

FREE TRADE AGREEMENT

BETWEEN

THE GOVERNMENT OF UKRAINE

AND

THE GOVERNMENT OF MONTENEGRO

**Free Trade Agreement between the Government of Ukraine
and the Government of Montenegro**

PREAMBLE

The Government of Ukraine and the Government of Montenegro (hereinafter referred to as “the Parties” or “Ukraine” and “Montenegro” where appropriate)

DESIROUS to develop and strengthen friendly relations, especially in the fields of economic co-operation and trade, with an aim to contribute to the progress of economic co-operation and to increase the scope of mutual trade exchange,

CONFIRMING their intention to participate actively and to promote expansion of reciprocal trade and economic relations;

HAVING regard to the experience gained from the co-operation developed between the Parties as well as between them and their main trading partners,

DECLARING their readiness to undertake activities with a view to promoting harmonious development of their trade as well as to expanding and diversifying their mutual cooperation in the fields of joint interest, including fields not covered by this Free Trade Agreement (hereinafter referred to as "this Agreement"), thus creating a framework and supportive environment based on equality, non discrimination, and a balance of rights and obligations,

REFERRING to the mutual interest in the continual reinforcement of the multilateral trading system and considering that the legal instruments of the World Trade Organization (hereinafter referred to as “WTO”) constitute a basis for their foreign trade policy,

RESOLVED to lay down for this purpose provisions aimed at the progressive abolition of the obstacles to the mutual trade in accordance with the provisions of these instruments, in particular those concerning the establishment of free trade areas,

Have agreed as follows:

CHAPTER I GENERAL PROVISIONS

Article 1 *Objectives*

1. The Parties hereby shall establish a free trade area by means of this Agreement and in conformity with the WTO rules.
2. The objectives of this Agreement are:
 - a) to increase and enhance the economic cooperation between the Parties and raise the living standard of the population of the two countries,
 - b) to eliminate difficulties and restrictions on trade in goods and to liberalize trade in services,
 - c) to promote, through the expansion of reciprocal trade, the harmonious development of the economic relations between the Parties,
 - d) to contribute by the removal of barriers to trade, to the harmonious development and expansion of world trade and
 - e) to promote trade and cooperation between the Parties in third country markets.

Article 2 *Definitions*

For purposes of this Agreement, unless otherwise specified further, the definitions of World Trade Organization (WTO) are applicable.

Article 3 *Transparency*

1. The Parties shall publish or otherwise make publicly available their laws, regulations, judicial decisions, administrative rulings of general application and their respective international agreements that may affect the operation of this Agreement.
2. The Parties shall promptly respond to specific questions and provide, upon request, information to each other on matters referred to in paragraph 1. They are not required to disclose confidential information.

Article 4
Customs Unions, Free Trade Areas and Frontier Trade Arrangements

1. This Agreement shall not preclude the maintenance or establishment of customs unions, free trade areas, arrangements for frontier trade and other preferential agreements insofar as they do not have the effect of altering the trade arrangements provided for in this Agreement.

2. When a Party enters into a customs union or free trade agreement with a third party it shall, upon request by other Party, be prepared to enter into consultations with the requesting Party.

Article 5
Relationship to Other International Obligations

1. This Agreement shall in no way prejudice the obligation of the Parties arising from their participation in the regional or sub-regional unions and entities, and multilateral treaties as well as in international organizations.

2. The rights and obligations arising from treaties concluded between the Parties before or after entry into force of this Agreement shall not be affected by the provisions of this Agreement, except that their provisions are compatible with those of this Agreement.

CHAPTER II
TRADE IN GOODS

Article 6
Scope

The provisions of this Agreement shall apply to products originating in the Parties classified under Chapters 1 to 97 of the Harmonized Commodity Description and Coding System (HS 2007).

Article 7
Customs Duties on Imports

1. Upon entry into force of this Agreement, the Parties shall abolish all customs duties on imports of products originating in Ukraine or in Montenegro covered by Article 6 except as otherwise provided for in Annex I. No new customs duties on imports shall be introduced.

2. A customs duty includes any duty or charge of equivalent effect imposed in connection with the importation or exportation of a product, including any form of surtax or surcharge in connection with such importation or exportation, but does not include any charge imposed in conformity with Articles III and VIII of the GATT 1994.

Article 8

Other Duties and charges with equivalent effects

1. The value-added tax and excise taxes levied in connection with customs clearance of imported goods are not covered by taxes (charges), having equivalent effect to the customs duties.

2. No new customs duties on imports or any taxes and other charges having equivalent effect shall be introduced in trade between the Parties.

