

FREE TRADE AGREEMENT BETWEEN UKRAINE AND MOLDOVA

FREE TRADE AGREEMENT BETWEEN THE CABINET OF MINISTERS OF UKRAINE AND THE GOVERNMENT OF THE REPUBLIC OF MOLDOVA

Date of signing: November 13, 2003

Date of ratification: May 19, 2005 (with reservations)

The Cabinet of Ministers of Ukraine and the Government of the Republic of Moldova, referred to hereinafter as the Parties,

confirming their desire to take an active part in the process of economic cooperation, which is an important factor of stability on the European continent, and expressing their readiness to cooperate in seeking ways and means of strengthening this process.

recognizing their commitments to the principles of market economy which is the underlying basis of their bilateral relations,

confirming their commitments in accordance with the Final Act of the Conference on Cooperation and Security in Europe of August 1, 1975, the Charter of Paris for a New Europe of November 21, 1999 and with allowance for the principles set out in the final document of the Bonn Conference on Economic Cooperation in Europe,

showing in this connection a resolve to remove the existing obstacles in the way of mutual trade as a whole in compliance with the agreements of the World Trade Organization (hereinafter – WTO);

expressing firm conviction that the present Agreement will promote the strengthening of beneficial commercial exchange and the process of European integration,

believing that not a single provision of the present Agreement shall be interpreted as a departure of the Parties from their commitments concerning other international bilateral and multilateral agreements in this area and, in particular those implied under the status of a WTO member,

have agreed as follows:

Article 1

1. The Parties shall establish a free trade area in their bilateral trade in compliance with the provisions of the present Agreement as well as in compliance with the General Agreement on Tariffs and Trade (GATT 1994), specifically with Article XXIV and the agreement on the interpretation of Article XXIV GATT 1994.

2. The objectives of the present Agreement are to:

- a) facilitate the liberalization of mutual trade and thereby the political and economic stability in the region, as well as the harmonious development and enlargement of world trade in compliance with the WTO principles;
- b) promote through the enlargement of a mutually beneficial trading regime the predictable, transparent and long-term harmonious development of economic relations between the Parties, which would contribute to the improvement of living standards and conditions of work, increase in production and financial stability;
- c) ensure equal conditions for fair competition in trade between the Parties.

Section I

Article 2

Scope of Application

The provisions of the present Agreement shall not apply to agricultural and industrial products originating in the customs territories of the State Parties. In the present Agreement, the term “agricultural products” shall mean the commodities of sections 1-24, while the term “Industrial commodities” shall mean the commodities of sections 25-97 of the Harmonized System of Description and Coding of Commodities (HS 96).

Article 3

Import and/or Export Duties and Duties of Equivalent Effect

In mutual trade the Parties shall not apply duties and charges as well as duties of equivalent effect.

Article 4

Quantitative Restrictions and Measures of Equivalent Effect on Import and/or Export

1. All quantitative restrictions and measures of equivalent effect on import and/or export of products originating from the territories of the State Parties shall be abolished from the moment the present Agreement comes into force.
2. Not a single restriction or measure of equivalent effect on import and/or export shall be applied in trade between the Parties except for cases stipulated in Article 22.

Article 5

Import Licenses

If one of the parties applies the regime of licensing imports originating from the territory of the state of another Party, the regime of licensing imports of a corresponding Party shall comply with the norms of articles I and III GATT 1994 as well as the WTO Agreement on the procedure of licensing imports.

Article 6

Technical Norms and Rules

All technical norms and rules of the Parties, which concern trade, shall be designed, adopted and applied in compliance with the provisions of the WTO Agreement on Technical Barriers to Trade from the moment Ukraine accedes to WTO.

Section II
Trade in Agricultural Commodities

Article 7
Concessions and Agricultural Policy

1. Without prejudicing the commitments undertaken in Section “Trade in Agricultural Commodities,” the provisions of the present Agreement shall in no way restrict the corresponding agricultural policy of the Parties or some of the measures under these commitments, on condition of compliance with the commitments undertaken by the Parties after accession to the WTO and, in particular, the provisions of the WTO Agreement on agriculture.
2. The Parties shall notify each other about the changes in agricultural policy or application of measures that may impact on the conditions of mutual trade in agricultural commodities, as provided for by the present Agreement. In order to review the situation, immediate consultations may be held by request of one of the Parties.

