

THE REPUBLIC OF MOLDOVA BETWEEN THE SIGNED EUROPEAN UNION' FREE TRADE AGREEMENT AND THE CUSTOMS UNION OF RUSSIA, KAZAKHSTAN AND BELARUS. CHALLENGES AND PERSPECTIVES

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Abstract

The Republic of Moldova, as a sovereign, independent and democratic state, imposed on itself a course of progressive adherence to the European Union. The profound transformations, dictated by the new geopolitical realities in the region, as well as the new requirements and exigencies imposed by the imperative of economic prosperity and political security, allowed the Republic of Moldova to establish priorities and to conclude treaties and international agreements. Can it be said that the new stage that will occur as imperative of the Republic of Moldova's integration into the EU will have consequences on the domestic policy given its ongoing commercial economic relations with the Russian Federation? Can the Free Trade Agreement between the Republic of Moldova and the EU, signed on June 27th, 2014, to represent the beginning of new commercial relations with member states of the European community? Two levels of analysis need to be taken into account: on the one hand the opening of new markets for Moldovan products and on the other hand, counteracting the impact of high-quality products on third markets against trade barriers imposed by the Custom Union of Russia, Kazakhstan and Belarus, following the non-adherence to this free trade area. Can this agreement also be analyzed as being the key to diplomatic success regarding the visa-liberalization regime, in maintaining the international community's support for a favorable settlement of the Transnistrian problem, as well as for the determination of the Russian Federation to withdraw its troops from the territory of the Republic of Moldova?

Keywords: Foreign policy, free trade, political membership, trade agreement, trade barriers

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1. Introduction

In the context of the transition towards a democratic society and a new stage in the political, economic and social development, as a sovereign, independent and democratic state, Moldova has as strategic objectives the progressive adherence to the European Union, being thus free to set priorities and international treaties or agreements concluded under the agreement of intent (Năstase and Aurescu 2000, Miga-Besteliu 1998, Mazilu 2001).

Therefore, the new stage will take place under the imperative of Moldova's European Union integration. This may have implications for the internal policy and on the Moldovan foreign economic relations, given the ongoing traditional trade with the Russian Federation.

Due to the political factor chosen by the successive governments of the last decade, the relations between the European Union and Moldova have highlighted successes at international level, evidenced by: visa liberalization, the act of initiating and signing the Free Trade Agreement; strengthened relations within the Eastern Partnership¹⁰⁴.

Having as reference for the diplomacy of recent years, the recognition of independence, strengthened security and stability¹⁰⁵, as a member state of the UN, the Council of Europe, OSCE, WTO etc., Moldova, having the status of permanent neutrality under the Constitution, is now a major international actor in the region, with important resources that can contribute in solving the Transnistrian conflict. The boost of the relations with the European Union, having as a landmark the Mission of the European Union Border Assistance in the Republic of Moldova and Ukraine, the Stability Pact for South Eastern Europe and engaging in a series of commitments under the New European Neighborhood Policy, allows the Republic of Moldova, together with OSCE, Ukraine, USA and EU, to strengthen the system of defense and security in the

¹⁰⁴ The Eastern Partnership aims at projecting the region of a climate of security, democratic stability and economic and social progress, through a stronger political association and economic integration, also to facilitate the rapprochement of partner states to values and EU rules in line with their aspirations and individual capacity. The Eastern Partnership was launched at the summit in Prague on May 7th, 2009, in the EU 27 format (at the level of Heads of State and Government) and 6 representatives of the target countries: Armenia, Azerbaijan, Georgia, Ukraine, Moldova and Belarus.

¹⁰⁵ According to its Constitution, the Republic of Moldova has the status of permanent neutrality.

area, and *in extremis* even to initiate a mechanism for establishing a multinational civil mission with an international mandate from the OSCE.

Given the extremely tense situation in the conflict zone, Moldova has developed lately relationships with its major strategic partners mentioned above, to achieve and maintain the support of the international community for the favorable settlement of the Transnistrian problem, especially for determining the Russian Federation to withdraw its troops from Moldova because, even after 16 years, they did not fulfill, except in a small degree, the commitment undertaken at the 1999 OSCE summit in Istanbul.

