



# **The purchase of fresh fruits and vegetables from individuals for export to EU markets**

**2013**

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## EXECUTIVE SUMMARY

This study analyzes the entire domestic chain of purchasing fresh fruits and vegetables — primarily of kernel or shelled walnuts from individuals — for export to the EU. Its purpose is to detect the legal, institutional, and procedural issues that exist within the framework of this complex process and to propose solutions and recommendations based on the existing European practices that will lead to a qualitative and sustainable enhancement of the regulatory framework for these economic activities. The impetus for this study is the challenges faced by Moldovan walnut exporters in autumn 2012, including a number of system issues related to the justification of the origin of the goods for the purpose of obtaining preferential certificates of origin for exportation of Moldovan agricultural production on the EU markets.

For a detailed understanding of the problems revealed by the local exporters, the study's authors met with a range of stakeholders on this issue, including business representatives and exporters; representatives of public institutions, such as the Parliament of the Republic of Moldova (Standing Committee on Economy, Budget and Finance), Tax Inspectorate, Customs Service, and Ministry of Agriculture and Food Industry; as well as representatives of the technical assistance projects implemented in the Republic of Moldova.

The opinions, positions, proposals and arguments of the stakeholders were different and even divergent, which illustrates the complexity and depth of the problem, as well as the strong interest in it. According to exporters, the revealed problems led to the creation of some negative precedents and practices in the process of exporting fresh or processed agricultural products, particularly to the EU countries. This is because the procedure of purchase of agricultural products from individuals is insufficiently regulated and the procedure for issuing certificates of origin is unclear and vague in terms of the origin of goods. According to the customs and tax officers, the complex control and inspection procedures for exports of agricultural products prior to the issuance of the certificates of origin and customs clearance are a necessity.

The object of this study — purchase of agricultural products from individuals for the purpose of export — comprises two distinct aspects/problems:

- Taxation of income for individual sellers of agricultural products, mainly kernel or shelled walnuts, that are harvested in their households or collected from trees in the areas under national and local roads protection.
- Control of the origin of agricultural products purchased from individuals for the purpose of determining the origin of exported goods and the subsequent issuance of certificates of Moldovan origin by the customs body for the products to be exported to the EU.

This study's authors have examined both problems jointly, because a separate examination of each issue would not resolve in essence the exporters' problem.

In general, the regulatory framework in the field of purchase of fresh fruits and vegetables from individuals does not contain any limitation and has no tax implications under the aspect of taxation of the income of the individual sellers. Thus, the processors and exporters (legal persons) may purchase the agricultural products harvested by individuals on their own land and/or in the areas under the protection of national roads (in the case of walnuts) without any quantitative or qualitative restrictions on the purchase amount (financial values). The income of the individual sellers is not subject to taxation (pursuant to Article 20, Paragraph Y of the Tax Code, revenue generated by individuals from the delivery of plant origin and horticulture production in natural form does not constitute a taxable income source).

However, in the case of shelled walnuts and/or walnut kernel export activity, there is a fee in the form of compulsory contributions (payments) required by the State that are paid by exporters at the time of the issuance of the necessary documents for exporting a respective batch. This represents 1.5% of export value (invoice value) of walnuts, walnut derived products, and walnut wood indicated in the Customs Declaration and confirmed through the treasury payment order at the time of export.

However, in practice, exporters pay the respective contribution, which becomes direct revenue to the State Budget. In this way, essentially, the mandatory contribution of 1.5% of the export value becomes an export charge and must be revised because, according to the general provisions of the national legislation, exports from the Republic of Moldova are encouraged and are not subject to taxation.

In general, the state should support export development through all possible ways to create effective mechanisms to increase the volumes and categories of goods for export and simplify the bureaucratic process to maximum possible and the procedures of obtaining of all permits, including the obtaining preferential certificates of origin for export to the EU. Thus, for the export should not be any barriers and additional charges.

To export Moldovan goods onto the EU Market in a tax-free regime, the Moldovan goods have to be supported by preferential certificates of origin, which are issued by the Customs Service of the RM. The preferential certificates of origin of goods are issued at the request of the local exporters that export the goods, including fresh and/or processed agricultural production, to the EU market and that benefit from the preferential free trade regime with the European Union (ATP) and countries that have granted the generalized system of preferences (GSP) to the Republic of Moldova.

The issue of issuance of preferential certificates of origin of goods lies in the fact that it is complicated for the Customs Service to check physically, directly on the site, the origin of the agricultural products for export that are purchased from individuals. For this reason, in addition to the statement of honor on origin, the Customs Service (on the basis of internal and unpublished orders and indications) requires exporters to provide supporting documents proving that the products to be exported are of local origin and that, therefore, there is a reasoned basis for the issuance of a certificate of preferential origin. Currently, to demonstrate the domestic origin of the agricultural products for export, the Customs Service (on the basis of internal and unpublished orders and indications) may require exporters to submit the certificates on harvest issued by the mayoralities where the exported agricultural products were purchased from individuals. This practice provides only a temporary solution and must be changed because there is legal basis for mayoralities to issue certificates on the harvest and there is no mechanism to control the accuracy of the data recorded in the certificates, which in many cases are inaccurate.

European practice in the field of purchase of fresh fruits and vegetables from individuals is different from that in the RM. The reason is that in most highly developed EU countries, production and trade in agricultural goods is performed by producers that are legal entities or companies<sup>1</sup>, unlike in Moldova, where there are still individual producers/sellers who have not registered their business as a legal entity and who are selling their agricultural goods in significant quantities.

Romanian practice — in the case of taxpayers — is that for individuals who receive income from farming by harnessing the sold products to certain specialized collection units, the tax is calculated and withheld at the source by applying a 2% share on the value of the supplied products. The tax is final.

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<sup>1</sup> The reason is that there are more advantages under the subsidy policy promoted by the state for the development of agriculture. Please study the experience of Poland described in the current study.

The experience of the RM is mostly in line with the European experience in the field of certificates of origin and is based on the EU directives applied on the territory of EU. In this way, the Customs authorities are designed as the authority empowered with the function of issuing/releasing preferential certificates of origin, as well as with functions and duties of verification of the origin of goods for export<sup>2</sup>. In European practice there are political / subsidy scheme which are very consistent and efficient, as well as complex database of information and agricultural statistics that should contribute to the efficient development of agriculture of the country.

As a result of the complex examination of the problem, this study's authors propose to examine the following main basic recommendations:

- Streamlining the use of the financial resources of the Development Fund of Nut Crops for the purpose of channeling its resources towards the development of nut industry (subsidy to the nut producers);

Discussing, given the current unfavorable situation in agriculture, the exemption from taxation the income generated by individuals as a result of the delivery of agricultural production (Article 20, Paragraph Y of the Tax Code of the Republic of Moldova). This study's authors find inappropriate the establishment of an income tax on producers/individuals from the phyto-technical and horticulture sector (withheld at the source of payment upon the completion of the agricultural products purchase transaction);

This because the introduction of income tax will have a negative impact on the most vulnerable, unstable and, in fact, poor social class - rural residents, because this tax will be restrained namely from low and unstable income of these people

- Developing customs legislation by underlining and applying in practice the honest/credible exporter institutions, statement issued on honor by the exporter (on his own responsibility) and post-factum verification if needed, as well as presumption of autochthon and legal origin of exported goods.

For these reasons, this study's authors propose solutions/recommendations to improve the current situation, so that, at the beginning of the export season in 2013, exporters have a clear understanding of the new rules and for the export process to be carried out normally and without any obstacles.

Next steps in promoting the outputs of the current study:

- Develop a presentation with the preliminary outputs of the study;
- Present and discuss the outputs of the current study within a round table discussion involving the participation of all the important stakeholders.

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<sup>2</sup> Please study the experience of Romania, Turkey, Croatia, and Montenegro, presented in the annexes of this document.

## 1 Problem Definition

In the autumn of 2012, the local exporters of agricultural products, mainly of walnuts kernel or shelled walnuts, during the purchase of production for export purposes and directly during the export transaction, faced a number of institutional, administrative and procedural issues.

In particular, there were problems related to the justification of the sources of purchase/origin of goods exported for the purpose of issuing the preferential certificates of origin of goods from the Republic of Moldova at the request of the tax and customs authorities.

The purchase of agricultural products from individuals for the purpose of export comprises 2 distinct aspects/problems:

- Taxation of the individuals' income – sellers of agricultural products, mainly walnuts kernels or shelled walnuts harvested in their households or collected from trees in the areas of the national and local roads protection.
- Control of the origin of the agricultural products purchased from individuals for the purpose of determining the origin of the exported goods and the subsequent issuance of certificates of Moldovan origin by the customs body for the production exported to the EU.

Examining the problem separately, that is, only the part related to taxation of individual sellers income (removal or introduction of some taxes), or only the part related to the analysis of the issuance of certificates of origin for customs purposes is not productive and not sufficient to resolve the exporters' problem in essence.

This is because the exporters when presenting the documents required for customs clearance of the goods will be required anyway to demonstrate the origin of the agricultural products to be exported to the EU in order to get certificates of origin.

For these reasons, the expert group examines both aspects/problems and proposes solutions/recommendations to improve the situation and solve these problems, so that, at the beginning of the export season in 2013, the exporters have a clear understanding of the new rules and for the export process to be carried out normally and without any obstacles.

In order to understand in details the issue addressed, the expert group has planned and conducted meetings with all the stakeholders in the field of the purchase of agricultural products from individuals for export purposes:

- Business community - Groups of exporters;
- Public domain – the Parliament of Republic of Moldova – Standing Committee on Economy, Budget and Finance, Main State Tax Inspectorate, Customs Service, Ministry of Agriculture and Food Industry.

The opinions, positions, proposals and arguments of the stakeholders were different and even divergent.

Thus, a different approach shows the complexity, profoundness and high interest towards the problem addressed.



## 2 Description of the problem from the perspective of exporters

The exporters of agricultural products, mainly of walnuts kernel or shelled walnuts, say that, in the fall of 2012, they faced difficulties in the process of obtaining the necessary documents for export.

The problems faced by the exporters are related to the application for meticulous and thorough checks by the tax and customs authorities of the purchase sources and quantities of the production purchased.

The formal reason communicated by the customs and tax authorities being the prevention of any possible cases of fraud related to the origin of goods for the purpose of obtaining certificates of origin of goods.

This is due to the fact that the local agricultural output can be exported to the EU only provided that it comes exclusively from the Republic of Moldova.

