

**ANTI-CONTRABAND AND ANTI-COUNTERFEIT  
AGREEMENT AND GENERAL RELEASE**

**dated as of**

**July 9, 2004**

**among**

**PHILIP MORRIS INTERNATIONAL INC.,  
PHILIP MORRIS PRODUCTS INC.,  
PHILIP MORRIS DUTY FREE INC., and  
PHILIP MORRIS WORLD TRADE SARL**

**THE EUROPEAN COMMUNITY  
REPRESENTED BY THE EUROPEAN COMMISSION**

**AND**

**EACH MEMBER STATE LISTED ON  
THE SIGNATURE PAGES HERETO**

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**ANTI-CONTRABAND AND ANTI-COUNTERFEIT  
AGREEMENT AND GENERAL RELEASE**

This Anti-Contraband and Anti-Counterfeit Agreement and General Release dated as of July 9, 2004, (this “**Agreement**”) is made by and among the European Community (the “**EC**”) represented by the European Commission, the Member States of the EC that have executed a copy of this Agreement and become parties hereto (the “**Participating Member States**”, and together with the EC, “**the Relevant Administrations**”) and Philip Morris International Inc., Philip Morris Products Inc., Philip Morris Duty Free Inc. and Philip Morris World Trade SARL (collectively with the Relevant Administrations, “**the Parties**”).

**W I T N E S S E T H :**

(1) **WHEREAS**, the smuggling of Cigarettes, both authentic and counterfeit, results in great economic loss and causes other various harms to the Relevant Administrations;

(2) **WHEREAS**, the Relevant Administrations are fully committed to combat the illegal introduction of both authentic and counterfeit Cigarettes into the Territory of the Member States;

(3) **WHEREAS**, Philip Morris International is committed to take commercially reasonable steps as a manufacturer of Cigarettes to promote the Parties’ joint objective that Philip Morris Cigarettes be sold, distributed, stored, and shipped in accordance with all applicable fiscal and legal requirements, and, in particular, sold at retail in accordance with all applicable tax and duty laws in the intended retail market;

(4) **WHEREAS**, while the smuggling of certain authentic brands of Cigarettes other than Philip Morris brands continues in significant quantities, for the last few years the incidence of bulk quantities of Contraband Philip Morris Cigarettes in the Member States has been greatly reduced, and during the same time period, there has been an increase in Cigarette counterfeiting activity such that currently, there is a growing threat to the Relevant Administrations’ finances from the illegal importation and introduction of Counterfeit Philip Morris Cigarettes;

(5) **WHEREAS**, the Member States and Philip Morris International have a mutual interest in (1) eliminating the illegal importation, distribution and sale of Cigarettes and any related illegal activity, (2) ensuring the collection of applicable taxes and duties on Cigarettes sold or distributed in the Territory of the Member States, including, without limitation, those that will be remitted wholly or in part to the EC by the Member States, (3) protecting lawful competition in the sale of Cigarettes, (4) protecting the Trademark rights of legitimate Cigarette

manufacturers, and (5) preventing citizens of the Member States from being misled about the source and quality of the Cigarettes they purchase; and whereas the EC has an interest in the foregoing insofar as they affect the interests of the EC and the achievement of the EC's objectives;

**(6) WHEREAS**, by virtue of Article 3 and Article 23 of the EC Treaty, the EC is competent for matters relating to customs duties on the import and export of goods in Member States, and by virtue of Part 5, Title II of the EC Treaty, the European Commission is obligated to ensure the orderly collection of the EC's own resources;

**(7) WHEREAS**, combating fraud and other illegal activities affecting the financial interests of the EC, including those resulting from the illegal Cigarette trade within the Territory of the Member States, is an obligation of the EC and Member States under Article 280 of the EC Treaty;

**(8) WHEREAS**, pursuant to Article 10 of the EC Treaty, the Member States shall take all appropriate measures, whether general or particular, to ensure fulfillment of the obligations arising out of the EC Treaty or resulting from action taken by the institutions of the EC and shall facilitate achievement of the objectives of the EC's tasks;

**(9) WHEREAS**, the EC and Member States, each within their respective competences and subject to budgetary constraints, intend to continue and improve their efforts to combat the smuggling of authentic and Counterfeit Cigarettes and the illegal importation and introduction of said Cigarettes into the Territory of the Member States;

**(10) WHEREAS**, it is in the best interest of Philip Morris International for there to be an end to the illegal importation of Contraband and Counterfeit Cigarettes into the Territory of the Member States and the counterfeiting of Philip Morris Cigarettes;

**(11) WHEREAS**, Philip Morris International agrees to provide all reasonable assistance, both direct and indirect, as set forth herein, to the EC and the Member States in the fight against Contraband and Counterfeit Cigarettes, including in part, monetary payments;

**(12) WHEREAS**, the EC and certain Member States commenced a civil action in the United States District Court for the Eastern District of New York, entitled European Community, et al. v. RJR Nabisco, et al., under Civil Action No. 01-CV-5188 (NGG), asserting various claims for damages, costs and equitable relief, based in part on alleged sales of Philip Morris Cigarettes in the Territory of the Member States in violation of applicable laws (such action, the "**Civil Action**");

(13) **WHEREAS**, the Civil Action has been dismissed by the United States District Court (as to some of the claims with prejudice and as to others without prejudice) and is currently the subject of an appeal (such appeal, together with the Civil Action, the “**Litigation**”);

(14) **WHEREAS**, pursuant to the mutual rights and obligations in this Agreement, the Parties agree that it is in the public interest, will further advance their objectives, and will facilitate the achievement of their goals to swiftly resolve, finally and fully, in an amicable and cooperative manner without any admission of liability, all matters between the Parties that relate to the alleged conduct, acts or omissions that were asserted or could have been asserted in the Litigation and any alleged Losses (as hereinafter defined) caused by such conduct, acts, or omissions;

(15) **WHEREAS**, the Parties acknowledge and agree to take all appropriate measures (1) to ensure fulfillment of their obligations under this Agreement, (2) to facilitate the achievement of the objectives of the Agreement, and (3) to abstain from any measures that could jeopardize the attainment of the objectives of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual obligations described herein, the sufficiency of which is hereby acknowledged, the Parties, acting by and through their authorized agents, hereby memorialize and agree as follows:

## ARTICLE 1 DEFINITIONS

### Section 1.01. *Definitions.*

The following terms, as used herein, have the following meanings:

“**Affiliate**” means, with respect to any Person, any other legally related Person directly controlling, controlled by, or under common control with, such other Person. For purposes of this definition, “**control**”, when used with respect to any Person, means the power to choose the Board of Directors and/or establish the policies of such Person, whether through the ownership of voting securities or contract, and the terms “**controlling**” and “**controlled**” have meanings correlative to the foregoing.

“**Agreement**” shall have the meaning ascribed to it in the preamble of this Agreement.

**“Anti-Contraband and Anti-Counterfeit Initiatives”** shall have the meaning ascribed to it in Section 3.01 of this Agreement.

**“Applicant”** shall have the meaning ascribed to it in the EC Compliance Protocols, attached as Appendix B to this Agreement.

**“Approved Contractor”** means a Contractor approved by Philip Morris International in accordance with the EC Compliance Protocols, attached as Appendix B to this Agreement.

**“Arbitrator(s)”** shall have the meaning ascribed to it in Section 12.02(a) of this Agreement.

**“Audit Order”** shall have the meaning ascribed to it in Section 2.02(d) of this Agreement.

**“Baseline Amount”** means 90 million Cigarettes, which is half of the total combined Contraband Philip Morris Cigarettes seized by the Member States who were Member States on January 1, 2004, during the calendar years ended December 31, 2001, and December 31, 2002, but does not include seizures of less than five Master Cases of Philip Morris Cigarettes. The Baseline Amount may be amended pursuant to Section 4.01(s) and (t) of this Agreement.

**“Blocked Contractor”** means a former Approved Contractor who is no longer authorized by Philip Morris International to conduct business relating to the sale, distribution, storage, or shipment of Philip Morris Cigarettes in or through the Territory of the Member States or any Designated State.

**“Carton”** or **“Bundle”** or **“Outer”** means a package containing 10 Packs of Cigarettes (approximately 200 Cigarettes total) and includes all input materials used in the assembly of such container such as cardboard, plastic wrap and tear tapes.

**“Certification of Compliance”** shall have the meaning ascribed to it in Section 2.02(a) of this Agreement.

**“Cigarette”** means any product that contains tobacco and is intended to be burned or heated under ordinary conditions of use and includes, without limitation, any “roll-your-own” tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For the purposes of this Agreement, 0.0325 ounces of “roll-your-own” tobacco shall be considered the equivalent of one individual Cigarette.

**“Civil Action”** shall have the meaning ascribed to it in the recitals of this Agreement.



**“Compliance Order”** shall have the meaning ascribed to it in Section 2.02(d) of this Agreement.

**“Contraband Cigarettes”** means Cigarettes that have been imported into, distributed in, or sold in, the Territory of a Member State, or were en route to the Territory of a Member State for sale in that Member State, in violation of the applicable tax, duty or other fiscal laws of that Member State or the EC, but, for purposes of this Agreement, shall exclude Counterfeit Cigarettes.

**“Contraband Philip Morris Cigarettes”** means Philip Morris Cigarettes that have been imported into, distributed in, or sold in, the Territory of a Member State, or were en route to the Territory of a Member State for sale in that Member State, in violation of the applicable tax, duty or other fiscal laws of that Member State or the EC, but, for purposes of this Agreement, shall exclude Counterfeit Philip Morris Cigarettes.

**“Contractor”** means a First Purchaser or any warehouser, shipper or freight forwarder engaged by Philip Morris International in connection with the storage or shipment of Philip Morris Cigarettes in or through the Territory of the Member States or a Designated State.

**“Counterfeit Cigarettes”** means Cigarettes bearing a Trademark of a Cigarette manufacturer that are manufactured by a third party without the consent of that Cigarette manufacturer, but shall in no event include (i) Cigarettes manufactured by the Trademark holder or any affiliate thereof, regardless of the actual or intended market of distribution, (ii) Cigarettes bearing a Trademark of a Cigarette manufacturer using tobacco either produced by or sold by that Cigarette manufacturer, or (iii) Cigarettes bearing a Trademark of a Cigarette manufacturer that are packaged in genuine packaging of that Cigarette Manufacturer, including genuine cartons and packs of that Cigarette manufacturer.