Article 9

Customs Duties on Exports

1. Upon entry into force of this Agreement, each party may apply customs duties on exports of originating in Ukraine or in Montenegro products covered by Article 6 in accordance with the Article XI of the GATT.

2. The Parties agree that under this Agreement Ukraine retains its WTO commitments as for export duty applying on oilseeds, live cattle and animal skins according to the timetable for phasing in the export duty cuts.

Article 10

Basic Duties

In trade between the Parties covered by this Agreement, the Parties shall apply their respective Customs Tariffs on the classification of goods for imports into them.

Article 11

Import and Export Restrictions

Without prejudice to the provision of the Article 7, the rights and obligations of the Parties in respect of export and import restrictions shall be governed by Article XI of the GATT 1994, which is hereby incorporated into and made part of this Agreement.

Article 12
Internal Taxation and Regulations

The Parties shall apply any internal taxes and other charges and regulations in accordance with Article III of the GATT 1994 and other relevant WTO Agreements.

Article 13
General and Security Exceptions

1. For the purposes of this Agreement, Articles XX and XXI of the GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 14
Technical Regulations

1. The rights and obligations of the Parties in respect of technical regulations, standards and conformity assessment shall be governed by the WTO Agreement on Technical Barriers to Trade (hereinafter referred to as “the TBT Agreement”).

2. Without prejudice to paragraph 1, the Parties agree to hold consultations where a Party considers that another Party has taken measures not in conformity with the TBT Agreement which are likely to create, or have created, an obstacle to trade, in order to find an appropriate solution in conformity with the TBT Agreement.

Article 15
Sanitary and Phytosanitary Measures

1. The rights and obligations of the Parties in respect of sanitary and phytosanitary measures shall be governed by the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (hereinafter referred to as “the SPS Agreement”).

2. The Parties shall exchange names and addresses of contact points with sanitary and phytosanitary expertise in order to facilitate communication and the exchange of information.

Article 16
Rules of Origin

The provisions of this Agreement shall be applied to all products covered by this Agreement provided that they satisfy the Rules of Origin as set out in Annex II, which shall form an integral part of this Agreement.

Article 17
Customs Valuation

The Parties shall determine the customs value of goods traded between them in accordance with the provisions of Article VII of the GATT 1994 and the WTO Agreement on Implementation of Article VII of the GATT 1994.

Article 18
Transit of Goods

The Parties shall ensure free transit of goods, originating in the territory of the State of one Party and transporting through the territory of the State of the other Party, in accordance with national legislation of their States.

Article 19
Bilateral Safeguard Measures

1. Where, as a result of the reduction or elimination of a customs duty under this Agreement, any product originating in a Party is being imported into the territory of another Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to constitute a substantial cause of serious injury or threat thereof to the domestic industry of like or directly competitive products in the territory of the importing Party, the importing Party may take bilateral safeguard measures to the minimum extent necessary to remedy or prevent the injury, subject to the provisions of paragraphs 2 to 10.

2. Bilateral safeguard measures shall only be taken upon clear evidence that increased imports have caused or are threatening to cause serious injury pursuant to an investigation in accordance with the procedures laid down in Articles 3 and 4 of the WTO Agreement on Safeguards.

3. The Party intending to take a bilateral safeguard measure under this Article shall immediately, and in any case before taking a measure, make notification to the other Party. The notification shall contain all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, a precise description of the product involved and the proposed measure, as well as the proposed

date of introduction, expected duration and timetable for the progressive removal of the measure.

4. If the conditions set out in paragraph 1 are met, the importing Party may take measures consisting in increasing the rate of customs duty for the product to a level not to exceed the lesser of:

- (a) the MFN rate of duty applied at the time the action is taken; or
- (b) the MFN rate of duty applied on the day immediately preceding the date of the entry into force of this Agreement.

5. Bilateral safeguard measures shall be taken for a period not exceeding two years. In very exceptional circumstances, after review by the joint Free Trade Committee (referred to in Article 55), measures may be taken up to a total maximum period of three years. No bilateral safeguard measures shall be applied to the import of a product which has previously been subject to such a measure.

6. The Committee shall, within 30 days from the date of notification, examine the information provided under paragraph 3 in order to facilitate a mutually acceptable resolution of the matter. In the absence of such resolution, the importing Party may adopt a measure pursuant to paragraph 4 to remedy the problem, and, in the absence of mutually agreed compensation, the Party against whose product the measure is taken may take compensatory action. In the selection of the bilateral safeguard measure and the compensatory action, priority must be given to the measure which least disturbs the functioning of this Agreement. The compensatory action shall normally consist of suspension of concessions having substantially equivalent trade effects or concessions substantially equivalent to the value of the additional duties expected to result from the bilateral safeguard measure. The Party taking compensatory action shall apply the action only for the minimum period necessary to achieve the substantially equivalent trade effects and in any event, only while the bilateral safeguard measure under paragraph 4 is being applied.

