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## **AUTONOMOUS TRADE PREFERENCE AND ASSOCIATION AGREEMENT. DIFFERENCES AND COMMON POINTS**

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*The research analyzes the two agreements the Republic of Moldova signed with the European Union in the last decade - the Autonomous trade preference in 2008 and the Association Agreement in 2014. These two agreements played a mayor role in shaping up Moldavian economy and politics, but they are completely different in terms of political goals and areas covered. The Autonomous trade preference one being only an agreement willing to allow Moldavian exporters to sell products and services tariff free in the EU. While the Association Agreement is a very ambitious plan of reform for the Republic of Moldova to align with European standards in different sector of social life.*

**Keywords:** *autonomous trade preference, Association agreement, DCFTA, Republic of Moldova, European Union.*

### **PREFERINȚA COMERCIALĂ AUTONOMĂ ȘI ACORDUL DE ASOCIERE. DIFERENȚE ȘI PUNCTE COMUNE**

*Prezentul articol analizează cele două acorduri pe care Republica Moldova le-a semnat cu Uniunea Europeană în ultimul deceniu - Preferința comercială autonomă, în 2008 și Acordul de asociere, în 2014. Aceste două acorduri au jucat un rol primar în modelarea economiei și politicii moldovenești, dar sunt complet diferite în ceea ce privește obiectivele politice și domeniile acoperite. Preferința comercială autonomă fiind doar un acord care să permită exportatorilor moldoveni să vândă produse și servicii fără tarife în UE. În timp ce Acordul de asociere este un plan foarte ambițios de reformă pentru Republica Moldova, cu scopul de a se alinia la standardele europene în diferite sectoare ale vieții sociale.*

**Cuvinte-cheie:** *preferință comercială autonomă, Acord de asociere, DCFTA, Republica Moldova, Uniunea Europeană.*

### **PRÉFÉRENCE COMMERCIALE AUTONOME ET L'ACCORD D'ASSOCIATION. DIFFÉRENCES ET POINTS COMMUNS**

*Cet article analyse les deux accords que la République de Moldova a signés avec l'Union Européenne au cours de la dernière décennie - la préférence commerciale autonome en 2008 et l'accord d'association en 2014. Ces deux accords ont joué un rôle primordial dans la formation de l'économie et de la politique moldaves, mais sont complètement différents en termes d'objectifs politiques et de domaines couverts.*

*La préférence commerciale autonome n'étant qu'un accord permettant aux exportateurs moldaves de vendre des biens et des services en franchise de droits dans l'UE. Alors que l'accord d'association est un plan de réforme très ambitieux pour la République de Moldova, dans le but de le mettre en conformité avec les normes européennes dans divers secteurs de la vie sociale.*

*Mots-clés: préférence commerciale autonome, Accord d'Association, DCFTA, République de Moldova, Union Européenne.*

## **СОГЛАШЕНИЕ ОБ АВТОНОМНЫХ ТОРГОВЫХ ПРЕФЕРЕНЦИЯХ И СОГЛАШЕНИЕ ОБ АССОЦИИ. РАЗЛИЧИЯ И ТОЧКИ СОПРИКОСНОВЕНИЯ**

*В данной статье анализируются два соглашения, которые Республика Молдова подписала с Европейским Союзом за последнее десятилетие – Соглашение об Автономных торговых преференциях в 2008 году и Соглашение об ассоциации в 2014 году. Эти два документа сыграли первостепенную роль в формировании молдавской экономики и политики, но они совершенно различны с точки зрения политических целей и охватываемых областей. Автономные торговые преференции – это всего лишь соглашение, позволяющее молдавским экспортерам без пошлин продавать товары и услуги в ЕС. При этом, Соглашение об ассоциации является весьма амбициозным планом реформ для Республики Молдова, направленных на приведение в соответствие с европейскими стандартами в различных сферах общественной жизни.*

*Ключевые слова: Автономные торговые преференции, Соглашение об ассоциации, DCFTA, Республика Молдова, Европейский Союз.*

### **Introduction**

The Autonomous Trade Preference or ATP was granted from the European Union to Moldova in 2008 and it was the previous agreement to regulate the commercial relationship between the 2 parts.

