

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.08.2004
COM(2004) 556 final

Proposal for a

COUNCIL DECISION

approving the conclusion by the European Commission, on behalf of the European atomic energy community, of the Interim Agreement on trade and trade-related matters between the European Community and the European atomic energy community, of the one part, and the Republic of Tajikistan, of the other part

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. Relations between Tajikistan and the European Communities are currently governed by the trade and cooperation agreement signed with the former Soviet Union on 18 December 1989 (which entered into force on 1 April 1990), as endorsed by the Republic of Tajikistan in an exchange of letters on 4 February 1994. The Council adopted its negotiating directives on 5 October 1992, amending them on 10 October 2003, and the Commission formally launched the negotiations for a partnership and cooperation agreement in November 2003. After the second round of negotiations, the text of the agreement was initialled by the negotiators of the Commission and the Government of Tajikistan in Brussels on 16 December 2003.

2. Pending the entry into force of the Partnership and Cooperation Agreement, it is proposed that the European Communities and Tajikistan conclude an interim agreement mainly concerning trade, cooperation and the institutional framework, as provided for in Article 101 of the Partnership and Cooperation Agreement. This agreement has no impact on the budget.

3. The documents COM(2004)520 and COM(2004)521, concerning the signature and the conclusion of the partnership and cooperation agreement, and the conclusion by the Council of the interim agreement on behalf of the European Community, were already forwarded to the Council previously.

4. The procedure stipulates that the Council approves the agreement on behalf of the European atomic energy community, under the terms of the second paragraph of Article 101 of the European atomic energy community Treaty, before the agreement is concluded by the Commission.

5. In view of what precedes, the Commission calls on the Council to give its approval to the conclusion by the Commission of the interim agreement on behalf of the European atomic energy community.

Proposal for a

COUNCIL DECISION

Approving the conclusion by the European Commission, on behalf of the European atomic energy community, of the Interim Agreement on trade and trade-related matters between the European Community and the European atomic energy community, of the one part, and the Republic of Tajikistan, of the other part

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European atomic energy community, and in particular Article 101, paragraph 2 thereof,

Having regard to the proposal from the Commission[1],

Whereas:

(1) Pending the entry into force of the Partnership and Cooperation Agreement between the European Community and its Member States, of the one part, and the Republic of Tajikistan, of the other part, signed in …….. on ..... 2004, an Interim Agreement on trade and trade-related matters between the European Community and the European Atomic Energy Community, of the one part, and the Republic of Tajikistan, of the other part, should be concluded by the European Commission on behalf of the European atomic energy community.

HAS DECIDED AS FOLLOWS:

Sole Article

1. The conclusion by the European Commission, on behalf of the European atomic energy community, of the Interim Agreement on trade and trade-related matters between the European Community and the European Atomic Energy Community, of the one part, and the Republic of Tajikistan, of the other part, together with the annexes and protocols attached thereto and the declarations made by the Community unilaterally or jointly with the other Party is hereby approved.

2. The text of the agreement, annexes, protocols is attached to this decision.

Done at Brussels, […]

For the Council
ThePresident

[1] OJ C […], […], p. […].

ANNEX

INTERIM AGREEMENT

On trade and trade related matters between the European community and the European atomic energy community of the one part and the Republic of Tajikistan of the other part

The EUROPEAN COMMUNITY and the EUROPEAN ATOMIC ENERGY COMMUNITY, herein after referred to as "THE COMMUNITY"

of the one part,

and the REPUBLIC OF TAJIKISTAN

of the other part,

Whereas an Agreement on Partnership and Cooperation between the European Communities and their Member States, of the one part and the Republic of Tajikistan of the other part was initialled on the 16 December 2003,

Whereas the aim of the Partnership and Cooperation Agreement is to strengthen and widen the relations established previously, notably by the Agreement on Trade and Commercial and Economic Cooperation between the European Economic Community, the European Atomic Energy Community, and the USSR signed on 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 Trade and Commercial and Economic Cooperation Agreement;

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 REPUBLIC OF TAJIKISTAN:

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

Have agreed as follows:

TITLE I: GENERAL PRINCIPLES

[PCA TAJIKISTAN: TITLE I]

Article 1

[PCA TAJIKISTAN: ARTICLE 2]

Respect for democratic principles and fundamental and human rights, as defined in particular 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, underpin the internal and external policies of the Parties and constitute an essential element of this Agreement.