7. Upon the termination of the bilateral safeguard measure, the rate of customs duty shall be the rate which would have been in effect before the measure.

8. In critical circumstances, where delay in the introduction of a bilateral safeguard measure in accordance with this Article would cause damage which would be difficult to repair, a Party may take a provisional bilateral safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports constitute a substantial cause of serious injury, or threat thereof, to the domestic industry. The Party intending to take such a measure shall immediately notify the other Party. Within 30 days of the date of the notification, the procedures set out in paragraphs 2 to 6, including for compensatory action, shall be initiated. Any compensation shall be based on the total period of application of the provisional bilateral safeguard measure and of the bilateral safeguard measure.

9. Any provisional bilateral safeguard measure shall be terminated within 200 days at the latest. The period of application of any such provisional bilateral safeguard measure shall be counted as part of the duration of the bilateral safeguard measure set out in paragraph 5 and any extension thereof. Any tariff increases shall be promptly refunded if the investigation described in paragraph 2 does not result in a finding that the conditions of paragraph 1 are met.

10. Five years after the date of entry into force of this Agreement, the Parties shall review in the Committee whether there is need to maintain the possibility to take bilateral safeguard measures between them. If the Parties decide, after the first review, to maintain such possibility, they shall thereafter conduct biennial reviews of this matter in the Committee.

Article 20

Global Safeguard Measures

1. If a product is being imported, irrespective of its origin, in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products each Party has a right to apply safeguard measures to such products according to Article XIX of the GATT 1994 and WTO Agreement on Safeguards.

2. For imports of goods originating from the territory of one of the Parties to the territory of the other Party that do not cause or threaten to cause serious injury to the domestic industry producing like or directly competing goods of the importing Party, the safeguard measures with respect to imports of such goods do not apply.

3. At the request of the other Party and/or provided that it has a substantial interest the Party intending to take safeguard measures shall provide immediately ad hoc written notification of all pertinent information on the initiation of the safeguard investigation, the provisional findings and the final findings of the investigation.

4. For the purpose of this Article, it is considered that a Party has a substantial interest when it is among the five largest suppliers of the imported goods during the most recent three-year period of time, measured in terms of either absolute volume or value.

5. The Parties, in selecting measures relating to this Article, give priority to those measures which cause minimal economic injury and do not create serious obstacles to the implementation of this Agreement.

Article 21
Antidumping and Countervailing Measures

1. Both Parties agree that anti-dumping and countervailing measures should be used in full compliance with Article VI of GATT 1994, WTO Agreement on Implementation of Article VI of GATT 1994 and WTO Agreement on Subsidies and Countervailing Measures and should be based on a fair and transparent system.

2. Immediately after any imposition of provisional measures and before the final decision is taken, the Parties shall ensure full and meaningful disclosure of all essential facts and considerations which form the basis for the decision to apply these measures. Disclosures shall be made in writing and allow interested parties sufficient time to respond with comments. After final disclosure interested parties shall be given at least ten days to make these comments. Each interested party shall be granted the possibility to express their views during an anti-dumping investigation.

3. Should a Party decide to impose an anti-dumping duty, the amount of such duty shall not exceed the margin of dumping and should be less than the margin if such a lesser duty is adequate to remove the injury to the domestic industry.

4. The Party which is subject to anti-dumping measures imposed by the other Party has the right to request consultations in order to discuss the impact of the anti-dumping measures on bilateral trade and review national anti-dumping legislation.

Article 22
Procedure for consultation and application of measures

1. Prior to the application of measures envisaged in Articles 19 and/or 21 of this Agreement, the Parties shall seek a resolution of differences through consultations within the Committee referred in Article 55 of this Agreement.

2. If this Committee is unable to reach a mutually acceptable solution within thirty days of the date of initiating these consultations, the Party that initiated the procedure to introduce measures envisaged in Articles 19 and/or 21, is entitled to take such measures aimed at removing the serious injury, or threat of serious injury, and shall notify the other Party in advance. The extent and the period of application of the measures shall be limited as far as it is necessary to remove the injury.

3. In exceptional cases, when the delay of application of measures envisaged in Articles 19 and/or 21 of this Agreement may lead to injury being difficult to remedy, the Party shall inform the Committee before applying provisional measures without prior consultations. Such consultations shall be immediately initiated after taking such action.