The ATP differs from the Association Agreement that is now into force in several ways:

1) first of all it is just a commercial agreement between two parts and does not have any political and integration goal, neither in the small nor in the medium long term like the Association Agreement does; 2) the second main difference between the 2 agreement is its provisions in the commercial part applies only to Moldavian exporter but the internal market of Moldova remained under the same tariff regime to European goods and services.

The Association agreement is a much more ambitious kind of agreement between parts; because it opens up the markets through its DCFTA part, but at the same time it has many political integration goals to achieve in the medium long term.

Moldova is following a very thorough path in order to reform its legislation to meet all the

requirements the association agreement has, basically it can be defined a real government program.

Association agreement is the main tool the European Union has in order to bring countries of the eastern partnership (Moldova, Ukraine, Georgia, Byelorussia, Armenia and Azerbaijan) close to EU standards and regulation in different sector of social life.

It comprises 4 general chapters that covers very diverse area of life: 1) Common foreign and security policy; 2) Justice and Home affairs; 3) The deep and Comprehensive free Trade Area (DCFTA); 4) Environment Science Transportation and Education.

The DCFTA is probably the most relevant part of the association Agreement, and countries signing it will be committing them to adopt specific pieces of EU legislation in trade, consumer protection and environmental regulation. Countries that sign a DCFTA must adopt some 350 EU laws within a 10 year timeframe.

As a reward for the compliance with the EU laws signatories of the DCFTA will have access without barriers to a huge market of 500

million consumers with a combined economy of 12.9 trillion euros annually, the second largest in the world.

After an Eastern partnership country signs the association Agreement it must be ratified by the parliament of all EU member states, a process by the way that can take several years.

In the meantime it is foreseen there would be a provisional application of parts of the agreements such as trade, once an Eastern Partnership signatory ratifies the agreement and the European parliament has given its assent.

Moldova finishes its negotiations in June 2014 and a provisional application started in September 2014.

The trade part of the agreement, as far as Moldova is concerned, will be in place for Transnistrian companies as well, as far as companies from the eastern part of the country will comply with the EU standards.

It has to be pointed out very clearly anyway that the Association Agreement do not offer a path toward membership in the EU for the countries that signed it like the case of countries in the western Balkans, but it is worth noting it offers much more in comparisons with the association agreement the EU signed previously with countries such as Morocco and Tunisia which on the other hand clearly exclude any possible future membership.

The Association agreement is basically a program of reforms to bring the signing country in line with European Union standards in different fields, from economy to the rule of law and democratic institution.

From an economic standpoint the Association agreement aims at increasing productivity of the Moldavian economy by boosting trade ties between EU and Moldova's company and by reforming regulation that are behind business life, to bring the best international practices in use in the Moldavian economic system.

The EU has opened up its market to Moldova's export removing tariffs, and this represent a huge opportunity that deserves to be fully exploited.

Financial assistance is available in order to help Moldavian firms to become competitive and to comply with new technical standards.

The DCFTA will certainly help to establish a more competitive and productive business environment in the Republic of Moldova.

### **Discussion**

The association agreement has 4 main objectives:

#### **Political Purposes**

The Association Agreement has also very important political aim to accomplish, Moldova still now has fragile political institution even though the electoral process is fair and competitive and also human rights record are improving quickly.

Moldova needs anyway to realize important reforms in order to be considered a mature democracy.

#### **Rule of Law**

Fight against corruption is also a crucial objectives Moldova needs to pursue in order to create a fair and competitive business environment, to lure foreign investors and to increase possibility through foreign investments, of success for the implementation of the Association Agreement.

#### **Foreign and Security Policy**

The Association Agreement between the European Union and Moldova envisages also objectives in the foreign policy field; in fact the ultimate goal is to align Moldova foreign policy to the EU one.

Obviously in Moldova the Transnistrian conflict has played a mayor role in shaping up its foreign and security policy since gaining independence from the Soviet Union in 1991.

The EU Border Assistance Mission is the most important operational program which aims to facilitate cooperation over the borders between Moldova and Ukraine in the Transnistrian segment, and also trying to settle the conflict.

Since 2014 it also involved in the implementation of the DCFTA provisions.

### **DCFTA**

Now it is very important to understand what the DCFTA is, and the issues covered in this very important part of the Association Agreement, which wants to establish a free trade area between the European Union and Moldova.