**“Counterfeit Philip Morris Cigarettes”** means Cigarettes bearing a Philip Morris Trademark that are manufactured by a third party without the consent of Philip Morris, but shall in no event include (i) Cigarettes manufactured by Philip Morris or any affiliate thereof, regardless of the actual or intended market of distribution, (ii) Cigarettes bearing a Trademark of Philip Morris using tobacco either produced by or sold by Philip Morris, or (iii) Cigarettes bearing a Trademark of Philip Morris that are packaged in genuine Philip Morris packaging, including genuine Philip Morris cartons and packs.

**“Designated State”** means any state listed in the Designated State List attached as Appendix G, which may be amended in accordance with the procedure therein.

**“Due Diligence”** means a reasonable state-of-the-art investigation conducted by Philip Morris International before the commencement of a business relationship with a Person relating to the sale, distribution, storage, or shipment of Philip Morris Cigarettes in or through the Territory of the Member States or any Designated State, as described in the EC Compliance Protocols, attached as Appendix B to this Agreement.

**“Due Diligence Information”** shall have the meaning ascribed to it in the EC Compliance Protocols, attached as Appendix B to this Agreement.

**“EC”** shall have the meaning ascribed to it in the preamble of this Agreement.

**“EC Compliance Protocols”** shall have the meaning ascribed to it in Section 2.01 of this Agreement.

**“EC Treaty”** shall have the meaning ascribed to it in Section 7.03 of this Agreement.

**“Execution Date”** means the later of (i) the date on which the signatures to this Agreement of all the Relevant Administrations who are Plaintiffs in the Litigation have been delivered to Philip Morris International; or (ii) the date on which the signature to this Agreement of Philip Morris International has been delivered to the EC.

**“Expiration Date”** means the 12th anniversary of the Execution Date.

**“First Purchaser”** means any Person, other than an Affiliate of Philip Morris International, to whom Philip Morris International directly sells a quantity of Philip Morris Cigarettes in excess of 2,500 Master Cases annually for sale, distribution or consumption within or into the Territory of one or more of the Member States or any Designated State, and such Person’s Affiliates.

**“Fiscal Compliance Coordinator”** shall have the meaning ascribed to it in the EC Compliance Protocols, attached as Appendix B to this Agreement.

**“Fiscal Compliance Policy”** shall have the meaning ascribed to it in Section 2.01 of this Agreement.

**“Follow-up Due Diligence”** shall have the meaning ascribed to it in the EC Compliance Protocols, attached as Appendix B to this Agreement.

**“Future Cooperation Agreement”** shall have the meaning ascribed to it in Section 13.14 of this Agreement.

**“Identification Markings”** means codes and markings on Philip Morris Cigarette packaging placed on that packaging by Philip Morris International or its authorized agents, which correspond to information regarding those Cigarettes as set forth in the Tracking and Tracing Protocols, attached as Appendix D to this Agreement.

**“Initial Participating Member States”** means the Participating Member States that have executed a copy of the Agreement on or prior to the Execution Date.

**“Intended Market of Retail Sale”** means the market which Philip Morris International intends as the market of either domestic retail or duty-free retail sale for Philip Morris Cigarettes when Philip Morris International sells such Cigarettes to a First Purchaser.

**“International Compliance Policy”** shall have the meaning ascribed to it in the EC Compliance Protocols, attached as Appendix B to this Agreement.

**“Litigation”** shall have the meaning ascribed to it in recitals (12) and (13) of this Agreement.

**“Losses”** means the monetary and non-monetary losses and other injuries alleged to have been sustained as a result of the sale, distribution, storage, or shipment of Contraband Philip Morris Cigarettes before the Execution Date, or for Subsequent Participating Member States, their respective Signature Dates, including any and all monetary and non-monetary losses and injuries claimed or described by the EC and the Member States in paragraphs 39 through 40 of the Complaint dated August 3, 2001, filed in the Case entitled European Community, et al. v. RJR Nabisco, et al., case number 01-CV-5188 (NGG) .

**“Market of Interest”** shall have the meaning ascribed to it in Protocol 6 of Appendix D to this Agreement.

**“Master Case”** means a case containing 10,000 Cigarettes.

**“Member States”** means States that are members of the European Union.

**“Money Laundering”** means conduct in violation of 18 U.S.C. §§ 1956 or 1957 or the comparable provisions under the laws of the EC or the Member States.

**“New Member State”** means any Member State which, having submitted to the Council of the European Union an application for membership of the European Union and said application having been granted and the State having acceded to the Treaty on European Union, has joined the European Union after January 1, 2004.

**“Non-Participating Member States”** means the Member States that are not a Party to this Agreement.

**“Notice of Interest”** shall have the meaning ascribed to it in Protocol 6 Appendix D to of this Agreement.

**“OLAF”** means the Anti-Fraud Office of the European Commission or any successor thereof.

**“Pack”** means a small package containing approximately 20 cigarettes and includes all input materials used in the assembly of such container such as cardboard, aluminum foil or metallized papers, plastic wrappings, tax stamps, and tear tapes.

**“Participating Member States”** shall have the meaning ascribed to it in the Preamble of this Agreement.

**“Person”** means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

**“Philip Morris Cigarettes”** means Cigarettes manufactured by Philip Morris or any of its Affiliates that manufacture Cigarettes, or Cigarettes manufactured by licensees and bearing Philip Morris Trademarks as set forth in Appendix I.

**“Philip Morris”** means Altria Group, Inc., f/k/a Philip Morris Companies Inc., and all of its current and former Affiliates, direct and indirect subsidiaries along with their direct and indirect subsidiaries, and/or any successors thereto, as well as all current and former employees, directors, officers, and servants, including outside attorneys.

**“Philip Morris International”** means Philip Morris International Inc. and its controlled subsidiaries, including without limitation Philip Morris Products Inc., Philip Morris Duty Free Inc. and Philip Morris World Trade SARL.

**“Released Claims”** shall have the meaning ascribed to it in Section 9.01(b) of this Agreement.

**“Released Persons”** shall have the meaning ascribed to it in Section 9.01(a) of this Agreement.

**“Releasing Persons”** shall have the meaning ascribed to it in Section 9.01(a) of this Agreement.

“**Relevant Administrations**” shall have the meaning ascribed to it in the Preamble of this Agreement.

“**Relevant Law**” shall have the meaning ascribed to it in Section 13.06(a) of this Agreement.

“**Reporting System**” shall have the meaning ascribed to it in the EC Compliance Protocols, attached as Appendix B to this Agreement.

“**Representatives of the Relevant Administrations**” means OLAF or other authorized representatives duly designated by the Relevant Administrations.

“**Request for Termination**” shall have the meaning ascribed to it in the EC Compliance Protocols, attached as Appendix B to this Agreement.

“**Retail Demand**” means the estimated demand for Philip Morris Cigarettes in a particular market to be sold at retail in that market in accordance with all applicable tax, duty or other fiscal laws.

“**Sales Plan**” shall have the meaning ascribed to it in the EC Compliance Protocols, attached as Appendix B to this Agreement.

“**seizure**” means a seizure from a single individual or entity (or in certain specific instances, multiple individuals or entities if shown to be acting in concert with one another), in a single location (or in certain specific instances, multiple locations in close proximity if shown to be part of the same scheme), at a single point in time, (or in certain specific instances, multiple points in time in close proximity if shown to be part of the same scheme).

“**Signature Date**” means, for each Initial Participating Member State the Execution Date and for each Subsequent Participating Member State, the date on which that Participating Member State executed a copy of the Agreement.

“**Sold by a Retailer**” means (i) the sale of Cigarettes by an authorized retailer to a customer in which all applicable Member State excise and VAT taxes on the retail price in the location of sale have been paid or accounted for in the sale price, or (ii) sales to a customer that has ordered 50 packs of Cigarettes or less through the use of the Internet or other means whereby the seller is not in the physical presence of the customer when the sale is made.

“**Statement of Non-Compliance**” shall have the meaning ascribed to it in Section 2.02(b) of this Agreement.

“**Subsequent Participating Member States**” means the Participating Member States that have executed a copy of the Agreement after the Execution Date.

**“Subsequent Purchaser”** means any Person and such Person’s Affiliates, other than an Affiliate of Philip Morris, who acquires more than 1,000 Master Cases of Philip Morris Cigarettes annually from sources other than Philip Morris International.

**“Sufficient Evidence”** shall have the meaning ascribed to it in the EC Compliance Protocols, attached as Appendix B to this Agreement.

**“Supplemental Payments”** means the payments by Philip Morris International that are to be made, without regard to fault, in accordance with Section 4.01(f) and 4.01(g) of this Agreement, to compensate the Relevant Administrations for their lost taxes and duties and other costs, as well as to provide a source of additional funding for anti-contraband enforcement, in the event of a seizure of Contraband Philip Morris Cigarettes.

**“Territory of the Member States”** means the customs territory of the EC, as defined in Article 3 of Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code, including, for the avoidance of doubt, the free zones, free ports and duty-free areas physically situated therein as well as the Aland Islands.

**“Territory of a Non-Participating Member State”** means the territory of a Non-Participating Member State, as defined in Article 3 of Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code, including, for the avoidance of doubt, the free zones, free ports and duty-free areas physically situated therein.

**“Territory of a Participating Member State”** means the territory of a Participating Member State, as defined in Article 3 of Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code, including, for the avoidance of doubt, the free zones, free ports and duty-free areas physically situated therein, as well as the Aland Islands.

**“Tracking and Tracing Protocols”** shall have the meaning ascribed to it in Section 5.01 of this Agreement, and are attached as Appendix D to this Agreement.

**“Termination Order”** shall have the meaning ascribed to it in the EC Compliance Protocols, attached as Appendix B to this Agreement.

**“Trademark”** means a brand name (alone or in conjunction with any other word), logo, symbol, or any other indicia of product identification.

“**Vice President for Compliance Systems**” shall have the meaning ascribed to it in the EC Compliance Protocols, attached as Appendix B to this Agreement.

“**World Wide Duty Free**” means the worldwide market in which Philip Morris Cigarettes are sold by Philip Morris International for resale to retail consumers entitled to purchase free of domestic taxation.