Article 2

[PCA TAJIKISTAN: ARTICLE 3]

The Parties consider that it is essential for their future prosperity and stability that the newly independent states which have emerged from the dissolution of the Union of Soviet Socialist Republics, hereinafter called "Independent States", should maintain and develop cooperation among themselves in compliance with the principles of the Helsinki Final Act and with international law and in the spirit of good neighbourly relations, and will make every effort to encourage this process.

TITLE II: TRADE IN GOODS

[PCA TAJIKISTAN: TITLE III]

Article 3

[PCA TAJIKISTAN: ARTICLE 7]

1. The Parties shall accord 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;

- 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 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 five years after the entry into force of the Partnership and Cooperation Agreement, to advantages defined in Annex I granted by the Republic of Tajikistan to other states which have emerged from the dissolution of the USSR.

Article 4

[PCA TAJIKISTAN: 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 1994 are applicable between the Parties.

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

Article 5

[PCA TAJIKISTAN: ARTICLE 9]

Without prejudice to the rights and obligations stemming from international conventions on the temporary admission of goods which bind the Parties, each Party shall 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 legislation. 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 6

[PCA TAJIKISTAN: ARTICLE 10]

1. Goods originating in the Republic of Tajikistan shall be imported into the Community free of quantitative restrictions or measures having equivalent effect, without prejudice to the provisions of Articles 12, 15 and 16 of this Agreement.

2. Goods originating in the Community shall be imported into Tajikistan free of quantitative restrictions or measures having equivalent effect, without prejudice to the provisions of Articles 12, 15 and 16 of this Agreement.

Article 7

[PCA TAJIKISTAN: ARTICLE 11]

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

Article 8

[PCA TAJIKISTAN: 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 directly competing products, the Community or the Republic of Tajikistan, as the case may be, 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 the Republic of Tajikistan, as the case may be, shall supply the Cooperation Council with all relevant information with a view to seeking a solution acceptable to the Parties as provided for in Title XI.

3. If, as a result of the consultations, the Parties do not reach agreement within 30 days of referral to the Cooperation Council on actions to remedy the situation, the Party which requested consultations 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 condition that consultations are 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 9

[PCA TAJIKISTAN: ARTICLE 13]

The Parties undertake to adjust the provisions in this Agreement on trade in goods between them, in the light of circumstances, and in particular of the situation arising from the future accession of the Republic of Tajikistan to the WTO. The Cooperation Council may make recommendations on such adjustments 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 10

[PCA TAJIKISTAN: ARTICLE 14]

This 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 discrimination or a disguised restriction on trade between the Parties.

Article 11

[PCA TAJIKISTAN: ARTICLE 15]

Trade in textile products falling under Chapters 50 to 63 of the Combined Nomenclature is governed by a separate bilateral agreement. After expiry of the separate agreement, textile products shall be included in this Agreement.

Article 12

[PCA TAJIKISTAN: ARTICLE 16]

Trade in nuclear materials shall 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 the Republic of Tajikistan.

TITLE III:

PAYMENTS, COMPETITION, AND OTHER ECONOMIC PROVISIONS

[PCA TAJIKISTAN: TITLE IV]

Article 13

[PCA TAJIKISTAN: ARTICLE 38.1]

The Parties undertake to authorise in freely convertible currency any payments on the current account of the balance of payments between residents of the Community and of the Republic of Tajikistan connected with the movement of goods, services or persons made in accordance with the provisions of this Agreement.

