COMMISSION OF THE EUROPEAN COMMUNITIES

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2004/0178 (ACC)

Proposal for a

COUNCIL DECISION

on the signing of a 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

Proposal for a

COUNCIL DECISION

on the conclusion by the European 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. The proposed Partnership and Cooperation Agreement will help consolidate and strengthen the EU's political and economic and trade presence in Tajikistan and Central Asia in general. It will also promote economic growth and support sustainable development, action against poverty and stability in Tajikistan and Central Asia. It will provide a framework for future EU cooperation with Tajikistan.

3. Though modelled on other partnership and cooperation agreements, the EU-Tajikistan agreement is the first to include clauses on action against terrorism and weapons of mass destruction. It will be concluded for a period of ten years, automatically renewable from year to year thereafter. The Agreement will open the way for deeper relations in a great number of fields, based on reciprocity and partnership. The Agreement is founded on respect for the essential principles of democracy, human rights and the rule of law, and on the promotion of sustainable development and the link between different aid instruments (the link between relief, rehabilitation and development).

4. The proposed Agreement has three main components: political dialogue, cooperation and trade. It also includes general and institutional provisions to sustain those components.

   (i) Political dialogue: The EU and Tajikistan will pursue a regular political dialogue. They will in particular cooperate against terrorism, the proliferation of weapons of mass destruction and trafficking, including the drugs trade.

   (ii) Cooperation: The Agreement includes provisions in the area of social and economic cooperation, finance and trade, science, information society and technologies, culture, education and audio-visual, state reform and public administration, social and legislative cooperation. The Agreement also provides for commitments and cooperation in re-admission, in the control of illegal immigration, and in combating drugs and organised crime. The Agreement also provides for cooperation on democracy and human rights. A separate protocol covers mutual assistance in customs matters.

   (iii) The Agreement also includes provisions on trade in goods and services and on trade and investment.

5. The Partnership and Cooperation Agreement is a mixed agreement covering some matters for which the European Communities are competent and others for which the Member States are competent. It is concluded for an initial period of ten years.

The Agreement includes a clause permitting its unilateral suspension if an essential element is violated (i.e. respect for democracy, human rights and the principles of a market economy).

The Agreement establishes institutional machinery for its implementation in the form of a Cooperation Council, a Cooperation Committee and a Parliamentary Committee.

This Agreement has no impact on the budget.

6. 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.

7. Having completed the negotiating process, the Commission now proposes that the Council approve the results of the negotiations and initiate the procedures for the signing and conclusion of this agreement. To that end, the Commission is submitting the following proposals:

(i) proposal for a Council Decision for the signing of the Agreement;

(ii) proposal for a Council and Commission Decision for the conclusion of the Agreement;

(iii) proposal for a Council Decision for the conclusion of the Interim Agreement on behalf of the European Community;

(iv) draft Commission Decision on the conclusion of the Interim Agreement on behalf of the European Atomic Energy Community.

The procedures for the signing and the conclusion of the Agreement are different for the two European Communities (European Community and the European Atomic Energy Community):

(a) as regards signing, the first sentence of the first subparagraph of Article 300(2) of the EC Treaty provides for a separate Council decision on the signing of an agreement on behalf of the European Community. No such act is required under the EAEC Treaty;

(b) as regards the conclusion of the Agreement:

- the Council concludes the Agreement on behalf of the European Community, after having received the assent of the European Parliament, by virtue of Article 44(2), the last sentence of Article 47(2) and Articles 55, 57(2), 63(3), 71, 80(2), 93, 94, 133 and 181a of the EC Treaty, in conjunction with the last sentence of the first subparagraph of Article 300(2) and the second subparagraph of Article 300(3);

- the Council approves the Agreement on behalf of the European Atomic Energy Community by virtue of the second paragraph of Article 101 of the EAEC Treaty and the Agreement is then concluded by the Commission;

(c) as regards the conclusion of the Interim Agreement:

- the Council concludes the Agreement on behalf of the European Community by virtue of Article 133 and the first sentence of Article 300(2);

- the Council approves the Agreement on behalf of the European Atomic Energy Community by virtue of the second paragraph of Article 101 of the EAEC Treaty and the Agreement is then concluded by the Commission.

In the light of the above, the Commission proposes:

- that the Council adopt a decision on the signing of the Partnership and Cooperation Agreement between the European Communities and the Republic of Tajikistan on behalf of the European Community;

- that the Council conclude the Partnership and Cooperation Agreement between the European Communities and the Republic of Tajikistan on behalf of the European Community and approve its conclusion by the EAEC;

- that the Council conclude the Interim Agreement on behalf of the European Community;

- that the Council approve the conclusion by the EAEC of the Interim Agreement.

Ratification by all Member States of the European Union will be a prerequisite for the entry into force of the Agreement.

Proposal for a

COUNCIL DECISION

on the signing of a 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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 44(2), the last sentence of Article 47(2) and Articles 55, 57(2), 63(3), 71, 80(2), 93, 94, 133 and 181a of the EC Treaty, in conjunction with the first sentence of the first subparagraph of Article 300(2) thereof,

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

Whereas:

(1) On 5 October 1992 the Council authorised the Commission to open negotiations for a partnership and cooperation agreement between the European Communities and their Member States, of the one part, and the Republic of Tajikistan, of the other part. These negotiating directives were amended by the Council on 10 October 2003.

(2) The negotiations have been completed and the Agreement was initialled on 16 December 2003.

(3) Subject to its possible conclusion at a later date, this Agreement should be signed,

HAS DECIDED AS FOLLOWS:

[1] OJ C […], […], p. […].

Sole Article

1. The President of the Council is hereby authorised to designate the person(s) empowered to sign, on behalf of the Community, the Partnership and Cooperation Agreement between the European Communities and their Member States, 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 that are attached to the Final Act, subject to its possible conclusion at a later date.

2. The text of the Agreement, annexes, protocols and the Final Act is attached to this Decision.

Done at Brussels, […]

For the Council
The President

2004/0178 (ACC)

Proposal for a

COUNCIL DECISION

on the conclusion by the European 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 Community, and in particular Article 133 in conjunction with Article 300(3) thereof,

Having regard to the proposal from the Commission,[2]

Whereas:

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 at ... on ....., an Interim Agreement should be approved 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.

HAS DECIDED AS FOLLOWS:

Article 1

1. 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 on behalf of the European Community.

2. The text of the Agreement, annexes and protocols is attached to this Decision.

Article 2

The President of the Council is authorised to designate the person(s) empowered to sign the Interim Agreement on behalf of the European Community.

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[2] OJ C […], […], p. […].

Article 3

The President of the Council shall give the notification provided for in Article 37 of the Agreement on behalf of the Community.

Done at Brussels, […]

For the Council
The President

ANNEX

DRAFT PARTNERSHIP AND COOPERATION AGREEMENT ESTABLISHING A PARTNERSHIP BETWEEN THE EUROPEAN COMMUNITIES AND THEIR MEMBER STATES, OF THE ONE PART, AND THE REPUBLIC OF TAJIKISTAN, OF THE OTHER PART

THE KINGDOM OF BELGIUM,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

IRELAND,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

THE REPUBLIC OF HUNGARY,

THE REPUBLIC OF MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

Parties to the Treaty establishing the European Community, the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community,

hereinafter referred to as "Member States", and

THE EUROPEAN COMMUNITY AND THE EUROPEAN ATOMIC ENERGY COMMUNITY,

hereinafter referred to as "the Community",

of the one part,

AND THE REPUBLIC OF TAJIKISTAN,

of the other part,

CONSIDERING the links between the Community, its Member States and the Republic of Tajikistan and the common values that they share,

RECOGNISING that the Community and the Republic of Tajikistan wish to strengthen these links and to establish partnership and cooperation which would strengthen and widen the relations established in the past in particular 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,

CONSIDERING the commitment of the Community and its Member States and of the Republic of Tajikistan to strengthen the political and economic freedoms which constitute the very basis of the partnership,

RECOGNISING in that context that support of the independence, sovereignty and territorial integrity of the Republic of Tajikistan will contribute to the safeguarding of peace and stability in Central Asia,

