INTERIM AGREEMENT on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and Turkmenistan of the other part

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

of the one part, and TURKMENISTAN, of the other part,

WHEREAS a Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part and Turkmenistan of the other part was initialled on 24 May 1997;

WHEREAS the aim of the Partnership and Cooperation Agreement is to strengthen and widen the relations established previously, notably by the Agreement between the European Economic Community and the European Atomic Energy Community and the Union of Soviet Socialist Republics on Trade and Commercial and Economic Cooperation signed on 18 December 1989;

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

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

WHEREAS the said provisions should, accordingly, replace the relevant provisions of the Agreement on Trade and Commercial and Economic Cooperation;

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

HAVE DECIDED to conclude this Agreement and to this end have designated as their plenipotentiaries: THE EUROPEAN COMMUNITY:

THE EUROPEAN COAL AND STEEL COMMUNITY:

THE EUROPEAN ATOMIC ENERGY COMMUNITY:

TURKMENISTAN:

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

HAVE AGREED AS FOLLOWS:

Title I. GENERAL PRINCIPLES (PCA Turkmenistan: Title I)

Article 1. (PCA Turkmenistan: Article 2)

Respect for democracy and fundamental and human rights, as defined in the Universal Declaration of Human Rights, the United Nations Charter, the Helsinki Final Act and the Charter of Paris for a New Europe, as well as the principles of market economy, including those enunciated in the documents of the CSCE Bonn Conference, underpin the internal and external policies of the Parties and constitute an essential element of this Agreement.

Title II. TRADE IN GOODS (PCA Turkmenistan: Title III)

Article 2. (PCA Turkmenistan: Article 7)

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

- customs duties and charges applied to imports and exports, including the method of collecting such duties and charges,

- provisions relating to customs clearance, transit, warehouses and transhipment,

- taxes and other internal charges of any kind applied directly or indirectly to imported goods,

- methods of payment and the transfer of such payments related to trade in goods,

- the rules relating to the sale, purchase, transport, distribution and use of goods on the domestic market.

2. The provisions of paragraph 1 shall not apply to:

(a) advantages granted with the aim of creating a customs union or a free-trade area or pursuant to the creation of such a union or area;

(b) advantages granted to particular countries in accordance with World Trade Organisation (WTO) rules and with other international arrangements in favour of developing countries;

(c) advantages accorded to adjacent countries in order to facilitate frontier traffic.

3. The provisions of paragraph 1 shall not apply, during a transitional period expiring on 31 December 1998, to advantages defined in Annex I granted by Turkmenistan to other states which have emerged from the dissolution of the USSR.

Article 3. (PCA Turkmenistan: Article 8)

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

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

2. The rules described in Article V, paragraphs 2, 3, 4 and 5 of the GATT are applicable between the Parties.

3. The rules contained in this Article are without prejudice to any special rules relating to specific sectors, in particular such as transport, or products agreed between the Parties.

Article 4. (PCA Turkmenistan: Article 9)

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

Article 5. (PCA Turkmenistan: Article 10)

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

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

Article 6. (PCA Turkmenistan: Article 11)

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

Article 7. (PCA Turkmenistan: Article 12)

1. Where any product is being imported into the territory of one of the Parties in such increased quantities or under such

conditions as to cause or threaten to cause injury to domestic producers of like or direct competitive products, the Community or Turkmenistan, whichever is concerned, may take appropriate measures in accordance with the following procedures and conditions.

2. Before taking any measures, or in cases to which paragraph 4 applies, as soon as possible thereafter, the Community or Turkmenistan as the case may be shall supply the Joint Committee with all relevant information with a view to seeking a solution acceptable to both Parties as provided for in Title IV.

3. If, as a result of the consultations, the Parties do not reach agreement within 30 days of referral to the Joint Committee on actions to avoid the situation, the Party which requested con- sultations shall be free to restrict imports of the products concerned to the extent and for such time as is necessary to prevent or remedy the injury, or to adopt other appropriate measures.

4. In critical circumstances where delay would cause damage difficult to repair, the Parties may take the measures before the consultations, on the condition that consultations shall be offered immediately after taking such action.

5. In the selection of measures under this Article, the Parties shall give priority to those which cause least disturbance to the achievement of the aims of this Agreement.