Article 23
Balance of Payments

1. The Parties shall endeavour to avoid the imposition of restrictive measures for balance of payments purposes.

2. A Party in serious balance of payments difficulties, or under imminent threat thereof, may, in accordance with the conditions established under the GATT 1994 and the WTO Understanding on the Balance of Payments Provisions of the GATT 1994, adopt trade restrictive measures, which shall be of limited duration and non-discriminatory, and may not go beyond what is necessary to remedy the balance of payments situation.

3. The Party introducing a measure under this Article shall promptly notify the other Party thereof.

Article 24
State Trading Enterprises

The rights and obligations of the Parties in respect of state trading enterprises shall be governed by Article XVII of the GATT 1994 and the Understanding on the Interpretation of Article XVII of the GATT 1994, which are hereby incorporated into and made part of this Agreement.

CHAPTER III
TRADE IN SERVICES

Article 25
Scope and Coverage

1. This Chapter applies to measures by Parties affecting trade in services. It applies to all services sectors.

2. In respect of air transport services, this Chapter shall not apply to measures affecting air traffic rights or measures affecting services directly related to the exercise of air traffic rights, except as provided for in paragraph 3 of the GATS Annex on Air Transport Services. The definitions of paragraph 6 of the GATS Annex on Air Transport Services are hereby incorporated and made part of this Chapter.

3. Articles 28, 29 and 30 shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for

governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.

Article 26 ***Incorporation of Provisions from the GATS***

Wherever a provision of this Chapter provides that a provision of the GATS is incorporated into and made part of this Chapter, the meaning of the terms used in the GATS provision shall be understood as follows:

- (a) “Member” means Party;
- (b) “Schedule” means a Schedule referred to in Article 41 and contained in Annex VII; and
- (c) “Specific commitment” means a specific commitment in a Schedule referred to in Article 41.

Article 27 ***Definitions***

For the purpose of this Chapter:

- (a) the following definitions of Article I of the GATS are incorporated into and made part of this Agreement:
 - (i) “trade in services”;
 - (ii) “services”; and
 - (iii) “a service supplied in the exercise of governmental authority”;
- (b) “measures by Parties” means measures taken by the Parties as defined in Article I paragraph 3 (a) (i) and (ii) of the GATS;
- (c) “service supplier” means any person that supplies, or seeks to supply, a service;¹

¹ Where the service is not supplied or sought to be supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (*i.e.* the juridical person) shall, nonetheless, through such commercial presence be accorded the treatment provided for service suppliers under this Chapter. Such treatment shall be extended to the commercial presence through which the service is supplied or sought to be supplied and need not be extended to any other parts of the service supplier located outside the territory where the service is supplied or sought to be supplied.

- (d) “natural person of another Party” means a natural person who, under the legislation of that other Party, is:
- (i) a national of that other Party who resides in the territory of any WTO Member; or
 - (ii) a permanent resident of that other Party who resides in the territory of any Party, if that other Party accords substantially the same treatment to its permanent residents as to its nationals in respect of measures affecting trade in services. For the purpose of the supply of a service through presence of natural persons (Mode 4), this definition covers a permanent resident of that other Party who resides in the territory of any Party or in the territory of any WTO Member;
- (e) “juridical person of another Party” means a juridical person which is either:
- (i) constituted or otherwise organised under the law of that other Party, and is engaged in substantive business operations in the territory of:
 - (aa) any Party; or
 - (bb) any Member of the WTO and is owned or controlled by natural persons of that other Party or by juridical persons that meet all the conditions of subparagraph (i) (aa);or
 - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 - (aa) natural persons of that other Party; or
 - (bb) juridical persons of that other Party identified under subparagraph (e) (i);
- (f) the following definitions of Article XXVIII of the GATS are hereby incorporated into and made part of this Chapter:
- (i) “measure”;
 - (ii) “supply of a service”;
 - (iii) “measures by Members affecting trade in services”;
 - (iv) “commercial presence”;

- (v) “sector” of a service;
- (vi) “service of another Member”;
- (vii) “monopoly supplier of a service”;
- (viii) “service consumer”;
- (ix) “person”;
- (x) “juridical person”;
- (xi) “owned”, “controlled” and “affiliated”; and
- (xii) “direct taxes”.

Article 28

Most-Favoured-Nation Treatment

1. Without prejudice to measures taken in accordance with Article VII of the GATS, and except as provided for in its List of MFN Exemptions contained in Annex III, a Party shall accord immediately and unconditionally, in respect of all measures affecting the supply of services, to services and service suppliers of another Party treatment no less favourable than the treatment it accords to like services and service suppliers of any non-party.