CONSIDERING the commitment of the Parties to promote international peace and security and the peaceful settlement of disputes, and to cooperate to this end in the framework of the United Nations and the Organisation for Security and Cooperation in Europe (OSCE),

CONSIDERING the firm commitment of the Community and its Member States and the Republic of Tajikistan to the full implementation of all principles and provisions contained in the Final Act of the Conference on Security and Cooperation in Europe (CSCE), the Concluding Documents of the Madrid and Vienna Follow-Up Meetings, the Document of the CSCE Bonn Conference on Economic Cooperation, the Charter of Paris for a New Europe and the CSCE Helsinki Document 1992 "The Challenges of Change", and other fundamental documents of the OSCE,

CONVINCED of the paramount importance of the rule of law and respect for human rights, particularly those of persons belonging to minorities, the establishment of a multiparty system with free and democratic elections and economic liberalization aimed at setting up a market economy,

BELIEVING that full implementation of this Partnership and Cooperation Agreement will both depend on and contribute to the continuation and accomplishment of political, economic and legal reforms in the Republic of Tajikistan and the introduction of the factors necessary for cooperation, notably in the light of the conclusions of the CSCE Bonn Conference,

DESIROUS of encouraging the process of internal reconciliation launched in the Republic of Tajikistan following the Moscow peace agreements,

DESIROUS of encouraging the process of regional cooperation in the areas covered by this agreement with neighbouring countries in order to promote the prosperity and stability of the region,

DESIROUS of establishing and developing regular political dialogue on bilateral and international issues of mutual interest,

RECOGNISING AND SUPPORTING the wish of the Republic of Tajikistan to establish close cooperation with European institutions,

CONSIDERING the necessity of promoting investment in the Republic of Tajikistan, including in the energy and water management sectors, confirming the importance attached by the Community, its Member States and the Republic of Tajikistan to the European Energy Charter, and to the full implementation of the Energy Charter Treaty and the Energy Charter Protocol on energy efficiency and related environmental aspects,

TAKING ACCOUNT of the Community's willingness to provide socioeconomic cooperation and technical assistance as appropriate, including in the fight against poverty,

BEARING IN MIND the utility of the Agreement in favouring a gradual rapprochement between the Republic of Tajikistan and a wider area of cooperation in Europe and neighbouring regions and its progressive integration into the open international trading system,

CONSIDERING the commitment of the Parties to liberalize trade, in conformity with World Trade Organization (WTO) rules, and that the Community welcomes the intention of The Republic of Tajikistanto accede to WTO,

CONSCIOUS of the need to improve conditions affecting business and investment, and conditions in areas such as establishment of companies, labour, provision of services and capital movements,

CONVINCED that this Agreement will create a new climate for economic relations between the Parties and in particular for the development of trade and investment, which are essential to economic restructuring and technological modernisation,

DESIROUS of establishing close cooperation in the area of environment protection taking into account the interdependence existing between the Parties in this field,

RECOGNISING that cooperation for the prevention and control of illegal immigration, international organised crime and drug trafficking and the fight against terrorism constitute primary objectives of this Agreement,

DESIROUS of establishing cultural cooperation, cooperation in the field of education and improving the flow of information,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

A Partnership is hereby established between the Community and its Member States of the one part, and the Republic of Tajikistan, of the other part. The objectives of this partnership are:

- to support the independence and sovereignty of the Republic of Tajikistan,

- to support the Republic of Tajikistan's efforts to consolidate its democracy, to develop its economy and social infrastructure and to achieve transition to a market economy,

- to provide an appropriate framework for the political dialogue between the Parties allowing the development of close political relations,

- to promote trade and investment, in particular in the energy and water sectors, and harmonious economic relations between the Parties and so to foster their sustainable economic development,

- to provide a basis for legislative, economic, social, financial, civil, scientific, industrial, technological and cultural cooperation.

TITLE I

GENERAL PRINCIPLES

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 underpin the internal and external policies of the Parties and constitute an essential element of this Agreement.

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

POLITICAL DIALOGUE

ARTICLE 4

A regular and constant political dialogue shall be established between the Parties, which they intend to develop and intensify. It shall accompany and consolidate the rapprochement between the Community and the Republic of Tajikistan, support the political and socioeconomic changes underway in the Republic of Tajikistan and contribute to the establishment of new forms of cooperation. The political dialogue:

- will strengthen the links of the Republic of Tajikistan with the Community and its Member States, and thus with the community of democratic nations as a whole. The economic convergence achieved through this Agreement will lead to more intense political relations;

- will bring about an increasing convergence of positions on international issues of mutual concern thus increasing security and stability in the region,

- will encourage the Parties to cooperate on matters pertaining to the observance of the principles of democracy, and the respect, protection and promotion of human rights, including those of persons belonging to minorities, and to hold consultations, if necessary, on relevant matters.

The Parties consider that the proliferation of weapons of mass destruction (WMD) and their means of delivery, both to state and non-state actors, represents one of the most serious threats to international stability and security. The Parties therefore agree to co-operate and to contribute to countering the proliferation of weapons of mass destruction and their means of delivery through full compliance with and national implementation of their existing obligations under international disarmament and non-proliferation treaties and agreements and other relevant international obligations. The parties agree that this provision constitutes an essential element of this agreement and will be part of the political dialogue that will accompany and consolidate these elements.

The parties furthermore agree to cooperate and to contribute to countering the proliferation of weapons of mass destruction and their means of delivery by:

– taking steps to sign, ratify, or accede to, as appropriate, and fully implement all other relevant international instruments;

– the establishment of an effective system of national export controls, controlling the export as well as transit WMD related of goods, including a WMD end-use control on dual use technologies and containing effective sanctions for breaches of export controls. Such dialogue may take place on a regional basis.

ARTICLE 5

At ministerial level, political dialogue shall take place within the Cooperation Council established in Article 77 and on other occasions by mutual agreement.

ARTICLE 6

Other procedures and mechanisms for political dialogue shall be set up by the Parties, notably:

- by regular meetings at senior official level between representatives of the Community and its Member States on the one hand, and of the Republic of Tajikistan on the other hand;

- taking full advantage of diplomatic channels between the Parties, in particular appropriate contacts in the bilateral or multilateral fields, including at United Nations, OSCE meetings and elsewhere;

- by any other means, including the possibility of expert meetings which would contribute to consolidating and developing this dialogue.

TITLE III

TRADE IN GOODS

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 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 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 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 theTajikistan free of quantitative restrictions or measures having equivalent effect, without prejudice to the provisions of Articles 12, 15 and 16 of this Agreement.

ARTICLE 11

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

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 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 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 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 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 IV

PROVISIONS AFFECTING BUSINESS AND INVESTMENT

CHAPTER I

Labour conditions

ARTICLE 17

1. Subject to the laws, conditions and procedures applicable in each Member State, the Community and the Member States shall endeavour to ensure that the treatment accorded to nationals of the Republic of Tajikistan legally resident and employed in the territory of a Member State shall be free from any discrimination based on nationality, as regards working conditions, remuneration or dismissal, compared with that Member State's own nationals.

2. Subject to the laws, conditions and procedures applicable in Tajikistan, the Republic of Tajikistan shall endeavour to ensure that the treatment accorded to nationals of a Member State legally resident and employed in the territory of Tajikistan shall be free from any discrimination based on nationality, as regards working conditions, remuneration or dismissal, compared with its own nationals.

ARTICLE 18

The Cooperation Council shall examine what improvements can be made in working conditions for business people consistent with the international commitments of the Parties, including those set out in the document of the CSCE Bonn Conference.

ARTICLE 19

The Cooperation Council shall make recommendations for the implementation of Articles 17 and 18.

CHAPTER II

Conditions affecting the establishment and operation of companies

ARTICLE 20

1. The Community and its Member States shall grant, for the establishment of Tajik companies as defined in Article 22(d), treatment no less favourable than that accorded to any third country companies.

2. Without prejudice to the reservations listed in Annex II, the Community and its Member States shall grant subsidiaries of Tajik companies established in their

territories treatment no less favourable than that granted to any Community companies, in respect of their operation.

3. The Community and its Member States shall grant branches of Tajik companies established in their territories treatment no less favourable than that accorded to branches of companies of any third country, in respect of their operation.

