

FREE TRADE AGREEMENT BETWEEN ESTONIA AND UKRAINE

The Republic of Estonia and Ukraine (hereafter referred to as "the Parties"),

Recalling their intention to participate actively in the process of economic integration in Europe and expressing their preparedness to cooperate in seeking ways and means to strengthen this process,

Recalling their firm commitment to the Final Act of the Conference on Security and Cooperation in Europe, the Paris Charter, and in particular the principles contained in the final document of the CSCE Bonn Conference on Economic Cooperation in Europe,

Reaffirming their commitment to the idea of law state based on the rule of law, human rights and fundamental freedoms,

Desiring to create favourable conditions for the development and diversification of trade between them and for the promotion of commercial and economic cooperation in areas of common interest on the basis of equality, mutual benefit and international law,

Resolved to contribute to the strengthening of the multilateral trading system and to develop their relations in the field of trade in accordance with the basic principles of the General Agreement on Trade and Tariffs (GATT/WTO),

Declaring their readiness to examine the possibility of developing and deepening their relations in order to extend them to fields not covered by this Agreement,

Have agreed as follows:

Article 1

Objectives

1. The Parties shall gradually establish a free-trade area in accordance with the provisions of this Agreement.
2. The objectives of this Agreement, which is based on trade relations between market economies, are:
 - (a) to promote, through the expansion of mutual trade, the harmonious development of the economic relations between Estonia and Ukraine and thus to foster the advance of economic activity, the improvement of living and employment conditions, increased productivity, financial stability and sustained growth of both Parties;
 - (b) to provide fair conditions of competition for trade between the Parties;
 - (c) to develop and intensify, as far as possible, cooperation in the areas which are not covered by this Agreement, especially in the promotion of investments, economic and scientific cooperation, economic aid and the environment protection

Article 2

The Joint Committee

1. The Joint Committee is hereby established, which shall be responsible for the administration of this Agreement and shall review its implementation. For this purpose it shall follow closely the development of the trade and economic cooperation between the Parties and take any corresponding measure which is necessary to improve and further develop those relations. The decisions of the Joint Committee shall be put into effect by the Parties in accordance with their own laws.
2. For the purpose of the proper implementation of this Agreement the Parties shall exchange information and, at the request of either Party, shall hold consultations within the Joint Committee.
3. The Joint Committee shall consist of equally authorized representatives of Estonia on the one side and of representatives of Ukraine on the other.
4. The Joint Committee shall act by mutual agreement.
5. Each Party shall preside alternately over the Joint Committee.
6. The meetings of the Joint Committee should be held at least once a year in order to review the general functioning of the Agreement. The Joint Committee shall, in addition, meet whenever special circumstances so require at the request of either Party,
7. The Joint Committee may decide to set up any working group that can assist it in carrying out its duties.
8. The Joint Committee may take independent decisions concerning the application of this Agreement. The Joint Committee shall make recommendations on the amendments and changes of this Agreement.

Article 3

Scope

This Agreement shall apply to products falling within Chapters 1 to 97 of the Harmonized Commodity Description and Coding System, originating in Estonia or in Ukraine.

Article 4

Rules of origin and cooperation in customs administration

1. Protocol A lays down the rules of origin and methods of administrative cooperation.
2. The Parties shall take appropriate measures, including regular reviews by the Joint Committee and arrangements for administrative cooperation, to ensure that the provision of Article 5 (Prohibition and abolition of customs duties on imports and

charges having equivalent effect), Article 6 (Prohibition and abolition of customs duties on exports and charges having equivalent effect), Article 7 (Prohibition and abolition of quantitative restrictions on imports or exports and measures having equivalent effect), Article 10 (Internal taxation) and Article 18 (Re-exports and serious shortage) of the Agreement and Protocol A are effectively and harmoniously applied, and to reduce, as far as possible, the formalities imposed on trade, and to achieve mutually satisfactory solutions to any difficulties arising from the operation of those provisions.