For this study, given the complexity of the approach, the consulted studies targeted both international papers and papers from the Republic of Moldova, papers written by Russian or Ukrainian authors found in prestigious international journals published in major publishing houses, indexed in international databases. Finally, were consulted course notes and monographs belonging to consecrated Romanian authors. The study covers the period 1990-2014, during which important changes occurred in the political and economic unification of Europe, a process spurred by the collapse of communist regimes in Eastern Europe.

The study proposes two complementary approaches: the first one is an analysis of the legal consequences, in commercial matters, which arose from the signing by Moldova of the Deep and Comprehensive Free Trade Agreement with the European Union, while the second approach focuses on Moldova's relations with the Customs Union of Russia - Kazakhstan - Belarus and the impact assessment of ongoing agreements with each of the listed countries. Both approaches are however current and, the multidisciplinary study, through its arguments, seeks to answer, in short, the questions whether the option of Moldova to sign an agreement with the European Union is a legitimate one from the standpoint of public international law and a pragmatic one from the point of view of commercial interest, stability in the region and strengthened relations within the Eastern Partnership.

2. A few considerations on the evolution of relations of the Republic of Moldova

It is known that in the Republic of Moldova some of the international treaties remained in force after the collapse of the USSR (Mazilu, 2002).

One of the first important documents that established the institutional framework of relations between the Republic of Moldova and the European Union was the Partnership and Cooperation Agreement signed on the 28th of November 1994 and entered into force on the 1st of July 1998 for a period of 10 years.

Through this agreement, the parties agreed to initiate a dialogue capable of supporting the political and economic transformations in the Republic of Moldova, to contribute decisively to the convergence of positions in international issues of mutual interest, to encourage their cooperation on issues related to respect for democratic principles and strengthening stability and security in Europe.

The Partnership and Cooperation Agreement, even if it did have mostly a political development, pursuing to a lesser extent the economic cooperation interest (European Commission, 2009), contributed on granting to the Republic of Moldova *the treatment of preferred states*¹⁰⁶ on the tariffs for goods and at the same time introduced new elements to facilitate the trade between the EU and the Republic of Moldova.

Even though the Republic of Moldova was admitted on the 28th of June 2001 in the framework of the Stability Pact for South Eastern Europe¹⁰⁷, pact that included the EU's commitment on supporting these states from the perspective of their full integration into its structures, this commitment didn't refer to the Republic of Moldova, its inclusion in the SPSEE was conditioned by absence addressing of Transnistrian problem.

The diplomacy of the Republic of Moldova, as a component part of South Eastern Europe, wanted a public detachment from the category of ex-Soviet states.

¹⁰⁶ The unconditional of the clause regarding the Most Favoured Nation (stated also in Article I of the GATT) involves an obligation for Contracting Parties to grant each other, automatically and without further compensation, all the privileges and advantages granted to them or to be granted in the future to third countries in commercial relations.

¹⁰⁷ The Stability Pact for South Eastern Europe is a political declaration and a framework agreement adopted in June 1999 to encourage and strengthen cooperation between the countries of Southeast Europe and to facilitate, coordinate and focus efforts to ensure stability and growth in the region.

Thus, Moldova joined the European Neighbourhood Policy after signing the Stability Pact for South Eastern Europe (the Action Plan)¹⁰⁸, on the 22nd of February 2005. Through this Action Plan, both Moldova and the European Union have undertaken a series of joint commitments, which resulted in boosting the relations between Moldova and the European Union in important areas such as the development of trade-economic and political reforms, the settlement of the Transnistrian conflict, justice and internal affairs etc.

Therefore, the European Neighbourhood Policy has enabled the European Union to become directly involved in finding viable political solutions to the conflict in Transnistria. The European Union participates as observer in the negotiations on Transnistria in the "5+2" format (Gstöhl and Lannon, 2014)¹⁰⁹ and it is present in Moldova at the level of European Security and Defence Policy (ESDP) through the European Union Border Assistance Mission between Moldova and Ukraine (EUBAM). (Igor and Igor, 2009)

The entry of Moldova, in 2001, into the World Trade Organization (WTO) was a clear signal of its intention to be ready to start negotiation regarding the Free Trade Agreement with the EU. In order to accelerate reforms and trade facilitation, Moldova joined the World Trade Organization and signed a series of bilateral and regional preferential trade agreements:

- Agreement on creation of free trade zone within the CIS which entered into force in late 2012, being ratified by six countries - the Russian Federation, Belarus, Ukraine, Armenia, Kazakhstan and Moldova, two other countries - Kyrgyzstan, Tajikistan only signed it. This agreement was preceded by a series of bilateral agreements which have been concluded between the Member States since the early 90s;

- Agreement on Free Trade Area with the GUAM member states (Georgia, Ukraine, Azerbaijan and Moldova);

- The free trade agreement with Central European countries (CEFTA 2006), non-adherent to the European Union - Albania, Bosnia and Herzegovina, Macedonia, Montenegro, Croatia, Serbia, and Kosovo. In July 2013, Croatia became the 28th member of the EU;

¹⁰⁸ The European Neighbourhood Policy aims to prevent the emergence of gaps between the enlarged EU and its neighbors, giving to the latter the opportunity to participate in various EU activities through closer cooperation in political, economic and cultural domains.

¹⁰⁹ 5 + 2 format includes representatives of the parties, mediators and observers in the negotiations - Moldova, Transnistria, OSCE, the Russian Federation, Ukraine, the US and the EU.

-Asymmetric Free Trade Agreement with the European Union - Autonomous Trade Preferences (ATPs).

Despite the establishment of preferential relations with dozens of countries and promoting a general policy of liberalization within the WTO, which generated a high degree of openness, based on several indicators analyzed (Stratan, 2013), foreign trade performance remains relatively low, facing numerous challenges.

In another plan, the European Union, being more concerned about Eastern enlargement and strengthening internal cohesion, even after May 23rd, 2008, when Poland and Sweden proposed setting up an Eastern Partnership between the 27 European Union member states and six states of Eastern Europe: Ukraine, Moldova, Georgia, Armenia, Azerbaijan and Belarus, did not achieve any progress in creating a free trade area.

However, the European initiative has provided new opportunities for deepening the partnership between the European Union and Eastern Europe, particularly for those countries that are ready to assume and fulfil political, institutional, legislative, economic and social commitments, necessary for the accomplishment of this goal. Moldova is the case. (Igor and Igor, 2014)

Even though most European investors operate in a competitive environment and the attractiveness as far as investment is concerned in the Republic of Moldova is low, the European Union encourages the investment giving an important financial support, for the moment, just on the background of an obvious geopolitical interest in the region. On the other hand, the Republic of Moldova has already changed the foreign policy, granting the Russian Federation a subsidiary status even if the latter made more difficult the access to the job market for the Moldovan migrants and introduced tariff and non tariff barriers for a range of exports from the Republic of Moldova. The gas price will be a hot topic in both countries, while Russia will take advantage of that. The pipeline Iași-Ungheni will supply less than a third of the gas needed by the Republic of Moldova. Russia will strengthen further the position as a principal supplier of raw materials and technological equipment in the area for the same geopolitical reasons as the European Union.

3. Transnistrian situation

The negotiation and the implementation of the agreement raise questions about the role of Transnistria. Commercially, the Transnistrian exporters benefit from the European Union's trade preferences, compared to those of the Republic of Moldova, although Tiraspol authorities have levied duties on almost all the products from the EU. The legal status of the Transnistrian region complicates the equation of harmonizing policies about trading with the European Union for the Republic of Moldova. Such measures include customs control of goods to enable the implementation of trade policy measures and appropriate non-tariff mechanisms. In this sense, the current trade preferences are replaced by a free trade agreement that grants to the Moldovan control authorities' exemption from import customs duties for verifying the origin of goods on the Transnistrian territory (Olaru, 2014).

Amid the orientation in political and economic terms of the Republic of Moldova and Ukraine towards the European Union, there is a risk of economic isolation for Transnistria, making it more difficult to obtain the approval from the Tiraspol authorities to implement the Free Trade Agreement. Furthermore, according to the studies regarding the impact carried out, although it statistically results in an increased intention regarding the exports to the European market, Russia vehemently opposes the inclusion of Transnistrian region in one of European customs preferences, endangering the well-known economic domination from Transnistria. (Luecke and Oprunenco and Prohnitchi, 2011)

The European Union and Moldova are looking for a solution to integrate the Transnistrian region into the Agreement, too. Unofficially, it was announced that after signing the Association Agreement, Transnistria will have a transition period, until the end of 2015, during which it will benefit from the privileges of a preferential arrangement, just to convince Tiraspol leaders that the solution of integration must be a convenient one even if this position is in total contradiction even with the original idea of excluding the Transnistrian region from the Moldovan association with the European Union (Ciurea 2013)

There are expectations among the population, in terms of obtaining advantages, not only for commercial reintegration, but also for obtaining the right to circulate freely in Europe without visas. From this perspective, besides the pressure exerted by the Republic of Moldova and Ukraine to get closer to Europe, the Moldovan authorities consider this argument in a secondary plan, as a way to escalate the Transnistrian conflict..

