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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.4.2008
COM(2008) 222 final

Proposal for a

COUNCIL DECISION

on the signature and provisional application of the Agreement in the form of an Exchange of Letters between the European Community and Ukraine in relation to preservation of commitments on trade in services contained in the Partnership and Cooperation Agreement

(presented by the Commission)

EXPLANATORY MEMORANDUM

According to Article 44 of the Partnership and Co-operation Agreement between the European Communities and their Member States, and Ukraine (hereafter “PCA”), commitments undertaken under the GATS in the context of Ukraine's WTO accession will automatically supersede the commitments on trade in services contained in the PCA.

In the context of its process of accession to the WTO Ukraine has offered GATS commitments which substantially cover the commitments of Ukraine under the PCA, except for Article 39, paragraph 3, thereof. Ukraine, however, offered to preserve this provision of the PCA through a bilateral agreement outside the WTO context.

In order to formalise this agreement, on 23 April 2007 the General Affairs and External Relations Council adopted negotiating directives authorising the Commission to negotiate a binding international agreement in the context of the PCA in the form of an Exchange of Letters with Ukraine to preserve commitments on trade in services contained in the Partnership and Cooperation Agreement with Ukraine once this country has acceded to the WTO.

Agreement has been reached on the text of the formal exchange of letters. The Agreement does not require the EC to undertake any commitments going beyond their present obligations under the GATS and the PCA. The Agreement was initialled on 18 February 2008.

Therefore, the Commission proposes that the Council consults the European Parliament on the negotiated Agreement and, pending completion of the institutional procedures for conclusion of the Agreement, adopts the attached proposal.

Proposal for a

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on the signature and provisional application of the Agreement in the form of an Exchange of Letters between the European Community and Ukraine in relation to preservation of commitments on trade in services contained in the Partnership and Cooperation Agreement

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 71(1) and 80(2) thereof in conjunction with the first sentence of the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) On 14 June 1994 the European Communities and its Member States and Ukraine signed in Luxembourg the Partnership and Co-operation Agreement (PCA), which entered into force on 1 March 1998.
- (2) According to Article 44 of the PCA, commitments undertaken under the GATS in the context of Ukraine's WTO accession will automatically supersede the commitments on trade in services contained in the PCA.
- (3) Article 39, paragraph 3, of the PCA is not reflected in the GATS commitments offered by Ukraine in the context of its accession to the WTO and shall therefore be preserved on a bilateral basis.
- (4) On the basis of an authorisation given by the Council on 23 April 2007, the Commission has negotiated on behalf of the Community an agreement in the form of an Exchange of Letters between the European Community and Ukraine preserving Article 39, paragraph 3 of the PCA, which was initialled on 18 February 2008.
- (5) The Agreement does not require the EC to undertake any commitments going beyond its present obligations under the GATS and the PCA.
- (6) The Agreement should be signed on behalf of the European Community and applied on a provisional basis pending its conclusion at a later date.

HAS DECIDED AS FOLLOWS:

Article 1

The signing of the Agreement, in the framework of the Partnership and Co-operation Agreement and in the form of an Exchange of Letters between the European Community and Ukraine with a view to preserve commitments on trade in services contained in the Partnership and Co-operation Agreement with Ukraine once this country has acceded to the WTO is hereby approved on behalf of the Community, subject to the Council Decision concerning the conclusion of the said Agreement.

The text of the Agreement in the form of an Exchange of letters is attached hereto.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Community subject to its conclusion.

Article 3

The Agreement shall be applied on a provisional basis pending completion of the procedures for conclusion. The Commission will publish a notice providing information on the date of provisional application.

Article 4

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels,

For the Council
The President

ANNEX
AGREEMENT IN THE FORM OF
EXCHANGE OF LETTERS

between the European Community and Ukraine in relation to preservation of commitments on trade in services contained in the Partnership and Co-operation Agreement

A. Letter from Ukraine

Dear Sir,

In connection with the signing on 17th March 2003 of the EC-Ukraine bilateral deal for the accession of Ukraine to the WTO and as part of that deal, the delegations of the EC and of Ukraine agreed to preserve the provisions on international maritime transport of the Partnership and Co-operation Agreement between the European Communities and its Member States, of the one part, and Ukraine, of the other part, signed on 14th June 1994 in Luxembourg. This agreement shall be drafted as follows:

THE EUROPEAN COMMUNITY AND UKRAINE

HAVING REGARD TO article 5 of the Partnership and Co-operation Agreement between the European Communities and its Member States, of the one part, and Ukraine of the other part, signed on 14th June 1994 in Luxembourg (hereafter “the PCA”);

CONSIDERING the commitment of the Parties to liberalize trade, based on the principles of the WTO Agreement and the Multilateral Trade Agreements annexed thereto;

CONSCIOUS of the need to improve conditions affecting trade in services between the Parties, based on reciprocity;

TAKING INTO ACCOUNT the situation arising from Ukraine’s accession to the WTO and its impact on the provisions of the PCA on business and investment;

HAVE DECIDED AS FOLLOWS,

Sole Article

International maritime transport

Notwithstanding the provisions of Article 44 of the PCA, after the accession of Ukraine to the WTO, the following provisions of the PCA will continue to apply between the Parties:

- Article 39 paragraph 3, in conjunction with article 32 (g), in the field of international maritime transport.