Article 14

[PCA TAJIKISTAN: ARTICLE 40.4]

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 TAJIKISTAN: ARTICLE 39.1]

Pursuant to the provisions of this Article and of Annex II, the Republic of Tajikistan 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 this Agreement, a level of protection similar to that existing in the Community, including effective means of enforcing such rights.

Article 16

[PCA TAJIKISTAN: ARTICLE 42]

Cooperation in the field of trade in goods and services

The Parties will cooperate with a view to ensuring that the Republic of Tajikistan's international trade is conducted in conformity with the rules of the WTO. The Community shall provide the Republic of Tajikistan with technical assistance for this purpose.

Such cooperation shall include specific issues directly relevant to trade facilitation, in particular with a view to assisting the Republic of Tajikistan to harmonise its legislation and regulations with WTO rules and so fulfil as soon as possible the conditions of accession to that Organisation. These include:

- the formulation of policy on trade and trade-related questions, including payments and clearing mechanisms,

- the drafting of relevant legislation.

Article 17

[PCA TAJIKISTAN: ARTICLE 45]

Public procurement

The Parties shall cooperate to develop conditions for open and competitive award of contracts for goods and services, in particular through calls for tenders.

Article 18

[PCA TAJIKISTAN: ARTICLE 46]

Cooperation in the field of standards and conformity assessment

1. Cooperation between the Parties shall promote alignment with internationally agreed criteria, principles and guidelines in the field of metrology, standards and conformity assessment, to facilitate progress towards mutual recognition in the field of conformity assessment, and to improve the quality of Tajik products.

2. To this end the Parties shall seek to cooperate in technical assistance projects which will:

   - promote appropriate cooperation with organisations and institutions specialised in these fields;

   - promote the use of Community technical regulations and the application of European standards and conformity-assessment procedures;

   - permit the sharing of experience and technical information in the field of quality management.

Article 19

[PCA TAJIKISTAN: ARTICLE 50]

Agriculture and the agro-industrial sector

The purpose of cooperation in this area shall be the pursuit of agrarian reform and the reform of agricultural structures, the modernisation, privatisation and restructuring of agriculture, stock farming and the agro-industrial and services sectors in the Republic of Tajikistan, and the development of domestic and foreign markets for Tajik products, in conditions that ensure the protection of the environment, taking into account the necessity to improve security of food supply and to develop agri-business and the processing and distribution of agricultural products. The Parties shall also pursue the gradual approximation of Tajik standards to Community technical regulations concerning industrial and agricultural food products, including sanitary and phytosanitary standards.

Article 20

[PCA TAJIKISTAN: ARTICLE 63]

Customs

1. The aim of cooperation shall be to guarantee compliance with all the provisions scheduled for adoption in connection with trade and fair trade and to achieve the approximation of the Republic of Tajikistan's customs system to that of the Community.

2. Cooperation shall take place particularly through:

   - the exchange of information;

   - the improvement of working methods;

   - the introduction of the Combined Nomenclature and the single administrative document;

   - the simplification of controls and formalities in respect of the carriage of goods;

   - support for the introduction of modern customs information systems;

   - the organisation of seminars and training periods.

   Technical assistance shall be provided where necessary.

3. Without prejudice to other cooperation under this Agreement, and in particular Title VIII, mutual assistance in customs matters between administrative authorities of the Parties shall take place in accordance with the provisions of the Protocol attached to this Agreement.

Article 21

[PCA TAJIKISTAN: ARTICLE 64]

Statistical cooperation

Cooperation in this area shall pursue the development of an efficient statistical system to provide the reliable statistics needed to support and monitor the process of socioeconomic reform and contribute to the development of private enterprise in the Republic of Tajikistan.

The Parties shall, in particular, cooperate in the following fields:

- the adaptation of the Tajik statistical system to international methods, standards and classification;

- the exchange of statistical information;

- the provision of the macro- and microeconomic statistics necessary to implement and manage economic reforms.