4. The Republic of Tajikistan shall grant, for the establishment of Community companies as defined in Article 22(d), treatment no less favourable than that accorded to Tajik companies or to any third country companies, whichever is the better.

5. The Republic of Tajikistan shall grant subsidiaries and branches of Community companies established in its territory treatment no less favourable than that accorded to Tajik companies or branches, or to any third country company or branch, whichever is the better, in respect of their operations.

ARTICLE 21

1. The provisions of Article 20 shall not apply to air transport, inland waterways transport and maritime transport.

2. However, in respect of activities undertaken by shipping agencies for the provision of international maritime transport services, including intermodal activities involving a sea leg, each Party shall permit the companies of the other Party to have a commercial presence in its territory in the form of subsidiaries or branches, under conditions of establishment and operation no less favourable than those accorded to its own companies or to subsidiaries or branches of companies of any third country, whichever are better.

Such activities include but are not limited to:

(a) the marketing and sale of maritime transport and related services through direct contact with customers, from quotation to invoicing, whether these services are operated or offered by the service supplier itself or by service suppliers with which the service seller has established standing business arrangements;

(b) the purchase and use, on their own account or on behalf of their customers (and the resale to their customers), of any transport and related services, including inward transport services by any mode, particularly inland waterways, road and rail, necessary for the supply of an integrated service;

(c) the preparation of transport documents, customs documents, or other documents related to the origin and character of the goods transported;

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

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

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

ARTICLE 22

For the purpose of this Agreement:

(a) A "Community company" or a "Tajik company" respectively shall mean a company set up in accordance with the laws of a Member State or of the Republic of Tajikistan respectively and having its registered office, central administration or principal place of business in the territory of the Community or of the Republic of Tajikistan respectively. However, should a company set up in accordance with the laws of a Member State or the Republic of Tajikistan respectively have only its registered office in the territory of the Community or of the Republic of Tajikistan respectively, the company shall be considered a Community or Tajik company respectively if its operations possess a real and continuous link with the economy of one of the Member States or the Republic of Tajikistan respectively.

(b) "Subsidiary" of a company shall mean a company which is effectively controlled by the first company.

(c) "Branch" of a company shall mean a place of business not having legal personality which has the appearance of permanency, such as the extension of a parent body, has a management and is materially equipped to negotiate business with third parties so that the latter, although knowing that there will if necessary be a legal link with the parent body, the head office of which is abroad, do not have to deal directly with such parent body but may transact business at the place of business constituting the extension.

(d) "Establishment" shall mean the right of Community or Tajik companies as referred to in point (a) to take up economic activities by means of the setting up of subsidiaries and branches in the Republic of Tajikistan or in the Community respectively.

(e) "Operation" shall mean the pursuit of economic activities.

(f) "Economic activities" shall mean activities of an industrial, commercial and professional character.

With regard to international maritime transport, including intermodal operations involving a sea leg, nationals of the Member States or of the Republic of Tajikistan established outside the Community or the Republic of Tajikistan respectively, and shipping companies established outside the Community or the Republic of Tajikistan and controlled by nationals of a Member State or nationals of the Republic of Tajikistan respectively, shall also be beneficiaries of the provisions of this Chapter and Chapter III if their vessels are registered in that Member State or in the Republic of Tajikistan respectively in accordance with their respective legislation.

ARTICLE 23

1. Notwithstanding any other provisions of this Agreement, a Party shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the obligations of a Party under this Agreement.

2. Nothing in this Agreement shall be construed as requiring a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

3. For the purposes of this Agreement, "financial services" shall mean those activities described in Annex III.

ARTICLE 24

The provisions of this Agreement shall not prejudice the application by each Party of any measure necessary to prevent the circumvention of its measures concerning third country access to its market, through the provisions of this Agreement.

ARTICLE 25

1. Notwithstanding the provisions of Chapter I of this Title, a Community company or a Tajik company established in the territory of the Republic of Tajikistan or the Community respectively shall be entitled to employ, or have employed by one of its subsidiaries or branches, in accordance with the legislation in force in the host country of establishment, in the territory of the Republic of Tajikistan and the Community respectively, employees who are nationals of Community Member States and the Republic of Tajikistan respectively, provided that such employees are key personnel as defined in paragraph 2, and that they are employed exclusively by companies, or branches. The residence and work permits of such employees shall only cover the period of such employment.

2. Key personnel of the abovementioned companies herein referred to as "organisations" are "intra-corporate transferees" as defined in (c) in the following

categories, provided that the organisation is a legal person and that the persons concerned have been employed by it or have been partners in it (other than majority shareholders) for at least the year immediately preceding such movement:

(a) Persons working in a senior position with an organisation, who primarily direct the management of the establishment, receiving general supervision or direction principally from the board of directors or stockholders of the business or their equivalent, including:

- directing the establishment or a department or subdivision of the establishment,

- supervising and controlling the work of other supervisory, professional or managerial employees,

- having the authority personally to hire and fire or recommend hiring, firing or other personnel actions.

(b) Persons working within an organisation who possess uncommon knowledge essential to the establishment's service, research equipment, techniques or management. The assessment of such knowledge may reflect, apart from knowledge specific to the establishment, a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession.

(c) An "intra-corporate transferee" is defined as a natural person working within an organisation in the territory of a Party, and being temporarily transferred in the context of pursuit of economic activities in the territory of the other Party; the organisation concerned must have its principal place of business in the territory of a Party and the transfer be to abranch or a subsidiary of that organisation effectively pursuing like economic activities in the territory of the other Party.

ARTICLE 26

1. The Parties shall use their best endeavours to avoid taking any measures or actions which render the conditions for the establishment and operation of each other's companies more restrictive than the situation existing on the day preceding the date of signature of the Agreement.

2. The provisions of this Article are without prejudice to those of Article 34: the situations covered by Article 34 shall be governed exclusively by the provisions thereof.

3. Acting in the spirit of partnership and cooperation and in the light of the provisions of Article 40, the Government of the Republic of Tajikistan shall inform the Community of its intentions to submit new legislation or adopt new regulations

which may render the conditions for the establishment or operation in the Republic of Tajikistan of subsidiaries and branches of Community companies more restrictive than the situation existing on the day preceding the date of signature of the Agreement. The Community may request the Republic of Tajikistan to communicate the drafts of such legislation or regulations and to enter into consultations about those drafts.

4. Where new legislation or regulations introduced in the Republic of Tajikistan would result in rendering the conditions for operation of subsidiaries and branches of Community companies established in the Republic of Tajikistan more restrictive than the situation existing on the day of signature of this Agreement, such legislation or regulations shall not apply during three years following the entry into force of the relevant act to those subsidiaries and branches already established in the Republic of Tajikistan at the time of entry into force of the relevant act.

CHAPTER III

Cross-border supply of services between

the Community and the Republic of Tajikistan

ARTICLE 27

1. The Parties undertake in accordance with the provisions of this Chapter to take the necessary steps to allow progressively the supply of services by Community or Tajik companies which are established in a party other than that of the person for whom the services are intended, taking into account the development of the service sectors in the two Parties.

2. The Cooperation Council shall make recommendations for the implementation of paragraph 1.

ARTICLE 28

The Parties shall cooperate with the aim of developing a market-oriented service sector in the Republic of Tajikistan.

ARTICLE 29

1. The Parties undertake to apply effectively the principle of unrestricted access to the international maritime market and traffic on a commercial basis:

   (a) The above provision does not prejudice the rights and obligations arising from the United Nations Convention on a Code of Conduct for Liner Conferences, as applicable to one or other Party to this Agreement. Non-conference lines will be free to operate in competition with a conference as long as they adhere to the principle of fair competition on a commercial basis.

(b) The Parties affirm their commitment to a freely competitive environment as being an essential feature of the dry and liquid bulk trade.

2. In applying the principles of paragraph 1, the Parties shall:

(a) not apply, as from the entry into force of this Agreement, any cargo-sharing provisions of bilateral agreements between Member States of the Community and the former Soviet Union;

(b) not introduce cargo-sharing clauses into future bilateral agreements with third countries, other than in those exceptional circumstances where liner shipping companies from one or other Party to this Agreement would not otherwise have an effective opportunity to ply for trade to and from the third country concerned;

(c) prohibit cargo-sharing arrangements in future bilateral agreements concerning dry and liquid bulk trade;

(d) abolish, upon entry into force of this Agreement, all unilateral measures, administrative, technical and other obstacles which could have restrictive or discriminatory effects on the free supply of services in international maritime transport.