2. Treatment granted under other existing or future agreements concluded by one of the Parties and notified under Article V or Article V *bis* of the GATS shall not be subject to paragraph 1.

3. If a Party concludes or amends an agreement of the type referred to in paragraph 2, it shall notify the other Parties without delay and endeavour to accord to the other Parties treatment no less favourable than that provided under that agreement. The former Party shall, upon request by any other Party, negotiate the incorporation into this Agreement of a treatment no less favourable than that provided under the former agreement.

4. The rights and obligations of the Parties in respect of advantages accorded to adjacent countries shall be governed by paragraph 3 of Article II of the GATS, which is hereby incorporated into and made part of this Chapter.

Article 29
Market Access

Commitments on market access shall be governed by Article XVI of the GATS, which is hereby incorporated into and made part of this Chapter.

Article 30
National Treatment

Commitments on national treatment shall be governed by Article XVII of the GATS, which is hereby incorporated into and made part of this Chapter.

Article 31
Additional Commitments

Additional commitments shall be governed by Article XVIII of the GATS, which is hereby incorporated into and made part of this Chapter.

Article 32
Domestic Regulation

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier of another Party, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

3. Where authorisation is required by a Party for the supply of a service, the competent authorities of that Party shall, within a reasonable period of time after the submission of an application is considered complete under that Party's domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of that Party shall provide, without undue delay, information concerning the status of the application.

4. Each Party shall provide for adequate procedures to verify the competence of professionals of any other Party.

Article 33

Recognition

1. For the purpose of the fulfilment of its relevant standards or criteria for the authorisation, licensing or certification of service suppliers, each Party shall give due consideration to any requests by another Party to recognise the education or experience obtained, requirements met, or licences or certifications granted in that other Party. Such recognition may be based upon an agreement or arrangement with that other Party, or otherwise be accorded autonomously.

2. Where a Party recognises, by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted, in the territory of a non-party, that Party shall afford another Party adequate opportunity to negotiate its accession to such an agreement or arrangement, whether existing or future, or to negotiate a comparable agreement or arrangement with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for another Party to demonstrate that the education or experience obtained, requirements met, or licences or certifications granted in the territory of that other Party should also be recognised.

3. Any such agreement or arrangement or autonomous recognition shall be in conformity with the relevant provisions of the WTO Agreement, in particular paragraph 3 of Article VII of the GATS.

Article 34

Movement of Natural Persons

1. This Article applies to measures affecting natural persons who are service suppliers of a Party, and natural persons of a Party who are employed by a service supplier of a Party, in respect of the supply of a service.

2. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding nationality, residence or employment on a permanent basis.

3. Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment.

4. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of another Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Party under the terms of a specific commitment.²

² The sole fact of requiring a visa for natural persons shall not be regarded as nullifying or impairing benefits under a specific commitment.

Article 35
Transparency

The rights and obligations of the Parties in respect of transparency shall be governed by paragraphs 1 and 2 of Article III and by Article III *bis* of the GATS, which are hereby incorporated into and made part of this Chapter.

Article 36
Monopolies and Exclusive Service Suppliers

The rights and obligations of the Parties in respect of monopolies and exclusive service suppliers shall be governed by paragraphs 1, 2 and 5 of Article VIII of the GATS, which are hereby incorporated into and made part of this Chapter.

Article 37
Business Practices

The rights and obligations of the Parties in respect of business practices shall be governed by Article IX of the GATS, which is hereby incorporated into and made part of this Chapter.

Article 38
Payments and Transfers

1. Except under the circumstances envisaged in Article 39, a Party shall not apply restrictions on international transfers and payments for current transactions with another Party.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties under the Articles of the Agreement of the International Monetary Fund (hereinafter referred to as the “IMF”), including the use of exchange actions which are in conformity with the Articles of the Agreement of the IMF, provided that a Party shall not impose restrictions on capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 39 or at the request of the IMF.

Article 39
Restrictions to Safeguard the Balance of Payments

1. The Parties shall endeavour to avoid the imposition of restrictions to safeguard the balance of payments.

2. Any restriction to safeguard the balance of payments adopted or maintained by a Party under and in conformity with Article XII of the GATS shall apply under this Chapter.

Article 40 ***Exceptions***

The rights and obligations of the Parties in respect of general exceptions and security exceptions shall be governed by Article XIV and paragraph 1 of Article XIV *bis* of the GATS, which are hereby incorporated into and made part of this Chapter.