Article 8
Sanitary and Phytosanitary Measures

1. All sanitary and phytosanitary measures that may directly or indirectly impact on the mutual trade of the Parties shall be designed, adopted and applied in compliance with the provisions of the WTO Agreement on the application of sanitary and phytosanitary measures from the moment of Ukraine’s accession to the WTO.
2. Sanitary and phytosanitary measures of the Parties shall as far as possible be harmonized with the norms, directives and international recommendations in cases when they have been designed and exist within the framework of the Codex Alimentarius Commission, the International Office of Epizootics, and other international conventions in this area.

Section III
General Provisions

Article 9
Rules for Identifying the Commodities’ Origin

For the purposes of the present Agreement commodities originating from the territory of the state Party shall mean commodities in accordance with the conciliated Rules for Identifying the Countries of the Commodities’ Origin.

Article 10
Reduction of Trading Formalities

The Parties shall cooperate in reducing the procedures and customs formalities applied in the trade in commodities under the provisions of the present Agreement, in particular as regards perishable agricultural products. The Working Group established in compliance with Article 27 of the present Agreement shall design the measures necessary for these purposes.

Article 11
Transit

The Parties shall ensure free transit of commodities originating from the customs territory of one State Party through the territory of another State Party in compliance with the WTO rules.

Article 12

Domestic Payments

The Parties shall ensure a national regime in accordance with domestic taxation and regulation in compliance with the WTO rules.

Article 13

General Exceptions

Nothing in the present Agreement shall hinder the Parties from taking any measures in compliance with Article XX GATT 1994.

Article 14

Exceptions for Security

Nothing in the present Agreement shall hinder the Parties from taking any measures in compliance with Article XX GATT 1994.

Article 15

Payments

1. Payments in freely convertible currency related to trade between the Parties and remittance of such payments on the territory of one of the State Parties, on which the creditor resides, shall be free without any restrictions.
2. The Parties shall refrain of any currency of administrative restrictions issue, settled or receiving long-term and medium-term credits that cover the commercial agreements, in which a resident takes part.
3. Regardless of the provisions of Item 2, any measure related to current payments concerning the movement of commodities shall conform to the terms under Article VIII of the Agreement of the International Monetary Fund.

Article 16

Non-Admission Competition Restrictions

1. For the proper performance of the present Agreement, the Parties shall recognize as incompatible actions that result or may result in restriction of competition, infringement on the legitimate interests of other business entities of consumers, or are manifestations of unfair competition.
2. On issues of non-admission and termination of the actions of business entities mentioned in Item 1 of this Article on the commodity markets of Ukraine and the Republic of Moldova the Parties shall interact on the basis of the Agreement on Implementing a Concerted Antimonopoly Policy of January 25, 2000.

Article 17

State Assistance

1. The provision of any assistance by the Parties shall be carried out in compliance with the WTO Agreement of subsidies and compensating measures.
 2. The provision of any assistance by the Parties with regard to agricultural products shall be carried out in compliance with the provisions of the WTO Agreement on agriculture.
 3. The Parties shall ensure transparency of the measures in the area of state assistance, including the provision of annual reciprocal reports on the total volume of state assistance and on its distribution by way of providing information, by request of the other Party, about the scheme of assistance in individual cases.
- If a Party believes that any practice, in agriculture included:

- is incompatible with the provisions of Item 1, or
- such practice causes or threatens to cause serious damage to the interests of the said Party or material losses to the interests of its national industry,
- it may take measures in compliance with the procedure set out in Article 26 of the present Agreement. Such measures may be taken only in compliance with the procedures and terms set out by the WTO and any other instrument, of which the Parties have agreed and apply in their mutual trade.

Article 18

State Procurement

1. The provisions of the present Agreement shall apply to state procurement of the Parties.
2. The Parties shall ensure free access, transparency, equal rights and obligations of the business entities when carrying out state procurement.