The difficulties faced by the exporters are complex and can be categorized as follows:

- *Procedural/legal*: compulsory submission of some documents not provided for in the legislation in force, and references to the internal orders and indications not published in the Official Gazette;
- *Institutional*: interaction with the customs and tax bodies, imposition of rules laid down by internal provisions and orders; and
- *Subjective*: subjective treatment applied by the customs and tax authorities' officers.

### 2.1 Procedural-Legal Issues

The procedurally-legal issues consisted in passing through the difficult procedure of obtaining the certificate of origin of the goods in the customs, caused by the imposition of submitting some additional supporting documents that are not provided for in the legislation in force, in particular the certificates issued by the mayoralty of the localities where the goods intended for export were collected.

In practice, the employees of the customs and tax authorities made reference to internal orders, provisions and indications that are not published in the Official Gazette of the Republic of Moldova.

### 2.2 Institutional Issues

The institutional issues consisted in the creation of ad hoc tax offices besides the customs offices that had the task to meticulously check the purchase documents, origin of the goods, quantities declared, purchase prices, etc.

Without any opinion of the respective tax office, the customs authorities did not allow to perform the export transaction.

In the same context, but on other aspects, the police officers have carried out visits and inspections at some individuals – sellers of agricultural production, mentioning that they need to pay taxes on the amounts received.

Verification visits were carried out at the premises of the mayoralities of localities in order to document the procedure for issuing certificates on the harvest and the veracity of the information contained in these certificates.

## 2.3 Subjective Treatment

The subjective treatment on behalf of the customs and tax bodies' officers was manifested by the requests of additional documents. In practice, it is admitted the fact that there were attempts of requesting financial means for facilitating somehow the procedures.

**According to the exporters**, the revealed problems led to the creation of some negative precedents and practices in the process of export of fresh or processed agricultural products abroad, particularly in the EU countries. That is because the procedure of purchase of agricultural products from individuals is insufficiently regulated and the procedure for issuing certificates of origin is unclear and vague in terms of the origin of goods.

The **exporters** want that, starting with the export season 2013, to no longer face the problems described and are prepared to have discussions and negotiations with the state institutions and all stakeholders in order to identify solutions to overcome the difficulties that they have faced in the past.

### 3 Description of the problem from the perspective of public institutions

According to the customs and tax bodies' officers, the complex control and inspection actions undertaken over the local exporters of agricultural products, mainly of walnuts kernel or shelled walnuts by the competent authorities prior to the issuance of the certificates of origin and customs clearance represent a necessity.

In this respect, the customs service officers held operative information and were to verify the activity of exporters in relation to the following assumptions based on:

- Hiding income from the purchase of agricultural production from individuals;
- Claiming VAT refund on the basis of forged invoices;
- The products are purchased formally from deceased persons for tax evasion purposes and to ensure the origin of the quantities of the production purchased without counting;
- Tax evasion made by indicating in the purchasing documents amounts higher than were provided to individuals in reality;
- Falsification of the purchase documents.

Moreover, the Customs Service considers that eventually the export of excessive and unverified quantities of agricultural products, mainly walnuts kernels, can affect the economic relations between the Republic of Moldova and the EU based on the free trade regime.

Meaning that, for the confirmation of the originating status of the goods (authentication and issuance of the certificate of origin EUR.I), the goods to be exported to the European Union shall comply with the requirements of the Regulation of the Commission (EEC) no. 2454/93 of 2 July 1993 laying down the provisions for applying the Regulation (EEC) no. 2913/92 of the Council on establishing the Community Customs Code.

When the Commission considers that there are sufficient elements indicating a fraud, irregularities or the fact that the Republic of Moldova does not comply or does not manage to ensure the compliance with the relevant rules of origin of products and the related procedures, or failure to comply with any requirements that are defined in the Regulation, it may take measures to fully or partially suspend the preferential arrangements.

In order to avoid such a situation, the Customs Service, being the sole authority empowered with the right of authentication and issuing the preferential certificates of origin is obliged to undertake all legal measures necessary to prevent any cases of fraud related to the origin of the goods.

For these reasons, the tax and customs authorities have initiated a joint control to verify that the agricultural production exported is of domestic origin and does not come from smuggling or re-exported in the EU on the basis of Moldovan certificates of origin.

However, as a result of the controls carried out by the customs and tax authorities, no relevant information concerning the activities carried out, statistics confirming the fraud prevention measures, etc. was prepared or made available to the public.

However, it considers that invocation of arguments related to the illicit traffic of nuts from Ukraine to the Republic of Moldova for export to the EU is not plausible one, because there are no restrictions

and / or additional duties on imports of nuts or cores from Ukraine to EU respectively, there is an economic interest that would encourage illicit the traffic of nuts from Ukraine to Moldova, because nuts or cores can be directly exported from Ukraine to the EU.

### 3.1 Parliament of the Republic of Moldova

The Parliamentary Standing Committee on Economy, Budget and Finance knows the problems that exporters faced in the fall of 2012, and is interested to settle these by amending the existing regulatory framework as soon as possible.

In this regard, a draft law on amending and completing the Tax Code, in the part related to the taxable income of individuals has been developed.

In this way, they proposed a 5% tax to be withheld at the source of payment of the income to the individuals for the income derived from the sale of plant growing and horticulture production. The draft law is attached.

However, only the taxation of individuals does not solve the problem faced by the exporters that anyway would face the problem related to the origin of the goods for export. For these reasons, other problem-solving solutions should be also identified.

### 3.2 Customs Service

The Customs Service is the institution, which is empowered with the function of verification and confirmation of the origin of goods and issuance of the certificates of origin for export of Moldavian goods.

Although the Customs Service is empowered with the above mentioned function, this entity has technical instruments and modalities (access to the database on imports), customs, financial statistics and documents for verification of the origin of goods, but does not have enough possibilities for the direct/physical verification, on the spot, of the origin of the agricultural products harvested on the territory of the Republic of Moldova. This problem is recognized and revealed also by the customs service leadership.

At the same time, the Customs Service, in order to simplify the procedures for the confirmation of the origin of walnuts intended for export, proposes the following:

- Issuance of preferential certificates of origin, when the exporter is submitting the statement of the producer and register of documents on purchases from individuals, according to the samples indicated in the Annexes.
- At the same time, in order to avoid any possible fraud of walnuts' origin intended for certification, the origin of goods services/departments of the customs offices should consult the Customs Service Portal in ASYCUDA World in order to check the import of walnuts in the Republic of Moldova and MD-UA Portal in order to check the export of walnuts from Ukraine through the Transnistrian region.

However, it considers that invocation of arguments related to the illicit traffic of nuts from Ukraine to the Republic of Moldova for export to the EU is not plausible one, because there are no restrictions and / or additional duties on imports of nuts or cores from Ukraine to EU respectively, there is an economic interest that would encourage illicit the traffic of nuts from Ukraine to Moldova, because nuts or cores can be directly exported from Ukraine to the EU.

### 3.3 Main State Tax Inspectorate

Currently, the income of individuals obtained as a result of the sale of production of plant and horticulture origin in natural form are fully tax exempt.

At the same time, the Tax Inspectorate believes that only income from the sale of agricultural produce harvested from their own lands should be exempted of taxes, but the products obtained from the State properties are to be subject to taxation as a result of sale.

This means that, in the case of walnuts, only the income from selling walnuts harvested in the own households of a physical person should be exempted of taxes, and the revenue from the sale of walnuts/walnut kernel collected from the roads protection areas are to be subject to taxation.

However, the Tax Inspectorate does not have the instruments and methods to verify the origin of the agricultural products sold by individuals.

In another train to thoughts, the Tax Inspectorate is interested in combating tax evasion committed by the businesses through the misuse and mass falsification of data included in the documents on purchases from individuals.

### 3.4 Ministry of Agriculture and Food Industry

The Ministry of Agriculture and Food Industry (MAFI) supports the simplification to the maximum of all bureaucratic procedures related to the process of purchasing agricultural products and their export.

The MAIA lacks a statistical database on the volume of the annual walnut harvest, but argues that the potential harvest amounts to about 14,000 tons annually and it is constantly increasing on the grounds that many nuts plantations planted previously started to produce harvest.

Out of the total harvested walnuts currently, about 80 percent come from the trees in the road protection areas, and the number of trees on the national roads is about 600,000 units. There is no statistics regarding the walnuts trees in the households.

The MAIA argues that the basis for existence and payment by the exports of 1.5% of the total value of walnuts export into the Fund to encourage the Walnuts Culture Development envisaged by Law on nut crops no. 658 of 29.10.1999 should be revised.

This is because, at present, this Fund does not exist anymore, and all amounts paid by the exporters are transferred to the State Budget. The financial support for the development of the walnuts plantations takes place within and from the general agriculture subsidy fund.

## 4 Current regulatory framework and the procedure of purchasing fresh fruits and vegetables from individuals for export to EU markets

### 4.1 List of normative acts regulating the purchase of fresh fruits and vegetables from individuals for export to EU markets

The national regulatory framework in the field of purchase of fresh fruits and vegetables from individuals for the export to EU markets consists of the following:

#### A. Purchase of agricultural products from individuals:

- Tax Code approved by Law no. 1163 of 24.04.1997. Link: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=326971>
- Law on nut crops, no. 658 of 29.10.1999. Link: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=311709>
- Government Decision on the implementation of Decree of the President of the Republic of Moldova no.406-II of 23 December 1997, no. 294 of 17.03.1998. Link: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=296079>
- Order of the Ministry of Finance on the approval of a standard form of primary document with a special regime „Act on purchase of goods”, no. 130 of 30.09.2010. Link: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=336477>

#### B. Issuance of the preferential certificates of origin for export to the EU:

- Customs Code of the Republic of Moldova approved by Law no. 1149 of 20.07.2000. Link: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=319745>
- Law on customs tariff, no.1380 of 20.11.1997. Link: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=319952>
- Government Decision on the rules of origin of goods, no. 1599 of 13.12.2002. Link: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=299658>;
- Order of the Customs Service regarding the approval of the Regulation on completion, authentication and issuance of certificates of origin on the goods exported from the Republic of Moldova in the framework of the preferential trade arrangements with the European Union (ATP) and countries granting the Generalized System of Preferences (GSP) to the Republic of Moldova, no. 50 of 18.02.2008. Link: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=327043>
- Order of the Customs Service regarding the approval of the Regulation on completion, authentication and issuance of transportation/shipping certificates EUR.1 for the goods exported from the Republic of Moldova in the framework of the free trade arrangements with the Member States to the Central European Free Trade Agreement (CEFTA) and amendments in the rules concerning the completion and issuance of the certificates, authentication and issuance of the certificates of origin for the goods exported from the Republic of Moldova in

the framework of the preferential trade arrangements with the European Union, no. 244 of 03.07.2007. Link:

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=324811>

## **4.2 General description of the regulatory framework and procedures in the field of purchase of fresh fruits and vegetables from individuals**

### **4.2.1 General description of the regulatory framework in the field of purchase of fresh fruits and vegetables from individuals**

In general, the regulatory framework in the field of purchase of fresh fruits and vegetables from individuals is permissive; it does not contain any limitation and has no tax implications under the aspect of taxation of the income of the seller – individuals.