6. Nothing in this Article shall prejudice or affect in any way the taking, by either Party, of anti-dumping or countervailing measures in accordance with Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the GATT 1994, the Agreement on Subsidies and Countervailing Measures or related internal legislation.

Article 8. (PCA Turkmenistan: Article 13)

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

Article 9. (PCA Turkmenistan: Article 14)

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

Article 10. (PCA Turkmenistan: Article 15)

This Title shall not apply to trade in textile products falling under Chapters 50 to 63 of the Combined Nomenclature. Trade in these products shall be governed by a separate agreement, initialled on 30 December 1995 and applied provi- sionally since 1 January 1996.

Article 11. (PCA Turkmenistan: Article 16)

1. Trade in products covered by the Treaty establishing the European Coal and Steel Community shall be governed by the provisions of this Title, with the exception of Article 5.

2. A contact group on coal and steel matters shall be set up, comprising representatives of the Community on the one hand, and representatives of the Turkmenistan on the other.

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

Article 12. PCA Turkmenistan: Article 17)

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

Title III. PAYMENTS, COMPETITION AND OTHER ECONOMIC PROVISIONS (PCA

Turkmenistan: Title IV)

Article 13. (PCA Turkmenistan: Article 39(1))

The Parties undertake to authorise, in freely convertible currency, any current payments between residents of the Community and of Turkmenistan connected with the movement of goods, made in accordance with the provisions of this Agreement.

Article 14. PCA Turkmenistan: Article 41(4))

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

Article 15. PCA Turkmenistan: Article 40(1))

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

Article 16.

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

Title IV. TITLE IV INSTITUTIONAL, GENERAL AND FINAL PROVISIONS (PCA Turkmenistan: Title XI)

Article 17.

The Joint Committee set up by the Agreement between the European Economic Community and the European Atomic Energy Community and the Union of Soviet Socialist Republics on Trade and Commercial and Economic Cooperation signed on 18 December 1989 shall perform the duties assigned to it by this Agreement until the Cooperation Council provided for in Article 77 of the Partnership and Cooperation Agreement is established.

Article 18.

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

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

Article 19. (PCA Turkmenistan: Article 81)

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

Article 20. (PCA Turkmenistan: Article 85)

1. Within the scope of this Agreement, each Party undertakes to ensure that natural and legal persons of the other Party have access free of discrimination in relation to its own nationals to the competent courts and administrative organs of the Parties to defend their individual rights and their property rights, including those concerning intellectual, industrial and commercial property.

2. Within the limits of their respective powers, the Parties:

- shall encourage the adoption of arbitration for the settlement of disputes arising out of commercial and co-operation transactions concluded by economic operators of the Community and those of Turkmenistan,

- agree that where a dispute is submitted to arbitration, each party to the dispute may, except where the rules of the arbitration centre chosen by the parties provide otherwise, choose its own arbitrator, irrespective of his nationality, and that the presiding third arbitrator or the sole arbitrator may be a citizen of a third State,

- will recommend their economic operators to choose by mutual consent the law applicable to their contracts,

- shall encourage recourse to the arbitration rules elaborated by the United Nations Commission on International Trade Law (Uncitral) and to arbitration by any centre of a state signatory to the Convention on Recognition and Enforcement of Foreign Arbitral Awards done at New York on 10 June 1958.

Article 21. (PCA Turkmenistan: Article 86)

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

(a) which it considers necessary to prevent the disclosure of information contrary to its essential security interests;

(b) which relate to the production of, or trade in arms, munitions or war materials or to research, development or production indispensable for defence purposes, provided that such measures do not impair the conditions of competition in respect of products not intended for specifically military purposes;

(c) which it considers essential to its own security in the event of serious internal disturbances affecting the maintenance of law and order, in time of war or serious international tension constituting threat of war or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security;

(d) which it considers necessary to respect its international obli- gations and commitments in the control of dual use industrial goods and technology.

Article 22. (PCA Turkmenistan: Article 87)

1. In the fields covered by this Agreement and without prejudice to any special provisions contained therein:

- the arrangements applied by Turkmenistan in respect of the Community shall not give rise to any discrimination between the Member States, their nationals or their companies or firms,

- the arrangements applied by the Community in respect of Turkmenistan shall not give rise to any discrimination between Turkmen nationals, or Turkmen companies or firms.