The Community shall provide the Republic of Tajikistan with technical assistance for this purpose.

TITLE IV:

INSTITUTIONAL, GENERAL AND FINAL PROVISIONS

[PCA TAJIKISTAN: TITLE XI]

Article 22

The Joint Committee set up by the Agreement on Trade and Commercial and Economic Cooperation signed between the European Economic Community and the USSR 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 23

The Joint Committee may, for the purpose 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 24

[PCA TAJIKISTAN: 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 Cooperation Council 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 25

[PCA TAJIKISTAN: 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 and competences, the Parties:

   - shall encourage the adoption of arbitration for the settlement of disputes arising from commercial and cooperation transactions concluded by economic operators of the Community and those of the Republic of Tajikistan;

   - 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 country;

   - shall 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 26

[PCA TAJIKISTAN: ARTICLE 86]

Nothing in this Agreement shall prevent a Party, within the limits of its respective powers and competences, 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 obligations and commitments in the control of dual use industrial goods and technology.

Article 27

[PCA TAJIKISTAN: ARTICLE 87]

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

   - the arrangements applied by the Republic of Tajikistan 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 the Republic of Tajikistan shall not give rise to any discrimination between Tajik nationals, 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 taxpayers who are not in identical situations as regards their place of residence.

Article 28

[PCA TAJIKISTAN: ARTICLE 88]

1. Each of the Parties may refer to the Cooperation Council any dispute relating to the application or interpretation of this Agreement.

2. The Cooperation Council may settle the dispute by means of a recommendation.

3. If it is not possible to settle the dispute in accordance with paragraph 2 of this Article, either Party may notify the other of the appointment of a conciliator; the other Party must then appoint a second conciliator within two months. For the application of this procedure, the Community and the Member States shall be deemed to be a single Party to the dispute.

   The Cooperation Council shall appoint a third conciliator.

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

Article 29

[PCA TAJIKISTAN: ARTICLE 89]

The Parties agree to consult each other promptly, through appropriate channels and at the request of either Party, on 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 12, 88 and 94.

The Cooperation Council may establish rules of procedure for the settlement of disputes.

Article 30

[PCA TAJIKISTAN: ARTICLE 90]

The treatment granted to the Republic of Tajikistan under this Agreement shall in no case be more favourable than that granted by the Member States to each other.

Article 31

[PCA TAJIKISTAN: 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 32

1. This Agreement shall be applicable until the entry into force of the Partnership and Cooperation Agreement initialled on 16 December 2003.

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

Article 33

[PCA TAJIKISTAN: ARTICLE 94]

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

2. If either Party considers that the other Party has failed to fulfil an obligation under this Agreement, it may take appropriate measures. Before so doing, except in cases of special urgency, it shall supply the Cooperation Council 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 this Agreement. These measures shall be notified immediately to the Cooperation Council if the other Party so requests.

Article 34

[PCA TAJIKISTAN: ARTICLE 95]

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

Article 35

[PCA TAJIKISTAN: ARTICLE 97]

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

Article 36

[PCA TAJIKISTAN: ARTICLE 99]

The original of this Agreement, of which the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovene, Spanish, Swedish and Tajik languages are equally authentic, shall be deposited with the Secretary-General of the Council of the European Union.

Article 37

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 that the procedures referred to in the first paragraph have been completed.

Upon its entry into force, and as far as relations between Tajikistan 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 Energy Community and the Union of Soviet Socialist Republics on Trade and Economic and Commercial Cooperation signed in Brussels on 18 December 1989.

FOR THE EUROPEAN COMMUNITY

FOR THE REPUBLIC OF TAJIKISTAN

LIST OF DOCUMENTS ATTACHED

Annex I	Indicative list of advantages granted by the Republic of Tajikistan to the Independent States in accordance with PCA Tajikistan, Article 7(3).
Annex II	Intellectual, industrial and commercial property conventions referred to in PCA Tajikistan, Article 39.