Thus, the processors and exporters - legal persons may purchase the agricultural products harvested by individuals on their own land and/or in the areas of protection of national roads (in the case of walnuts) without any quantitative, qualitative restrictions (shelled walnuts or walnuts kernels) and the purchase amount (financial values).

The income of the sellers – individuals – is not subject to taxation (pursuant to Article 20 paragraph y) of the Tax Code - revenue generated by individuals from the delivery of the plant origin and horticulture production in natural form does not constitute taxable income sources).

However, in the case of shelled walnuts and/or walnut kernel export activity, there is a fee in the form of compulsory contributions (payments) required by the State that are to be paid by the exporters on the date/time of the issuance of the necessary documents for exporting a respective batch and represents 1.5% of export value (invoice value) of walnuts, walnut derived products and walnut wood indicated in the Customs Declaration and confirmed through the treasury payment order at the time of export (as prescribed in Article no. 16 of Law on nut crops no. 658 of 29.10.1999).

However, the officials of the Ministry of Agriculture and Food Industry (MAFI) are reserved with regard to the fairness and procedure for mandatory contributions made by the exporters, because according to the provisions of Article no. 16 of the Law on nut crops, the compulsory payments shall be collected in a special Fund for the development of nut crops, but with the emergence and development of the general system of subsidies in agriculture, the nut crops branch became an integral part of the general framework for assistance and the existence of this Fund is no longer needed. As a consequence, the MAFI does not manage the respective Fund and has no access to the financial means paid by exporters.

However, in practice, the exporters pay the respective contribution, which becomes direct revenue to the State Budget.

In this way, essentially, the mandatory contribution of 1.5% of the export value becomes an export charge and is to be revised, because, according to the general provisions of the national legislation, the export from the Republic of Moldova is encouraged and is not subject to taxation.



#### 4.2.2 Description of the current procedure of purchase of fresh fruits and vegetables from individuals

Currently, the process of purchasing fresh fruits and vegetables from individuals takes place according to the following algorithm:

1. Processing and exporting companies of agricultural products of plant growing and horticulture origin sign material liability agreements with their Collectors. The collectors receive amounts of money in order to pay for the production purchased from individuals.
2. The collectors identify and buy agricultural products from individuals and pay in cash the negotiated price of the purchased goods.
3. As a result of the sale-purchase transaction with individuals, the collectors are required to prepare/fill in 2 copies of the purchase document, which is a standard form of strict record keeping and is to be filled in according to the provisions of the Instruction on the completion of the purchase of goods document, approved by order of the Ministry of Finance regarding the approval of a standard form of primary document with special regime “Act on purchase of goods” no. 130 of 30.09.2010. Link: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=336477>.
4. The Act on purchase is to be prepared by the purchasers only on the basis of the identification card of the individuals-sellers. The Purchase Act shall contain the following information:
  - Buyer – legal entity: legal name and address; tax code/IDNO; the name, surname of the manager of the entity; name, surname of the person who has purchased goods should be indicated.
  - Seller – a natural person/individual: name, surname of the natural person; personal code/IDNP; identity card data (series, number, date of issuance and Issuing Office); residence address.
  - Goods: the name of the goods purchased shall be specified. The measuring unit of goods purchased should be reflected. The quantity of goods purchased should be specified.
  - Price: The unit price per kg/lei of the goods purchased and the total amount paid to the seller – natural person should be specified.
  - Taxation Issues: the budget, amount of taxes retained to the budget, if any, should be specified in figures and in letters. In all examined cases, the purchasing documents should state the value of 0 lei 00 bani, because the amounts received by individuals are qualified as non-taxable sources of income (in accordance with Article no. 20 paragraph y) of the Tax Code - revenue generated by natural persons from the delivery of products of plant origin and horticulture in natural form is not subject to taxation).
  - Signatures of the parties: confirmation of the goods delivery and receipt subject to the transaction and receipt of the full amount by the seller.
5. In addition to that, the collectors had to obtain certificates on the harvest from the local public authorities (mayoralities). These certificates are not provided for by the legislation in force, but are mentioned in an internal order (not published) of the Customs Service and are additional proof of the agricultural production of local origin intended for export. These certificates are obtained from the mayor halls in the area of each collector’s activity.



### **4.3 General description of the regulatory framework and procedures in the field of issuing preferential certificates of origin for export to EU markets**

#### **4.3.1 General description of the regulatory framework in the field of issuing preferential certificates of origin for export to EU markets**

According to the provisions of Government Decision no. 1599 of 13.12.2002<sup>3</sup> on the rules of origin of the goods, the Customs Service is designated as being the authority empowered to issue preferential certificates of origin for the goods to be exported (certificates of the form “A”, “CT-1”, “EUR.1”).

The preferential certificates of origin of goods shall be issued at the request of the local exporters that export the goods, including fresh and/or processed agricultural production to the EU markets and willing to benefit from the preferential free trade regime with the European Union (ATP) and countries that granted the generalized system of preferences (GSP) to the Republic of Moldova.

The issue of issuance of preferential certificates of origin of goods lays in the fact that it is complicated for the Customs Service to check physically, directly on the site, the origin of the agricultural products for export that are purchased from individuals.

For these reasons, the Customs Service is put in a position to require (on the basis of internal and unpublished orders and indications) from exporters, in addition to the statement on honor, of the fact that goods are of domestic origin, supporting documents proving that the exported products is of local origin and there is a reasoned basis for the issuance of a certificate of preferential origin.

At the same time, according to the provisions of paragraph 17 of the Order of the Customs Service no. 50 of 18.02.2008, the customs officer responsible for the authentication of the certificates of origin and their issuance, in order to certify the origin of goods, has the following rights:

- To access the exporter, producer and the activity of any other natural or legal persons, for the certification of the origin of goods;
- To examine the production process;
- To analyze and verify the technological production operations of the exported goods;
- To request the provision of any supporting evidence and to carry out any inspection considered appropriate.

Currently, in order to demonstrate the domestic origin of the agricultural products for export, the Customs Service (on the basis of internal and unpublished orders and indications) may require the exporters to submit the certificates on harvest issued by the mayor halls of the localities, where the exported agricultural products were purchased from individuals.

This practice provides the solution only for the moment and, in the future, it must be changed because it is a vicious one based on the reason that the legal basis for the mayor halls to issue certificates on the harvest is missing and there is no mechanism to control the accuracy of the data recorded in the respective certificate, which, in many cases are inaccurate and do not correspond to reality.

<sup>3</sup> <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=299658>

In general, the activity of the Customs Service in the field of issuing certificates of origin is supervised by the Ministry of Economy.

To this end, the Ministry of Economy has the right to:

- Carry out the control over the certificates of origin issued by the empowered authority;
- Compare the data contained in the certificates of origin with the real data characteristic for the goods delivered;
- Make recommendations to the empowered authorities concerning the elimination of irregularities detected in determining the origin of the goods by the authority empowered;
- Propose to the Government to conduct concrete measures to eliminate some irregularities practiced in the activity of the authorities empowered.

The direct procedure for issuing preferential certificates of origin is described in the Order of the Customs Service on the approval of the Regulation on the completion, authentication and issuance of certificates of origin of the goods exported from the Republic of Moldova in the framework of preferential trade arrangements with the European Union (ATP) and countries that granted the generalized system of preferences (GSP) to the Republic of Moldova, no. 50 of 18.02.2008<sup>4</sup>.

#### **4.3.2 Description of the current procedure for obtaining a preferential certificate of origin for export to EU markets**

In conformity with the provisions of the Order of the Customs Service with respect to the approval of the Regulation on the completion, authentication and issuance of certificates of origin for the goods exported from the Republic of Moldova in the framework of the preferential trade arrangements with the European Union (ATP) and countries granting the generalized system of preferences (GSP) to the Republic of Moldova, no. 50 of 18.02.2008:

- Grounds for issuing and authenticating the certificates of origin for the goods is the request – declaration of the exporter or by its legal representative, authenticated by the signature and the stamp in the original, completed on its full responsibility.

The exporter should attach the following documents to the request-declaration:

- Founding documents of the exporter (registration certificate of the enterprise, charter, decision on the establishment, constituting agreement, certificate of attributing the statistical code, orders/reports on the appointment of the head of the enterprise - exporter and Chief Accountant). These documents are to be submitted in copies, notarized in accordance with the procedure laid down, including by sealing with the wet stamp and signature of the exporter. In addition to that, the sample of the exporter's stamp and signatures of the manager, chief-accountant and authorized representative of the exporter (in original). These documents shall be submitted to the respective Customs Office only upon the first request of the certificate of origin.
- Identity documents of the physical person – representative of the exporter;

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<sup>4</sup> <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=327043>

- The license or authorization, in the case exports of goods licensed or based on quotas (in the case of export of walnuts in shells and/or shelled walnuts, such acts are not required);
- Agreement on the export of goods (copy);
- Commercial documents: commercial invoices, their pro-formas, invoice, including other documents used in foreign trade (a copy authenticated by the stamp and signature of the exporter);
- Power of Attorney issued to the exporter's authorized representative, which confirms the authorization to submit the declaration, documents, data and information required in order to confirm the origin of the goods to the customs body, as well as to sign and receive the original of the certificate of origin on behalf of and on the responsibility of the exporter (in the original);
- The document on the expertise of the goods origin (in the original) issued by the competent body in the field, at the request of the customs body from the exporter, if there are no data justifying the origin of the goods or there is a reason to believe that the data submitted by the exporter are not truthful and/or sufficient to prove the origin. The expertise document can be presented also on the initiative of the exporter;
- Other documents containing data/information justifying the compliance with the criteria for determining the origin (bills of lading, tax invoices, payment orders, procurement documents, customs declarations, certificate of shipment EUR.1 etc.

Based on this, Certificates on the harvest issued by the mayor halls of the localities, where the batch of goods for export comes from are required.