## ARTICLE 2

### PHILIP MORRIS INTERNATIONAL’S SALES AND DISTRIBUTION PRACTICES

#### Section 2.01. *EC Compliance Procedures.*

Philip Morris International has already undertaken as a matter of company policy to comply with the principles set forth in the Philip Morris Companies Inc. Policy Statement on Compliance with Fiscal, Trade and Anti-Money Laundering Laws dated September 13, 1999 (the “**Fiscal Compliance Policy**”), a copy of which is attached as Appendix A to this Agreement. In addition to the provisions in Appendix A, Philip Morris International agrees to adopt, implement, and be bound by protocols, approved with the EC, regarding the sale, distribution, storage, and shipment of Philip Morris Cigarettes in and through the Territory of the Member States or any Designated State (the “**EC Compliance Protocols**”), which are attached as Appendix B to this Agreement.

#### Section 2.02. *Certification of Compliance with EC Compliance Protocols.*

(a) Each year, on the anniversary of the Execution Date, Philip Morris International shall provide the Relevant Administrations with a report, signed by the Vice President for Compliance Systems, describing Philip Morris International’s fulfillment of the requirements of (i) the EC Compliance Protocols, which are set forth in Appendix B of this Agreement, and (ii) the Tracking and Tracing Protocols, which are set forth in Article 5 and Appendix D of this Agreement (the “**Certification of Compliance**”).

(b) If, after receipt of any Certification of Compliance, OLAF reasonably concludes that Philip Morris International is failing to perform its obligations under the EC Compliance Protocols or the Tracking and Tracing Protocols, it may, but by no later than 60 days after OLAF has received the Certification of Compliance, provide Philip Morris International with a statement clearly describing the areas where OLAF reasonably believes that Philip Morris International is failing to perform its obligations under the EC Compliance Protocols or the Tracking and Tracing Protocols, OLAF’s reasons for that belief, and what measures OLAF believes Philip Morris International must take in order

to perform its obligations under the EC Compliance Protocols (the “**Statement of Non-Compliance**”).

(c) OLAF may also provide Philip Morris International with a Statement of Non-Compliance at any other time it reasonably believes that Philip Morris International is significantly failing to adhere to the EC Compliance Protocols or the Tracking and Tracing Protocols and such failure could likely result in a significant increase in the volume of Contraband Philip Morris Cigarettes.

(d) Within 30 days of receiving a Statement of Non-Compliance, under subsections (b) or (c) above, Philip Morris International must provide OLAF with a written response. Thereafter, authorized representatives of Philip Morris International and the European Commission shall meet and confer and attempt to resolve in good faith any dispute relating to the Statement of Non-Compliance. If the dispute has not been resolved within 60 days of Philip Morris International receiving a Statement of Non-Compliance, the European Commission may bring the dispute before the Arbitrator in accordance with Section 12.02 of this Agreement and may seek an order from the Arbitrator requiring Philip Morris International to bring itself into compliance with the EC Compliance Protocols or the Tracking and Tracing Protocols, as the case may be, (a “**Compliance Order**”) and/or an order requiring Philip Morris International to permit OLAF to conduct an audit of Philip Morris International in order to determine what Compliance Orders may be required (an “**Audit Order**”).

(e) An Audit Order issued under this Section shall specifically require Philip Morris International to do the following and only the following:

(i) if OLAF seeks entry into premises, allow OLAF entry to any of its business premises or business premises of its Affiliates, for the sole purpose of observing business operations, provided that OLAF provides Philip Morris International with reasonable notice of where and when it seeks to do so; and

(ii) if OLAF seeks to review documents, Philip Morris International shall provide OLAF with specified business records created after the Execution Date, that OLAF reasonably believes will assist in its anti-contraband and anti-counterfeit efforts.

(f) In any proceeding brought under Section 2.02(d), the Arbitrator may issue a Compliance Order or an Audit Order to Philip Morris International only when it has been proven by the greater weight of the evidence that (i) Philip Morris International has materially failed to adhere to the EC Compliance Protocols and/or the Tracking and Tracing Protocols, (ii) such failure was



identified by OLAF in its Statement of Non-Compliance, and (iii) such failure has not been adequately remedied by the time of the arbitration hearing.

ARTICLE 3  
ANTI-CONTRABAND AND ANTI-COUNTERFEIT INITIATIVES

Section 3.01. *Anti-Contraband and Anti-Counterfeit Initiatives.*

(a) It is the policy of the EC and the Member States to vigorously combat the introduction, sale and distribution of Contraband Cigarettes and Counterfeit Cigarettes within or through the Territory of the Member States. Subject to budgetary constraints, the EC intends to intensify efforts to curb the introduction, sale and distribution of Contraband Cigarettes and Counterfeit Cigarettes; apply appropriate equipment for monitoring and tracking the introduction, sale, distribution, storage, and shipment of Contraband Cigarettes and Counterfeit Cigarettes; and continue to train law-enforcement personnel in how best to detect and seize Contraband Cigarettes and Counterfeit Cigarettes.

Section 3.02. *Support for Anti-Contraband and Anti-Counterfeit Initiatives.*

(a) Recognizing that it is in the best interest of Philip Morris International for there to be an end to the illegal importation and introduction of Contraband Cigarettes and Counterfeit Cigarettes into the Territory of the Member States and an end to the counterfeiting of Philip Morris Cigarettes, Philip Morris International agrees to provide reasonable assistance, both direct and indirect, to the EC and the Member States in the fight against Contraband Cigarettes and Counterfeit Cigarettes, as set forth in Section 4.01, Appendix B, Appendix C, and Appendix D. The monetary payments under this Agreement may serve as a source of additional funding for anti-contraband and anti-counterfeit initiatives.

(b) Subject to Article 10 of this Agreement, for any dispute relating to a payment that has been or will be provided by Philip Morris International in accordance with this Section 3.02 or Appendix C (Philip Morris International's Monetary Contributions), the Parties involved in the dispute shall meet and confer in an attempt to resolve the dispute in good faith. If the dispute has not been resolved within 60 days of a Party receiving formal notice of such a dispute, any Party involved in the dispute may refer the dispute to the Arbitrator(s) in accordance with Section 12.02 of this Agreement.

ARTICLE 4  
ANTI-CONTRABAND AND ANTI-COUNTERFEIT COOPERATION

Section 4.01. *Contraband and Counterfeit Seizures.*

Subject to the limitations in subsections (k)-(u) below, for seizures of Cigarettes bearing Philip Morris Trademarks by the Member States after the Execution Date, the Parties agree to the following procedures:

(a) Within 30 days after notification to OLAF of a seizure by a Member State of five Master Cases or more of Cigarettes bearing Philip Morris Trademarks, OLAF may provide Philip Morris International with a notice of seizure, which shall include:

- (i) the date, time and location of the seizure;
- (ii) the brand of seized Cigarettes indicated on the packaging and, if available, any indication of the Intended Market of Retail Sale;
- (iii) the quantity of seized Cigarettes;
- (iv) any Identification Markings that appear on the Master Cases or cartons of the seized Cigarettes; and
- (v) as to seizures made by the Member States outside the Territory of the Member States, the basis of the seizing Member State's belief that the Cigarettes seized were destined for introduction into the Territory of the Member States.

(b) Philip Morris International shall be permitted to inspect the seized Cigarettes in the condition they were in at the time of seizure within 30 days after transmittal of the notice of seizure described in subsection (a) above, and to select random samples of the seized Cigarettes for examination. The seizing authority may also select samples which Philip Morris International must examine.

(c) Within 30 days after the inspection of the seized Cigarettes described in subsection (b) above, Philip Morris International shall provide a written response to OLAF stating whether the Cigarettes are Philip Morris Cigarettes or Counterfeit Philip Morris Cigarettes.

(d) Subject to the limitations in subsections (k)-(u) below, where notice of seizure described in subsection (a) above has been delivered reasonably in accordance with the requirements of subsection (a) above, if the Cigarettes are determined by Philip Morris International to be Counterfeit Philip Morris Cigarettes, its response shall include documentation and examination results demonstrating that conclusion. The determination as to whether Cigarettes are

Counterfeit Philip Morris Cigarettes or Philip Morris Cigarettes shall involve a consideration of the factors set forth in Appendix F to this Agreement, which shall be amended by agreement between the Parties as new technologies and techniques are developed.

(e) Subject to the limitations in subsections (k)-(u) below, where notice of seizure described in subsection (a) above has been delivered reasonably in accordance with the requirements of subsection (a) above, if the seized Cigarettes are Contraband Philip Morris Cigarettes manufactured after January 1, 2004, Philip Morris International's response shall include as much information as is available to it concerning:

- (i) the place of manufacture of the seized Cigarettes;
- (ii) the date of manufacture of the seized Cigarettes;
- (iii) the country of intended destination for the seized Cigarettes;
- (iv) any intervening warehousing and shipping;
- (v) the identity of the First Purchaser of the seized Cigarettes;
- (vi) the identity of any known Subsequent Purchaser of the seized Cigarettes;
- (vii) invoices to the First Purchaser that relate to the seized Cigarettes; and
- (viii) payment records from the First Purchaser for any Cigarettes seized.

(f) Subject to the limitations in subsections (k)-(u) below, where notice of seizure described in subsection (a) above has been delivered reasonably in accordance with the requirements of subsection (a) above, for seizures of Contraband Philip Morris Cigarettes by an Initial Participating Member State after the Execution Date or by a Subsequent Participating Member State after its Signature Date, the response of Philip Morris International shall also include a Supplemental Payment calculated as follows:

- (i) Philip Morris International shall make a Supplemental Payment to compensate the EC and the Participating Member State by which the Cigarettes were seized for their lost taxes and duties and other costs, in an amount equal to 100% of the taxes and duties that would have been assessed had the seized Contraband Philip Morris Cigarettes been legally distributed for retail sale in the Participating Member State by

which the Cigarettes were seized as set forth in Appendix E, which shall be updated by the Relevant Administrations upon notice to Philip Morris International as applicable taxes and duties change, less any amount of taxes and duties already paid to the EC or any Member State(s) in relation to those Contraband Philip Morris Cigarettes; and

(ii) If the Contraband Philip Morris Cigarettes seized, when added to the number of Contraband Philip Morris Cigarettes already seized in the same calendar year in the Member States that were Member States on January 1, 2004, results in a total number that exceeds the Baseline Amount, Philip Morris International's Supplemental Payment shall include an additional amount equal to four times the amount under subsection (f)(i), which shall compensate the EC and the Participating Member State by which the Cigarettes were seized for any costs not compensated by the amount under subsection (f)(i) and which may provide the EC and the Participating Member State by which the Cigarettes were seized with a source of additional funding for anti-contraband and anti-counterfeit efforts.