Article 19

Protection of Intellectual Rights

1. The Parties confirm their readiness to cooperate in the area concerning trade-related aspects of intellectual rights, and when necessary apply the measures foreseen in the WTO Agreement on trade-related aspects of intellectual rights, as well as other international conventions and agreements containing the norms on the protection of intellectual rights, to which the Parties are signatories.
2. For the purposes of the present Agreement the term “intellectual property” shall include all the objects of intellectual property rights: objects of copyright and related rights, trademarks, geographical directions, topologies of integral microcircuits, industrial samples, inventions, and commercial secrets.
3. For meeting the obligations of international legislative acts and agreements concerning intellectual property rights, the Parties shall provide to the citizens of the other State Party a regime not less favorable than the one they provide to their own citizens of citizens of other countries.
4. The Parties shall cooperate in the area of intellectual property. On the basis of an application by a Party, consultations will be held with experts in this area, especially as regards compliance with activity related to operative or future conventions on intellectual property and activity within the framework of international organizations such as the WTO, the World Intellectual Property Organization, as well as the relations of the Parties with other countries as far as intellectual property is concerned.
5. 4. The Parties shall cooperate in the area of intellectual property and, by request of the other Party, will hold consultations on these issues at the level of experts, especially as regards international conventions on intellectual property rights.

Article 20

Dumping

Nothing in the present Agreement shall restrict the rights of the Parties to apply antidumping measures to imports originating from the territory of the other state Party in compliance with the norms of Article VI GATT 1944 and the Agreement on the application of Article VI GATT.

Article 21

Subsidies

Nothing in the present Agreement shall restrict the rights of the Parties to apply antidumping measures to imports originating from the territory of the other state Party as well as compensating measures in compliance with the norms of Article VI GATT 1944 and the WTO Agreement on subsidies and compensating measures.

Article 22

Special Safeguards

Nothing in the present Agreement shall restrict the rights of the Parties to apply special safeguards to imports originating from the territory of the other state Party in compliance with the norms of Article XIX GATT 1944 and the WTO Agreement on safeguards.

Article 23

Reexport

If the application of Article 3 (non-application of customs duty and charges of equivalent effect) and Article 4 (non-application of quantitative restrictions on imports and/or exports of equivalent effect) results in:

- reexport to a third country, relative to which the exporting Party applies to individual commodities quantitative restrictions, export customs duty and charges of equivalent effect, or
- shortage of any commodity or danger of its shortage, **which is of great importance** for the exporting Party,
- and when the above-mentioned situation might cause difficulties for the exporting Party, the latter may apply corresponding preliminary measures required for the control of the ensued situation.

The Working Group shall be informed about the application of these measures and consultations between the Parties shall be held without delay.

Article 24

Performance of Obligations

1. The Parties shall take all necessary measures to ensure the performance of the obligations under the provisions of the present Agreement.
2. If one of the Parties believes that the other Party failed to perform an obligation under the present Agreement, the Party concerned may take adequate measures on the terms and in compliance with the procedure set out in Article 26 of the present Agreement.

Article 25

Balance of Payments Maintenance

The Parties shall undertake to apply restrictions aimed at maintaining the balance of payments in compliance with WTO rules.

Article 26

Procedure for Applying Safeguards

1. First before initiating the procedure for applying safeguards stipulated in this Articles, the Parties shall attempt the regulate through direct consultations any contradictions that arose between them.
2. Without prejudice to the provisions of Item 6 of the present Article, in case any of the Parties believes that the other Party does not perform its obligations, causes or threatens to cause damage to the economic interests of the first Party, it may request the other Party for consultations that have to be held within two months from the date of the written request in order to seek a decision acceptable to both Parties. To the written request shall be attached all the information relating the essence of the problem.
3. a) As regards articles 16 and 17 of the present Agreement, the Working Group shall have to consider the case or situation and may make a necessary decision to resolve the disputes presented by one of the Parties. In case of lack of such decision within 30 days from the date of submission of the Working Group's application, the Party concern may take necessary measures to resolve the situation.
b) As regards articles 16 and 17 of the present Agreement, the Party concerned shall have to render the Working Group all-out assistance for the consideration of the case or situation and as far as possible dispose of the existing problem.
4. The opposite Party shall notify without delay the application of safeguards. The latter shall be restricted in space and time that is necessary for rectifying the situation that ensued, and shall not be more than the damages caused by the said situation. In the choice of such safeguards preference should be given to those that in the least degree affect the validity of the present Agreement. The application of such safeguards has to be terminated immediately after the other Party annuls the decisions, as a result of which the safeguards were introduced.
5. The application of safeguards shall be the subject of periodical consultations within the Working Group, since they should be substituted or annulled as quickly as possible in cases when the conditions of their continued application are no longer justified.
6. In cases when emergencies calling for immediate actions make their consideration impossible, the Party concerned may, on the basis of the provisions of articles 20, 21 and 22 of the present Agreement, immediately apply temporary measures that are required for resolving the situation. The opposite Party shall without delay notify about the applied measures, and the Parties begin consultations within the Working Group.