In order to confirm the veracity of the documents submitted and the domestic origin of goods, the customs officer has the right to visit the production unit of the exporter, to examine the production process, analyze and verify the technological operations for the production of exported goods, to ask for any evidence and to carry out any check considered appropriate by him/her.

- After examining all the supporting documents, the customs officer authenticates the preferential certificate of origin for the goods, filling in the application-declaration with the customs entries, later applying the personal stamp and signature. The customs officer responsible for the authentication of the certificate of origin shall issue it to the exporter.

## 5 European practice

### 5.1 European practice in the field of purchase of fresh fruits and vegetables from individuals

European practice in the field of purchase of fresh fruits and vegetables from individuals is different from the experience of the RM. The explanation relies in the fact that in most EU highly developed countries production and trade with agricultural goods is performed by producers – who represent in fact LEGAL ENTITIES/COMPANIES<sup>5</sup>, unlike the experience in the RM, where there are still producers/sellers – who are individuals (that have not registered their business as a legal entity/entrepreneurs) and that are selling their agricultural goods in significant quantities.

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<sup>5</sup> The reason is that there are more advantages **under the subsidy policy promoted by the state for the development of agriculture. Please study the experience of Poland described in the current study.**

### Romanian experience

In the case of taxpayers - individuals that get income from farming by harnessing the sold products to certain specialized collection units, the tax is calculated and withheld at the source by applying a 2% share on the value of the supplied products. The tax is final.

### Poland

In Poland, the farmers are organized in lucrative legal entities and they have bank accounts for settlement of payments.

In Poland, the farmers are exempted of the payment of income tax.

The companies paying VAT that buys agricultural products from flat-rate farmers are required to issue an invoice showing the purchase of goods (VAT RR). This document must be issued in two copies, one copy of which shall be sent to the supplier (farmer). The lump sum income tax refund is of 6 percent of the net value of the invoice. The actual burden of the tax refund to the buyer rests with the farmer, who later recovers it from the State.

## 5.2 Autonomous trade preferences for the Republic of Moldova granted by the EU. Certificates of origin

The autonomous trade preferences for the Republic of Moldova are provided under Regulation (EC) no. 55/2008 of 21 January 2008 introducing some autonomous trade preferences for the Republic of Moldova and amending Regulation (EC) no. 980/2005 and Decision 2005/924/EC of the Commission.<sup>6</sup>

In the action plan within the European Neighborhood Policy (ENP Action Plan) for the Republic of Moldova, which was adopted in 2005, the EU has undertaken the commitment to consider the possibility of granting supplementary autonomous trade preferences (ATP) to the Republic of Moldova, provided that Moldova will improve considerably its system of control and certification of the goods origin. In 2006, the Republic of Moldova reformed its customs legislation and, in early 2007, achieved a satisfactory level of the new legislation enforcement.

The satisfactory level referred to in Regulation (EC) no. 55/2008 was achieved including thanks to the Customs Code of the Republic of Moldova, Law on customs tariffs and Government Decision on the rules of origin of the goods no. 1599 of 13.12.2002 were amended and harmonized with the EU legislation, regulatory framework and procedure for issuing the certificates of origin.

In this way, the Customs Service was designated as the authority empowered with the function of issuing/releasing preferential certificates of origin, as well as with functions and duties of verification of the origin of goods for export.

In accordance with Decision 2005/924/EC of the Commission (2), the Republic of Moldova benefits of special incentive arrangements for sustainable development and good governance (GSP +) provided for in Regulation (EC) no. 980/2005 of 27 June 2005 applying a system of generalized tariff preferences (GSP).

The European Community noted that the Republic of Moldova has the right to benefit from the autonomous trade preferences due to the compliance by the Republic of Moldova with the relevant

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<sup>6</sup> <http://www.mec.gov.md/preferinte-comerciale-autonome-atp/>

norms of the rules on origin of products and related procedures, as well as effective administrative cooperation with the Community in order to prevent any risk of fraud.

At the same time, the European Community reserves the right to suspend unconditionally the trade preferences granted to the Republic of Moldova. The reasons for the temporary suspension of the preferences should include the serious and systematic violations of the conditions for obtaining the preferential regimes, fraud or lack of administrative cooperation for verification of the origin of goods, as well as the inability of the Republic of Moldova to show a continuous commitment in implementing the priorities set out in the ENP action plan and the obligations undertaken through the pacts, conventions and protocols to which it has acceded.

### Conditions for granting preferential regimes

The provision of the benefit of preferential regimes introduced by the EU for the Republic of Moldova shall be subject to:

- Compliance with the rules of origin of products and the related procedures in accordance with title IV, Chapter 2, Section 2 of Regulation (EEC) no. 2454/93<sup>7</sup>;
- Observing the methods of administrative cooperation in accordance with Articles 121 and 122 of Regulation (EEC) no. 2454/93;
- Commitment of the Republic of Moldova with regard to the effective administrative cooperation with the Community in order to prevent any risk of fraud.

The administrative cooperation requires an efficient communication of the Moldavian authorities with the authorities of the European Community and each of the responsible authorities of the EU member states with a view to overcoming all the difficulties encountered and detecting frauds committed in the process of trade, particularly in the export of the Moldovan goods on the EU market and checking their origin.

The Republic of Moldova committed itself to carry out a rigorous surveillance in the agricultural sector for the purposes of compliance with the rules of origin.

The main provisions in the field of origin of goods laid down in Regulation (EEC) no. 2454/93 of 2 July 1993 laying down the provisions for implementing Regulation (EEC) no. 2913/92 of the Council on establishment of the Community Customs Code<sup>8</sup>

### Provisions relating to the universal certificates of origin

When the origin of the goods is to be proved on the importation by presenting a certificate of origin, this certificate shall comply with the following conditions:

- be drawn up by an authority or body empowered for this purpose by the issuing country;
- to contain all data necessary for identifying the product to which it relates, in particular:
  - number of packages, their nature, marks and numbers of the packages;
  - type of goods;
  - gross and net weight of the goods; these data can, however, be replaced by other data, such as the number or volume, when the goods are subject to considerable changes of weight during the transportation or when its weight cannot be assessed or if the identification is carried out normally through other features of this kind;

<sup>7</sup> [http://www.customs.ro/ro/agenti\\_economici/originea\\_marfurilor/reglementri.aspx](http://www.customs.ro/ro/agenti_economici/originea_marfurilor/reglementri.aspx)

<sup>8</sup> [http://www.customs.ro/ro/agenti\\_economici/originea\\_marfurilor/reglementri.aspx](http://www.customs.ro/ro/agenti_economici/originea_marfurilor/reglementri.aspx)

- name of the exporter;
- To certify without any doubt that the goods in question originates from a specific country.

### Preferential Origin Section

It sets out the rules concerning the definition of the concept of “originating products”, as well as procedures and related methods of administrative cooperation, for the purposes of applying the generalized system of tariff preferences (GSP) granted by the European Union to developing countries under Regulation (EC) no. 732/2008,

The following notions are used:

- “*registered exporter*” represents an exporter that is registered under the competent authorities in the respective beneficiary country with a view to the issuance of statements on origin for the export within the system;
- “*statement on origin*” represents a declaration made by the exporter, which shall specify that the products covered by the statement on origin comply with the system’s rules of origin, in order to allow the person that declares the goods for their release for free circulation in the European Union to require the granting of preferential tariff treatment, or in order to allow businesses from a beneficiary country that import materials for their subsequent processing according to the cumulation rules to prove the originating status of the respective goods.

In order to ensure a proper implementation of the system of preferential origin certification, the beneficiary countries commit themselves to the following:

- to create and maintain the administrative structures and systems necessary to manage the approved rules and procedures within their territories;
- To ensure the cooperation of their competent authorities with the Commission and customs authorities of the Member States.

The administrative cooperation referred to consists of the following:

- At the request of the Commission, the provision of any support necessary for its monitoring of the good management of the system in that country, including control visits on the field carried out by the Commission or customs authorities of the Member States;
- Verification of the originating status of the products, as well as the fulfillment of the other conditions stipulated in this section, including through visits on the field, at the request of the Commission or customs authorities of the Member States in the framework of investigations on the origin.

The beneficiary countries shall inform the Commission about the names and addresses of the authorities situated in their territory which:

- are part of the Government authorities of the respective country or, that act under the authority of the Government and are empowered to register exporters and to remove from the register the registered exporters;



- Are part of the Government authorities of the respective country and are empowered to assist the Commission and the Customs authorities of the Member States during the administrative cooperation.

The Commission shall maintain an electronic database of registered exporters on the basis of information provided by the governmental authorities of the beneficiary countries and by the customs authorities of the Member States.

The data processed in the database are made available to the public via the internet, except for the confidential information.

The personal data processed in the database referred to in the first paragraph and by the Member States pursuant to this section shall be transferred or communicated to the third countries or international organizations in accordance with Article 9 of Regulation (EC) no. 45/2001.

**In connection** with the provisions of the Regulation regarding *the registered exporters*, it should be noted that the Customs Service implements the provisions of Order no. 521 of 10.12.2012<sup>9</sup> of the Customs Service regarding the approval of the Regulation on simplified customs clearance procedures and enforces notions related to the preferential provision of the following statuses to the domestic exporters: low risk businesses; credible businesses; and reliable carrier.

The access to the database regarding the businesses – exporters treated preferentially may be granted including to the Commission and authorities concerned, including the customs authorities of the EU Member States.

#### Definition of the concept of originating products

The following products are considered as originating in a beneficiary country:

- products integrally obtained in the respective country that benefit of the preferential trade arrangements;
- products obtained in the country benefiting from the preferential trade arrangements, which contains materials that have not been integrally obtained there, provided that such materials have undergone some sufficient processing or transformation.

The following shall be considered as being obtained integrally in a beneficiary country:

- a) mineral products extracted from its soil or from its seabed;
- b) *plants and vegetal products grown and harvested in the respective country;*
- c) live animals born and raised in the respective country;
- d) products obtained from live animals raised in the respective country;
- e) products derived from the slaughtered animals born and raised in the respective country;
- f) products obtained from hunting or fishing activities in the respective country;
- g) aquaculture products, if fish, crustaceans and mollusks are born and raised in the respective country;

<sup>9</sup> <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=346118>

- h) sea-fishing products and other products obtained by the vessels of the respective country in the seas situated outside any territorial waters;
- i) products obtained on vessels - factory of the respective countries, exclusively from the products referred to in subparagraph h);
- j) used articles collected in the respective country and that can be used only for the recovery of raw materials;
- k) waste and scrap resulting from manufacturing operations conducted in the respective country;
- l) products extracted from the soil or marine subsoil outside any territorial waters, provided that the respective country has the exclusive rights of exploitation;
- m) Products produced in the respective country, exclusively from the products specified in subparagraphs (a) - (l).