(g) Subject to the limitations in subsections (k)-(u) below, where notice of seizure described in subsection (a) above has been delivered reasonably in accordance with the requirements of subsection (a) above, for seizures of Contraband Philip Morris Cigarettes after the Execution Date by a Non-Participating Member State, the response of Philip Morris International shall also include a Supplemental Payment calculated as follows:

(i) Philip Morris International shall make a Supplemental Payment to compensate the EC for any lost taxes and duties and other costs, in an amount equal to 100% of the taxes and duties that would have been remitted to the EC in respect of such seized Contraband Philip Morris Cigarettes had such Cigarettes been legally distributed for retail sale in the Non-Participating Member State by which the Cigarettes were seized as set forth in Appendix E, less the EC's share of any amount of taxes and duties already paid to the EC or any Member State(s) in relation to those Contraband Philip Morris Cigarettes, and

(ii) If the Contraband Philip Morris Cigarettes seized, when added to the number of Contraband Philip Morris Cigarettes already seized in the same calendar year in the Member States that were Member States on January 1, 2004, results in a total number that exceeds the Baseline Amount, Philip Morris International's Supplemental Payment shall include an additional amount equal to four times the amount under subsection (g)(i), which shall compensate the EC for any costs not compensated by the amount under subsection (g)(i) and which may

provide the EC with a source of additional funding for anti-contraband and anti-counterfeit efforts.

(h) For the Supplemental Payments to be made pursuant to subsections (f) and (g) above, it shall not be incumbent on the Relevant Administrations to establish fault on the part of Philip Morris International and such payments, if due, shall be made even though Philip Morris International shall have complied in all respects with its obligations under this Agreement relating to anti-contraband efforts and initiatives.

(i) The Parties recognize and understand that the mere fact of seizure of Contraband Philip Morris Cigarettes at any point in the distribution chain does not, in and of itself, automatically implicate Philip Morris International, or the First Purchaser to whom the seized Philip Morris Cigarettes were originally sold, as a violator of any applicable tax or duty laws.

(j) OLAF or any Participating Member State may sample and test seized Cigarettes at any time. If OLAF disputes the determination made by Philip Morris International as to whether the seized goods are Counterfeit Philip Morris Cigarettes or Contraband Philip Morris Cigarettes, OLAF shall reply in writing to Philip Morris International detailing the basis for the dispute within 60 days after receiving the response referred to in Section 4.01(c), and thereafter Philip Morris International and OLAF shall meet and confer and attempt to resolve the dispute in good faith. If the dispute cannot be resolved within 30 days of Philip Morris International receiving OLAF's reply, the samples in dispute shall be submitted to an independent laboratory or facility for examination to determine whether the Cigarettes are Counterfeit Philip Morris Cigarettes or Contraband Philip Morris Cigarettes in accordance with the factors set forth in Appendix F to this Agreement. The determination of the selected independent laboratory or facility as to whether the Cigarettes are Contraband Philip Morris Cigarettes or Counterfeit Philip Morris Cigarettes shall be final and binding on the Parties. The costs of the laboratory or facility's services shall be paid by the non-prevailing Party. The independent laboratory or facility shall be designated by mutual agreement of the Parties on the Execution Date. If a dispute arises with respect to the selection of the independent laboratory or facility, such dispute shall be settled by the Arbitrator in accordance with Section 12.02 of the Agreement.

(k) Notwithstanding any other provision in this Section 4.01 to the contrary, Philip Morris International shall have no obligation to make Supplemental Payments pursuant to subsections (f) and (g) above, and Contraband Philip Morris Cigarettes shall not be included in the calculations to determine the amount of any Supplemental Payment described in subsections (f) and (g) above, where:

(i) the notice of seizure described in subsection (a) above has not been delivered reasonably in accordance with the requirements of subsection (a) above;

(ii) Philip Morris International has not been permitted to inspect the seized Cigarettes in substantial accordance with the requirements of subsection (b) above, or the seizing authority has determined that the seized Cigarettes are not Contraband Philip Morris Cigarettes as evidenced by the release of the seized Cigarettes;

(iii) the total volume of Contraband Philip Morris Cigarettes seized in the particular seizure was less than five Master Cases of cigarettes after exclusion of any amount excluded by the seizing authority or a court pursuant to Article 8 of Directive 92/12 by virtue of having been acquired in another Member State for “own use” and transported by the purchaser;

(iv) the Contraband Philip Morris Cigarettes were manufactured prior to January 1, 2004;

(v) the Contraband Philip Morris Cigarettes were stolen by a third party and Philip Morris International can reasonably demonstrate that such theft has occurred;

(vi) the Contraband Philip Morris Cigarettes were seized by a Member State outside of the Territory of the Member States and the greater weight of the evidence demonstrates that the Cigarettes seized were not destined for introduction into the Territory of the Member States; or

(vii) the Contraband Philip Morris Cigarettes were seized by a Member State and Philip Morris International can reasonably demonstrate that such Contraband Philip Morris Cigarettes were sold, distributed, stored, and shipped in accordance with all applicable fiscal and legal requirements of the EC and a Member State, or were Sold by a Retailer.

(l) For any dispute relating to (i) application of the provisions in subsection (k) above, (ii) the amount, if any, of a payment to be made under subsections (f) and (g) above, or (iii) the determination of the appropriate Member State by which the Cigarettes were seized, the Parties involved in the dispute shall meet and confer in an attempt to resolve the dispute in good faith. If the dispute has not been resolved within 60 days of a Party receiving formal notice of such a dispute, any Party involved in the dispute may refer the dispute to the Arbitrator for settlement in accordance with the provisions of Section 12.02 of this Agreement.

(m) If a Member State or the EC accepts a Supplemental Payment in regard to a particular seizure of Philip Morris Cigarettes and later collects duties or taxes or the monetary equivalent from Philip Morris in regard to that particular seizure, the Member State or the EC shall promptly refund to Philip Morris International the amount of the Supplemental Payment that had been paid equal to the duty and taxes or the monetary equivalent collected or paid as well as any corresponding portion of the amounts, if any, paid under subsections (f)(ii) or (g)(ii).

(n) If a Member State or the EC accepts a Supplemental Payment in regard to a particular seizure of Philip Morris Cigarettes and it is later found that duties and taxes or the monetary equivalent had already been paid with regard to that particular seizure, the Member State or the EC shall promptly refund to Philip Morris International the amount of the Supplemental Payment that had been paid equal to the duty and taxes or the monetary equivalent collected or paid as well as any corresponding portion of the amounts paid, if any, under subsections (f)(ii) or (g)(ii).

(o) Notwithstanding any other provision in this Agreement, other than subsections (p), (t), and (u) below, for seizures of Contraband Philip Morris Cigarettes in a New Member State,

(i) in the first year following that New Member State's accession to the European Union, no Supplemental Payment shall be payable by Philip Morris International and any such seizures shall not be counted against the Baseline Amount for the purpose of any other calculation under subsections (f) or (g) above.

(ii) Notwithstanding subsections (iii) and (iv) below, after adjustment of the Baseline Amount in accordance with subsection (s) below, Supplemental Payments shall be payable by Philip Morris International under subsections (f)(i), and/or (f)(ii) in the case of a Subsequent Participating Member State as applicable, or, (g)(i), and/or (g)(ii) in the case of a Non-Participating Member State as applicable, and such seizures shall be counted against the Baseline Amount for the purpose of any other calculation under subsections (f) or (g) above, beginning in the year following the year in which the incidence of Contraband Cigarettes and Counterfeit Cigarettes in that New Member State is determined to be less than 2% of the total market for Cigarettes in that New Member State.

(iii) in each of the second, third, fourth and fifth years following that New Member State's accession to the European Union, in the event that a New Member State does not satisfy subsection (ii) above, a Supplemental Payment shall be payable by Philip Morris International

only under subsections (f)(i) in the case of a Subsequent Participating Member State as applicable and/or (g)(i) in the case of a Non-Participating Member State as applicable, and only if in that year:

(A) the incidence of Contraband Cigarettes and Counterfeit Cigarettes in that New Member State is determined to be:

- (1) 12% or less (for the second year following accession);
- (2) 10% or less (for the third year following accession);
- (3) 7% or less (for the fourth year following accession);
- (4) 5% or less (for the fifth year following accession);

of the total market for Cigarettes in that New Member State; or

(B) the incidence of Contraband Cigarettes and Counterfeit Cigarettes in that New Member State is determined to be more than the thresholds set forth in subsection (A) above, but the incidence of Contraband Philip Morris Cigarettes divided by the total incidence of Contraband Cigarettes and Counterfeit Cigarettes in that New Member State, expressed as a percentage, is greater than 70% of (x) the total tax-paid retail sales of Philip Morris Cigarettes divided by (y) the total tax-paid retail Cigarette sales in that New Member State, expressed as a percentage.

(iv) from the sixth year following a New Member State's accession to the European Union, Supplemental Payments shall be payable by Philip Morris International and any such seizures shall be counted against the Baseline Amount for the purpose of any other calculation under subsections (f) or (g) above, only if the incidence of Contraband Cigarettes and Counterfeit Cigarettes as a percentage of the total market for Cigarettes in that New Member State has been determined to be less than or equal to the incidence of Contraband and Counterfeit Cigarettes in the Initial Participating Member States as a percentage of the total market for Cigarettes in the Initial Participating Member States, in the fifth year following the New Member State's accession as determined pursuant to subsection (q).



(p) In addition to the limitations on Supplemental Payments set forth in subsection (o) above, for the first five years following a New Member State's accession to European Union, if Contraband Philip Morris Cigarettes are seized in a New Member State and the amount of those Contraband Philip Morris Cigarettes when added to the number of Contraband Philip Morris Cigarettes already seized in the same calendar year in all the New Member States that joined the European Union in the same year as the seizing New Member State, results in a total number that exceeds the Baseline Amount as of January 1, 2004, Philip Morris International shall have no obligation to make Supplemental Payments for that seizure. In relation to any New Member State that joins the European Union after January 1, 2007, the Parties shall agree on a method for determining how this subsection (p) shall operate.

(q) For the purposes of subsections (o) and (p) above, the incidence of Contraband Cigarettes and Counterfeit Cigarettes in any New Member State and in the Initial Participating Member States in accordance with subsection (o)(iv) above shall be determined by a methodology agreed to by the Parties.