Protocol on mutual administrative assistance in customs matters

ANNEX I

Indicative list of advantages granted

by the Republic of Tajikistan to the Commonwealth Independent States

In accordance with Article 7 paragraph 3

1. Republic of Belarus, Republic of Kazakhstan, Kyrghyz Republic, Russian Federation: customs duties are not applicable.

2. The commodities transported in accordance with treatments on industrial cooperation with CIS countries are not taxable.

3. The Certificate of Compliance for Serial Production is recognized with all CIS countries, on the basis of which National Certificate of Compliance is issued.

4. There is a special system of current payment with all CIS countries.

5. There are special terms for transit with all CIS countries.

ANNEX II

Intellectual, industrial and commercial property conventions

referred to in Article 39

1. Article 39(2) concerns the following multilateral conventions:

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

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

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

2. The Cooperation Council may recommend that Article 39(2) shall apply to other multilateral conventions. If problems in the area of intellectual, industrial and commercial property affecting trading conditions were to occur, urgent consultations will be undertaken, at the request of either Party, with a view to reaching mutually satisfactory solutions.

3. The Parties confirm the importance they attach 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 in 1979 and modified in 1984);

   - Revised Berne Convention for the protection of literacy and artistic works (1886 lastly amended in 1979);

   - Trademark Law Treaty (Geneva 1994).

4. From the entry into force of this Agreement, the Republic of Tajikistan 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 the Republic of Tajikistan to any third country on an effective reciprocal basis and to advantages granted by the Republic of Tajikistan to another country of the former USSR.

PROTOCOL

ON MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS

ARTICLE 1

Definitions

For the purposes of this Protocol:

(a) "customs legislation" shall mean any legal or regulatory provisions applicable in the territory of the Contracting Parties governing the import, export and transit of goods and their placing under any other customs regime or procedure, including measures of prohibition, restriction and control adopted by the said Parties;

(b) "applicant authority" shall mean a competent administrative authority which has been appointed by a Contracting Party for this purpose and which makes a request for assistance in customs matters;

(c) "requested authority" shall mean a competent administrative authority which has been appointed by a Party for this purpose and which receives a request for assistance in customs matters;

(d) "personal data" shall mean all information relating to an identified or identifiable individual;

(e) "operation in breach of customs legislation" shall mean any violation or attempted violation of customs legislation.

ARTICLE 2

Scope

1. The Parties shall assist each other, in the areas within their competence, in accordance with the arrangements and the conditions laid down in this Protocol, to ensure that the customs legislation is correctly applied, in particular with a view to preventing, investigating and prosecuting operations in breach of that legislation.

2. Assistance, in customs matters, as provided for in this Protocol, shall apply to any administrative authority of the Contracting Parties which is competent for the application of this Protocol. It shall not prejudice the provisions governing mutual assistance in criminal matters. Nor shall it cover information obtained under powers exercised at the request of the judicial authorities, except where communication of such information is authorised by the said authorities.

ARTICLE 3

Assistance on request

1. At the request of the applicant authority, the requested authority shall furnish it with all relevant information which may enable it to ensure compliance with customs legislation, including information regarding operations noted or planned which are or might be in breach of that legislation.

2. At the request of the applicant authority, the requested authority shall inform it as to whether:

   (a) goods exported from the territory of one of the Contracting Parties have been properly imported into the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods;

   (b) if the goods imported into the territory of one of the Contracting Parties have been properly imported into the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods.

