

# **POLITICAL, FREE TRADE AND STRATEGIC PARTNERSHIP AGREEMENT BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND UKRAINE**

## **PREAMBLE**

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, hereinafter referred to as "the United Kingdom" or "the UK", of the one part, and UKRAINE, of the other part, hereinafter jointly referred to as "the Parties",

TAKING ACCOUNT of the active development of bilateral relations between the Parties as well as their desire to strengthen and widen their relations and strategic partnership;

COMMITTED to a close and lasting relationship that is based on common values, namely respect for democratic principles, the rule of law, good governance, human rights and fundamental freedoms, including the rights of persons belonging to national minorities, non-discrimination of persons belonging to minorities and respect for diversity, human dignity and commitment to the principles of a free market economy;

RECOGNISING that the Parties share common values and are committed to promoting those values;

CONVINCED of the need to help strengthen the atmosphere of friendship, mutual confidence and respect, understanding and cooperation in international relations and determined to play an active part in this process;

CONFIRMING that the United Kingdom acknowledges the EU membership aspirations of Ukraine and welcomes its European choice, as well as recognising the significant progress Ukraine has made in reforms to this end;

RECOGNISING Ukraine's continuing reform of its defence and security sectors, its strong commitment and contribution to international security, its Euro-Atlantic aspirations towards NATO membership and the progress it has made in this regard;

CONFIRMING that the United Kingdom will continue to support the political, socio-economic, legal and institutional reforms in Ukraine with the aim of building a developed and sustainable democracy and a strong market economy;

COMMITTED to implementing all the principles and provisions of the United Nations Charter, the Organization for Security and Cooperation in Europe (OSCE), in particular the Helsinki Final Act of 1975 of the Conference on Security and Cooperation in Europe, the concluding documents of the Madrid and Vienna Conferences of 1991 and 1992 respectively, the Charter of Paris for a New Europe of 1990, the United Nations Universal Declaration on Human Rights of 1948 and the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950;

CONSCIOUS of their responsibility to help preserve peace and strengthen security in Europe and the whole world;

DESIROUS of strengthening international peace and security as well as engaging in effective multilateralism and the peaceful settlement of disputes, in particular by closely cooperating, to that end, within the framework of the UN, the OSCE, the Council of Europe and other international organisations or entities of which the Parties are members;

REAFFIRMING the willingness of the Parties to respond jointly to regional and global security threats to comply with and restore the international order and international law;

EMPHASISING that in international relations it is impermissible for the threat or use of force to be employed as a means of settling disputes, and that all international disputes should be settled exclusively by peaceful means;

COMMITTED to promoting the independence, sovereignty, territorial integrity and inviolability of borders in accordance with international law, the UN Charter, the Helsinki Final Act of 1975 of the Conference on Security and Cooperation in Europe and the relevant resolutions of the UN Security Council and the General Assembly;

FULLY SUPPORTING the firm commitment of Ukraine to peace and security, and its efforts to restore through peaceful settlement Ukraine's sovereignty and territorial integrity within its internationally recognised borders;

RECOGNISING that Russia's hostile actions against Ukraine undermine Ukraine's sovereignty and territorial integrity in

violation of international law;

COMMITTED to strictly adhering to the policy of non-recognition of Russia's attempted annexation of the Autonomous Republic of Crimea and the city of Sevastopol;

DESIROUS of achieving an ever-closer cooperation on bilateral, regional and international issues of mutual interest;

COMMITTED to reaffirming the international obligations of the Parties to fighting against the proliferation of weapons of mass destruction, related materials and their means of delivery, and to cooperating on arms control and international efforts on disarmament;

REAFFIRMING the importance and efficiency of the security assurances enshrined in the Budapest Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons of 5 December 1994 (the Budapest Memorandum);

DESIROUS of achieving a high level of economic cooperation, inter alia through a Free Trade Area (FTA) as an integral part of this Agreement, in compliance with rights and obligations arising out of the World Trade Organisation (WTO) membership of the Parties;

COMMITTED to developing a new climate conducive to economic relations between the Parties, and above all for the development of trade and investment and stimulating competition;

ACKNOWLEDGING the need for enhanced energy cooperation, and the commitment of the Parties to ongoing implementation of the Energy Charter Treaty;

COMMITTED to enhancing cooperation in the areas of energy, energy security, energy saving, energy efficiency and the use of renewable energy sources, facilitating the development of appropriate infrastructure and achieving a high level of nuclear safety and security;

COMMITTED to enhancing cooperation on legal migration based on reciprocity and equity and to cooperating on tackling illegal migration and trafficking in human beings;

RECOGNISING the importance of creating the most favourable conditions for entry and stay of nationals of the Parties in the territory of the other Party and of improving the well-managed and secure mobility of people;

COMMITTED to combating transnational organised crime, including, amongst others, money laundering and smuggling, to reducing the supply of and demand for illicit drugs and to intensifying cooperation in the fight against terrorism;

AGREEING that environmental protection is a high priority;

DESIROUS of promoting cooperation in the field of health care and public health protection;

COMMITTED to enhancing cooperation aimed at protecting and improving the environment and the principles of sustainable development and green economy;

COMMITTED to enhancing people-to-people contacts, including through cooperation and exchange in the fields of science and technology, business, youth, education, culture and sport;

RECOGNISING the value of cooperation between the regional bodies of each Party;

TAKING INTO ACCOUNT that this Agreement will not prejudice and leaves open future developments in relations between the Parties;

RECOGNISING that the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, done at Brussels on 27 June 2014 (the EU-Ukraine Association Agreement) will cease to apply to the United Kingdom at the end of any transitional arrangement during which the rights and obligations under that Agreement continues to apply to the United Kingdom;

RECOGNISING that the Treaty on the Principles of Relations and Co-operation between the United Kingdom of Great Britain and Northern Ireland and Ukraine, done at London on 10 February 1993, will cease to have effect from the date of entry into force of this Agreement;

HAVE AGREED AS FOLLOWS:

## **Article 1. Objectives**

1. A strategic partnership is hereby established between the United Kingdom, of the one part, and Ukraine, of the other part.
2. The Parties identify the following key aims of their strategic partnership:
  - (a) developing political and economic cooperation based on common values;
  - (b) providing an appropriate framework for a Strategic Partnership Dialogue in all areas of mutual interest, in accordance with Article 4 and Title VII of this Agreement;
  - (c) promoting, preserving and strengthening peace and stability in the regional and international dimensions in accordance with the principles of the United Nations Charter and of the Helsinki Final Act of 1975 of the Conference on Security and Cooperation in Europe and the objectives of the Charter of Paris for a New Europe of 1990, as well as with regard to the principles set out in the Budapest Memorandum;
  - (d) strengthening engagement for peaceful resolution of the conflict caused by Russia's hostile actions, in full respect of the sovereignty and territorial integrity of Ukraine within its internationally recognised borders, as well as for economic recovery and reintegration;
  - (e) supporting Ukraine's continuing political, economic, defence and security reforms, which are aimed at realising its European and Euro- Atlantic aspirations, including towards EU and NATO membership;
  - (f) cooperating on the international stage in order to maintain the policy of non-recognition of Russia's attempted annexation of the Autonomous Republic of Crimea and the city of Sevastopol until the full restoration of the territorial integrity and sovereignty of Ukraine;
  - (g) further developing a close relationship in the field of security and defence to tackle threats to peace and stability;
  - (h) establishing conditions for enhanced economic and trade relations, including by setting up a Free Trade Area as stipulated in Title IV (Trade and Trade-related Matters) of this Agreement;
  - (i) enhancing cooperation in the field of justice, freedom and security with the aim of reinforcing the rule of law and respect for human rights and fundamental freedoms;
  - (j) enhancing interaction of law enforcement agencies and the judiciary of the Parties with the aim of counteracting common transnational criminal threats as well as corruption;
  - (k) supporting and developing cooperation in the fields of education, science, culture, youth and sport with the aim of fostering people-to-people ties and collaboration between the Parties and their institutions operating in these domains;
  - (l) establishing conditions for increasingly close cooperation in other areas of mutual interest.

## **Title I. GENERAL PRINCIPLES**

### **Article 2.**

1. Respect for democratic principles, human rights and fundamental freedoms, as defined in particular in the Helsinki Final Act of 1975 of the Conference on Security and Cooperation in Europe and the Charter of Paris for a New Europe of 1990, and other relevant human rights instruments, among them the UN Universal Declaration of Human Rights of 1948 and the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, and respect for the principle of the rule of law shall form the basis of the domestic and external policies of the Parties and constitute essential elements of this Agreement.
2. Promotion of respect for the principles of sovereignty and territorial integrity, inviolability of borders and independence also constitutes an essential element of this Agreement.
3. Cooperating and contributing to countering the proliferation of weapons of mass destruction, related materials and their means of delivery through full compliance with, and national implementation of, the Parties' existing obligations under international disarmament and non-proliferation treaties and agreements and other relevant international obligations also constitutes an essential element of this Agreement.
4. The Parties reaffirm their respect for the principles set out in the Budapest Memorandum.

5. The Parties recognise that the principles of a free market economy and sustainable development underpin their relationship.

6. The Parties reaffirm their commitment to the rule of law, good governance, the fight against corruption, as well as the fight against the different forms of transnational organised crime and terrorism.

7. The Parties shall develop their relations in strict observance of the principles of international law and in good faith.

## **Title II. STRATEGIC POLITICAL DIALOGUE AND COOPERATION IN THE FIELD OF FOREIGN AND SECURITY POLICY**

### **Article 3. Aims of Strategic Political Dialogue**

1. Strategic political dialogue in all areas of mutual interest shall be further developed and strengthened between the Parties through the Strategic Partnership Dialogue created in Article 400 of this Agreement.

2. The aims of the strategic political dialogue shall be:

(a) to increase political, foreign and security policy cooperation and effectiveness;

(b) to promote the peaceful resolution of the conflict caused by Russia's hostile actions, in full respect of the sovereignty and territorial integrity of Ukraine within its internationally recognised borders;

(c) to cooperate in international fora in order to maintain the policy of non- recognition of Russia's attempted annexation of the Autonomous Republic of Crimea and the city of Sevastopol until the full restoration of the territorial integrity and sovereignty of Ukraine;

(d) to seek to restore and maintain peace and promote international stability and security based on effective multilateralism, as well as to jointly address global and regional challenges and threats;

(e) to enhance security and defence cooperation, as well as seek to establish closer collaboration between the defence industries of the two nations;

(f) to progress security and defence sector reforms to align with the standards upheld by NATO member states;

(g) to contribute to consolidating domestic reforms aimed at strengthening sustainable democracy, the rule of law and developing a strong market economy;

(h) to strengthen respect for democratic principles, the rule of law and good governance, human rights and fundamental freedoms, including the rights of persons belonging to national minorities, non-discrimination of persons belonging to minorities and respect for diversity;

(i) to enhance cooperation in the field of justice, law enforcement and the fight against crime;

(j) to enhance cooperation in the field of migration, including mobility of citizens.

### **Article 4. Fora for the Conduct of the Strategic Partnership Dialogue**

1. The Parties shall hold annual meetings of the Strategic Partnership Dialogue at high official or highest governmental level on all aspects of bilateral cooperation, including security, economic and migration issues, as well as on international and regional issues of mutual interest, in accordance with Title VII of this Agreement. For the purposes of this Article, the UK recognises migration under the UN Global Compact for Migration, including but not limited to, visas, border security and returns policy.

2. Notwithstanding paragraph 1 of this Article, the Strategic Partnership Dialogue may also meet at any time and at any level, including at short notice where a situation so requires, to address any aspect of bilateral cooperation, as well as any international and regional issues of mutual interest.

3. The Parties shall encourage exchanges between members of their respective legislatures. They shall encourage cooperation and exchanges of experience in parliamentary procedures and practice, and in the preparation of legislation, and nothing in this Agreement shall restrict cooperation between the UK Parliament and the Verkhovna Rada of Ukraine.

4. The Parties shall also encourage contacts and exchanges of experience in public administration, in the judiciary and between legal bodies, and between press and media organisations.

## **Article 5. Dialogue and Cooperation on Domestic Reform**

The Parties shall cooperate in order to ensure that their internal policies are based on principles common to the Parties, in particular stability and effectiveness of democratic institutions and the rule of law, and on respect for human rights and fundamental freedoms, in particular as referred to in Article 13 of this Agreement.

## **Article 6. Foreign and Security Policy**

1. The Parties shall, through the Strategic Partnership Dialogue created in Article 400 of this Agreement, intensify their dialogue and cooperation in the area of foreign and security policy and shall strengthen practical cooperation in the areas of conflict prevention, peaceful conflict resolution and crisis management, regional stability, non-proliferation, arms control and arms export control and international efforts on disarmament.

2. The Parties shall work together bilaterally and within international organisations to respond effectively to regional and global security threats.

3. The Parties shall aim for the convergence of their foreign policy positions in the international arena on matters of common interest.

4. The Parties shall intensify the implementation of defence and security cooperation and assistance programs, as well as military and military-technical cooperation with the aim of further developing a close partnership in the field of security and defence, including through entering into relevant agreements.

## **Article 7. Peaceful Conflict Resolution and Post-Conflict Recovery**

1. The Parties reiterate their commitment to peace and security in Ukraine, including the resolution of the conflict caused by Russia's hostile actions, in full respect of the sovereignty and territorial integrity of Ukraine within its internationally recognised borders. Conflict resolution will constitute one of the central subjects of the strategic political relationship between the Parties in accordance with Article 3 of this Agreement, as well as in dialogue in other bilateral and multilateral formats.

2. The United Kingdom reaffirms its commitment to advocating internationally the policy of non-recognition of Russia's attempted annexation of the Autonomous Republic of Crimea and the city of Sevastopol.

3. The Parties underline the necessity of maintaining peaceful resolution of the Russia-Ukraine conflict high on the international agenda and express their commitment in this context to coordinate efforts with other relevant international actors and organisations, including by maintaining international pressure on Russia and the use of sanctions, as appropriate.

4. The United Kingdom will support Ukraine's efforts aimed at the post-conflict recovery of the Donbas, in particular in rebuilding the economy and infrastructure of the liberated territories and the implementation of social programs to reintegrate the local population.

## **Article 8. Regional Stability**

1. The Parties shall intensify their joint efforts to promote stability, security and democratic development in the region, as well as to work together for the prevention and peaceful settlement of regional conflicts.

2. These efforts shall follow commonly shared principles for maintaining international peace and security as established by the UN Charter, the Helsinki Final Act of 1975 of the Conference on Security and Cooperation in Europe and other relevant multilateral instruments.

## **Article 9. Military and Military-Technical Cooperation**

1. The Parties shall enhance practical cooperation in conflict prevention and crisis management.

2. Cooperation in this field shall be based on modalities and arrangements between the United Kingdom and Ukraine on consultation and cooperation on crisis management.

3. The Parties shall effect military and military-technical cooperation in areas of mutual interest, including but not limited to information on the development and implementation of national military doctrines, advice on defence policy and

management, participation in joint exercises, military intelligence, the training of service personnel, legal matters of military service, cooperation in areas of military healthcare, identifying opportunities to purchase military equipment, spare parts and supplies, as well as improvement of defence and military capabilities.

## **Article 10. Non-proliferation of Weapons of Mass Destruction**

1. The Parties consider that the proliferation of weapons of mass destruction, related materials and their means of delivery, to both state and non-state actors, represents one of the most serious threats to international stability and security. The Parties shall therefore cooperate and contribute to countering the proliferation of weapons of mass destruction, related materials and their means of delivery through full compliance with, and national implementation of, their existing obligations under international disarmament and non-proliferation treaties and agreements and other relevant international obligations, taking into account the provisions in nuclear non-proliferation treaties relating to civil nuclear energy.

2. The Parties shall cooperate and contribute to countering the proliferation of weapons of mass destruction, related materials and their means of delivery by:

(a) taking steps to sign, ratify or accede to, as appropriate, and fully implement all other relevant international instruments, and

(b) further improving the system of national export controls, in order to control effectively the export and transfer as well as transit of goods related to weapons of mass destruction, including through the effective implementation of end-use based "catch-all" controls and controls on transfer of sensitive technology by intangible means and provision of Technical Assistance that may contribute to the proliferation of weapons of mass destruction and means for their delivery, as well as effective sanctions for violations of export controls.

## **Article 11. Arms Control, Arms Export Control and the Fight Against Illicit Trafficking of Arms**

1. The Parties shall develop further cooperation on arms control and international efforts on disarmament, as well as with the aim of dealing with the impact on the population and on the environment of abandoned and unexploded ordnance. Cooperation on arms control shall also include export control and the fight against illicit trafficking of arms, including small arms and light weapons. The Parties shall promote universal adherence to, and compliance with, relevant international instruments and shall aim to ensure their effectiveness, including through implementation of the relevant United Nations Security Council Resolutions.

2. The Parties reaffirm their commitment to continue the process of conventional arms control, including through the full implementation of the Treaty on Conventional Armed Forces in Europe.

## **Article 12. Fight Against Crime**

1. The Parties shall work closely together in the fight against crime, including organised crime and cybercrime, trafficking in human beings, smuggling, money laundering, illegal international transactions in cultural art objects, civil aviation and navigation threats, as well as hybrid threats.

2. The Parties shall exchange experience and seek to enter into agreements to facilitate cooperation in this field.

## **Title III. JUSTICE, FREEDOM AND SECURITY**

### **Article 13. Rule of Law and Respect for Human Rights and Fundamental Freedoms**

1. In their cooperation on justice, freedom and security, the Parties shall attach particular importance to the consolidation of the rule of law and the reinforcement of institutions at all levels in the areas of administration in general and law enforcement and the administration of justice in particular. Cooperation shall, in particular, aim at strengthening the judiciary, improving its efficiency, safeguarding its independence and impartiality, and combating corruption. Respect for human rights and fundamental freedoms will guide all cooperation on justice, freedom and security.

2. Cooperation between the Parties, based on shared values, will reflect the balance between security on the one hand, and justice and freedom on the other.

### **Article 14. Protection of Personal Data**

1. The Parties shall cooperate in order to ensure an adequate level of protection of personal data in accordance with the highest European and international standards, including the relevant Council of Europe instruments. Cooperation on personal data protection may include, inter alia, the exchange of information and of experts.

2. The Parties agree to cooperate in order to ensure that compliance with the relevant requirements for the protection of personal data are upheld when exchanging technical, operational and strategic information between law enforcement agencies.

## **Article 15. Cooperation on Migration, Asylum and Border Management**

The Parties shall cooperate in the field of migration, asylum and border management, focusing jointly on:

- (a) tackling the root causes of irregular migration, pursuing actively the possibilities of cooperation in this field with third countries and in international fora;
- (b) establishing an effective and preventive policy against irregular migration, smuggling of migrants and trafficking in human beings including how to combat networks of smugglers and traffickers and how to protect the victims of such trafficking;
- (c) establishing an inter-state dialogue on asylum issues and in particular on matters relating to the practical implementation of the UN Convention of 1951 relating to the Status of Refugees and the Protocol relating to the Status of Refugees of 1967 and other relevant international instruments, as well as ensuring the respect by the Parties for the principle of non-refoulement;
- (d) further developing operational measures in the field of border management, subject to:
  - (i) cooperation on border management may include, inter alia, training, exchange of best practices including technological aspects, exchange of information in line with applicable rules and, where appropriate, exchange of liaison officers;
  - (ii) efforts of the Parties in this field will aim at the effective implementation of the principle of integrated border management;
- (e) enhancing document security;
- (f) developing an effective return policy; and
- (g) exchanging views on the informal employment of migrants.

## **Article 16. Treatment of Workers**

Subject to the laws, conditions and procedures applicable by the Parties, treatment accorded to workers who are nationals of one Party and who are legally employed in the territory of the other Party shall be free of any discrimination based on nationality as regards working conditions, remuneration or dismissal, compared to the nationals of that Party.

## **Article 17. Mobility of Workers**

The Strategic Partnership Dialogue shall regularly review the granting of more favourable provisions for mobility of workers, including by providing access to professional training, in accordance with laws, conditions and procedures in force in the UK and Ukraine, and taking into account the labour market in the UK and Ukraine.

## **Article 18. Movement of Persons**

The Parties shall establish cooperation aimed at facilitating movement of persons and shall, where the conditions for well-managed and secure mobility are in place, take gradual steps towards making it easier for citizens to travel to and visit each other's countries.

## **Article 19. Fight Against Money Laundering and Terrorism Financing**

The Parties shall work together in order to prevent and combat money laundering and terrorism financing. To that end, the Parties shall enhance bilateral and international cooperation in this field, including at operational level. The Parties shall ensure implementation of relevant international standards, in particular those of the Financial Action Task Force (FATF).

## **Article 20. Cooperation In the Fight Against Illicit Drugs, and on Precursors and Psychotropic Substances**

1. The Parties shall cooperate on issues relating to combating illicit trafficking in narcotic drugs, psychotropic substances and their precursors on the basis of commonly agreed principles along the lines of the relevant international conventions, and taking into account the 2009 Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem and the outcome document of the 2016 United Nations General Assembly Special Session on the world drug problem "Our Joint Commitment to Effectively Addressing and Countering the World Drug Problem".

2. This cooperation shall aim to combat illicit drugs, reduce the supply of, trafficking in, and demand for, illicit drugs, and cope with the health and social consequences of drug abuse. It shall also aim at a more effective prevention of diversion of chemical precursors used for the illicit manufacture of narcotic drugs and psychotropic substances.

3. The Parties shall use the necessary methods of cooperation to attain these objectives, ensuring a balanced and integrated approach towards the issues at stake.

## **Article 21. Fight Against Crime and Corruption**

1. The Parties shall cooperate in combating and preventing crime and corruption.

2. This cooperation shall address, inter alia:

(a) smuggling of, and trafficking in, human beings as well as firearms and illicit drugs;

(b) trafficking in goods;

(c) economic crimes including in the field of taxation;

(d) corruption, both in the private and public sector;

(e) forgery of documents;

(f) cybercrime; and

(g) new crime types, including hybrid threats.

3. The Parties shall enhance bilateral, regional and international cooperation in this field, including, where appropriate, cooperation that involves the International Criminal Police Organization (Interpol) and the European Union Agency for Law Enforcement Cooperation (Europol). The Parties shall further develop their cooperation on, inter alia:

(a) the exchange of best practice, including on investigation techniques and crime research;

(b) the exchange of information in line with applicable rules;

(c) capacity-building, including training and, where appropriate, the exchange of staff; and

(d) issues relating to the protection of witnesses and victims.

4. The Parties are committed to implementing effectively the UN Convention against Transnational Organised Crime of 2000 and its three Protocols, the UN Convention against Corruption of 2003 and other relevant international instruments.

## **Article 22. Cooperation In Fighting Terrorism**

1. The Parties agree to cooperate in the prevention and suppression of acts of terrorism in accordance with international law, international human rights law, refugee law and international humanitarian law, and the respective laws and regulations of the Parties. In particular, the Parties agree to cooperate on the basis of the full implementation of Resolution No. 1373 of the UN Security Council of 2001, the United Nations Global Counter-Terrorism Strategy of 2006 and subsequent updates and other relevant UN instruments, and applicable international conventions and instruments.

2. The Parties shall do so in particular by exchanging: (a) information on terrorist groups and their support networks;

(b) experience and information on terrorism trends and on the means and methods of combating terrorism, including in technical areas, and training; and



(c) experience in respect of terrorism prevention.

All exchange of information shall take place in accordance with international and national law.

3. In accordance with paragraph one of this Article, the Parties further:

(a) reaffirm their conviction that terrorism in all forms and manifestations constitutes one of the most serious threats to international peace and security and that any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever, wherever and by whomsoever committed; and

(b) reiterate their commitment to combat terrorism by all means and shall ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice.

## **Article 23. Legal Cooperation**

1. The Parties shall further develop judicial cooperation in civil and criminal matters, making full use of the relevant international and bilateral instruments and based on the principles of legal certainty and the right to a fair trial.

2. The Parties shall facilitate further judicial cooperation in civil matters on the basis of the applicable multilateral legal instruments, especially the conventions of the Hague Conference on Private International Law in the field of international legal cooperation and litigation as well as the protection of children.

3. As regards judicial cooperation in criminal matters, the Parties shall seek to enhance arrangements on mutual legal assistance and extradition. This would include, where appropriate, accession to, and implementation of, the relevant international instruments of the United Nations and the Council of Europe, as well as the Rome Statute of the International Criminal Court of 1998, including, wherever possible, cooperation through Eurojust.

## **Article 24. Diplomatic Missions**

The Parties shall extend to each other all appropriate assistance in the operations of diplomatic missions in each other's countries.

## **Title IV. TRADE AND TRADE-RELATED MATTERS**

### **Chapter 1. NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS**

#### **Section 1. COMMON PROVISIONS**

##### **Article 25. Objective**

The Parties shall continue to progressively establish a free trade area over a transitional period of a maximum of 10 years starting from 1 January 2016 (1), in accordance with the provisions of this Agreement and in conformity with Article XXIV of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as "GATT 1994").

(1) Unless otherwise provided in Annex I to this Agreement.

##### **Article 26. Scope and Coverage**

1. The provisions of this Chapter shall apply to trade in goods (2) originating in the territories of the Parties.

2. For the purposes of this Chapter, "originating" means qualifying under the rules of origin set out in Protocol I to this Agreement (Concerning the Definition of the Concept of "Originating Products" and Methods of Administrative Cooperation).

(2) For the purposes of this Agreement, goods means products as understood in GATT 1994 unless otherwise provided in this Agreement.

#### **Section 2. ELIMINATION OF CUSTOMS DUTIES, FEES AND OTHER**

# **CHARGES**

## **Article 27. Definition of Customs Duties**

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

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

## **Article 28. Classification of Goods**

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

## **Article 29. Elimination of Customs Duties on Imports**

1. The Parties shall eliminate all customs duties on goods originating in the other Party, except as provided in the Schedules set out in Annex I-A to this Agreement (hereinafter referred to as the "Schedules").
2. For each good, the base rate of customs duties to which the successive reductions are to be applied under paragraph 1 of this Article shall be that specified in Annex I to this Agreement.

Without prejudice to the first subparagraph, for worn clothing and other worn articles falling within the Ukrainian customs code 6309 00 00, Ukraine will apply an entry price custom duty on imports to its territory, in accordance with the conditions set out in Annex I-B to this Agreement.

3. If, at any moment following the date of entry into force of this Agreement, a Party reduces its applied most-favoured-nation (hereinafter referred to as 'MFN') customs duty rate, such duty rate shall apply as base rate if and for as long as it is lower than the customs duty rate calculated in accordance with that Party's Schedule.
4. Two years after the entry into force of this Agreement, at the request of either Party, the Parties shall consult one another in order to consider accelerating and broadening the scope of the elimination of customs duties on trade between themselves. A decision of the Trade Committee created in Article 404(1) of this Agreement on the acceleration or elimination of a customs duty on a good shall supersede any duty rate or staging category determined pursuant to their Schedules for that good.

## **Article 30. Standstill**

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

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

## **Article 31. Customs Duties on Exports**

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

measures for export duties as set out in Annex I-D to this Agreement. Such safeguard measures shall expire at the end of the period specified for that good in Annex I-D to this Agreement.

## **Article 32. Export Subsidies and Measures of Equivalent Effect**

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

## **Article 33. Fees and other Charges**

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

## **Section 3. NON-TARIFF MEASURES**

### **Article 34. National Treatment**

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

### **Article 35. Import and Export Restrictions**

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

## **Section 4. SPECIFIC PROVISIONS RELATED TO GOODS**

### **Article 36. General Exceptions**

Nothing in this Agreement shall be construed in such a way as to prevent the adoption or enforcement by any Party of measures in accordance with Articles XX and XXI

of GATT 1994 and its interpretative notes, which are hereby incorporated into and made an integral part of this Agreement.

## **Section 5. ADMINISTRATIVE COOPERATION AND COORDINATION WITH OTHER COUNTRIES**

### **Article 37. Special Provisions on Administrative Cooperation**

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

fraud shall mean, inter alia:

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

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

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

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

5. At the same time as the notification to the Trade Committee under paragraph 4(a) of this Article, the Party concerned should publish a notice to importers in its sources of official information. The notice to importers should indicate for the product concerned that there is a finding, on the basis of objective information, of a failure to provide administrative cooperation and/or of irregularities or fraud.

## **Article 38. Management of Administrative Errors**

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

## **Article 39. Agreements with other Countries**

1. This Agreement shall not preclude the maintenance or establishment of customs unions, free trade areas or arrangements for frontier traffic, except in so far as they conflict with trade arrangements provided for in this Agreement.
2. Consultations between the Parties shall take place within the Trade Committee concerning agreements establishing customs unions, free trade areas or arrangements for frontier traffic and, where requested, on other major issues relating to their respective trade policies with third countries.

# **Chapter 2. TRADE REMEDIES**

## **Section 1. GLOBAL SAFEGUARD MEASURES**

### **Article 40. General Provisions**

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

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

### **Article 41. Transparency**

1. The Party initiating a safeguard investigation shall notify the other Party of such initiation by sending an official notification to the other Party, if the latter has a substantial economic interest.

2. For the purposes of this Article, a Party shall be considered as having a substantial economic interest when it is among the five largest suppliers of the imported product during the most recent three-year period of time, measured in terms of either absolute volume or value.

3. Notwithstanding Article 40 of this Agreement and without prejudice to Article 3.2 of the Agreement on Safeguards, at the request of the other Party, the Party initiating a safeguard investigation and intending to apply safeguard measures shall provide immediately ad hoc written notification of all the pertinent information leading to the initiation of a safeguard investigation and imposition of safeguard measures, including where relevant, on the provisional findings and on the final findings of the investigation as well as offer the possibility for consultations to the other Party.

### **Article 42. Application of Measures**

1. When imposing safeguard measures, the Parties shall endeavour to impose them in a way that least affects their bilateral trade.

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

### **Article 43. Developing Country**

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

(3) For the purposes of this Article, the determination of developing country shall take into consideration the lists issued by international organisations such as the World Bank, the Organisation for Economic Co-operation and Development (hereinafter referred to as the "OECD") or the International Monetary Fund (hereinafter referred to as the "IMF"), etc.

## **Section 2. ANTI-DUMPING AND COUNTERVAILING MEASURES**

### **Article 44. General Provisions**

1. The Parties confirm their rights and obligations under Article VI of GATT 1994, the Agreement on Implementation of Article VI of GATT 1994, contained in Annex 1A to the WTO Agreement (hereinafter referred to as the "Anti-Dumping Agreement") and the Agreement on Subsidies and Countervailing Measures, contained in Annex 1A to the WTO Agreement (hereinafter referred to as the "SCM Agreement").

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

### **Article 45. Transparency**

1. The Parties agree that anti-dumping and countervailing measures should be used in full compliance with the

requirements under the Anti-Dumping Agreement and the SCM Agreement respectively and should be based on a fair and transparent system.

2. After receipt by a Party's competent authorities of a properly documented anti-dumping application with respect to imports from the other Party, and no later than 15 days before initiating an investigation, the Party shall provide written notification to the other Party of receipt of the application.

3. Without prejudice to Article 6.5 of the Anti-Dumping Agreement and Article 12.4 of the SCM Agreement, the Parties shall ensure, immediately after the imposition of provisional measures, if any, and before final determination is made, full and meaningful disclosure of all essential facts and considerations which form the basis for the decision to apply measures. Disclosure shall be made in writing and allow interested parties sufficient time to make their comments. After final disclosure, interested parties shall be given at least 10 days to make their comments.

4. Provided it does not unnecessarily delay the conduct of the investigation and in accordance with a Party's internal legislation concerning investigation procedures, each interested party shall be granted the possibility to be heard in order to express its views during anti-dumping and anti-subsidy investigations.

## **Article 46. Consideration of Public Interest**

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

## **Article 47. Lesser Duty Rule**

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

## **Article 48. Application of Measures and Reviews**

1. Provisional anti-dumping or countervailing measures may be applied by the Parties only if a preliminary determination has shown the existence of dumping or subsidy causing injury to a domestic industry.

2. Before imposing a definitive anti-dumping or countervailing duty, the Parties shall explore the possibility of applying constructive remedies, due consideration being given to the special circumstances of each case. Without prejudice to the relevant provisions of each Party's internal legislation, the Parties should give preference to price undertakings, to the extent that they have received adequate offers by exporters and that the acceptance of these offers is not considered impractical.

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

## **Section 3. CONSULTATIONS**

### **Article 49. Consultations**

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

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

3. Consultations under this Section shall be held without prejudice to, and in full compliance with, the provisions of Article 41 and Article 45 of this Agreement.

## **Section 4. INSTITUTIONAL PROVISIONS**

## **Article 50. Dialogue on Trade Remedies**

1. The Parties have agreed to establish an expert-level Dialogue on Trade Remedies as a forum for cooperation in trade remedies matters.
2. The Dialogue on Trade Remedies shall be conducted with the aim of:
  - (a) enhancing a Party's knowledge and understanding of the other Party's trade remedy laws, policies and practices;
  - (b) examining the implementation of this Chapter;
  - (c) improving cooperation between the Parties' authorities having responsibility for trade remedies matters;
  - (d) discussing international developments in the area of trade defence; (e) cooperating on any other trade remedies matter.
3. The Dialogue on Trade Remedies meetings shall be held on ad hoc basis upon request by either Party. The agenda of each such meeting shall be jointly agreed in advance.

## **Section 5. DISPUTE SETTLEMENT**

### **Article 51. Dispute Settlement**

Chapter 14 (Dispute Settlement) of Title IV of this Agreement shall not apply to this Chapter.

## **Chapter 3. TECHNICAL BARRIERS TO TRADE**

### **Article 52. Scope and Definitions**

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

### **Article 53. Affirmation of the TBT Agreement**

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

### **Article 54. Technical Cooperation**

1. The Parties shall strengthen their cooperation in the field of technical regulations, standards, metrology, market surveillance, accreditation and conformity assessment procedures with a view to increasing mutual understanding of their respective systems and facilitating access to their respective markets. To this end, they may establish regulatory dialogues at both horizontal and sectoral levels.
2. In their cooperation, the Parties shall seek to identify, develop and promote trade-facilitating initiatives which may include, but are not limited to:
  - (a) reinforcing regulatory cooperation through the exchange of information, experience and data; scientific and technical cooperation, with a view to improving the quality of their technical regulations, standards, testing, market surveillance, certification, and accreditation, and making efficient use of regulatory resources;
  - (b) promoting and encouraging cooperation between their respective organisations, public or private, responsible for metrology, standardisation, testing, market surveillance, certification and accreditation;
  - (c) fostering the development of the quality infrastructure for standardisation, metrology, accreditation, conformity

assessment and the market surveillance system in Ukraine;

(d) promoting Ukrainian participation in the work of related United Kingdom organisations;

(e) seeking solutions to trade barriers that may arise;

( coordinating their positions in international trade and regulatory organisations such as the WTO and the United Nations Economic Commission for Europe (hereinafter referred to as "UN-ECE").

## **Article 55. Agreement on Conformity Assessment and Acceptance of Industrial Products**

1. The Parties agree to add an ACAA as a Protocol to this Agreement, covering sectors agreed by Parties.

2. The ACAA shall be added as a Protocol to this Agreement by agreement between the Parties according to the procedure for amending this Agreement. It is intended that the ACAA will ultimately be extended to cover all the sectors agreed by Parties, in accordance with the aforementioned procedure.

3. Once the sectors on the list have been covered by the ACAA, the Parties, by mutual agreement and in accordance with the procedure for amending this Agreement, undertake to consider extending its scope to cover other industrial sectors.

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

## **Article 56. Marking and Labelling**

1. Without prejudice to Article 55 of this Agreement, with respect to technical regulations relating to labelling or marking requirements, the Parties reaffirm the principles of Article 2.2 of the TBT Agreement whereby such requirements are not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade. For this purpose, such labelling or marking requirements shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks that non-fulfilment would create.

2. In particular, regarding mandatory marking or labelling, the Parties agree that: (a) they will endeavour to minimise their requirements for marking or labelling, except as required for the protection of health, safety, or the environment, or for other reasonable public policy purposes;

(b) a Party may determine the form of labelling or marking, but shall not require the approval, registration or certification of labels; and

(c) the Parties retain the right to require the information on a label or marks to be in a specific language.

## **Chapter 4. SANITARY AND PHYTOSANITARY MEASURES**

### **Article 57. Objective**

1. The objective of this Chapter is to facilitate trade in commodities covered by sanitary and phytosanitary measures between the Parties, whilst safeguarding human, animal and plant life or health, by:

(a) ensuring full transparency as regards sanitary and phytosanitary measures applicable to trade;

(b) recognising the animal and plant health status of the Parties and applying the principle of regionalisation;

(c) establishing a mechanism for the recognition of equivalence of sanitary or phytosanitary measures maintained by a Party;

(d) further implementing the principles of the SPS Agreement;

(e) establishing mechanisms and procedures for trade facilitation; and

(f) improving communication and cooperation between the Parties on sanitary and phytosanitary measures.

