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C O N F I D E N T I A L SECTION 01 OF 03 KYIV 004679

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SUBJECT: UKRAINE: FIGHT OVER NATO/SINGLE ECONOMIC SPACE  
REFERENDUM HEATS UP

Classified By: Ambassador for reasons 1.4(a,b,d).

1. (C) Summary. The Central Election Commission (CEC) announced on December 29 that more than four million valid signatures had been collected in support of a proposed nationwide referendum on NATO membership and the Single Economic Space (SES), as a result of aggressive pushing from referendum proponents and a court ruling. Under the law, three million valid signatures collected in no fewer than two-thirds of all oblasts (regions) are required to call a referendum. The collection of signatures in support of the referendum began in late 2005 as a ploy by the SPDU(o) party of former Kuchma Chief of Staff Medvedchuk to gain votes in the March 2006 Rada elections, but the rules of referenda in Ukraine have turned this issue into a possible vehicle for anti-NATO politicians to slow down relations with the Alliance and revisit Ukraine's announced European path. The CEC has tried to stall issuance of a decision on the validity of the signatures gathered in support of the referendum, but has run out of legal options. Yushchenko as President has the authority to sit on the referendum issue without making a decision, according to CEC Chair Davydovych and Deputy Head of the Presidential Administration Yatsenyuk assured the Ambassador that the President would not let a referendum happen in the near future.

2. (C) While the Universal agreement endorsed holding a referendum prior to NATO accession, it also emphasized the need to ensure all proper preparations had been completed, an implied reference to an effective public education campaign to lift popular support. If the referendum were to be held in the short term, most believe it would fail given the unpopularity of NATO membership in the wake of two election cycles and an anemic government information campaign. If it fails, another referendum on NATO could not be held for five years. End summary and comment.

Collecting Signatures For Political Gain  
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3. (SBU) Beginning in late 2005 and leading up to the March 2006 parliamentary elections, the political party SDPU(o) led by former Kuchma chief of staff Viktor Medvedchuk, who has strong ties to the Kremlin, began a campaign to collect signatures requesting the CEC conduct a referendum on the questions of joining NATO and the Single Economic Space (SES) on March 26, the day general elections were held. At the time, many believed that SDPU(o) pushed the referendum in hopes of bolstering its chances of getting its political bloc Ne Tak! over the three percent threshold. (Note: Ne Tak! received a scant one percent, not making it into the Rada.) However, their collection of far more than the legally-required minimum number of signatures--the constitution requires three million; they sent the CEC more than four and a half million--gave them the right to demand the referendum be held.

4. (C) Comment: Although the petition for referendum contains two questions, the press and our contacts have paid little attention to the SES aspect of the petition. As opposed to just a referendum on joining NATO, which could be interpreted as support for neutrality, the proposed SES plank would offer a popular endorsement of the alternative of economic integration with Russia rather than the EU. While the GOU line on SES, even under Kuchma, has been consistently against anything beyond a free trade agreement, public polls in 2004 and 2005 showed a clear majority of Ukrainians in favor of SES and deeper economic ties with Russia. Shortly after the March election, Kremlin-associated Russian political technologist Gleb Pavlovsky publicly warned Medvedchuk not to leave Ukraine until he succeeded in pushing the referendum through.

5. (C) Comment continued: According to the current referendum law, if a referendum on a certain question were held and failed, a repeat referendum on the same issue could not be held again for 5 years. Polling numbers and our contacts confirm that a referendum on NATO membership held before an effective public education campaign would be doomed to failure. Currently, about two-thirds of the country oppose NATO membership for Ukraine, with about a third representing hard opposition and the rest skeptical that the benefits of membership outweigh the risks and costs. End comment.

CEC Not Rushing to Make Progress

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6. (C) At a November 15 meeting, CEC Chairman Davydovych told the Ambassador that he had been trying to drag out the process of verifying the signatures collected by SDPU(o); according to the law, the CEC should have finished the count

KYIV 00004679 002 OF 003

within one month of receiving the signatures. Although Davydovych said publicly that the CEC has found that 12-15 percent of the signatures were forged, he told the Ambassador that there was such a large number of signatures that eventually the CEC would have to conclude that there were enough valid signatures. He added that the SDPU(o)-led referendum group had taken the CEC to court over its lack of progress. On December 11, the Pechersk Court ruled that the CEC must make a decision on the validity of the signatures.