3. Each Party shall grant, inter alia, no less favourable treatment to ships operated by nationals or companies of the other Party than that accorded to a Party's own ships with regard to access to ports open to international trade, the use of infrastructure and auxiliary maritime services of the ports, the related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading.

ARTICLE 30

With a view to assuring the coordinated development of transport between the Parties, adapted to their commercial needs, the conditions of mutual market access and provision of services in transport by road, rail and inland waterways and, if applicable, air may be dealt with by specific agreements negotiated between the Parties after entry into force of this Agreement.

CHAPTER IV

General provisions

ARTICLE 31

1. The provisions of this Title shall be applied subject to limitations justified on grounds of public policy, public security or public health.

2. They shall not apply to activities which in the territory of the Parties are connected, even occasionally, with the exercise of official authority.

ARTICLE 32

For the purpose of this Title, nothing in this Agreement shall prevent the Parties from applying their laws and regulations regarding entry and stay, work, labour conditions and establishment of natural persons and supply of services, provided that, in so doing, they do not apply them in a manner such as to nullify or impair the benefits accruing to any Party under the terms of a specific provision of this Agreement. The above provision does not prejudice the application of Article 31.

ARTICLE 33

Companies which are controlled and exclusively owned by Tajik companies and Community companies jointly shall also be beneficiaries of the provisions of Chapters II, III and IV.

ARTICLE 34

Treatment granted by either Party to the other under this Agreement shall, as from the day one month prior to the date of entry into force of the relevant obligations of the General Agreement on Trade in Services (GATS), in respect of sectors or measures covered by the GATS, in no case be more favourable than that accorded by such first Party under the provisions of GATS and this in respect of each service sector, sub-sector and mode of supply.

ARTICLE 35

For the purposes of Chapters II, III and IV, no account shall be taken of treatment accorded by the Community, its Member States or the Republic of Tajikistan pursuant to commitments entered into in economic integration agreements in accordance with the principles of Article V of the GATS.

ARTICLE 36

1. The most-favoured-nation treatment granted in accordance with the provisions of this Title shall not apply to the tax advantages which the Parties are providing, or will provide in the future, on the basis of agreements to avoid double taxation or of other tax arrangements.

2. Nothing in this Title shall be construed as preventing the adoption or enforcement by the Parties of any measure aimed at preventing the avoidance or evasion of taxes pursuant to the tax provisions of agreements to avoid double taxation, other tax arrangements or domestic fiscal legislation.

3. Nothing in this Title shall be construed as preventing Member States or the Republic of Tajikistan from distinguishing, in the application of the relevant provisions of their fiscal legislation, between taxpayers who are not in identical situations, in particular as regards their place of residence.

ARTICLE 37

Without prejudice to Article 24, no provision of Chapters II, III and IV shall be interpreted as giving the right to:

- nationals of the Member States or of the Republic of Tajikistan respectively to enter, or stay in, the territory of the Republic of Tajikistan or the Community respectively in any capacity whatsoever, and in particular as a shareholder or partner in a company or manager or employee thereof or supplier or recipient of services;

- Community subsidiaries or branches of Tajik companies to employ, or have employed, nationals of the Republic of Tajikistan in the territory of the Community;

- Tajik subsidiaries or branches of Community companies to employ, or have employed, nationals of the Member States in the territory of the Republic of Tajikistan;

- Tajik companies or Community subsidiaries or branches of Tajik companies to supply Tajik persons to act for and under the control of, other persons under temporary employment contracts;

- Community companies or Tajik subsidiaries or branches of Community companies to supply workers who are nationals of the Member States under temporary employment contracts.

CHAPTER V

Current payments and capital

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.

2. With regard to transactions on the capital account of the balance of payments, from entry into force of this Agreement, the free movement of capital shall be ensured for the purposes of direct investments made in companies formed in accordance with the laws of the host country, investments made in accordance with the provisions of Chapter II, and the liquidation or repatriation of these investments and of any profit stemming therefrom.

3. Without prejudice to paragraph 2 or to paragraph 5, as from the entry into force of this Agreement, no new foreign exchange restrictions shall be introduced on the movement of capital and current payments connected therewith between residents of

the Community and Tajikistan and nor shall the existing arrangements be made more restrictive.

4. The Parties shall consult each other with a view to facilitating the movement of forms of capital other than those referred to in paragraph 2 between the Community and the Republic of Tajikistan in order to promote the objectives of this Agreement.

5. With reference to the provisions of this Article, until full convertibility of the Tajik currency within the meaning of Article VIII of the Articles of Agreement of the International Monetary Fund (IMF) is introduced, the Republic of Tajikistan may in exceptional circumstances apply exchange restrictions connected with the granting or taking-up of short- and medium-term financial credits to the extent that such restrictions are imposed on Tajikistan for the granting of such credits and are permitted according to the Republic of Tajikistan's status under the IMF. The Republic of Tajikistan shall apply these restrictions in a non-discriminatory manner. They shall be applied in such a manner as to cause the least possible disruption to this Agreement. the Republic of Tajikistan shall inform the Cooperation Council promptly of the introduction of such measures and of any changes therein.

6. Without prejudice to paragraphs 1 and 2, where, in exceptional circumstances, movements of capital between the Community and the Republic of Tajikistan cause, or threaten to cause, serious difficulties for the operation of exchange-rate policy or monetary policy in the Community or Tajikistan, the Community and the Republic of Tajikistan respectively may take safeguard measures with regard to movements of capital between the Community and the Republic of Tajikistan for a period not exceeding six months, if such measures are strictly necessary.

CHAPTER VI

Intellectual, industrial and commercial property protection

ARTICLE 39

1. Pursuant to the provisions of this Article and of Annex IV, 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.

2. By the end of the fifth year after entry into force of this Agreement, the Republic of Tajikistan shall accede to the multilateral conventions on intellectual, industrial and commercial property rights referred to in paragraph 1 of Annex IV to which Member States are parties or which are de facto applied by Member States, according to the relevant provisions contained in these conventions. For implementation of this provision, the Community will provide support wherever possible.

TITLE V

LEGISLATIVE COOPERATION

ARTICLE 40

1. The Parties recognise that an important condition for strengthening the economic links between the Republic of Tajikistan and the Community is the approximation of the Republic of Tajikistan's existing and future legislation to that of the Community. The Republic of Tajikistan shall endeavour to ensure that its legislation is gradually made compatible with that of the Community.

2. The approximation of laws shall extend to the following areas in particular: customs law, company law, laws on banking and other financial services, company accounts and taxes, intellectual property, protection of workers at the workplace, rules on competition, including any related issues and practices affecting trade, public procurement, protection of health and life of humans, animals and plants, the environment, consumer protection, indirect taxation, technical rules and standards, nuclear laws and regulations, transport and electronic communications.

3. The Community shall provide the Republic of Tajikistan with technical assistance for the implementation of these measures, which may include:

   - the exchange of experts;

   - the provision of early information, especially on relevant legislation;

   - organisation of seminars;

   - training of personnel involved in the drafting and implementation of legislation;

   - aid for translation of Community legislation in the relevant sectors.

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.

TITLE VI

ECONOMIC COOPERATION

ARTICLE 41

1. The Community and the Republic of Tajikistan shall establish economic cooperation aimed at contributing to the process of economic reform and recovery and sustainable development of the Republic of Tajikistan. Such cooperation shall strengthen existing economic links to the benefit of the Parties.

2. Policies and other measures will be designed to bring about economic and social reforms and the restructuring of economic systems in the Republic of Tajikistan and will be guided by the requirements of sustainability and harmonious social development; they will also fully incorporate environmental considerations and the fight against poverty.

3. To this end the cooperation will concentrate, in particular, on economic and social development, human resources development, support for enterprises (including privatisation, investment and development of financial services), agriculture and food (including food security), energy (including hydro-electricity), water management and civil nuclear safety, health and the fight against poverty, transport, postal services, electronic communications, tourism, environmental protection, cross-border activities and regional cooperation.