2. This Chapter also aims at reaching a common understanding between the Parties concerning animal welfare standards.

### **Article 58. Multilateral Obligations**



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

## **Article 59. Scope**

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

## **Article 60. Definitions**

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

1. "sanitary and phytosanitary measures " means measures as defined in paragraph 1 of Annex A to the SPS Agreement, falling within the scope of this Chapter;
2. "animals" means terrestrial and aquatic animals, as defined in the Terrestrial Animal Health Code and the Aquatic Animal Health Code of the World Organisation for Animal Health (hereinafter referred to as the "OIE") accordingly;
3. "animal products" means products of animal origin, including aquatic animal products, as defined in the Terrestrial Animal Health Code or the Aquatic Animal Health Code of the OIE;
4. "animal by-products not intended for human consumption" means animal products as listed in Annex I-A, Part 2 (I1) to this Agreement;
5. "plants" means living plants and specified living parts thereof, including seeds:
  - (a) fruit, in the botanical sense, other than those preserved by deep freezing;
  - (b) vegetables, other than those preserved by deep freezing;
  - (c) tubers, corms, bulbs, rhizomes;
  - (d) cut flowers;
  - (e) branches with foliage;
  - (f) cut trees retaining foliage;
  - (g) plant tissue cultures;
  - (h) leaves, foliage;
  - (i) live pollen; and
  - (j) bud-wood, cuttings, scions.
6. "plant products" means products of plant origin, unprocessed or having undergone simple preparation in so far as these are not plants, set out in Annex II-A, Part 3 to this Agreement;
7. "seeds" means seeds in the botanical sense, intended for planting;
8. "pests (harmful organisms)" means any species, strain or biotype of plant, animal or pathogenic agent injurious to plants or plant products;
9. "animal disease" means a clinical or pathological manifestation of an infection in animals;
10. "aquaculture disease" means clinical or non-clinical infection with one or more of the aetiological agents of the diseases referred to in the Aquatic Animal Health Code of the OIE;
11. "infection in animals" means the situation where animals maintain an infectious agent with or without the presence of clinical or pathological manifestation of an infection;
12. "animal welfare standards" means standards for the protection of animals as developed and applied by the Parties and, as appropriate, in line with the OIE standards and falling within the scope of this Agreement;
13. "appropriate level of sanitary and phytosanitary protection" means the appropriate level of sanitary and phytosanitary

protection as defined in paragraph 5 of Annex A to the SPS Agreement;

14. "region" means, as regards animal health, zones or regions as defined in the Terrestrial Animal Health Code of the OIE, and for aquaculture as defined in the Aquatic Animal Health Code of the OIE;

15. "pest-free area" means an area in which a specific pest does not occur as demonstrated by scientific evidence and in which, where appropriate, this condition is being officially maintained;

16. "regionalisation" means the concept of regionalisation as described in Article 6 of the SPS Agreement;

17. "consignment" means a quantity of animal products of the same type, covered by the same certificate or document, conveyed by the same means of transport, consigned by a single consignor and originating in the same exporting country or part of such country. A consignment may be composed of one or more lots;

18. "consignment of plants or plant products" means a quantity of plants, plant products and/or other articles being moved from one country to another and covered, when required, by a single phytosanitary certificate (a consignment may be composed of one or more commodities or lots);

19. "lot" means a number or units of a single commodity, identifiable by its homogeneity of composition and origin, and forming part of a consignment;

20. "equivalence for trade purposes" (hereinafter referred to as "equivalence") means the situation where the importing Party shall accept the sanitary or phytosanitary measures of the exporting Party as equivalent, even if these measures differ from its own, if the exporting Party objectively demonstrates to the importing Party that its measures achieve the importing Party's appropriate level of sanitary or phytosanitary protection;

21. "sector" means the production and trade structure for a product or category of products in a Party;

22. "sub-sector" means a well-defined and controlled part of a sector;

23. "commodities" means animals and plants, or categories thereof, or specific products and other objects being moved for trade or other purposes, including those referred to in points 2 to 7 of this Article;

24. "specific import authorisation" means a formal prior authorisation by the competent authorities of the importing Party addressed to an individual importer as a condition for import of a single consignment or multiple consignments of a commodity from the exporting Party, within the scope of this Agreement;

25. "working days" means week days except Sunday, Saturday and public holidays in one of the Parties;

26. "inspection" means the examination of any aspect of feed, food, animal health and animal welfare in order to verify that such aspect(s) comply with the legal requirements of feed and food law and animal health and animal welfare rules;

27. "plant health inspection" means official visual examination of plants, plant products or other regulated objects to determine if pests are present and/or to determine compliance with phytosanitary regulations;

28. "verification" means checking, by examination and the consideration of objective evidence, whether specified requirements have been fulfilled.

## **Article 61. Competent Authorities**

The Parties shall inform each other about the structure, organisation, and division of competences of their competent authorities during the first meeting of the Sanitary and Phytosanitary Management Sub-Committee (hereinafter referred to as the "SPS Sub-Committee") referred to in Article 71 of this Agreement. The Parties shall inform each other of any change concerning such competent authorities, including contact points.

## **Article 62. Recognition for Trade Purposes of Animal Health and Pest Status and Regional Conditions**

### **A. Recognition of Status for Animal Diseases, Infections in Animals or Pests**

1. As regards animal diseases and infections in animals (including zoonosis), the following shall apply:

(a) The importing Party shall recognise for trade purposes, the animal health status of the exporting Party or its regions as determined by the exporting Party in accordance with Annex IV Part A to this Agreement, with respect to animal diseases

specified in Annex III-A to this Agreement;

(b) Where a Party considers that it has, for its territory or a region, a special status with respect to a specific animal disease, other than those listed in Annex III-A to this Agreement, it may request recognition of this status in accordance with the criteria laid down in Annex IV Part C to this Agreement. The importing Party may request guarantees in respect of imports of live animals and animal products, which are appropriate to the agreed status of the Parties;

(c) The status of the territories or regions, or the status in a sector or sub-sector of the Parties related to the prevalence or incidence of an animal disease other than listed in Annex III-A to this Agreement, or infections in animals, and/or the associated risk, as appropriate, as defined by OIE, is recognised by the Parties as the basis for trade between them. The importing Party may request guarantees in respect of imports of live animals and animal products which are appropriate to the defined status in accordance with the recommendations of OIE, as appropriate.

(d) Without prejudice to Articles 64, 66 and 70 of this Agreement, and unless the importing Party raises an explicit objection and requests supporting or additional information or consultations and/or verification, each Party shall take, without undue delay, the necessary legislative and administrative measures to allow trade on the basis of points (a), (b) and (c) of this paragraph.

2. As regards pests, the following shall apply:

(a) The Parties recognise for trade purposes their pest status in respect of pests specified in Annex III-B to this Agreement;

(b) Without prejudice to Articles 64, 66 and 70 of this Agreement, and unless the importing Party raises an explicit objection and requests supporting or additional information or consultations and/or verification, each Party shall take, without undue delay, the necessary legislative and administrative measures to allow trade on the basis of point (a) of this paragraph.

B. Recognition of regionalisation/zoning and pest-free areas (hereinafter referred to as "PFAs")

3. The Parties recognise the concept of regionalisation and PFAs as specified in the relevant Food and Agriculture Organization/International Plant Protection Convention of 1997 and International Standards for Phytosanitary Measures (hereinafter referred to as "ISPM") of the Food and Agriculture Organization, which they agree to apply to trade between them.

4. The Parties agree that regionalisation decisions for animal and fish diseases listed in Annex III-A, and for pests listed in Annex III-B to this Agreement, shall be taken in accordance with the provisions of Annex IV Part A and B to this Agreement.

5. (a) As regards animal diseases, and in accordance with Article 64 of this Agreement, the exporting Party seeking recognition of its regionalisation decision by the importing Party shall notify its measures with full explanations and supporting data for its determinations and decisions. Without prejudice to Article 65 of this Agreement, and unless the importing Party raises an explicit objection and requests additional information or consultations and/or verification within 15 working days of receipt of the notification, the regionalisation decision so notified shall be deemed to be accepted;

(b) The consultations referred to in point (a) of this paragraph shall take place in accordance with Article 65(3) of this Agreement. The importing Party shall assess the additional information within 15 working days of receipt of the additional information. The verification referred to in point (a) shall be carried out in accordance with Article 68 of this Agreement and within 25 working days of receipt of the request for verification.

6. (a) As regards pests, each Party shall ensure that trade in plants, plant products and other objects takes account, as appropriate, of the pest status in an area recognised as a PFA by the other Party. A Party seeking recognition of its PFA by the other Party shall notify its measures and, upon request, provide full explanation and supporting data for its establishment and maintenance, as guided by the relevant ISPMs as the Parties deem appropriate. Without prejudice to Article 70 of this Agreement, and unless a Party raises an explicit objection and requests additional information or consultations and/or verification within three months of the notification, the regionalisation decision for PFAs so notified shall be deemed to be accepted;

(b) The consultations referred to in point (a) shall take place in accordance with Article 65(3) of this Agreement. The importing Party shall assess the additional information within three months of receipt of the additional information. The verification referred to in point (a) shall be carried out in accordance with Article 68 of this Agreement and within 12 months of receipt of the request for verification, taking into account the biology of the pest and the crop concerned.

7. After finalisation of the procedures described in paragraphs 4 to 6 of this Article, and without prejudice to Article 70 of this Agreement, each Party shall take, without undue delay, the necessary legislative and administrative measures to allow trade on that basis. C. Compartmentalisation The Parties commit themselves to engaging in further discussions with a view to implementing the principle of compartmentalisation referred to in Annex XI to this Agreement.

## **Article 63. Determination of Equivalence**

1. Equivalence may be recognised in respect of:

(a) an individual measure; or

(b) a group of measures; or

(c) a system applicable to a sector, sub-sector, commodities or group of commodities.

2. In the determination of equivalence, the Parties shall follow the process set out in paragraph 3 of this Article. This process shall include the objective demonstration of equivalence by the exporting Party and the objective assessment of this demonstration by the importing Party. This may include an inspection or verification.

3. Upon a request by the exporting Party concerning recognition of equivalence, as set out in paragraph 1 of this Article, the Parties shall without delay and no later than three months following receipt by the importing Party of such request, initiate the consultation process which includes the steps set out in Annex VI to this Agreement. However, if multiple requests are made by the exporting Party, the Parties, at the request of the importing Party, shall agree within the SPS Sub-Committee referred to in Article 71 of this Agreement on a time schedule in which they shall initiate and conduct the process referred to in this paragraph.

4. Unless otherwise agreed, the importing Party shall finalise the determination of equivalence referred to in paragraph 3 of this Article within 360 days of receipt from the exporting Party of the request, including a dossier demonstrating the equivalence, except for seasonal crops when it is justifiable to delay the assessment to permit verification during a suitable period of growth of a crop.

5. The importing Party determines equivalence as regards plants, plant products and other objects in accordance with relevant ISPMs, as appropriate.

6. The importing Party may withdraw or suspend equivalence, on the basis of any amendment by one of the Parties, of measures affecting equivalence, provided that the following procedures are followed:

(a) In accordance with Article 64(2) of this Agreement, the exporting Party shall inform the importing Party of any proposal for amendment of its measures for which equivalence of measures is recognised and the likely effect of the proposed measures on the equivalence which has been recognised. Within 30 working days of receipt of this information, the importing Party shall inform the exporting Party whether or not equivalence would continue to be recognised on the basis of the proposed measures;

(b) In accordance with Article 64(2) of this Agreement, the importing Party shall inform the exporting Party of any proposal for amendment of its measures on which recognition of equivalence has been based and the likely effect of the proposed measures on the equivalence which has been recognised. Should the importing Party not continue to recognise equivalence, the Parties may agree on the conditions to re-initiate the process referred to in paragraph 3 of this Article on the basis of the proposed measures.

7. The recognition, suspension or withdrawal of equivalence rests solely with the importing Party acting in accordance with its administrative and legislative framework. That Party shall provide to the exporting Party in writing full explanations and supporting data used for the determinations and decisions covered by this Article. In case of non-recognition, suspension or withdrawal of equivalence, the importing Party shall indicate to the exporting Party the required conditions on the basis of which the process referred to in paragraph 3 may be reinitiated.

8. Without prejudice to Article 70 of this Agreement, the importing Party may not withdraw or suspend equivalence before the proposed new measures of either Party enter into force.

9. Where equivalence is formally recognised by the importing party, on the basis of the consultation process as set out in Annex VI to this Agreement, the SPS Sub-Committee shall, in accordance with the procedure set out in Article 71(2) of this Agreement, declare recognition of equivalence in trade between the Parties. The decision shall also provide for the reduction of physical checks at the frontiers, simplified certificates and pre-listing procedures for the establishments as appropriate.

The status of the equivalence shall be listed in Annex VI to this Agreement.

## **Article 64. Transparency and Exchange of Information**

1. Without prejudice to Article 65 of this Agreement, the Parties shall cooperate to enhance mutual understanding of their official control structure and mechanisms tasked with the application of SPS measures and their respective performance. This can be achieved, amongst others, through reports of international audits when these are made public and the Parties can exchange information on the results of these audits or other information, as appropriate.

2. In the framework of determination of equivalence as referred to in Article 63 of this Agreement, the Parties shall keep each other informed of legislative and other procedural changes adopted in the areas concerned.

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

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

## **Article 65. Notification, Consultation and Facilitation of Communication**

1. Each Party shall notify the other Party in writing within two working days, of any serious or significant public, animal or plant health risk, including any food control emergencies or situations where there is a clearly identified risk of serious health effects associated with the consumption of animal or plant products and in particular of:

(a) any measures affecting regionalisation decisions as referred to in Article 62 of this Agreement;

(b) the presence or evolution of any animal disease listed in Annex III-A or of the regulated pests on the list contained in Annex III-B to this Agreement;

(c) findings of epidemiological importance or important associated risks with respect to animal diseases and pests which are not listed in Annex I-A and Annex II-B to this Agreement or which are new animal diseases or pests; and

(d) any additional measures going beyond the basic requirements applicable to the respective measures taken by the Parties to control or eradicate animal diseases or pests or to protect public or plant health and any changes in prophylactic policies, including vaccination policies.

2. (a) Notifications shall be made in writing to the contact points referred to in Article 64(2) of this Agreement.

(b) Notification in writing means notification by mail, fax or e-mail. Notifications shall only be sent between the contact points referred to in Article 64(2) of this Agreement.

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

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

5. Upon request by a Party, consultations as referred to in paragraphs 3 and 4 of this Article, shall be held by video or audio conference. The requesting Party shall ensure the preparation of the minutes of the consultation, which shall be formally approved by the Parties. For the purposes of such approval, Article 64(2) of this Agreement shall apply.

6. A mutually applied rapid alert system and early warning mechanism for any veterinary or phytosanitary emergency will start at a later stage after the Parties have decided on the arrangements for the functioning of such mechanisms.

## **Article 66. Trade Conditions**

1. General Import Conditions

(a) For any commodity covered by Annex I-A and Annex II-C(2) to this Agreement, the Parties agree to apply general import conditions. Without prejudice to the decisions taken in accordance with Article 62 of this Agreement, the import conditions of the importing Party shall be applicable to the total territory of the exporting Party. Upon entry into force of this Agreement and in accordance with Article 674 of this Agreement, the importing Party shall inform the exporting Party of its sanitary and phytosanitary import requirements for commodities referred to in Annex II-A and Annex II-C(2) to this Agreement. This information shall include, as appropriate, the models for the official certificates or declarations or

commercial documents, as prescribed by the importing Party.

(b) (i) For the notification by the Parties of amendments or proposed amendments of the conditions referred to in paragraph 1 of this Article, they shall comply with the provisions of the SPS Agreement and subsequent decisions as regards the notification of measures. Without prejudice to Article 70 of this Agreement, the importing Party shall take into account the transport time between the Parties to establish the date of entry into force of the amended conditions referred to in paragraph 1(a).

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

## 2. Import Conditions after Recognition of Equivalence

(a) Within 90 days of the adoption of a decision on recognition of equivalence, the Parties shall take the necessary legislative and administrative measures to implement the recognition of equivalence in order to allow on that basis trade between them of commodities referred to in Annex I-A and Annex II-C(2) to this Agreement in sectors and sub-sectors where applicable, for which all respective sanitary and phytosanitary measures of the exporting Party are recognised as equivalent by the importing Party. For these commodities, the model of the official certificate or official document required by the importing Party may, at that stage, be replaced by a certificate drawn up pursuant to Annex X.B to this Agreement;

(b) For commodities in sectors or sub-sectors, where applicable, for which some but not all measures are recognised as equivalent, trade shall continue on the basis of compliance with the conditions referred to in paragraph 1(a). Upon request by the exporting Party, paragraph 5 of this Article shall apply.

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

4. For conditions affecting trade in the commodities referred to in paragraph 1(a), upon request by the exporting Party, the Parties shall enter into consultations within the SPS Sub Committee in accordance with Article 71 of this Agreement, in order to agree on alternative or additional import conditions of the importing Party. Such alternative or additional import conditions may, where appropriate, be based on measures of the exporting Party recognised as equivalent by the importing Party. If agreed, the importing Party shall take the necessary legislative and/or administrative measures to allow import on that basis, within 90 days of the decision of the SPS Sub-Committee.

## 5. List of Establishments, Conditional Approval

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

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

(b) For the import of animal products referred to in paragraph 2(a), the exporting Party shall inform the importing Party of its list of establishments meeting the importing Party's requirements.

6. Upon request by a Party, the other Party shall provide necessary explanations and supporting data for the determinations and decisions falling within the scope of this Article.

## **Article 67. Certification Procedure**

1. For purposes of certification procedures and the issuing of certificates and official documents, the Parties agree on the principles set out in Annex IX to this Agreement.

2. The SPS Sub-Committee referred to in Article 71 of this Agreement may agree on rules to be followed in case of electronic certification, withdrawal or replacement of certificates.

3. The Parties will agree on common models of certificates where appropriate.

## **Article 68. Verification**

1. In order to maintain confidence in the effective implementation of the provisions of this Chapter, each Party shall have the right:

(a) to verify, in accordance with the guidelines of Annex VII to this Agreement, all or part of the total control programme of the other Party's authorities or other measures where applicable. The expenses of such verification shall be borne by the Party carrying out the verification;

(b) from a date to be determined by the Parties, to receive, at its request from the other Party, information about all or part of that Party's total control programmes and reports concerning the results of the controls carried out under that programme;

(c) for laboratory tests relating to the commodities of Annex I-A and Annex I-C(2) to this Agreement, upon request, and where applicable, to participate in the periodical inter-comparative test programme for specific tests organised by the reference laboratory of the other Party. The expenses of such participation shall be borne by the participating Party.

2. Either Party may share the results of the verifications referred to in subparagraph 1(a) of this Article with third parties and make the results publicly available as may be required by provisions applicable to either Party. Confidentiality provisions applicable to either Party shall be respected in such sharing and/or publication of the results, where appropriate.

3. The SPS Sub-Committee referred to in Article 71 of this Agreement may modify, by means of a decision, Annex VII to this Agreement, taking due account of relevant work carried out by international organisations.

4. The results of verification may contribute to measures referred to in Articles 63 and 69 of this Agreement by the Parties or one of the Parties.

## **Article 69. Import Checks and Inspection Fees**

1. The Parties agree that import checks on the import by the importing Party of consignments from the exporting Party shall respect the principles set out in Annex VII, Part A to this Agreement. The results of these checks may contribute to the verification process referred to in Article 68 of this Agreement.

2. The frequency of physical import checks applied by each Party are set out in Annex VIII, Part B to this Agreement. A Party may amend these frequencies within its competences and in accordance with its internal legislation, as a result of progress made in accordance with Articles 63 and 66 of this Agreement, or as a result of verifications, consultations or other measures provided for in this Agreement. The SPS Sub-Committee referred to in Article 71 of this Agreement shall, by decision, amend Annex VII, Part B of this Agreement accordingly.

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

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

5. From a date to be determined by the SPS Sub-Committee referred to in Article 71 of this Agreement, the Parties may agree on the conditions to approve each other's controls as laid down in Article 68(1)(b) with a view to adapting and reciprocally reducing, where applicable, the frequency of physical import checks for the commodities referred to in Article 66(2) of this Agreement.

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

6. The conditions required for approval of the adaptation of import checks shall be included in Annex VIII to this Agreement by the procedure referred to in Article 71(6) of this Agreement.

## **Article 70. Safeguard Measures**

1. Should the importing Party take, within its territory, measures to control any cause likely to constitute a serious hazard or risk to human, animal or plant health, the exporting Party, without prejudice to paragraph 2 of this Article, shall take equivalent measures to prevent the introduction of the hazard or risk into the territory of the importing Party.

2. On the basis of serious public, animal or plant health grounds, the importing Party may take provisional measures

necessary for the protection of public, animal or plant health. For consignments in transport between the Parties, the importing Party shall consider the most suitable and proportionate solution in order to avoid unnecessary disruption to trade.

3. The Party adopting measures under paragraph 2 of this Article shall inform the other Party no later than one working day following the date of adoption of the measures. Upon request by either Party, and in accordance with Article 65(3) of this Agreement, the Parties shall hold consultations regarding the situation within 15 working days of the notification. The Parties shall take due account of any information provided through such consultations and shall endeavour to avoid unnecessary disruption to trade, taking into account, where applicable, the outcome of the consultations provided for in Article 65(3) of this Agreement.

## **Article 71. Sanitary and Phytosanitary Management (SPS) Sub-Committee**

1. The Sanitary and Phytosanitary Management (SPS) Sub-Committee is hereby established. The SPS Sub-Committee shall meet within three months of the entry into force of this Agreement and, thereafter, upon request of either Party or at least once a year. If agreed by the Parties, a meeting of the SPS Sub-Committee may be held by video or audio conference. The SPS Sub-Committee may also address issues out of session, by correspondence.

2. The SPS Sub-Committee shall have the following functions:

(a) to monitor the implementation of this Chapter and consider any matter relating to this Chapter, and examine all matters which may arise in relation to its implementation;

(b) to review the Annexes to this Chapter, in particular in the light of progress made under the consultations and procedures provided for under this Chapter;

(c) in the light of the review provided for in subparagraph (b) of this paragraph or as otherwise provided in this Chapter, to modify, by means of a decision, Annexes II to XI to this Agreement; and

(d) in the light of the review provided for in subparagraph (b) of this paragraph, to give opinions and make recommendations to other bodies as defined in the Institutional, General and Final Provisions of this Agreement.

3. The Parties agree to establish technical working groups, where appropriate, consisting of expert-level representatives of the Parties, which shall identify and address technical and scientific issues arising from the application of this Chapter. When additional expertise is required, the Parties may establish ad hoc groups, including scientific groups. Membership of such ad hoc groups need not be restricted to representatives of the Parties.

4. The SPS Sub-Committee shall regularly report to the Trade Committee established under Article 404(1) of this Agreement on its activities and decisions taken within its competence.

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

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

## **Chapter 5. CUSTOMS AND TRADE FACILITATION**

### **Article 72. Objectives**

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

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

### **Article 73. Legislation and Procedures**

1. The Parties agree that their respective trade and customs legislation, as a matter of principle, shall be stable and



comprehensive, and that provisions and procedures shall be proportionate, transparent, predictable, non-discriminatory, impartial and applied uniformly and effectively and shall inter alia:

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

2. In order to improve working methods, as well as to ensure non-discrimination, transparency, efficiency, integrity and accountability of operations, the Parties shall:

- (a) take further steps towards the reduction, simplification and standardisation of data and documentation required by customs and other agencies;
- (b) simplify requirements and formalities wherever possible, in respect of the prompt release and clearance of goods;
- (c) provide effective, prompt and non-discriminatory procedures guaranteeing the right of appeal against customs' and other agencies' administrative actions, rulings and decisions affecting the goods submitted to customs. Such procedures for appeal shall be easily accessible, including to small or medium-sized enterprises and any costs shall be reasonable and commensurate with costs in providing for appeals. The Parties shall also take steps to ensure that where a disputed decision is the subject of an appeal, goods are normally released and duty payments may be left pending, subject to any safeguarding measures judged necessary. Where required, this should be subject to the provision of a guarantee, such as a surety or deposit;
- (d) ensure that the highest standards of integrity be maintained, in particular at the border, through the application of measures reflecting the principles of the relevant international conventions and instruments in this field, in particular the WCO Revised Arusha Declaration (2003).

3. The Parties agree to eliminate:

- (a) any requirements for the mandatory use of customs brokers;
- (b) any requirements for the mandatory use of pre-shipment inspections or destination inspection.

4. Provisions on transit

(a) For the purposes of this Agreement, the transit rules and definitions as set out in the WTO provisions (Article V of GATT 1994, and related provisions, including any clarification or improvement resulting from the Doha Round negotiations on trade facilitation) shall apply. These provisions also apply when the transit of goods begins or ends in the territory of a Party (inland transit).

(b) The Parties shall pursue the progressive interconnectivity of their respective customs transit systems, with a view to Ukraine participating in the future in the common transit system set out in the Convention of 20 May 1987 on a common transit procedure.

(c) The Parties shall ensure cooperation and coordination between all relevant authorities and agencies in their territories in order to facilitate traffic in transit and promote cooperation across borders. Parties shall also promote cooperation between authorities and the private sector in relation to transit.

## **Article 74. Relations with the Business Community**

The Parties agree:

(a) to ensure that their respective legislation and procedures are transparent and made publicly available, as far as possible through electronic means, together with the justification for them. There should be a consultation mechanism in place and a reasonable time period between the publication of new or amended provisions and their entry into force;

(b) on the need for timely and regular consultations with trade representatives on legislative proposals and procedures relating to customs and trade issues. To this end, mechanisms for appropriate and regular consultation between administrations and the business community shall be established by each Party;

(c) to make publicly available relevant notices of an administrative nature, including agency requirements and entry procedures, hours of operations and operating procedures for customs offices at ports and border crossing points, and points of contact for information enquiries;

(d) to foster cooperation between operators and relevant administrations via the use of non-arbitrary and publicly accessible procedures, such as Memoranda of Understanding based, in particular, on those promulgated by the WCO;

(e) to ensure that their respective customs and related requirements and procedures continue to meet the legitimate needs of the trading community, follow best practices, and remain the least trade-restrictive possible;

(f) to seek the implementation of the WTO Agreement on Trade Facilitation (TFA). Where the provisions of the TFA conflict with the provisions of this Agreement, the Trade Committee shall determine which of those provisions shall prevail.

## **Article 75. Fees and Charges**

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

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

(a) fees and charges may only be imposed for services provided outside of appointed hours and in places other than those referred to in customs regulations, at the request of the declarant in connection with the import or export in question or for any formality required for undertaking such import or export;

(b) fees and charges shall not exceed the cost of the service provided;

(c) fees and charges shall not be calculated on an ad valorem basis;

(d) information on fees and charges shall be published. This information shall include the reason for the fee or charge for the service provided, the authority responsible, the fees and charges that will be applied, and when and how payment is to be made.

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

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

## **Article 76. Customs Valuation**

1. The Agreement on the Implementation of Article VI of GATT 1994 contained in Annex 1A to the WTO Agreement, including any subsequent amendments, shall govern the customs valuation of goods in trade between the Parties. Its provisions are hereby incorporated into, and made part of, this Agreement. Minimum customs values shall not be used.

2. The Parties shall cooperate with a view to reaching a common approach to issues relating to customs valuation.

## **Article 77. Customs Cooperation**

The Parties shall strengthen cooperation to ensure implementation of the objectives of this Chapter, striking a reasonable balance between simplification and facilitation and effective control and security.

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

(a) exchange information concerning customs legislation and procedures;

(b) develop joint initiatives relating to import, export and transit procedures, as well as work towards ensuring that an effective service is provided to the business community;

(c) cooperate on the automation of customs and other trade procedures;

(d) exchange, where appropriate, relevant information and data subject to respect of confidentiality of sensitive data and personal data protection;

(e) exchange information and/or enter into consultations with a view to establishing, where possible, common positions in international organisations in the field of customs, such as the WTO, the WCO, the UN, the United Nations Conference on Trade And Development and the United Nations Economic Commission for Europe;

(f) cooperate in the planning and delivery of technical assistance, in particular to facilitate customs and trade facilitation reforms in line with the relevant provisions of this Agreement;

(g) exchange best practices in customs operations focusing in particular on intellectual property rights enforcement, especially in relation to counterfeit products;

(h) promote coordination between all border agencies, both internally and across borders, to facilitate border-crossing processes and enhance control, taking into account joint border controls where feasible and appropriate;

(i) mutually recognise, where relevant and appropriate, authorised traders and customs controls. The scope of this cooperation, the implementation and the practical arrangements shall be decided by the Customs Sub-Committee provided for in Article 80 of this Agreement.

## **Article 78. Mutual Administrative Assistance In Customs Matters**

Notwithstanding Article 77 of this Agreement, the administrations of the Parties shall provide mutual administrative assistance in customs matters in accordance with the provisions laid down in Protocol II to this Agreement and the Memorandum of Understanding between the Government of Ukraine and the Government of the United Kingdom of Great Britain and Northern Ireland Regarding Mutual Administrative Assistance between their Customs Authorities (1998). Where the provisions of the Memorandum of Understanding between the Government of Ukraine and the Government of the United Kingdom of Great Britain and Northern Ireland Regarding Mutual Administrative Assistance between their Customs Authorities (1998) conflict with the provisions of this Agreement, the Trade Committee shall determine which of those provisions shall prevail.

## **Article 79. Technical Assistance and Capacity-Building**

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

## **Article 80. Customs Sub-Committee**

The Customs Sub-Committee is hereby established. It shall report on its activities to the Trade Committee in accordance with Article 404(5) of this Agreement. The function of the Customs Sub-Committee shall include regular consultations and

monitoring of implementation and administration of this Chapter, including the issues of customs cooperation, cross-border customs cooperation and management, technical assistance, rules of origin, and trade facilitation, as well as mutual administrative assistance in customs matters.

The Customs Sub-Committee shall inter alia:

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

## **Chapter 6. ESTABLISHMENT, TRADE IN SERVICES AND ELECTRONIC COMMERCE**

### **Section 1. GENERAL PROVISIONS**

#### **Article 81. Objective, Scope and Coverage**

1. The Parties, reaffirming their respective rights and obligations under the WTO Agreement, hereby lay down the necessary arrangements for the progressive reciprocal liberalisation of establishment and trade in services and for cooperation on electronic commerce.
2. Government procurement is dealt with by Chapter 8 (Public Procurement) of Title IV of this Agreement and nothing in this Chapter shall be construed in such a way as to impose any obligation with respect to government procurement.
3. Subsidies are dealt with in Chapter 10 (Competition) of Title IV of this Agreement and the provisions of this Chapter shall not apply to subsidies granted by the Parties.
4. Each Party shall retain the right to regulate and to introduce new regulations to meet legitimate policy objectives, provided they are compatible with this Chapter.
5. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

Without prejudice to the provisions on movement of persons set out in Title II (Justice Freedom and Security) of this Agreement, nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of natural persons, and to ensure their orderly movement across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Party under the terms of this Chapter (4).

(4) The sole fact of requiring a visa for natural persons of certain countries and not for those of others shall not be regarded as nullifying or impairing benefits under the Agreement.

#### **Article 82. Definitions**

For the purposes of this Chapter:

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

3. "natural person of a Party" means a national of the United Kingdom or a national of Ukraine according to the respective legislation;
4. "legal person" means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
5. "legal person of the United Kingdom" or "legal person of Ukraine" means:  
a legal person set up in accordance with the laws of the United Kingdom or of Ukraine respectively, and having its registered office, central administration, or principal place of business in the territory of the United Kingdom or Ukraine, respectively, as defined in paragraphs 1 and 2 of Article 416;  
should this legal person have only its registered office or central administration in either territory as defined in paragraphs 1 and 2 of Article 416, it shall not be considered as a legal person of the United Kingdom or a legal person of Ukraine, respectively, unless its operations possess a real and continuous link with the economy of the United Kingdom or of Ukraine, respectively;
6. Notwithstanding the preceding paragraph, shipping companies established outside the United Kingdom or Ukraine and controlled by nationals of the United Kingdom or of Ukraine, respectively, shall also be beneficiaries of the provisions of this Agreement, if their vessels are registered in accordance with their respective legislation, in the United Kingdom or in Ukraine and carry the flag of the United Kingdom or of Ukraine;
7. "subsidiary" of a legal person of a Party means a legal person which is effectively controlled by another legal person of that Party (5);
8. "branch" of a legal person means a place of business not having legal personality which:
- (a) has the appearance of permanency such as the extension of a parent body;
- (b) has a management structure; and
- (c) is materially equipped to negotiate business with third parties so that the latter, although knowing that there will, if necessary, be a legal link with the parent body, the head office of which is abroad, do not have to deal directly with such parent body but may transact business at the place of business constituting the extension;
9. "establishment" means:
- (a) as regards legal persons of the United Kingdom or of Ukraine, the right to take up and pursue economic activities by means of setting up, including the acquisition of, a legal person and/or create a branch or a representative office in Ukraine or in the United Kingdom respectively;
- (b) as regards natural persons, the right of natural persons of the United Kingdom or of Ukraine to take up and pursue economic activities as self-employed persons, and to set up undertakings, in particular companies, which they effectively control.
10. "investor" means any natural or legal person of a Party that seeks to perform or performs an economic activity through setting up an establishment;
11. "economic activities" includes activities of an industrial, commercial and professional character and activities of craftsmen and do not include activities performed in the exercise of governmental authority;
12. "operations" means the pursuit of economic activities;
13. "services" includes any service in any sector except services supplied in the exercise of governmental authority;
14. "services and other activities performed in the exercise of governmental authority" are services or activities which are performed neither on a commercial basis nor in competition with one or more economic operators;
15. "cross-border supply of services" means the supply of a service:
- (a) from the territory of a Party into the territory of the other Party;
- (b) in the territory of a Party to a service consumer of the other Party.
16. "service supplier" of a Party means any natural or legal person of a Party that seeks to supply or supplies a service,

including through an establishment;

17. "key personnel" means natural persons employed within a legal person of one Party other than a non-profit organisation and who are responsible for the setting-up or the proper control, administration and operation of an establishment.

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

(a) "Business visitors" means natural persons working in a senior position who are responsible for setting up an establishment. They do not engage in direct transactions with the general public and do not receive remuneration from a source located within the host Party,

(b) "Intra-corporate transferees" means natural persons who have been employed by a legal person of one Party or have been partners in it (other than as majority shareholders) for at least one year and who are temporarily transferred to an establishment in the territory of the other Party. The natural person concerned must belong to one of the following categories:

(i) Managers:

Persons working in a senior position within a legal person who primarily direct the management of the establishment, receiving general supervision or direction principally from the board of directors or stockholders of the business or their equivalent, including:

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

(ii) Specialists:

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

18. "graduate trainees" means natural persons of a Party who have been employed by a legal person of that Party for at least one year, possess a university degree and are temporarily transferred to an establishment in the territory of the other Party for career development purposes or to obtain training in business techniques or methods (6);

19. "business services sellers" means natural persons who are representatives of a service supplier of one Party seeking entry into and temporary stay in the territory of the other Party for the purpose of negotiating the sale of services or entering into agreements to sell services for that service supplier. They do not engage in making direct sales to the general public and do not receive remuneration from a source located within the host Party.

20. "contractual services suppliers" means natural persons employed by a legal person of one Party which has no establishment in the territory of the other Party and which has concluded a *bona fide* contract (7) to supply services with a final consumer in the latter Party requiring the presence on a temporary basis of its employees in that Party in order to fulfil the contract to provide services;

21. "independent professionals" means natural persons engaged in the supply of a service and established as self-employed in the territory of a Party who have no establishment in the territory of the other Party and who have concluded a *bona fide* contract (8) to supply services with a final consumer in the latter Party requiring their presence on a temporary basis in that Party in order to fulfil the contract to provide services.

(5) A legal person is controlled by another legal person if the latter has the power to name a majority of its directors or otherwise to legally direct its actions.

(6) The recipient establishment may be required to submit a training programme covering the duration of stay for prior approval, demonstrating that the purpose of the stay is for training. The competent authorities may require that the training be linked to the university degree which has been obtained.

(7) The service contract shall comply with the laws, regulations and legal requirements of the Party where the contract is executed.

(8) The service contract shall comply with the laws, regulations and legal requirements of the Party where the contract is executed.