I would be grateful if you would confirm that the EC approves this text and send me your reply signed by the competent authority of the European Community. I have the honour to propose that this letter and your confirmation in reply constitute an agreement between competent authorities to be treated as an integral part of the Partnership and Co-operation

Agreement signed on 14th June 1994 in Luxembourg. This agreement shall not be affected by the eventual expiration of the Partnership and Co-operation Agreement, pursuant to Article 101 thereof.

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

[On behalf of Ukraine]

B. Letter from the European Community

Dear Sir,

Thank you for your letter of _____, which reads as follows:

"Dear Sir,

In connection with the signing on 17th March 2003 of the EC-Ukraine bilateral deal for the accession of Ukraine to the WTO and as part of that deal, the delegations of the EC and of Ukraine agreed to preserve the provisions on international maritime transport of the Partnership and Cooperation Agreement between the European Communities and its Member States, of the one part, and Ukraine, of the other part, signed on 14th June 1994 in Luxembourg. This agreement shall be drafted as follows:

THE EUROPEAN COMMUNITY AND UKRAINE

HAVING REGARD TO article 5 of the Partnership and Co-operation Agreement between the European Communities and its Member States, of the one part, and Ukraine of the other part, signed on 14th June 1994 in Luxembourg (hereafter "the PCA");

CONSIDERING the commitment of the Parties to liberalize trade, based on the principles of the WTO Agreement and the Multilateral Trade Agreements annexed thereto;

CONSCIOUS of the need to improve conditions affecting trade in services between the Parties, based on reciprocity;

TAKING INTO ACCOUNT the situation arising from Ukraine's accession to the WTO and its impact on the provisions of the PCA on business and investment;

HAVE DECIDED AS FOLLOWS,

Sole Article

International maritime transport

Notwithstanding the provisions of Article 44 of the PCA, after the accession of Ukraine to the WTO, the following provisions of the PCA will continue to apply between the Parties:

- Article 39 paragraph 3, in conjunction with article 32 (g), in the field of international maritime transport.

I would be grateful if you would confirm that the EC approves this text and send me your reply signed by the competent authority of the European Community. I have the honour to propose that this letter and your confirmation in reply constitute an agreement between competent authorities to be treated as an integral part of the Partnership and Co-operation Agreement signed on 14th June 1994 in Luxembourg. This agreement shall not be affected by the eventual expiration of the Partnership and Co-operation Agreement, pursuant to Article 101 thereof.

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

I confirm that the above-quoted letter and my reply will establish a formal agreement between the European Community and Ukraine.

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

[On behalf of the European Community]

LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS HAVING A BUDGETARY IMPACT EXCLUSIVELY LIMITED TO THE REVENUE SIDE

1. NAME OF THE PROPOSAL :

Council Decision on the signature and provisional application of the Agreement in the form of an Exchange of Letters between the European Community and Ukraine in relation to preservation of commitments on trade in services contained in the Partnership and Cooperation Agreement

2. BUDGET LINES :

Chapter and Article : **120**

Amount budgeted for the year concerned (2008): **16.431.900.000 euro**

3. FINANCIAL IMPACT:

- Proposal has no financial implications
- Proposal has no financial impact on expenditure but has a financial impact on revenue – the effect is as follows:

(€ million to one decimal place)

| | | | |
|-------------|----------------------|--------------------------------------|----------|
| | | | |
| Budget line | Revenue ¹ | 12 month period, starting dd/mm/aaaa | [Year n] |

Article ... *Impact on own resources*

Article ... *Impact on own resources*

| Situation following action | | | | | |
|----------------------------|-------|-------|-------|-------|-------|
| | [n+1] | [n+2] | [n+3] | [n+4] | [n+5] |

¹ Regarding traditional own resources (agricultural duties, sugar levies, customs duties) the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % of collection costs

| | | | | | |
|------------|--|--|--|--|--|
| Article... | | | | | |
| Article... | | | | | |

4. ANTI-FRAUD MEASURES

5. OTHER REMARKS