that is in state and municipal property;

(iii) to privatise land that was previously transferred them for use.

Purpose or motivation of the measure: Agricultural policy considerations and food security.

### **APPENDIX 2. TO ANNEX XI REFERRED TO IN ARTICLE 4.11. RESERVATIONS BY ICELAND**

Sector: All sectors

Sub-sector:

Legal source or authority of the measure: Law No. 138/1994 Respecting Private Limited, Companies, Law No. 2/1995 Respecting Public Limited Companies, Law No. 34/1991 on Investment by Non-Residents in Business Enterprises.

Succinct description of the measure: The majority of the founders of a private limited company or a public limited company must either be resident in Iceland, in another member state of the European Economic Area, in another member state of the European Free Trade Association or in the Faroe Islands. The Minister of Commerce can grant exemptions from these restrictions.

The manager(s) and at least half the board of directors of a private limited company or a public limited company must either be resident in Iceland, in another member state of the European Economic Area, in another member state of the European

Free Trade Association or in the Faroe Islands. The Minister of Commerce can grant exemptions from these restrictions.

Purpose or motivation of the measure: To secure that the legal venue of the majority of the board of directors and managers is within Icelandic jurisdiction.

Sector: All sectors

Sub-sector:

Legal source or authority of the measure:

Law No. 19/1966 on the Right to Own and Use Real Estate, Law No. 34/1991 on Investment by Non-Residents in Business Enterprises.

Succinct description of the measure: Only Icelandic citizens and Icelandic legal entities and citizens and legal entities from another member state of the European Economic Area, another member state of the European Free Trade Association or from the Faroe Islands are allowed to own real estate in Iceland unless the ownership and use is linked to an investment in real estate pertaining to the business activity of the investor. The same applies to the hiring of a real estate if the duration of the lease lasts for more than three years. These restrictions do not apply to a non-EEA citizen who has been residing in Iceland for at least five years. The Minister of Justice can grant exemptions from these restrictions.

Purpose or motivation of the measure: Fluctuations in real estate prices due to possible excess foreign demand can adversely affect the domestic market for housing and summer houses (secondary homes).

Sector: Fisheries

Sub-sector: Fishing, whaling

Legal source or authority of the measure:

Law No. 22/1998 on the Fishing and Fish processing of Foreign Vessels in Iceland's Economic Zone, Law No. 34/1991 on Investment by Non-Residents in Business Enterprises, Law No. 26/1949 on Whaling

Succinct description of the measure: Only the following may conduct fishing operations within the Icelandic fisheries jurisdiction:

(a) Icelandic citizens and other Icelandic persons.

(b) Icelandic legal persons which are wholly owned by Icelandic persons or Icelandic legal persons which:

(i) are controlled by Icelandic entities;

(ii) are not under more than 25% ownership of foreign residents calculated on the basis of share capital or initial capital. However, if the share of an Icelandic legal person in a legal person conducting fishing operations in the Icelandic fisheries jurisdiction or fish processing in Iceland is not above 5%, the share of the foreign resident may be up to 33%;

(iii) are in other respects under the ownership of Icelandic citizens or Icelandic legal persons controlled by Icelandic persons.

Purpose or motivation of the measure: The relative economic importance of the fishing industry for Iceland, with fish and fish products constituting around half of the country's foreign earnings, as well as Iceland's determination to maintain a sustainable yield from its fishing stocks. The control and surveillance regarding the preservation of Icelandic fish stocks needs to be under Icelandic jurisdiction.

Sector: Fisheries

Sub-sector: Fish Processing

Legal source or authority of the measure: Law No. 34/1991 on Investment by Non-Residents in Business Enterprises

Succinct description of the measure: Only the following may own or run enterprises engaged in fish processing in Iceland:

a) Icelandic citizens and other Icelandic persons.

b) Icelandic legal persons which are wholly owned by Icelandic persons or Icelandic legal persons which:

i) are controlled by Icelandic entities;

ii) are not under more than 25% ownership of foreign residents calculated on the basis of share capital or initial capital. However, if the share of an Icelandic legal person in a legal person conducting fishing operations in the Icelandic fisheries jurisdiction or fish processing in Iceland is not above 5%, the share of the foreign resident may be up to 33%;

iii) are in other respects under the ownership of Icelandic citizens or Icelandic legal persons controlled by Icelandic persons.