## **Section 2. ESTABLISHMENT**

### **Article 83. Scope**

This Section applies to measures adopted or maintained by the Parties affecting establishment (9) in respect of all economic activities with the exception of:

- (a) mining, manufacturing and processing (10) of nuclear materials;
- (b) production of or trade in arms, munitions and war material;
- (c) audio-visual services;
- (d) national maritime cabotage (11), and
- (e) domestic and international air transport services (12), whether scheduled or unscheduled, and services directly related to the exercise of traffic rights, other than:
  - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
  - (ii) the selling and marketing of air transport services;
  - (iii) computer reservation system (hereinafter referred to as "CRS") services;
  - (iv) ground handling services;
  - (v) airport operation services.

(9) Investment protection, other than the treatment deriving from Article 84 (National treatment), including investor-state dispute settlement procedure, is not covered by this Chapter.

(10) For greater certainty, processing of nuclear materials includes all the activities contained in UN ISIC Rev.3.1 code 2330.

(11) Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national cabotage under this Chapter covers transportation of passengers or goods between a port or point located in Ukraine or the United Kingdom and another port or point located in Ukraine or the United Kingdom, including on its continental shelf, as provided in the UN Convention on the Law on the Sea, and traffic originating and terminating in the same port or point located in Ukraine or the United Kingdom.

(12) The conditions of mutual market access in air transport shall be dealt with by the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ukraine concerning Air Services as amended from time to time.

### **Article 84. National Treatment and Most Favourable Nation Treatment**

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

- (i) as regards the establishment of subsidiaries, branches and representative offices of legal persons of the United Kingdom, treatment no less favourable than that accorded to its own legal persons, branches and representative offices or to any third-country legal persons, branches and representative offices, whichever is better;
- (ii) as regards the operation of subsidiaries, branches and representative offices of legal persons of the United Kingdom in Ukraine, once established, treatment no less favourable than that accorded to its own legal persons, branches and representative offices; or to any third- country legal persons, branches and representative offices, whichever is better. (13)

2. Subject to reservations listed in Annex XII-A to this Agreement, the United Kingdom shall grant, upon entry into force of this Agreement:

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

(ii) as regards the operation of subsidiaries, branches and representative offices of legal persons of Ukraine in the United Kingdom, once established, treatment no less favourable than that accorded to its own legal persons, branches and representative offices; or to any third- country legal persons, branches and representative offices, whichever is better. (14)

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

(13) This obligation does not extend to the investment protection provisions, including provisions relating to investor-state dispute settlement procedures, as found in other agreements and which are not covered by this Chapter.

(14) This obligation does not extend to the investment protection provisions not covered by this Chapter, including provisions relating to investor-state dispute settlement procedures, as found in other agreements.

## **Article 85. Review**

1. With a view to progressively liberalising the establishment conditions, the Parties shall regularly review the establishment legal framework (15) and the establishment climate, consistent with their commitments under international agreements.

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

(15) This includes this Chapter and Annexes XII-A and XII-D.

## **Article 86. Other Agreements**

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

## **Article 87. Standard of Treatment for Branches and Representative Offices**

1. The provisions of Article 84 of this Agreement do not preclude the application by a Party of particular rules concerning the establishment and operation in its territory of branches and representative offices of legal persons of the other Party not incorporated in the territory of the first Party, which are justified by legal or technical differences between such branches and representative offices as compared to branches and representative offices of companies incorporated in its territory or, as regards financial services, for prudential reasons.

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

## **Section 3. CROSS-BORDER SUPPLY OF SERVICES**

### **Article 88. Scope**

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

(a) audio-visual services (16);



(b) national maritime cabotage (17); and

(c) domestic and international air transport services (18), whether scheduled or unscheduled, and services directly related to the exercise of traffic rights other than:

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;

(ii) the selling and marketing of air transport services;

(iii) CRS services;

(iv) ground handling services;

(v) airport operation services.

(16) The exclusion of audio-visual services from the scope of this Chapter is without prejudice to the cooperation on audio-visual services under Title V on Economic and Sector Cooperation of this Agreement.

(17) Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this Chapter covers transportation of passengers or goods between a port or point located in Ukraine or the United Kingdom and another port or point located in Ukraine or the United Kingdom, including on its continental shelf, as provided in the UN Convention on the Law of the Sea and traffic originating and terminating in the same port or point located in Ukraine or the United Kingdom.

(18) The conditions of mutual market access in air transport shall be dealt with by the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ukraine concerning Air Services as amended from time to time.

## **Article 89. Market Access**

1. With respect to market access through the cross-border supply of services, each Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for in the specific commitments contained in Annexes XII-B and XII-E to this Agreement.

2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in Annex XII-B and XXI-E to this Agreement, are defined as:

(a) limitations on the number of services suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

(b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limitations on the total number of service operations or on the total quantity of service output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test.

## **Article 90. National Treatment**

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

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

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

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

## **Article 91. Lists of Commitments**

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

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

## **Article 92. Review**

With a view to progressive liberalisation of the cross-border supply of services between the Parties, the Trade Committee shall regularly review the lists of commitments referred to in Article 91 of this Agreement. This review shall take into account the resultant impact on the elimination of remaining obstacles to cross-border supply of services between the Parties.

## **Section 4. TEMPORARY PRESENCE OF NATURAL PERSONS FOR BUSINESS PURPOSES**

### **Article 93. Scope**

This Section applies to measures of the Parties concerning the entry into and temporary stay (19) in their territory of categories of natural persons providing services as defined in Article 82(17) to (21) of this Agreement.

(19) All other requirements of the Parties' laws and regulations regarding entry, stay, work and social security measures shall continue to apply, including regulations concerning period of stay and minimum wages, as well as collective wage agreements. Commitments on movement of persons do not apply in cases where the intent or effect of such movement is to interfere in or otherwise affect the outcome of any labour/management dispute or negotiation.

### **Article 94. Key Personnel**

1. A legal person of the United Kingdom or a legal person of Ukraine shall be entitled to employ, or have employed by one of its subsidiaries, branches and representative offices established in the territory of Ukraine or of the United Kingdom, respectively, in accordance with the legislation in force in the host country of establishment, employees who are nationals of the United Kingdom and of Ukraine, respectively, provided that such employees are key personnel as defined in Article 82 of this Agreement who are employed exclusively by legal persons, subsidiaries, branches and representative offices. The residence and work permits of such employees shall only cover the period of such employment. The entry and temporary stay of such employees shall be for a period of up to three years.

2. The entry into and temporary presence within the territory of the United Kingdom or Ukraine of natural persons of Ukraine and of the United Kingdom, respectively, shall be permitted when these natural persons are representatives of legal persons and are business visitors within the meaning of Article 82(17)(a) of this Agreement. Notwithstanding paragraph 1 of this Article, the entry and temporary stay of business visitors shall be for a period of up to 90 days in any 12-month period.

### **Article 95. Graduate Trainees**

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

### **Article 96. Business Services Sellers**

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

## **Article 97. Contractual Services Suppliers**

1. the Parties Reaffirm Their Respective Obligations Arising from Their Commitments Under the General Agreement on Trade In Services of 1994 (hereinafter referred to as "GATS"); as Regards the Entry and Temporary Stay of Contractual Services Suppliers.

2. For every sector listed below, each Party shall allow the supply of services in their territory by contractual services suppliers of the other Party, subject to the conditions specified in paragraph 3 of this Article and in Annexes XII-C and XII-F to this Agreement on reservations on contractual service suppliers and independent professionals:

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

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

- (a) The natural persons must be engaged in the supply of a service on a temporary basis as employees of a juridical person, which has obtained a service contract not exceeding twelve months;
- (b) The natural persons entering the other Party should be offering such services as employees of the juridical person supplying the services for at least the year immediately preceding the date of submission of an application for entry into the other Party. In addition, the natural persons must possess, at the date of submission of an application for entry into the other Party, at least three years professional experience (20) in the sector of activity which is the subject of the contract;
- (c) The natural persons entering the other Party must possess:
  - (i) a university degree or a qualification demonstrating knowledge of an equivalent level (21); and
  - (ii) professional qualifications where this is required to exercise an activity pursuant to the laws, regulations or legal requirements of the Party where the service is supplied.

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

(20) Obtained after having reached the age of majority.

(21) Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree required in its territory.

## **Article 98. Independent Professionals**

1. The Parties reaffirm their respective obligations arising from their commitments under the GATS as regards the entry and temporary stay of independent professionals.

2. For every sector listed below, the Parties shall allow the supply of services in their territory by independent professionals of the other Party, subject to the conditions specified in paragraph 3 of this Article and in Annexes XII-C and XII-F to this Agreement on reservations on contractual service suppliers and independent professionals.

- (a) Legal services
- (b) Architectural services, urban planning and landscape architecture
- (c) Engineering and integrated engineering services
- (d) Computer and related services
- (e) Management consulting services and services related to management consulting
- (f) Translation services

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

- (a) The natural persons must be engaged in the supply of a service on a temporary basis as self-employed persons established in the other Party and must have obtained a service contract for a period not exceeding 12 months;
- (b) The natural persons entering the other Party must possess, at the date of submission of an application for entry into the other Party, at least six years professional experience in the sector of activity which is the subject of the contract;
- (c) The natural persons entering the other Party must possess:
  - (i) a university degree or a qualification demonstrating knowledge of an equivalent level (22); and
  - (ii) professional qualifications where this is required to exercise an activity pursuant to the law, regulations or other legal requirements of the Party where the service is supplied.
- (d) The entry and temporary stay of natural persons within the Party concerned shall be for a cumulative period of not more than six months in any twelve-month period or for the duration of the contract, whichever is less.
- (e) Access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract; it does not confer entitlement to use the professional title of the Party where the service is provided;

(f) Other discriminatory limitations, including on the number of natural persons in the form of economic needs tests, which are specified in Annexes XII-C and XII-F to this Agreement on reservations on contractual service suppliers and independent professionals.

(22) Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree required in its territory.

## **Section 5. REGULATORY FRAMEWORK**

### **Subsection 1. DOMESTIC REGULATION**

#### **Article 99. Scope and Definitions**

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

(a) cross-border supply of services;

(b) establishment in their territory of legal and natural persons defined in Article 82 of this Agreement; or

(c) temporary stay in their territory of categories of natural persons defined in Article 82(17) to (21) of this Agreement.

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

3. These disciplines do not apply to measures to the extent that they constitute limitations subject to scheduling under Articles 84, 89 and 90 of this Agreement.

4. For the purposes of this Section:

(a) "Licensing" means the process through which a service supplier or an investor is in effect required to take steps in order to obtain from a competent authority a decision concerning the authorisation to supply a service, including through establishment, or concerning the authorisation to establish in an economic activity other than services, including a decision to amend or renew such authorisation.

(b) "Competent authority" means any central, regional or local government and authority or non-governmental body in the exercise of powers delegated by central or regional or local governments or authorities, which takes a decision concerning licensing.

(c) "Licensing procedures" shall mean the procedures to be followed as a part of licensing. ARTICLE 100 Conditions for Licensing

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

2. The criteria referred to in paragraph 1 of this Article shall be: (a) proportionate to a legitimate public policy objective; (b) clear and unambiguous; (c) objective; (d) pre-established; (e) made public in advance; (f) transparent and accessible.

3. A licence shall be granted as soon as it is established, in the light of an appropriate examination, that the conditions for obtaining a licence have been met.

4. Article 272 of this Agreement shall apply to provisions of this Chapter.

5. Where the number of licences available for a given activity is limited because of the scarcity of available natural resources or technical capacity, the Parties shall apply a selection procedure to potential candidates which provides full guarantees of impartiality and transparency, including, in particular, adequate publicity about the launch, conduct and completion of the procedure.

6. Subject to the provisions specified by this Article, in establishing the rules for the selection procedure, the Parties may take into account legitimate public policy objectives, including considerations of health, safety, the protection of the environment and preservation of cultural heritage.

## **Article 101. Licensing Procedures**

1. Licensing procedures and formalities shall be clear, made public in advance and be such as to provide the applicants with a guarantee that their application will be dealt with objectively and impartially.
2. Licensing procedures and formalities shall be as simple as possible and shall not unduly complicate or delay the provision of the service. Any licensing fees (23) which the applicants may incur as a result of their application shall be reasonable and proportionate to the cost of the licensing procedures in question.
3. Licensing procedures and formalities shall provide applicants with a guarantee that their application will be processed within a reasonable period which is made public in advance. The period shall run only from the time when all documentation has been received by the competent authorities. When justified by the complexity of the issue, the time period may be extended, by the competent authority, for a reasonable time. The extension and its duration shall be duly motivated and shall be notified to the applicant before the original period has expired.
4. In the case of an incomplete application, the applicant shall be informed as quickly as possible of the need to supply any additional documentation. In this case, the period referred to in paragraph 3 of this Article may be suspended by the competent authorities, until all documentation has been received by the competent authorities.
5. If an application for a licence is rejected, the applicant should be informed without undue delay. In principle, the applicant shall, upon request, be informed of the reasons for rejection of the application and of the timeframe for an appeal against the decision.

(23) Licensing fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

## **Subsection 2. PROVISIONS OF GENERAL APPLICATION**

### **Article 102. Mutual Recognition**

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

### **Article 103. Transparency and Disclosure of Confidential Information**

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

impede law enforcement, or otherwise be contrary to the public interest or which would prejudice legitimate commercial interests of particular enterprises, whether public or private.

### **Subsection 3. COMPUTER SERVICES**

#### **Article 104. Understanding on Computer Services**

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

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

Basic services are all services that provide:

(a) consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, support, technical assistance, or management of or for computers or computer systems; or

(b) computer programs defined as the set of instructions required to make computers work and communicate (in and of themselves), plus consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, adaptation, maintenance, support, technical assistance, and management or use of or for computer programs; or

(c) data processing, data storage, data hosting or database services; or

(d) maintenance and repair services for office machinery and equipment, including computers; or

(e) training services for staff of clients, related to computer programs, computers or computer systems, and not elsewhere classified.

### **Subsection 4. POSTAL AND COURIER SERVICES**

#### **Article 105. Scope and Definitions**

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

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

(a) a "licence" means an authorisation, granted to an individual supplier by a regulatory authority, which is required before carrying out the activity of supplying a given service;

(b) "universal service" means the permanent provision of a postal service of specified quality at all points in the territory of a Party at affordable prices for all users.

#### **Article 106. Prevention of Anti-Competitive Practices In the Postal and Courier Sector**

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

#### **Article 107. Universal Service**

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

## **Article 108. Licences**

1. From the entry into force of this Agreement, a licence may only be required for services which are within the scope of the universal service.

2. Where a licence is required, the following shall be made publicly available:

(a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence; and

(b) the terms and conditions of licences. 3. The reasons for denial of a licence shall be made known to the applicant upon request and an appeal procedure through an independent body will be established by each Party. Such a procedure will be transparent, non-discriminatory, and based on objective criteria. ARTICLE 109 Independence of the Regulatory Body The regulatory body shall be legally separate from and not accountable to any supplier of postal and courier services. The decisions of and the procedures used by the regulatory body shall be impartial with respect to all market participants.

## **Subsection 5. ELECTRONIC COMMUNICATIONS**

### **Article 110. Scope and Definitions**

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

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

(a) "electronic communication services" means all services that consist of the transmission and reception of electromagnetic signals and are normally provided for remuneration, excluding broadcasting, which does not cover the economic activity consisting in the provision of content that requires telecommunications for its transport. Broadcasting is defined as the uninterrupted chain of transmission required for the distribution of television and radio programme signals to the general public, but does not cover contribution links between operators;

(b) "public communication network" means an electronic communication network used wholly or mainly for the provision of publicly available electronic communication services;

(c) "electronic communication network" means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, and electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;

(d) a "regulatory authority" in the electronic communication sector means the body or bodies charged with the regulation of electronic communication mentioned in this Chapter;

(e) a service supplier shall be deemed to have "significant market power" if, either individually or jointly with others, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers;

(f) "interconnection" means the physical and/or logical linking of public communication networks used by the same or a different service supplier in order to allow the users of one service supplier to communicate with users of the same or another service supplier, or to access services provided by another service supplier. Services may be provided by the parties involved or other parties who have access to the network. Interconnection is a specific type of access implemented between public network operators;

(g) "universal service" means the set of services of specified quality that is made available to all users in the territory of a Party regardless of their geographical location and at an affordable price; its scope and implementation are decided by each Party;

(h) "access" means the making available of facilities and/or services, to another service supplier, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communication services. It covers, inter alia, access to network elements and associated facilities, which may involve the connection of equipment by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop), access to physical infrastructure including buildings, cable ducts, and masts; access to relevant software systems including operational support systems, access to numbering translation or systems offering equivalent



functionality, access to fixed and mobile networks, in particular for roaming, access to conditional access systems for digital televisions services, access to virtual network services;

(i) "end-user" means a user not providing public communication networks or publicly available electronic communication services;

(j) "local loop" means the physical circuit connecting the network termination point at the subscriber's premises to the main distribution frame or equivalent facility in the fixed public communication network.

## **Article 111. Regulatory Authority**

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

2. The Parties shall ensure that the regulatory authority is sufficiently empowered to regulate the sector. The tasks to be undertaken by a regulatory authority shall be made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body.

3. The Parties shall ensure that the decisions of and the procedures used by the regulatory authorities are impartial with respect to all market participants and transparent.

4. The regulatory authority shall have the power to carry out an analysis of the indicative list of relevant product and service markets included in the Annexes (24) to this Agreement. Where the regulatory authority is required to determine under Article 113 of this Agreement whether to impose, maintain, amend or withdraw obligations, it shall determine on the basis of a market analysis whether the relevant market is effectively competitive.

5. Where the regulatory authority determines that a relevant market is not effectively competitive, it shall identify and designate service suppliers with significant market power on that market and shall impose, maintain or amend specific regulatory obligations referred to in Article 113 of this Agreement as it is appropriate. Where the regulatory authority concludes that the market is effectively competitive it shall not impose or maintain any of the regulatory obligations referred to in Article 113 of this Agreement.

6. The Parties shall ensure that a service supplier affected by the decision of a regulatory authority shall have a right to appeal against that decision to an appeal body that is independent of the parties involved in the decision. The Parties shall ensure that the merits of the case are duly taken into account. Pending the outcome of any such appeal, the decision of the regulator shall stand, unless the appeal body decides otherwise. Where the appeal body is not judicial in character, written reasons for its decision shall always be given and its decisions shall also be subject to review by an impartial and independent judicial authority. Decisions taken by appeal bodies shall be effectively enforced.

7. The Parties shall ensure that where the regulatory authorities intend to take measures related to any of the provisions of this Sub-section and which have a significant impact on the relevant market, they give the interested parties the opportunity to comment on the draft measure within a reasonable period of time. Regulators shall publish their consultation procedures. The results of the consultation procedure shall be made publicly available except in the case of confidential information.

8. The Parties shall ensure that service suppliers providing electronic communication networks and services provide all the information, including financial information, necessary for regulatory authorities to ensure conformity with the provisions of this Sub-section or decisions made in accordance with this Sub-section. These service suppliers shall provide such information promptly on request and to the timescales and level of detail required by the regulatory authority. The information requested by the regulatory authority shall be proportionate to the performance of that task. The regulatory authority shall give the reasons justifying its request for information.

(24) For the UK: The indicative list of relevant product and service markets is submitted as a separate Annex XIV. The list of relevant markets included in Annex XIV is subject to regular revision by the UK. Any obligations undertaken on the basis of this Chapter will need to take into account such revision. For Ukraine: The indicative list of product and service markets is submitted as a separate Annex XV. The list of relevant markets included in Annex XV is subject to regular revision by Ukraine. Any obligations undertaken on the basis of this Chapter will need to take into account such revision.

## **Article 112. Authorisation to Provide Electronic Communication Services**

1. The Parties shall ensure that the provision of services is authorised, as much as possible, following mere notification and/or registration.
2. The Parties shall ensure that a licence can be required to address issues of attributions of numbers and frequencies. The terms and conditions for such licences shall be made publicly available.
3. The Parties shall ensure that where a licence is required:
  - (a) all the licensing criteria and a reasonable period of time normally required to reach a decision concerning an application for a licence are made publicly available;
  - (b) the reasons for the denial of a licence are made known in writing to the applicant upon request;
  - (c) the applicant of a licence is able to seek recourse before an appeal body in case that a licence is unduly denied;
  - (d) licence fees (25) required by any Party for granting a licence do not exceed the administrative costs normally incurred in the management, control and enforcement of the applicable licences. Licence fees for the use of radio spectrum and numbering resources are not subject to the requirements of this paragraph.

(25) Licensing fees do not include payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

## **Article 113. Access and Interconnection**

1. The Parties shall ensure that any service supplier authorised to provide electronic communication services has the right and obligation to negotiate interconnection with other providers of publicly available electronic communications networks and services. Interconnection should in principle be agreed on the basis of commercial negotiation between the legal persons concerned.
2. The Parties shall ensure that service suppliers that acquire information from another service supplier during the process of negotiating interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.
3. The Parties shall ensure that upon the finding in accordance with Article 111 of this Agreement that a relevant market, including those in the attached Annexes to this Agreement, is not effectively competitive, the regulatory authority has the power to impose on the service supplier designated as having significant market power one or more of the following obligations in relation to interconnection and/or access:
  - (a) obligation of non-discrimination to ensure that the operator applies equivalent conditions in equivalent circumstances to other service suppliers providing equivalent services, and provides services and information to others under the same conditions and of the same quality as it provides for its own services, or those of its subsidiaries or partners;
  - (b) obligation on a vertically integrated company to make transparent its wholesale prices and its internal transfer prices, where there is a requirement for non-discrimination or for prevention of unfair cross- subsidy. The regulatory authority may specify the format and accounting methodology to be used;
  - (c) obligations to meet reasonable requests for access to, and use of, specific network elements and associated facilities including unbundled access to the local loop, inter alia, in situations where the regulatory authority considers that denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, or would not be in the end-user's interest;
  - (d) obligation to provide specified services on a wholesale basis for resale by third parties; to grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services; to provide co-location or other forms of facility sharing, including cable duct, building or mast sharing; to provide specified services needed to ensure interoperability of end-to- end services to users, including facilities for intelligent network services; to provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services; to interconnect networks or network facilities.Regulatory authorities may attach conditions including fairness, reasonableness and timeliness to the obligations included under points (c) and (d) of this paragraph;
- (e) obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations

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

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

(f) obligation to publish the specific obligations imposed on a service supplier by the regulatory authority identifying the specific product/service and geographical markets. Up-to-date information, provided that it is not confidential and does not comprise business secrets is to be made publicly available in a manner that guarantees all interested parties easy access to that information;

(g) obligations of transparency requiring operators to make public specified information, and in particular, where an operator has obligations of non-discrimination, the regulator may require that operator to publish a reference offer, which shall be sufficiently unbundled to ensure that service suppliers are not required to pay for facilities which are not necessary for the service requested, giving a description of the relevant offerings broken down into components according to market needs, and the associated terms and conditions including prices.

4. The Parties shall ensure that a service supplier requesting interconnection with a service supplier designated as having significant market power shall have recourse, either at any time or after a reasonable period of time which has been made publicly known, to an independent domestic body, which may be a regulatory body as referred to in Article 110(2)(d) of this Agreement, to resolve disputes regarding terms and conditions for interconnection and/or access.

## **Article 114. Scarce Resources**

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

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

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

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

## **Article 115. Universal Service**

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

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

3. The Parties shall ensure that all service suppliers should be eligible to ensure universal service and no service supplier shall be a priori excluded. The designation shall be made through an efficient, transparent, objective and non-discriminatory mechanism. Where necessary, Parties shall assess whether the provision of universal service represents an unfair burden on organisations(s) designated to provide universal service. Where justified on the basis of such calculation, and taking into account the market benefit, if any, which accrues to an organisation that offers universal service, regulatory authorities shall determine whether a mechanism is required to compensate the service supplier(s) concerned or to share the net cost of universal service obligations.

4. The Parties shall ensure that:

(a) directories of all subscribers (26) are available to users, whether printed or electronic, or both, and are updated on a regular basis, and at least once a year;

(b) organisations that provide the services referred to in paragraph (a) apply the principle of non-discrimination to the treatment of information that has been provided to them by other organisations.

(26) In compliance with the applicable rules on processing of personal data and the protection of privacy in the electronic communication sector.

## **Article 116. Cross-Border Provision of Electronic Communication Services**

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

## **Article 117. Confidentiality of Information**

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

## **Article 118. Disputes between Service Suppliers**

1. The Parties shall ensure that in the event of a dispute arising between service suppliers of electronic communication networks or services in connection with rights and obligations referred to in this Chapter, the regulatory authority concerned shall, at the request of either Party, issue a binding decision to resolve the dispute in the shortest possible timeframe and in any case within four months.

2. The decision of the regulatory authority shall be made available to the public, having regard to the requirements of business confidentiality. The parties concerned shall be given a full statement of the reasons on which it is based.

3. When such a dispute concerns the cross-border provision of services, the regulatory authorities concerned shall coordinate their efforts in order to bring about a resolution of the dispute.

## **Subsection 6. FINANCIAL SERVICES**

### **Article 119. Scope and Definitions**

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

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

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

(i) Insurance and insurance-related services

1. direct insurance (including co-insurance):

(a) life;

(b) non-life.

2. reinsurance and retrocession;

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

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

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

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

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

3. financial leasing;

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

## **Article 120. Prudential Carve-out**

1. Each Party may adopt or maintain measures for prudential reasons, such as:
  - (a) the protection of investors, depositors, policyholders or persons to whom a fiduciary duty is owed by a financial service supplier;
  - (b) ensuring the integrity and stability of a Party's financial system.
2. These measures shall not be more burdensome than necessary to achieve their aim.
3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

4. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.

## **Article 121. Effective and Transparent Regulation**

1. Each Party shall make its best endeavours to provide in advance to all interested persons any measure of general application that the Party proposes to adopt in order to allow such persons an opportunity to comment on the measure. Such measure shall be provided:

- (a) by means of an official publication; or
- (b) in other written or electronic form.

2. Each Party shall make available to all interested persons its requirements for completing applications relating to the supply of financial services.

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

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

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

## **Article 122. New Financial Services**

Each Party shall permit a financial service supplier of the other Party established in the territory of that Party to provide any new financial service of a type similar to those services that the Party would permit its own financial service suppliers to provide under its domestic law in like circumstances. A Party may determine the juridical form through which the service may be provided and may require authorisation for the provision of the service. Where such authorisation is required, a decision shall be made within a reasonable time and the authorisation may only be refused for the reasons set out in Article 120 of this Agreement.

## **Article 123. Data Processing**

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

## **Article 124. Specific Exceptions**

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

financial resources of the Party, or its public entities.

## **Article 125. Self-Regulatory Organisations**

When a Party requires membership of or participation in, or access to, any self-regulatory body, securities or futures exchange or market, clearing agency, or any other organisation or association, in order for financial service suppliers of the other Party to supply financial services on an equal basis with financial service suppliers of the Party, or when the Party provides directly or indirectly such entities, privileges or advantages in supplying financial services, the Party shall ensure observance of the obligations under Articles 84 and 90 of this Agreement.

## **Article 126. Clearing and Payment Systems**

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

## **Subsection 7. TRANSPORT SERVICES**

### **Article 127. Scope**

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

### **Article 128. International Maritime Transport**

1. This Agreement applies to international maritime transport between the ports of Ukraine and of the United Kingdom. It also applies to trades between the ports of Ukraine and third countries and between the ports of the United Kingdom and third countries.
2. This Agreement shall not apply to domestic maritime transport between the ports of Ukraine or between the ports of the United Kingdom. Notwithstanding the previous sentence, the movement of equipment, such as empty containers, not being carried as cargo against payment between the ports of Ukraine or between the ports of the United Kingdom shall be regarded as a part of international maritime transport.
3. For the purposes of this Sub-section and Sections 2, 3 and 4 of this Chapter:
  - (a) "international maritime transport" includes door to door and multi-modal transport operations, which is the carriage of goods using more than one mode of transport, involving a sea-leg, under a single transport document, and to this effect direct contracting with providers of other modes of transport;
  - (b) "maritime cargo handling services" means activities exercised by stevedore companies, including terminal operators, but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:
    - (i) the loading/discharging of cargo to/from a ship;
    - (ii) the lashing/unlashing of cargo;
    - (iii) the reception/delivery and safekeeping of cargoes before shipment or after discharge;
  - (c) "customs clearance services" (alternatively "customs house brokers' services") means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity;
  - (d) "container station and depot services" means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing/stripping, repairing and making them available for shipments;
  - (e) "maritime agency services" means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:
    - (i) marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading

on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information;

(ii) acting on behalf of the companies organising the call of the ship or taking over cargoes when required.

(f) "freight forwarding services" means the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information.

(g) "feeder services" means the pre- and onward transport of international cargoes by sea, in particular containerised, between ports located in a Party.

4. Each Party shall grant to vessels flying the flag of the other Party or operated by service suppliers of the other Party treatment no less favourable than that accorded to its own vessels, or those of any third country, whichever are the better, with regard to, inter alia, access to ports, the use of infrastructure and services of ports, and the use of maritime auxiliary services (27), as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading.

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

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

(a) not introduce cargo sharing arrangements in future agreements with third countries concerning maritime transport services, including dry and liquid bulk and liner trade, and terminate such cargo sharing arrangements in the case they exist in previous agreements; and

(b) abolish or abstain from implementing any administrative, technical, or other measures, which could constitute an indirect restriction and have discriminatory effects against nationals or companies of the other Party in the supply of services in international maritime transport.

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

(a) publishing, marketing and sales of maritime transport and related services, from quotation to invoicing, on their own account or on behalf of other service suppliers of international maritime transport, through direct contact with customers;

(b) provision of business information by any means, including computerised information systems and electronic data interchange (subject to any non-discriminatory restrictions concerning telecommunications);

(c) preparation of documentation concerning transport and customs and other documents related to the origin and character of what is being transported;

(d) organising the call of vessels or taking delivery of cargoes on their own account or on behalf of other service suppliers of international maritime transport;

(e) setting up of any business arrangement with any locally established shipping agency, including participation in the company's stock and the appointment of personnel recruited locally or recruited from abroad subject to the relevant provisions of this Agreement;

(f) purchase and use, on their own account or on behalf of their customers (and the resale to their customers), of transport services by all modes, including inland waterways, road and rail, and services auxiliary to all modes of transport, necessary for the supply of an integrated transport service;

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

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



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

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

11. This Agreement shall not affect the application of the maritime agreements concluded between Ukraine and the United Kingdom for issues falling outside the scope of this Agreement. Except for the situation referred to in the preceding sentence, the provisions of this Agreement replace those of previous bilateral agreements concluded between the United Kingdom and Ukraine, if the latter provisions are either inconsistent with the former, or identical to them. Provisions of existing bilateral agreements not covered by this Agreement shall continue to apply.

(27) Maritime auxiliary services include maritime cargo handling services, storage and warehousing services, customs clearance services, container station and depot services, maritime agency services, (maritime) freight forwarding services, rental of vessels with crew, maintenance and repair of vessels, pushing and towing services, and supporting services for maritime transport.

## **Article 129. Road, Rail and Inland Waterways Transport**

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

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

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

## **Article 130. Air Transport**

1. With a view to ensuring a coordinated development and progressive liberalisation of transport between the Parties adapted to their reciprocal commercial needs, the conditions of mutual market access in air transport should be dealt in accordance with the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ukraine concerning Air Services as amended from time to time.

## **Section 6. ELECTRONIC COMMERCE**

### **Article 131. Objective and Principles**

1. The Parties, recognising that electronic commerce increases trade opportunities in many sectors, agree to promote the development of electronic commerce between them, in particular by co-operating on the issues raised by electronic commerce under the provisions of this Chapter.

2. The Parties agree that the development of electronic commerce must be fully compatible with the highest international standards of data protection, in order to ensure the confidence of users of electronic commerce.

3. The Parties agree that electronic transmissions shall be considered as the provision of services, within the meaning of Section 3 (Cross-border supply of services) of this Chapter, which cannot be subject to customs duties.

### **Article 132. Regulatory Aspects of Electronic Commerce**

1. The Parties shall maintain a dialogue on regulatory issues raised by electronic commerce, which will inter alia address the following issues:

(a) the recognition of certificates of electronic signatures issued to the public and the facilitation of cross-border certification services,

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

## **Section 7. EXCEPTIONS**

### **Article 133. General Exceptions**

1. Without prejudice to general exceptions set out in Articles 407 of this Agreement, the provisions of this Chapter and of Annexes XII-A, XII-B, XII-C, XII- D, XII -E and XII-F to this Agreement are subject to the exceptions contained in this Article.
2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on establishment or cross-border supply of services, nothing in this Chapter shall be construed in such a way as to prevent the adoption or enforcement by any Party of measures:
- (a) necessary to protect public security or public morals or to maintain public order;
- (b) necessary to protect human, animal or plant life or health;
- (c) relating to the conservation of exhaustible natural resources if such measures are applied in conjunction with restrictions on domestic investors or on the domestic supply or consumption of services;
- (d) necessary for the protection of national treasures of artistic, historic or archaeological value;
- (e) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
- (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
- (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
- (iii) safety.
- (f) inconsistent with Article 84(1) and Article 90 of this Agreement, provided that the difference in treatment is aimed at ensuring the effective or equitable imposition or collection of direct taxes in respect of economic activities, investors or services suppliers of the other Party. (28)
3. The provisions of this Chapter and of Annexes XII-A, XII-B, XII-C, XII-D, XII-E and XII F to this Agreement shall not apply to the Parties' respective social security systems or to activities in the territory of each Party, which are connected, even occasionally, with the exercise of official authority.

(28) Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which: (i) apply to non-resident investors and service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory; or (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or (iv) apply to consumers of services supplied in or from the territory of another Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or (v) distinguish investors and service suppliers subject to tax on worldwide taxable items from other investors and service suppliers, in recognition of the difference in the nature of the tax base between them; or (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base. Tax terms or concepts in paragraph (f) of this provision and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.

### **Article 134. Recognition and Taxation Measures**

The MFN treatment granted in accordance with the provisions of this Chapter shall not apply to:

(a) Treatment granted under measures providing for recognition of qualifications, licenses, or prudential measures in accordance with Article VII of GATS or its Annex on Financial Services;

(b) the tax treatment granted under any international agreement or arrangement relating wholly or mainly to taxation.

## **Article 135. Security Exceptions**

Nothing in this Agreement shall be construed in such a way as:

(a) to require any Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:

(i) connected with the production of or trade in arms, munitions or war material;

(ii) relating to economic activities carried out directly or indirectly for the purpose of provisioning a military establishment;

(iii) relating to fissionable and fusionable materials or the materials from which they are derived; or

(iv) taken in time of war or other emergency in international relations; or

(c) to prevent any Party from taking any action in pursuance of obligations it has accepted for the purpose of maintaining international peace and security.

## **Chapter 7. CURRENT PAYMENTS AND MOVEMENT OF CAPITAL**

### **Article 136. Current Payments**

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

### **Article 137. Capital Movements**

1. With regard to transactions on the capital and financial account of balance of payments, from the entry into force of this Agreement, the Parties shall ensure the free movement of capital relating to direct investments (29) made in accordance with the laws of the host country, to investments made in accordance with the provisions of Chapter 6 (Establishment, Trade in Services and Electronic Commerce) of Title IV of this Agreement and to the liquidation or repatriation of such invested capitals and of any profit stemming therefrom.

2. With regard to other transactions on the capital and financial account of balance of payments, from the entry into force of this Agreement and without prejudice to other provisions of this Agreement the Parties shall ensure:

(a) the free movement of capital relating to credits related to commercial transactions or to the provision of services in which a resident of one of the Parties is participating;

(b) the free movement of capital relating to portfolio investments and financial loans and credits by the investors of the other Party.

3. Without prejudice to other provisions of this Agreement, the Parties shall not introduce any new restrictions on the movement of capital and current payments between residents of the United Kingdom and Ukraine and shall not make the existing arrangements more restrictive.

(29) Including the acquisition of real estate related to direct investment.

### **Article 138. Safeguard Measures**

1. Without prejudice to other provisions of this Agreement, where, in exceptional circumstances, payments or movements of capital between the Parties cause, or threaten to cause, serious difficulties for the operation of exchange rate policy or

monetary policy (30) in the United Kingdom or Ukraine, the Parties concerned may take safeguard measures for a period not exceeding six months with the right to extend the validity period of previous measures for another period in accordance with the laws of the Parties if such measures are strictly necessary. The Party adopting the safeguard measure shall inform the other Party forthwith of the adoption of such measure.

2. The provisions of this Chapter shall not be construed as preventing a Party from applying its laws and regulations relating to:

(a) bankruptcy, insolvency, or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities, or futures, options and other financial instruments;

(c) financial reporting or record keeping of capital movements, payments or transfers where necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offenses, deceptive or fraudulent practices;

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings; or

(f) social security, public retirement or compulsory savings schemes.