(r) If a Member State or any subdivision thereof sells or resells, or authorizes the sale or resale of, seized Contraband Philip Morris Cigarettes no Supplemental Payment is due in relation to such Cigarettes and, if paid, any such Supplemental Payment shall be refunded.

(s) If a New Member State, upon or after accession to the European Union, joins the Agreement and becomes eligible for Supplemental Payments under subsection (f)(ii), Philip Morris International and the European Commission shall, with regard to the factors set forth in Appendix K, meet and confer as to when and how the Baseline Amount shall be amended or recalculated. If no agreement is reached, the Arbitrator, pursuant to Section 12.02 of this Agreement, shall determine the appropriate amendment to, or recalculation of, the Baseline Amount, with due regard to the factors set forth in Appendix K. No payments shall be made under subsection (f)(ii), however, until an amended Baseline Amount shall have been established.

(t) If at any time, a Party asserts that there is a serious persisting problem concerning Contraband Cigarettes or Counterfeit Cigarettes entering into a New Member State, which could bring about serious imbalances in the application of the Agreement, Philip Morris International and the EC shall meet and discuss as soon as reasonably possible any appropriate measures to ensure the continued functioning of the Agreement, including, if necessary, amendment or suspension of Philip Morris International's obligations under Article 4 as to that New Member State. If no agreement is reached, the Arbitrator, pursuant to Section 12.02 of this Agreement, shall determine the appropriate amendment or relief, with due regard to the factors set forth in Appendix K.

(u) If at any time, a Party asserts that there is a serious persisting problem concerning seizures of Contraband Philip Morris Cigarettes in a Participating Member State who was a Member State on January 1, 2004, which could bring about serious imbalances in the application of the Agreement, Philip Morris International and the European Community shall meet and discuss as soon as reasonably possible any appropriate measures to insure the continuing functioning of the Agreement, including, if necessary, amendment of Philip Morris International's obligations under Article 4 as to that Member State. If no agreement is reached, the Arbitrator, pursuant to Section 12.02 of this Agreement, shall determine the appropriate amendment or relief, with due regard to the factors set forth in Appendix K.

For purposes of this Section, it shall be presumed that a serious persisting problem exists if Philip Morris International can reasonably demonstrate that:

(i) For a substantial period of time, seizures in a Member State significantly exceed the seizures by that Member State in 2003 so as to materially deviate from the expectations of the Parties, and

(ii) More than fifty percent of the seized Cigarettes for which Supplemental Payments are made are Cigarettes which were sold at retail and the applicable taxes on the retail price of the Cigarettes were paid in either a New Member State of the European Community or a non-Member State outside the European Community.

If the increase in the incidence of Contraband Philip Morris Cigarettes in the aforesaid Member State is substantially attributable to a failure on the part of Philip Morris International to adhere to the terms of this Agreement, and/or its failure to sell Cigarettes into a market consistent with legitimate Retail Demand in that market, amendment of Article 4 obligations is not appropriate.

## ARTICLE 5 TRACKING AND TRACING

### Section 5.01. *Tracking and Tracing Protocols.*

Consistent with its Fiscal Compliance Policy and applicable packaging laws, Philip Morris International agrees to adopt, implement, maintain and be bound by the commercially reasonable practices and procedures with respect to the tracking and tracing of shipments of Philip Morris Cigarettes after the Execution Date as set forth in the “**Tracking and Tracing Protocols**” attached as Appendix D.

Section 5.02. *Certification of Compliance with Tracking and Tracing Protocols.*

(a) Each year, on the anniversary of the Execution Date, Philip Morris International shall provide the Relevant Administrations with a report, signed by the Vice President for Compliance Systems, describing Philip Morris International's compliance with the requirements of the Tracking and Tracing Protocols. Such certification shall be part of the annual Certification of Compliance and shall be governed by the procedures set forth in Section 2.02 of this Agreement.

ARTICLE 6  
REVIEW OF AGREEMENT

Section 6.01. *Annual Meetings.*

At least once per year, the authorized representatives of Philip Morris International and the European Commission shall meet to confer and assess the functioning of the Agreement and its Protocols. At that meeting, Philip Morris International and the European Commission may each present any suggestions they may have to improve the functioning of the Agreement. Subject to Relevant Law, the European Commission and Philip Morris International may communicate to each other concerns relating to any Party's activities in connection with their commitments and obligations under the Agreement.

ARTICLE 7  
FULFILLMENT OF OBLIGATIONS AND OBJECTIVES

Section 7.01. *Promotion of Public Policy.*

The Parties to this Agreement hereby acknowledge and agree that this Agreement is designed to provide meaningful assistance to the Participating Member States and the EC in curtailing the smuggling and illegal distribution of Cigarettes into and within the Territory of the Member States.

Section 7.02. *Respect for Obligations.*

The Parties hereby acknowledge and agree to take all appropriate measures: (1) to ensure fulfillment of their obligations under this Agreement, (2) to facilitate the achievement of the objectives of the Agreement, and (3) to abstain from any measures that would jeopardize the attainment of the objectives of this Agreement.

Section 7.03. *Agreement Consistent with EC and Applicable National Laws.*

The Parties to this Agreement hereby acknowledge and agree that compliance with the terms of this Agreement is consistent with EC and applicable national laws, and with the provisions of the Treaty Establishing the European Community (the “**EC Treaty**”), and will contribute to achieving the objectives of the EC Treaty.

Section 7.04. *The Parties’ Intentions.*

The mutual intention of the Parties is that this Agreement will swiftly, finally and fully resolve in an amicable and cooperative manner, without any admission of liability, all matters in which or in respect of which the following persons seek or might seek redress for alleged Losses: (i) the Parties; (ii) the political subdivisions of the Participating Member States; (iii) instrumentalities and agencies of (i) and (ii); and (iv) successors and assignees of all of the foregoing (collectively “**Resolved Matters**”). The Parties’ mutual intention is that all Parties and Released Persons be relieved of the threat of claims, actions, suits, assessments, or proceedings in any forum against them that seeks redress for any Resolved Matters.

ARTICLE 8  
REPRESENTATIONS AND WARRANTIES

Section 8.01. *Mutual Representations.*

(a) Each of the Relevant Administrations hereby represents and warrants to Philip Morris International, and Philip Morris International hereby represents and warrants to each of the Relevant Administrations that:

- (i) the execution, delivery and performance of this Agreement by such Party is within its governmental or corporate powers, as the case may be, and has been duly authorized by all necessary action on its part;
- (ii) the Person executing this Agreement on behalf of such Party has the full right and authority to do so; and
- (iii) this Agreement constitutes a valid and binding agreement of such Party, enforceable in accordance with its terms.

ARTICLE 9  
RELEASE AND DISMISSAL OF CLAIMS

Section 9.01. *Release.*

(a) The provisions of Sections 9.01(a), (b), and (c) shall inure to the benefit of Philip Morris (the “**Released Persons**”) and, consistent with Relevant Law, be binding upon each of (i) the Relevant Administrations; (ii) their respective political subdivisions; (iii) instrumentalities and agencies of (i) and (ii); and (iv) successors and assignees of all of the foregoing (collectively, the “**Releasing Persons**”). The release provided for in this Section 9.01 shall cover companies acquired by or merged into Philip Morris subsequent to the Execution Date, but only if the company’s aggregate EC market share was not in excess of 2% in 2002.

(b) On the Signature Date of the Agreement for each Releasing Person, such Releasing Person agrees to and shall, without any further action on the part of such Releasing Person, absolutely and unconditionally fully release and forever discharge the Released Persons, to the fullest extent permitted by law, from any and all civil claims, charges, demands, damages, subpoenas, discovery requests, actions, suits, causes of action, liabilities, costs, expenses and attorneys’ fees, including without limitation, all civil claims that may be allowable to the Releasing Persons within criminal proceedings in the form of restitution, disgorgement, forfeiture, punitive damages, or otherwise, for conduct prior to the Signature Date wherever arising and of whatever nature, whether known or unknown, suspected or unsuspected, accrued or unaccrued, asserted or unasserted, foreseen or unforeseen, with respect to, that result from, arise out of, or relate to the allegations, or the alleged acts (or omissions) forming the basis of the allegations, that were raised or asserted, or could have been raised or asserted, in the Litigation (collectively, the “**Released Claims**”), regardless of the legal theory or purported basis of legal duty or liability on which such Released Claims are, or could be, raised or asserted.

(c) The provisions of Sections 9.01(a), (b), and (c) (as well as the other provisions of this Agreement) are a result of a compromise of disputed claims and defenses, and Released Persons shall not be deemed to have admitted any of the allegations asserted in the Litigation.

(d) On the Execution Date of the Agreement, each Released Person agrees to and shall, without any further action on the part of such Released Person, absolutely and unconditionally fully release and forever discharge the Releasing Persons and their attorneys, to the fullest extent permitted by law, from any and all civil claims, charges, demands, actions, suits, causes of action, liabilities, costs, expenses, fees, and attorneys’ fees, including without limitation, all civil claims for compensation or monetary damages sought in civil

proceedings in the form of restitution, disgorgement, forfeiture, punitive damages, or otherwise for conduct prior to the Execution Date wherever arising and of whatever nature, whether known or unknown, suspected or unsuspected, accrued or unaccrued, asserted or unasserted, foreseen or unforeseen, that result from, arise out of or relate to the Litigation, regardless of the legal theory or purported basis of legal duty or liability on which such claims are, or could be, asserted.

Section 9.02. *Dismissal Of Claims.*

The Parties shall promptly seek and obtain dismissal with prejudice and without costs of all pending actions and/or appeals, as they relate to Philip Morris, and to the extent that they are related to the matters at issue in the Litigation, including any proceeding by Philip Morris International before the European Court of First Instance or the European Court of Justice. The Parties shall jointly submit a form of a Stipulation of Dismissal with Prejudice and without costs to the relevant court or courts which will be substantially in the form annexed as Appendix H to this Agreement.

ARTICLE 10  
SETOFF

Section 10.01. *Right of Setoff*

(a) In addition to its rights and obligations under Article 7 and the releases set forth in Article 9 of this Agreement, Philip Morris International shall have the right to set off against any and all amounts otherwise due and payable to the Relevant Administrations under this Agreement, the amount of any damage, loss, liability, tax, custom duty, expense or non-criminal penalty actually incurred, payable or suffered by Philip Morris with respect to, resulting from, or arising out of, actions, suits, or proceedings, other than the Litigation (whether civil proceedings, administrative proceedings, tax proceedings, or civil claims made within criminal proceedings) brought against Philip Morris by (i) the EC, (ii) any Member State, (iii) the political subdivisions of any Member State; (iv) instrumentalities and agencies of (i), (ii), and (iii); and (v) successors and assignees of all of the foregoing, which seek redress as a result of the sale, distribution, storage, or shipment of Contraband Philip Morris Cigarettes before the Execution Date or, for Subsequent Participating Member States, their respective Signature Dates.