4. Special attention shall be devoted to measures capable of fostering the economic potential of the Republic of Tajikistan and regional cooperation.

5. Where appropriate, economic cooperation and other forms of cooperation provided for in this Agreement may be supported by technical assistance from the Community, taking into account the Community's Council Regulation applicable to technical assistance in the Independent States, the agreed priorities in the indicative programme for Community technical assistance to Central Asia and its application in the Republic of Tajikistan and its established coordination and implementation procedures. the Republic of Tajikistan may also benefit from other Community programmes in accordance with the appropriate regulations adopted by the Council.

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 43

Industrial cooperation

1. Cooperation shall aim at promoting the following in particular:

- the development of business links between economic operators of both Parties, including between small and medium-sized enterprises;
- Community participation in the Republic of Tajikistan's efforts to restructure its industry;
- the improvement of management;
- the improvement of the quality of industrial products and their adaptation to international standards;
- the development of efficient production and processing capacity in the raw materials sector;
- the development of appropriate commercial rules and practices, including product marketing;
- environmental protection;
- defence conversion;
- training of personnel.

2. The provisions of this Article shall not affect the enforcement of Community competition rules applicable to undertakings.

ARTICLE 44

Investment promotion and protection

1. Bearing in mind the respective powers and competences of the Community and the Member States, cooperation shall aim to establish a favourable climate for private investment, both domestic and foreign, especially through better conditions for investment protection, the transfer of capital and the exchange of information on investment opportunities.

2. The aims of cooperation shall be in particular:

- to conclude, where appropriate, agreements between the Member States and the Republic of Tajikistan to avoid double taxation;

- to create favourable conditions for attracting foreign investments into the Tajik economy;

- to establish stable and adequate business law and conditions, and to exchange information on laws, regulations and administrative practices in the field of investment;

- to exchange information on investment opportunities in the form of, inter alia, trade fairs, exhibitions, trade weeks and other events.

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 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 47

Mining and raw materials

1. The Parties shall aim at increasing investment and trade in mining and raw materials, including non ferrous metals.

2. The cooperation shall focus in particular on the following areas:

- the exchange of information on the prospects of the mining and non-ferrous metals sectors;

- the establishment of a legal framework for cooperation;

- trade matters;

- the adoption and implementation of environmental legislation;

- training;

- safety in the mining industry.

ARTICLE 48

Cooperation in science and technology

1. The Parties shall promote cooperation in civil scientific research and technological development (RTD) on the basis of mutual benefit and, taking into account the availability of resources, adequate access to their respective programmes, subject to appropriate levels of effective protection of intellectual, industrial and commercial property rights (IPR).

2. Science and technology cooperation shall cover:

   - the exchange of scientific and technical information;

   - joint RTD activities;

   - training activities and mobility programmes for scientists, researchers and technicians of both Parties engaged in RTD.

   Where such cooperation takes the form of activities involving education and/or training, it must be carried out in accordance with the provisions of Article 49.

   The Parties, on the basis of mutual agreement, may engage in other forms of cooperation in science and technology.

   In carrying out such cooperation activities, particular attention shall be devoted to the redeployment of scientists, engineers, researchers and technicians who are or have been engaged in research on, and/or production of, weapons of mass destruction.

3. The cooperation covered by this Article shall be implemented according to specific arrangements to be negotiated and concluded in accordance with the procedures adopted by each Party, which shall include appropriate IPR provisions.

ARTICLE 49

Education and training

1. The Parties shall cooperate with the aim of raising the level of general education and professional qualifications in the Republic of Tajikistan, both in the public and private sectors.

2. The cooperation shall focus in particular on the following areas:

- updating higher education and training systems in the Republic of Tajikistan, including the system of certification of higher education establishments and higher education diplomas;

- training public and private sector executives and civil servants in priority areas to be determined;

- cooperation between educational establishments and between educational establishments and firms;

- mobility for teachers, graduates, administrators, young scientists and researchers, and young people;

- promoting teaching in the field of European studies within the appropriate institutions;

- teaching Community languages;

- post-graduate training of conference interpreters;

- training of journalists;

- training of trainers.

3. The possible participation of one Party in the other Party's programmes in the field of education and training may be considered in accordance with their respective procedures; where appropriate, institutional frameworks and plans of cooperation will then be established through the participation of the Republic of Tajikistan in the Community's TEMPUS programme.

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 51

Energy

1. Cooperation shall be governed by the principles of the market economy and the European Energy Charter, against a background of the progressive integration of the energy markets in Europe.

2. Cooperation shall concentrate, inter alia, upon the formulation and development of energy policy. It shall include the following areas:

   - the improvement of the management and regulation of the energy sector in line with a market economy;

   - the improvement of energy supply, including security of supply, in an economically and environmentally sound manner;

   - the promotion of energy saving and energy efficiency and implementation of the Energy Charter Protocol on Energy Efficiency and related environmental aspects;

   - the modernisation of energy infrastructure;

   - the improvement of energy supply and use technologies across the range of energy types;

   - management and technical training in the energy sector;

   - the transportation and transit of energy materials and products;

   - the introduction of the range of institutional, legal, fiscal and other conditions necessary to encourage increased energy trade and investment;

   - the development of hydro-electric and other renewable energy resources.

3. The Parties shall exchange relevant information on investment projects in the energy sector, in particular concerning the production of energy resources and the construction and refurbishing of oil and gas pipelines or other means of transporting energy products. The Parties attach particular importance to cooperation regarding investments in the energy sector and the manner in which these are regulated. They

shall cooperate with a view to implementing the provisions of Title IV and of Article 44 as efficaciously as possible in respect of investments in the energy sector.

ARTICLE 52

Environment and health

1. Bearing in mind the European Energy Charter, the Declarations of the Lucerne Conference of April 1993 and of the Sofia Conference of October 1995, and taking into account the Energy Charter Treaty, and especially Article 19 thereof, and the Energy Charter Protocol on Energy Efficiency and related environmental aspects, the Parties shall develop and strengthen their cooperation on environment and human health.

2. Cooperation shall aim at protecting the environment, combating all kinds of pollution and in particular cover:

- effective monitoring of pollution levels and assessment of the environment; a system of information on the state of the environment;
- combating local, regional and transboundary air and water pollution;
- environmental rehabilitation;
- sustainable, efficient and environmentally sound production and use of energy;
- the safety of industrial plants;
- classification and safe handling of chemicals;
- water quality;
- waste reduction, recycling and safe disposal, implementation of the Basel Convention when signed;
- the environmental impact of agriculture; soil erosion; chemical pollution;
- the protection of forests;
- the conservation of biodiversity, protected areas and sustainable use and management of biological resources;
- land-use planning, including construction and urban planning;
- the use of economic and fiscal instruments;
- global climate change;

- environmental education and awareness;

- implementation of the Espoo Convention on Environmental Impact Assessment in a transboundary context when signed.

3. Forms of cooperation shall include:

- planning for disasters and other emergency situations;

- the exchange of information and experts, including information and experts dealing with the transfer of clean technologies and the safe and environmentally sound use of biotechnologies;

- joint research activities;

- approximation of laws towards Community standards;

- cooperation at regional level, including cooperation within the framework of the European Environment Agency, and at international level;

- the development of strategies, particularly with regard to global and climatic issues and with a view to achieving sustainable development;

- environmental impact studies.

4. The Parties shall seek to develop their cooperation on questions of human health, in particular through technical assistance on the prevention and combating of infectious diseases and the protection of mothers and young children.

ARTICLE 53

Transport

The Parties shall develop and strengthen their cooperation in the field of transport.

This cooperation shall, inter alia, aim at restructuring and modernising transport systems and networks in the Republic of Tajikistan; developing and ensuring, where appropriate, compatibility of transportation systems in the context of achieving a more global transport system; and identifying and elaborating priority projects and seeking to attract investment for their implementation.

Cooperation shall include:

- the modernisation of management and operations of road transport, railways and airports;

- the modernisation and development of railways, waterways, roads, airport and air navigation infrastructure and navigation aids, including the modernisation of major routes of common interest and the trans-European links for the above modes, particularly those related to the TRACECA project;

- the promotion and development of multi-modal transport;

- the promotion of joint research and development programmes;

- the preparation of the legislative and institutional framework for policy development and implementation, including privatisation of the transport sector;

- the simplification of procedures for all forms of transport in the region.