#### Statement on origin

The exporter shall prepare a statement on origin to export its products, if the goods can be considered as originating in the beneficiary country.

The statement on origin can be prepared exceptionally after carrying out the export activity (“certified retroactively”), provided that it is submitted in the Member State of the declaration of release for free circulation not later than two years from the date of export.

The statement on origin is presented by the exporter to its client in the European Union, and shall contain the information set out in Annex 13d of the Regulation.

#### Control of origin

In order to ensure the compliance with the rules regarding the originating status of the products, the competent authorities in the beneficiary country shall:

- carry out inspections of the originating status of the products, at the request of the customs authorities of the Member States,
- Carry out regulated controls over exporters, on their own initiative.

The above mentioned controls shall ensure the continuous compliance by the exporters with their obligations. The controls are carried out at intervals determined on the basis of adequate risk assessment criteria. To this end, the competent authorities from the beneficiary countries shall require the exporters to provide copies or a list of statement on origin, which they have drawn up.

The competent authorities of the recipient countries have the right to request any supporting documents and to carry out any checks of the accounting records kept by the exporter and, if applicable, the producers who supplied, including at their premises, as well as any other checks it considers necessary.



### Subsequent verification

The subsequent verification of the statement on origin shall be carried out randomly or whenever the Customs authorities of the Member States have reasonable doubt as to their authenticity, of the originating status of the products concerned or to comply with other requirements set out in this section.

When seeking the cooperation of the competent authorities of a beneficiary country, in order to verify the validity of a statement on origin, the originating status of the products or both, the customs authorities of a Member State shall indicate on their application, where appropriate, the reasons for which they have reasonable doubt on the validity of the statement on origin or the originating status of the products.

In support of the request for verification, a copy of the statement on origin and any other supplementary information or documents suggesting that the information provided in the certificate is incorrect can be transmitted.

For the communication of results, the requesting Member State shall establish an initial term of six months from the date of the application, except for the requests addressed to Norway, Switzerland or Turkey for the verification of the replacement of statements on origin drawn up on their territory based on a statement on origin drawn up in a beneficiary country, for which this period shall be extended to eight months.

Where there is reasonable doubt, if no reply is received within 6 or 8 months or if the reply does not contain sufficient information to determine the true origin of the products, the competent authorities shall send a second notification. This notification shall establish a further period, which should not exceed six months.

## 6 Conclusions

As a result of the complex examination of issues relating to the purchase of fresh fruits and vegetables from individuals, mainly shelled walnuts and/or walnuts with shell, as well as problems related to the issuance of the preferential certificates of origin for export to EU markets by the Customs Service, the following main conclusions are established:

- The relevant issue was examined/approached complexly, because a separate review - just the purchase and taxation of the fresh fruits and vegetable sellers - individuals (removal or introduction of taxes) or only the part related to the issuance of the certificates of origin for customs purposes - is not sufficient and does not resolve the problem of the exporters, on the merits, because these problems are interrelated. That is because even if the system of taxation of the agricultural products purchased from individuals is reformed, however, the exporters will continue to face problems in customs when obtaining certificates of preferential origin for export to EU markets.
- The opinions, positions, proposals and arguments of the counterparts on the issues addressed were different and sometimes divergent. A different approach reflects the complexity, depth and increased interest of all those involved with regard to the issue addressed. All stakeholders recognize the need to change the current situation on the basis of some reasoned, balanced and realistic recommendations.
- The current procedure regarding the purchase of agricultural products from individuals on the basis of purchase documents is insufficiently regulated, because there is only an instruction how to fill in that, essentially, is a guideline for filling in, but a regulation on purchase documents is missing.
- The current provisions of the Tax Code relating to the exemption of the individuals from paying the tax on income arising from the supply (sale) of the fresh agricultural production, without determining the sources of origin of goods sold and/or other qualitative or quantitative criteria, are elusive, and can be interpreted in a broad sense, so as during their application in practice, it leaves room for abuse and evasion.
- The public authorities believe that only the natural persons who market fresh agricultural products harvested in their own household and/or private or leased farmland are to benefit from the preferential tax treatment. The individuals selling walnuts kernels or walnuts in shell collected from the trees located in the areas of the national roads protection (which are under the management of road maintenance companies), in fact, sell a commodity which did not belong to them.
- The tax service has insufficient instruments and methods (tax administration) for a thorough verification of the purchase documents issued (even though these are under strict record keeping) by businesses as a result of the sale-purchase transaction with individuals.
- Similarly, there are no methods and instruments for checking and verifying the origin of the quantities of agricultural products in general, and the shelled walnuts and walnuts in shell, specifically traded by individuals. The prerequisites for the emergence of control instruments objectively will appear after the publication of the results of the General Agricultural Census.
- At present, the burden of proof in customs of the domestic origin of the goods for export, including the walnut kernel belongs to the exporters and is demonstrated mainly based on the

submitted procurement documents. However, this method of proving is subject to the risks, because the Document of purchase, through its essence, is not a primary act that demonstrates the origin, but is a financial instrument that establishes the fact of sale-purchase transaction by a natural person and legal entity – a potential exporter. The assumption is that the physical person may sell also agricultural products, which are harvested on the territory of the Republic of Moldova. The exporter can declare with certainty that the products have been purchased on the territory of the Republic of Moldova.

- The procurement document shall contain a form of declaration on own responsibility of a natural person – seller that the agricultural production is harvested on the territory of the Republic of Moldova and that it comes from legal sources.
- The regulatory framework with respect to the procedure and the list of documents required for the issuance by the customs authorities of the certificates of preferential origin for export to EU markets generally complies with the requirements of EU directives, but it is not exhaustive and leaves room for interpretation, imposition of procedures and requirements for additional documents (certificates on harvest issued by the mayor halls) a fact that is in contrary to the general domestic framework with regard to the general principles regulating the entrepreneurial activity (Guillotine).
- The lack of transparency in regulation and decision-making generates uncertainty and lack of security for exporters, and this may influence negatively the export growth.
- The Nuts Crop Development Fund set up by Law on nuts crops no. 658 of 29.10.1999 currently lost its relevance due to the development of the general system of subsidies in agriculture, including the development of the nuts crops. In this way, the transfers in the amount of 1.5% of export value, as indicated in the customs declaration at the time of export, in practice, has become an export charge payable directly to the State Budget. In this way, the status and reason/justification of this Fund existence should be reviewed.

## 7 Recommendations

As a result of the complex examination of the issues relating to the purchase of fresh fruits and vegetables from individuals, mainly walnuts kernel and/or walnuts in shell, the problem related to the issuance by the Customs Service of the preferential certificates of origin for export to the EU markets, as well as the European practice and export market demand in these areas, the following recommendations that come also from the holders of vested interests are proposed for consideration:

- Improve the system/framework of declaration of the origin of goods for export on their own responsibility. Through the implementation of the system of goods purchase notes /agricultural products, which contain the primary information that can be easily controlled by the competent State institutions (tax inspectorate and/or customs, as appropriate);
- Facilitation of the procedure to issue the certificate of origin for the agricultural products designed for export for the companies registered as “honest/reliable exporters”;
- Assume the risk of fraudulent origin of the agricultural production, including by the individuals – sellers of the goods. This, by natural persons’ declaration on own risk of the fact that the goods are of local origin and comes from the legal sources;
- The definition of the regulatory framework, including by developing and implementing a joint Order of the Main State Tax Inspectorate and the Customs Service with respect to the procedure for issuing the Act of purchase, and its form, which generally consist of two parts – (i) fiscal and (ii) declarative regarding the provenance/origin of goods sold. The Act of purchase, in the fiscal part, shall provide, as in the present, all the identification data of the parties, identification of the goods and price, as well as the fact of no income taxes. The declarative part regarding the provenance/origin of goods, the seller –natural person – shall declare, under his own responsibility, by undersigning it, that the product is originating from the Republic of Moldova and is obtained in a legal way.
- The enforcement of this joint Order represents also the creation of the instruments and methods of verification (corresponding administration) to verify the veracity of the recorded and declared data and information.
- Improving the Customs Service Orders with respect to the issuance of certificates of preferential origin in such a way as to clearly stipulate the exhaustive list of the documents necessary for the issue of the respective certificate and that there should be maximum transparency in the decision-making process and sustainability of the process of local agricultural products export (clarification of various formulations of “other documents necessary”, etc.);
- Streamline the use of the financial resources of the Walnuts Crops Development Fund for the purpose of channeling its resources towards the development of nut industry (subsidize the producers of walnuts);
- Taking into account the present unfavorable situation in agriculture that:
  - It is not characteristic for the countries with a high potential in agriculture, where this branch generates substantial profit and exports in significant quantities, thus bringing essential revenues to the State budgets;
  - Does not benefit from the complex development programs in the sector (e.g.: Romania, Poland, Hungary, etc.);

- Does not get enough subsidies from the State to support farmers as it is done in the EU countries,

It is necessary to discuss about the maintenance of the current situation relating to the exemption from the income tax of individuals when delivering the agricultural production (Article 20 paragraph y) of the Tax Code of the Republic of Moldova) and we find inappropriate the establishment of the income tax on the producers/individuals in phyto-technical and horticulture sector (withheld at the source of payment upon the completion of the transaction of purchase of agricultural products) for the following reasons:

- Taking into account the fact that the problems created in cases of exports of the agricultural products to the EU markets are based on the demonstration of the origin of those goods, the application of a tax on income does not resolve itself the problem of the origin of goods;
- The current situation related to the purchase of agricultural products, mainly walnuts, from individuals is a temporary one, that will disappear soon, along with the presence on the market of legal persons, which have already invested considerably in walnut plantations, which soon will be on harvest period and the production will be delivered on the basis of tax invoices;
- Additional costs for those purchasing agricultural products will be created;
- It will adversely affect the export price of walnuts and other agricultural products may become uncompetitive on the international markets, including the EU market, which is increasingly turning to cheaper Asian products.
- It will create reluctance (fear) on the part of individuals in relation to the sale of the agricultural products. Lacking general knowledge in the field of taxation, and as a result of some preceding events in autumn 2012, the people were scared to be subsequently verified and required to pay additional taxes.
- The introduction of a personal income tax will have a negative impact on the most vulnerable, unstable and, in fact, poor social class -- rural residents, because this tax will be restrained namely from low and unstable income of these people
- It will create problems in the administration of this tax, both for the tax inspectorate and exporters, individuals, who have sold the goods, etc.
- In the Republic of Moldova, there is no information system/database that would track the crop harvested on lands owned or leased by the natural and legal persons and which would facilitate the calculation of the overall net annual production (the example of Poland, Hungary, etc.) which would allow a tax deduction, as well as data on the origin of the goods;
- Even if the experience of Romania provides for an income tax withholding of 2% at the source of payment, at the same time, Romania benefits from major investment programs in the agricultural sector provided by the EU, such as SAPARD, EPARD etc.
- Publication of the general agricultural census results in proximal terms by the Bureau of Statistics. In this way, it will be possible to calculate/determine roughly the potential quantity of harvest/production of the walnuts kernel and shelled walnuts, including by species. The approximate calculation of the potential annual production quantity can serve as a landmark in the process of issuing certificates of origin;