#### **1. Tariffs**

One of the first steps to take in order to create a free trade area is to remove tariffs on trades of goods and services.

Since September 1 of 2014 the EU has removed tariffs on imported goods from Moldova on almost everything, with few relevant exceptions on agricultural products.

At the same time, Moldova got a transitional period to remove its tariffs on European products in order to protect its home market from an invasion of more productive and efficient European products.

In this transitional period Moldavian firm's needs to improve their productivity and standards in order to be able to face the competition on of the free market in the future and for these reasons are available line of financing to reach this goals

The DCFTA includes also some measures in order to defense the national industry from damages the other part may bring:

- a) Anti dumping measures
- b) Anti subsidy measures
- c) Safeguard measures

a) Anti dumping measures are the main instrument used when a company is exporting a product at a lower price than on its home market.

If this case happens the Government of the country importing the goods may act imposing duties if and when there is a material damage to the national production.

b) Anti subsidy measures are trade import duties which are imposed to avoid the negative effects subsidies granted by public authorities of another country. After an investigation finds out that a country trough public subsidies helps its own export damaging considerably domestic producers in the importing country this kind of measures can be imposed. This subsidy may be utilized in order for instance to reduce costs and to offer a better pricing to gain market share undermining a fair and free competition

c) Safeguard measures may take a "safeguard" action (i.e., restrict imports of a product temporarily) to protect a specific domestic industry from an increase in imports of any product which is causing, or which is threatening to cause, serious injury to the industry.

#### **2. Customs**

It is obvious in order to exploit to the full extent a free trade area it is necessary to have a customs service which is business friendly and do not delay commercial procedures, but it actually try to speed up the administrative procedures of import export.

The DCFTA has very detailed provisions in this matter, the main principles inspiring the custom legislation is to be stable, transparent and non discriminatory.

Different measures to make more efficient customs procedures have been adopted including 1) reduction of permissions acts required for export 2) the authorized economic operator 3) electronic customs declaration.

All this measures needs to align Moldavian legislation to the best international practices and to reduce the corruption level that so badly affect the competitiveness of the national economy and its private sector overall.

### **3. Technical Standards for industrial goods**

After the provisional entrance into force of the association Agreement tariffs between the European Union and Moldova will disappear progressively, this means the main barriers to trade will be technical standards the products needs to comply with.

Moldova in order to fully benefit from the DCFTA is committed to adopt the most important European legislation in the field.

European legislation for industrial goods is composed of 2 different lines of rules:

- a) EU harmonization's law which are 30 directives that covers broad industrial groups
- b) Around 5000 specific harmonized standards which in details foreseen everything about health and safety requirements

### **4. Food Safety regulations**

Food safety or officially called Sanitary and Phytosanitary measures are all the rules which apply to food and agricultural products.

The EU has 235 directives and regulations, of which 78 are for veterinary requirements, 48 for health of agro-foods products, 27 are for animal feed and 10 deals with the OGM subject.

In order to comply with this rules are involved huge financial cost, for this reason the Association Agreement granted to small Moldavian farms an exemption.

The EU is active in supporting reforms in the Moldavian system in order to improve the food safety control system.

The Moldavian national Agency for Food safety (ANSA) needs to be reformed in order to work properly, at the moment for instance Moldova is experiencing huge challenges to export toward EU products of animal origin because of the lack of infrastructure in the laboratory and also lack of international accreditation

### **5. Services**

The association Agreement foresees 3 main situations applying to the service sector:

- a) Establishment, which means the right of one party to establish its activity in the other party
- b) Cross border supply of services, for instance software outsourcing
- c) Temporary presence of individuals of one side on the other side for business purposes

In general the service sector in the DCFTA has been liberalized but still persist significant limitations from the EU side in order to protect European services sector from low cost services coming from third countries.

### **6. Public procurement**

The DCFTA has provisions also for public procurements which accounts for large share of the economy both in the EU and in Moldova.

The Liberalization is the main achievements to reach with conditions Moldova align its legislation in the issue to the one in the European Union.

Moldova needs to undertake reforms to get a market fair and competitive.

In the DCFTA is possible to find standards in order to win procurements:

- a) Principle of non discrimination
- b) Principle of Equal treatment
- c) Principle of transparency
- d) Principle of Proportionality

Moldova in 2015 has adopted a new public procurement law to align itself to the EU principles in the field.