Article 5

Prohibition and abolition of customs duties on imports and charges having equivalent effect

1. No new customs duties on imports or charges having equivalent effect shall be introduced in trade between the Parties.
2. Customs duties on imports and charges having equivalent effect shall be abolished upon the date of entry into force of this Agreement.
3. The provisions of this Article shall also apply to customs duties of a fiscal nature. The Parties may replace a customs duty by an internal tax.

Article 6

Prohibition and abolition of customs duties on exports and charges having equivalent effect

1. No new customs duties on exports or charges having equivalent effect shall be introduced in trade between the Parties.
2. Customs duties on exports and charges having equivalent effect shall be abolished upon the entry into force of this Agreement.

Article 7

Prohibition and abolition of quantitative restrictions on imports or exports and measures having equivalent effect

1. No new quantitative restrictions on imports or exports and measures having equivalent effect shall be introduced in trade between the Parties.
2. Quantitative restrictions on imports or exports and measures having equivalent effect shall be abolished in trade upon the date of entry into force of this Agreement.

Article 8

General exceptions

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 the environment; the protection of national treasures possessing artistic, historic or

archaeological value; the protection of intellectual property; laws and regulations relating to precious stones and metals. Such prohibitions or restrictions shall not, however, constitute means of arbitrary discriminations or a disguised restriction on trade between the Parties.

Article 9

State monopolies

1. The Parties shall ensure that any state monopoly of commercial character be adjusted, so that no discrimination regarding the conditions under which goods are procured and labelled will exist between nationals of the Parties. These goods shall be produced and marketed in accordance with commercial considerations.

2. This Article shall apply to the institutions through which the competent authorities of the Parties, in law or in fact, either directly or indirectly supervise, determine or appreciably influence imports or exports between the Parties. This Article shall likewise apply to monopolies delegated by the Party to others.

Article 10

Internal taxation

1. The Parties shall refrain from any measure or practice of an internal fiscal nature establishing, whether directly or indirectly, discrimination between the products originating in one Party and the similar products originating in the other Party.

2. Products exported to the territory of one of the Parties may not benefit from repayment of internal taxation in excess of the amount of direct or indirect taxation imposed on them.

Article 11

Payments

1. Payments relating to the trade and the transfer of such payments to the territory of the Party where the creditor resides shall be free from any restrictions.

2. The Parties shall refrain from any exchange and administrative restrictions on the grant, repayment or acceptance of short and medium-term credits covering commercial transactions.

Article 12

Legal protection of intellectual property

1. The Parties shall guarantee adequate, effective and non-discriminatory legal protection of intellectual property rights. With the establishment of this legal protection, especially against counterfeiting and piracy, they will adopt and apply adequate, effective and non-discriminatory measures.

2. In the field of intellectual property, the Parties shall not grant treatment less favourable to each other's nationals than that accorded to the nationals of a third State.

3. The Parties may apply, using their national laws and regulations, legal protection which exceeds the provisions of this Article provided that this legal protection is not in contradiction to the provisions of this Agreement.

4. If one of the Parties considers that the other Party has failed to fulfil the obligations under this Article, Article 23 (Fulfilment of obligations), paragraph 2 shall apply.

5. The Parties to this Agreement shall agree upon appropriate modalities for technical assistance and cooperation of respective authorities of the Parties.

Article 13

Rules of competition concerning undertakings

1. The following are incompatible with the proper functioning of this Agreement in so far as they may affect trade between the Parties:

(a) all agreements between the undertakings, decisions taken by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;

(b) abuse by one or more undertakings of a dominant position in the territories of the Parties as whole or in a substantial part thereof.

2. If a Party considers that a given practice is incompatible with the provisions of paragraph 1 of this Article, it may take appropriate measures after consultations within the Joint Committee or after thirty days following referral to such consultations.

Article 14

State-aid

1. Any aid granted by a Party in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it may affect trade between the Parties, be incompatible with the proper functioning of this Agreement.