3. The laws and regulations referred to in paragraph 2 shall not be applied in an arbitrary or discriminatory manner, or otherwise constitute a disguised restriction on capital movements, payments or transfers.

(30) Including serious balance of payments difficulties.

## **Article 139. Facilitation and Further Liberalisation Provisions**

The Parties shall consult each other with a view to facilitating the movement of capital between the Parties in order to promote the objectives of this Agreement.

## **Chapter 8. PUBLIC PROCUREMENT**

### **Article 140. Objectives**

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

This Chapter envisages mutual access to public procurement markets on the basis of the principle of national treatment at national, regional and local level for public contracts and concessions in the traditional sector as well as in the utilities sector.

### **Article 141. Scope**

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

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

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

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

These value thresholds shall be revised regularly every two years, beginning in the first even year following the entry into force of this Agreement, based on the average daily value of the Euro, expressed in Special Drawing Rights, over the 24

months terminating on the last day of August preceding the revision with effect from January 1. The value of the thresholds thus revised shall, where necessary, be rounded down to nearest thousand Euro. The revision of the thresholds shall be adopted by the Trade Committee according to the procedure defined in Title VII (Institutional General and Final Provisions) of this Agreement.

## **Article 142. Institutional Background**

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

2. Ukraine shall designate in particular:

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

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

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

## **Article 143. Basic Standards Regulating the Award of Contracts**

1. The Parties shall comply with a set of basic standards for the award of all contracts as stipulated in paragraphs 2 to 15 of this Article. These basic standards derive directly from the rules and principles of public procurement, including the principles of non-discrimination, equal treatment, transparency and proportionality.

### Publication

2. The Parties shall ensure that all intended procurements are published in an appropriate media in a manner that is sufficient:

(a) to enable the market to be opened up to competition; and

(b) to allow any interested economic operator to have appropriate access to information regarding the intended procurement prior to the award of the contract and to express its interest in obtaining the contract.

3. The publication shall be appropriate to the economic interest of the contract to economic operators.

4. The publication shall contain at least the essential details of the contract to be awarded, the criteria for qualitative selection, the award method, the contract award criteria and any other additional information that the economic operators reasonably need to make a decision on whether to express their interest in obtaining the contract.

### Award of Contracts

5. All contracts shall be awarded through transparent and impartial award procedures that prevent corruptive practices. This impartiality shall be ensured especially through the non-discriminatory description of the subject matter of the contract, equal access for all economic operators, appropriate time limits and a transparent and objective approach.

6. When describing the characteristics of the required work, supply or service, the contracting entities shall use general descriptions of performance and functions and international or national standards.

7. The description of the characteristics required of a work, supply or service should not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production unless such a reference is justified by the subject matter of the contract and accompanied by the words "or equivalent". Preference shall be given to the use of general descriptions of performance or functions.

8. Contracting entities shall not impose conditions resulting in direct or indirect discrimination against the economic operators of the other Party, such as the requirement that economic operators interested in the contract must be established in the same country, region or territory as the contracting entity.

Notwithstanding the above, in cases where it is justified by the specific circumstances of the contract, the successful

applicant may be required to establish certain business infrastructure at the place of performance.

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

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

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

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

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

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

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

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

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

#### Judicial Protection

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

### **Article 144. Market Access**

The Parties agree that the effective and reciprocal opening of their respective markets shall be attained gradually and simultaneously in accordance with the timetable in Annex XVI-A to this Agreement.

The Parties will examine the possibility to mutually grant market access with regard to procurements even below the value thresholds set out in Article 141(3) of this Agreement.

### **Article 145. Information**

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

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

### **Article 146. Cooperation**

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

2. The United Kingdom shall facilitate the implementation of this Chapter, including through technical assistance where appropriate. In line with the provisions on financial cooperation in Title VI (Financial Co-operation, with Anti-fraud Provisions) of this Agreement, specific decisions on financial assistance shall be taken by both Parties.

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

# **Chapter 9. INTELLECTUAL PROPERTY**

## **Section 1. GENERAL PROVISIONS**

### **Article 147. Objectives**

The Objectives of this Chapter are to:

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

### **Article 148. Nature and Scope of Obligations**

1. The Parties shall ensure the adequate and effective implementation of the international treaties dealing with intellectual property to which they are parties including the Agreement on Trade-Related Aspects of Intellectual Property Rights, contained in Annex 1C to the WTO Agreement (hereinafter referred to as the "TRIPS Agreement"). The provisions of this Chapter shall complement and further specify the rights and obligations between the Parties under the TRIPS Agreement and other international treaties in the field of intellectual property.

2. For the purposes of this Agreement, intellectual property rights embody copyright, including copyright in computer programs and in databases, and rights related to copyright, rights related to patents including patents for bio-technological inventions, trade marks, trade names in so far as these are protected as exclusive property rights in the domestic law concerned, designs, layout-designs (topographies) of integrated circuits, geographical indications, including designations of origin, indications of source, plant varieties, protection of undisclosed information and protection against unfair competition as referred to in Article 10 bis of the Paris Convention for the Protection of Industrial Property (1967) (hereinafter referred to as the "Paris Convention").

### **Article 149. Transfer of Technology**

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

2. The Parties shall ensure that the legitimate interests of the intellectual property right-holders are protected.

### **Article 150. Exhaustion**

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

## **Section 2. STANDARDS CONCERNING INTELLECTUAL PROPERTY RIGHTS**

### **Subsection 1. COPYRIGHT AND RELATED RIGHTS**

#### **Article 151. Protection Granted**

The Parties shall comply with:

(a) Articles 1 to 22 of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961) (hereinafter referred to as the "Rome Convention");

(b) Articles 1 to 18 of the Berne Convention for the Protection of Literary and Artistic Works (1886, last amended in 1979) (hereinafter referred to as the "Berne Convention");

(c) Articles 1 to 14 of the World Intellectual Property Organisation (hereinafter referred to as 'WIPO') Copyright Treaty (1996) (hereinafter referred to as the "WCT"); and

(d) Articles 1 to 23 of the WIPO Performances and Phonograms Treaty (1996).

## **Article 152. Duration of Authors' Rights**

1. The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for not less than 70 years after his/her death, irrespective of the date when the work is lawfully made available to the public.
2. In the case of a work of joint authorship, the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.
3. In the case of anonymous or pseudonymous works, the term of protection shall run for not less than 70 years after the work is lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his/her identity, or if the author discloses his/her identity during the period referred to in the first sentence, the term of protection applicable shall be that laid down in paragraph 1.
4. Where a work is published in volumes, parts, instalments, issues or episodes and the term of protection runs from the time when the work was lawfully made available to the public, the term of protection shall run for each such item separately.
5. In the case of works for which the term of protection is not calculated from the death of the author or authors and which have not been lawfully made available to the public within 70 years of their creation, the protection shall terminate.
6. Notwithstanding paragraph 5, where a term of protection is longer than the corresponding term provided by this Agreement or is already running in the territory of a Party (as defined under Article 416 of this Agreement) on the date of entry into force of this Agreement, this Agreement shall not have the effect of reducing that term of protection in the territory of that Party.

## **Article 153. Duration of Protection of Cinematographic or Audiovisual Works**

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

## **Article 154. Duration of Related Rights**

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

## **Article 155. Protection of Previously Unpublished Works**



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

## **Article 156. Critical and Scientific Publications**

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

## **Article 157. Protection of Photographs**

Photographs which are original in the sense that they are the author's own intellectual creation shall be protected in accordance with Article 152 of this Agreement. Parties may provide for the protection of other photographs.

## **Article 158. Cooperation on Collective Management of Rights**

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

## **Article 159. Fixation Right**

1. For the purpose of this Article, fixation means the embodiment of sounds and images, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device.
2. The Parties shall provide performers with the exclusive right to authorise or prohibit the fixation of their performances.
3. The Parties shall provide broadcasting organisations with the exclusive right to authorise or prohibit the fixation of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite.
4. Accessible distributor shall not have the right provided for in paragraph 2 where it merely retransmits by cable the broadcasts of broadcasting organisations.

## **Article 160. Broadcasting and Communication to the Public**

1. For the purposes of this Article:

(a) "broadcasting" means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite; and transmission of encrypted signals, where the means for decrypting are provided to the public by the broadcasting organisation or with its consent;

(b) "communication to the public" means the transmission to the public by any medium, otherwise than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram. For the purposes of paragraph 3, "communication to the public" includes making the sounds or representations of sounds fixed in a phonogram audible to the public.

2. The Parties shall provide performers with the exclusive right to authorise or prohibit the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.
3. The Parties shall provide performers and producers of phonograms with the right to a single equitable remuneration if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public, and ensure that this remuneration is shared among the relevant performers and phonogram producers. The Parties may, in the absence of agreement between the performers and phonogram producers, lay down the conditions as to the sharing of this remuneration among them.
4. The Parties shall provide broadcasting organisations with the exclusive right to authorise or prohibit re-broadcasting of

their broadcasts by wireless means, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

### **Article 161. Distribution Right**

1. The Parties shall provide authors, in respect of the original of their works or of copies thereof, with the exclusive right to authorise or prohibit any form of distribution to the public by sale or otherwise.

2. The Parties shall provide the exclusive right to make available to the public, by sale or otherwise, the objects indicated in subparagraphs (a) to (d) of this paragraph, including copies thereof:

(a) for performers, in respect of fixations of their performances;

(b) for phonogram producers, in respect of their phonograms;

(c) for producers of the first fixation of films, in respect of the original and copies of their films;

(d) for broadcasting organisations, in respect of fixations of their broadcasts as set out in Article 159(3) of this Agreement.

### **Article 162. Limitations**

1. Parties may provide for limitations on the rights referred to in Articles 159, 160 and 161 of this Agreement in respect of:

(a) private use;

(b) use of short excerpts in connection with the reporting of current events;

(c) ephemeral fixation by a broadcasting organisation by means of its own facilities and for its own broadcasts;

(d) use solely for the purposes of teaching or scientific research.

2. Notwithstanding paragraph 1, Parties may provide for the same kinds of limitations with regard to the protection of performers, producers of phonograms, broadcasting organisations and producers of the first fixations of films, as they provide for in connection with the protection of copyright in literary and artistic works. However, compulsory licences may be provided for only to the extent to which they are compatible with the Rome Convention.

3. The limitations set out in paragraphs 1 and 2 of this Article shall be applied only in certain special cases which do not conflict with a normal exploitation of the subject matter and do not unreasonably prejudice the legitimate interests of the right-holder.

### **Article 163. Reproduction Right**

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

(a) for authors, of their works;

(b) for performers, of fixations of their performances;

(c) for phonogram producers, of their phonograms;

(d) for the producers of the first fixations of films, in respect of the original and copies of their films;

(e) for broadcasting organisations, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite.

### **Article 164. Right of Communication to the Public of Works and Right of Making Available to the Public other Subject Matter**

1. The Parties shall provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.

2. The Parties shall provide for the exclusive right to authorise or prohibit the making available of works to the public, by

wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them, namely:

(a) for performers, of fixations of their performances;

(b) for phonogram producers, of their phonograms;

(c) for the producers of the first fixations of films, of the original and copies of their films;

(d) for broadcasting organisations, of fixations of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite.

3. Both Parties agree that the rights referred to in paragraphs 1 and 2 shall not be exhausted by any act of communication to the public or making them available to the public as set out in this Article.

## **Article 165. Exceptions and Limitations**

1. The Parties shall provide that temporary acts of reproduction referred to in Article 163 of this Agreement, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable:

(a) transmission in a network between third parties by an intermediary; or

(b) lawful use of a work or other subject matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 163.

2. Where the Parties provide for an exception or limitation to the right of reproduction provided for in Article 163, they may provide similarly for an exception or limitation to the right of distribution provided for in Article 161(1) of this Agreement to the extent justified by the purpose of the authorised act of reproduction.

3. The Parties may provide for exceptions and limitations to the rights set out in Articles 163 and 164 of this Agreement only in certain special cases which do not conflict with normal exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interests of the right-holder.

## **Article 166. Protection of Technological Measures**

1. The Parties shall provide adequate legal protection against the circumvention of effective technological measures which the person concerned carries out in the knowledge, or with reasonable grounds for knowing, that he/she is pursuing that objective.

2. The Parties shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which:

(a) are promoted, advertised or marketed for the purpose of circumvention of; or

(b) have only a limited commercially significant purpose or use other than to circumvent; or

(c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of any effective technological measures.

3. For the purposes of this Section, the expression "technological measures" means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject matter, which are not authorised by the right-holder of any copyright or any right related to copyright as provided for by each Party's legislation. Technological measures shall be deemed "effective" where the use of a protected work or other subject matter is controlled by the right-holders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject matter or a copy control mechanism, which achieves the protection objective.

4. Where Parties provide for limitations to the rights set out in Articles 162 and 165 of this Agreement, they may also ensure that right-holders make available to a beneficiary of an exception or limitation the means of benefiting from that exception or limitation to the extent necessary to benefit from that exception or limitation and where that beneficiary has legal access to the protected work or subject matter concerned.

5. The Parties may provide that the provisions of Article 166(4) of this Agreement shall not apply to works or other subject matter made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.

## **Article 167. Protection of Rights-Management Information**

1. The Parties shall provide for adequate legal protection against any person knowingly performing without authority any of the following acts:

(a) the removal or alteration of any electronic rights-management information;

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

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

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

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

## **Article 168. Right-Holders and Subject Matter of Rental and Lending Right**

1. The Parties should provide the exclusive right to authorise or prohibit rental and lending for the following:

(a) the author in respect of the original and copies of his/her work;

(b) the performer in respect of fixations of his/her performance;

(c) the phonogram producer in respect of his/her phonograms;

(d) the producer of the first fixation of a film in respect of the original and copies of his film.

2. These provisions shall not cover rental and lending rights in relation to buildings and to works of applied art.

3. The Parties may derogate from the exclusive right provided for in paragraph 1 in respect of public lending, provided that at least authors obtain remuneration for such lending. The Parties shall be free to determine this remuneration, taking account of their cultural promotion objectives.

4. Where the Parties do not apply the exclusive lending right provided for in this Article as regards phonograms, films and computer programs, they shall introduce, at least for authors, remuneration.

5. The Parties may exempt certain categories of establishments from the payment of the remuneration referred to in paragraphs 3 and 4.

## **Article 169. Unwaivable Right to Equitable Remuneration**

1. Where an author or performer has transferred or assigned his/her rental right concerning a phonogram or an original or copy of a film to a phonogram or film producer, that author or performer shall retain the right to obtain equitable remuneration for the rental.

2. The right to obtain equitable remuneration for rental cannot be waived by authors or performers.

3. The administration of the right to obtain equitable remuneration may be entrusted to collecting societies representing authors or performers.

4. The Parties may regulate whether and to what extent administration by collecting societies of the right to obtain equitable remuneration may be imposed, as well as the question from whom this remuneration may be claimed or collected.

## **Article 170. Protection of Computer Programs**

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

## **Article 171. Authorship of Computer Programs**

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

## **Article 172. Restricted Acts Relating to Computer Programs**

Subject to the provisions of Articles 173 and 174 of this Agreement, the exclusive rights of the right-holder within the meaning of Article 171, shall include the right to carry out or to authorise:

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

## **Article 173. Exceptions to the Restricted Acts Relating to Computer Programs**

1. In the absence of specific contractual provisions, the acts referred to in Article 172(a) and (b) of this Agreement shall not require authorisation by the right-holder where they are necessary for the use of the computer program by the lawful acquirer in accordance with its intended purpose, including for error correction.
2. The making of a back-up copy by a person having a right to use the computer program may not be prevented by contract in so far as it is necessary for that use.
3. The person having a right to use a copy of a computer program shall be entitled, without the authorisation of the right-holder, to observe, study or test the functioning of the programme in order to determine the ideas and principles which underlie any element of the programme if such person does so while performing any of the acts of loading, displaying, running, transmitting or storing the programme which he or she is entitled to do.

## **Article 174. Decompilation**

1. The authorisation of the right-holder shall not be required where reproduction of the code and translation of its form within the meaning of Article 172 (a) and (b) are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, provided that the following conditions are met:
  - (a) these acts are performed by the licensee or by another person having a right to use a copy of a program, or on their

behalf by a person authorised to do so;

(b) the information necessary to achieve interoperability has not previously been readily available to the persons referred to in subparagraph (a) of this paragraph; and

(c) these acts are confined to the parts of the original program which are necessary to achieve interoperability.

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

(a) to be used for goals other than to achieve the interoperability of the independently created computer program;

(b) to be given to others, except when necessary for the interoperability of the independently created computer program; or

(c) to be used for the development, production or marketing of a computer program substantially similar in its expression, or for any other act which infringes copyright.

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

## **Article 175. Protection of Databases**

1. For the purposes of this Agreement, "database" shall mean a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means.

2. Protection under this Agreement shall not apply to computer programs used in the making or operation of databases accessible by electronic means.

## **Article 176. Object of Protection**

1. In accordance with Sub-section 1, databases which, by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation shall be protected as such by copyright. No other criteria shall be applied to determine their eligibility for that protection.

2. The copyright protection of databases provided for in Sub-section 1 shall not extend to their contents and shall be without prejudice to any rights subsisting in those contents themselves.

## **Article 177. Database Authorship**

1. The author of a database shall be the natural person or group of natural persons who created the database or, where the legislation of the Parties so permits, the legal person designated as the right-holder by legislation.

2. Where collective works are recognised by the legislation of the Parties, the economic rights shall be owned by the person holding the copyright.

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

## **Article 178. Restricted Acts Relating to Databases**

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

(a) temporary or permanent reproduction by any means and in any form, in whole or in part;

(b) translation, adaptation, arrangement and any other alteration;

(c) any form of distribution to the public of the database or copies thereof;

(d) any communication, display or performance to the public;

(e) any reproduction, distribution, communication, display or performance to the public of the results of the acts referred to in subparagraph (b).

## **Article 179. Exceptions to Restricted Acts Relating to Databases**

1. Performance by the lawful user of a database or a copy thereof of any of the acts listed in Article 178 of this Agreement which is necessary for purposes of access to the contents of the database and normal use of the contents by the lawful user shall not require the authorisation of the author of the database. Where the lawful user is authorised to use only part of the database, this provision shall apply only to that part.

2. The Parties shall have the option of providing for limitations on the rights set out in Article 178 in the following cases:

(a) in the case of reproduction for private purposes of a non-electronic database;

(b) where there is use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;

(c) where there is use for purposes of public security or for the purposes of an administrative or judicial procedure;

(d) where other exceptions to copyright are traditionally authorised by each Party, without prejudice to subparagraphs (a), (b) and (c).

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

## **Article 180. Resale Right**

1. The Parties shall provide, for the benefit of the author of an original work of art (31), a resale right, to be defined as an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.

2. The right referred to in paragraph 1 shall apply to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art.

3. The Parties may provide, in accordance with their legislation, that the right referred to in paragraph 1 shall not apply to acts of resale where the seller has acquired the work directly from the author less than three years before that resale and where the resale price does not exceed a certain minimum amount.

4. The royalty shall be payable by the seller. The Parties may provide that one of the natural or legal persons referred to in paragraph 2 other than the seller shall alone be liable or shall share liability with the seller for payment of the royalty.

(31) For the purposes of this Article, a Party may construe an "original work of art" as being a work of graphic or plastic art which is either the original or one of a limited number made by the author or under their authority.

## **Article 181. Broadcasting of Programmes by Satellite**

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

## **Article 182. Cable Retransmission**

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

## **Subsection 2. TRADE MARKS**

### **Article 183. Registration Procedure**

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

available electronic database of trade mark applications and trade mark registrations.

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

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

3. A Party may determine that a trade mark shall not be refused registration by virtue of subsection 2(b), (c) or (d) if, before the date of application for registration it has acquired a distinctive character as a result of a use made. Where a trade mark was registered in breach of subsection 2(b), (c) or (d), a Party may determine that it should not be declared invalid if, in consequence of the use which has been made of it, it has after registration acquired a distinctive character in relation to the goods or services for which it is registered.

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

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

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

## **Article 184. Well-known Trade Marks**

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

## **Article 185. Rights Conferred by a Trade Mark**

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

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



includes the likelihood of association between the sign and the trade mark.

## **Article 186. Exceptions to the Rights Conferred by a Trade Mark**

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

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

(a) The name or the address of the third party, where that third party is a natural person;

(b) signs or indications which are not distinctive or which concern the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of a service, or other characteristics of goods or services;

(c) the trade mark for the purpose of identifying or referring to goods or services as those of the proprietor of the trade mark in particular, where the use of the trade mark is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts, the use made by the third party is in accordance with honest practices in industrial or commercial matters.

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

## **Article 187. Use of Trade Marks**

1. If, within five years of the date of completion of the registration procedure, the proprietor has not put a trade mark to genuine use in connection with the goods or services in respect of which it is registered in the relevant territory, or if such use has been suspended during an uninterrupted period of five years, the trade mark shall be subject to the sanctions provided for in this Sub-section, unless there are proper reasons for non-use.

2. The following shall also constitute use within the meaning of paragraph 1:

(a) use of the trade mark in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered;

(b) affixing of the trade mark to goods or to the packaging thereof solely for export purposes.

3. Use of a trade mark with the consent of the proprietor or by any person who has authority to use a collective mark or a guarantee or certification mark shall be deemed to constitute use by the proprietor within the meaning of paragraph 1.

## **Article 188. Grounds for Revocation**

1. The Parties shall provide that a trade mark shall be liable to revocation if, within a continuous period of five years, it has not been put to genuine use in the relevant territory in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use; however, no person may claim that the proprietor's rights in a trade mark should be revoked where, during the interval between expiry of the five-year period and filing of the application for revocation, genuine use of the trade mark has been started or resumed; the commencement or resumption of use within a period of three months preceding the filing of the application for revocation which began at the earliest on expiry of the continuous period of five years of non-use, shall, however, be disregarded where preparations for the commencement or resumption occur only after the proprietor becomes aware that the application for revocation may be filed.

2. A trade mark shall also be liable to revocation if, after the date on which it was registered:

(a) in consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a product or service in respect of which it is registered;

(b) in consequence of the use made of it by the proprietor of the trade mark or with his/her consent in respect of the goods or services for which it is registered, it is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

## **Article 189. Partial Refusal, Revocation or Invalidity**

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

## **Article 190. Term of Protection**

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

## **Subsection 3. GEOGRAPHICAL INDICATIONS**

### **Article 191. Scope of the Sub-section**

1. This Sub-section applies to the recognition and protection of geographical indications originating in the territories of the Parties.
2. Geographical indications of a Party to be protected by the other Party shall only be subject to this Agreement if covered by the scope of the legislation referred to in Article 192 of this Agreement.

### **Article 192. Established Geographical Indications**

1. Having examined the Ukrainian legislation listed in Annex XVII-A Part A to this Agreement, the United Kingdom concludes that these laws meet the elements laid down in Annex XVII-A Part B to this Agreement.
2. Having examined the United Kingdom's legislation listed in Annex XVII-A Part A to this Agreement, Ukraine concludes that these laws meet the elements laid down in Annex XVII-A Part B to this Agreement.
3. Ukraine shall protect the geographical indications for the agricultural products and foodstuffs of the United Kingdom listed in Annex XVII-C to this Agreement and the geographical indications for wines, aromatised wines and spirit drinks of the United Kingdom listed in Annex XVI-D to this Agreement, which have been registered by the United Kingdom under the legislation referred to in paragraph 2, according to the level of protection laid down in this Sub section.
4. The United Kingdom shall protect the geographical indications for the wines, aromatised wines and spirit drinks of Ukraine listed in Annex XVII-D to this Agreement, which have been registered by Ukraine under the legislation referred to in paragraph 1, according to the level of protection laid down in this Sub-section.

### **Article 193. Addition of New Geographical Indications**

1. The Parties agree on the possibility of adding new geographical indications to be protected in Annexes XVII-C and XVII-D to this Agreement in accordance with Article 201(3) of this Agreement after having completed the objection procedure in accordance with the criteria set out in Annex XVII-B to this Agreement and having examined the geographical indications to the satisfaction of both Parties.
2. A Party shall not be required to protect as a geographical indication a name that conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead the consumer as to the true origin of the product.

### **Article 194. Scope of Protection of Geographical Indications**

1. The geographical indications listed in Annexes XVII-C and XVII-D to this Agreement, including those added pursuant to Article 193 of this Agreement, shall be protected against:
  - (a) any direct or indirect commercial use of a protected name for comparable products not compliant with the product specification of the protected name, or in so far as such use exploits the reputation of a geographical indication;
  - (b) any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated, transcribed, transliterated or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation", "flavour", "like", or similar;
  - (c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the

inner or outer packaging, in advertising material or documents relating to the product concerned, and on the packing of the product in a container liable to convey a false impression as to its origin;

(d) any other practice liable to mislead the consumer as to the true origin of the product.

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

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

4. Where a Party, in the context of negotiations with a third country, proposes to protect a geographical indication of the third country, and the name is homonymous with a geographical indication of the other Party the latter shall be informed and be given the opportunity to comment before the name is protected.

5. Nothing in this Agreement shall oblige a Party to protect a geographical indication of the other Party which is not or ceases to be protected in its country of origin. The Parties shall notify each other if a geographical indication ceases to be protected in its country of origin. Such notification shall take place in accordance with Article 201(3) of this Agreement.

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

## **Article 195. Right of Use of Geographical Indications**

1. The commercial use of a name protected under this Agreement for agricultural products, foodstuffs, wines, aromatised wines or spirit drinks conforming to the corresponding specification is open to any entity.

2. Once a geographical indication is protected under this Agreement, the use of such protected name shall not be subject to any registration of users or further charges.

## **Article 196. Relationship with Trade Marks**

1. The Parties shall refuse to register or shall invalidate a trade mark that corresponds to any of the situations referred to in Article 194(1) of this Agreement in relation to a protected geographical indication for like products, provided an application to register the trade mark is submitted after the date of application for registration of the geographical indication in the territory concerned.

2. For geographical indications referred to in Article 192 of this Agreement, the date of application for registration shall be 1 January 2016.

3. For geographical indications referred to in Article 193 of this Agreement, the date of application for registration shall be the date of the transmission of a request to the other Party to protect a geographical indication.

4. The Parties shall have no obligation to protect a geographical indication pursuant to Article 193 of this Agreement where, in the light of a reputed or well-known trade mark, protection is liable to mislead consumers as to the true identity of the product.

5. Without prejudice to paragraph 4 of this Article, the Parties shall protect geographical indications also where a prior trade mark exists. Prior trade mark shall mean a trade mark, the use of which corresponds to one of the situations referred to in Article 194(1) of this Agreement, which has been applied for, registered or established by use, if that possibility is provided for by the legislation concerned, in the territory of one of the Parties before the date on which the application for protection of the geographical indication is submitted by the other Party under this Agreement. Such trade mark may continue to be used and renewed notwithstanding the protection of the geographical indication, provided that no grounds for the trade mark's invalidity or revocation exist in the legislation on trade marks of the Parties.

## **Article 197. Enforcement of Protection**

The Parties shall enforce the protection provided for in Articles 194 to 196 of this Agreement by appropriate action by their

authorities including at the customs border. They shall also enforce such protection at the request of an interested party.

## **Article 198. Temporary Measures**

Products which were produced and labelled in conformity with national law before 1 January 2016 but which do not comply with the requirements of this Agreement, may continue to be sold until stocks run out.

## **Article 199. General Rules**

1. The importation, exportation and commercialisation of any product referred to in Articles 192 and 193 of this Agreement shall be conducted in compliance with the laws and regulations applying in the territory of the Party in which the products are placed on the market.
2. Any matter arising from product specifications of registered geographical indications shall be dealt with in the GI Sub-Committee established pursuant to Article 201 of this Agreement.
3. The registration of geographical indications protected under this Agreement may only be cancelled by the Party in which the product originates.
4. A product specification referred to in this Sub-section shall be that which is approved, including any amendments also approved, by the authorities of the Party in whose territory the product originates.

## **Article 200. Cooperation and Transparency**

1. The Parties shall, either directly or through the GI Sub-Committee established pursuant to Article 201 of this Agreement, maintain contact on all matters related to the implementation and functioning of this Agreement. In particular, a Party may request from the other Party information relating to product specifications and their modification, and contact points for control provisions.
2. Each Party may make publicly available the product specifications or a summary thereof and contact points for control provisions corresponding to geographical indications of the other Party protected pursuant to this Agreement.

## **Article 201. Sub-Committee on Geographical Indications**

1. The Sub-Committee on Geographical Indications (GI Sub-Committee) is hereby established. It shall report on its activities to the Trade Committee in accordance with Article 404(5) of this Agreement. The GI Sub-Committee shall consist of representatives of the UK and Ukraine with the purpose of monitoring the development of this Agreement and of intensifying their co-operation and dialogue on geographical indications.
2. The GI Sub-Committee shall adopt its decisions by consensus. It shall determine its own rules of procedure. It shall meet at the request of either of the Parties, alternatively in the UK and in Ukraine, at a time and a place and in a manner (which may include by videoconference) mutually determined by the Parties, but no later than 90 days after the request.
3. The GI Sub-Committee shall also see to the proper functioning of this Sub-section and may consider any matter related to its implementation and operation. In particular, it shall be responsible for:
  - (a) amending Annex XVII-A Part A to this Agreement, as regards the references to the law applicable in the Parties;
  - (b) amending Annex XVII-A Part B to this Agreement, as regards the elements for registration and control of geographical indications;
  - (c) amending Annex XVII-B to this Agreement, as regards the criteria to be included in the objection procedure;
  - (d) modifying Annexes XVI-C and XVI-D to this Agreement as regards geographical indications;
  - (e) exchanging information on legislative and policy developments on geographical indications and any other matter of mutual interest in the area of geographical indications;
  - (f) exchanging information on geographical indications for the purpose of considering their protection in accordance with this Agreement.

## **Subsection 4. DESIGNS**

## Article 202. Definition

For the purposes of this Agreement:

- (a) "design" means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation (32);
- (b) "product" means any industrial or handicraft item, including inter alia parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs;
- (c) "complex product" means a product which is composed of multiple components that can be replaced, permitting disassembly and reassembly of the product.

(32) For the purposes of Article 202 and subsequent Articles referring to unregistered designs, in the United Kingdom an "unregistered design" is one which is protected by Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs.

## Article 203. Requirements for Protection

1. The United Kingdom and Ukraine shall provide for the protection of independently created designs that are new and have individual character.

2. A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and to have individual character:

- (a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter; and
- (b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and individual character.

3. A design shall be considered to be new if no identical design has been made available to the public:

- (a) in the case of an unregistered design, before the date on which the design for which protection is claimed has first been made available to the public;
- (b) in the case of a registered design, before the date of filing of the application for registration of the design for which protection is claimed, or, if priority is claimed, the date of priority.

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

4. A design shall be considered to have individual character if the overall impression it produces on an informed user differs from the overall impression produced on such a user by any other design which has been made available to the public:

- (a) in the case of an unregistered design, before the date on which the design for which protection is claimed has first been made available to the public;
- (b) in the case of a registered design, before the date of filing of the application for registration of the design for which protection is claimed, or, if priority is claimed, the date of priority.

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

5. This protection shall be provided by registration and shall confer exclusive rights upon their holders in accordance with the provisions of this Article. Unregistered designs made available to the public shall confer the same exclusive rights, but only if the contested use results from copying the protected design.

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

territory in which protection is claimed.

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

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

(a) by the designer, his/her successor in title, or a third person as a result of information provided or action taken by the designer, or his/her successor in title; and

(b) during the twelve-month period preceding the date of filing of the application or, if priority is claimed, the date of priority.

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

## **Article 204. Term of Protection**

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

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

## **Article 205. Invalidity or Refusal of Registration**

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

(a) if the design does not correspond to the definition under Article 202(a) of this Agreement;

(b) if it does not fulfil the requirements of Article 203 and Article 207 (paragraphs 3, 4 and 5) of this Agreement;

(c) if, by virtue of a court decision, the right-holder is not entitled to the design;

(d) if the design is in conflict with a prior design which has been made available to the public after the date of filing of the application or, if priority is claimed, the date of priority of the design, and which is protected from a date prior to the said date by a registered design or an application for a design;

(e) if a distinctive sign is used in a subsequent design, and the law of the Party concerned governing that sign confers on the right-holder of the sign the right to prohibit such use;

(if the design constitutes an unauthorised use of a work protected under the copyright law of the Party concerned;

(g) if the design constitutes an improper use of any of the items listed in Article 6ter of the Paris Convention or of badges, emblems and escutcheons other than those covered by the said Article 6ter and which are of particular public interest in the territory of a Party.

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

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

## **Article 206. Rights Conferred**

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

## **Article 207. Exceptions**

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

(a) acts done privately and for non-commercial purposes;

(b) acts done for experimental purposes;

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

2. In addition, the rights conferred by a design right upon registration shall not be exercised in respect of:

(a) the equipment on ships and aircraft registered in another country when these temporarily enter the territory of the Party concerned;

(b) the importation by the Party concerned of spare parts and accessories for the purpose of repairing such craft;

(c) the execution of repairs on such craft.

3. A design right shall not subsist in features of appearance of a product which are solely dictated by its technical function.

4. A design right shall not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function.

5. A design right shall not subsist in a design which is contrary to public policy or to accepted principles of morality.

## **Article 208. Relationship to Copyright**

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

## **Subsection 5. PATENTS**

### **Article 209. Patents and Public Health**

1. The Parties recognise the importance of the Declaration on the TRIPS Agreement and Public Health, adopted on 14 November 2001 (hereinafter referred to as the "Doha Declaration") by the Ministerial Conference of the WTO. In interpreting and implementing the rights and obligations under this Chapter, the Parties shall ensure consistency with the Doha Declaration.

2. The Parties shall contribute to the implementation of, and shall respect, the Decision of the WTO General Council of 30 August 2003 on the implementation of paragraph 6 of the Doha Declaration.

### **Article 210. Supplementary Protection Certificate**

1. The Parties recognise that medicinal and plant protection products protected by a patent in their respective territory may be subject to an administrative authorisation procedure before being put on their market. They recognise that the period that elapses between the filing of the application for a patent and the first authorisation to place the product on their respective market, as defined for that purpose by the relevant legislation, may shorten the period of effective protection under the patent.

2. The Parties shall provide for a further period of protection for a medicinal or plant protection product which is protected by a patent and which has been subject to an administrative authorisation procedure, that period being equal to the period referred to in paragraph 1, reduced by a period of five years.

3. In the case of medicinal products for which paediatric studies have been carried out, and the results of those studies are reflected in the product information, the Parties shall provide for a further six-month extension of the period of protection referred to in paragraph 2 of this Article.

### **Article 211. Protection of Biotechnological Inventions**

1. The Parties shall protect biotechnological inventions under national patent law. They shall, if necessary, adjust their patent law to take account of the provisions of this Agreement. This Article shall be without prejudice to the obligations of the Parties pursuant to international agreements, and in particular the TRIPS Agreement and the Convention on Biological Diversity of 1992 (hereinafter referred to as the "CBD").

2. For the purposes of this Sub-section:

(a) "biological material" means any material containing genetic information and capable of reproducing itself or being reproduced in a biological system;

(b) "microbiological process" means any process involving or performed upon or resulting in microbiological material.

3. For the purposes of this Agreement, inventions which are new, which involve an inventive step and which are susceptible of industrial application shall be patentable even if they concern a product consisting of or containing biological material or a process by means of which biological material is produced, processed or used.

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

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

4. The following shall not be patentable:

(a) plant and animal varieties;

(b) essentially biological processes for the production of plants or animals;

(c) the human body, at the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene.

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

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

(a) processes for cloning human beings;

(b) processes for modifying the germ line genetic identity of human beings;

(c) uses of human embryos for industrial or commercial purposes;

(d) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes.

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

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

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

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



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

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

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

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

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

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

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

(a) they have applied unsuccessfully to the holder of the patent or of the plant variety right to obtain a contractual licence;

(b) the plant variety or the invention constitutes significant technical progress of considerable economic interest compared with the invention claimed in the patent or the protected plant variety.

## **Article 212. Protection of Data Submitted to Obtain an Authorisation to Put a Medicinal Product on the Market**

1. The Parties shall implement a comprehensive system to guarantee the confidentiality, non disclosure and non-reliance of data submitted for the purpose of obtaining an authorisation to put a medicinal product on the market.