- Introduction of clarity over the fact whether the walnuts kernel represent an agricultural production of phyto-technology/plant growing in natural form or is a product obtained during the shelling process;
- Issuing preferential certificates of origin on presentation by the exporter of the producer's declaration and register of deeds of purchase from individuals, according to the models (to be attached).
- At the same time, in order to avoid any possible frauds of the origin of walnuts intended for certification, the sections/services for certifying the origin of goods within the Customs Offices shall consult the Customs Service Portal within ASYCUDA World in order to check the import of walnuts in the Republic of Moldova and MD-UA Portal in order to check the export of walnuts from Ukraine through the border with Transnistrian region.
- The report will be presented in the framework of a roundtable. Recommendations from the roundtable discussion will be integrated into the report, the final version of which will be circulated to stakeholders.

## Annex: The list of stakeholders interviewed over the EBA Study development

Nr	Name	Function	Organization	Address	Telephone, Email
<b>Exporters – March 04 2013 (BIS office)</b>					
1	Dumitru Vicol	Director General	SC Monicol SRL Processor and exporter of walnuts and dry fruit	Str. Bernardazzi , 49/5 Chisinau, MD 2012	GSM +373 69 124780 Tel. +373 22 500 675 Fax +373 22 500 676 dumitru.vicol@monicol.md
2	Victor Avram	President of association of Exporters of Fruit MOLDOVA FRUCT	MOLDOVA FRUCT Association, Processor and Exporter	Str. Bucuresti, 67 Chisinau, MD 2012	Tel. +373 22 212339 Fax +373 22 212105 Cell +373 69 1123 61 <a href="mailto:vavram@vicam.md">vavram@vicam.md</a> <a href="http://www.moldovafruct.md">www.moldovafruct.md</a>
3	Tudor Slănină	Director General	Prometeu-T SA		
<b>Main State Tax Inspectorate – March 06 2013 (IFPS office)</b>					
4	Eduard Podubnîi	Head of tax compliance division	IFPS	str. Cosmonauţilor 9 Chisinau, MD 2005	Tel. Fax GSM
5	Doamnele Nicoleta şi Veronica	Tax Compliance division	IFPS	str. Cosmonauţilor 9 Chisinau, MD 2005	Tel. Fax GSM
<b>Customs Service – March 19 (CS Office)</b>					
6	Tudor Baliţchi	Director General	SV	str. Columna 30 Chisinau, MD-2001	Tel. Anticamera : + 373 22 574-201 Fax + 373 22 273-061 Email: <a href="mailto:vama@customs.gov.md">vama@customs.gov.md</a>
7	Tudor Dabija	Revenues and customs control Division, Head of division	SV	str. Columna 30 Chisinau, MD-2001	Tel. Fax GSM
8	Galina Scripca	Unit Origin of goods, Head of unit	SV	str. Columna 30 Chisinau, MD-2001	Tel. Fax GSM
<b>Ministry of Agriculture and Food Industry – March 21 2013 (MAIA office)</b>					
9	Viorel Guţu	Deputy Minister	MAIA	Bd. Stefan cel Mare 162 Chisinau, MD-2004	Tel +373 22 23 23 84 Fax ..... GSM ..... Email: <a href="mailto:viorel.gutu@maia.gov.md">viorel.gutu@maia.gov.md</a>
10	Ion Sula	Policy development Unit, Head of Unit	Ministry of Agriculture & Food Industry of the Republic of Moldova	162, Stefan cel Mare str., off. 414 MD-2004, Chisinau	Tel +373 22 210139 Fax ..... 210204 Cell 069303889 Email: <a href="mailto:ion.sula@maia.gov.md">ion.sula@maia.gov.md</a> <a href="mailto:ionicas@hotmail.com">ionicas@hotmail.com</a>
11	Waldemar Sochaczewski	Adviser of MAIA	MAIA	Bd. Stefan cel Mare 162 Chisinau, MD-2004	GSM 06008825 Email: <a href="mailto:waldemar.sochaczewski@yahoo.com">waldemar.sochaczewski@yahoo.com</a>

Study on the purchase of fresh fruits and vegetables from individuals  
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Nr	Name	Function	Organization	Address	Telephone, Email
<b>Agricultural Competitiveness and Enterprise Development Project (ACED) - March 21 2013 (ACED office)</b>					
12	Ion Perju	Project Deputy-Director	ACED	Bd. Stefan cel Mare 202 Chisinau, MD-2004	Tel +373 22 59 52 65 Fax +373 58 28 23 GSM 069033880 Email: <a href="mailto:ion_perju@dai.com">ion_perju@dai.com</a>
13	Lilian Cipciriuc	Domestic Market Linkage Specialist	ACED	Bd. Stefan cel Mare 202 Chisinau, MD-2004	Tel.+373 22 595265 Fax +373 22 582823 GSM: 068360388 Email <a href="mailto:lilian_cipciriuc@dai.com">lilian_cipciriuc@dai.com</a>
<b>Parliament of the RM - 18.03.2013 (MAIA office)</b>					
14	Iurie Cernean	Parliament commission for budget economy and finance	Parlamentul RM	Bd. Stefan cel Mare 162 Chisinau, MD-2004	
<b>PWC</b>					
15	Tatiana Stavinschi	Tax Expert	PWC	Str. M. Cibotari, Chisinau, MD-	



## **Annex: European practice**

### **I. European practice in the field of purchase of fresh fruits and vegetables from individuals**

#### **A. Romania**

In the case of taxpayers - individuals that get income from farming by harnessing the sold products to certain specialized collection units, the tax is calculated and withheld at the source by applying a 2% share on the value of the supplied products. The tax is final.

According to the provisions of the tax legislation of Romania, the income from agricultural activities is income from the following activities:

- Cultivation and sale of flowers, vegetables and gardening products, in greenhouses and solariums specifically designed for these purposes and/or in the irrigated system;
- Cultivating and sale of shrubs, decorative plants and mushrooms;
- Exploring the viniculture and orcharding and others similar;
- Selling the agricultural products obtained after harvesting, in natural state, from the privately-owned farmland or tenancy, to specialized units of collection, industrial processing units or other units, for the appropriate use.

Beginning with the year 2012, the compulsory filling in of the book of receipts and payments has been introduced, in the case of persons that determine the annual net income from agricultural activities based on income rules, but also for the taxpayers who receive income from farming carried out under the provisions of the tax legislation, by harnessing the products sold to the specialized collection units, industrial processing units or other units for appropriate use.

The tax on the amounts received is calculated by withholding at source a share of 2% of the value of the delivered products.

#### **Taxation of income from agriculture for farmers – natural persons**

The regulations related to the income from the agricultural activities shall apply to the following categories of taxpayers:

- Natural persons; and
- Tenants – natural persons.

For the income obtained to qualify as being from the sale of agricultural products, these shall meet the following conditions:

- be obtained after harvest;
- to be in natural state;

- to be obtained from the privately owned farmland or leased land;
- To be harnessed (sold) to specialized collection units, industrial processing units to other units, for use.

The terms used above have the following meanings:

- Specialized collection units – the units for storage of agricultural products in good conditions, securing the integrity of their essential qualities thereof, according to different technological uses, and maintaining their hygienic and nutritional value. For examples: closet, warehouses and silos;
- Units of industrial processing of vegetal products – the technological units, where the agricultural products are processed through processes that significantly alter the initial product in the food or feed. For examples: industrial processing units for cereals for grains, legumes, dried shelling, root crops, vegetables grown in the field, industrial plants, green fodder from arable land, fruits;
- Other units for use as such – the units acquiring the agricultural vegetal products and using them as animal feed. For examples: zoo-technical complexes etc.;
- Agricultural products – the agricultural plant products obtained after harvesting, in natural state, on the agricultural land. For: cereals for grains (wheat, rye, barley, oats, rice, corn, etc.), dried leguminous (peas, beans, chickpeas, kidney beans etc.), root crops (potatoes, sugar beet, stock beet, etc.), industrial plants (rapeseed, sunflower, soya beans, oil-seeds, tobacco etc.), green fodder from the arable land (green maize fodder, clover, alfalfa, etc.), vegetables grown on the fields (cabbage, spinach, lettuce, melons, eggplants, cucumbers, peppers, zucchini, carrots, etc.), fruits (peaches, apricots, grapes, cherries, sour cherries, walnuts, and quince, raspberries, apples, pears etc.).

#### The tax rate applied on the income from agricultural activities

In the case of income from agricultural activities, the individuals are subject to taxation at a tax rate of 2% on the value of the products delivered to the above-mentioned units, in accordance with the accounting documents drawn up for this purpose. There are two scenarios of withholding this tax:

1. The taxpayers subject to taxation - based on the rules of income or in the real system based on the simple accounting (who declared their agricultural activity at the territorial tax office, where they belong), who receive income from the agricultural products obtained after harvesting, in the natural state, from the privately-owned farmland or leased land, to the specialized collection units, industrial processing units or other units for use as such, are not due to pay the 2% tax. The collection units, industrial processing units or other units shall require the respective taxpayers a copy of the form “Decision to impose the anticipated payment of the tax”, in order to not apply the 2% tax.
2. Otherwise (the farmers – individuals, who did not declare an agricultural activity at the territorial tax office where they belong; in case of some sporadic purchases, purchases at the fairs, markets, etc.), the tax is calculated by withholding it at the source at the time of payment by the payers (buyers), by applying a 2% share to the gross income.

The tax calculated and withheld represents the final tax

If the tax withheld at the source of payment, the deadline for transferring into the State budget the tax withheld is up to the date of 25 inclusive, of the month following the month when it was withheld.