ARTICLE 54

Electronic communications and postal services

Within their respective powers and competences the Parties shall expand and strengthen cooperation aimed at:

- establishing policies and guidelines for the development of the electronic communications sector and postal services;

- developing tariff policy and marketing principles for electronic communications and postal services;

- transferring technology and know-how, particularly regarding European technical standards and certification systems;

- encouraging the development of projects for electronic communications and postal services and attracting investment;

- enhancing the efficiency and quality of electronic communications and postal services, inter alia through liberalisation of activities in sub-sectors;

- promoting advanced application of electronic communications, notably in the area of electronic funds transfer;

- enhancing the management of, and optimising, electronic communications networks;

- developing an appropriate regulatory basis for the provision of electronic communications and postal services and for the use of the radio frequency spectrum;

- enhancing training in the field of electronic communications and postal services for operations in market conditions.

ARTICLE 55

Financial services and fiscal institutions

1. Cooperation in the field of financial services shall in particular aim at facilitating the involvement of the Republic of Tajikistan in universally recognised clearing systems. Technical assistance shall focus on:

   - the development of a stock market and a securities market;

   - the development of banking services, the development of a common market for credit resources and the involvement of the Republic of Tajikistan in a universally recognised clearing system;

   - the development of insurance services, which would inter alia create a favourable framework for Community companies' participation in the establishment of joint ventures in the insurance sector in the Republic of Tajikistan, and the development of export credit insurance.

   This cooperation shall in particular contribute to fostering relations between the Parties in the financial services sector.

2. The Parties shall cooperate in developing the fiscal system and fiscal institutions in the Republic of Tajikistan. This cooperation shall include the exchange of information and experience on fiscal matters and the training of personnel involved in the formulation and implementation of fiscal policy.

ARTICLE 56

Enterprise restructuring and privatisation

Recognising that privatisation is of fundamental importance to a sustainable economic recovery, the Parties agree to cooperate in the development of the necessary institutional, legal and methodological framework. Particular attention shall be paid to the orderly and transparent nature of the privatisation process, exchange of information and experience, and appropriate training in investment policy.

Technical assistance shall focus on, inter alia:

- the further development of an institutional base within the Government of the Republic of Tajikistan to assist with defining and managing the privatisation process;

- the further development of the privatisation strategy of the Government of the Republic of Tajikistan, including the legislative framework, and implementation mechanisms;

- furthering market approaches to land use and usufruct;

- the restructuring of those enterprises not yet ready for privatisation;

- the development of private enterprise, and particularly small and medium-sized enterprises;

- the development of investment funds.

The objective of this cooperation shall be to contribute to the promotion of Community investment in the Republic of Tajikistan.

ARTICLE 57

Regional development

1. The Parties shall strengthen cooperation on regional development and land-use planning.

2. To this end, the Parties shall encourage the exchange of information by national, regional and local authorities on regional and land-use planning policy and on methods of formulation of regional policies with special emphasis on the development of disadvantaged areas.

   They shall also encourage direct contacts between the respective regions and public organisations responsible for regional development planning with the aim, inter alia, of exchanging information regarding ways of fostering regional development.

ARTICLE 58

Social cooperation

1. With regard to health and safety, the Parties shall develop cooperation between them with the aim of improving inter alia the level of protection of the health and safety of workers.

   This cooperation shall include:

   - education and training on health and safety issues with specific attention to high risk sectors of activity;

   - development and promotion of preventive measures to combat work related diseases and other work related ailments;

   - prevention of major accident hazards and the management of toxic chemicals;

   - research on developing information and understanding of the working environment and on the health and safety of workers.

2. With regard to employment, the cooperation shall include notably technical assistance for:

- the optimisation of the labour market;
- the modernisation of job-finding and careers advisory services;
- the planning and management of restructuring programmes;
- the encouragement of local employment development;
- the exchange of information on the programmes of flexible employment, including those stimulating self-employment and promoting entrepreneurship.

3. The Parties shall pay special attention to cooperation in the sphere of social protection, including cooperation in planning and implementing social protection reforms in the Republic of Tajikistan.

These reforms shall aim to develop in the Republic of Tajikistan methods of protection intrinsic to market economies and shall comprise all relevant forms of social protection.

ARTICLE 59

Tourism

The Parties shall increase and develop their cooperation with a view, inter alia, to:

- facilitating the tourist trade;
- increasing the flow of information;
- transferring know-how;
- studying the opportunities for joint operations;
- cooperation between official tourism bodies, including the preparation of promotional material;
- training for tourism development.

ARTICLE 60

Small and medium-sized enterprises

1. The Parties shall aim to develop and strengthen small and medium-sized enterprises (SMEs) and their associations, and cooperation between SMEs in the Community and the Republic of Tajikistan.

2. Cooperation shall include technical assistance, in particular in the following areas:

- the development of a legislative framework for SMEs;

- the development of an appropriate infrastructure to support SMEs, to promote communication and business cooperation between SMEs both within the Republic of Tajikistan and further afield, and to train SMEs in the skills necessary to access funding;

- training in the areas of marketing, accounting and control of the quality of products.

ARTICLE 61

Information and communication

The Parties shall support the development of modern methods of information handling, including the media, and stimulate the effective mutual exchange of information. Priority shall be given to programmes aimed at providing the general public with basic information about the Community and the Republic of Tajikistan, including, where possible, access to databases, in full respect of intellectual property rights.

ARTICLE 62

Consumer protection

The Parties shall enter into close cooperation aimed at achieving compatibility between their systems of consumer protection. This cooperation may include the exchange of information on legislative work and institutional reform, the establishment of permanent systems of mutual information on dangerous products, the improvement of information provided to consumers, especially on prices, characteristics of products and services offered, the development of exchanges between consumer interest representatives, and increasing the compatibility of consumer protection policies, and the organization of seminars and training periods.

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 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.

ARTICLE 65

Economic science

The Parties shall facilitate the process of socioeconomic reform and the coordination of economic policies by cooperating to improve understanding of the fundamentals of their respective economies and the design and implementation of economic policy in market

economies. To this end, the Parties shall exchange information on macroeconomic performance and prospects.

The Community shall provide technical assistance to:

- assist the Republic of Tajikistan in the process of economic reform by providing expert advice and technical assistance,

- encourage cooperation among economists in order to expedite the transfer of know-how for the drafting of economic policies, and provide for wide dissemination of policy-relevant research;

- improve the Republic of Tajikistan's capacity to formulate economic models.

TITLE VII

COOPERATION ON MATTERS RELATING TO

DEMOCRACY AND HUMAN RIGHTS

ARTICLE 66

The Parties shall cooperate on all questions relevant to the establishment or reinforcement of democratic institutions, including those required in order to strengthen the rule of law, and the protection of human rights and fundamental freedoms according to international law and OSCE principles.

This cooperation shall take the form of technical assistance programmes intended to assist, inter alia, in the drafting of relevant legislation and regulations; the implementation of such legislation; the functioning of the judiciary; the role of the State in questions of justice; and the operation of the electoral system. They shall include training where appropriate. The Parties shall encourage contacts and exchanges between their national, regional and judicial authorities, parliamentarians, and non-governmental organisations.

TITLE VIII

COOPERATION ON PREVENTION OF ILLEGAL ACTIVITIES

AND THE PREVENTION AND CONTROL OF ILLEGAL IMMIGRATION

ARTICLE 67

The Parties shall establish cooperation aimed at preventing illegal activities such as:

- illegal activities in the sphere of economics, including corruption;

- illegal transactions in various goods, including industrial waste, and illicit traffic of arms;

- counterfeiting.

Cooperation in the above areas shall be based on mutual consultation and close interaction. Technical and administrative assistance shall be provided, in such areas as:

- drafting national legislation in the sphere of preventing illegal activities;

- creating information centres;

- increasing the efficiency of institutions engaged in preventing illegal activities;

- training personnel and developing research infrastructure;

- elaborating mutually acceptable measures to counter illegal activities.

ARTICLE 68

Money laundering

1. The Parties agree on the necessity of making efforts and cooperating in order to prevent the use of their financial systems for laundering the proceeds of criminal activities in general and drug offences in particular.