To counter the threat of such major geopolitical vulnerability, leaders in Tiraspol and Moscow are present in media, make statements and threaten with sanctions and economic blockade. There were often those situations in which the access to the territory of the Russian Federation was denied, without justification; to the Moldovan exporters (see export wines). This agreement was perceived by Russia as an affront, thus making the process of integration of Moldova into the European Union very difficult and long, even if in the short term, the objective is only a commercial one. (Ciurea, 2013)

4. Eurasian Customs Union, the alternative normative to the European Neighbourhood Policy and Eastern Partnership

In the context of the European Neighbourhood Policy and the Eastern Partnership (Wallace et al., 2015), through the governance model offered, the European Union has become a rival to Russia. By enhancing the commitment made, the European Union was seen as a vehicle towards economic integration.

As a counterweight to the danger of European countries such as Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine to further prove the quality of influential actor in the region, but also for the reintegration in the post-Soviet space, including in countries covered by the European Union Eastern Neighbourhood, Russia offered an alternative by forming Eurasian Customs Union.

The Customs Union promoted by Russia emphasizes the economic benefits supported by an ambitious project that includes the establishment of institutional framework. Clearly, by creating this union, there was not taken into account only the economic aspect, but especially post-Soviet integration initiatives. (Dragneva and Wolczuk Kataryna 2012) The Russian Federation is forced to respond to the European and transatlantic strategies of broadening the influence of the Eastern Europe, but it betrays institutional weakness. Being a continuous concern for Russian resistance to NATO expansion, strengthening its area of influence as much as possible in the former Soviet space is a priority for Russia.

Avoiding the conflict between the rules remains the biggest challenge for the customs union in relation to the interaction with the regimes instituted following Russia's accession to the World Trade Organization (WTO). Russia began individual negotiations and the impact of WTO's own arrangements with

the member states of the Customs Union will constitute permanent object of a negotiation that will provide standardized reference points in modernizing and improving the Agreement on the Establishment of the Eurasian Customs Union.

Nonetheless many international observers have described Russia's entry into the WTO in positive terms, as a way to promote transparency and ensure predictability for the state members, in contouring custom policies. In relation to the plans envisaged by Russia on Moldova's admission into the Eurasian Customs Union, the Vilnius summit from November 2013 was the onset of a series of trade sanctions.

Most of these sanctions consisted of bans in agronomic and food products from the Republic of Moldova and were based on allegations of non-compliance with the safety requirements in Russia. It is famous the Russian embargo on Moldovan wines. According to Eurostat, Russia is the second largest export market for European exporters of food products (Eur 12.2 billion in 2013). The sanctions imposed by Russia in 2013, only for certain categories of food products totaled approximately EUR 5 billion. The three most affected areas, based on value, are meat and animal products, then milk and milk products and, not least, fruits. (Cenusa and Emerson and Kovziridse and Movchan 2014)

Even if the goods originating from Moldova are, in many cases, competitive on the European market, the most difficult aspect is that of their promoting, and the restrictive measures applied by Russia have created serious problems to Moldovan producers which are still depending on the Russian market, especially because these measures were accompanied by granting facilities to producers from Gagauzia.

The economic dependence on Russia and the way the Free Trade Agreement is implemented greatly influence the political choice of Moldovan citizens. Political vectors support the opportunities of these two east-west trade agreements. In relation to economic interests, the agreement with the European Union creates the foundation for a functioning market economy, based on free enterprise and competitiveness. But people are afraid of the reaction of Russia and choose to avoid the approach of trading mechanisms, initiated by the Free Trade Agreement, as a practical way to avoid a confrontation like in Ukraine where regional geo-politics is torn by conflicts.