### **7. Intellectual property right**

We are living in a society that is increasing knowledge based and where the main economic assets are becoming intangible.

In this situation the protection of intellectual property rights are becoming even more important of what they used to be in the past.

Moldova is committed to create an environment where companies can enjoy protection for their intangible assets.

The intellectual property law includes:

a) Copyright that is a legal right granting the creator of an original work exclusive rights for its commercialization

b) Trademarks which is a recognizable sign design or expression that identifies a product or service

c) Design and Patents which is a set of exclusive rights granted to an inventor for a limited period of time in exchange for disclosure of an invention

d) Geographic indication it is a name or sign of products which corresponds to a specific location of origin, and act as a certification the product has specific qualities and it is made according specific procedures. It is widely used for wine and food in general

### **8. Competition policy**

Competition policy is actually very important in order to keep the economy efficient given the fact a good competition assures to consumers better price for a better quality.

Moldova after the signing of the DCFTA needs to create legislation that effectively address anti competitive cartels, mergers and abuse of dominant position.

Legislation in order to be efficiently enforced needs to have an independent authority that will take care of it.

Since 2012 Moldova is receiving precious help from the European Union and single member states to increase its capacity to enforce competition law

The Competition council has a wide range of interventions:

- a) Decision
- b) Regulation
- c) Prohibition
- d) Intervention and Inspection
- e) Sanctions

The main infractions in the competition policy were:

- a) Abuse of dominant position
- b) Mergers and acquisition
- c) State Aid

a) Abuse of dominant position is one of the most typical situation competition policy (Antitrust) is trying to fight; basically it takes place when one company holds a dominant position in a given market and it tries to abuse that position.

Abuse of a dominant position may appear in several situations, for example when a company imposes unfair purchase or selling price or imposes supplementary obligations which have no connection with the subject of such contract ecc.

It is not forbidden to have a dominant position but to abuse this position

b) It is a situation control happening when a proposed merger acquisition or joint ventures involves companies with a certain amount of turnover

c) It is a control of direct and indirect State aid

The Association Agreement includes also several other chapters: 1) Financial assistance; 2) the aligning of Moldavian legislation in the banking and financial assistance at least in the medium term; 3) Transport sector; 4) Energy; 5) Environment; 6 ) Digital sector; 7) Consumer protection; 8) Company law; 9) Agriculture, in this field it is very important the program Empard which support agricultural and rural development; 10) Employment and social policies; 12) Education training and culture; 13) Science technology and space; 14 ) EU agencies and programmer ;15) Cross border cooperation ;16) Civil society.

### **Autonomous Trade Preference**

The Autonomous Trade Preference was the previous agreement regulating relationship

between the Republic of Moldova and the European Union.

It is a different kind of agreement, less ambitious of the Association Agreement and covers only commercial matters without taking into consideration any other issue such as rule of law foreign and security policy ecc.

The Association agreement basically it is much more than a simple creation of a free trade area, but it envisages also the alignment of the legislation in a very wide spectrum of issues of the signatory countries to the EU legislation in order to create a single area of rights and democracy at its borders.

Moldova got this preferential treatment with the European Union through the Autonomous Trade preference with the Council regulation n55/2008 on January 21, 2008.

The European Neighborhood Policy action plan for Moldova foresaw the possibility to consider granting additional Autonomous Trade Preferences (ATPs) given the fact the country improved substantially system of control and certification of origin of goods.

In 2006 Moldova adopted a very substantial reform of custom legislation and already by 2007 the level of implementation of it was quite good.

The Autonomous Trade Preference gave to Moldova the possibility to export its industrial production without tariffs and also agricultural products to some extent at least.

In fact it was stated in the ATP the possibility for Moldova to export tariff free each year fixed quotas of production for each agricultural product considered.

The European Union decided to take these important steps because the total level of import from Moldova in the EU was very small, 0.03 % back then, and the opening up of the European market to Moldavian firms was not threatening the local industrial system by any means.

On the other hand this opening up of the European market was quite significant for the small and open economy of Moldova and would have brought economic growth, investments, the creation of new jobs and the overall export level.

It was clear that level of integration of Moldova's economy was related to its commitment to align to several European legislation.