2. Cooperation in this area shall include administrative and technical assistance with a view to establishing standards against money laundering equivalent to those adopted by the Community and international fora in this field, including the Financial Action Task Force (FATF).

ARTICLE 69

Fight against drugs

Within the framework of their respective powers and competences the Parties shall cooperate to increase the effectiveness and efficiency of policies and measures to counter the illicit production, supply and traffic in narcotic drugs and psychotropic substances, including the prevention of diversion of precursor chemicals, and to promote drug demand prevention and reduction. As regards the control of precursor chemicals and other essential substances used for the illicit production of narcotic drugs and psychotropic substances, this cooperation shall be based on the standards adopted by the Community and the international authorities concerned, such as those of the Chemical Action Task Force (CATF). Cooperation in this area shall be based on mutual consultation and close coordination between the Parties on objectives and measures to be taken in the various drug-related fields.

ARTICLE 70

Co-operation on migration

1. The Parties reaffirm the importance, which they attach to a joint management of migration flows between their territories. With a view to strengthening co-operation between them, they shall establish a comprehensive dialogue on all migration-related issues, including illegal migration, smuggling and trafficking in human beings, as well as the inclusion of the migration concerns in the national strategies for economic and social development of the areas from which migrants originate.

2. Co-operation shall be based on a specific needs assessment conducted in mutual consultation between the Parties and be implemented in accordance with the relevant Community and national legislation in force. It will, in particular, focus on:

(a) the root causes of migration;

(b) the development and implementation of national legislation and practices as regards international protection, with a view to satisfying the provisions of the Geneva Convention of 1951 on the status of refugees and of the Protocol of 1967 and other relevant international instruments, and to ensuring the respect of the principle of "non-refoulement";

(c) the admission rules and rights and status of persons admitted, fair treatment and integration of lawfully residing non-nationals, education and training and measures against racism and xenophobia;

(d) the establishment of an effective and preventive policy against illegal immigration, smuggling of migrants and trafficking in human beings including the issue of how to combat networks of smugglers and traffickers and how to protect the victims of such trafficking;

(e) the return, under humane and dignified conditions, of persons residing illegally including the promotion of their voluntary return, and the readmission of such persons, in accordance with paragraph 3;

(f) the field of visas, on issues identified as being of mutual interest;

(g) the field of border controls, on issues related to organisation, training, best practices and other operational measures on the ground and where relevant, equipment, while being aware of the potential dual use of such equipment.

3. In the framework of the cooperation to prevent and control illegal immigration, the Parties also agree to readmit their illegal migrants. To this end:

- the Republic of Tajikistan shall readmit any of its nationals illegally present on the territory of a Member State of the European Union, upon request by the latter and without further formalities;

- and each Member State of the European Union shall readmit any of its nationals illegally present on the territory of the Republic of Tajikistan, upon request by the latter and without further formalities.

The Member States of the European Union and the Republic of Tajikistan will provide their nationals with appropriate identity documents for such purposes.

The Parties agree to conclude, upon request and as soon as possible, an agreement regulating the specific obligations for Member States of the European Union and the Republic of Tajikistan on readmission, including an obligation for the readmission of nationals of other countries and stateless persons.

For this purpose, the term "Parties" shall mean the European Community, any of its Member States and the Republic of Tajikistan.

ARTICLE 71

Fight against terrorism

The parties reaffirm the importance of the fight against terrorism and, in accordance with international agreements and their respective laws and regulations, agree to cooperate on the prevention and elimination of terrorist acts. In particular they will cooperate:

- in the framework of the full implementation of UN Security Council Resolution 1373 and other UN resolutions, agreements and other international instruments relating to this matter;

- by exchanges of information, in accordance with the international and national laws on terrorist groups and their support networks;

- and by exchanges of views on the means and methods used to counter terrorism, including technical fields and training, and by an exchange of experience concerning the prevention of terrorism.

TITLE IX

CULTURAL COOPERATION

ARTICLE 72

The Parties undertake to promote, encourage and facilitate cultural cooperation. Where appropriate, the Community's cultural cooperation programmes or those of one or more

Member States may be the subject of cooperation and further activities of mutual interest may be developed.

TITLE X

FINANCIAL COOPERATION

ARTICLE 73

In order to achieve the objectives of this Agreement and in accordance with Articles 74, 75 and 76, the Republic of Tajikistan shall be eligible for temporary financial assistance from the Community by way of technical assistance grants.

ARTICLE 74

This financial assistance shall be covered by the Tacis programme and the Community's relevant Council Regulation. the Republic of Tajikistan may also benefit from other types of Community assistance according to its needs. Particular attention shall be given to the focussing of aid, the coordination of assistance instruments and the link between the various types of Community humanitarian, rehabilitation and development aid. The fight against poverty shall be incorporated into the Community programmes.

ARTICLE 75

The objectives and the areas of the Community's financial assistance shall be laid down in an indicative programme reflecting priorities between the Community and the Republic of Tajikistan, taking into account the Republic of Tajikistan's needs, sectoral absorption capacities and progress with reform. The Parties shall inform the Cooperation Council thereof.

ARTICLE 76

In order to permit optimum use of the resources available, the Parties shall ensure that Community assistance is closely coordinated with contributions from other sources such as the Member States, other countries and international organisations such as the International Bank for Reconstruction and Development and the European Bank for Reconstruction and Development.

TITLE XI

INSTITUTIONAL, GENERAL AND FINAL PROVISIONS

ARTICLE 77

A Cooperation Council is hereby established to supervise the implementation of this Agreement. It shall meet regularly at ministerial level. It shall meet at intervals which it shall itself determine and at least once every two years. It shall examine any major issues arising within the framework of this Agreement and any other bilateral or international issues of mutual

interest for the purpose of attaining the objectives of this Agreement. With the Parties' agreement, the Cooperation Council may also make appropriate recommendations.

ARTICLE 78

1. The Cooperation Council shall consist of members of the Council of the European Union and members of the Commission of the European Communities, on the one hand, and of members of the Government of the Republic of Tajikistan, on the other.

2. The Cooperation Council shall establish its rules of procedure.

3. The office of President of the Cooperation Council shall be held alternately by a representative of the Community and by a member of the Government of the Republic of Tajikistan.

ARTICLE 79

1. The Cooperation Council shall be assisted in the performance of its duties by a Cooperation Committee composed of representatives of the members of the Council of the European Union and of members of the Commission of the European Communities on the one hand and of representatives of the Government of the Republic of Tajikistan on the other, normally at senior civil servant level. The office of President of the Cooperation Committee shall be held alternately by the Community and by the Republic of Tajikistan.

   In its rules of procedure the Cooperation Council shall lay down the duties of the Cooperation Committee, which shall include the preparation of meetings of the Cooperation Council, and how the Committee shall function.

2. The Cooperation Council may delegate any of its powers to the Cooperation Committee, which will ensure continuity between meetings of the Cooperation Council.

ARTICLE 80

The Cooperation Council may decide to set up any other special committee or body that can assist it in carrying out its duties and shall determine the composition and duties of such committees or bodies and how they shall function.

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 82

A Parliamentary Cooperation Committee is hereby established. It shall be a forum for Members of the Tajik Parliament and the European Parliament to meet and exchange views, including on matters concerning political dialogue at parliamentary level. It shall meet at intervals which it shall itself determine.

ARTICLE 83

1. The Parliamentary Cooperation Committee shall consist of members of the European Parliament, on the one hand, and of members of the Tajik Parliament, on the other.

2. The Parliamentary Cooperation Committee shall establish its rules of procedure.

3. The Parliamentary Cooperation Committee shall be presided in turn by the European Parliament and the Tajik Parliament respectively, in accordance with the provisions to be laid down in its rules of procedure.

ARTICLE 84

The Parliamentary Cooperation Committee may request relevant information regarding the implementation of this Agreement from the Cooperation Council, which shall then supply the Committee with the requested information.

The Parliamentary Cooperation Committee shall be informed of the recommendations of the Cooperation Council.

The Parliamentary Cooperation Committee may make recommendations to the Cooperation Council.

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 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 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 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 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 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 91

For the purposes of this Agreement, the term "Parties" shall mean the Republic of Tajikistan, on the one part, and the Community, or the Member States, or the Community and the Member States, in accordance with their respective powers, on the other part.