5. Regional challenges and common interests

The essence is that in the past decade Moldova recorded modest economic growths¹¹⁰ which were accompanied by social problems and border security, especially regarding the Transnistrian conflict¹¹¹. The policy makers and the government of the Republic of Moldova believe that the initialling of the FTA with the EU can lead to the sustainable growth and quality of the economic capacity in terms of openness to European and international markets (Delcour, 2015).

The chances are high for the materialization of new financial support projects, which will develop the infrastructure in areas of major production sectors in both rural and urban areas.

Measures should be taken and efforts should be made by the factors involved from local and central public administration, by NGOs, to improve the quality of life and to identify strategies for diminishing the serious economic imbalances that actually exist between the neighbouring Member States of the European Union and the Republic of Moldova.

Recent impact studies (Ciucu 2011) reveal that there are fears among the population about the risk of increasing competition, competitiveness, regarding the Free Trade Agreement without, however, taking into account that the same risks existed in the trade with the former Soviet states. According to the official statistics, over 30% of imports come from Ukraine. Belarus is a very important competitor, and raw materials in Russia are very qualitative. This requires, imperatively, a decision and to assume a strategy that involves carrying out support impact studies regarding counteracting the commercial policies of both East-West agreements on the most important industrial and agro-food goods. These can be the ground for negotiating new regional agreements with positive impact on certain business activities and for maintaining internal equilibrium among domestic producers.

Although Russia reacted negatively immediately after the initialling of the Agreement in Vilnius by introducing economic sanctions, the European Union can counteract or even bring an end to the negative impact of this policy,

¹¹⁰ In terms of statistics, data can be collected and read from the official website of the National Bureau of Statistics, <http://www.statistica.md/index.php?l=ro>

¹¹¹ Transnistria is a Moldovan territory but is not controlled by state authorities, which brings a high degree of instability and risk to external partners. It is the main obstacle to European integration.

with assistance programs, financial support and trade incentives, by improving knowledge and skills which contribute to increasing the competitiveness of domestic producers which, eventually must understand that the same inefficient practices cannot be maintained indefinitely.

The dependence on Russia not only did not work in the last 20 years, but also the Republic of Moldova should ascertain that it is the victim of geopolitical reasons. The Russian blackmail through economic pressures is evident, precisely because, recently it did not allow the Republic of Moldova to become member of the Customs Union Russia, Kazakhstan and Belarus. The European Union sent a strong message of political support for the Republic of Moldova's European path through market liberalization for the restrictions created by Russia.

On a different level, the Free Trade Agreement signed by the Republic of Moldova, represents a new opportunity in solving the frozen conflict from Transnistria. However, a top priority is the resumption of negotiations on the implementation of the trade agreement concluded by Transnistria.

Separatist authorities refused the alignment of the Chisinau policy now more than ever, which is likely to create a higher economic imbalance between the two regions of the same country despite the fact that there are common benefits from the agreement. While the new economic flows does not seek consistency with Community standards, and Russia still controls Transnistria, premises are created for the development of illegal smuggling circuits with cigarettes and food. (Gaibu 2013, Lazăr 2014)

6. Conclusions

According to Article 24 of the Agreement on Tariffs and Trade (GATT 1994), the basic rules of a free trade agreement compatible with WTO, tariffs and other trade barriers need to be removed. Currently, the free circulation of Moldovan's goods already benefits from European Union's trade preferences, which eliminated import duties except for a small number of sensitive agricultural products. (Eriksen and Fossum 2015)

In the strict terms of the provisions of Vienna Convention already mentioned, the suspension of a treaty may intervene "by mutual consent", if such a suspension is provided for by the Treaty. Regarding the denunciation of the Treaty, this involves a notification of the other party and its consent (Preda 2002,

Niciu 1997, Trocan 2014). Tacitly, Moldova currently waives many agreements with the Russian Federation or with USSR, the European Union representing the only community of states that offers a wide and clear program regarding the economic recovery of the country.

The benefit of the given opportunities assume however, the alignment of the domestic normative framework with the European one and the identification of concrete solutions after a pertinent analysis of the economic impact on the implementation of the free trade agreement between the Republic of Moldova and the European Union, as well as the assumption of giving up as soon as possible to the agreements, still in force, concluded with the Russian Federation.

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