2. For that purpose, when a Party requires the submission of test data or studies concerning the safety and efficacy of a medicinal product prior to granting approval for the marketing of such product, the Party shall not, for a period of at least five years from the date of the first approval in that Party, permit other applicants to market the same or a similar product, on the basis of the marketing approval granted to the applicant which had provided the test data or studies, unless the applicant which had provided the test data or studies has given consent. During such period, the test data or studies submitted for the first approval will not be used for the benefit of any subsequent applicant aiming to obtain a marketing approval for a medicinal product, except when the consent of the first applicant is given.

## **Article 213. Data Protection on Plant Protection Products**

1. The Parties shall determine safety and efficacy requirements before authorising the placing on the market of plant protection products.

2. The Parties shall recognise a temporary right to the owner of a test or study report submitted for the first time to achieve a marketing authorisation for a plant protection product. During such period, the test or study report will not be used for the benefit of any other person aiming to obtain a marketing authorisation for a plant protection product, except when the explicit consent of the first owner is given. This right will be hereinafter referred to as "data protection".

3. The Parties shall determine the conditions to be fulfilled by the test or study report.

4. The period of data protection should be at least 10 years starting from the date of the first authorisation in the Party

concerned. The Parties may decide to provide an extension of the period of protection for low-risk plant protection products. In such a situation, the period can be extended to 13 years.

5. The Parties may decide that those periods shall be extended for each extension of authorisation for minor uses (33). In such a situation, the total period of data protection may in no case exceed 13 years or, for low-risk plant protection products, 15 years.

6. A test or study shall also be protected if it was necessary for the renewal or review of an authorisation. In those cases, the period for data protection shall be 30 months.

7. Rules to avoid duplicative testing on vertebrate animals will be laid down by the Parties. Any applicant intending to perform tests and studies involving vertebrate animals shall take the necessary measures to verify that those tests and studies have not already been performed or initiated.

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

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

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

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

(33) Minor use: use of a plant protection product in a particular Party on plants or plant products which are not widely grown in that particular Party or widely grown to meet an exceptional plant protection need.

## **Subsection 6. TOPOGRAPHIES OF SEMI-CONDUCTOR PRODUCTS**

### **Article 214. Definition**

For the purposes of this Sub-section:

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

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

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

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

(c) "commercial exploitation" means the sale, rental, leasing or any other method of commercial distribution, or an offer for these purposes. However, for the purposes of Article 217 of this Agreement, commercial exploitation shall not include exploitation under conditions of confidentiality to the extent that no further distribution to third parties occurs.

### **Article 215. Requirements for Protection**

1. The Parties shall protect the topographies of semiconductor products by adopting legislative provisions conferring exclusive rights in accordance with the provisions of this Article.

2. The Parties shall provide for the protection of the topography of a semiconductor in so far as it satisfies the conditions

that it is the result of its creator's own intellectual effort and is not commonplace in the semiconductor industry. Where the topography of a semiconductor product consists of elements that are commonplace in the semiconductor industry, it shall be protected only to the extent that the combination of such elements, taken as a whole, fulfils the abovementioned conditions.

## **Article 216. Exclusive Rights**

1. The exclusive rights referred to in Article 215(1) of this Agreement shall include the right to authorise or prohibit any of the following acts:

(a) reproduction of a topography in so far as it is protected under Article 215(2) of this Agreement;

(b) commercial exploitation or the importation for that purpose of a topography or of a semiconductor product manufactured by using the topography.

2. The exclusive rights referred to in paragraph 1 (a) of this Article shall not apply to reproduction for the purpose of analysing, evaluating or teaching the concepts, processes, systems or techniques embodied in the topography or the topography itself.

3. The exclusive rights referred to in paragraph 1 of this Article shall not extend to any such act in relation to a topography meeting the requirements of Article 215(2) of this Agreement and created on the basis of an analysis and evaluation of another topography, carried out in conformity with paragraph 2 of this Article.

4. The exclusive rights to authorise or prohibit the acts specified in paragraph 1 (b) of this Article shall not apply to any such act committed after the topography or the semiconductor product has been lawfully put on the market.

## **Article 217. Term of Protection**

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

(a) the end of the calendar year in which the topography is first commercially exploited anywhere in the world;

(b) the end of the calendar year in which the application for registration has been filed in due form.

## **Subsection 7. OTHER PROVISIONS**

### **Article 218. Plant Varieties**

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

### **Article 219. Genetic Resources, Traditional Knowledge and Folklore**

1. Subject to their domestic legislation, the Parties shall respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity, and promote their wider application with the involvement and approval of the holders of such knowledge, innovations and practices, and encourage equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices.

2. The Parties recognise the importance of taking appropriate measures, subject to national legislation, to preserve traditional knowledge and agree to continue working towards the development of internationally agreed sui generis models for the legal protection of traditional knowledge.

3. The Parties agree that the intellectual property provisions of this Sub-section and the CBD shall be implemented in a mutually supportive way.

4. The Parties agree to regularly exchange views and information on relevant multilateral discussions.

## **Section 3. ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS**

### **Article 220. General Obligations**

1. Both Parties reaffirm their commitments under the TRIPS Agreement and in particular its Part I, and shall provide for the following complementary measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights (34). These measures, procedures and remedies shall be fair and equitable, and shall not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays.

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

(34) For the purposes of this Section, the notion of "intellectual property rights" should at least cover the following rights: copyright; rights related to copyright; sui generis right of a database maker; rights of the creator of the topographies of a semi conductor product; trademark rights; design rights; patent rights, including rights derived from supplementary protection certificates; geographical indications; utility model rights; plant variety rights; trade names in so far as these are protected as exclusive rights in the national law concerned.

### **Article 221. Entitled Applicants**

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

(a) the holders of intellectual property rights in accordance with the provisions of the applicable law;

(b) all other persons authorised to use those rights, in particular licensees, in so far as permitted by and in accordance with the provisions of the applicable law;

(c) professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law.

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

### **Subsection 1. CIVIL MEASURES, PROCEDURES AND REMEDIES**

#### **Article 222. Presumption of Authorship or Ownership**

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

(a) for the author of a literary or artistic work, in the absence of proof to the contrary, to be regarded as such, and consequently to be entitled to institute infringement proceedings, it shall be sufficient for his/her name to appear on the work in the usual manner;

(b) the provision under point (a) of this Article shall apply mutatis mutandis to the holders of rights related to copyright with regard to their protected subject matter.

#### **Article 223. Evidence**

1. The judicial authorities of the Parties shall have the authority, where a party has presented reasonably available evidence sufficient to support its claims and has, in substantiating its claims, specified evidence which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject to conditions which ensure the protection of confidential information.

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

## **Article 224. Measures for Preserving Evidence**

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

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

## **Article 225. Right to Information**

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

(a) was found in possession of the infringing goods on a commercial scale;

(b) was found to be using the infringing services on a commercial scale;

(c) was found to be providing on a commercial scale services used in infringing activities; or

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

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

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

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

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

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

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

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

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

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

## **Article 226. Provisional and Precautionary Measures**

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

2. An interlocutory injunction may also be issued to order the seizure or delivery up of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.

3. In the case of an infringement committed on a commercial scale, the Parties shall ensure that, if the applicant demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets. To that end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.

4. The Parties shall ensure that the provisional measures referred to in paragraphs 1, 2 and 3 of this Article may, in appropriate cases, be taken without the defendant having been heard, in particular where any delay would cause irreparable harm to the right-holder. In that event, the Parties shall be so informed without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable time after notification of the measures, whether those measures shall be modified, revoked or confirmed.

5. The Parties shall ensure that the provisional measures referred to in paragraphs 1, 2 and 3 of this Article are revoked or otherwise cease to have effect, upon request of the defendant, if the applicant does not institute, within a reasonable period, proceedings leading to a decision on the merits of the case before the competent judicial authority.

6. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by those measures.

## **Article 227. Corrective Measures**

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

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

## **Article 228. Injunctions**

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

## **Article 229. Alternative Measures**

The Parties may provide that, in appropriate cases and at the request of the person liable to be subject to the measures provided for in Article 227 and/or Article 228 of this Agreement, the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in Article 227 and/or Article 228 of this Agreement if that person acted unintentionally and without negligence, if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

## **Article 230. Damages**

1. The Parties shall ensure that when the judicial authorities set damages:

(a) they shall take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the right-holder by the infringement; or

(b) as an alternative to subparagraph (a) of this paragraph, they may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.

2. Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, the Parties may lay down that the judicial authorities may order in favour of the injured party the recovery of profits or the payment of damages which may be pre-established.

### **Article 231. Legal Costs**

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

### **Article 232. Publication of Judicial Decisions**

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

### **Article 233. Administrative Procedures**

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

## **Subsection 2. LIABILITY OF INTERMEDIARY SERVICE PROVIDERS**

### **Article 234. Use of Intermediaries' Services**

Both Parties recognise that the services of intermediaries may be used by third parties for infringement-related activities. To ensure the free movement of information services and at the same time enforce intellectual property rights in the digital environment, each Party shall provide for the measures set out in this Sub-section in respect of intermediary service providers. This Sub-section only applies to liability that could result from infringements in the field of intellectual property rights, in particular copyright (35).

(35) The exemptions from liability established in this Article cover only cases where the activity of the information society service provider is limited to the technical process of operating and giving access to a communication network over which information made available by third parties is transmitted or temporarily stored, for the sole purpose of making the transmission more efficient; this activity is of a mere technical, automatic and passive nature, which implies that the information society service provider has neither knowledge of nor control over the information which is transmitted or stored.

### **Article 235. Liability of Intermediary Service Providers: "Mere Conduit"**

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

- (a) does not initiate the transmission;
- (b) does not select the receiver of the transmission; and
- (c) does not select or modify the information contained in the transmission.

2. The acts of transmission and of provision of access referred to in paragraph 1 of this Article include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for such transmission.

3. This Article shall not affect the possibility for a court or administrative authority, in accordance with the Parties legal systems, to require the service provider to terminate or prevent an infringement.

### **Article 236. Liability of Intermediary Service Providers: "Caching"**

1. Where an information society service that is provided consists of the transmission in a communication network of information provided by a recipient of the service, the Parties shall ensure that the service provider is not liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service at their request, on condition that:

- (a) the provider does not modify the information; (b) the provider complies with conditions on access to the information;
- (c) the provider complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
- (d) the provider does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and
- (e) the provider acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.

2. This Article shall not affect the possibility for a court or administrative authority, in accordance with Parties' legal systems, of requiring the service provider to terminate or prevent an infringement.

### **Article 237. Liability of Intermediary Service Providers: "Hosting"**

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

- (a) the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or
- (b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

2. Paragraph 1 of this Article shall not apply when the recipient of the service is acting under the authority or the control of the provider.

3. This Article shall not affect the possibility for a court or administrative authority, in accordance with the Parties' legal systems, to require the service provider to terminate or prevent an infringement, nor does it affect the possibility of the Parties establishing procedures governing the removal or disablement of access to information.

### **Article 238. No General Obligation to Monitor**

1. The Parties shall not impose, on providers of services covered by Articles 235, 236 and 237 of this Agreement, a general obligation to monitor the information which they transmit or store, nor a general obligation to actively seek facts or circumstances indicating illegal activity.

2. The Parties may establish obligations for information society service providers promptly to inform the competent public authorities of alleged illegal activities undertaken or information provided by recipients of their service or obligations to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements.

## **Subsection 3. OTHER PROVISIONS**

### **Article 239. Border Measures**

1. For the purposes of this provision, "goods infringing an intellectual property right" means:

- (a) "counterfeit goods", namely:



- (i) goods, including packaging, bearing without authorisation a trade mark which is identical to a trade mark duly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trade mark, and which thereby infringes the trade mark holder's rights;
  - (ii) any trade mark symbol (logo, label, sticker, brochure, instructions for use or guarantee document), even if presented separately, on the same conditions as apply to the goods referred to in subparagraph (i);
  - (iii) packaging materials bearing the trade marks of counterfeit goods, presented separately, on the same conditions as apply to the goods referred to in subparagraph (i);
- (b) "pirated goods", namely goods which are or contain copies made without the consent of the holder, or of a person duly authorised by the holder in the country of production, of a copyright or related right or design right, regardless of whether it is registered in domestic law;
- (c) goods which, according to the law of the Party in which the application for customs action is made, infringe:
- (i) a patent;
  - (ii) a supplementary protection certificate;
  - (iii) a plant variety right;
  - (iv) a design;
  - (v) a geographical indication.

2. The Parties shall, unless otherwise provided for in this Sub-section, adopt procedures (36) to enable a right-holder who has valid grounds for suspecting that the importation, exportation, re-exportation, entry into or exit from the customs territory, placement under a suspensive procedure or placement in a free zone or a free warehouse of goods infringing an intellectual property right may take place, to lodge an application in writing with the competent authorities, administrative or judicial, for suspension by the customs authorities of the release into free circulation or the detention of such goods.

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

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

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

(36) It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right-holder.

## **Article 240. Codes of Conduct and Forensic Cooperation**

The Parties shall encourage:

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

## **Article 241. Cooperation**

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

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

following activities:

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

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

## **Chapter 10. COMPETITION**

### **Section 1. ANTITRUST AND MERGERS**

#### **Article 242. Definitions**

For the purposes of this Section:

1. "competition authority" means:

- (a) for the UK, the Competition and Markets Authority (CMA) and
- (b) for Ukraine the Anti-monopoly Committee of Ukraine.

2. "competition laws"; means:

- (a) for the United Kingdom, The Competition Act 1998 (c.41), and Part 3 and Schedules 7, 8 and 10 to the Enterprise Act 2002 (c.40);
- (b) for Ukraine, Law N° 2210-I of 11 January 2001 (with amendments) and its implementing regulations and amendments. In the event of conflict between a provision of Law N° 2210-III and another substantive provision on competition, Ukraine shall ensure that the former shall prevail to the extent of the conflict; as well as

(c) any changes that the abovementioned instruments may undergo after the entry into force of this Agreement.

3. Terms used in this Section are further explained in Annex XVII.

#### **Article 243. Principles**

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

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

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

(c) concentrations between undertakings, which result in monopolisation or a substantial restriction of competition in the market in the territory of either Party.

## **Article 244. Implementation**

1. The United Kingdom and Ukraine shall maintain competition laws which effectively address the practices and transactions referred to in Article 243(a) (b) and (c).

2. The Parties shall maintain authorities responsible, and appropriately equipped, for the effective enforcement of the competition laws set out in paragraph 1 of this Article.

3. The Parties recognise the importance of applying their respective competition laws in a transparent, timely and non-discriminatory manner, respecting the principles of procedural fairness and rights of defence. Each Party in particular shall ensure that:

(a) before a competition authority of one of the Parties imposes a sanction or remedy against any natural or legal person for violating its competition law, it affords the person the right to be heard and to present evidence within a reasonable time to be defined in the respective competition laws of the Parties after it has communicated to the natural or legal person concerned its provisional conclusions as to the existence of the violation; and

(b) a court or other independent tribunal established under that Party's laws imposes or, at the person's request, reviews any such sanction or remedy.

4. Upon request of a Party, each Party shall make available to the other Party public information concerning enforcement activities of its competition laws and legislation related to the obligations covered by this Section.

5. The competition authority shall adopt and publish a document explaining the principles to be used in the setting of any pecuniary sanctions imposed for infringements of the competition laws.

6. The competition authority shall adopt and publish a document explaining the principles used in the assessment of horizontal mergers.

## **Article 245. Public Enterprises and Enterprises Entrusted with Special or Exclusive Rights**

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

(a) neither Party shall enact or maintain in force any measure contrary to the principles contained in Articles 243 and Article 246(1) of this Agreement; and

(b) the Parties shall ensure that such enterprises are subject to the competition laws referred to in Article 242(2) of this Agreement insofar as the application of the above-mentioned competition laws and principles does not obstruct the performance, in law or in fact, of the particular tasks assigned to the enterprises in question.

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

## **Article 246. State Monopolies**

1. Each Party shall ensure that the operations of state monopolies of a commercial character do not constitute or give rise to discriminatory measures regarding the conditions under which goods are procured and marketed between natural and legal persons of the Parties.

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

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

## **Article 247. Exchange of Information and Enforcement Cooperation**

1. The Parties recognise the importance of co-operation and co-ordination between their respective competition authorities

to further enhance effective competition law enforcement, and to fulfil the objectives of this Agreement through the promotion of competition and the curtailment of anti-competitive business conduct or anti-competitive transactions.

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

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

## **Article 248. Consultations**

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

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

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

## **Article 249.**

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

## **Section 2. STATE AID**

### **Article 250. General Principles**

1. Any aid granted by Ukraine or the United Kingdom through state resources which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the proper functioning of this Agreement in so far as it may affect trade between the Parties.

2. Terms used in this Section are further explained in Annex XVII.

### **Article 251. Transparency**

1. Each Party shall ensure transparency in the area of state aid. To this end, each Party shall notify annually to the other Party the total amount, types and the sectoral distribution of state aid which may affect trade between the Parties. Respective notifications should contain information concerning the objective, form, the amount or budget, the granting authority and where possible the recipient of the aid. For the purposes of this Article, any aid below the threshold of EUR 200.000 per undertaking over a period of three years does not need to be notified. Such notification is deemed to have been provided if it is sent to the other Party, or if the relevant information is made available on a publicly accessible internet website, by 31 December of the subsequent calendar year.

2. Upon request by a Party, the other Party shall provide further information on any state aid scheme and particular individual cases of state aid affecting trade between the Parties. The Parties shall exchange this information taking into account the limitations imposed by the requirements of professional and business secrecy.

3. The Parties shall ensure that financial relations between public authorities and public undertakings are transparent, so that the following emerge clearly:

(a) public funds made available directly or indirectly (for example through the intermediary of public undertakings or financial institutions) by public authorities to the public undertakings concerned;

(b) the use to which these public funds are actually put into.

4. The Parties shall moreover ensure that the financial and organisational structure of any undertaking that enjoys a special

or exclusive right granted by Ukraine or the United Kingdom or is entrusted with the operation of a service of general economic interest, that receives public service compensation in any form whatsoever in relation to such service, is correctly reflected in separate accounts, so that the following emerge clearly:

(a) the costs and revenues associated with all products or services in respect of which a special or exclusive right is granted to an undertaking or all services of general economic interest with which an undertaking is entrusted and, on the other hand, each other separate product or service in respect of which the undertaking is active;

(b) full details of the methods by which costs and revenues are assigned or allocated to different activities. These methods shall operate on the basis of accounting principles of causality, objectivity, transparency and consistency, according to internationally recognised accounting methodologies such as activity based costing, and be based on audited data.

## **Article 252. Interpretation**

Any practices contrary to this section shall be assessed by the Parties in accordance with their own domestic legislation.

## **Article 253. Relationship with WTO**

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

## **Article 254. Scope**

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

# **Chapter 11. TRADE-RELATED ENERGY**

## **Article 255. Definitions**

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

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

## **Article 256. Domestic Regulated Prices**

1. The price for the supply of gas and electricity to industrial consumers shall be determined solely by supply and demand.
2. By way of derogation from paragraph 1 of this Article, the Parties may impose in the general economic interest an obligation on undertakings which relates to the price of supply of gas and electricity, (hereinafter referred to as "regulated price").
3. The Parties shall ensure that this obligation is clearly defined, transparent, proportionate, non-discriminatory, verifiable and of limited duration. In applying this obligation, the Parties shall also guarantee equality of access to consumers for other

undertakings.

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

## **Article 257. Prohibition of Dual Pricing**

1. Without prejudice to the possibility to impose domestic regulated prices consistently with paragraphs 2 and 3 of Article 256 of this Agreement, neither Party or a regulatory authority thereof, shall adopt or maintain a measure resulting in a higher price for exports of energy goods to the other Party than the price charged for such goods when intended for domestic consumption.

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

## **Article 258. Customs Duties and Quantitative Restrictions**

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

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

## **Article 259. Transit**

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

## **Article 260. Transport**

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

## **Article 261. Cooperation on Infrastructure**

The Parties shall endeavour to facilitate the use of gas transmission infrastructure and gas storage facilities and shall consult or coordinate, as appropriate, with each other on infrastructure developments. The Parties shall cooperate on matters related to trade in natural gas, sustainability and security of supply. With a view to further integrate markets of energy goods, each Party shall take into account the energy networks and capacities of the other Party when developing policy documents regarding demand and supply scenarios, interconnections, energy strategies and infrastructure development plans.

## **Article 262. Unauthorised Taking of Energy Goods**

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

## **Article 263. Interruption**

1. Each Party shall ensure that transmission system operators take the necessary measures to:

(a) minimise the risk of accidental interruption, reduction or stoppage of transit and transport;

(b) expeditiously restore the normal operation of such transit or transport, which has been accidentally interrupted, reduced or stopped.

2. A Party through whose territory energy goods transit or are transported shall not, in the event of a dispute over any matter involving the Parties or one or more entities subject to the control or jurisdiction of one of the Parties, interrupt or reduce, permit any entity subject to its control or jurisdiction, including a state trading enterprise, to interrupt or reduce, or require any entity subject to its jurisdiction to interrupt or reduce the existing transport or transit of energy goods, except where this is specifically provided for in a contract or other agreement governing such transit or transport, prior to the conclusion of a dispute resolution procedure under the relevant contract.

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

## **Article 264. Regulatory Authority for Electricity and Gas**

1. A regulatory authority shall be legally distinct and functionally independent from any public or private entity, and sufficiently empowered to ensure effective competition and the efficient functioning of the market.

2. The decisions of and the procedures used by a regulatory authority shall be impartial with respect to all market participants.

3. An operator affected by any decision of a regulatory authority shall have the right to appeal against that decision to an appeal body which is independent of the parties involved. Where the appeal body is not judicial in character, written reasons for its decision shall always be given and its decisions shall also be subject to review by an impartial and independent judicial authority. Decisions taken by appeal bodies shall be effectively enforced.

## **Article 265. Access to and Exercise of the Activities of Prospecting, Exploring for and Producing Hydrocarbons**

1. Each Party has, in accordance with international law including the United Nations Convention on the Law of the Sea of 1982, full sovereignty over hydrocarbon resources located in its territory as well as in its archipelagic and territorial waters in addition to sovereign rights for the purposes of exploring and exploiting hydrocarbon resources located in its exclusive economic zone and continental shelf.

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

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

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

## **Article 266. Licensing and Licensing Conditions**

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

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

3. Article 100 and Article 101 of this Agreement shall apply to the licensing conditions and the licensing authorisation procedure.

## **Chapter 12. TRANSPARENCY**

## **Article 267. Definitions**

For the purposes of this Chapter:

1. "Measures of general application" include laws, regulations, judicial decisions, procedures and administrative rulings of general application and any other general or abstract act, interpretation or other requirement that may have an impact on any matter covered by this Agreement. It does not include a ruling that applies to a particular person; and
2. "Interested person" means any natural or legal person that may be subject to any rights or duties under measures of general application, within the meaning of Article 268 of this Agreement.

## **Article 268. Objective and Scope**

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

## **Article 269. Publication**

1. Each Party shall ensure that measures of general application:

(a) are promptly published or are otherwise made readily available to interested persons, in a non-discriminatory manner, via an officially designated medium, and where feasible and possible, electronic means, in such manner as to enable interested persons and the other Party to become acquainted with them;

(b) provide an explanation of the objective of and rationale for such measure; and

(c) allow for sufficient time between publication and entry into force of such measure except where this is not possible because of an emergency.

2. Each Party shall:

(a) endeavour to publish in advance any proposal to adopt or amend any measure of general application, including an explanation of the objective of and rationale for the proposal;

(b) provide reasonable opportunities for interested persons to comment on such proposed measure, allowing, in particular, for sufficient time for such opportunities; and

(c) endeavour to take into account the comments received from interested persons with respect to such proposed measure.

## **Article 270. Enquiries and Contact Points**

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

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

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

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

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

4. Each Party shall maintain or establish appropriate mechanisms for interested persons tasked with seeking to effectively



resolve problems for interested persons of the other Party that may arise from the application of any measures of general application and administrative proceedings as mentioned in Article 271 of this Agreement. Such mechanisms should be easily accessible, time-bound, result-oriented, and transparent. They shall be without prejudice to any appeal or review procedures which the Parties establish or maintain. They shall also be without prejudice to the Parties' rights and obligations under Chapter 14 (Dispute Settlement) and Chapter 15 (Mediation) of Title IV of this Agreement.

### **Article 271. Administrative Proceedings**

Each Party shall administer in a consistent, impartial, and reasonable manner all measures of general application referred to in Article 267 of this Agreement. To this end, in applying those measures to particular persons, goods, services or establishments of the other Party in specific cases, each Party shall:

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

### **Article 272. Review and Appeal**

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

### **Article 273. Regulatory Quality and Performance and Good Administrative Behaviour**

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

### **Article 274. Non-discrimination**

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

## **Chapter 13. TRADE AND SUSTAINABLE DEVELOPMENT**

### **Article 275. Context and Objectives**

1. The Parties recall Agenda 21 on Environment and Development of 1992, the Johannesburg Plan of Implementation on Sustainable Development of 2002 and the internationally agreed policy agendas in the employment and social policy fields, in particular the International Labour Organization (hereinafter referred to as the "ILO") Decent Work Agenda and the 2006

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

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

### **Article 276. Right to Regulate**

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

### **Article 277. Multilateral Labour Standards and Agreements**

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

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

(a) the freedom of association and the effective recognition of the right to collective bargaining;

(b) elimination of all forms of forced or compulsory labour;

(c) effective abolition of child labour; and

(d) elimination of discrimination in respect of employment and occupation.

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

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

### **Article 278. Multilateral Environmental Agreements**

1. The Parties recognise the value of international environmental governance and agreements as a response of the international community to global or regional environmental problems.

2. The Parties reaffirm their commitment to the effective implementation in their laws and practices of the multilateral environmental agreements to which they are party.

3. Nothing in this Agreement shall limit the rights of a Party to adopt or maintain measures to implement the multilateral environmental agreements to which it is a Party. Such measures shall not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade.

4. The Parties shall ensure that environmental policy shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

5. The Parties shall cooperate in order to promote the prudent and rational utilisation of natural resources in accordance with the objective of sustainable development with a view to strengthening the links between the Parties' trade and environmental policies and practices.

### **Article 279. Trade Favouring Sustainable Development**

1. The Parties reaffirm that trade should promote sustainable development in all its dimensions. The Parties recognise the beneficial role that core labour standards and decent work can have on economic efficiency, innovation and productivity, and they highlight the value of greater coherence between trade policies, on the one hand, and employment and social policies on the other.

2. The Parties shall strive to facilitate and promote trade and foreign direct investment in environmental goods, services and technologies, sustainable renewable-energy and energy-efficient products and services, and eco-labelled goods, including through addressing related non tariff barriers.

3. The Parties shall strive to facilitate trade in products that contribute to sustainable development, including products that are the subject of schemes such as fair and ethical trade schemes, as well as those respecting corporate social responsibility and accountability principles.

## **Article 280. Trade In Forest Products**

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

## **Article 281. Trade In Fish Products**

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

(a) taking effective measures to monitor and control fish and other aquatic resources;

(b) ensuring full compliance with applicable conservation and control measures, adopted by Regional Fisheries Management Organisations as well as cooperating with and within Regional Fisheries Management Organisations as widely as possible; and

(c) introducing inter alia trade measures to combat illegal, unreported and unregulated fishing.

## **Article 282. Upholding Levels of Protection**

1. A Party shall not fail to effectively enforce its environmental and labour laws, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties.

2. A Party shall not weaken or reduce the environmental or labour protection afforded by its laws to encourage trade or investment, by waiving or otherwise derogating from, or offering to waive or otherwise derogate from, its laws, regulations or standards, in a manner affecting trade or investment between the Parties.

## **Article 283. Scientific Information**

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

## **Article 284. Review of Sustainability Impacts**

The Parties commit to reviewing, monitoring and assessing the impact of the implementation of this Title on sustainable development through their respective participative processes and institutions, as well as those set up under this Agreement, for instance, through trade-related sustainability impact assessments.

## **Article 285. Civil Society Institutions**

1. Each Party shall designate and convene a new or existing Advisory Group on sustainable development with the task of advising on the implementation of this Chapter.

2. The Advisory Group comprises independent representative organisations of civil society in a balanced representation of employers and workers organisations, non-governmental organisations as well as other relevant stakeholders.

3. Members of the Advisory Group of each Party will meet at an open Civil Society Forum in order to conduct a dialogue

encompassing sustainable development aspects of trade relations between the Parties. The Civil Society Forum will meet once a year unless otherwise agreed by the Parties. The Parties shall agree on the operation of the Civil Society Forum no later than one year after the entry into force of this Agreement.

4. The Parties shall inform the Civil Society Forum on progress in implementation of this Chapter. The views, opinions or suggestions of the Civil Society Forum can be submitted to the Parties directly or through the Advisory Groups.

## **Article 286. Institutional and Monitoring Mechanisms**

1. The Trade and Sustainable Development Sub-Committee is hereby established. It shall report on its activities to the Strategic Partnership Dialogue established under Article 402(3) of this Agreement. The Trade and Sustainable Development Sub-Committee shall comprise of senior officials from within the administrations of each Party. It shall oversee the implementation of this Chapter, including the results of monitoring activities and impact assessments and shall discuss in good faith any problems arising from the application of this Chapter. It shall establish its own rules of procedure. It shall meet within a year of the entry into force of this Agreement and thereafter at least once a year.

2. Each Party shall designate a contact point within its administration in order to facilitate communication between the Parties on any matter covered by this Chapter.

3. The Parties may monitor the progress in implementing and enforcing measures covered by this Chapter. A Party may request the other Party to provide specific and reasoned information on the results of implementation of this Chapter.

4. A Party may request consultations with the other Party regarding any matter arising under this Chapter, by delivering a written request to the contact point of that Party. The Parties agree to consult promptly through appropriate channels at the request of either Party.

5. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter and may seek advice, information or assistance from any person or body they deem appropriate in order to fully examine the matter at issue. The Parties shall take into account the activities of the ILO or relevant multilateral environmental organisations or bodies to which they are party.

6. If the Parties fail to resolve the matter through consultations, either Party may request that the Trade and Sustainable Development Sub-Committee be convened to consider the matter by delivering a written request to the contact point of the other Party. It shall convene promptly and endeavour to agree on a resolution of the matter, including, where appropriate, by consulting with governmental or non-governmental experts. The resolution of the Trade and Sustainable Development Sub-Committee shall be made public unless it otherwise decides.

7. For any matter arising under this Chapter, the Parties shall only have recourse to the procedures provided for in Articles 286 and 287 of this Agreement.

## **Article 287. Group of Experts**

1. Unless the Parties otherwise agree, a Party may, after 90 days of the delivery of a request for consultations, under Article 286(4) of this Agreement, request that a Group of Experts be convened to examine the matter that has not been satisfactorily addressed through governmental consultations. Within 30 days of the request by a Party to convene the Group of Experts, following the request of either Party, the Trade and Sustainable Development Sub-Committee may be convened to discuss the matter. The Parties may present submissions to the Group. The Group may seek information and advice from either Party, the Advisory Group(s), or international organisations. The Group of Experts shall be convened within 60 days of a Party's request.

2. The Group that is selected in accordance with the procedures set out in paragraph 3 of this Article shall provide its expertise in implementing this Chapter. Unless the Parties otherwise agree, the Group shall, within 90 days of the last expert being selected, present to the Parties a report. The Parties shall make their best efforts to accommodate advice or recommendations of the Group on the implementation of this Chapter. The implementation of the recommendations of the Group shall be monitored by the Trade and Sustainable Development Sub-Committee. The report of the Group shall be made available to the Advisory Group(s) of the Parties. As regards confidential information and rules of procedure, the principles in Annex XIX to Chapter 14 (Dispute Settlement) of Title IV of this Agreement, respectively, shall apply.

3. Upon the entry into force of this Agreement, the Parties shall agree on a list of at least 15 persons with expertise on the issues covered by this Chapter, of whom at least five shall be non nationals of either Party who will serve as Chair of the Group. The experts shall be independent of, and not be affiliated with or take instructions from, either Party or organisations represented in the Advisory Group(s). Each Party shall select one expert from the list of experts within 50 days

of the date of receipt of a Party's request to establish the Group. If a Party fails to select its expert within such period, the other Party shall select from the list of experts a national of the Party that has failed to select an expert. The two selected experts shall agree on the chair who shall be chosen from the list of non-nationals experts.

## **Article 288. Cooperation on Trade and Sustainable Development**

The Parties will work together on trade-related aspects of labour and environmental policies in order to achieve the objectives of this Agreement.

## **Chapter 14. DISPUTE SETTLEMENT (37)**

(37) For the avoidance of doubt, this Title shall not be construed as conferring rights or imposing obligations which can be directly invoked before the domestic courts of the Parties.

### **Article 289. Objective**

The objective of this Chapter is to avoid and settle, in good faith, any dispute between the Parties concerning the application of provisions of this Agreement referred to in Article 290 of this Agreement and to arrive at a mutually agreed solution wherever possible (38).

(38) For the avoidance of doubt, decisions and any alleged failure to act by bodies created by this Agreement are not subject to this Chapter.

### **Article 290. Scope**

The provisions of this Chapter apply in respect to any dispute concerning the interpretation, and application, fulfillment or non-fulfillment of the provisions of Title IV of this Agreement except as otherwise expressly provided.

### **Article 291. Consultations**

1. The Parties shall endeavour to resolve any dispute regarding the interpretation and application, fulfillment or non-fulfillment of the provisions of this Agreement referred to in Article 290 of this Agreement by entering into consultations in good faith with the aim of reaching a mutually agreed solution.
2. A Party shall seek consultations by means of a written request to the other Party, copied to the Trade Committee, identifying the measure at issue and the provisions of this Agreement referred to in Article 290 of this Agreement that it considers applicable.
3. Consultations shall be held within 30 days of the date of receipt of the request and shall take place, unless the Parties agree otherwise, in the territory of the Party complained against. The consultations shall be deemed concluded within 30 days of the date of receipt of the request, unless both Parties agree to continue consultations. All confidential information disclosed during the consultations shall remain confidential.
4. Consultations on matters of urgency, including those regarding perishable or seasonal goods shall be held within 15 days of the date of submission of the request, and shall be deemed concluded 15 days after the date of the submission of the request.
5. Where consultations concern the transport of energy goods through networks and one Party views resolution of the dispute as urgent because of an interruption, in full or in part, of transport of natural gas, oil or electricity between Ukraine and the UK they shall be held within three days of the date of submission of the request and shall be deemed concluded three days after the date of the submission of the request unless both Parties agree to continue consultations. All confidential information disclosed during the consultations shall remain confidential.
6. If consultations are not held within the timeframes laid down in paragraph 3 of this Article or in paragraph 4 of this Article respectively, or if consultations have been concluded and no agreement has been reached on a mutually agreed solution, the complaining Party may request the establishment of an arbitration panel in accordance with Article 292 of this Agreement.

# **Section 1. ARBITRATION PROCEDURE**

## **Article 292. Initiation of the Arbitration Procedure**

1. Where the Parties have failed to resolve the dispute by recourse to consultations as provided for in Article 291 of this Agreement, the complaining Party may request the establishment of an arbitration panel.
2. The request for the establishment of an arbitration panel shall be made in writing to the Party complained against and the Trade Committee. The complaining Party shall identify in its request the specific measure at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly. In case the complaining Party requests the establishment of a panel with other than standard terms of reference, the written request shall include the proposed text of special terms of reference.
3. Unless the Parties agree otherwise within five days of the establishment of the panel the terms of reference of the arbitration panel shall be:

"to examine the matter referred to in the request for establishment of the arbitration panel, to rule on the compatibility of the measure in question with the provisions of this Agreement referred to in Article 290 of this Agreement and to make a ruling in accordance with Article 296 of this Agreement."

## **Article 293. Composition of the Arbitration Panel**

1. An Arbitration Panel shall be composed of three arbitrators.
2. Within 10 days of the date of submission of the request for the establishment of an arbitration panel to the Trade Committee, the Parties shall consult in order to reach an agreement on the composition of the arbitration panel.
3. In the event that the Parties are unable to agree on the composition of the arbitration panel within the time frame laid down in paragraph 2 of this Article, either Party may request the chair of the Trade Committee, or the chair's delegate, to select all three members by lot from the applicable list established under Article 308 of this Agreement, one among the individuals proposed by the complaining Party, one among the individuals proposed by the Party complained against and one among the individuals selected by the Parties to act as chairperson.
4. Where the Parties agree on one or more of the members of the arbitration panel, any remaining member or members shall be selected by the same procedure:
  - (a) if the Parties have agreed on two members of the arbitration panel, the remaining member shall be selected from the individuals selected by the Parties to act as chairperson;
  - (b) if the Parties have agreed on one member of the arbitration panel, one of the remaining members shall be selected from the individuals proposed by the complaining Party and one from the individuals proposed by the Party complained against.
5. The chair of the Trade Committee, or the chair's delegate, shall select the arbitrators within five days of the request referred to in paragraph 3. A representative of each Party is entitled to be present at the selection.
6. The date of establishment of the arbitration panel shall be the date on which the selection procedure is completed.
7. Should any of the lists provided for in Article 308 of this Agreement not be established at the time a request is made pursuant to paragraph 3 of this Article the three arbitrators shall be drawn by lot from the individuals which have been formally proposed by one or both of the Parties.
8. In respect of a dispute concerning Chapter 11 (Trade-related Energy) of Title IV of this Agreement which one Party considers to be urgent because of an interruption, in full or in part, of any transport of natural gas, oil, or electricity or a threat thereof, between Ukraine and the UK paragraph 3 of this Article shall apply without recourse to paragraph 2 of this Article, and the period in paragraph 5 of this Article shall be two days.