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 93

This Agreement is concluded for an initial period of ten years, after which time it shall be automatically renewed from year to year, provided that neither Party gives the other Party written notice of denunciation of this Agreement six months before it expires.

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 95

Annexes I, II, III and IV together with the Protocol shall form an integral part of this Agreement.

ARTICLE 96

This Agreement shall not, until equivalent rights have been achieved hereunder, affect rights assured to individuals and economic operators by existing Agreements binding one or more Member States, on the one hand, and the Republic of Tajikistan, on the other, except in areas falling within Community competence and without prejudice to the obligations of Member States resulting from this Agreement in areas falling within their competence.

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 98

The Secretary-General of the Council of the European Union shall be the depositary of this Agreement.

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 100

This Agreement shall 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 subparagraph have been completed.

Upon its entry into force, and as far as relations between the Republic of Tajikistan and the Community are concerned, this Agreement shall replace the Agreement between the European Economic Community and the Union of Soviet Socialist Republics on trade and economic and commercial cooperation signed in Brussels on 18 December 1989.

ARTICLE 101

In the event that, pending the completion of the procedures necessary for the entry into force of this Agreement, the provisions of certain parts of this Agreement are put into effect by means of an Interim Agreement between the Community and the Republic of Tajikistan, the Parties agree that, in such circumstances, the term "date of entry into force of this Agreement" shall mean the date of entry into force of the Interim Agreement.

FOR THE MEMBER STATES

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 Article 7(3).
Annex II	Community reservations in accordance with Article 21(2).
Annex III	Financial services in accordance with Article 23(3).
Annex IV	Intellectual, industrial and commercial property conventions referred to in 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

Community reservations in accordance with Article 21 paragraph 2

Mining

In some Member States, a concession may be required for mining and mineral rights for non-Community controlled companies.

Fishing

Access to and use of the biological resources and fishing grounds situated in the maritime waters coming under the sovereignty or within the jurisdiction of Member States of the Community is restricted to fishing vessels flying the flag of a Community Member State and registered in Community territory unless otherwise provided for.

Real estate purchase

In some Member States, the purchase of real estate by non-Community companies is subject to restrictions.

Audiovisual services including radio

National treatment concerning production and distribution, including broadcasting and other forms of transmission to the public, may be reserved to audiovisual works meeting certain origin criteria, but this excludes radio-broadcasting infrastructure for the transmission of such audiovisual works.

Professional services

Services reserved to natural persons who are nationals of Member States. Under certain conditions those persons may create companies.

Agriculture

In some Member States national treatment is not applicable to non-Community controlled companies which wish to undertake an agricultural enterprise. The acquisition of vineyards by non-Community controlled companies is subject to notification, or, as necessary, authorisation.

News agency services

In some Member States limitations exist on foreign participation in publishing companies and broadcasting companies.

ANNEX III

Financial services

referred to in Article 23(3)

A financial service is any service of a financial nature offered by a financial service provider of a Party. Financial services include the following activities:

A. All insurance and insurance-related services;

1. Direct insurance (including co-insurance):

   (i) life,

   (ii) non-life.

2. Reinsurance and retrocession.

3. Insurance intermediation, such as brokerage and agency.

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

B. Banking and other financial services (excluding insurance).

1. Acceptance of deposits and other repayable funds from the public.

2. Lending of all types, including, inter alia, consumer credit, mortgage credit, factoring and financing of commercial transaction.

3. Financial leasing.

4. All payment and money transmission services, including credit charge and debit cards, travellers cheques and bankers drafts.

5. Guarantees and commitments.

6. Trading for own account or for the account of customers, whether on an exchange, in an over the counter market or otherwise, the following:

   (a) money market instruments (cheques, bills, certificates of deposits, etc.),

   (b) foreign exchange,

   (c) derivative products including, but not limited to, futures and options,

(d) exchange rates and interest rate instruments, including products such as swaps, forward rate agreements, etc.,

(e) transferable securities,

(f) other negotiable instruments and financial assets, including bullion.

7. Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues.

8. Money brokering.

9. Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial depository and trust services.

10. Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments.

11. Advisory intermediation and other auxiliary financial services on all the activities listed in points 1 to 10 above, including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

12. Provision and transfer of financial information, and financial data processing and related software by providers of other financial services.

The following activities are excluded from the definition of financial services:

(a) Activities carried out by central banks or by any other public institution in pursuit of monetary and exchange rate policies.

(b) Activities conducted by central banks, government agencies or departments, or public institutions, for the account or with the guarantee of the government, except when those activities may be carried out by financial service providers in competition with such public entities.

(c) Activities forming part of a statutory system of social security or public retirement plans, except when those activities may be carried out by financial service providers in competition with public entities or private institutions.

ANNEX IV

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

1. 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.

2. The official shall enjoy the protection guaranteed by existing legislation to officials of the applicant authority on its territory.

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 KINGDOM OF BELGIUM,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

IRELAND,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

THE REPUBLIC OF HUNGARY,

THE REPUBLIC OF MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

Contracting Parties to the Treaty establishing the EUROPEAN COMMUNITY and the Treaty establishing the EUROPEAN ATOMIC ENERGY COMMUNITY,

hereinafter referred to as "the Member States", and

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 Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, 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 Agreement including its Annexes and the following Protocol:

the Protocol on mutual administrative assistance in customs matters.

The plenipotentiaries of the Member States and of the Community 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 5 of the Agreement.

Joint Declaration concerning Article 13 of the Agreement.

Joint Declaration concerning the notion of "control" in Article 23(b) and Article 34.

Joint Declaration concerning Article 33 of the Agreement.

Joint Declaration concerning Article 40 of the Agreement.

Joint Declaration concerning Article 94 of the Agreement.

The plenipotentiaries of the Member States and of the Community and the plenipotentiaries of the Republic of Tajikistan have also taken note of the Declaration of the Commission and the Council of the European Union on the clause concerning the return and readmission of illegal immigrants (Article 70) annexed to this Final Act.

The plenipotentiaries of the Member States and of the Community 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 Community and the Republic of Tajikistan in relation to the establishment of companies.

The plenipotentiaries of the Member States and of the Community and the plenipotentiaries of the Republic of Tajikistan have further taken note of the following Declaration annexed to this Final Act:

Declaration by the French Government.

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 5

Should the Parties agree that circumstances warrant meetings at the highest level, such meetings may be arranged on an ad hoc basis.

JOINT DECLARATION CONCERNING 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 THE NOTION OF "CONTROL"

IN ARTICLE 22(b) AND ARTICLE 33

1. The Parties confirm their mutual understanding that the question of control shall depend on the factual circumstances of the particular case.

2. A company shall, for example, be considered as being "controlled" by another company, and thus a subsidiary of such other company if:

   - the other company holds directly or indirectly a majority of the voting rights, or

- the other company has the right to appoint or dismiss a majority of the administrative organ, of the management organ or of the supervisory organ and is at the same time a shareholder or member of the subsidiary.

3. The Parties consider the criteria in paragraph 2 to be non-exhaustive.

JOINT DECLARATION CONCERNING ARTICLE 32

The sole fact of requiring a visa for natural persons of certain Parties and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

JOINT DECLARATION CONCERNING ARTICLE 39

The Parties agree that for the purpose of the 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 10^{bis} of the Paris Convention for the protection of Industrial Property and protection of undisclosed information on know-how.

JOINT DECLARATION CONCERNING 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 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 2.

2. The Parties agree that the "appropriate measures" referred to in 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 94, the other Party may avail itself of the procedure relating to settlement of dispute.

DECLARATION OF THE COMMISSION AND THE COUNCIL OF THE EUROPEAN UNION ON THE CLAUSE CONCERNING THE RETURN AND READMISSION OF ILLEGAL IMMIGRANTS (ARTICLE 70)

Article 70 shall be without prejudice to the internal division of powers between the European Community and its Member States for the conclusion of readmission agreements.

FOR THE MEMBER STATES

FOR THE EUROPEAN COMMUNITY
FOR THE REPUBLIC OF TAJIKISTAN

EXCHANGE OF LETTERS

BETWEEN THE COMMUNITY

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 Community

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

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