(b) Upon any Party learning of (i) the existence of any actual claim, action, suit, or proceeding, or (ii) any threatened claim that would require disclosure under Financial Accounting Standard Board Statement No. 5, that may result in Philip Morris International having a right to setoff under this Section

10.01, that Party shall provide each other Party, to the fullest extent permitted by law, with prompt notice of the existence of such claim, action, suit, or proceeding.

(c) Upon learning of the existence of (i) any actual claim, action, suit, or proceeding, or (ii) any threatened claim that would require disclosure under Financial Accounting Standard Board Statement No. 5, that may result in Philip Morris International having a right to setoff under this Section 10.01, Philip Morris International may, upon giving the EC 30 days notice, begin paying any funds which are due to the Relevant Administrations under this Agreement into an interest-bearing escrow account, up to the amount claimed, or if no specific amount is claimed, the amount at issue, in such actions or proceedings, rather than paying such funds directly to the Relevant Administrations. Payment of funds into escrow by Philip Morris International pursuant to this subsection (c) above shall not be deemed a breach of this Agreement.

(d) In each instance where Philip Morris International pays funds into escrow as set forth in Section 10.01(c), Philip Morris International and the EC shall make a good faith effort to agree as to whether utilization of the escrow account provided for in subsection (c) above is appropriate. If they have not agreed within 60 days after notice was provided pursuant to subsection (b) above, the EC shall have the right to make application to the Arbitrator(s), as described below in Section 12.02, to challenge the applicability of subsection (c) above. In order for such a challenge to be upheld by the Arbitrator(s), the EC must demonstrate that Philip Morris International does not have a reasonable basis to support its belief that it is incurring, or may incur, damage, loss, liability or expense that may be eligible for setoff pursuant to subsection (a) above. If the Arbitrator(s) determines that Philip Morris International does not have a reasonable basis to place the aforesaid funds into the escrow account, the Arbitrator(s) shall order that such funds together with accrued interest be released from the escrow account within 30 days and paid to the Relevant Administrations pursuant to this Agreement.

(e) Before exercising any right to setoff pursuant to subsection (a) above either by ceasing to make payments due to the Relevant Administrations or by claiming amounts held in escrow, Philip Morris International shall provide at least 30 days notice to the European Commission of its intention to do so. Upon receipt of such notice, Philip Morris International and the European Commission shall immediately make a good faith effort to agree as to whether setoff is appropriate and, if so, what the amount of the setoff should be. If Philip Morris International and the European Commission have not agreed within 60 days of notice being received by the European Commission, either Party may make an application to the Arbitrator in accordance with Section 12.02 to determine whether a right of setoff exists pursuant to this Section 10.01. In order to establish any right of setoff, Philip Morris International must demonstrate by the greater weight of the evidence that (i) Philip Morris has incurred or suffered

damage, loss, liability or expense that is eligible for setoff pursuant to subsection (a) above; and (ii) the amount so incurred or suffered. This subsection (e) does not in any way affect the rights of Philip Morris International to pay funds into escrow in accordance with subsection (c) above. Upon a ruling by the Arbitrator(s) that Philip Morris International has failed to establish a right of setoff, all funds owed to the Relevant Administrations under the terms of the Agreement that were the subject of dispute together with accrued interest, shall promptly be paid over to the Relevant Administrations. Upon a ruling by the Arbitrator(s) that Philip Morris International has established a right of setoff, Philip Morris International shall be entitled to recover such funds from escrow and/or set off against future payments in accordance with the Arbitrator's(s') ruling.

(f) *Claims in Excess of Amount Available for Setoff.* If a claim, action, suit, proceeding, assessment or demand has been made that would, if successful, entitle Philip Morris International to exercise its right to setoff under Article 10 and either (1) the amount of the claim, action, suit, proceeding, assessment or demand is likely to exceed the total amount available for setoff or escrow under Article 10, or (2) the claim, action, suit, proceeding, assessment or demand has been brought within two years of the Execution Date and the amount of the claim, action, suit, proceeding, assessment or demand is likely to exceed € 200 million; and, despite the good-faith and expeditious efforts of Philip Morris to defeat the claim action, suit, proceeding, assessment or demand, including invoking the releases provided for by this Agreement if applicable:

(i) the claim action, suit, proceeding, assessment or demand has not been dismissed, withdrawn, or reduced below the applicable threshold in (1) or (2) above, within one year after the court or tribunal has received full and complete arguments from the parties to the dispute as to whether the claim, action, suit, proceeding, assessment or demand should be dismissed because its assertion contravenes the provisions of this Agreement or otherwise, or

(ii) the claim, action, suit, proceeding, assessment or demand has been sustained by the court or tribunal after considering arguments by Philip Morris International that the claim, action, suit, proceeding, assessment or demand should be dismissed because its assertion contravenes the provisions of this Agreement or otherwise, and

(iii) Philip Morris can demonstrate that, as a result of the ongoing claim, burdens have been imposed on it or it is otherwise prejudiced by virtue of such claim.

then (A) as to any such claim, action, suit, proceeding, assessment or demand that is within the scope of Article 9, Philip



Morris International shall be discharged of its obligations to pay any amounts payable (i) under Appendix C to the Member State that brought the action, suit, proceeding, assessment or demand, (ii) under Article 4 of this Agreement to that Member State, and (iii) to the EC for its share of any Supplemental Payment for seizures by that Member State. In the event that the aforesaid claim, action, suit, proceeding, assessment, or demand is eventually dismissed or otherwise resolved for an amount below the applicable threshold set forth in (1) and (2) above, Philip Morris International's obligations to the Member State under Appendix C and to the Member State and the EC under Article 4 shall resume prospectively; and

(B) as to any such claim, action, suit, proceeding, assessment or demand that is not within the scope of Article 9, Philip Morris International shall be discharged of its obligations to pay (i) 50% of the amounts payable to all the Relevant Administrations under Appendix C, (ii) amounts payable under Article 4 of the Agreement to the Member State that brought the claim, action, suit, proceeding, assessment or demand, as well that Member State's share of any payments payable under Appendix C of this Agreement; and (iii) amounts payable to the EC for its share of any Supplemental Payments for any seizures by that Member State. In the event that the aforesaid claim, action, suit, proceeding, assessment or demand is eventually dismissed or otherwise resolved for an amount below the applicable threshold set forth in (1) and (2) above, Philip Morris International's obligations to the Relevant Administrations under Appendix C and to the Member State and the EC under Article 4 shall resume prospectively.

(iv) For the purposes of subsections (A) and (B) above, the term "Member State" that brought the action, suit, proceeding, assessment or demand shall include (i) the Member State; (ii) the political subdivisions of that Member State; (iii) instrumentalities or agencies of (i) or (ii); and (iv) successors and assignees of all of the foregoing.

Section 10.02. *No Other Effect.*

Subject to Article 11, nothing in this article shall reduce or otherwise affect the other duties of Released Persons to any Releasing Person or the requirements of Relevant Law, nor shall it reduce or otherwise affect the duty of the participating Released Person's obligations under this Agreement, which shall continue in full force and effect during and after any dispute resolution proceedings.

ARTICLE 11  
TERMINATION

Section 11.01. *Termination.*

(a) This Agreement shall terminate upon the Expiration Date unless terminated earlier by subsections (b) through (g) of this Section.

(b) The Parties agree that pursuant to this Agreement each Party and all Released Persons shall have adequate remedies to protect them against any claims or demands which are (i) asserted against them in contravention of Article 9, or (ii) subject to setoff under the provisions of Article 10. Accordingly, a Party shall have the right to terminate this Agreement if, despite their good-faith efforts, the Parties are unable to agree upon substitute provisions, adjustments, or modifications to the Agreement so as to restore those remedies. A Party shall have the right to terminate this Agreement under the circumstances and in the manner set forth in subsections (c) through (g), inclusive, below.

(c) A Party shall have the right to terminate this Agreement if:

(i) A claim, action, suit, proceeding, assessment or demand that would, if successful, entitle Philip Morris International to exercise its right to setoff under Article 10 has been made by a Participating Member State in which the sales of Philip Morris Cigarettes are equivalent to or are more than 10 percent of the Philip Morris Cigarettes sold in the Territory of the Member States as of January 1, 2004, and a court in that Participating Member State, or the European Court of Justice, has issued a final and unappealable judgment that invalidates or renders unenforceable a material provision of Article 9 or Article 10, or there is a legislative, executive or administrative action with the same effect in that Participating Member State; or

(ii) Claims, actions, suits, proceedings, assessments or demands that would, if successful, entitle Philip Morris International to exercise its right to setoff under Article 10 have been made by Participating Member States in which collectively the sales of Philip Morris Cigarettes are equivalent to or are more than 10 percent of the Philip Morris Cigarettes sold in the Territory of the Member States as of January 1, 2004, and the European Court of Justice has, or courts in those Participating Member States have, issued final and unappealable judgments that invalidate or render unenforceable a material provision of Article 9 or Article 10, or there are legislative, executive, or administrative actions with the same effect in those Participating Member States.

(d) For the purposes of subsection (c) above, the term “Participating Member State” shall include (i) the Participating Member State; (ii) the political subdivisions of that Participating Member State; (iii) instrumentalities or agencies of (i) or (ii); and (iv) successors and assignees of all of the foregoing.

(e) A Party that seeks to terminate the Agreement must first submit a notice of termination to the other Parties, setting out the basis for termination. Such termination shall become effective 120 days from receipt of notice unless another Party challenges the notice of termination pursuant to Section 12.02 of this Agreement.

(f) In the event that an arbitration proceeding is invoked pursuant to subsection (e) above, if the Arbitrator(s) determines that there is a basis for termination, the Agreement shall terminate in its entirety unless the precipitating cause of the termination is clearly confined in its application to a particular Member State or particular Member States, in which case, the Arbitrator(s) shall determine the scope of the termination in the absence of an agreement by the remaining Parties.