Fish processing in this context is freezing, salting, drying and any other process used to initially preserve fish and fish products, including melting and meal processing.

This reservation does not apply to secondary fish processing.

Purpose or motivation of the measure: The reservation on fish processing is an integral part of retaining control in the field of fishing and whaling. The relative economic importance of the fishing industry for Iceland, with fish and fish products constituting around half of the country's foreign earnings, as well as Iceland's determination to maintain a sustained yield from its fishing stocks. The control and surveillance regarding the preservation of Icelandic fish stocks needs to be under Icelandic jurisdiction.

Sector: Fisheries

Subsector: Fish Auctioning

Legal source or authority of the measure: Law No. 79/2005 on the Auctioning of Fish

Succinct description of the measure:

Only Icelandic citizens and Icelandic legal entities and citizens and legal entities from another member state of the European Economic Area, from another member state of the European Free Trade Association or from the Faroe Islands are allowed to own and manage enterprises engaged in fish auctioning in Iceland.

Purpose or motivation of the measure: The reservation on fish auctioning is an integral part of retaining control in the field of fishing and whaling. The relative economic importance of the fishing industry for Iceland, with fish and fish products constituting around half of the country's foreign earnings, as well as Iceland's determination to maintain a sustained yield from its fishing stocks. The control and surveillance regarding the preservation of Icelandic fish stocks needs to be under Icelandic jurisdiction.

Sector: Energy

Sub-sector: Energy production and distribution

Legal source or authority of the measure: Law No. 34/1991 on Investment by Non-Residents in Business Enterprises

Succinct description of the measure: Only Icelandic citizens and legal entities, and citizens and legal entities from another member state of the European Economic Area, from another member state of the European Free Trade Association or from the Faroe Islands, can own the right to harness hydroelectric and geothermal power other than for own personal home use.

The same applies to investment in enterprises engaged in power production and power distribution.

Purpose or Motivation of the Measure: Apart from the fish stock, hydroelectric power and geothermal power are Iceland's most important natural resources. Their utilisation need to be centrally administered through licensing and co-generation agreements. The power production and power distribution are public utilities which to a large degree operate as public monopolies.

### **APPENDIX 3. TO ANNEX XI REFERRED TO IN ARTICLE 4.11. RESERVATIONS BY THE PRINCIPALITY OF LIECHTENSTEIN**

Sector: All sectors

Sub-sector:

Legal source or authority of the measure: Gewerbegesetz (Act on Commercial Law) of 10 December 1969, LR (Systematic Collection of Liechtenstein Law) 930.1, and relevant laws as mentioned in Article 2, paragraph 1 of that Act, as well as relevant Parliament or Government decisions.

Succinct description of the measure: The establishment of a commercial presence by a juridical person (including branches) is subject to the requirement that no objection for reasons of national economy is made (balanced proportion of national



and foreign capital; balanced ratio of foreigners in comparison with the number of resident population; balanced ratio of total number of jobs in the economy in comparison with the number of the resident population; balanced geographic situation; balanced development of the national economy, between and within the sectors).

Purpose or motivation of the measure: To ensure a balanced development of the national economy taking into account the specific geographic situation of the country, its limited resources and the small labour market.

Sector: All sectors

Sub-sector:

Legal source or authority of the measure: Gewerbegesetz (Commercial Law Act) of 10 December 1969, LR 930.1; Personen- und Gesellschaftsrecht (Company Law) of 20 January 1926, LR 216.0

Succinct description of the measure: The establishment of a commercial presence by an individual is subject to the requirement of prior residence during a certain period of time and of permanent domicile in Liechtenstein.

The establishment of a commercial presence by a juridical person (including branches) is subject to the following requirements: At least one of the managers has to fulfill the requirements of prior residence during a certain period of time and of permanent domicile in Liechtenstein. The majority of the administrators (authorized to manage and represent the juridical person) must be residents in Liechtenstein and have either to be Liechtenstein citizens or have prior residence during a certain period of time in Liechtenstein. The general and the limited partnership have to fulfill the same conditions as corporations with limited liability (juridical person). In addition the majority of the associates have to be Liechtenstein citizens or to have prior residence during a certain period of time in Liechtenstein.