## **Article 294. Interim Panel Report**

1. The arbitration panel shall issue to the Parties an interim report setting out the findings of facts, and the basis on which these findings were determined, the applicability of the relevant provisions and the basic rationale behind any findings and recommendations that it makes, within 90 days of the date of establishment of the arbitration panel. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel must notify the Parties and the Trade Committee in

writing, stating the reasons for the delay and the date on which the panel plans to issue its interim report. Under no circumstances should the interim report be issued later than 120 days after the date of the establishment of the arbitration panel.

2. Any Party may submit a written request for the arbitration panel to review precise aspects of the interim report within 14 days of its issuance. Such request shall be provided to the other Party.

3. In cases of urgency, including those involving perishable or seasonal goods, the arbitration panel shall make every effort to issue its interim report and any Party may submit a written request for the arbitration panel to review precise aspects of the interim report, within half of the respective time frames under paragraphs 1 and 2 of this Article.

4. In respect of a dispute concerning Chapter 11 (Trade-related Energy) of Title IV of this Agreement which one Party considers to be urgent because of an interruption, in full or in part, of any transport of natural gas, oil or electricity, or a threat thereof, between Ukraine and the UK, the interim report shall be issued after 20 days and any request pursuant to paragraph 2 shall be made within five days of issuance of the written report. The arbitration panel may also decide to dispense with the interim report.

5. After considering any written comments by the Parties on the interim report, the arbitration panel may modify its report and make any further examination it considers appropriate which may include requesting further clarification by the Parties. Each of the Parties shall receive a copy of any request made by the arbitration panel. The final arbitration panel ruling shall include a discussion of the arguments made at the interim review stage.

## **Article 295. Conciliation for Urgent Energy Disputes**

1. In respect of a dispute concerning Chapter 11 (Trade-related Energy) of Title IV of this Agreement which one Party considers to be urgent because of an interruption, in full or in part, of any transport of natural gas, oil, or electricity or a threat thereof, between Ukraine and the UK, either Party may request the chair of the panel to act as conciliator concerning any matter relating to the dispute by making a request to the panel.

2. The conciliator shall seek an agreed resolution of the dispute or seek agreement on a procedure to achieve such resolution. If within 15 days of his or her appointment the conciliator fails to secure such agreement, he or she shall recommend a resolution to the dispute or a procedure to achieve such resolution and shall decide on the terms and conditions to be observed from a specified date which he or she shall specify until the dispute is resolved.

3. The Parties and the entities under the control or jurisdiction of the Parties shall respect the recommendations on the terms and conditions made under paragraph 2 of this Article for three months following the conciliator's decision or until resolution of the dispute, whichever is earlier.

4. The conciliator shall respect the Code of Conduct for Arbitrators.

## **Article 296. Arbitration Panel Ruling**

1. The arbitration panel shall notify its ruling to the Parties and to the Trade Committee within 120 days of the date of establishment of the arbitration panel. Where the arbitration panel considers that it cannot meet this deadline, the chairperson of the arbitration panel shall notify the Parties and the Trade Committee in writing, stating the reasons for the delay and the date on which the panel plans to conclude its work. Under no circumstances should the ruling be notified later than 150 days from the date of the establishment of the arbitration panel.

2. In cases of urgency, including those involving perishable or seasonal goods, the arbitration panel shall make every effort to notify its ruling within 60 days of the date of its establishment. Under no circumstances should it take longer than 75 days from its establishment. The arbitration panel may give a preliminary ruling within 10 days of its establishment on whether it deems the case to be urgent.

3. In respect of a dispute concerning Chapter 11 (Trade-related Energy) of Title IV of this Agreement which one Party considers to be urgent because of an interruption, in full or in part, of any transport of natural gas, oil or electricity or a threat thereof, between Ukraine and the UK, the arbitration panel shall notify its ruling within 40 days of the date of its establishment.

## **Section 2. COMPLIANCE**

### **Article 297. Compliance with the Arbitration Panel Ruling**

Each Party shall take any measure necessary to comply in good faith with the arbitration panel ruling, and the Parties will endeavour to agree on the period of time to comply with the ruling.

## **Article 298. Reasonable Period of Time for Compliance**

1. No later than 30 days after the notification of the arbitration panel ruling to the Parties, the Party complained against shall notify the complaining Party and the Trade Committee of the time it considers it will require for compliance (hereinafter referred to as the "reasonable period of time").
2. If there is disagreement between the Parties on the reasonable period of time to comply with the arbitration panel ruling, the complaining Party shall, within 20 days of the notification under paragraph 1 of this Article, request in writing the original arbitration panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the other party and to the Trade Committee. The arbitration panel shall notify its ruling to the Parties and to the Trade Committee within 20 days of the date of submission of the request.
3. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures set out in Article 293 of this Agreement shall apply. The time limit for notifying the ruling shall be 35 days from the date of the submission of the request referred to in paragraph 2 of this Article.
4. The Party complained against will inform the complaining Party in writing of its progress to comply with the arbitration panel ruling at least one month before the expiry of the reasonable period of time.
5. The reasonable period of time may be extended by mutual agreement of the Parties.

## **Article 299. Review of Any Measure Taken to Comply with the Arbitration Panel Ruling**

1. The Party complained against shall notify the complaining Party and the Trade Committee before the end of the reasonable period of time of any measure that it has taken to comply with the arbitration panel ruling.
2. In the event that there is disagreement between the Parties concerning the existence or the consistency of any measure notified under paragraph 1 with the Agreement, the complaining Party may request in writing the original arbitration panel to rule on the matter. Such a request shall identify the specific measure at issue and the provisions of the Agreement with which it considers that measure to be inconsistent, in a manner sufficient to present the legal basis for the complaint clearly. The arbitration panel shall notify its ruling within 45 days of the date of submission of the request.
3. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures set out in Article 293 of this Agreement shall apply. The time limit for notifying the ruling shall be 60 days from the date of submission of the request referred to in paragraph 2 of this Article.

## **Article 300. Remedies for Urgent Energy Disputes**

1. In respect of a dispute concerning Chapter 11 (Trade-related Energy) of Title IV of this Agreement which one Party considers to be urgent because of an interruption, in full or in part, of any transport of natural gas, oil, or electricity or a threat thereof, between Ukraine and the UK the following specific provisions on remedies shall apply.
2. By way of derogation from Articles 297, 298 and 299 of this Agreement, the complaining Party may suspend obligations arising under this Agreement to a level equivalent to the nullification or impairment caused by a Party failing to bring itself into compliance with the Panel's findings within 15 days of their release. This suspension may take effect immediately. Such suspension may be maintained for no longer than three months, unless the Party complained against has not complied with the panel's report.
3. Should the Party complained against dispute the existence of a failure to comply or the level of suspension due to the failure to comply, it may initiate proceedings under Articles 301 or 302 of this Agreement which shall be examined on an expeditious basis. The complaining party shall be required to remove or adjust the suspension only once the Panel has ruled on the matter, and may maintain the suspension pending the proceedings.

## **Article 301. Temporary Remedies In Case of Non-Compliance**

1. If the Party complained against fails to notify any measure taken to comply with the arbitration panel ruling before the expiry of the reasonable period of time, or if the arbitration panel rules that any measure notified under Article 299(1) of this Agreement is inconsistent with that Party's obligations under the provisions of the Agreement referred to in Article 290, the



Party complained against shall, if so requested by the complaining Party, present an offer for temporary compensation.

2. If no agreement on compensation is reached within 30 days of the end of the reasonable period of time or of the arbitration panel ruling under Article 299 of this Agreement that a measure taken to comply is inconsistent with the provisions of this Agreement referred to in Article 290, the complaining Party shall be entitled, upon notification to the Party complained against and to the Trade Committee, to suspend obligations arising from any provision contained in the Chapter on the free-trade area at a level equivalent to the nullification or impairment caused by the violation. The complaining Party may implement the suspension at any moment after the expiry of 10 days after the date of the notification, unless the Party complained against has requested arbitration under paragraph 4 of this Article.

3. In suspending obligations, the complaining Party may choose to increase its tariff rates to the level applied to other WTO Members on a volume of trade to be determined in such a way that the volume of trade multiplied by the increase of the tariff rates equals the value of the nullification or impairment caused by the violation.

4. If the Party complained against considers that the level of suspension is not equivalent to the nullification or impairment caused by the violation, it may request in writing the original arbitration panel to rule on the matter. Such request shall be notified to the complaining Party and to the Trade Committee before the expiry of the 10 day period referred to in paragraph 2 of this Article. The arbitration panel shall notify its ruling on the level of the suspension of obligations to the Parties and to the Trade Committee within 30 days of the date of submission of the request. Obligations shall not be suspended until the arbitration panel has notified its ruling, and any suspension shall be consistent with the arbitration panel ruling.

5. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures laid down in Article 293 of this Agreement shall apply. In such cases, the period for notifying the ruling shall be 45 days from the date of the submission of the request referred to in paragraph 4 of this Article.

6. The suspension of obligations shall be temporary and shall be applied only until any measure found to be inconsistent with the provisions of the Agreement referred to in Article 290 has been withdrawn or amended, so as to achieve conformity with the provisions of the Agreement referred to in Article 290, as established under Article 302, or until the Parties have agreed to settle the dispute.

### **Article 302. Review of Any Measure Taken to Comply after the Suspension of Obligations**

1. The Party complained against shall notify the complaining Party and the Trade Committee of any measure it has taken to comply with the ruling of the arbitration panel and of its request for an end to the suspension of obligations applied by the complaining Party.

2. If the Parties do not reach an agreement on whether the notified measure brings the Party complained against into conformity with the provisions of the Agreement referred to in Article 290 of this Agreement within 30 days of the date of submission of the notification, the complaining Party may request in writing the original arbitration panel to rule on the matter. Such request shall be notified simultaneously to the Party complained against and to the Trade Committee. The arbitration panel ruling shall be notified to the Parties and to the Trade Committee within 45 days of the date of submission of the request. If the arbitration panel rules that the Party complained against has brought itself into conformity with the Agreement, or if the complaining Party does not, within 45 days of the submission of the notification referred to in paragraph 1 of this Article, request that the original arbitration panel rule on the matter, the suspension of obligations shall be terminated within 15 days of either the ruling of the arbitration panel or the end of the 45 day period.

3. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures laid down in Article 293 of this Agreement shall apply. The period for notifying the ruling shall in that case be 60 days from the date of the submission of the request referred to in paragraph 2 of this Article.

## **Section 3. COMMON PROVISIONS**

### **Article 303. Mutually Agreed Solution**

The Parties may reach a mutually agreed solution to a dispute under this Chapter at any time. They shall jointly notify the Trade Committee and the chairperson of the arbitration panel, where applicable, of any such solution. If the solution requires approval pursuant to the relevant domestic procedures of either party, the notification shall refer to this requirement, and the arbitration procedure shall be suspended. If such approval is not required, or upon notification of the completion of any such domestic procedures, the arbitration procedure shall be terminated.

## **Article 304. Rules of Procedure**

1. Dispute settlement procedures under this Chapter shall be governed by the Rules of Procedure set out in Annex XIX to this Agreement.
2. Any hearing of the arbitration panel shall be open to the public, unless the parties agree otherwise, in accordance with the Rules of Procedure set out in Annex XIX to this Agreement.

## **Article 305. Information and Technical Advice**

At the request of a Party, or upon its own initiative, the arbitration panel may obtain information from any source, including the Parties involved in the dispute, it deems appropriate for the arbitration panel proceeding. The arbitration panel also has the right to seek the relevant opinion of experts as it deems appropriate. Any information obtained in this manner must be disclosed to each of the Parties and submitted for their comments. Interested natural or legal persons established in the Parties' territories are authorised to submit amicus curiae briefs to the arbitration panel in accordance with the Rules of Procedure set out in Annex XIX to this Agreement.

## **Article 306. Rules of Interpretation**

Any arbitration panel shall interpret the provisions referred to in Article 290 of this Agreement in accordance with customary rules of interpretation of public international law, including those codified in the Vienna Convention on the Law of Treaties of 1969. The arbitration panel shall also take into account relevant interpretations established in reports of panels and of the Appellate Body adopted by the WTO Dispute Settlement Body (DSB). The rulings of the arbitration panel cannot add to or diminish the rights and obligations provided for in this Agreement.

## **Article 307. Arbitration Panel Decisions and Rulings**

1. The arbitration panel shall make every effort to take any decision by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote. However, in no case dissenting opinions of arbitrators shall be published.
2. Any ruling of the arbitration panel shall be binding on the Parties and shall not create any rights or obligations for natural or legal persons. The ruling shall set out the findings of fact and the basis on which these findings were determined, the applicability of the relevant provisions of the Agreement and the basic rationale behind any findings and conclusions that it makes. The Trade Committee shall make the arbitration panel rulings publicly available in their entirety unless it decides not to do so.

## **Section 4. GENERAL PROVISIONS**

### **Article 308. Arbitrators**

1. The Trade Committee shall, no later than six months after the entry into force of this Agreement, establish a list of 15 individuals each who are willing and able to serve as arbitrators. Each of the Parties shall propose five individuals to serve as arbitrators. Once established, the list shall remain in effect until the Trade Committee constitutes a new list. The Trade Committee may appoint a replacement where an individual is no longer available to serve. The two Parties shall also select five individuals that are not nationals of either Party and who shall act as chairperson to the arbitration panel. The Trade Committee shall ensure that the list is always maintained at this level.
2. The list established pursuant to paragraph 1 of this Article shall serve for the composition of arbitration panels in accordance with Article 293 of this Agreement. It shall comprise arbitrators with specialised knowledge or experience of law and international trade.
3. All arbitrators appointed to serve on an arbitration panel shall be independent, serve in their individual capacity and not take instructions from any organisation or government, or be affiliated with the government of any of the Parties, and shall comply with the Code of Conduct set out in Annex XX to this Agreement.

### **Article 309. Relation with WTO Obligations**

1. Recourse to the dispute settlement provisions of this Chapter shall be without prejudice to any action in the WTO

framework, including dispute settlement action.

2. However, where a Party has, with regard to a particular measure, instituted a dispute settlement proceeding, either under Article 292(1) of this Agreement or under the WTO Agreement, it may not institute a dispute settlement proceeding regarding the same measure in the other forum until the first proceeding has been concluded. In addition, a Party shall not seek redress of an obligation which is identical under this Agreement and under the WTO Agreement in the two forums. In such case, once a dispute settlement proceeding has been initiated, the Party shall not bring a claim seeking redress of the identical obligation under the other Agreement to the other forum, unless the forum selected fails for procedural or jurisdictional reasons to make findings on the claim seeking redress of that obligation.

3. For the purposes of paragraph 2:

(a) dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes contained in Annex 2 of the WTO Agreement (hereinafter referred to as the "DSU") and are deemed to be concluded when the DSB adopts the Panel's report, and the Appellate Body's report as the case may be, under Articles 16 and 17.14 of the DSU; and

(b) dispute settlement proceedings under this Chapter are deemed to be initiated by a Party's request for the establishment of an arbitration panel under Article 292(1) of this Agreement and are deemed to be concluded when the arbitration panel issues its ruling to the Parties and to the Trade Committee.

4. Nothing in this Chapter shall preclude a Party from implementing the suspension of obligations authorised by the DSB. The WTO Agreement shall not be invoked to preclude a Party from suspending obligations under this Chapter.

### **Article 310. Time Limits**

1. All time limits laid down in this Chapter, including the limits for the arbitration panels to notify their rulings, shall be counted in calendar days, the first day being the day following the act or fact to which they refer.

2. Any time limit referred to in this Chapter may be extended by mutual agreement of the Parties.

### **Article 311. Modification of the Chapter**

The Trade Committee may decide to modify this Chapter, the Rules of Procedure for Arbitration set out in Annex XIX to this Agreement and the Code of Conduct for Members of Arbitration Panels and Mediators set out in Annex XX to this Agreement.

## **Chapter 15. MEDIATION MECHANISM**

### **Article 312. Objective and Scope**

1. The objective of this Chapter is to facilitate the finding of a mutually agreed solution through a comprehensive and expeditious procedure with the assistance of a mediator.

2. This Chapter shall apply to any measure falling under the scope of Chapter 1 (National Treatment and Market Access for Goods) of Title IV of this Agreement adversely affecting trade between the Parties.

3. This Chapter shall not apply to measures falling under Chapter 6 (Establishment, Trade in Services and Electronic Commerce), Chapter 7 (Current Payments and Movement of Capital), Chapter 8 (Public Procurement), Chapter 9 (Intellectual Property) and Chapter 13 (Trade and Sustainable Development) of this Agreement. The Trade Committee may, after due consideration, decide that this mechanism should apply to any of these sectors.

## **Section 1. PROCEDURE UNDER THE MEDIATION MECHANISM**

### **Article 313. Request for Information**

1. Before the initiation of the mediation procedure, a Party may request at any time information regarding a measure adversely affecting trade or investment between the Parties. The Party to which such request is made shall provide, within 20 days of the date of receipt of the request, a response containing its comments on the information contained in the request. Wherever possible, the request and the response shall be made in writing.

2. Where the responding Party considers that a response within 20 days is not practicable, it shall inform the requesting Party of the reasons for the delay, together with an estimate of the shortest period within which it will be able to provide its response.

## **Article 314. Initiation of the Procedure**

1. A Party may request, at any time, that the Parties enter into a mediation procedure. Such request shall be addressed to the other Party in writing. The request shall be sufficiently detailed to present clearly the concerns of the requesting Party and shall:

(a) identify the specific measure at issue;

(b) provide a statement of the alleged adverse effects that the requesting Party believes the measure has, or will have, on trade or investment between the Parties; and

(c) explain how the requesting Party considers that those effects are linked to the measure;

2. The Party to which such request is addressed shall give sympathetic consideration to the request and accept or reject it in writing within 10 days of its receipt.

## **Article 315. Selection of the Mediator**

1. Upon launch of the mediation procedure, the Parties shall endeavour to agree on a mediator no later than 15 days after the receipt of the reply to the request.

2. If the Parties cannot agree on the mediator within the established time frame, either Party may request the chair of the Trade Committee, or the chair's delegate, to draw the mediator by lot from the list established under Article 308 of this Agreement. Representatives of both Parties to the dispute shall be invited with due anticipation, to be present when lots are drawn. In any event, the lot shall be carried out with the Party/Parties that are present.

3. The chair of the Trade Committee, or the chair's delegate, shall select the mediator within five working days of the request by either Party as referred to in paragraph 2.

4. Should the list provided for in Article 308 of this Agreement not be established at the time a request is made pursuant to paragraph 2 of this Article, the mediator shall be drawn by lot from the individuals which have been formally proposed by one or both of the Parties.

5. The Parties may agree that the mediator shall be a national of one of the Parties.

6. The mediator shall assist, in an impartial and transparent manner, the Parties in bringing clarity to the measure and its possible trade effects, and in reaching a mutually agreed solution. The code of conduct set out in Annex XX to this Agreement shall apply to mediators as provided for in that code. Rules 3 to 7 (notifications) and 41 to 46 (translation and calculation of time limits) of the Rules of Procedure set out in Annex XIX to this Agreement shall also apply, *mutatis mutandis*.

## **Article 316. Rules of the Mediation Procedure**

1. Within 10 days of the appointment of the mediator, the Party having invoked the mediation procedure shall present, in writing, a detailed description of the problem to the mediator and to the other Party, in particular of the operation of the measure at issue and its trade effects. Within 20 days of the date of delivery of this submission, the other Party may provide, in writing, its comments to the description of the problem. Either Party may include in its description or comments any information that it deems relevant.

2. The mediator may decide on the most appropriate way of bringing clarity to the measure concerned and its possible trade-related impact. In particular, the mediator may organise meetings between the Parties, consult the Parties jointly or individually, seek the assistance of or consult with relevant experts and stakeholders, and provide any additional support requested by the Parties. However, before seeking the assistance of or consulting with relevant experts and stakeholders, the mediator shall consult with the Parties.

3. The mediator may offer advice and propose a solution for consideration by the Parties which may accept or reject the proposed solution or may agree on a different solution. However, the mediator shall not advise or give comments on the consistency of the measure at issue with this Agreement.

4. The procedure shall take place in the territory of the Party to which the request was addressed or by mutual agreement in any other location or by any other means.

5. The Parties shall endeavour to reach a mutually agreed solution within 60 days of the appointment of the mediator. Pending a final agreement, the Parties may consider possible interim solutions, especially if the measure relates to perishable goods.

6. The solution may be adopted by means of a decision of the Trade Committee. Either Party may make such solution subject to the completion of any necessary internal procedures. Mutually agreed solutions shall be made publicly available. However, the version disclosed to the public may not contain any information that a Party has designated as confidential.

7. The procedure shall be terminated:

(a) by the adoption of a mutually agreed solution by the Parties, on the date of adoption;

(b) by a written declaration of the mediator, after consultation with the Parties, that further efforts at mediation would be to no avail;

(c) by a written declaration of a Party after exploring mutually agreed solutions under the mediation procedure and after having considered any advice and proposed solutions by the mediator; or

(d) at any stage of the procedure by mutual agreement of the Parties.

## **Section 2. IMPLEMENTATION**

### **Article 317. Implementation of a Mutually Agreed Solution**

1. Where the Parties have agreed to a solution, each Party shall take the measures necessary to implement the mutually agreed solution within the agreed timeframe.

2. The implementing Party shall inform the other Party in writing of any steps or measures taken to implement the mutually agreed solution.

3. On request of the Parties, the mediator shall issue to the Parties, in writing, a draft factual report, providing a brief summary of:

(a) the measure at issue in these procedures; (b) the procedures followed; and

(c) any mutually agreed solution reached as the final outcome of these procedures, including possible interim solutions.

The mediator shall provide the Parties 15 days to comment on the draft report. After considering the comments of the Parties submitted within that period, the mediator shall submit, in writing, a final factual report to the Parties within 15 days. The factual report shall not include any interpretation of this Agreement.

## **Section 3. GENERAL PROVISIONS**

### **Article 318. Relationship to Dispute Settlement**

1. The procedure under this mediation mechanism is not intended to serve as a basis for dispute settlement procedures under this Agreement or another agreement.

A Party shall not rely on or introduce as evidence in such dispute settlement procedures, nor shall a panel take into consideration:

(a) positions taken by the other Party in the course of the mediation procedure;

(b) the fact that the other Party has indicated its willingness to accept a solution to the measure subject to mediation; or

(c) advice given or proposals made by the mediator.

2. The mediation mechanism is without prejudice to the Parties' rights and obligations under the provisions on Dispute Settlement.

3. Unless the Parties agree otherwise, and without prejudice to Article 316(6) of this Agreement, all steps of the procedure,

including any advice or proposed solution, are confidential. However, any Party may disclose to the public that mediation is taking place.

### **Article 319. Time Limits**

Any time limit referred to in this Chapter may be modified by mutual agreement between the Parties involved in these procedures.

### **Article 320. Costs**

1. Each Party shall bear its own expenses derived from the participation in the mediation procedure.
2. The Parties shall share jointly and equally the expenses derived from organisational matters, including the remuneration and expenses of the mediator, any assistant to the mediator and in the event that the Parties are unable to agree on a common language, any costs associated with translation. Remuneration of the mediator shall be in accordance with that foreseen for the Chairperson of an arbitration Panel in paragraph 2 and 8 of Annex XIX to this Agreement.

### **Article 321. Review**

Five years after the date of entry into force of this Agreement, the Parties shall consult each other on the need to modify the mediation mechanism in light of the experience gained and the development of a corresponding mechanism in the WTO.

## **Title V. ECONOMIC AND SECTOR COOPERATION**

### **Chapter 1. ENERGY COOPERATION, INCLUDING NUCLEAR ISSUES**

#### **Article 322.**

1. The Parties shall cooperate on energy matters for the enhancement of energy security, competitiveness and sustainability, which is crucial for the promotion of economic growth. The Parties's regulatory cooperation shall take into account the need to ensure relevant public service obligations, including measures to inform and protect customers from unfair selling practices, and access to affordable energy for consumers, including for the most vulnerable citizens.
2. Such cooperation shall be guided by the principles of mutual interest, reciprocity, transparency and predictability, consistent with the market economy, the Energy Charter Treaty of 1994 and other multilateral and related bilateral agreements.

#### **Article 323.**

Mutual cooperation shall cover, among others, the following areas:

- (a) cooperation in the Civil Nuclear sector, focusing on ensuring a high level of nuclear safety, the clean and peaceful use of nuclear energy, covering all civil nuclear energy activities and stages of the fuel cycle, including production of and trade in nuclear materials, safety and security aspects of nuclear energy, and emergency preparedness, as well as health-related and environmental issues and non-proliferation. In this context, cooperation will also include the further development of policies and legal and regulatory frameworks based on International Atomic Energy Agency (IAEA) standards;
- (b) promotion of civil scientific research in the fields of nuclear safety and security, including joint research and development activities, and training and mobility of scientists;
- (c) implementation of energy strategies and policies and development/elaboration of forecasts and scenarios, as well as improvement of the statistical recording system in the energy sector based on timely exchange of information on energy balances and energy flows, in accordance with international practices, as well as infrastructure developments;
- (d) establishing effective mechanisms to address potential energy crisis situations in a spirit of solidarity;
- (e) modernisation and enhancement of existing energy infrastructures of common interests, including energy-generating capacities and the integrity, safety and security of the energy networks, and the establishment of new energy infrastructures of common interest in order to diversify energy sources, suppliers, transportation routes and transport methods in an economic and environmentally sound manner;

- (f) development of competitive, transparent and non-discriminatory energy markets;
- (g) enhancement and strengthening of long-term stability and security of energy trade, transit, exploration, extraction, refining, production, storage, transport, transmission, distribution and marketing, or sale of energy materials and products on a mutually beneficial and non-discriminatory basis, in accordance with international rules, in particular the Energy Charter Treaty of 1994, the WTO Agreement and this Agreement;
- (h) progress towards an attractive and stable investment climate by addressing institutional, legal, fiscal and other conditions, and encouraging mutual investments in the energy field on a non-discriminatory basis;
- (i) efficient cooperation with the European Bank for Reconstruction and Development (EBRD) and other international financial organisations and instruments to support energy cooperation between the Parties;
- (j) promotion of energy efficiency and energy savings, including through the establishment of energy efficiency policies and legal and regulatory frameworks, with the aim of achieving major improvements, including efficient generation, production, transportation, distribution and use of energy, compatible with the functioning of market mechanisms, as well as the efficient utilisation of energy in appliances, lightings and buildings;
- (k) development of and support for renewable energies in an economic and environmentally sound manner, as well as alternative fuels, including sustainable biofuel production, and cooperation on regulatory issues, certification and standardisation as well as on technological and commercial development;
- (l) promotion of the Joint Implementation Mechanism under the Kyoto Protocol to the UN Framework Convention on Climate Change of 1997 to reduce emissions of greenhouse gases through energy efficiency and renewable energy projects;
- (m) scientific and technical cooperation and exchange of information for the development and improvement of technologies in energy production, transportation, supply and end use, paying particular attention to energy-efficient and environmentally friendly technologies, including carbon capture and storage and efficient and clean coal technologies;
- (n) cooperation in the framework of European and international standardisation bodies in the field of energy.

#### **Article 324.**

The Parties shall exchange information and experience, as well as provide relevant support to the process of regulatory reforms, which include the restructuring of the coal sector (steam coal, coking coal and lignite) in order to increase its competitiveness, enhance mine safety and occupational safety and reduce its environmental impact, while bearing in mind the regional and social impact. In order to enhance efficiency, competitiveness, and sustainability, the restructuring process needs to cover the entire coal value chain, i.e. from exploration via production and processing to conversion and handling of residues from coal processing and combustion. This approach includes recovery and utilisation of methane emissions from coal mines, as well as those from oil and gas operations, landfills, and the agricultural sector, as set out, inter alia, by the Global Methane Initiative in which the Parties are Partners.

## **Chapter 2. MACRO-ECONOMIC COOPERATION**

#### **Article 325.**

The Parties shall facilitate the process of economic reform by co-operating to improve understanding of the fundamentals of their respective economies and the formulation and implementation of economic policy in market economies. Ukraine shall strive to establish a functioning market economy, in accordance with the guiding principles of macroeconomic stability, sound public finances and a sustainable balance of payments.

#### **Article 326.**

In order to achieve the objectives set out in Article 325 of this Agreement, the Parties shall cooperate to:

- (a) exchange information on macroeconomic performance and prospects and on strategies for development;
- (b) analyse jointly economic issues of mutual interest, including economic policy measures and the instruments for implementing them, such as methods for economic forecasting and elaboration of strategic policy documents, with a view to strengthening Ukraine's policy-making in line with international best practices;
- (c) exchange expertise in the sphere of macro-economy.

## **Chapter 3. MANAGEMENT OF PUBLIC FINANCES: BUDGET POLICY, INTERNAL CONTROL AND EXTERNAL AUDIT**

### **Article 327.**

Cooperation in the field of management of public finances shall aim at ensuring the development of budget policy and sound systems of public internal control and external audit, on the basis of international standards, and which are compatible with the fundamental principles of accountability, transparency, economy, efficiency and effectiveness.

### **Article 328.**

The Parties shall exchange information, experience, best practice and take other actions, in particular on the following:

1. In the area of budget policy: (a) development of a medium-term budget forecast/planning system;  
(b) improvement of programme-targeted approaches in the budget process and analysis of the efficiency and effectiveness of the implementation of budget programmes;  
(c) improvement in the exchange of information and experience on planning and execution of the budget and on public debt.
2. In the area of external audit:
  - implementation of the International Organisation of Supreme Audit Institutions (INTOSAI) standards and methods as well as exchange of best practices in the field of external control and audit of public finances, paying particular attention to the independence of the relevant bodies of the Parties;
3. In the area of public internal financial control:
  - further developing the public internal financial control system through harmonisation with internationally-agreed standards (Institute of Internal Auditors (IIA), International Federation of Accountants (IFAC), INTOSAI) and methodologies, as well as best practice for internal control and internal audit in state bodies;
4. In the area of the fight against fraud:
  - improvement of methods aimed at combating and preventing fraud and corruption in the area covered by this Chapter, including cooperation between relevant administrative bodies.

## **Chapter 4. TAXATION**

### **Article 329.**

The Parties shall cooperate to enhance good governance in the tax area, with a view to the further improvement of economic relations, trade, investment and fair competition.

### **Article 330.**

1. With reference to Article 329 of this Agreement, the Parties recognise and commit to implementing the principles of good governance in the area of taxation reflecting the OECD principles concerning fair tax competition, the global standards on tax transparency and exchange of information, and the OECD minimum standards against Base Erosion and Profit Shifting (BEPS). To that end, the Parties will improve international cooperation in the tax area, facilitate the collection of legitimate tax revenues, and develop measures for the effective implementation of the abovementioned principles.
2. Nothing in this Agreement affects the rights and obligations, under any tax convention, of the United Kingdom and Ukraine. In the event of any inconsistency between this Agreement and any such tax convention, the tax convention prevails to the extent of the inconsistency.
3. For the purposes of this Article "tax convention" means a convention for the avoidance of double taxation, or any other international taxation agreement or arrangement (including, for the avoidance of doubt, such a convention, agreement or arrangement which is made after this Agreement is ratified, or any amendment to such a convention, agreement or arrangement).



## **Article 331.**

The Parties shall also enhance and strengthen their cooperation aimed at the improvement and development of Ukraine's tax system and administration, including the enhancement of collection and control capacity, to avoid accumulation of arrears, ensure effective tax collection and reinforce the fight against tax fraud and tax avoidance. The Parties shall strive to enhance cooperation and sharing of experiences in combating tax fraud, in particular carousel fraud.

## **Article 332.**

The Parties shall develop their cooperation in counteracting and fighting fraud and smuggling of excisable products. To this end, the Parties will look to strengthen their cooperation within the regional context.

# **Chapter 5. STATISTICS**

## **Article 333.**

The Parties shall develop and strengthen their cooperation on statistical issues, thereby contributing to the long-term objective of providing timely, internationally comparable and reliable statistical data. It is expected that a sustainable, efficient and professionally independent national statistical system shall produce information relevant to citizens, businesses and decision-makers in the UK and in Ukraine, thus enabling them to take informed decisions. The national statistical system should respect the UN Fundamental Principles of Official Statistics, taking into account international standards and best practice, in order to harmonise the national statistical system with internationally comparable norms and standards.

## **Article 334.**

Cooperation shall aim at:

- (a) further strengthening the capacity of the national statistical system, focusing on a sound legal basis, adequate data and metadata dissemination policy and user- friendliness;
- (b) fine-tuning of data provision, taking into account the application of relevant international methodologies, including classifications;
- (c) enhancing the professional and management capacity of the national statistical staff to facilitate the application of statistical standards and to contribute to the development of the Ukrainian statistical system;
- (d) exchanging experience between the Parties on the development of statistical know-how;
- (e) promoting total quality management of all statistical production processes and dissemination.

## **Article 335.**

The Parties shall further cooperate, inter alia, on the areas of:

- (a) population statistics, including censuses;
- (b) agricultural statistics, including agricultural censuses and environment statistics;
- (c) business statistics, including business registers and the use of administrative sources for statistical purposes;
- (d) energy, including balances;
- (e) national accounts;
- (f) foreign trade statistics;
- (g) regional statistics;
- (h) total quality management of all statistical production processes and dissemination.

## **Article 336.**

The Parties shall, *inter alia*, exchange information and expertise, and shall develop their cooperation, taking into account the already accumulated experience in reforming the statistical system. In the statistical data production process, emphasis will be placed on further development of sample surveys, while taking into account the need to reduce the response burden. The data shall be relevant to the designing and monitoring of policies in all key areas of social and economic life.

## **Chapter 6. ENVIRONMENT**

### **Article 337.**

The Parties shall develop and strengthen their cooperation on environmental issues, thereby contributing to the long-term objective of sustainable development and green economy. It is expected that enhanced environmental protection will bring benefits to citizens and businesses in the UK and in Ukraine, including through improved public health, preserved natural resources, increased economic and environmental efficiency, integration of environment into other policy areas, and higher production as a result of modern technologies. Cooperation shall be conducted in the best interests of the Parties on the basis of equality and mutual benefit while also taking into account interdependence existing between the Parties in the field of environmental protection and related multilateral agreements.

### **Article 338.**

Cooperation shall aim at preserving, protecting, improving, and rehabilitating the quality of the environment, protecting human health, prudent and rational utilisation of natural resources and promoting measures at international level to deal with regional or global environmental problems, *inter alia* in the areas of:

- (a) Climate Change;
- (b) environmental governance and horizontal issues, including education and training, and access to environmental information and decision-making processes;
- (c) air quality;
- (d) water quality and water resource management, including marine environment;
- (e) waste and resource management;
- (f) nature protection, including conservation and protection of bio and landscape diversity (eco-networks);
- (g) industrial pollution and industrial hazards;
- (h) chemicals;
- (i) genetically modified organisms, including in the field of agriculture;
- (j) noise pollution;
- (k) civil protection, including natural and man-made hazards;
- (l) urban environment;
- (m) environmental fees.

### **Article 339.**

1. The Parties shall, *inter alia*:

- (a) exchange information and expertise;
- (b) implement joint research activities and exchange of information on cleaner technologies;
- (c) plan the handling of disasters and other emergency situations;
- (d) implement joint activities at regional and international level, including with regard to multilateral environmental agreements ratified by the Parties and joint activities in the framework of relevant agencies as appropriate.

2. The Parties shall pay special attention to transboundary issues.

## **Article 340.**

Cooperation in the civil protection sector shall take place through the implementation of specific agreements in this field concluded between the Parties in accordance with the legal procedures of each Party. It shall aim, *inter alia*, at:

- (a) facilitating mutual assistance in case of emergencies;
- (b) exchanging early warnings on cross-border emergencies, including requests for and offers of assistance;
- (c) assessment of the environmental impact of disasters;
- (d) inviting experts to specific technical workshops and symposia on civil protection issues;
- (e) inviting, on a case-by-case basis, observers to specific exercises and training activities organised by the Parties;
- (f) the most effective use of available civil protection capabilities.