Article 41 ***Schedules of Specific Commitments***

1. Each Party shall set out in a schedule the specific commitments it undertakes under Articles 29, 30 and 31. With respect to sectors where such commitments are undertaken, each Schedule shall specify:

- (a) terms, limitations and conditions on market access;
- (b) conditions and qualifications on national treatment;
- (c) undertakings relating to additional commitments referred to in Article 31; and
- (d) where appropriate, the time-frame for implementation of such commitments and the date of entry into force of such commitments.

2. Measures inconsistent with both Articles 29 and 30 shall be dealt with as provided for in paragraph 2 of Article XX of the GATS.

3. The Parties' Schedules of specific commitments are set out in Annex III.

Article 42 ***Modification of Schedules***

The Parties shall, upon written request by a Party, hold consultations to consider any modification or withdrawal of a specific commitment in the requesting Party's Schedule of specific commitments. The consultations shall be held within three months after the requesting Party made its request. In the consultations, the Parties shall aim to ensure that a general level of mutually advantageous commitments no less favourable to trade than that provided for in the Schedule of specific commitments prior to such consultations is maintained. Modifications of Schedules are subject to the procedures set out in Articles 55 and 58.

Article 43

Review

With the objective of further liberalising trade in services between them, in particular eliminating substantially all remaining discrimination within a period of ten years, the Parties shall review at least every other year, or more frequently if so agreed, their Schedules of specific commitments and their Lists of MFN Exemptions, taking into account in particular any autonomous liberalisation and on-going work under the auspices of the WTO. The first such review shall take place no later than three years after the entry into force of this Agreement.

Article 44

Annexes

The following Annexes form an integral part of this Chapter:

- Annex III (Schedules of Specific Commitments and Lists of MFN Exemptions);
- Annex IV (Financial Services); and
- Annex V (Telecommunications Services).

CHAPTER IV DISPUTE SETTLEMENT

Article 45

Scope and Coverage

1. The provisions of this Chapter shall apply with respect to the settlement of any disputes concerning the interpretation or application of this Agreement, except as otherwise provided in this Agreement.
2. Disputes regarding the same matter arising under both this Agreement and the WTO Agreement may be settled in either forum at the discretion of the complaining Party. The forum thus selected shall be used to the exclusion of the other.
3. For purposes of paragraph 2, dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the WTO Dispute Settlement Understanding, whereas dispute settlement proceedings under this Agreement are deemed to be initiated upon a request for arbitration pursuant to paragraph 1 of Article 48.
4. Before a Party initiates dispute settlement proceedings under the WTO Agreement against another Party, that Party shall notify other Party of its intention.

Article 46

Good Offices, Conciliation or Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the Parties so agree. They may begin and be terminated at any time. They may continue while procedures of an arbitration panel established in accordance with this Chapter are in progress.
2. Proceedings involving good offices, conciliation and mediation shall be confidential and without prejudice to the Parties' rights in any other proceedings.

Article 47

Consultations

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to reach a mutually satisfactory resolution of any matter raised in accordance with this Article.
2. A Party may request in writing consultations with another Party if it considers that a measure or other matter is inconsistent with this Agreement. The Party requesting consultations shall at the same time notify the other Party in writing thereof. The Party to which the request is made shall reply to the request within 10 days after the

date of its receipt. Consultations shall take place in the Committee unless the Parties making and receiving the request for consultations agree otherwise.

3. Consultations shall commence within 30 days from the date of receipt of the request for consultations. Consultations on urgent matters, including those on perishable goods, shall commence within 15 days from the receipt of the request for consultations. If the Party to which the request is made does not reply within 10 days or does not enter into consultations within 30 days from the date of receipt of the request for consultations, or within 15 days for urgent matters, the Party making the request is entitled to request the establishment of an arbitration panel in accordance with Article 4.4 48.

4. The parties to the dispute shall provide sufficient information to enable a full examination of how the measure or other matter is inconsistent with this Agreement and treat any confidential or proprietary information exchanged in the course of consultations in the same manner as the Party providing the information.

5. The consultations shall be confidential and without prejudice to the rights of the Parties in any further proceedings.

Article 48 ***Establishment of Arbitration Panel***

1. If the consultations referred to in Article 47 fail to settle a dispute within 60 days, or 30 days in relation to urgent matters, including those on perishable goods, after the date of the receipt of the request for consultations by the Party complained against, it may be referred to an arbitration panel by means of a written request from the complaining Party to the Party complained against.

2. The request for arbitration shall identify the specific measure or other matter at issue and provide a brief summary of the legal basis of the complaint.