2. The Parties shall ensure transparency of State-aid measures by exchanging information on the request of either Party.

3. The Joint Committee shall keep the situation regarding the application of state-aid measures under review, and shall with regard to other state-aid than export aid, elaborate further rules of implementation.

4. If a Party considers that a given practice is incompatible with paragraph 1 of this Article, it may take appropriate measures under the conditions and in accordance with

the procedure laid down in Article 20 (Procedure for the application of safeguard measures) of this Agreement.

Article 15 Dumping

If a Party finds that dumping within the meaning of Article VI of the General Agreement on Tariffs and Trade is taking place in trade relations governed by this Agreement, it may take appropriate measures against that practice in accordance with that Article and Agreements related to, under the conditions and in accordance with the procedure laid down in Article 20 (Procedure for the application of safeguard measures) of this Agreement.

Article 16 Emergency action on import of a particular product

If an increase in imports of a given product originating in Estonia or in Ukraine occurs in quantities or under conditions which cause, or are likely to cause:

- (a) serious injury to domestic procedures of like or directly competitive products in the territory of the other Party; or
- (b) serious disturbances in any related sector of the economy or difficulties, which could bring about serious deterioration in the economic situation of a region,

the Party concerned may take appropriate measures under the conditions and in accordance with the procedure laid down in Article 20 (Procedure for the application of safeguard measures) of this Agreement.

Article 17 Structural adjustment

Exceptional measures may only concern infant industries or certain sectors undergoing restructuring or facing serious difficulties, particularly where these difficulties produce important social problems.

These measures shall be applied for a period not exceeding five years unless a longer duration is authorized by the Joint Committee, and cannot be introduced later than five years after the entry into force of this Agreement.

Article 18 Re-exports and serious shortage

Where compliance with the provisions of Article 6 (Prohibition and abolition of customs duties on exports and charges having equivalent effect) and Article 7 (Prohibition and abolition of quantitative restrictions on imports or exports and measures having equivalent effect) leads to:

(a) re-exports towards a third country against which the exporting Party maintains for the products concerned quantitative export restriction, export duties or measures or charges having equivalent effect; or

(b) a serious shortage, or threat thereof, of a product essential to the exporting Party;

and where the situations referred to above give rise or are likely to give rise to major difficulties for the exporting Party, that Party may take appropriate measures under the conditions and in accordance with the procedures laid down in Article 20 (Procedure for the application of safeguard measures) of this Agreement.

Article 19

Balance-of-payments difficulties

1. Where either Party is in serious balance-of-payments difficulties, or under imminent threat thereof, the Party concerned may, in accordance with the terms and conditions established under the General Agreement on Tariffs and Trade (GATT/WTO) and associated legal instruments, adopt trade restrictive measures, which shall be of limited duration and may not go beyond what is necessary to remedy the balance-of-payments situation. The Parties shall give preference to price-based measures. The measures shall be eliminated when conditions no longer justify their maintenance. Parties shall inform each other forthwith of their introduction and of the time schedule for their removal.

2. The Parties shall, nevertheless, endeavour to avoid the imposition of restrictive measures for balance-of-payments purposes.

Article 20

Procedure for the application of safeguard measures

1. Without prejudice to paragraph 5 of this Article, the Party which considers resorting to safeguard measures shall promptly notify the other Party thereof and supply with all relevant information. Consultations shall take place without delay in the Joint Committee with a view to finding a mutually acceptable solution.

2 (a) As regards Article 14 (State-aid) the Party concerned shall give to the Joint Committee all the assistance required in order to examine the case and, where appropriate, eliminate this practice. If the Party in question fails to put an end to the practice objected to within the period fixed by the Joint Committee or if the Joint Committee fails to reach an agreement after consultations, or after thirty days following referral to such consultations, the Party concerned may adopt the appropriate measures to deal with the difficulties resulting from the practice in question.

(b) As regards Articles 15 (Dumping), 16 (Emergency action on import of a particular product) and 18 (Re-exports and serious shortage), the Joint Committee shall examine the case or the situation and may take any decision needed to put an end to the difficulties notified by the Party concerned. In the absence of such a decision within

thirty days of the matter being referred to the Joint Committee, the Party concerned may adopt the measures necessary in order to remedy the situation.