## **Article 341.**

The cooperation shall cover, *inter alia*, the following objectives:

- (a) development of an overall strategy on environment, covering planned institutional reforms (with timetables) for ensuring implementation and enforcement of environmental legislation; division of competence for the environmental administration at national, regional and municipal levels; procedures for decision-making and the implementation of decisions; procedures for promotion of integration of environment into other policy areas; identification of the necessary human and financial resources and a review mechanism;
- (b) development of sector strategies on air quality; water quality and resource management, including marine environment; waste and resource management; nature protection; industrial pollution and industrial hazards and chemicals, including clearly defined timetables and milestones for implementation, administrative responsibilities as well as financing strategies for investments in infrastructure and technology;
- (c) development and implementation of a policy on climate change in line with obligations to which both Parties are committed through international agreements.

# **Chapter 7. TRANSPORT**

## **Article 342.**

The Parties shall:

- (a) expand and strengthen their transport cooperation in order to contribute to the development of sustainable transport systems;
- (b) promote efficient, safe and secure transport operations as well as intermodality and interoperability of transport systems;
- (c) endeavour to enhance the main transport links between their territories.

## **Article 343.**

1. Cooperation between the Parties shall aim to facilitate the restructuring and modernisation of Ukraine's transport sector, without prejudice to obligations stemming from specific transport agreements concluded between the Parties. Implementation of the above-mentioned measures shall not contravene the rights and obligations of the Parties under international agreements to which they are parties, or their participation in international organisations.
2. Cooperation shall also aim at improving the movement of passengers and goods, increasing fluidity of transport flows between the UK, Ukraine and third countries in the region, by removing administrative, technical, cross-border and other obstacles, improving transport networks and upgrading the infrastructure in particular on the main axes connecting the Parties. This cooperation shall include actions to facilitate border-crossings.
3. Cooperation shall include information exchange and joint activities:

- at regional level, in particular taking into consideration and integrating progress achieved under relevant transport cooperation arrangements and initiatives;

- at international level, including with regard to international transport organisations and international agreements and conventions ratified by the Parties.

## **Article 344.**

This cooperation shall cover, *inter alia*, the following areas:

(a) (a) development of a sustainable national transport policy covering all modes of transport, particularly with a view to ensuring efficient, safe and secure transport systems and promoting the integration of transport considerations into other policy areas;

(b) (b) development of sector strategies in light of the national transport policy (including legal requirements for the upgrading of technical equipment and transport fleets to meet the highest international standards) for road, rail, inland waterway, aviation, maritime transport and intermodality, including timetables and milestones for implementation, administrative responsibilities and financing plans;

(c) (c) development of multimodal transport networks and improvement of infrastructure policy in order to better identify and evaluate infrastructure projects in the various modes of transport. Development of funding strategies focusing on maintenance, capacity constraints and missing link infrastructure as well as activating and promoting the participation of the private sector in transport projects;

(d) (d) accession to relevant international transport organisations and agreements including procedures for ensuring strict implementation and effective enforcement of international transport agreements and conventions;

(e) (e) scientific and technical cooperation and exchange of information for the development and improvement of technologies, such as intelligent transport systems;

(f) (f) promotion of the use of intelligent transport systems and information technology in managing and operating all modes of transport as well as supporting intermodality and cooperation in the use of space systems and commercial applications facilitating transport.

## **Chapter 8. SPACE**

### **Article 345.**

1. The Parties shall promote the development of mutually beneficial cooperation on civil space research and space applications and in particular will aim for cooperation in the following areas:

(a) global navigation satellite systems;

(b) earth observation and global monitoring;

(c) space science and exploration;

(d) the latest applied space technologies and materials, including launcher and propulsion technology.

2. The Parties will encourage and promote the exchange of experience on space policy, administration and legal aspects, as well as on industrial restructuring and the commercialisation of space technologies.

### **Article 346.**

1. Cooperation will include the exchange of information between the Parties on policies and programs and relevant opportunities for cooperation and joint projects.

2. The Parties will encourage and support the exchange of scientists and specialists and the establishment of appropriate networks.

3. Cooperation may also include the implementation of joint projects and joint participation in multinational programs.

## **Chapter 9. COOPERATION IN SCIENCE AND TECHNOLOGY**

## **Article 347.**

The Parties shall develop and strengthen their scientific and technological cooperation in order to contribute both to scientific development itself, and to reinforce their scientific potential for contributing to the resolution of national and global challenges. The Parties shall endeavour to contribute to progress in acquiring scientific and technological knowledge relevant to sustainable economic development, by strengthening their research capacities and human potential. The sharing and pooling of scientific knowledge will contribute to the competitiveness of the Parties, by increasing the ability of their economies to generate and use knowledge to commercialise new products and services. Finally, the Parties will develop their scientific potential in order to fulfil their global responsibilities and commitments in areas such as health-related issues, environmental protection including climate change and other global challenges.

## **Article 348.**

Cooperation shall assist Ukraine in reforming and reorganising its science management system and research institutions (including boosting its capacity for research and technological development), in order to support the development of a competitive economy and knowledge society.

## **Article 349.**

Cooperation shall take place particularly through:

- (a) exchange of information on each other's science and technology policies;
- (b) joint implementation of scientific programmes and research activities;
- (c) joint research and development activities aimed at encouraging scientific progress and the transfer of technology and know-how;
- (d) training through mobility programmes for researchers and specialists;
- (e) the organisation of joint scientific and technological development events/measures;
- (f) implementation measures aimed at the development of an environment conducive to research and the application of new technologies and adequate protection of the intellectual property results of research;
- (g) enhancement of cooperation at regional and international level, notably within multi-lateral organisations such as the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the Organisation for Economic Cooperation and Development (OECD) and the Group of 7 (G7), as well as in the context of multilateral agreements such as the UN Framework Convention on Climate Change (UNFCCC) of 1992;
- (h) exchange of expertise on management of research and science institutions in order to develop and improve their capacities of conducting and participating in scientific researches.

# **Chapter 10. INDUSTRIAL AND ENTERPRISE POLICY**

## **Article 350.**

The Parties shall develop and strengthen their cooperation on industrial and enterprise policy, thereby improving the business environment for all economic operators, but with particular emphasis on Small and Medium Sized Enterprises (SMEs). Enhanced cooperation should improve the administrative and regulatory framework for both UK and Ukrainian businesses operating in the UK and in Ukraine, taking into account internationally recognised principles and practices in this field.

## **Article 351.**

To that end, the Parties shall cooperate in order to:

- (a) implement strategies for SME development and monitor the implementation process through annual reporting and dialogue. This cooperation will also include a focus on micro- and craft enterprises, which are extremely important for both the UK and Ukrainian economies;

- (b) create better framework conditions, via the exchange of information and good practice, contributing to greater competitiveness. This cooperation will include the management of structural changes (restructuring) and environmental and energy issues, such as energy efficiency and cleaner production;
- (c) simplify and rationalise regulations and regulatory practice, with specific focus on exchange of good practice as regards regulatory techniques;
- (d) encourage the development of innovation policy, via the exchange of information and good practice regarding the commercialisation of research and development (including support instruments for technology-based business start-ups), cluster development and access to finance;
- (e) encourage more contacts between UK and Ukrainian businesses and between these businesses and the authorities in the UK and in Ukraine;
- (f) support the establishment of export promotion activities in Ukraine;
- (g) facilitate the modernisation and restructuring of both UK and Ukrainian industry in certain sectors.

## **Chapter 11. MINING AND METALS**

### **Article 352.**

The Parties shall develop and strengthen their cooperation in relation to the mining and metals industries, with a view to promoting mutual understanding, improvement of the business environment, information exchange and cooperation on non-energy issues, relating in particular to the mining of metallic ores and industrial minerals. This cooperation is without prejudice to the provisions regarding to coal as referred to in Article 324 of this Agreement.

### **Article 353.**

In order to achieve the objectives set out in Article 352 of this Agreement, the Parties shall cooperate in order to:

- (a) exchange information on the basic situations of their mining and metals industries;
- (b) exchange information on the outlook for the UK and Ukrainian mining and metals industries in terms of consumption, production and market forecast;
- (c) exchange information on measures taken by the Parties in order to facilitate the restructuring process in these sectors;
- (d) exchange information and best practices in relation to the sustainable development of the mining and metals industries in the UK and in Ukraine.

## **Chapter 12. FINANCIAL SERVICES**

### **Article 354.**

Recognising that an effective set of rules and practices in the area of financial services is needed to establish a fully-functioning market economy and in order to foster trade exchanges among the Parties, the Parties shall cooperate in the area of financial services with a view to:

- (a) supporting the process of adapting financial services regulation to the needs of an open market economy;
- (b) ensuring effective and adequate protection of investors and other consumers of financial services;
- (c) ensuring the stability and integrity of the global financial system;
- (d) promoting cooperation between different actors of the financial system, including regulators and supervisors;
- (e) ensuring independent and effective supervision.

### **Article 355.**

1. The Parties shall encourage cooperation between relevant regulatory and supervisory authorities, including information exchange, sharing of expertise on financial markets and other such measures.

2. Special attention shall be paid to the development of the administrative capacity of such authorities, inter alia through personnel exchanges and joint training.

#### **Article 356.**

The Parties shall promote gradual approximation to recognised international standards on regulation and supervision in the area of financial services.

## **Chapter 13. COMPANY LAW, CORPORATE GOVERNANCE, ACCOUNTING AND AUDITING**

#### **Article 357.**

1. Recognising the importance of an effective set of rules and practices in the areas of company law and corporate governance, as well as in accounting and auditing, for creating a fully-functioning market economy and for fostering trade, the Parties shall cooperate in relation to:

- (a) protecting shareholders, creditors and other stakeholders;
- (b) using relevant international standards at national level, and developing appropriate domestic systems, in the field of accounting and auditing;
- (c) further developing of corporate governance policy in line with international standards, in particular the OECD Principles on Corporate Governance.

2. The Parties shall aim at sharing information and expertise on both existing systems and relevant new developments in these areas. In addition, the Parties shall seek to improve information exchange between business registers of the UK and the national register of Ukraine.

## **Chapter 14. INFORMATION SOCIETY**

#### **Article 358.**

The Parties shall step up cooperation on the development of the Information Society to benefit citizens and businesses through the widespread availability of Information and Communication Technology (ICT) and through better quality of services at affordable prices. This cooperation will also facilitate the access to the markets for electronic communication services, encouraging competition and investment in the sector.

#### **Article 359.**

Cooperation shall aim at implementing national Information Society strategies and developing a comprehensive regulatory framework for electronic communications.

#### **Article 360.**

Cooperation shall cover the following subjects:

- (a) promotion of broadband access, improvement of network security and more widespread use of ICT by citizens, business and administrations by developing local content for the Internet and introducing online services, in particular e-business, e-government, e-health and e-learning;
- (b) coordination of electronic communication policies with a view to making optimal use of the radio spectrum and interoperability of networks in the UK and in Ukraine;
- (c) strengthening of the independence and administrative capacity of the national regulator in the field of communications in order to ensure its ability to take appropriate regulatory measures and enforce its own decisions and all applicable regulations, and to guarantee fair competition in the markets;
- (d) promotion of joint projects for research in the field of information and communications technology.

#### **Article 361.**

The Parties shall exchange information, best practices and experience, undertake joint actions with the aim of developing a comprehensive regulatory framework and ensure efficient functioning of, and undistorted competition in, the electronic communications markets.

#### **Article 362.**

The Parties shall promote cooperation between national regulators in the field of communications of the UK and Ukraine.

## **Chapter 15. AUDIO-VISUAL POLICY**

#### **Article 363.**

The Parties shall cooperate to promote the audiovisual industry and encourage co- production in the fields of cinema and television.

#### **Article 364.**

Cooperation under Article 363 could include, inter alia, the training of journalists and other professionals from both the printed and electronic media, as well as support to the media (public and private), so as to reinforce their independence, professionalism and links between media in compliance with international standards.

## **Chapter 16. TOURISM**

#### **Article 365.**

The Parties shall cooperate in the field of tourism with the aim of developing a more competitive tourism industry, as a generator of economic growth and empowerment, employment and foreign exchange.

#### **Article 366.**

1. Cooperation shall have regard to the following principles:

- (a) respect for the integrity and interests of local communities, particularly in rural areas;
- (b) the importance of cultural heritage;
- (c) positive interaction between tourism and environmental preservation.

2. Relevant provisions concerning tour operators are contained in Chapter 6 (Establishment, Trade in Services, and Electronic commerce) of Title IV (Trade and Trade-related Matters) of this Agreement. Relevant provisions concerning movement of persons are covered by Article 18 of this Agreement.

#### **Article 367.**

Cooperation will focus, inter alia, on the following aspects:

- (a) exchange of information, best practices, experience and "know-how" transfer, including on innovative technologies;
- (b) establishment of a strategic partnership between public, private and community interests in order to ensure the sustainable development of tourism;
- (c) promotion and development of tourism products and markets, infrastructure, human resources and institutional structures;
- (d) development and implementation of efficient policies and strategies, including appropriate legal, administrative and financial aspects;
- (e) tourism training and capacity building designed to improve service standards;
- (f) development and promotion of community-based tourism.



## **Chapter 17. AGRICULTURE AND RURAL DEVELOPMENT**

### **Article 368.**

The Parties shall cooperate to promote agricultural and rural development.

### **Article 369.**

Cooperation between the Parties in the field of agriculture and rural development shall cover, inter alia, the following areas:

- (a) facilitating mutual understanding of agricultural and rural development policies, including through the exchange of knowledge and practices on high value added agricultural and food production and mechanisms of its support;
- (b) enhancing administrative capacities at central and local levels for the planning, evaluation and implementation of policies;
- (c) promoting modern and sustainable agricultural production, respectful of the environment and of animal welfare, including extension of the use of organic production methods and the use of biotechnologies, inter alia through the implementation of best practices in those fields, taking into account climate change;
- (d) sharing knowledge and best practices of rural development policies to promote economic well-being for rural communities;
- (e) improving the competitiveness of the agricultural sector and the efficiency and transparency of the markets as well as conditions for investment;
- (f) disseminating knowledge through training and information events;
- (g) favouring innovation through research and promoting extension services to agricultural producers;
- (h) enhancing harmonisation of issues addressed within the framework of international organisations;
- (i) exchanging best practices on support mechanisms for agricultural policies and rural areas;
- (j) promoting the policy of quality of agricultural products in the areas of product standards, production requirements and quality schemes.

## **Chapter 18. FISHERIES AND MARITIME POLICIES**

### **Section 1. FISHERIES POLICY**

#### **Article 370.**

1. The Parties shall cooperate on mutually beneficial matters of common interest in the fisheries sector, including conservation and management of living aquatic resources, inspection and control, data collection, and the fight against illegal, unreported and unregulated fishing.

2. Such cooperation will respect the international obligations of the Parties concerning management and conservation of living aquatic resources.

#### **Article 371.**

The Parties shall take joint actions, exchange information and provide support to each other in order to promote:

- (a) good governance and best practices in fisheries management with a view to ensuring conservation and management of fish stocks in a sustainable manner, and based on the ecosystem approach;
- (b) responsible fishing and fisheries management consistent with the principles of sustainable development, so as to conserve fish stocks and ecosystems in a healthy state;
- (c) cooperation through Regional Fisheries Management Organisations (RFMOs). ARTICLE 372 The Parties will support initiatives, such as mutual exchange of experience and providing support, designed to ensure the implementation of a

sustainable fisheries policy, including:

- (a) management of living aquatic resources, fishing effort and technical measures;
- (b) inspection and control of fishing activities, using the necessary surveillance equipment, including a vessel monitoring system, as well as development of corresponding administrative and judicial structures capable of applying appropriate measures;
- (c) harmonised collection of catch, landing, fleet, biological and economic data;
- (d) management of fishing capacity, including a functioning fishing fleet register;
- (e) improving the efficiency of the markets, in particular by promoting producer organisations, providing information to consumers, and through marketing standards and traceability;
- (f) development of a structural policy for the fisheries sector, paying particular attention to the sustainable development of coastal communities.

## **Chapter 18. FISHERIES AND MARITIME POLICIES**

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1. The Parties shall cooperate on mutually beneficial matters of common interest in the fisheries sector, including conservation and management of living aquatic resources, inspection and control, data collection, and the fight against illegal, unreported and unregulated fishing.
2. Such cooperation will respect the international obligations of the Parties concerning management and conservation of living aquatic resources.

#### **Article 371.**

The Parties shall take joint actions, exchange information and provide support to each other in order to promote:

- (a) good governance and best practices in fisheries management with a view to ensuring conservation and management of fish stocks in a sustainable manner, and based on the ecosystem approach;
- (b) responsible fishing and fisheries management consistent with the principles of sustainable development, so as to conserve fish stocks and ecosystems in a healthy state;
- (c) cooperation through Regional Fisheries Management Organisations (RFMOs).

#### **Article 372.**

The Parties will support initiatives, such as mutual exchange of experience and providing support, designed to ensure the implementation of a sustainable fisheries policy, including:

- (a) management of living aquatic resources, fishing effort and technical measures;
- (b) inspection and control of fishing activities, using the necessary surveillance equipment, including a vessel monitoring system, as well as development of corresponding administrative and judicial structures capable of applying appropriate measures;
- (c) harmonised collection of catch, landing, fleet, biological and economic data;
- (d) management of fishing capacity, including a functioning fishing fleet register;
- (e) improving the efficiency of the markets, in particular by promoting producer organisations, providing information to consumers, and through marketing standards and traceability;
- (f) development of a structural policy for the fisheries sector, paying particular attention to the sustainable development of coastal communities.

## **Chapter 19. CONSUMER PROTECTION**

### **Article 375.**

The Parties shall cooperate in order to ensure a high level of consumer protection and to achieve compatibility between their systems of consumer protection.

### **Article 376.**

In order to achieve these objectives, the cooperation shall comprise, in particular:

- (a) promotion of exchange of information on consumer protection systems;
- (b) provision of expertise on legislative and technical capacity to enforce legislation and market surveillance systems;
- (c) improvement of information provided to consumers;
- (d) training activities for administration officials and persons representing consumer interests;
- (e) encouraging the development of independent consumer associations and contacts between consumer representatives.

## **Chapter 20. COOPERATION ON EMPLOYMENT, SOCIAL POLICY AND EQUAL OPPORTUNITIES**

### **Article 377.**

Taking account of Chapter 13 (Trade and Sustainable Development) of Title IV (Trade and Trade-related Matters) of this Agreement, the Parties shall strengthen their dialogue and cooperation on promoting the decent work agenda, employment policy, health and safety at work, social dialogue, social protection, social inclusion, gender equality and non-discrimination.

### **Article 378.**

Cooperation in the areas covered by Article 377 of this Agreement shall pursue the following goals:

- (a) improve the quality of human life;
- (b) meet common challenges, such as globalisation and demographic change;
- (c) aim at more and better jobs with decent working conditions;
- (d) promote social fairness and justice, while reforming labour markets;
- (e) promote conditions of labour markets that combine flexibility with security;
- (f) promote active labour market measures and improve efficiency of employment services to match the needs of the labour market;
- (g) foster more inclusive labour markets that integrate disadvantaged people;
- (h) reduce the informal economy by transforming undeclared work;
- (i) improve the level of protection of health and safety at work, including by education and training on health and safety issues, promotion of preventive measures, prevention of major accident hazards, management of toxic chemicals, and exchange of good practice and research in this area;
- (j) enhance the level of social protection and modernise social protection systems, in terms of quality, accessibility, and financial sustainability;
- (k) reduce poverty and enhance social cohesion;
- (l) aim at gender equality and ensure equal opportunities for women and men in employment, education, training, economy and society, and decision-making;

(m) combat discrimination on all grounds;

(n) enhance the capacity of social partners and promote social dialogue.

### **Article 379.**

The Parties shall encourage the involvement of all relevant stakeholders, in particular social partners, as well as civil society organisations, in Ukraine's policy reforms and in the cooperation between the Parties under this Agreement.

### **Article 380.**

The Parties shall promote corporate social responsibility and accountability and encourage responsible business practices, such as those promoted by the UN Global Compact of 2000, the International Labour Organization (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy of 1977 as amended in 2006, and the OECD Guidelines for Multinational Enterprises of 1976 as amended in 2000.

### **Article 381.**

The Parties shall aim at enhancing cooperation on employment and social policy matters in all relevant regional, multilateral and international fora and organisations.

## **Chapter 21. PUBLIC HEALTH**

### **Article 382.**

The Parties shall develop their cooperation in the public health field, to raise the level of public health safety and protection of human health as a precondition for sustainable development and economic growth.

### **Article 383.**

1. Such cooperation shall cover, in particular, the following areas:

(a) strengthening of the public health system and its capacity in Ukraine, in particular through implementation of reforms, further development of primary health care, and training of staff;

(b) prevention and control of communicable diseases, such as HIV/AIDS and tuberculosis, increased preparedness regarding highly pathogenic disease outbreaks, and implementation of the International Health Regulations;

(c) prevention and control of non-communicable diseases, through exchange of information and good practices, promoting healthy lifestyles, addressing major health determinants and problems, such as mother and child health, mental health, and addiction to alcohol, drugs and tobacco, including implementation of the Framework Convention on Tobacco Control of 2003;

(d) quality and safety of substances of human origin, such as blood, tissues and cells;

(e) health information and knowledge, including as regards the 'health in all policies' approach.

2. To that end, the Parties shall exchange data and best practices, and undertake other joint activities through participation in international networks in the public health field.

## **Chapter 22. EDUCATION, TRAINING, AND YOUTH**

### **Article 384.**

Fully respecting the responsibility of the Parties for the content of teaching and the organisation of education systems and their cultural and linguistic diversity, the Parties shall promote cooperation in the field of education, training and youth in order to enhance mutual understanding, promote intercultural dialogue and increase the knowledge of their respective cultures.

### **Article 385.**

The Parties shall cooperate in the field of higher education, aiming, in particular at:

- (a) reforming and modernising the higher education systems;
- (b) promoting convergence in the field of higher education deriving from the Bologna process;
- (c) enhancing the quality and relevance of higher education;
- (d) stepping up cooperation between higher education institutions;
- (e) building up the capacity of higher education institutions;
- (f) increasing student and teacher mobility, paying particular attention to cooperation in the field of education with a view to facilitating access to higher education.

### **Article 386.**

The Parties shall endeavour to exchange information and expertise, in order to encourage closer cooperation in the field of vocational education and training with a view, in particular, to developing systems of vocational education and training, and further professional training throughout the working life, in response to the needs of the changing labour market.

### **Article 387.**

The Parties shall examine the possibility of developing their cooperation in other areas, such as secondary education, distance education, and life-long learning.

### **Article 388.**

The Parties shall encourage closer cooperation and exchange of experience in the field of youth policy and non-formal education for young people, with the aim of:

- (a) facilitating the integration of young people into society at large by encouraging their active citizenship and spirit of initiative;
- (b) helping young people acquire knowledge, skills and competencies outside the educational systems, including through volunteering, and recognising the value of such experiences;
- (c) enhancing cooperation with third countries;
- (d) promoting cooperation between youth organisations in the UK and in Ukraine;
- (e) promoting healthy lifestyles, with a particular focus on youth.

## **Chapter 23. CULTURE**

### **Article 389.**

The Parties shall promote cultural cooperation in order to enhance mutual understanding and foster cultural exchanges, as well as to boost the mobility of art and artists from the UK and Ukraine.

### **Article 390.**

The Parties shall encourage intercultural dialogue between the individuals and organisations representing organised civil society and cultural institutions in the UK and in Ukraine.

### **Article 391.**

The Parties shall closely cooperate in relevant international fora, including United Nations Educational, Scientific and Cultural Organisation (UNESCO) and the Council of Europe (CoE), inter alia, in order to develop cultural diversity, and to preserve and valorise cultural and historical heritage.

## **Chapter 24. COOPERATION IN THE FIELD OF SPORT AND PHYSICAL**

## **ACTIVITY**

### **Article 392.**

1. The Parties shall cooperate in the field of sport and physical activity in order to help develop a healthy lifestyle among all age groups, to promote the social functions and educational values of sport and to fight against threats to sport such as doping, match-fixing, racism and violence.
2. Such cooperation shall, in particular, include the exchange of information and good practices in the following areas:
  - (a) promotion of physical activity and sport through the educational system, in cooperation with public institutions and non-governmental organisations;
  - (b) sports participation and physical activity as a means to contribute to a healthy lifestyle and general well-being;
  - (c) development of national competence and qualifications systems in the sport sector;
  - (d) integration of disadvantaged groups through sport;
  - (e) the fight against doping;
  - (f) the fight against match-fixing;
  - (g) security during major international sporting events.

## **Chapter 25. CIVIL SOCIETY COOPERATION**

### **Article 393.**

The Parties shall foster civil society cooperation, which shall aim to achieve the following objectives:

- (a) to strengthen contacts and encourage mutual exchange of experience between all sectors of civil society in the UK and in Ukraine;
- (b) to involve civil society organisations in the implementation of this Agreement, including its monitoring, and in the development of bilateral relations between the Parties;
- (c) to ensure a better knowledge and mutual understanding of the UK and Ukraine, including their history and culture.

### **Article 394.**

The Parties shall promote dialogue and cooperation between civil society stakeholders from both sides as an integral part of UK-Ukraine relations, by means of:

- (a) strengthening of contacts and mutual exchange of experience between civil society organisations in the UK and in Ukraine, in particular through professional seminars, training, etc;
- (b) facilitating institution-building and consolidation of civil society organisations, including, amongst others, advocacy, informal networking, visits, workshops, etc;
- (c) enabling the familiarisation of Ukrainian representatives with the process of consultation and dialogue between social and civil partners in the UK, with a view to integrating civil society into the policy process in Ukraine.

## **Chapter 26. REGIONAL COOPERATION**

### **Article 395.**

1. The Parties shall promote mutual understanding and bilateral cooperation in the field of regional policy, on methods of formulation and implementation of regional policies, including multi-level governance and partnership.
2. The Parties shall also promote the involvement of local and regional-level authorities in regional cooperation to sustain and develop capacity-building measures and to promote the strengthening of regional networks relating to, inter alia, transport, energy, communication networks, culture, education, tourism and health.

## **Title VI. FINANCIAL COOPERATION WITH ANTI-FRAUD PROVISIONS**

### **Article 396.**

Ukraine may benefit from financial assistance to contribute to achieving the objectives of this Agreement, if agreed by both Parties. Any financial assistance will be provided in accordance with the following Articles of this Agreement.

### **Article 397.**

The Government of Ukraine shall exempt any technical assistance and humanitarian aid provided and financed by the Government of the UK under this Agreement from the payment of all duties, fees, levies or any costs whatsoever, including VAT.

### **Article 398.**

In order to make the best use of the resources available, the Parties shall endeavour to implement any assistance programmes in close cooperation and coordination with other donor countries, donor organisations and international financial institutions, and in line with international principles of aid effectiveness.

### **Article 399.**

The Parties shall implement any assistance in accordance with the principles of sound financial management and shall cooperate in protecting the financial interests of the UK and of Ukraine. The Parties shall take effective measures to prevent and fight fraud, corruption and any other illegal activities, inter alia, by means of mutual administrative assistance and mutual legal assistance in the fields covered by this Agreement.

## **Title VII. INSTITUTIONAL, GENERAL AND FINAL PROVISIONS**

### **Chapter 1. INSTITUTIONAL FRAMEWORK**

#### **Article 400.**

The Parties shall establish a Strategic Partnership Dialogue which shall meet at the level and frequency agreed in accordance with Article 4 of this Agreement.

#### **Article 401.**

1. The Strategic Partnership Dialogue established by Article 400 of this Agreement shall consider any bilateral or international issues of mutual interest, including security, economic and migration issues, as well as any major issues arising within the framework of this Agreement. For the purposes of this Article, the UK recognises migration under the UN Global Compact for Migration, including but not limited to, visas, border security and returns policy.

2. In addition, the Strategic Partnership Dialogue shall supervise and monitor the application and implementation of this Agreement and periodically review the functioning of this Agreement in the light of its objectives.

#### **Article 402.**

1. The Strategic Partnership Dialogue shall consist of high-level officials or members of the Government of the United Kingdom, on the one hand, and of high-level officials or members of the Government of Ukraine, on the other.

2. The Strategic Partnership Dialogue shall establish its own rules of procedure.

3. The Strategic Partnership Dialogue may agree to set up committees and sub-committees to assist with the application and implementation of this Agreement, except in so far as it relates to Title IV (Trade and Trade-Related Matters). The Strategic Partnership Dialogue shall determine the composition, duties and functioning of any such committees and sub-committees. Any such committees and sub-committees shall report on their activities to the Strategic Partnership Dialogue regularly or upon the request of the Parties.

4. The existence of any committees or sub-committees shall not prevent either Party from bringing any matter directly to

the Strategic Partnership Dialogue established under Article 400 of this Agreement.

5. Upon entry into force of this Agreement, any decisions adopted by the committees or sub-committees established by the EU-Ukraine Association Agreement before the EU-Ukraine Association Agreement ceased to apply to the United Kingdom shall, to the extent those decisions relate to the Parties to this Agreement, be deemed to have been adopted, *mutatis mutandis* and subject to the provisions of this Agreement, by the Strategic Partnership Dialogue established by Article 400 of this Agreement or the Trade Committee established by 404 of this Agreement.

6. Where appropriate, and by mutual agreement of the Parties, other bodies will take part as observers in the work of the Strategic Partnership Dialogue.

### **Article 403.**

1. For the purpose of attaining the objectives of this Agreement, the Strategic Partnership Dialogue shall have the power to take decisions and make recommendations within the scope of this Agreement. It shall adopt its decisions and recommendations by agreement between the Parties and following completion of the Parties' respective internal procedures.

2. Decisions taken by the Strategic Partnership Dialogue shall be binding on the Parties, which shall take appropriate measures, including necessary action in specific bodies established under this Agreement, to implement the decisions taken.

3. In accordance with the provisions of paragraph 1 of this Article, the Strategic Partnership Dialogue may update or amend the Annexes to this Agreement, without prejudice to the powers of the Trade Committee in Article 405 or to any specific provisions of Title IV (Trade and Trade-related Matters) of this Agreement.

### **Article 404.**

1. The Parties shall establish a Trade Committee, composed of the representatives of the Parties at the most appropriate level, to address all issues related to Title IV (Trade and Trade-related Matters) of this Agreement, as well as consider any other economic matters that may be relevant to the provisions of Title IV of this Agreement.

2. The Trade Committee shall supervise and monitor the application and implementation of Title IV of this Agreement and periodically review the functioning of Title IV of this Agreement in the light of its objectives.

3. The Trade Committee shall meet at least once a year, or as otherwise agreed by the Parties.

4. The Parties may establish specific rules of procedure for the Trade Committee.

5. The sub-committees established under Title IV of this Agreement shall inform the Trade Committee of the date and agenda of their meetings sufficiently in advance of their meetings. They shall report on their activities at each regular meeting of the Trade Committee.

6. The existence of any sub-committees shall not prevent either Party from bringing any matter directly to the Trade Committee.

7. Without prejudice to the powers of the Strategic Partnership Dialogue in Article 403 or to any specific provisions of Title IV (Trade and Trade-related Matters) of this Agreement, the Trade Committee may update or amend the Annexes to Title IV of this Agreement.

### **Article 405.**

1. For the purpose of attaining the objectives of this Agreement, the Trade Committee shall have the power to take decisions and make recommendations within the scope of Title IV of this Agreement. It shall adopt its decisions and recommendations by agreement between the Parties and following completion of the Parties' respective internal procedures.

2. Decisions taken by the Trade Committee shall be binding on the Parties, which shall take appropriate measures, including necessary action in specific bodies established under this Agreement, to implement the decisions taken.

## **Chapter 2. GENERAL AND FINAL PROVISIONS**

### **Article 406. Access to Courts and Administrative Organs**



Within the scope of this Agreement, each Party undertakes to ensure that natural and legal persons of the other Party have access that is free of discrimination in relation to its own nationals to its competent courts and administrative organs, to defend their individual rights and property rights.

## **Article 407. Measures Related to Essential Security Interests**

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

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

## **Article 408. Non-discrimination**

1. In the fields covered by this Agreement and without prejudice to any special provisions contained therein:

- (a) the arrangements applied by Ukraine in respect of the UK shall not give rise to any discrimination between UK nationals or legal entities;
- (b) the arrangements applied by the United Kingdom in respect of Ukraine shall not give rise to any discrimination between Ukrainian nationals or legal entities.

2. The provisions of paragraph 1 of this Article shall be without prejudice to the right of the Parties to apply the relevant provisions of their fiscal legislation to taxpayers who are not in identical situations as regards their place of residence.

## **Article 409. Fulfilment of Obligations**

1. The Parties shall take any general or specific measures required to fulfil their obligations under this Agreement. They shall ensure that the objectives set out in this Agreement are attained.
2. The Parties agree to consult promptly at the request of either Party, to discuss any matter concerning the interpretation, implementation, or good faith application of this Agreement and other relevant aspects of the relations between the Parties.
3. Any dispute related to the interpretation, implementation or good faith application of this Agreement shall be considered by the Parties in accordance with Article 410 of this Agreement within the Strategic Partnership Dialogue, which may settle a dispute by means of a binding decision.

## **Article 410. Dispute Settlement**

1. When a dispute arises between the Parties concerning the interpretation, implementation, or good faith application of this Agreement, any Party shall submit to the other Party and the Strategic Partnership Dialogue created by Article 400 of this Agreement a formal request that the matter in dispute be resolved. By way of derogation, disputes concerning the interpretation, implementation, or good faith application of Title IV (Trade and Trade-related Matters) of this Agreement shall be exclusively governed by Chapter 14 (Dispute Settlement) of Title IV (Trade and Trade-related Matters) of this Agreement.

2. The Parties shall endeavour to resolve the dispute by entering into good faith consultations within the Strategic Partnership Dialogue created in Article 400, with the aim of reaching a mutually acceptable solution in the shortest time possible.

3. Notwithstanding the provisions of Article 400 of this Agreement if a Party makes a formal request that a dispute be resolved, the Parties shall meet in the Strategic Partnership Dialogue within one month of that request being made. The Parties shall ensure that the configuration of the Strategic Partnership Dialogue convened to consider the dispute is comprised of high officials or representatives at the most appropriate governmental level of both Parties. The Parties shall provide the Strategic Partnership Dialogue with all the information required for a thorough examination of the situation.

4. Notwithstanding the provisions of Article 400 of this Agreement, if a dispute is not resolved within a reasonable time through consultations, the Strategic Partnership Dialogue shall, at the request of any Party, meet monthly to discuss the dispute. A dispute shall be deemed to be resolved when the Strategic Partnership Dialogue has taken a binding decision to settle the matter as provided in paragraph 3 of Article 409 of this Agreement, or when it has declared that the dispute is at an end.

5. All information disclosed during the resolution of the dispute shall remain confidential.

## **Article 411. Immediate Termination or Suspension of the Agreement**

1. A Party may with immediate effect terminate the Agreement or suspend its operation in whole or in part only on the following grounds:

(a) denunciation of the Agreement by the other Party which is not sanctioned by the general rules of international law; or

(b) violation by the other Party of the essential elements in Article 2 of this Agreement.

2. If a Party invokes a ground listed in paragraph 1 (a) or (b) of this Article, Articles 409(2) and (3) and 410 shall not apply.

## **Article 412. Relation to other Agreements**

1. Upon the entry into force of this Agreement, the Treaty on the Principles of Relations and Co-Operation between the United Kingdom of Great Britain and Northern Ireland and Ukraine, done at London on 10 February 1993 shall terminate with immediate effect, notwithstanding Article 22 of that Treaty.

2. The Parties may complement this Agreement by concluding specific agreements in any area falling within its scope. Such specific agreements shall be an integral part of the overall bilateral relations as governed by this Agreement and shall form part of a common institutional framework of the Parties.

## **Article 413. References to EU Law**

1. Except as otherwise provided, references in this Agreement to EU law are to be read as references to that EU law in force as incorporated or implemented in United Kingdom law as retained EU law on the day after the United Kingdom ceases to be bound by the relevant EU law.

2. In this Article "United Kingdom law" includes the law of the territories for whose international relations the United Kingdom is responsible to whom this Agreement extends, as set out in paragraph 1 of Article 416.

## **Article 414. Annexes and Protocols**

The Annexes and Protocols to this Agreement shall form an integral part thereof.

## **Article 415. Duration**

1. This Agreement is concluded for an unlimited period. The Parties shall provide for a comprehensive review of the achievement of objectives under this Agreement by mutual consent of the Parties.