3. The arbitration panel shall comprise three members who shall be nominated in accordance with the “Optional Rules for Arbitrating Disputes between Two States of the Permanent Court of Arbitration”, effective 20 October 1992 (hereinafter referred to as “the Optional Rules”). The date of establishment of the arbitration panel shall be the date on which the Chairperson is appointed.

4. Unless the parties to the dispute otherwise agree within 20 days from the date of receipt of the request for the establishment of the arbitration panel, the terms of reference for the arbitration panel shall be:

“To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 48 and to make findings of law and fact together with the

reasons therefore, as well as recommendations, if any, for the resolution of the dispute and the implementation of the ruling.”

Article 49

Procedures of the Arbitration Panel

1. Unless otherwise specified in this Agreement or agreed between the parties to the dispute, the procedures of the arbitration panel shall be governed by the Optional Rules.

2. The arbitration panel shall examine the matter referred to it in the request for the establishment of an arbitration panel in the light of the relevant provisions of this Agreement interpreted in accordance with rules of interpretation of public international law.

3. Unless the parties to the dispute agree otherwise, the hearings of the arbitration panel shall take place in Geneva. The language of any proceeding shall be English. The hearings of the arbitration panel shall be open to the public unless the parties to the dispute agree otherwise.

4. There shall be no *ex parte* communications with the arbitration panel concerning matters under its consideration.

5. A Party's written submissions, written versions of oral statements and responses to questions put by an arbitration panel, shall, at the same time as it is submitted to the arbitration panel, be transmitted by that Party to the other party to the dispute.

6. The Parties shall treat as confidential the information submitted by other Party to the arbitration panel which that Party has designated as confidential.

7. Decisions of the arbitration panel shall be taken by a majority of its members. Any member may furnish separate opinions on matters not unanimously agreed. The arbitration panel may not disclose which members are associated with majority or minority opinions.

Article 50

Arbitration Panel Reports

1. The arbitration panel should, as a general rule, submit an initial report containing its findings and ruling to the parties to the dispute not later than 90 days from the date of establishment of the arbitration panel. In no case should it do so later than five months from this date. A party to the dispute may submit written comments to the arbitration panel on its initial report within 14 days of receipt of the report. The arbitration panel shall present to the parties to the dispute a final report within 30 days of their receipt of the initial report.

2. The final report, as well as any ruling under Articles 52 and 53, shall be communicated to the Parties. The reports shall be made public, unless the parties to the dispute decide otherwise.

3. Any ruling of the arbitration panel under any provision of this Chapter shall be final and binding upon the parties to the dispute.

Article 51

Suspension or Termination of Arbitration Panel Proceedings

1. Where the parties to the dispute agree, an arbitration panel may suspend its work at any time for a period not exceeding 12 months. If the work of an arbitration panel has been suspended for more than 12 months, the arbitration panel's authority for considering the dispute shall lapse unless the parties to the dispute agree otherwise.

2. A complaining Party may withdraw its complaint at any time before the final report has been issued. Such withdrawal is without prejudice to its right to introduce a new complaint regarding the same issue at a later point in time.

3. The parties to the dispute may agree at any time to terminate the proceedings of an arbitration panel established under this Agreement by jointly notifying the Chairperson of that arbitration panel.

4. An arbitration panel may, at any stage of the proceedings prior to release of the final report, propose that the parties to the dispute seek to settle the dispute amicably.

Article 52

Implementation of Final Report

1. The Party concerned shall promptly comply with the ruling of the arbitration panel. If it is impracticable to comply immediately, the parties to the dispute shall endeavour to agree on a reasonable period of time to do so. In the absence of such agreement within 30 days from the date of the issuance of the final report, either party to the dispute may request the original arbitration panel to determine the length of the reasonable period of time, in light of the particular circumstances of the case. The ruling of the arbitration panel should be given within 30 days from that request.

2. The party to the dispute concerned shall notify the other party to the dispute of the measure adopted in order to comply with the ruling of the arbitration panel, as well as provide a detailed description of how the measure ensures compliance sufficient to allow the other party to the dispute to assess the measure.

3. In case of disagreement as to the existence of a measure complying with the ruling of the arbitration panel or to the consistency of that measure with the ruling of the arbitration panel, such dispute shall be decided by the same arbitration panel before compensation can be sought or suspension of benefits can be applied in accordance with Article 53. The ruling of the arbitration panel shall normally be rendered within 90 days.

Article 53

Compensation and Suspension of Benefits

1. If the Party concerned fails to properly comply with the ruling in the final report within a reasonable period of time as provided for in paragraph 1 of Article 52, that Party shall, if so requested by the complaining Party, enter into consultations with a view to agreeing on a mutually acceptable compensation. If no such agreement has been reached within 20 days from the request, the complaining Party shall be entitled to suspend the application of benefits granted under this Agreement but only equivalent to those affected by the measure or matter that the arbitration panel has found to be inconsistent with this Agreement.