The purchasing units are required to submit a declaration concerning the calculation and withholding of the tax for each income beneficiary, to the competent tax authority before 30 June of the current fiscal year for the previous tax year.

### Accounting supporting documents for the purchases of agricultural products

The supporting documents, based on which the acquiring unit purchases the agricultural products from farmers – natural persons, are Notes on purchases<sup>10</sup>:

- Note on purchases, code 14-4-13/cb for the purchases of cereals and products processed from cereals;
- Note on purchases, code 14-4-13/b for purchases of other agricultural products.

### Aspects relating to the preparation and use of the note on purchases

The businesses (legal entities, authorized natural persons, sole proprietorships, and family businesses) that purchase different products from the population (agricultural products, cereals and processed grain products, other products, etc.) may use the following forms in their financial-accounting activity:

- Note on purchases, code 14-4-13;
- Note on purchases, code 14-4-13/b, from individual producers;
- Note on purchases, code 14-4-13/c,

The note on purchases, code 14-4-13, and Note on purchases with code 14-4-13/b, from the individual producers are the financial accounting documents used as supporting documents for recording the value of the goods purchased and documents to justify the amounts received as an advance towards settlement for purchases or for settlement of amounts paid for purchases.

The note on purchases shall contain a minimum of required information. In this way:

- Note on purchases, code 14-4-13:
  - name of the unit, fiscal identification code; legal address (locality, street, number); the county;
  - the name, number and date (day, month, year) when the form was filed in;
  - the product; commodity code; quantity; unit price of purchase; value of the purchase;
  - signatures: buyer, manager;
- Note on purchase, form code 14-4-13/b:
  - name of the unit, fiscal identification code; legal address (locality, street, number); the county;
  - name, number and date (day, month, year) when the form was filed in;

<sup>10</sup> <http://www.lege-online.ro/lr-ORDIN-1027-2006-%2872901%29.html>

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- number and date of the agreement; manufacturer: name and surname, place of residence, and number of the identity document, as appropriate;
  - products names; commodity code; quantity; unit price; value; advance payment made; amount paid; signature conforming the receipt of the amount;
  - Signatures: acquirer, manager.
- *The note on purchase, code 14-4-13/c*, for cereals and products processed from cereals is a special form with a special printing, attributing the series and numbering regime ensured by the National Company “National Printing Office” used solely for the purchase of grain and processed grain products.

This document is used as a registration document for the management of the products purchased; supporting document regarding the registration of the value of the products bought in the accounting.

The document shall contain a minimum of required information, as follows:

- Buyer: (name of the unit; fiscal identification code; registration number at ORC; legal address (locality, street, number); the county;
- Series; document number;
- Seller: name, last name, ID/identity card; series; number, issued by.
- Name, number and date (day, month, year) when the form was filled in;
- Number and date of the agreement; name of the product; commodity code; quantity; unit price; value; paid amount, signature confirming the receipt of the amount;
- Total (MDL);
- Data on the buyer's delegate: (name, surname, ID/identity card, number, series, issued by); transportation mean, number;
- Signatures: delegate of the buyer; manager.

### B. Poland

In Poland, the farmers are organized in lucrative legal entities and they have bank accounts for settlement of payments.

In Poland, the farmers are exempted of the payment of income tax.

As a rule, the small farmers are not paying the Value Added Tax (VAT). However, they have the right to get the refund of the lump sum tax paid.

In accordance with the principle laid down in the law on the taxation of goods and services, the status of the flat-rate farmer can be obtained by any person, who supplies agricultural products or provides services in the agricultural sector, which benefits from the exemption, except for the farmers who keep their accounts based on a separate legal provision.

The entity that sells agricultural products of their own production is exempted of issuing invoices, maintaining books of purchases and sales of goods and services, of recording the sales in cash and registering at the tax offices. The farmers pay a fee for the tax identification number.

### Lump sum payment of VAT

The legal provision specifies that, in principle, the refund of the VAT lump sum to the farmers is made by the buyers of agricultural products – companies paying VAT.

The companies paying VAT that buys agricultural products from flat-rate farmers are required to issue an invoice showing the purchase of goods (VAT RR). This document must be issued in two copies, one copy of which shall be sent to the supplier (farmer). The lump sum income tax refund is of 6 percent of the net value of the invoice. The actual burden of the tax refund to the buyer rests with the farmer, who later recovers it from the State.

### The responsibility of the farmers

The flat-rate farmer is obliged to keep the VAT RR invoices, issued by the buyers for the goods and services supplied for a period of 5 years just in case of an inspection on behalf of the tax bodies.

The farmers who do not have a status of a flat-rate farmer, the VAT RR is invoiced according to the general principles, without the right to VAT refund.

### VAT deduction by the buyer

In accordance with the provisions of the Law on the taxation of goods and services, the buyer will deduct the VAT paid to the flat-rate farmers, for the month when the payment was made, if:

- The purchase of agricultural products is a taxable supply;
- Payment for the agricultural products, including the amount of the flat-rate tax, shall be transferred on the farmer's bank account no later than within 14 days from the date of the transaction, unless the farmer has agreed to extend the period of payment, and that fact is shown in the VAT RR invoice.

## II. European experience in the field of certificates of origin

In general, the Rules on the origin of goods shall be determined individually by each country based on the specifics of the international and bilateral trade treaties signed by the respective country.

There are two types of origin — preferential and non-preferential:

- *The preferential rules of origin* are set out in the regulatory acts and international treaties to determine whether the goods are eligible for the preferential treatment in trade. The preferential origin confers certain tariff benefits (reduced or zero duty) for the goods traded between countries that have such an agreement between them, or when a country unilaterally granted such benefits.
- *The non-preferential rules of origin* shall include all rules of origin used in the non-preferential trade policy instruments, such as for the application of: most-favored-nation treatment; anti-dumping duties and countervailing duties; safeguard measures; rules on the origin marking and quantitative restrictions or discriminatory tariff quotas, applied in accordance with the provisions of the WTO Agreements.

### Romanian experience

The issuance of the proof of the origin of goods exported to the EU, A.E.L.S.<sup>11</sup>, C.E.F.T.A.<sup>12</sup> countries and in Turkey.

For the purposes of the application of the preferential arrangements set out in the above mentioned Agreements, the goods originating from Romania, exported to the EU countries, A.E.L.S., C.E.F.T.A. and Turkey shall be accompanied by the proof of preferential origin, as follows:

- EUR 1 certificate, issued in accordance with the provisions of the origin protocols, or
- Declaration on the invoice prepared in accordance with the protocols of origin, as follows:
  - for exports, the value of which does not exceed the equivalent of EUR 6,000 – statement made by any exporter for any consignment which consist of one or more packages containing the original products;
  - For exports, whose value exceeds the equivalent of EUR 6,000 - statement made only by the exporters authorized by the Romanian customs administration.

The movement certificate EUR.1 shall be issued by the customs office empowered for that purpose.

The exporter shall submit the completed form to the customs office in accordance with the instructions of the origin protocols, and on page2, in the application, respectively, the “exporter's declaration” shall specify the origin criteria under which the export goods shall be considered as originating in Romania, namely:

- the product is wholly obtained in Romania; or

<sup>11</sup> European Free Trade Association (EFTA), whose current Member States are: Switzerland, Iceland, Liechtenstein and Norway.

<sup>12</sup> Central European Free Trade link:

[http://ro.wikipedia.org/wiki/Acordul\\_Central\\_European\\_al\\_Comer%C8%9Bului\\_Liber](http://ro.wikipedia.org/wiki/Acordul_Central_European_al_Comer%C8%9Bului_Liber)

- the product obtained based on the cumulation rules in Romania; or
- product obtained in Romania, incorporating the materials, which have not been obtained entirely in Romania, but which have undergone sufficient processing and transformations in conformity with the protocols of origin.

The exporter shall submit the supporting documents in support of the criterion of origin cited: invoices, copies of certificates EUR 1 that have covered the raw materials and the materials used in the manufacture of the finished product, the declaration of the exporter regarding the processing process.

In accordance with the provisions of the origin protocols, the following are considered products originating in Romania:

- products wholly obtained in Romania;
- products wholly obtained in Romania, incorporating the materials that have not been wholly obtained in Romania, but have undergone sufficient processing in Romania;
- Products obtained on the basis of cumulation rules.

In exceptional circumstances, the empowered customs officers may cover a posteriori EUR 1 certificates, on the basis of justified demand of businesses, indicating the reasons for not endorsing as requested at the time of export. In box 7 of the certificate, the endorsement “issued retrospectively” shall be recorded.

The origin for sets of goods shall be determined in accordance with the provisions of the protocols of origin.

A set shall be considered as originating, when all component articles are originating or when the value of the non-originating articles does not exceed 15% of the ex-works price of the set.

Each component item of the set, except for the non-originating ones within the 15 per cent limit, shall satisfy the rule of origin corresponding to the tariff heading it belongs to itself and not to the tariff heading it fits as a set.

In the case of exports of a large number of products, when the corresponding heading area specified on the certificate of circulation for the goods identification and description is not enough for this purpose, the exporter may specify the related certificate, on attached invoices or other commercial document, in the following conditions:

- to indicate the number of invoices entered in box 10 of the EUR 1 certificate;
- commercial invoices and other documents to be attached to the certificate EUR.1 prior to its submission to the Customs Office for verification and endorsement;
- Customs Office shall apply the stamp designed for the endorsement of certificate EUR 1.

When issuing a certificate of movement EUR 1 or preparing the invoice declaration for non-originating materials incorporated into the finished product, the customs duties according the customs tariff shall be charged, with the following exceptions:



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- In respect of products falling under chapters 25 - 49 and 64 - 97 of the Harmonized System, a charge amounting to 5% of the customs value or customs duty in effect if this is less than the former one shall be retained.
- For the products listed under chapters 50 - 63 of the Harmonized System, a fee of 10% of the customs value or customs duty in effect if this is less than the former one shall be retained.

### Romanian version of the exporter's invoice declaration

The exporter of the products subject of this document (customs authorization no....<sup>1</sup>) declares that, except as otherwise expressly indicated, these products are of preferential origin .....<sup>2</sup>.

.....<sup>3</sup>

(Place and date)

..<sup>4</sup>

(Signature of the exporter, including the whole name of the person signing the declaration must be indicated clearly)

<sup>1</sup> When the invoice declaration is made out by an authorized exporter, the authorization number of the exporter should be mentioned in this space. When the invoice declaration is not made out by an authorized exporter, the words between brackets shall be omitted or free space shall be kept.

<sup>2</sup> The origin of the products must be indicated.