2. Either Party may denounce this Agreement by written notification to the other Party. This Agreement shall terminate six months from the date of receipt of such notification by the other Party.

3. This Article shall not apply if the Agreement is terminated in accordance with Article 411.

## **Article 416. Territorial Application**

1. This Agreement shall apply, to the extent that and under the conditions which the EU-Ukraine Association Agreement applied immediately before it ceased to apply to the United Kingdom, on the one hand, to the United Kingdom and the following territories for whose international relations it is responsible:

(a) Gibraltar;

(b) the Channel Islands and the Isle of Man and, on the other hand, to the territory of Ukraine.

2. The application of this Agreement, or of Title IV (Trade and Trade-related Matters) thereof, in relation to the Autonomous Republic of Crimea, the city of Sevastopol and parts of the Donetsk and Luhansk Oblasts of Ukraine defined in the Laws of Ukraine of 15 April 2014 Nr. 1207-VII "On Ensuring the Rights and Freedoms of Citizens and Legal Regime on the Temporarily Occupied Territory of Ukraine" and of 18 January 2018 Nr. 2268-VIII "On the Peculiarities of State Policy on Ensuring the State Sovereignty of Ukraine over Temporarily Occupied Territories in Donetsk and Luhansk Oblasts", shall commence once Ukraine ensures the full implementation and enforcement of this Agreement, or of Title IV (Trade and Trade-related Matters) thereof, on its entire territory.

3. The Strategic Partnership Dialogue shall adopt a decision on when the full implementation and enforcement of this Agreement, or of Title IV (Trade and Trade-related Matters) thereof, on the entire territory of Ukraine, is ensured.

### **Article 417. Authentic Texts**

This Agreement is drawn up in the English and Ukrainian languages, both texts being equally authentic.

### **Article 418. Entry Into Force**

1. This Agreement shall be subject to ratification or approval in accordance with the laws of each Party. Each Party shall notify the other Party in writing of the completion of those procedures.

2. This Agreement shall enter into force on the later of:

(a) the date on which the EU-Ukraine Association Agreement ceases to apply to the United Kingdom, and

(b) the date of receipt of the later of the Parties' notifications that they have completed their internal procedures.

3. Notifications regarding completion of internal procedures under paragraph 1 of this Article shall be submitted by the United Kingdom to the Ministry of Foreign Affairs of Ukraine and by Ukraine to the United Kingdom's Foreign, Commonwealth and Development Office or its successor.

IN WITNESS WHEREOF the undersigned, being duly authorised, have signed this Agreement.

DONE at London, this eighth day of October, 2020, in two originals, in the English and Ukrainian languages, both texts being equally authentic.

For the United Kingdom of Great Britain and Northern Ireland:

BORIS JOHNSON

For Ukraine:

VOLODYMYR ZELENSKY

## **Annex XII. ANNEX XII to Chapter 6**

### **LIST OF RESERVATIONS ON ESTABLISHMENT; LIST OF COMMITMENTS ON CROSS-BORDER SUPPLY OF SERVICES; LIST OF RESERVATIONS ON CONTRACTUAL SERVICES SUPPLIERS AND INDEPENDENT PROFESSIONALS**

United Kingdom

1. Reservations in conformity with Article 84(2) (Establishment): Annex XII-A

2. List of commitments in conformity with Article 91(1) (Cross-Border Supply): Annex XII-B

3. Reservations in conformity with Articles 97 (Contractual services suppliers) and 98 (Independent Professionals): Annex XII-C

Ukraine

4. Reservations in conformity with Article 84(1) (Establishment) Annex XII-D;

5. List of commitments in conformity with Article 91(1) (Cross-Border Supply): Annex XII-E

6. Reservations in conformity with Articles 97 (Contractual services suppliers) and 98 (Independent Professionals): Annex XII-F

7. The following abbreviations are used for the purpose of Annexes XII-A, XII- B, XII-C:

UK United Kingdom

8. The following abbreviation is used for the purpose of Annexes XII-D, XII-E, XI-F:

UA Ukraine

## **Annex XII-A. ANNEX XII-A to Chapter 6**

### **UNITED KINGDOM RESERVATIONS ON ESTABLISHMENT**

(Referred to in Article 84(2))

1. The list below indicates the economic activities where reservations to national treatment or most favourable treatment by the United Kingdom pursuant to Article 84(2) apply to establishments and investors of Ukraine.

The list is composed of the following elements:

(a) A list of horizontal reservations applying to all sectors or sub-sectors.

(b) A list of sector or sub-sector-specific reservations indicating the sector or sub-sector concerned alongside the applicable reservation(s).

A reservation corresponding to an activity which is not liberalised (Unbound) is expressed as follows: "No national treatment and most favoured nation treatment obligations".

2. In accordance with Article 81(3) of the Agreement, the list below does not include measures concerning subsidies granted by the Parties.

3. The rights and obligations arising from the list below shall have no selfexecuting effect and thus confer no rights directly on natural or legal persons.

#### **Horizontal reservations**

##### *Most-Favoured Nation*

The United Kingdom reserves the right to adopt or maintain any measure which accords differential treatment to a country pursuant to any existing or future bilateral or multilateral agreement which:

a) creates an internal market in services and investment;

b) grants the right of establishment; or

c) requires the approximation of legislation in one or more economic sectors.

An internal market on services and establishment means an area without internal frontiers in which the free movement of services, capital and persons is ensured.

The right of establishment means an obligation to abolish in substance all barriers to establishment among the parties to the regional economic integration agreement by the entry into force of that agreement. The right of establishment shall include the right of nationals of the parties to the regional economic integration agreement to set up and operate enterprises under the same conditions provided for nationals under the law of the country where such establishment takes place.

The approximation of legislation means:

(a) the alignment of the legislation of one or more of the parties to the regional economic integration agreement with the legislation of the other party or parties to that agreement; or

(b) the incorporation of common legislation into the law of the parties to the regional economic integration agreement.

Such alignment or incorporation shall take place, and shall be deemed to have taken place, only at such time that it has been enacted in the law of the party or parties to the regional economic integration agreement.

#### *Public utilities*

Economic activities considered as public utilities at a national or local level may be subject to public monopolies or to exclusive rights granted to private operators.

#### Investment and types of establishment

Treatment accorded to subsidiaries (of Ukraine companies) formed in accordance with the law of the United Kingdom and having their registered office, central administration or principal place of business within the United Kingdom is not extended to branches or agencies established in the United Kingdom by a Ukraine company.

Incorporation in the United Kingdom is required for establishment in some services sectors. (1)

1 For the sake of clarity, incorporation is to be understood as the establishment of a juridical person.

### **Sectoral reservations**

#### *Fishing and Aquaculture*

Access to and use of the biological resources and fishing grounds situated in the maritime waters coming under the sovereignty or within the jurisdiction of the United Kingdom may be restricted to fishing vessels flying the flag of the United Kingdom unless otherwise provided for.

#### *Mining and quarrying*

No national treatment and most favourable treatment obligations with respect to juridical persons of Ukraine controlled (2) by natural or juridical persons of a country which accounts for more than 5% of the United Kingdom's oil or natural gas imports, unless the United Kingdom provides comprehensive access to this sector to natural or juridical persons of this country, in the context of an economic integration agreement concluded with that country.

(2) A juridical person is controlled by other natural or juridical person(s) if the latter has/have the power to name a majority of its directors or otherwise legally direct its actions. In particular, ownership of more than 50% of the equity interest in a juridical person shall be deemed to constitute control.

#### *Manufacturing*

##### Manufacture of refined petroleum products (3)

No national treatment and most favourable treatment obligations with respect to juridical persons of Ukraine controlled (4) by natural or juridical persons of a country which accounts for more than 5% of the United Kingdom's oil or natural gas imports, unless the United Kingdom provides comprehensive access to this sector to natural or juridical persons of this country, in the context of an economic integration agreement concluded with that country.

(3) The horizontal limitation on public utilities applies.

(4) A juridical person is controlled by other natural or juridical person(s) if the latter has/have the power to name a majority of its directors or otherwise legally direct its actions. In particular, ownership of more than 50% of the equity interest in a juridical person shall be deemed to constitute control.

Production, Transmission and distribution on own account of electricity, gas, steam and hot water (5) (excluding nuclear based electricity generation)

Production of electricity; transmission and distribution of electricity on own account

Manufacture of gas; distribution of gaseous fuels through mains on own account

No national treatment and most favoured nation obligations for production of electricity, transmission and distribution of

electricity on own account and manufacture of gas, distribution of gaseous fuels.

(5) The horizontal limitation on public utilities applies.

For production, transmission and distribution of steam and hot water

No national treatment and most favoured national obligations for juridical persons controlled (6) by natural or juridical persons of a country which accounts for more than 5% of the United Kingdom's oil, electricity or natural gas imports. Unbound for direct branching (incorporation is required).

(6) A juridical person is controlled by other natural or juridical person(s) if the latter has/have the power to name a majority of its directors or otherwise legally direct its actions. In particular, ownership of more than 50% of the equity interest in a juridical person shall be deemed to constitute control.

## **Business services**

### *Professional services*

No national treatment and most favourable treatment obligations with respect to the supply of legal advisory and legal authorisation, documentation, and certification services provided by legal professionals entrusted with public functions, such as notaries, and with respect to services provided by bailiffs. (7)

(7) Provision of legal services is only authorised in respect of public international law, and the law of any jurisdiction where the investor or its personnel is qualified to practise as a lawyer, and, like the provision of other services, is subject to licensing requirements and procedures applicable in the relevant jurisdiction of the United Kingdom. For lawyers providing legal services in respect of public international law and foreign law, these licensing requirements and procedures may take, inter alia, the form of compliance with local codes of ethics, use of home title (unless recognition with a United Kingdom title has been obtained) insurance requirements, simple registration with the United Kingdom regulator or a simplified admission to practise in the United Kingdom through an aptitude test and a legal or professional domicile in the United Kingdom. Legal services in respect of the law of the United Kingdom or the relevant jurisdiction shall in principle be carried out by or through a fully qualified lawyer admitted to practise in that jurisdiction and acting personally. Full admission to practise in the relevant jurisdiction of the United Kingdom might therefore be necessary for representation before courts and other competent authorities in the United Kingdom since it involves practise of national procedural law.

### *Research and Development services*

For publicly funded Research and Development services, exclusive rights and/or authorisations can only be granted to the United Kingdom nationals and to the United Kingdom juridical persons having their headquarters in the United Kingdom.

### *Rental/Leasing without Operators*

With respect to rental and leasing relating to aircraft, although waivers can be granted for short-term lease contracts, aircraft must be owned either by natural persons meeting specific nationality criteria or by juridical persons meeting specific criteria regarding ownership of capital and control (including nationality of directors).

### *Other business services*

No national treatment and most favoured nation treatment obligations with respect to the supply of placement services of domestic help personnel, other commercial or industrial workers, nursing, and other personnel.

### *Communication services*

#### Telecommunication services

No national treatment and most favoured nation treatment with respect to broadcast transmission services. Broadcasting is defined as the uninterrupted chain of transmission required for the distribution of TV and radio programme signals to the general public, but does not cover contribution links between operators.

### *Distribution services*

No national treatment and most favourable nation treatment obligations with respect to distribution of arms, munitions and explosives.

### *Environmental services*

Collection, purification and distribution of water

No national treatment and most favoured nation treatment obligations with respect to activities, including services relating to the collection, purification and distribution of water to household, industrial, commercial or other users, including the supply of drinking water, and water management.

### *Financial services (8)*

Only firms having their registered office in the United Kingdom can act as depositories of the assets of investment funds. The establishment of a specialised management company, having its head office and registered office in the United Kingdom, is required to perform the activities of management of unit trusts and investment companies.

(8) The horizontal limitation on the difference in treatment between branches and subsidiaries applies. Foreign branches may only receive an authorisation to operate in the territory of the United Kingdom under the conditions provided for in the relevant legislation of the United Kingdom and may therefore be required to satisfy a number of specific prudential requirements.

### *Health, Social and Education services*

No national treatment and most favourable nation treatment obligations with respect to publicly-funded health, social and education services.

With respect to privately-funded education services, nationality conditions may apply for majority of members of the Board.

No national treatment and most favoured nation treatment obligations with respect to the provision of privately-funded other education services, which means other than those classified as being primary, secondary, higher and adult education services.

No national treatment and most favoured nation treatment obligations with respect to all privately-funded health services, other than privately funded hospital, ambulance, and residential health facilities services other than hospital services

No national treatment and most favoured nation treatment obligations with respect to the provision of privately-funded ambulance services or privately-funded residential health services other than hospital services.

No national treatment and most favoured nation treatment obligations with respect to the provision of privately-funded social services other than services relating to Convalescent and Rest Houses and Old People's Homes.

### *Recreational, cultural and sporting services*

Libraries, archives, museum and other cultural services

No national treatment and most favoured nation treatment with respect to libraries, archives, museum and other cultural services.

Sporting and other recreational services

No national treatment and most favourable nation treatment obligations with respect to gambling and betting services. For legal certainty, it is clarified that no market access is granted.

### *Transport services*

Maritime transport

No national treatment and most favourable nation treatment obligations with respect to national maritime cabotage transport.

No national treatment and most favourable treatment obligations for the establishment of a registered company for the purpose of operating a fleet under the national flag of the United Kingdom.

Internal Waterways Transport (9)

No national treatment and most favourable nation treatment obligations with respect to national cabotage transport. Measures based upon existing or future agreements on access to inland waterways reserve some traffic rights for operators based in the countries concerned and meeting nationality criteria regarding ownership.

(9) Including Services auxiliary to internal waterways transport.

#### Air transport services

No national treatment and most favourable nation treatment obligations for domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than aircraft repair and maintenance services, the selling and marketing of air transport services, CRS services and other services auxiliary to air transport services, such as ground handling services, rental services of aircraft with crew and airport operations services. The conditions of mutual market access in air transport shall be dealt with by the Agreement between the Government of Ukraine and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Air Services as amended from time to time.

No national treatment and most favoured nation treatment obligations with respect to the following auxiliary air transport services:

(a) the selling and marketing of air transport services;

(b) CRS services; and

(c) other services auxiliary to air transport, such as ground-handling services and airport operation services,

where treatment is pursuant to existing or future bilateral agreements relating to such services.

No national treatment and most favoured nation treatment obligations for maintenance and repair of aircrafts and parts, where treatment is pursuant to existing or future trade agreements pursuant to Article V of GATS.

#### Rental of aircraft with crew

Aircraft used by an air carrier of the United Kingdom have to be registered in the United Kingdom. With respect to rental of aircraft with crew, aircraft must be owned either by natural persons meeting specific nationality criteria or by juridical persons meeting specific criteria regarding ownership of capital and control. Aircraft must be operated by air carriers owned either by natural persons meeting specific nationality criteria or by juridical persons meeting specific criteria regarding ownership of capital and control.

#### Computer Reservations System

With respect to computer reservation services, where air carriers of the United Kingdom are not accorded equivalent treatment (10) to that provided in the United Kingdom by CRS services suppliers outside the United Kingdom, or where CRS services suppliers of the United Kingdom are not accorded equivalent treatment to that provided in the United Kingdom by non-UK air carriers, measures may be taken to accord equivalent treatment, respectively, to the non-UK air carriers by the CRS services suppliers in the United Kingdom, or to the non-UK CRS services suppliers by the air carriers in the United Kingdom.

(10) Equivalent treatment implies non-discriminatory treatment of the United Kingdom air carriers and the United Kingdom CRS services suppliers.

#### Road transport

With respect to passenger transportation (CPC 7121 and CPC 7122), foreign investors cannot provide transport services within the United Kingdom (cabotage) except for rental of non-scheduled services of buses with operators.

#### Space transport and rental of space craft

No national treatment and most favoured nation treatment with respect to the transportation services via space and the rental of space craft.

#### Energy sector

No national treatment and most favourable treatment obligations with respect to juridical persons of Ukraine controlled (11) by natural or juridical persons of a country which accounts for more than 5% of the United Kingdom's oil or natural gas imports, unless the United Kingdom provides comprehensive access to this sector to natural or juridical persons of this country, in the context of an economic integration agreement concluded with that country.



Certification of a transmission system operator which is controlled by a natural or legal person or persons from a third country or third countries may be refused where the operator has not demonstrated that granting certification will not put at risk the security of energy supply in the United Kingdom, in accordance with Article 11 of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity, and with Article 11 of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas.

(11) A juridical person is controlled by other natural or juridical person(s) if the latter has/have the power to name a majority of its directors or otherwise legally direct its actions. In particular, ownership of more than 50% of the equity interest in a juridical person shall be deemed to constitute control.

## **Annex XII-D. ANNEX XII-D to Chapter 6**

### **UKRAINE RESERVATIONS TO ESTABLISHMENT**

(Referred to in Article 84(1))

#### Land ownership

Foreign citizens and persons without citizenship have no right to acquisition of property of agricultural lands. Foreign citizens and persons without citizenship do not have a right to acquire free of charge the land plots, which belong to the State and Municipal property, or to privatize the land plots, previously given to them into use.

Foreign legal persons may acquire property rights only for land plots of nonagricultural destination on the territory of populated localities in case of acquisition of the real estate objects related with business activity carried out in Ukraine, and outside the inhabited localities - in case of acquisition of real estate objects.

There are no restrictions on the rent of land by foreigners and foreign legal entities.

The acquisition, purchase as well as rent or lease of real estate by foreign natural persons and juridical persons may require an authorization.

#### Forestry

Forests can be owned only by Ukrainian citizens and legal entities.

#### The acquisition of state-owned properties

Enterprises and governmental agencies in which state ownership exceeds 25% are not authorized to participate in the privatization of Ukrainian enterprises.

#### Prospecting, exploring for and producing hydrocarbons

Establishment shall be in line with Article 265 (Access to and exercise of the activities of prospecting, exploring for and producing hydrocarbons) in Chapter 11 (Trade-related Energy) of Title IV of this Agreement.

#### Professional services

Legal advisory and legal documentations and certification services provided by legal professionals entrusted with public functions such as notaries, private executors, state registrars, and arbitration managers.

#### Notary services

Only citizens of Ukraine are permitted to supply notary services.

#### Medical and dental services

Professional qualification requirements according with Ukrainian legislation.

Foreign service suppliers must speak Ukrainian.

Private Services provided by Midwives, Nurses, Physiotherapists and Paramedical Personnel

Professional qualification requirements according with Ukrainian legislation.

Foreigner service suppliers must speak Ukrainian.

Postal and Courier Services (including express delivery services)

No national treatment for ordinary letters weighing less than 50 grams and postcards.

Licensing may be required for:

(i) Handling of addressed written communication on any kind of physical medium (48), including:

– Hybrid mail service

– Direct mail

(ii) Handling of addressed parcels and packages (49)

(iii) Handling of addressed press products (50)

(iv) Handling of items referred to in (i) to (iii) above as registered or insured mail,

– for which a general Universal Service Obligations exists.

These licenses may be subject to particular universal service obligations and/or financial contribution to a compensation fund.

(48) E.g. letter, postcards.

(49) Books and catalogues are included in this subsector.

(50) Magazines, newspapers and periodicals.

## Educational Services

Primary education services, Secondary education services, Higher education services

In line with Ukrainian legislation, only a citizen of Ukraine may be the head of an educational institution, notwithstanding the type of ownership.

## Financial services

Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues may be conducted only by legal persons engaged exclusively in issuance of securities, and banks.

## Health Related And Social Services

Professional qualification requirements according with Ukrainian legislation for hospital services, including Hospital Management Services and other human health services.

## Recreational, Cultural And Sporting Services

No national treatment and most favourable nation treatment obligations for access to subsidies to cinema theatre operation services.

Foreign investment for news agency services providers is limited to 35%.

## Internal Waterways Transport (51)

No national treatment and most favourable nation treatment obligations with respect to national cabotage transport. Measures based upon existing or future agreements on access to inland waterways reserve some traffic rights for operators based in the countries concerned and meeting nationality criteria regarding ownership.

(51) Including Services auxiliary to internal waterways transport.

## Air Transport Services

No national treatment and most favourable nation treatment obligations for domestic and international air transport services and services, whether scheduled or nonscheduled, and services directly related to the exercise of traffic rights, other than aircraft repair and maintenance services, the selling and marketing of air transport services, CRS services and other services auxiliary to air transport services, such as ground handling services, rental services of aircraft with crew and airport operations services. The conditions of mutual market access in air transport shall be dealt with by the Agreement between the Government of Ukraine and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Air Services as amended from time to time.

## Rail Transport Services

No national treatment and most favourable nation treatment obligations for passenger and freight transportation, other than treatment established under Article 129 of Chapter 6 (Establishment, Trade in Services and Electronic Commerce) of Title IV of this Agreement.

## Road Transport Services

Passenger transportation and freight transportation entities shall be registered as a legal entity.

# **Annex XIX. ANNEX XIX to Chapter 14**

## **RULES OF PROCEDURE FOR DISPUTE SETTLEMENT**

### GENERAL PROVISIONS

1. In Chapter 14 (Dispute Settlement) of Title IV of this Agreement and under these rules:

"adviser" means a person retained by a Party to advise or assist that Party in connection with the arbitration panel proceeding;

"arbitration panel" means a panel established under Article 293 of this Agreement;

"arbitrator" means a member of an arbitration panel established under Article 293 of this Agreement;

"assistant" means a person who, under the terms of appointment of an arbitrator conducts research or provides assistance to the arbitrator;

"complaining Party" means any Party that requests the establishment of an arbitration panel under Article 292 of this Agreement;

"expert" means an individual who provides specialist information, opinion or advice;

"staff", in respect of an arbitrator or mediator, means persons under the direction and control of the arbitrator or mediator, other than assistants;

"Party complained against" means the Party that is alleged to have acted inconsistently with this Agreement;

"representative of a Party" means an employee or any person appointed by a government department or agency or any other public entity of a Party, who represents the Party for the purposes of a dispute under this Agreement;

"day" means a calendar day.

2. The Party complained against shall be in charge of the logistical administration of dispute settlement proceedings, in particular the organisation of hearings, unless otherwise agreed. However, both Parties shall share the expenses derived from organisational matters, including the remuneration and expenses of the arbitrators and any general expenses customarily incurred by the routine functioning of the arbitration panel.

### NOTIFICATIONS

3. The Parties and the arbitration panel shall transmit any request, notice, written submission or other document by delivery against receipt, registered post, courier, facsimile transmission, telex, telegram or any other means of telecommunication that provides a record of the sending thereof.

4. A Party shall provide a copy of each of its written submissions to the other Party and to each of the arbitrators. A copy of

the document shall also be provided in electronic format.

5. All notifications, including requests for consultations, shall be addressed to the Ministry of Economic Development and Trade of Ukraine, Ministry of Foreign Affairs of Ukraine, the Department for International Trade of United Kingdom and the successors of the aforementioned departments, respectively.

6. Minor errors of a clerical nature in any request, notice, written submission or other document related to the arbitration panel proceeding may be corrected by delivery of a new document clearly indicating the changes.

7. If the last day for delivery of a document falls on a legal holiday of Ukraine or of the institutions of the United Kingdom, the document may be delivered on the next business day.

#### COMMENCING THE ARBITRATION

8. Unless the Parties agree otherwise, they shall meet the arbitration panel within seven days of its establishment in order to determine such matters that the Parties or the arbitration panel deem appropriate, including the remuneration and expenses to be paid to the arbitrators, which will be in accordance with WTO standards.

#### INITIAL SUBMISSIONS

9. The complaining Party shall deliver its initial written submission no later than 20 days after the date of establishment of the arbitration panel. The Party complained against shall deliver its written counter-submission no later than 20 days after the date of delivery of the initial written submission.

#### WORKING OF ARBITRATION PANELS

10. The chairperson of the arbitration panel shall preside at all its meetings. An arbitration panel may delegate to the chairperson authority to make administrative and procedural decisions.

11. Unless otherwise provided in this Agreement and without prejudice to paragraph 24, the arbitration panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.

12. Only arbitrators may take part in the panel deliberations of the arbitration panel, but the arbitration panel may permit its assistants, administrative staff, interpreters, translators and court reporters to be present at its deliberations.

13. The drafting of any ruling shall remain the exclusive responsibility of the arbitration panel and shall not be delegated.

14. Where a procedural question arises which is not covered by the provisions of this Agreement and its annexes, an arbitration panel may adopt any appropriate procedure provided that the procedure ensures equal treatment between the Parties and is compatible with the provisions of this Agreement and its annexes.

15. When the arbitration panel considers that there is a need to modify any time limit applicable in the proceedings or to make any other procedural or administrative adjustment, it shall inform the Parties in writing of the reasons for the change or adjustment and of the period or adjustment needed. The time limits of Article 296(2) of this Agreement shall not be modified without the agreement of the Parties.

#### REPLACEMENT

16. If an arbitrator is unable to participate in the proceeding, withdraws, or must be replaced, a replacement shall be selected in accordance with Article 293(3) and (4) of this Agreement.

17. Where a Party considers that an arbitrator does not comply with the requirements of the Code of Conduct and for this reason should be replaced, this Party should notify the other Party within 15 days from the time at which it came to know of the circumstances underlying the arbitrator's violation of the Code of Conduct.

18. a) Where a Party considers that an arbitrator other than the chairperson does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if they so agree, replace the arbitrator by selecting a replacement following the procedure set out in Article 293(3) and (4) of this Agreement.

b) If the Parties fail to agree on the need to replace an arbitrator, any Party may request that such matter be referred to the chairperson of the arbitration panel, whose decision shall be final.

c) If, pursuant to such a request, the chairperson finds that an arbitrator does not comply with the requirements of the Code of Conduct, she or he shall select a new arbitrator by lot among the pool of individuals referred to under Article 308(1) of this Agreement of which the original arbitrator was a Member. If the original arbitrator was chosen by the Parties pursuant to Article 293(2) of this Agreement, the replacement shall be selected by lot among the pools of individuals that have been

proposed by the complaining Party and by the Party complained against under Article 398 of this Agreement. The selection of the new arbitrator shall be done in the presence of the Parties and within five days of the date of the submission of the request to the chairperson of the arbitration panel.

19. a) Where a Party considers that the chairperson of the arbitration panel does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if they so agree, replace the chairperson by selecting a replacement following the procedure set out in Article 293(3) and (4) of this Agreement.

b) If the Parties fail to agree on the need to replace the chairperson, any Party may request that such matter be referred to one of the remaining members of the pool of individuals selected to act as chairpersons under Article 308(1) of this Agreement. Her or his name shall be drawn by lot, in the presence of the Parties, by the chair of the Trade Committee, or the chair's delegate. The decision by this person on the need to replace the chairperson shall be final.

c) If this person decides that the original chairperson does not comply with the requirements of the Code of Conduct, she or he shall select a new chairperson by lot among the remaining pool of individuals referred to under Article 308(1) of this Agreement who may act as chairpersons. This selection of the new chairperson shall be done in the presence of the Parties and within five days of the date of the submission of the request referred to in this paragraph.

20. The arbitration panel proceedings shall be suspended for the period taken to carry out the procedures provided for in paragraphs 16, 17, 18 and 19.

#### HEARINGS

21. The chairperson shall fix the date and time of the hearing in consultation with the Parties and the other members of the arbitration panel, and confirm this in writing to the Parties. This information shall also be made publicly available by the Party in charge of the logistical administration of the proceedings unless the hearing is closed to the public. Unless the Parties disagree, the arbitration panel may decide not to convene a hearing.

22. Unless the Parties agree otherwise, the hearing shall be held in London if the complaining Party is Ukraine and in Kyiv if the complaining Party is the United Kingdom.

23. The arbitration panel may convene additional hearings if the Parties so agree.

24. All arbitrators shall be present during the entirety of any hearing.

25. The following persons may attend the hearing, irrespective of whether the hearing is closed to the public or not:

(a) representatives of the Parties;

(b) advisers to the Parties;

(c) administrative staff, interpreters, translators and court reporters; and

(d) arbitrators' assistants.

Only the representatives and advisers of the Parties may address the arbitration panel.

26. No later than five days before the date of a hearing, each Party shall deliver to the arbitration panel a list of the names of persons who will make oral arguments at the hearing on behalf of that Party and of other representatives or advisers who will be attending the hearing.

27. The hearings of the arbitration panels shall be open to the public, unless the Parties decide that the hearings shall be partially or completely closed to the public. However, the arbitration panel shall meet in closed session when the submission and arguments of a Party contain confidential information.

28. The arbitration panel shall conduct the hearing in the following manner, ensuring that the complaining Party and the Party complained against are afforded equal time:

#### Argument

(a) argument of the complaining Party

(b) argument of the Party complained against

#### Rebuttal Argument

(a) argument of the complaining Party

(b) counter-reply of the Party complained against

29. The arbitration panel may direct questions to either Party at any time during the hearing.

30. The arbitration panel shall arrange for a transcript of each hearing to be prepared and delivered as soon as possible to the Parties. The costs of making the record and the cost of transcription and copying shall be borne equally by the Parties.

31. Each Party may deliver a supplementary written submission concerning any matter that arose during the hearing within 10 days of the date of the hearing.

#### QUESTIONS IN WRITING

32. The arbitration panel may at any time during the proceedings address questions in writing to one or both Parties. Each of the Parties shall receive a copy of any questions put by the arbitration panel.

33. A Party shall provide a copy of its written response to the arbitration panel's questions to the other Party. Each Party shall be given the opportunity to provide written comments on the other Party's reply within five days of the date of delivery.

#### CONFIDENTIALITY

34. The Parties and their advisers shall maintain the confidentiality of the arbitration panel hearings where the hearings are held in closed session, in accordance with paragraph 27. Each Party and its advisers shall treat as confidential any information submitted by a Party ("the submitting party") to the arbitration panel or to the other Party which the submitting Party has designated as confidential. Where a Party submits a confidential version of its written submissions to the arbitration panel, it shall also, upon request of the other Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public no later than 15 days after the date of either the request or the submission, whichever is later. Nothing in these rules shall preclude a Party from disclosing statements of its own positions to the public to the extent that they do not contain confidential information.

#### EX PARTE CONTACTS

35. The arbitration panel shall not meet or contact a Party in the absence of the other Party.

36. No member of the arbitration panel may discuss any aspect of the subject matter of the proceedings with one Party or both Parties in the absence of the other arbitrators.

#### AMICUS CURIAE SUBMISSIONS

37. Unless the Parties agree otherwise within three days of the date of the establishment of the arbitration panel, the arbitration panel may receive unsolicited written submissions from interested natural or legal persons established in the territories of the Parties, provided that they are made within 30 days of the date of the establishment of the arbitration panel, that they are concise, including any annexes, and that they are directly relevant to the factual and legal issues under consideration by the arbitration panel. The arbitration panel may decide to impose a page limit on such submissions.

38. The submission shall contain a description of the person making the submission, whether natural or legal, including its place of establishment, the nature of its activities and the source of its financing, and specify the nature of the interest that the person has in the arbitration proceeding.

39. The arbitration panel shall list in its ruling all the submissions it has received that conform to the above rules. The arbitration panel shall not be obliged to address in its ruling the factual or legal arguments made in such submissions. Any submission obtained by the arbitration panel under this rule shall be submitted to the Parties for their comments.

#### URGENT CASES

40. In cases of urgency referred to in Article 296(2) of this Agreement, the arbitration panel shall adjust the time limits referred to in these rules as appropriate.

#### TRANSLATION AND INTERPRETATION

41. During the consultations referred to in Article 291 of this Agreement, and no later than the meeting referred to in paragraph 8 of these Rules of Procedure, the Parties shall endeavour to agree on a common working language for the proceedings before the arbitration panel.

42. If the Parties are unable to agree on a common working language, each Party shall expeditiously arrange for and bear the costs of the translation of its written submissions into the language chosen by the other Party and the Party complained against shall arrange for the interpretation of oral submissions into the languages chosen by the Parties.

43. Arbitration panel rulings shall be notified in the language or languages chosen by the Parties.

44. The costs incurred for translation of an arbitration ruling shall be borne equally by the Parties.

45. Any Party may provide comments on any translated version of a document drawn up in accordance with these rules.

#### CALCULATION OF TIME-LIMITS

46. Where, by reason of the application of paragraph 7 of these Rules of Procedure, a Party receives a document on a date other than the date on which this document is received by the other Party, any period of time that is calculated on the basis of the date of receipt of that document shall be calculated from the latter date of receipt of that document.

#### OTHER PROCEDURES

47. These Rules of Procedure are also applicable to procedures established under Article 298(2), Article 299(2), Article 301(3) and Article 302(2) of this Agreement. However, the time limits laid down in these Rules of Procedure shall be adjusted in line with the special time limits provided for the adoption of a ruling by the arbitration panel in those other procedures.

#### EXPENSES

Each arbitrator shall keep a record and render a final account of the time devoted to the procedure and of his/her expenses, as well as the time and expenses of his/her assistants and staff.

## **Annex XX. ANNEX XX to Chapter 15**

### **CODE OF CONDUCT FOR MEMBERS OF ARBITRATION PANELS AND MEDIATORS**

Definitions 1. In this Code of Conduct:

- (a) "arbitrator" means a member of an arbitration panel established under Article 293 of this Agreement;
- (b) "mediator" means a person who conducts a mediation procedure in accordance with Chapter 15 (Mediation Mechanism) of Title IV;
- (c) "candidate" means an individual whose name is on the list of arbitrators referred to in Article 308 of this Agreement and who is under consideration for selection as a member of an arbitration panel under Article 293 of this Agreement;
- (d) "assistant" means a person who, under the terms of appointment of an arbitrator or mediator, conducts research or provides assistance to the arbitrator or mediator;
- (e) "proceeding", unless otherwise specified, means an arbitration panel or mediation proceeding under this Agreement;
- (f) "staff", in respect of an arbitrator or mediator, means persons under the direction and control of the arbitrator or mediator, other than assistants.

#### Responsibilities to the process

2. Every candidate and arbitrator or mediator shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement mechanism is preserved. Former candidates, arbitrators or mediators must comply with the obligations established in paragraphs 15, 16, 17 and 18 of this Code of Conduct.

#### Disclosure obligations

3. Prior to confirmation of her or his selection as an arbitrator or as a mediator under this Agreement, a candidate shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

4. A candidate, arbitrator or mediator shall communicate matters concerning actual or potential violations of this Code of Conduct only to the Trade Committee for consideration by the Parties.

5. Once selected, an arbitrator or mediator shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in paragraph 3 of this Code of Conduct and shall disclose them. The disclosure obligation is a continuing duty which requires an arbitrator or mediator to disclose any such interests, relationships or matters that may arise during any stage of the proceeding. The member shall disclose such interests, relationships or matters by informing the Trade Committee, in writing, for consideration by the Parties.

#### Duties of arbitrators or mediators

6. Upon selection an arbitrator or mediator shall perform her or his duties thoroughly and expeditiously throughout the course of the proceeding, and with fairness and diligence.

7. An arbitrator or mediator shall consider only those issues raised in the proceeding and necessary for a ruling and shall not delegate this duty to any other person.

8. An arbitrator or mediator shall take all appropriate steps to ensure that his or her assistants and staff are aware of, and comply with, paragraphs 2, 3, 4, 5, 16, 17 and 18 of this Code of Conduct.

9. Without prejudice to Article 315 of this Agreement, an arbitrator or mediator shall not engage in ex parte contacts concerning the proceeding.

#### Independence and impartiality of arbitrators or mediators

10. An arbitrator or mediator must be independent and impartial and avoid creating an appearance of impropriety or bias and shall not be influenced by self-interest, outside pressure, political considerations, public clamour, and loyalty to a Party or fear of criticism.

11. An arbitrator or mediator shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of her or his duties.

12. An arbitrator or mediator may not use her or his position on the arbitration panel to advance any personal or private interests and shall avoid actions that may create the impression that others are in a special position to influence her or him.

13. An arbitrator or mediator may not allow financial, business, professional, family or social relationships or responsibilities to influence her or his conduct or judgement.

14. An arbitrator or mediator must avoid entering into any relationship or acquiring any financial interest that is likely to affect her or his impartiality or that might reasonably create an appearance of impropriety or bias.

#### Obligations of former arbitrators or mediators

15. All former arbitrators or mediators must avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from any decision or ruling of the arbitration panel or from an advisory opinion.

#### Confidentiality

16. No arbitrator or mediator or former arbitrator or mediator shall at any time disclose or use any non-public information concerning a proceeding or acquired during a proceeding except for the purposes of that proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to adversely affect the interest of others.

17. An arbitrator shall not disclose an arbitration panel ruling or parts thereof prior to its publication in accordance with this Agreement.

18. An arbitrator or former arbitrator shall not at any time disclose the deliberations of an arbitration panel, or any arbitrator's views.