The Liechtenstein company law does not prohibit joint stock companies from foreseeing in their articles of incorporation the preclusion or limitation of the transfer of registered shares.

Purpose or motivation of the measure: To facilitate judicial proceedings.

Sector: All sectors

Subsector: Legal source or authority of the measure: Agreement on the European Economic Area of 2 May 1992 (EEA Agreement)

Succinct description of the measure: Treatment accorded to subsidiaries of third-country companies formed in accordance with the law of an EEA Member State and having registered office, central administration or principal place of business within an EEA Member State is not extended to branches or agencies established in an EEA Member State by a third-country company.

Treatment less favorable may be accorded to subsidiaries of third countries having only their registered office in the territory of an EEA Member State unless they show that they possess an effective and continuous link with the economy of one of the EEA Member States.

Purpose or motivation of the measure: To ensure that benefits from the EEA Agreement are not automatically accorded to third countries.

Sector: All sectors

Subsector:

Legal source or authority of the measure: Grundverkehrsgesetz (Law on the acquisition of real estate) of 9 December 1992, LR 214.11

Succinct description of the measure: All acquisitions of real estate are subject to authorization.

Such authorization is granted only if an actual and proven requirement for living or business purposes is given and a certain period of residence has been completed.

Non-residents are excluded from the acquisition of real estate.

Purpose or motivation of the measure: Extreme scarcity of available land. Preservation of access to real estate for the resident population and maintenance of a balanced geographic situation.

Sector: Power and Energy sector

Sub-sector: -

Legal source or authority of the measure: Not applicable

Succinct description of the measure: All activities in the power and energy sector shall be treated as services under this Agreement.

Purpose or motivation of the measure: To take account of the fact that most activities in this sector are considered services in terms of the GATS.

#### **APPENDIX 4. TO ANNEX XI REFERRED TO IN ARTICLE 4.11. RESERVATIONS BY THE KINGDOM OF NORWAY**

Sector: All sectors

Sub-sector: -

Legal source or authority of the measure:

Succinct description of the measure: Norway does not extend to Ukraine any preferences granted under bilateral investment treaties signed by Norway prior to 1997.

Purpose or motivation of the measure:

Sector: All sectors

Sub-sector: -

Legal source or authority of the measure:

Succinct description of the measure: Norway reserves the right to apply measures inconsistent with Article 4.4 for the imposition, enforcement or collection of direct taxes in so far as such measures do not contravene any tax treaty (1) which is in force between Ukraine and Norway.

Purpose or motivation of the measure:

(1) Convention between The Government of the Kingdom of Norway and The Government of Ukraine for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, signed 7 March 1996 or a tax treaty succeeding this tax treaty.

Sector: All sectors

Sub-sector: -

Legal source or authority of the measure: Companies Act of 13 June 1997, No 44 (aksjeloven) and Joint Stock Public Companies Act of 13 June 1997, No 45 (allmennaksjeselskapsloven).

Succinct description of the measure: The general manager in a joint stock company and at least half of the members of the board of directors and of the corporate assembly must be residents of Norway.

The residency criteria do not apply to nationals of an EEA Member State who are permanent residents of one of these States. The Ministry of Trade and Industry may grant exemptions from this Provision.

Purpose or motivation of the measure: The resident criteria are based on reasons of jurisdiction, in order to ensure that the persons responsible for the company's affairs are accessible.

Sector: Power and Energy sector

Repair of Transport Equipment sector

Sub-sector: -

Legal source or authority of the measure: Not applicable

Succinct description of the measure: All activities in the power and energy sector as well as in the repair of transport equipment sector shall be treated as services under this Agreement.

Purpose or motivation of the measure:

Sector: Fishing and fish processing

Subsector: -

Legal source or authority of the measure: Regulation of Participation in Fishing Act of 26 March 1999, No 15, Economic Zone Act of 17 December 1976, No 91, The Fishing Limit Act of 17 June 1966, No 19

Succinct description of the measure: A concession to acquire a fishing vessel or share in a company which owns such vessels can only be given to a Norwegian citizen or a body that can be defined as a Norwegian citizen. A company is regarded as having equal rights with a Norwegian citizen when its main office is situated in Norway and the majority of the Board, including the Chair of the Board, are Norwegian citizens and have stayed in the country the last two years. Norwegian citizens also have to own a minimum of 60 per cent of the shares and have to be authorised to vote for at least 60 per cent of the votes.