2. The provisions of paragraph 1 are without prejudice to the right of the Parties to apply the relevant provisions of their fiscal legislation to tax payers who are not in identical situations as regards their place of residence.

Article 23. (PCA Turkmenistan: Article 88)

1. Each Party may refer to the Joint Committee any dispute relating to the application or interpretation of this Agreement.

2. The Joint Committee may settle the dispute by means of a recommendation.

3. In the event of it not being possible to settle the dispute in accordance with paragraph 2, either Party may notify the other of the appointment of a conciliator; the other Party must then appoint a second conciliator within 2 months.

The Joint Committee shall appoint a third conciliator.

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

Article 24. (PCA Turkmenistan: Article 89)

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

The provisions of this Article shall in no way affect and are without prejudice to Articles 7, 23 and 28.

Article 25. (PCA Turkmenistan: Article 90)

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

Article 26. (PCA Turkmenistan: Article 92)

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

Article 27.

1. This Agreement shall be applicable until the entry into force of the Partnership and Cooperation Agreement initialled on 24 May 1997.

2. Either Party may denounce this Agreement by notifying the other Party. This Agreement shall cease to apply 6 months after the date of such notification.

Article 28. (PCA Turkmenistan: Article 94)

1. The Parties shall take any general or specific measures required to fulfil their obligations under the Agreement. They shall see to it that the objectives set out in the Agreement are attained.

2. If either Party considers that the other Party has failed to fulfil an obligation under the Agreement, it may take the appropriate measures. Before so doing, except in cases of special urgency, it shall supply the Joint Committee with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties.

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

Article 29. (PCA Turkmenistan: Article 95)

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

Article 30. (PCA Turkmenistan: Article 97)

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

Article 31.

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

Article 32.

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

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

Upon its entry into force, and as far as relations between Turkmenistan and the Community are concerned, this Agreement shall replace Article 2, Article 3, except for the fourth indent thereof, and Articles 4 to 16 of the Agreement between the European Economic Community, the European Atomic Energy Community and the Union of Soviet Socialist Republics on Trade and Economic and Commercial Cooperation signed in Brussels on 18 December 1989.

Done at Brussels on the tenth day of November in the year one thousand nine hundred and ninety-nine.

For the European Communities

For Turkmenistan

Final Act

The Plenipotentiaries of the 'EUROPEAN COMMUNITY', the 'EUROPEAN COAL AND STEEL COMMUNITY', and the 'EUROPEAN ATOMIC ENERGY COMMUNITY', hereinafter referred to as 'the Community',

of the one part, and

the plenipotentiaries of 'TURKMENISTAN',

of the other part,

meeting at Brussels on 10 November 1999 for the signature of the Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and Turkmenistan, of the other part, hereinafter referred to as the 'Agreement', have adopted the following texts:

the Agreement including its Annexes and the following Protocol:

Protocol on mutual administrative assistance in customs matters.

The plenipotentiaries of the Community and the plenipotentiaries of Turkmenistan have adopted the texts

of the Joint Declarations listed below and annexed to this Final Act:

Joint Declaration on personal data

Joint Declaration concerning Article 7 of the Agreement

Joint Declaration concerning Article 8 of the Agreement

Joint Declaration concerning Article 15 of the Agreement

Joint Declaration concerning Article 28 of the Agreement

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

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

Done at Brussels on the tenth day of November in the year one thousand nine hundred and ninety-nine.

For the European Communities

For Turkmenistan

Joint declaration on personal data

In applying the agreement, the Parties are aware of the necessity of an adequate protection of individuals with regard to the processing of personal data and on the free movement of such data.

Joint declaration concerning Article 7 of the Agreement

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

Joint declaration concerning Article 8 of the Agreement

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

Joint declaration concerning Article 15 of the Agreement

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

Joint declaration concerning article 28 of the agreement

1. The Parties agree, for the purpose of its correct interpretation and its practical application, that the term 'cases of special urgency' included in Article 28 of the Agreement means cases of material breach of the Agreement by one of the Parties. A material breach of the Agreement consists in

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

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

2. The Parties agree that the 'appropriate measures' referred to in Article 28 are measures taken in accordance with international law. If a party takes a measure in a case of special urgency as provided for under Article 28, the other party may avail itself of the procedure relating to settlement of disputes.