(c) As regards Article 23 (Fulfilment of obligations), the Party concerned shall supply the Joint Committee with all relevant information required for a thorough examination of the situation with a view to seeking mutually acceptable solution. If the Joint Committee fails to reach such a solution or if a period of three months has elapsed from the date of notification, the Party concerned may take appropriate measures.

3. The safeguard measures taken shall be notified immediately to the other Party. They shall be restricted with regard to their extent and to their duration to what is strictly necessary in order to rectify the situation giving rise to their application and shall not be in excess of the injury caused by the practice of the difficulty in question. Priority shall be given to such measures as the least disturb the functioning of this Agreement.

4. The safeguard measures taken shall be the object of regular consultations with a view to their relaxation, substitution or abolition as soon as possible.

5. Where exceptional circumstances required immediate action make prior examination impossible, the Party concerned may, in the case of Articles 13 (Rules of competition concerning undertakings), 14 (State-aid), 15 (Dumping), 16 (Emergency action on imports of a particular product) and 18 (Re-exports and serious shortage) apply forthwith the precautionary and provisional measures strictly necessary to deal with the situation. The measures shall be notified to the Joint Committee without delay and consultations between the Parties shall take place as soon as possible.

Article 21

Security exceptions

Nothing in this Agreement shall prevent a Party from taking any measures which it considers necessary:

(a) to prevent the disclosure of information contrary to its essential security interests;

(b) for the protection of its essential security interests or for the implementation of international obligations or national policies:

(i) relating to the traffic in arms, ammunition and implements of war, provided that such measures do not impair the conditions of competition in respect of products not intended for specifically military purposes, and to such traffic in other goods, materials and services as is carried on directly or indirectly for the purpose of supplying a military establishment; or

(ii) relating to the non-proliferation of biological and chemical weapons, nuclear weapon, or other nuclear weapons explosive devices; or

(iii) taken in time of war or other serious international tension.

Article 22
Evolutionary clause

The Parties shall recognize the growing importance of such areas as services, investments and the implementation of joint projects. Where a Party considers that it would be useful in the interests of the economies of the Parties to develop and deepen the relations established by this Agreement by extending them to fields not covered thereby, it shall submit a reasoned request to the other Party. The Parties may instruct the Joint Committee to examine this request and, where appropriate, to make recommendations to them, particularly with a view to opening up negotiations.

Article 23
Fulfilment of obligations

1. 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.
2. If either Party considers that the other Party has failed to fulfil an obligation under this Agreement, the Party concerned may take the appropriate measures after consultation in the Joint Committee under the conditions and in accordance with the procedure laid down in Article 20 (Procedure for the application of safeguard measures).

Article 24
Annexes and protocols

The Annexes and Protocols to this Agreement are integral parts of it.

Article 25
Customs unions, free-trade areas and frontier trade

This Agreement shall not prevent the maintenance or establishment of customs unions, free-trade areas or arrangements for frontier trade to the extent that these do not negatively affect the trade regime and in particular the provisions concerning rules of origin provided by this Agreement.

Article 26
Amendments

Amendments to this Agreement shall be submitted to the Parties for acceptance and shall enter into force in accordance with Article 27 of this Agreement.

Article 27
Entry into force

This Agreement shall enter into force thirty days after the date when both Parties have notified each other in writing and the constitutional or other legal requirements for the

entry into force have been fulfilled. The Agreement shall remain in force for an inadequate period.

Article 28
Denunciation

Either Party may denounce this Agreement by means of a written notification to the other Party. This Agreement shall cease to be in force six months after the date on which the notification was received by the other Party.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto, have signed the present Agreement.

DONE at Tallinn, this 24 day of May 1995 in two originals, both in the Estonian, Ukrainian and English languages. In case of a dispute the English text shall prevail.

For the Republic of Estonia

For the Ukraine