3. At the request of the applicant authority, the requested authority shall, within the framework of its legal or regulatory provisions, take the necessary steps to ensure special surveillance of:

   (a) natural or legal persons of whom there are reasonable grounds for believing that they carry out or have carried out operations in breach of customs legislation;

   (b) places where stocks of goods have been or may be assembled in such a way that there are reasonable grounds for suspecting that they are intended to be used in operations in breach of customs legislation;

   (c) goods that are or may be transported in such a way that there are reasonable grounds for suspecting that they are intended to be used in operations in breach of customs legislation;

   (d) means of transport for which there are reasonable grounds for believing that they have been, or may be used in operations in breach of customs legislation.

ARTICLE 4

Spontaneous assistance

The Contracting Parties shall provide each other, at their own initiative and in accordance with their laws, rules and other legal instruments, with assistance if they consider that to be necessary for the correct application of customs legislation, particularly when they obtain information pertaining to:

- activities which constitute or appear to constitute operations in breach of customs legislation and which may be of interest to another Contracting Party;

- new means or methods employed in carrying out operations in breach of customs legislation;

- goods known to be subject to operations in breach of customs legislation;

- natural or legal persons concerning whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation;

- means of transport concerning which there are reasonable grounds for believing that they have been, are or may be used in operations in breach of customs legislation.

ARTICLE 5

Delivery/Notification

At the request of the applicant authority, the requested authority shall, in accordance with its applicable legal or regulatory provisions, take all necessary measures in order:

- to deliver all documents,

- to notify all decisions

emanating from the applicant authority and falling within the scope of this Protocol to an addressee, residing or established in its territory. In such a case, Article 6(3) shall apply to the requests for communication or notification.

ARTICLE 6

Form and substance of requests for assistance

1. Requests pursuant to this Protocol shall be made in writing. They shall be accompanied by the documents necessary to enable compliance with the request. When required because of the urgency of the situation, oral requests may be accepted, but must be confirmed in writing immediately.

2. Requests pursuant to paragraph 1 shall include the following information:

   (a) the applicant authority making the request;

   (b) the measure requested;

   (c) the object of and the reason for the request;

   (d) the laws, rules and other legal elements involved;

(e) indications as exact and comprehensive as possible on the natural or legal persons who are the target of the investigations;

(f) a summary of the relevant facts and of the enquiries already carried out.

3. Requests shall be submitted in an official language of the requested authority or in a language acceptable to that authority.

4. If a request does not meet the formal requirements, its correction or completion may be requested; precautionary measures may, however, be ordered.

ARTICLE 7

Execution of requests

1. In order to comply with a request for assistance, the requested authority shall proceed, within the limits of its competence and available resources, as though it were acting on its own account or at the request of other authorities of that same Party, by supplying information already possessed, by carrying out appropriate enquiries or by arranging for them to be carried out. This provision shall also apply to any other authority to which the request has been addressed by the requested authority by virtue of this protocol when the requested authority cannot act on its own.

2. Requests for assistance shall be executed in accordance with the laws, rules and other legal instruments of the requested Contracting Party.

3. Duly authorised officials of a Contracting Party may, with the agreement of the other Party involved and subject to the conditions laid down by the latter, obtain from the offices of the requested authority or other authority for which the requested authority is responsible, information relating to operations which are or may be in breach of customs legislation which the applicant authority needs for the purposes of this Protocol.

4. Officials of a Party may, with the agreement of the other Contracting Party involved and subject to the conditions laid down by the latter, be present at enquiries carried out in the latter's territory.

ARTICLE 8

Form in which information is to be communicated

1. The requested authority shall communicate results of enquiries to the applicant authority in the form of documents, certified copies of documents, reports and the like.

2. The provision of documents provided for in paragraph 1 may be replaced by that of information produced in any form for the same purpose by computerised means.

3. Original files and documents shall be requested only in cases where certified copies would be insufficient. Originals which have been transmitted shall be returned at the earliest opportunity.