7. (C) On December 29, the CEC held an open session at which it declared that 4,431,674 signatures of the total 4,656,182 collected in support of the nationwide referendum

were valid. Under the law, three million valid signatures collected in no fewer than two thirds of all the oblasts (regions), with no fewer than 100,000 signatures in each of these oblasts, are required to request a referendum. The CEC announced that it would send its referendum protocol attesting to the validity of the signatures to the President. All CEC members signed the protocol.

Next Steps: the Buck Stops with the President?

8. (C) CEC Secretary Dubovyk warned a USAID NGO partner on December 21 that the CEC would probably have to make its decision on the referendum petition soon. Once the CEC formally validated the signatures and accepted the petition, it would have to write a referendum protocol and forward it to President Yushchenko. Current law stipulates that the President can either approve it and set a date or decline to announce a referendum. Davydovych told the Ambassador that there was no time limit for Yushchenko's decision on whether to hold the referendum. However, if he were to approve the holding of a referendum, it would have to be conducted within 120 days of his decision.

9. (SBU) There are several remaining legal avenues to delay the process. On December 26, Davydovych appealed the Pechersk ruling to the Kyiv Court of Appeals. The CEC also asked a district court in Rivne to examine the validity of a small sample of signatures in favor of the referendum to address the forgery concerns. Several experts said that Yushchenko could also appeal the referendum law to the Constitutional Court, arguing that because the 1991 referendum law predates the 1996 Constitution, there was no constitutional legislation to guide the process. Such an appeal could effectively tie the issue up for months, given the backlog that the Court faces.

Anti-NATO Forces Turn Up the Political Heat

10. (SBU) Pressure has been building over the past few months for the CEC to issue a decision on the referendum. SDPU(o) publicly appealed on December 25 to the OSCE and PACE to help ensure that the referendum would be conducted in 2007. Former CEC chairman and current adviser to PM Yanukovych Ryabets said December 26 that he was filing a lawsuit against Davydovych for disgracing the CEC. In addition, on December 15, three Regions MPs registered a bill stating that the December 8, 2004 dismissal of the CEC under Chairman Kivalov, in the wake of Kivalov declaring Yanukovych President, was illegal; they registered a second bill on December 18 maintaining that the new CEC under Davydovych was appointed illegally. (note: in fact, then President Kuchma dismissed the Kivalov CEC and the Rada approved the dismissal and the reconstituted CEC in line with proper procedures).

Amending the Referendum Law

11. (C) Another issue that will have to be addressed is the existence of flaws in the current referendum law, adopted in

1991. Currently, the only draft bill on amending the law was tabled by radical Regions MP Kushnaryov. Davydovych said that Kushnaryov's draft leaves many questions unanswered and a number of provisions do not meet international standards and norms. A panel of experts on December 21 said that unaddressed issues included: who would fund referenda; how voting commissions would be formed; how to ensure there would be no multiple voting; the lack of guidelines for campaigning

for or against an issue; and a way to differentiate between binding and nonbinding referenda. The general consensus of the roundtable was that holding a referendum under these conditions could add to current political tensions.

#### CEC Politics at Play

12. (C) According to the USAID NGO partner, CEC Secretary

KYIV 00004679 003 OF 003

Dubovyk was highly critical of the President's team for having not yet done anything to "torpedo" the NATO/SES referendum. The CEC, to his mind, had given the Secretariat eight months to find a way to stop the referendum, which could have included conducting investigations into whether the signatures had been collected legally and without duress or fraud, but they had done nothing. At the end of the day, the CEC would be legally compelled to certify the signatures; it would then be up to Yushchenko to decide how to proceed.

13. (C) Comment: Yushchenko's non-interference is in keeping with his pledge during the 2006 parliamentary and local elections not to interfere in the procedural process, a pledge which he kept. Yatsenyuk told the Ambassador on December 29 not to worry about the court ruling that compelled the CEC to take action. The President's team understood that the push for an early referendum was a demand of the Kremlin, fed through Medvedchuk and adviser to the Prime Minister Lyovochkin, but that the President would not let it happen anytime soon. End comment.

14. (U) Visit Embassy Kyiv's classified website:  
[www.state.sgov.gov/p/eur/kiev](http://www.state.sgov.gov/p/eur/kiev).  
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