(g) If the Agreement is terminated before the Expiration Date in accordance with the provisions set forth above in subsection (c), a new agreement shall take its place without any further action being necessary by the Parties, such agreement remaining in effect until the Expiration Date, consisting of (1) the Parties’ rights and obligations under Articles 7, 9 and 12 of this Agreement, (2) the Parties’ rights and obligations in effect on the date of termination of the Agreement under Article 2 and Appendix B of this Agreement, and (3) the Parties’ rights and obligations in effect on the date of termination of the Agreement under Article 5 and Appendix D of this Agreement. All other provisions of the Agreement shall be terminated.

#### Section 11.02. *Subsequent Agreement.*

It is the intention of the Parties, if feasible, to extend the duration of this Agreement beyond the Expiration Date. Accordingly, beginning no later than two years prior to the Expiration Date, if this Agreement has not been terminated earlier in accordance with its terms, the representatives of the Parties shall meet and attempt in good faith to reach another agreement between the Parties covering the same subject matter addressed herein.

## ARTICLE 12 DISPUTE RESOLUTION

Section 12.01. *The Role of the European Court of First Instance and the European Court of Justice.*

(a) *Arbitration Clause for Articles 7 and 9.* In the absence of prior agreement, any claim, action, suit, proceeding or dispute between the Parties, between a Party and a Released Person or a Releasing Person, or between a Released Person and a Releasing Person, arising out of or relating to any breach, clarification or enforcement of Article 7 or 9 of this Agreement relating to the sale, distribution, storage or shipment of Contraband Cigarettes before the Execution Date or, for Subsequent Participating Member States, their respective Signature Dates, shall be brought exclusively before the European Court of First Instance pursuant to Article 238 of the EC Treaty. Each of the Parties hereby agrees, on its behalf and on behalf of the Released Persons or the Releasing Persons (as the case may be), that this Section 12.01 constitutes and is intended to be an arbitration clause for the purposes of Article 238 of the EC Treaty, and irrevocably consents to the jurisdiction of the European Court of First Instance in relation to any such dispute, and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the reference of such dispute to the European Court of First Instance or that any such dispute has been brought in an inconvenient forum. Process in any proceeding brought before the European Court of First Instance pursuant to Article 238 of the EC Treaty may be served on any Party anywhere in the world, whether within or without the jurisdiction of the European Court of First Instance. The applicable law to interpret this Agreement shall be the law of the State of New York, without giving effect to choice of law or conflict of law doctrine. The European Court of First Instance shall in its determination of any dispute concerning this Agreement, have regard to, *inter alia*, its own case law, and that of the European Court of Justice, on the interpretation of the EC Treaty and EC Law.

(b) *Referral of matters to the European Court of First Instance or the European Court of Justice.* In the event that a claim, suit, action, assessment, proceeding or demand (in this Section 12.01(b) hereinafter, “claim”) is brought against Philip Morris relating to the sale, distribution, storage, or shipment of Contraband Cigarettes before the Execution Date before any court or tribunal of the Member States (including the courts and tribunals of political subdivisions of the Member States) the Parties agree to follow the following procedures:

(i) the European Commission may be given notice of the claim by Philip Morris International;

(ii) As soon as reasonably possible after receiving notice of the claim, the European Commission agrees to: (a) consider whether the claim is within the scope of the Arbitration clause of Section 12.01(a) of this Agreement; (b) if it considers this to be the case, prepare a statement of position in admissible form that the claim concerns, in whole or in part, a matter covered by and subject to this Agreement and to the Arbitration clause in Section 12.01(a) and that the Agreement provides that disputes regarding the application of Articles 7 and 9 of this Agreement to such

claims should be brought exclusively before the Court of First Instance pursuant to Article 238 of the EC Treaty, the Agreement provides that if such claims are brought before any court or tribunal of the Member States (including a court or tribunal of the political subdivisions of the Member States), such proceeding should be suspended and referred or transferred to the European Court of First Instance pursuant to Article 238 of the EC Treaty, and the Agreement provides that to the extent that any Party is prevented from so transferring, all questions concerning the interpretation of any provision of Community Law that is necessary to enable such court to give judgment, be referred to the European Court of Justice under Article 234 of the EC Treaty and (c) provide said statement of position to all relevant Parties for use by any Party in a motion filed pursuant to Section 12.01(a) and, submit it to the competent authority of the Relevant Member State with a request that it be submitted to the appropriate court;

(iii) If the European Commission concludes that a claim, is not a matter covered by and subject to this Agreement or is not one to which the Arbitration clause of Section 12.01(a) applies, and any Party disagrees with that conclusion, or the European Commission does not render the aforesaid statement of position within sixty (60) days of the notice set forth herein, any Party may demand Arbitration pursuant to Section 12.02 of this Agreement. If the Arbitrators rule that the claim is within the scope of the Arbitration clause of Section 12.01(a), the European Commission agrees to (a) prepare a statement in admissible form that states that (i) the Arbitrator(s) have ruled that the claim is within the scope of the Arbitration clause of Section 12.01(a) of this Agreement, and (ii) the Agreement provides that disputes regarding the application of Articles 7 and 9 of this Agreement to such claims should be brought exclusively before the Court of First Instance pursuant to Article 238 of the EC Treaty, the Agreement provides that if such disputes are brought before any court or tribunal of the Member States (including a court or tribunal of the political subdivisions of the Member States), such proceeding should be suspended and referred or transferred to the European Court of First Instance pursuant to Article 238 of the EC Treaty, and the Agreement provides that to the extent that any Party is prevented from so transferring, all questions concerning the interpretation of any provision of Community Law that is necessary to enable such court to give judgment, be referred to the European Court of Justice under Article 234 of the EC Treaty, and (b) provide said statement to all relevant Parties for use by any Party in a motion filed pursuant to Section 12.01(a) and, submit it to the competent authority of the Relevant Member State with a request that it be submitted to the appropriate court;

(iv) Subject to Relevant Law, the Participating Member States, as well as their political subdivisions, instrumentalities, agencies,

successors and assigns, agree that they will not oppose a motion filed pursuant to Section 12.01(a).

Section 12.02. *Dispute Resolution for Claims Brought Under the Terms of the Agreement.*

(a) *Arbitration Clause.* Subject to Section 12.01, any dispute between the Parties arising out of or relating to this Agreement or any breach, clarification or enforcement of any provision of this Agreement or any conduct contemplated herein shall be brought exclusively before, and decided pursuant to the UNCITRAL Rules by the arbitrator who is at the top of the list attached to this Agreement as Appendix J (the “Arbitrator”). If the Arbitrator is unable to hear the Parties’ dispute within 60 days of reference, upon demand by any Party to the dispute, the next-highest-listed-arbitrator in Appendix J shall be deemed to be the Arbitrator for the purposes of that dispute. Should the Arbitrator be permanently unable to hear the Parties’ disputes, the next-highest-listed arbitrator in Appendix J shall be deemed to be the Arbitrator for the purposes of the Agreement. The Parties may add to, remove from, or reorder the list of arbitrators in Appendix J at any time by mutual agreement in writing.

(b) The arbitration proceedings shall be conducted in the English language in Brussels, unless otherwise agreed by the Parties to the dispute. Consistent with Relevant Law, and any applicable law governing Philip Morris’ disclosure obligations the arbitration proceedings shall be confidential to the extent possible, and the Parties shall not disclose the nature or scope of the proceedings, or any information obtained in or arising out of the proceedings, to any third party. No *amicus curiae* or “friend of the court” briefs may be filed in the proceedings. The Arbitrator(s) shall provide the rules of the proceedings and shall issue a written opinion stating the reasons for the relief granted. The arbitration proceedings, and the enforcement of any arbitral order or award, or an action to compel arbitration, shall be governed by the substantive laws of the State of New York without regard to choice of law doctrine. The Parties agree that the orders, decisions, and awards of the Arbitrator(s) shall be exclusively enforceable in the New York State Supreme Court (New York County), and any action to compel arbitration shall be commenced in New York State Supreme Court (New York County). The Party seeking to compel arbitration, or to enforce the orders, decisions, and awards of the Arbitrator(s), shall, at the time of the commencement of the action or proceeding, request assignment of the action or proceeding to the Commercial Division, Supreme Court of the State of New York (New York County). The final judgment of the New York State Supreme Court may be enforced by any Party in any court possessing personal and subject matter jurisdiction.

(c) Notwithstanding the foregoing, for any dispute between the Parties involving Article 3, Section 4.01(t) and (u), Article 11, Section 12.01(b), and any dispute involving Article 10 where the amount in dispute exceeds 20 percent of the “Base Payment” in Appendix C, any Party shall, upon request, have the right to have the dispute settled by a three-person arbitration panel with the Arbitrator acting as chairperson and one arbitrator to be selected by the Philip Morris International Party or Parties to the dispute and one arbitrator to be selected by the Relevant Administration Party or Parties to the dispute.

### ARTICLE 13 MISCELLANEOUS

#### Section 13.01. *Notices.*

All notices, requests and other communications to any Party hereunder shall be in writing (including facsimile transmission) and shall be given to the Director of OLAF and the General Counsel of Philip Morris International.

#### Section 13.02. *Waivers.*

No provision of this Agreement may be waived unless such waiver is in writing and is signed by the Party against whom the waiver is to be effective.

#### Section 13.03. *Expenses.*

All costs and expenses incurred in connection with this Agreement or the Litigation shall be paid by the Party incurring such cost or expense.

#### Section 13.04. *Nature of Payments.*

The Parties agree that no part of any of the payments made pursuant to this Agreement is being paid as (or in settlement of actual or potential claims for) fines or penalties, civil or criminal, or enhanced, multiple or punitive damage awards. Nor does any part of such payments represent the cost of a tangible or intangible asset or other future benefit.

#### Section 13.05. *Successors and Assigns.*

Except as provided for in Section 9.01(a) of this Agreement, the provisions of this Agreement, including the obligations set forth herein, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

Section 13.06. *Legality and Severability.*

(a) All obligations under this Agreement are subject to the relevant laws, statutes, ordinances, rules, regulations or other provisions having the force or effect of law of the EC and/or any Member State, which are in effect in each Member State as of its Signature Date, or are enacted or amended by the EC or a Member State after its Signature Date (“**Relevant Law**”), and without prejudice to the rights of the Parties under Article 11, the Parties agree that to the extent that any obligation of any Party under this Agreement would violate Relevant Law, the Party shall be excused from performing such obligation only to the extent that performance would violate such law and shall not incur any liability as a result thereof.