ARTICLE 9

Exceptions to the obligation to provide assistance

1. The Parties may refuse to give assistance as provided for in this Protocol, where to do so would:

(a) be likely to prejudice the sovereignty of the Republic of Tajikistan or that of a Member State which has been asked to provide assistance under this Protocol;

or

(b) be likely to prejudice public policy, security or other essential interests, in particular in the cases referred to under Article 10(2);

or

(c) violate an industrial, commercial or professional secret.

2. Assistance may be postponed by the requested authority on the ground that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case, the requested authority shall consult with the applicant authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.

3. Where the applicant authority requests assistance which it would itself be unable to provide if so asked, it shall draw attention to that fact in its request. It shall then be left to the requested authority to decide how to respond to such a request.

4. If assistance is refused, the decision and the reasons therefore must be notified to the applicant authority without delay.

ARTICLE 10

Information exchange and confidentiality

1. Any information communicated in whatsoever form pursuant to this Protocol shall be of a confidential or restricted nature, depending on the rules applicable in each of the Parties. It shall be covered by the obligation of official secrecy and shall enjoy the

protection extended to similar information under the relevant laws of the Party which received it and the corresponding provisions applying to the Community institutions.

2. Personal data may be exchanged only where the receiving Party undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the supplying Party.

3. Information obtained shall be used solely for the purposes of this Protocol. Where one of the Parties requests the use of such information for other purposes, it shall ask for the prior written consent of the authority which furnished the information. Such use shall then be subject to any restrictions laid down by that authority.

4. Paragraph 3 shall not impede the use of information in any judicial or administrative proceedings subsequently instituted for failure to comply with customs legislation. The competent authority which supplied that information shall be immediately notified of such use.

5. The Parties may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with the provisions of this Protocol.

ARTICLE 11

Experts and witnesses

An official of a requested authority may be authorised to appear, within the limitations of the authorization granted, as an expert or witness in judicial or administrative proceedings regarding the matters covered by this Protocol in the jurisdiction of the other Party, and produce such objects, documents or authenticated copies thereof, as may be needed for the proceedings. The request for an appearance must indicate specifically on what matters and by virtue of what title or qualification the official will be questioned.

ARTICLE 12

Assistance expenses

The Contracting Parties shall waive all claims on each other for the reimbursement of expenses incurred pursuant to this Protocol, except, as appropriate, for expenses to experts and witnesses and to interpreters and translators who are not public service employees.

ARTICLE 13

Implementation

1. The application of this Protocol shall be entrusted to the central customs authorities of the Republic of Tajikistan on the one hand and to the competent services of the

Commission of the European Communities and, where appropriate, the customs authorities of the Member States on the other. They shall decide on all practical measures and arrangements necessary for its application, taking into consideration the rules in force in the field of data protection. They may recommend to the competent bodies amendments which they consider should be made to this Protocol.

2. The Parties shall consult each other and subsequently keep each other informed of the detailed rules of implementation which are adopted in accordance with the provisions of this Protocol.

ARTICLE 14

Other agreements

1. Taking into account the respective competences of the European Community and the Member States, the provisions of this Protocol shall:

   - not affect the obligations of the Contracting Parties under any other international agreement or convention;

   - be deemed complementary with agreements on mutual assistance which have been or may be concluded between individual Member States and the Republic of Tajikistan; and

   - not affect the provisions governing the communication between the competent services of the Commission and the customs authorities of the Member States of any information obtained in the fields covered by this agreement which could be of interest to the Community.

2. Notwithstanding the provisions of paragraph 1, the provisions of this agreement shall take precedence over the provisions of the bilateral agreement on mutual assistance which have been or may be concluded between individual Member States and the Republic of Tajikistan insofar as the provisions of the latter are incompatible with those of this Protocol.

3. In respect of questions relating to the applicability of this Protocol, the Contracting Parties shall consult each other to resolve the matter in the framework of the Cooperation Committee established under Article 79 of the Agreement.