2. In considering what benefits to suspend, the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or matter that the arbitration panel has found to be inconsistent with this Agreement. The complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.

3. The complaining Party shall notify the other party to the dispute of the benefits which it intends to suspend, the grounds for such suspension and when suspension will commence, no later than 30 days before the date on which the suspension is due to take effect. Within 15 days from that notification, the Party complained against may request the original arbitration panel to rule on whether the benefits which the complaining Party intends to suspend are equivalent to those affected by the measure found to be inconsistent with this Agreement, and whether the proposed suspension is in accordance with paragraphs 1 and 2. The ruling of the arbitration panel shall be given

within 45 days from that request. Benefits shall not be suspended until the arbitration panel has issued its ruling.

4. Compensation and suspension of benefits shall be temporary measures and shall only be applied by the complaining Party until the measure or matter found to be inconsistent with this Agreement has been withdrawn or amended so as to bring it into conformity with this Agreement, or until the parties to the dispute have resolved the dispute otherwise.

5. At the request of a party to the dispute, the original arbitration panel shall rule on the conformity with the final report of any implementing measures adopted after the suspension of benefits and, in light of such ruling, whether the suspension of benefits should be terminated or modified. The ruling of the arbitration panel shall be given within 30 days from the date of that request.

Article 54 ***Other Provisions***

1. Whenever possible, the arbitration panel referred to in Articles 52 and 53 shall comprise the same panelists who issued the final report. If a member of the original arbitration panel is unavailable, the appointment of a replacement panelist shall be conducted in accordance with the selection procedure for the original panelist.

2. Any time period mentioned in this Chapter may be modified by mutual agreement of the Parties involved.

CHAPTER V **INSTITUTIONAL PROVISIONS**

Article 55 ***Free Trade Committee***

1. The Parties hereby establish the Montenegrin - Ukrainian Free Trade Committee (here and after referred to as “the Committee”) in order to ensure full and effective implementation of the provisions of this Agreement.

2. The objectives of the Committee are:

(a) to supervise and review the implementation of this Agreement, *inter alia* by means of a comprehensive review of the application of the provisions of this Agreement, with due regard to any specific reviews contained in this Agreement;

(b) to keep under review the possibility of further removal of barriers to trade and other restrictive measures concerning trade between the Parties;

- (c) to oversee the further development of this Agreement;
 - (d) to endeavour to resolve disputes that may arise regarding the interpretation or application of this Agreement; and
 - (e) to consider any other matter that may affect the operation of this Agreement.
3. The Committee shall meet whenever necessary upon request by the either Party in the capitals of both States alternately, at the agreed date.

CHAPTER VI FINAL PROVISIONS

Article 56 *Fulfillment of Obligations*

The Parties shall take all necessary measures to ensure the achievement of the objectives of this Agreement and the fulfilment of their obligations under this Agreement.

Article 57 *Annexes*

The Annexes to this Agreement shall form an integral part thereof. The Free Trade Committee may recommend amending the Annexes in accordance with the national legislation of the Parties.

Article 58 *Amendments*

Amendments to this Agreement, as well as to its Annexes, shall enter into force on the date of receipt of the latter written notification through diplomatic channels, by which the Parties inform each other that all necessary requirements foreseen by their national legislation for the entry into force of this Agreement, have been fulfilled.

Article 59 *Validity and Withdrawal*

1. This Agreement is concluded for an unlimited period.

2. Each Party to this Agreement may withdraw from this Agreement by a written notification to the other Party. The termination shall take effect on the first day of the seventh month following the date on which the notification was received by the other Party.

3. Without prejudice to Article 4, on the day of the accession of each Party of this Agreement to the European Union, this Agreement shall cease to be effective.

4. Six months after the termination of this Agreement, its provisions will apply to all contracts that are concluded during the term and in accordance with this Agreement, in order to ensure complete performance of obligations arising from them.

Article 60 ***Entry into Force***

The Parties shall ratify this Agreement in accordance with their own procedures. This Agreement shall enter into force on the first day of the second month, following the date of the receipt through diplomatic channels of the latter document on ratification.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorised thereto, have signed this Agreement.

DONE at,on....., in two originals, each in the Ukrainian, Montenegrin and English languages, all texts being equally authentic. In case of any divergence in the interpretation of this Agreement, the English text shall prevail.

For the Government of Ukraine

For the Government of Montenegro