Section IV

Final Provisions

Article 27

Working Group

1. By the present Agreement a Working Group shall be established to include representatives of the Parties.
2. The Working Group shall exercise control over the application of the present Agreement.
3. For the application of the present Agreement, the Parties shall exchange corresponding information, and, by request of each of the Parties, hold consultations within the Working Group.

Article 28

Procedures of the Working Group

1. For the execution of the provisions of the present Agreement, The Working Group shall be convened when necessary alternately in Kyiv or Chisinau, but not less than once a year. Each of the Parties may request to convene the Working Group not later than 3 months from the moment of submission of a petition.
2. In order to perform the present Agreement, the Working Group shall adopt its procedural rules.

Article 29

The Agreement as Compared to Other International Agreements

1. None of the provisions of the present Agreement shall be interpreted and/or applied contrary to rules and principles of the WTO, and in no manner violate the rights and obligations of the Parties, which derive from the status of members of this organization. The present Agreement shall not hinder the Parties for establishing other free trade areas, or their participation in other forms of economic integration (in particular, with the participation of the European Union) of special agreements on border trade, provided they do not negatively affect the existing trade regime between the Parties and, specifically, the provisions related to the rules of the commodities' origin, as provided for by the present Agreement.
2. If there are inconsistencies and differences in the interpretation of the provisions of the present Agreement and norms of WTO agreements, the norms of WTO agreements shall be of priority importance.

Article 30

Settlement of Disputes

1. All disputes that arise from the interpretation or application of the provisions of the present Agreement shall be settled by mutual agreement, giving preference to the consultations within the Working Group.
2. If the settlement of a dispute specified in Item 1 of this Article was not possible within the Working Group or three months elapsed since the first notification by the opposite Party about the substance of the dispute, the derogated Party shall be entitled to take measures derived from its WTO member status and, in particular, from the agreement on the rules and procedures governing the settlement of disputes in WTO.

Article 31

Amendments and Additions

1. The provisions of the present Agreement may be amended and supplemented. Such amendments and additions shall be formalized in annexes (protocols).
2. Such annexes (protocols) shall be an inseparable part of the present Agreement.

Article 32

Effectiveness

The present Agreement shall come into force from the moment of receipt of the last notification about the performance by each of the Parties of the inter-state procedures required for this purpose.

Article 33
Validity Period

1. The present Agreement has been concluded for an indefinite period.
2. Each of the Parties may terminate the effect of the Agreement by forwarding a corresponding written notification to the other Party. The effect of the Agreement shall terminate six months after the receipt of a corresponding notification by the other Party.

In witness whereof, the Parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed.

Made at the city of Chisinau on November 13, 2003 in two valid copies, each in the Ukrainian, Uzbek and Russian languages, each text being of equal force.

In case of differences in interpreting the provisions of the present Agreement, preference shall be given to the text in the Russian language.

Law of Ukraine
On the Ratification of the Free Trade Agreement
between the Cabinet of Ministers of Ukraine
and the Government of the Republic of Moldova

The Ukrainian Parliament **has resolved:**

To ratify the *Free Trade Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of Moldova* (attached) made at the city of Chisinau on November 13, 2003 with the following reservation:

“The Agreement shall come into force from the moment of Ukraine’s accession to the World Trade Organization.”