Unilateral Declaration by Turkmenistan concerning the protection of intellectual, industrial and commercial property rights

Turkmenistan declares that:

1. By the end of the fifth year after entry into force of the Agreement, Turkmenistan shall accede to the multilateral conventions on intellectual, industrial and commercial property rights referred to in paragraph 2 of this Declaration to which Member States of the Community are parties or which are de facto applied by Member States according to the relevant provisions contained in these conventions.

2. Paragraph 1 of this Declaration concerns the following multilateral conventions:

— Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971),

— International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome, 1961),

— Madrid Agreement concerning the International Registration of Marks (Stockholm Act, 1967, and amended in 1979),

— Protocol relating to the Madrid Agreement concerning the International Registration of Marks (Madrid, 1989),

— Nice Agreement concerning the International Classification of Goods and Services for the purposes of the Registration of Marks (Geneva 1977, amended 1979),

— Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the purposes of Patent Procedures (1977, modified in 1980),

— International Convention for the Protection of New Varieties of Plants (UPOV) (Geneva Act, 1991).

3. Turkmenistan confirms the importance it attaches to the obligations arising from the following multilateral conventions:

— Paris Convention for the Protection of Industrial Property (Stockholm Act, 1967 and amended in 1979),

— Patent Cooperation Treaty (Washington 1970, amended and modified in 1979 and 1984).

4. From the entry into force of this Agreement, Turkmenistan shall grant to Community companies and nationals, in respect of the recognition and protection of intellectual, industrial and commercial property, treatment no less favourable than that granted by it to any third country under bilateral agreements.

5. The provisions of paragraph 4 shall not apply to advantages granted by Turkmenistan to any third country on an effective reciprocal basis or to advantages granted by Turkmenistan to another country of the former USSR.

Exchange of Letters

Exchange of letters between the European Community and Turkmenistan amending the Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and Turkmenistan, of the other part, as regards the authentic language versions

A. Letter from the European Community

Sir,

The Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and Turkmenistan, of the other part, was signed on 10 November 1999.

Article 31 of the Interim Agreement designates the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish and Turkmen language versions as authentic versions of this agreement.

Following the increase in the number of official languages of the institutions of the European Community, in particular following the accession of 12 new Member States to the European Union since the signature of the Interim Agreement, it is necessary that the Bulgarian, Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Romanian, Slovak and Slovene language versions of the Interim Agreement are also designated as authentic versions of the Interim Agreement and that Article 31 of the Interim Agreement is amended accordingly.

You will find these additional language versions attached to the present letter.

I would be grateful if you could express Turkmenistan's acceptance of the attached language versions as authentic language versions of the Interim Agreement and Turkmenistan's agreement to the corresponding amendment of Article 31 of the Interim Agreement.

This Instrument will enter into force on the date of its signature.

Please accept, Sir, the assurance of my highest consideration.

For the European Community

B. Letter from Turkmenistan

Sir,

I have the honour to acknowledge receipt of your letter of today's date and the Annexed language versions of the Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and Turkmenistan, of the other part, which reads as follows:

'The Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and Turkmenistan, of the other part, was signed on 10 November 1999.

Article 31 of the Interim Agreement designates the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish and Turkmen language versions as authentic versions of this agreement.

Following the increase in the number of official languages of the institutions of the European Community, in particular following the accession of 12 new Member States to the European Union since the signature of the Interim Agreement, it is necessary that the Bulgarian, Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Romanian, Slovak and Slovene language versions of the Interim Agreement are also designated as authentic versions of the Interim Agreement and that Article 31 of the Interim Agreement is amended accordingly.

You will find these additional language versions attached to the present letter.

I would be grateful if you could express Turkmenistan's acceptance of the attached language versions as authentic language versions of the Interim Agreement and Turkmenistan's agreement to the corresponding amendment of Article 31 of the Interim Agreement.

This Instrument will enter into force on the date of its signature.'

I have the honour to express Turkmenistan's acceptance of the language versions attached to that letter as authentic language versions of the Interim Agreement and Turkmenistan's agreement to the corresponding amendment of Article 31 of the Interim Agreement.

As set out in your letter, this instrument will enter into force on the date of its signature.

Please accept, Sir, the assurance of my highest consideration.

For Turkmenistan