(b) Without prejudice to the rights of the Parties under Article 11, in the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court or tribunal of competent jurisdiction to be illegal, void or unenforceable, or there is a legislative, executive or administrative action with the same effect in a Participating Member State, the remainder of this Agreement shall continue in full force and effect and the application of such provision to other Persons or circumstances shall be interpreted so as to reasonably effectuate the intent of the Parties hereto. The Parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the intent and purpose of such void or unenforceable provision.

Section 13.07. *Counterparts; Effectiveness; Third Party Beneficiaries.*

This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective on the Execution Date. No provision of this Agreement is intended to confer upon any Person other than the Parties and the Persons identified in Article 9 any rights or remedies hereunder.

Section 13.08. *Entire Agreement.*

This Agreement, including the Appendixes, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior drafts of this Agreement and any prior understandings reached between the Parties during negotiation of this Agreement, whether oral or written. Notwithstanding the foregoing, each of the Parties may rely upon express representations made in any letter from another Party or their counsel provided at or near the Execution Date or any Signature Date relating to the Agreement.



Section 13.09. *Captions.*

The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof.

Section 13.10. *Designated EC Representative.*

The EC hereby appoints the Director of OLAF as its designated representative for communications with Philip Morris International relating to the administration of this Agreement. The designated representative is hereby given authority by the EC to act on its behalf for the purposes of this Agreement, including without limitation, giving and receiving notices and inquiries, and reviewing and approving any documentation or protocols required to be reviewed or approved under this Agreement.

Section 13.11. *Amendments.*

Any provision of this Agreement may be amended but only if such amendment is in writing and is signed by each Party to this Agreement.

Section 13.12. *Authorship.*

No one Party or group of Parties shall be considered to have been the author of this Agreement.

Section 13.13. *Use of Information Provided by Philip Morris International.*

Any information provided to the Relevant Administrations or OLAF pursuant to the Agreement shall be used only for the purposes of promoting the Parties' joint objective of combating Cigarette smuggling, Cigarette counterfeiting and any related Money Laundering. In no case shall any such information be used or provided to third parties for any other purpose without prior written consent by Philip Morris International, unless the Relevant Administration is compelled to disclose the information by judicial or administrative process or by other requirements of law.

Section 13.14. *Equal Treatment Provision.*

If, at any time during the operation of this Agreement, the EC enters into an agreement with another Cigarette manufacturer relating to the same subject-matter as this Agreement ("Future Cooperation Agreement") on terms (after due consideration of relevant differences in volume of Cigarettes or other appropriate factors) more favorable to such Cigarette manufacturer than the terms of this Agreement, then Philip Morris International may request of the EC that it receive treatment under this Agreement at least as relatively favorable as the overall terms

provided to the other Cigarette manufacturer. The EC will act in good faith to consider any such request and may grant such a request if it is consistent with the intent of this Agreement.

Section 13.15. *Additional Participating Member States.*

Any Member State may become a Participating Member State by executing a copy of this Agreement in the appropriate form and delivering a counterpart thereof to Philip Morris International and the other Parties thereto.

Section 13.16. *Use of the Agreement.*

This Agreement may be admitted into evidence, without the consent of the Parties (i) in any proceeding for the purposes of enforcing the terms hereof, or (ii) if the contemplated use of said document would not be contrary to the intent of this Agreement, in support of any claim or defense any Party may wish to raise in any proceeding brought against it. Otherwise, the Agreement may not be admitted into evidence in any proceeding without the consent of the Parties.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first written above.

Philip Morris International Inc.,  
Philip Morris Products Inc.,  
Philip Morris Duty Free Inc., and  
Philip Morris World Trade SARL

By:

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Andre Calantzopoulos

## European Community

The European Commission hereby executes this Agreement on behalf of the European Community and has the full right and authority to do so;

The execution and performance of this Agreement by the European Commission is within its powers and has been duly authorized by all necessary action on its part;

This Agreement constitutes a valid and binding Agreement of the European Community and is enforceable in accordance with its terms.

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Michel Petite  
Director General  
Legal Service  
European Commission

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Franz-Hermann Brüner  
Director General  
European Anti-Fraud Office  
European Commission

Date: \_\_\_\_\_

## **Kingdom of Belgium**

The Minister of Finance of the Kingdom of Belgium hereby executes this Agreement on behalf of the Kingdom of Belgium and has the full right and authority to do so;

The execution and performance of this Agreement by the Ministry of Finance of the Kingdom of Belgium is within its governmental powers and has been duly authorised by all necessary action on its part;

This Agreement constitutes a valid and binding Agreement of the Kingdom of Belgium and is enforceable in accordance with its terms.

Minister of Finance of the  
Kingdom of Belgium \_\_\_\_\_

Date: \_\_\_\_\_

## **Republic of Finland**

The Minister of Finance of the Republic of Finland hereby executes this Agreement on behalf of the Republic of Finland and has the full right and authority to do so;

The execution and performance of this Agreement by the Ministry of Finance of the Republic of Finland is within its governmental powers and has been duly authorised by all necessary action on its part;

This Agreement constitutes a valid and binding Agreement of the Republic of Finland and is enforceable in accordance with its terms.

Minister of Finance of the  
Republic of Finland

\_\_\_\_\_

Date: \_\_\_\_\_

## **French Republic**

The Ministry of the Economy, Finance and Industry of the French Republic hereby executes this Agreement on behalf of the French Republic and has the full right and authority to do so;

The execution and performance of this Agreement by the Ministry of the Economy, Finance and Industry of the French Republic is within its governmental powers and has been duly authorised by all necessary action on its part;

This Agreement constitutes a valid and binding Agreement of the French Republic and is enforceable in accordance with its terms.

On behalf of the  
Minister of Economy,  
Finance and Industry  
of the French Republic \_\_\_\_\_

Date: \_\_\_\_\_

## **Federal Republic of Germany**

The Ministry of Finance of the Federal Republic of Germany hereby executes this Agreement on behalf of the Federal Republic of Germany and has the full right and authority to do so;

The execution and performance of this Agreement by the Ministry of Finance of the Federal Republic of Germany is within its governmental powers and has been duly authorised by all necessary action on its part.

This Agreement constitutes a valid and binding Agreement of the Federal Republic of Germany and is enforceable in accordance with its terms.

On behalf of the Ministry of Finance  
of the Federal Republic of Germany

\_\_\_\_\_

Date: \_\_\_\_\_



## **Republic of Greece**

The Minister of the Economy and Finance of the Republic of Greece hereby executes this Agreement on behalf of the Republic of Greece and has the full right and authority to do so;

The execution and performance of this Agreement by the Ministry of the Economy and Finance of the Republic of Greece is within its governmental powers and has been duly authorised by all necessary action on its part;

This Agreement constitutes a valid and binding Agreement of the Republic of Greece and is enforceable in accordance with its terms.

Minister of the Economy and Finance  
for the Republic of Greece

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Date: \_\_\_\_\_

## **Italian Republic**

The Minister of Economy and Finance of the Italian Republic hereby executes this Agreement on behalf of the Italian Republic and has the full right and authority to do so;

The execution and performance of this Agreement by the Ministry of Economy and Finance of the Italian Republic is within its governmental powers and has been duly authorised by all necessary action on its part;

This Agreement constitutes a valid and binding Agreement of the Italian Republic and is enforceable in accordance with its terms.

Minister of Economy and Finance  
of the Italian Republic

\_\_\_\_\_

Date: \_\_\_\_\_

## **Grand-Duchy of Luxembourg**

The Minister of Finance of the Grand-Duchy of Luxembourg hereby executes this Agreement on behalf of the Grand-Duchy of Luxembourg and has the full right and authority to do so;

The execution and performance of this Agreement by the Ministry of Finance of the Grand-Duchy of Luxembourg, is within its governmental and administrative powers and has been duly authorised by all necessary action on its part;

This Agreement constitutes a valid and binding Agreement of the Grand-Duchy of Luxembourg and is enforceable in accordance with its terms.

Minister of Finance of the  
Grand-Duchy of Luxembourg \_\_\_\_\_

Date: \_\_\_\_\_

## **Kingdom of the Netherlands**

The Minister of Finance of the Kingdom of the Netherlands hereby executes this Agreement on behalf of the Kingdom of the Netherlands and has the full right and authority to do so;

The execution and performance of this Agreement by the Ministry of Finance of the Kingdom of the Netherlands is within its governmental powers and has been duly authorised by all necessary action on its part;

This Agreement constitutes a valid and binding Agreement of the Kingdom of the Netherlands and is enforceable in accordance with its terms.

Minister of Finance of the  
Kingdom of the Netherlands, \_\_\_\_\_

Date: \_\_\_\_\_

## **Portuguese Republic**

The Minister of State and Finance of the Portuguese Republic hereby executes this Agreement on behalf of the Portuguese Republic and has the full right and authority to do so;

The execution and performance of this Agreement by the Ministry of Finance of the Portuguese Republic is within its governmental powers and has been duly authorised by all necessary action on its part;

This Agreement constitutes a valid and binding Agreement of the Portuguese Republic and is enforceable in accordance with its terms.

Minister of State and Finance  
of the Portuguese Republic

\_\_\_\_\_

Date: \_\_\_\_\_

## **Kingdom of Spain**

The Minister of the Economy and Finance of the Kingdom of Spain hereby executes this Agreement on behalf of the Kingdom of Spain and has the full right and authority to do so;

The execution and performance of this Agreement by the Minister of the Economy and Finance of the Kingdom of Spain is within its governmental powers and has been duly authorized by all necessary action on its part;

This Agreement constitutes a valid and binding Agreement of the Kingdom of Spain and is enforceable in accordance with its terms.

Minister of the Economy and Finance  
of the Kingdom of Spain

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Date: \_\_\_\_\_

Altria Group, Inc., f/k/a Philip Morris Companies Inc., hereby warrants that should any of its direct or indirect subsidiaries that are not already Parties to this Agreement undertake to sell, distribute, ship or store Cigarettes within or through the Territory of the Member States, or any Designated State, whether directly or indirectly, Altria Group shall ensure that such subsidiaries adhere to the terms of this Agreement. Altria Group, Inc. also warrants that neither it, nor any of its direct or indirect subsidiaries, shall take any action to avoid or limit the obligations of Philip Morris International created by this Agreement. Altria Group, Inc. hereby declares that it has the authority to make the warranties herein concerning its said subsidiaries.

Altria Group, Inc.

By:

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