FINAL ACT

The plenipotentiaries of the EUROPEAN COMMUNITY, and of the EUROPEAN ATOMIC ENERGY COMMUNITY,

hereinafter referred to as "the Community",

of the one part, and

the plenipotentiaries of THE REPUBLIC OF TAJIKISTAN,

of the other part,

meeting at Brussels, this, for the signature of the Interim Agreement between the European Communities, of the one part, and the Republic of Tajikistan, of the other part, hereinafter referred to as the "Agreement", have adopted the following texts:

the Interim Agreement including its Annexes and the following Protocol:

the Protocol on mutual administrative assistance in customs matters.

The plenipotentiaries of the European Communities and the plenipotentiaries of the Republic of Tajikistan 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 9 [PCA TAJIKISTAN: ARTICLE 13] of the Agreement.

Joint Declaration concerning Article 33 [PCA TAJIKISTAN: ARTICLE 94] of the Agreement.

The plenipotentiaries of the European Communities and the plenipotentiaries of the Republic of Tajikistan have also taken note of the following Exchange of Letters annexed to this Final Act:

Exchange of Letters between the European Communities and the Republic of Tajikistan in relation to the establishment of companies.

JOINT DECLARATION ON PERSONAL DATA

In applying this 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 9

[PCA TAJIKISTAN: ARTICLE 13]

Until the Republic of Tajikistan accedes to the WTO, the Parties shall hold consultations in the Cooperation Committee on the Republic of Tajikistan'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 33

[PCA TAJIKISTAN: ARTICLE 94]

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 33 [PCA TAJIKISTAN: ARTICLE 94] 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 [PCA TAJIKISTAN: ARTICLE 2].

2. The Parties agree that the "appropriate measures" referred to in Article 33 [PCA TAJIKISTAN: ARTICLE 94] 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 33 [PCA TAJIKISTAN: ARTICLE 94], the other Party may avail itself of the procedure relating to settlement of dispute.

FOR THE EUROPEAN COMMUNITY

FOR THE REPUBLIC OF TAJIKISTAN

EXCHANGE OF LETTERS

BETWEEN THE EUROPEAN COMMUNITIES

AND THE REPUBLIC OF TAJIKISTAN

CONCERNING THE ESTABLISHMENT OF COMPANIES

A. Letter from the Government of the Republic of Tajikistan

Dear Sir,

I refer to the Partnership and Cooperation Agreement initialled on 16.12.2003.

As I underlined during the negotiations, the Republic of Tajikistan grants to Community companies establishing and operating in Tajikistan in certain respects a privileged treatment. I explained that this reflects the Tajik policy to promote by all means the establishment of Community companies in the Republic of Tajikistan.

With this in mind, it is my understanding that during the period between the date of initialling of this agreement and the entry into force of the relevant articles on establishment of companies, the Republic of Tajikistan shall not adopt measures or regulations which would introduce or worsen discrimination against Community companies vis-à-vis Tajik companies or companies from any third country as compared to the situation existing on the date of initialling of this Agreement.

I would be obliged if you would acknowledge receipt of this letter.

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

For the Government of
the Republic of Tajikistan

B. Letter from the European Communities

Dear Sir,

Thank you for your letter of today's date, which reads as follows:

"I refer to the Partnership and Cooperation Agreement initialled on 16.12.2003.

As I underlined during the negotiations, the Republic of Tajikistan grants to Community companies establishing and operating in the Republic of Tajikistan in certain respects a privileged treatment. I explained that this reflects the Tajik policy to promote by all means the establishment of Community companies in the Republic of Tajikistan.

With this in mind, it is my understanding that during the period between the date of initialling of this agreement and the entry into force of the relevant articles on establishment of companies, the Republic of Tajikistan shall not adopt measures or regulations which would introduce or worsen discrimination against Community companies vis-à-vis Tajik companies or companies from any third country as compared to the situation existing on the date of initialling of this Agreement.

I would be obliged if you would acknowledge receipt of this letter."

I acknowledge receipt of the letter.

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

On behalf of
the European Community