For instance key to try to fully exploit the benefit the Autonomous Trade Preference to Moldova was the compliance of the principle of the rule of origins of products.

In the ATP was also included the possibility to suspend temporarily the benefit of free tariffs commerce when serious violations of the rules for the entitlements to the preferential arrangements, such as fraud or failure to provide administrative cooperation in the process of verification of the origin of the goods happened.

In the ATP was also foresaw the possibility to return on a stable basis to the old system of Tariff in the cross border transaction for products threatening to cause difficulties to European producers.

As I already stressed in the ATP was not included the other way around, this means European producers were still working in their Moldavian transaction under a system of tariffs, basically ATP was only a system to try to spur, via export, the Moldavian economy in its attempt to reach better level of life.

ATP managed to help a lot the economy in Moldova, in fact in 2008 the export level increased substantially reaching a all time high, and also foreign direct investment reach an all time high of approximately 600 million euros on an annual bases.

The Association agreement went much further in integration between the EU and Moldova with the DCFTA aim to create a real free trade area between the two counterparts.

### **Comparison between DCFTA and ATP**

The DCFTA is in place since 2014, this means probably it is early to draw conclusions on its effect on the Moldavian economy; anyway some data are already available and deserves to be analyzed.

In the first year of effect of DCFTA from September 2014 to September 2015, total export from Moldova decreased 14.8 % but export toward the EU was stable decreasing only 1.4 %,

If we take into consideration only agricultural and food export, which is the backbone of the national economy, in the same period increased 10.8 %.

It is clear Moldova will need to comply with Sanitary and Phytosanitary rules in order to experience a real jump in export for food products, in particular if we talk about product of animal origin, otherwise the removal of tariff barriers will be frustrated from non tariffs barriers.

On the other hand one of the biggest fears the DCFTA was bringing, the invasion of Moldavian market from European product didn't happen, in fact in the first year of the free trade area actually import declined by 16.4 %.

This statistics was however influenced by the fact that European producers are still under a tariffs regime and furthermore Moldova's, economy experienced a severe recession in that period of time that clearly affected import.

In 2016 overall export of goods and services totaled 2, 9 billion American dollars, equivalent to 44 % of the total national GDP.

At the end of 2016 total Moldavian export fully recovered the small losses it experienced in the first year of the DCFTA with a 9.4 % increase over 2015 and it is 6.9 % higher than in 2014 when the DCFTA enter into force.

If we also analyze the kind of product Moldova is exporting toward the EU we can easily notice the huge increase for Machinery and

equipment that was linked mainly to foreign direct investment coming from abroad to open factories and activities in Moldova to benefit from the free trade agreement, and export the products towards European markets.

This increase is almost fourfold since 2004; this means that also various previous agreements played a role in this growth including the Autonomous Trade Preference.

Even the decrease of export that happens in 2015 was due mainly to the decrease in prices of commodities such as sunflowers and nuts on which the Moldova's economy relies heavily but if we take in consideration not prices but only physical volumes export toward EU increased 27 % in 2015.

### **Conclusions**

In general the DCFTA is bringing new investments and an increase in export to Moldova and had so far a moderate positive effect on its economy.

The export growth towards the EU, and a general reorientation of Moldavian export, started to began in 2004, thanks to other agreements including the very important Autonomous Trade Preference of 2008 that preceded the DCFTA and was a mayor step to put Moldova on a very good position to became a center where to invest for export towards EU market.

The DCFTA it is probably extending a phenomenon that already started several years ago of a general increase of Moldavian export towards Europe, which it is also exacerbated from the steep decline of export towards the most classical markets of Russian Federation and CIS countries in general, due to Russian sanctions to many key agricultural products and the recession that struck particularly hard there since 2014.

At the moment the share of the European Union of the total Moldavian export it is approximately 63 % and it will probably grow in



the future even further thanks to the DCFTA which will place Moldova in a good position to receive foreign direct investments from foreign firms willing to use the country in order to establish it as a export base towards European markets.

Moldova is also experiencing to some extent a strengthening of its Public Institution thanks to reform linked with the Association Agreement, and Moldavian citizens got the possibility of visa free travel towards the European Union, which clearly increased the attractiveness of Moldavian passport for its citizens.

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