Ownership to the fishing fleet shall be reserved for professional fishermen. To obtain the right to own a fishing vessel, one has to have a record of active, professional fishing on a Norwegian fishing boat for at least three of the last five years.

It is prohibited for other persons than Norwegian nationals or companies, as defined above, to process, pack or transship fish, crustaceans and molluscs or parts and products of these inside the fishing limits of the Norwegian Economic Zone. This applies to catches from both Norwegian and foreign vessels. Exceptions are granted under special circumstances.

Purpose or motivation of the measure: Resource conservation and management.

Sector: All sectors

Sub-sector:

Legal source or authority of the measure: Not applicable

Succinct description of the measure: Collective copyright and neighbouring rights' laws and measures: inter alia management systems, royalties, levies, grants and funds.

Purpose or motivation of the measure: To preserve and promote linguistic and cultural diversity in Norway.

## **APPENDIX 5. TO ANNEX XI REFERRED TO IN ARTICLE 4.11. RESERVATIONS BY SWITZERLAND**

Sector: All sectors

Sub-sector: -

Legal source or authority of the measure: Federal Act of 30 March 1911 (Code of Obligations) supplementing the Swiss Civil Code (Systematic Collection of Federal Laws and Regulations (RS 220)

Succinct description of the measure: For a "corporation" (société anonyme/ Aktiengesellschaft), a "corporation with unlimited partners" (société en commandite par actions/ Kommanditaktiengesellschaft), a "limited partnership" (société à responsabilité limitée/ Gesellschaft mit beschränkter Haftung) and a "cooperative" (société cooperative/ Genossenschaft) at least one member of the governing body of the legal person or another person with the right to represent the legal person must be domiciled in Switzerland.

A foreign legal person may also establish one or several branch offices in Switzerland. At least one person of the branch office with the right to represent the branch office must be domiciled in Switzerland.

Purpose or motivation of the measure: To facilitate judicial proceedings.

Sector: All sectors

Sub-sector: -

Legal source or authority of the measure: Federal Act of 16 December 1983 on the Acquisition of Real Estate by Persons Abroad (RS 211.412.41)

Succinct description of the measure: Acquisition of real estate is subject to authorisation by the relevant cantonal authority when the acquirer does not use the property to operate a permanent establishment.

Purpose or motivation of the measure: Scarcity of available land.

Sector: Energy

Sub-sector: Oil Prospection and Exploitation

Legal source or authority of the measure: Concordat of 24 September 1955 on Oil Prospecting and Exploitation

Succinct description of the measure: The inter-cantonal agreement (among 10 cantons) stipulates that oil concessions may be granted only to companies that are at least 75 percent Swiss-owned.

Other cantons apply similar restrictions.

Purpose or motivation of the measure: Energy policy considerations and national security.

Sector: Energy

Sub-sector: Nuclear energy

Legal source or authority of the measure: Federal Act of 21 March 2003 on Atomic Energy (RS 732.1)

Succinct description of the measure: A concession to construct and operate nuclear facilities is granted only to a corporation, a cooperative or a legal person of public law. A foreign company must have a registered subsidiary in Switzerland. Without prejudice to international obligations, the Federal Council may refuse the concession to a foreign company if its home state does not grant reciprocity.

Purpose or motivation of the measure: Energy policy considerations and national security.

Sector: Energy

Sub-sector: Hydroelectric power

Legal source or authority of the measure: Federal Act of 22 December 1916 on the Uses of Hydroelectric Power (RS 721.80)

Succinct description of the measure: When granting concessions, cantons take public interest considerations into account (they may in particular require the concession-holder to have its registered office in the relevant canton).

Purpose or motivation of the measure: Energy policy considerations and national security.

Sector: Energy

Sub-sector: Pipelines

Legal source or authority of the measure: Federal Act of 4 October 1963 on Pipelines for Liquid or Gaseous Fuels (RS 746.1)

Succinct description of the measure: For foreign-owned or controlled companies a registered office and management presence in Switzerland is required.

Purpose or motivation of the measure: Energy policy considerations and national security.