<sup>3</sup> These indications shall not be necessary, where the information is contained in the document itself.

<sup>4</sup> In cases where the exporter is not required to sign, this exception refers also to recording the name of the person who signs.

### Turkish experience

On 01 January 1996, a Customs Union between the EU and Turkey was created<sup>13</sup>. However, the Customs Union does not refer to the trade in agricultural products. In respect of the trade in agricultural products between the Community and Turkey, a preferential trade regime based on the rules of origin shall be applied. The legal basis of this regime is Decision no. 1/98 of the Association Council<sup>14</sup>.

The procedures and principles for determining the origin of goods benefiting from the preferential trade regime with Turkey are in accordance with the provisions of Regulation (EEC) no. 2454/93 of 2 July 1993 laying down the provisions for implementing Regulation (EEC) no. 2913/92 of the Council on the establishment of the Community Customs Code.

Most of the trade operations between the EU and Turkey take place under the Certificate ATR.1 that is a customs document and is issued in order to take advantage of cheaper rates of duties. The legal basis for the use of certificate ATR.1 is the creation of the EU-Turkey Customs Union.

It is important to mention the fact that not all products are included in the free trade within the Customs Union. The products that are not included in the free trade based on the certificate ATR.1 are

<sup>13</sup> [Decizia 1/95 a Consiliului de Asociere CE - Turcia](#) of 22.12.1995 on the implementation of the final phase of the Customs Union (JO L035, 13.02.1996)

<sup>14</sup>

[http://ec.europa.eu/taxation\\_customs/resources/documents/customs/customs\\_duties/rules\\_origin/customs\\_union/s/asso-turkey\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_duties/rules_origin/customs_union/s/asso-turkey_en.pdf)



the steel, coal and agricultural products. In addition to that, it should be mentioned that certificate ATR.1 is not a certificate of origin, but rather a certificate of commitment of the state. Therefore, it certifies the fact that the product has been released for free circulation, either in the EU or in Turkey, which means that the product has undergone the import-export procedure.

The trade regime for the agricultural products between the EU and Turkey is determined by Decision of the Association Council of 19 December 2006 (EC TR-108/05)<sup>15</sup>.

Products originating in the Community shall benefit, on importation into Turkey, and products originating from Turkey, in the case of importation into the Community, shall benefit from the provisions of Decision upon presentation of one of the following:

- Certificate of movement EUR.1 of the goods, which model is presented in Annex IIIa;
- Certificate of movement EUR-MED, which model is presented in Annex IIIb;
- The Declaration, hereinafter referred to as the “invoice declaration” or “EUR-MED invoice declaration” given by the exporter on an invoice, on a delivery note or any other commercial document, which describes the products concerned in sufficient detail to enable them to be identified; the texts of the invoice declarations are presented in Annexes IVa and b.

The certificate of movement EUR.1 or EUR-MED shall be issued by the customs authorities of the exporting country upon the written application of the exporter or its authorized representative.

The exporter or its authorized representative shall fill in the certificate of movement EUR.1 or EUR-MED. The description of the products must be made in the box provided for this purpose without leaving any spaces between rows.

The exporter requesting the issuance of a certificate of movement EUR.1 or EUR-MED shall be prepared to submit, at any time, all documents proving the origin of the products concerned at the request of the customs authorities of the exporting country.

The certificate of movement EUR.1 shall be issued by the customs authorities of a Member State of the Community or Turkey, if the products concerned can be considered as products originating in the Community, Turkey, or one of the Euro-Mediterranean Partnership countries with which cumulation is applicable;

The certificate of goods movement EUR-MED shall be issued by the customs authorities of a Member State of the Community or Turkey, if the products concerned can be considered as products originating in the Community or Turkey, one of the Euro-Mediterranean Partnership countries with which the cumulation is applicable.

The certificate of movement EUR-MED shall contain one of the following statements in Box 7:

- If the origin has been obtained through the application of cumulation with materials originating in one or more of the countries “CUMULATION APPLIED WITH .....” (name of the country/countries);

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<sup>15</sup>

[http://ec.europa.eu/taxation\\_customs/resources/documents/customs/customs\\_duties/rules\\_origin/customs\\_union\\_s/asso-turkey\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_duties/rules_origin/customs_union_s/asso-turkey_en.pdf)

- If the origin was obtained without the application of cumulation with materials “NO CUMULATION APPLIED”.

The customs authorities issuing the certificates of movement EUR.1 or EUR-MED shall undertake all the measures necessary to verify the originating status of the products and the fulfillment of all the requirements. To this end, these have the right to call for any evidence and to carry out any inspection of the exporter's accounts or any other check considered appropriate. The customs authorities shall ensure that all forms are filled out properly. In particular, these shall be verified whether the space designed for the description of the products was filled in so as to exclude any possibility of fraudulent additions.

The date of issuing the certificate of movement EUR.1 or EUR-MED shall be indicated in Box 11 of the certificate.

The certificate of movement EUR.1 or EUR-MED shall be issued by the customs authorities and made available to the exporter as soon as the exportation is real or all conditions are ensured.

The documents proving the origin and basis of issuing the certificates of movement EUR.1 or EUR-MED are, but not limited to:

- direct proof of the operations carried out by the exporter or supplier to obtain the goods concerned, contained, for example, in its accounts or internal bookkeeping;
- documents proving the originating status of materials used, issued or prepared in the Community or Turkey, where these documents are used in accordance with the national legislation;
- The documents proving the processing or transformation of the materials in the Community or Turkey, issued or made out in the Community or Turkey, where these documents are used in accordance with the national legislation;
- The certificates of movement EUR.1 or EUR-MED or invoice declarations proving the originating status of the materials used, issued or made out in the Community or in Turkey;
- Appropriate evidence concerning the fact that processing or transformation undergone outside the Community or Turkey was not sufficient.

### **The experience of Croatia and Montenegro**

The brief description of the experience of Croatia and Montenegro was possible thanks to the prompt response to the message of the Expert Group addressed to the civil servants within the customs authorities of the countries concerned.

#### **Croatian Experience**

The procedure for issuing the preferential certificate proving the origin in Croatia is the following:

- The exporters shall submit to the customs authority a request for obtaining a certificate of origin and provide the proof of the origin of goods for export, if the conditions relating to the status of the originating goods are satisfactory. These conditions shall be determined in accordance with the special rules laid down in the Trade Agreement and Protocol relating to the origin of goods, signed between the country of export and the country of import. Based on

such a request, if the conditions on the origin state are satisfactory, the Customs Service shall issue a Certificate proving the preferential origin for goods.

- The Chamber of Commerce of Croatia is empowered with the function to issue non-preferential certificates of origin.

### Montenegro Experience

The practice of the customs authority in Montenegro to issue export certificates EUR 1 is as follows:

- When the exporter files the declaration on placing the goods in free circulation, the declarant shall fill in completely a form on the issuance of the certificates of movement EUR.1.
- The exporter shall make a declaration in the application (declaration of the exporter) concerning the fulfillment of the requirements for obtaining the status of “originating product”, as well as declares that he meets the requirements for gaining the status of “originating products”. Along with the application, the exporter presents the necessary documents confirming its declarations in full.
- Based on the application filed for getting a certificate of movement EUR.1 and additional documents, the customs authority shall verify that the requirements are met. The exporter is obliged to submit any additional evidence, at the request of the customs authorities, as may be necessary to determine the facts regarding the origin of goods, as well as undertakes to allow a control of their business documents and the direct production process.
- The certificate of movement EUR.1 may be issued only after the customs authority finds that all the requirements are met in the context of the preferential arrangements.

## Annex: Act of good acquisition

### Standardized form

Approved by Order

no. \_\_\_\_ from \_\_\_\_\_ 2013

Act of good acquisition

Seria

No.

\_\_\_\_\_ 20 \_\_\_\_

Received under the contract

no. \_\_\_\_ from \_\_\_\_\_ 20 \_\_\_\_

\_\_\_\_\_  
Name of entity, address

Fiscal Code / IDNO \_\_\_\_\_

Head of entity/ empowered person \_\_\_\_\_

Name, first name

Received goods \_\_\_\_\_

Name, first name

Delivered goods \_\_\_\_\_

Name, first name

\_\_\_\_\_  
Personal code / IDNP, ID card data, address

Name goods	Unit of measure	Quantity	Unit price	Value, lei
1	2	3	4	5= 3 x 4
Total	X	X	X	

Total value \_\_\_\_\_

in letters

Delays:

to budget \_\_\_\_\_

in letters

Paid advances \_\_\_\_\_

in letters

in numbers

Total payment \_\_\_\_\_

in letters

in numbers

Responsible persons of the entity:

Head of entity / empowered person \_\_\_\_\_

signature

Delivered goods \_\_\_\_\_

signature

Received goods \_\_\_\_\_

signature

L.S.

Declaration of the personal liability of the person that bought the goods.

Declare that the delivered goods are of domestic origin and acquired legally by me, for which I sign.

\_\_\_\_\_/name, first name/ \_\_\_\_\_/signature/

False declarations and writings, as well as the illegal appropriation of property shall be punished as provided by law.

## **Anexx: Declaration's project of the manufacturer on preferential origin of goods**

### **Manufacturer's declaration of preferential origin of goods**

I, the undersigned (name, first name) \_\_\_\_\_ declare, that the following goods:

(description of goods, tariff position) \_\_\_\_\_

according to acts of acquisition \_\_\_\_\_

from invoice/export invoice no. \_\_\_\_\_ from \_\_\_\_\_

were produced in \_\_\_\_\_

(Company name, fiscal code, or name and first name of individual person) and correspond to preferential origin criteria, according to Commission Regulation (EEC) no. 2454/1993 of 02.07.1993, having preferential origin in Moldova. Were met following operations:

1 \_\_\_\_\_

2 \_\_\_\_\_

3 \_\_\_\_\_

4 \_\_\_\_\_

5 \_\_\_\_\_

6 \_\_\_\_\_

7 \_\_\_\_\_

**Declare on my own responsibility that the procured and processed goods have origin from Republic of Moldova.**

**We assume obligation to keep for at least 3 years and to provide the customs authorities any documents required in order to justify the above.**

**Director** \_\_\_\_\_

Chief Accountant \_\_\_\_\_

L.Ş.

## Anexx: Register's project of procurement documents

### Internal register of acts of acquisition of the company

Company Name \_\_\_\_\_

IDNO \_\_\_\_\_

No.	Date of issue	Series/Number of act	Product name	acquired quantity (kg)	Name/First name of manufacturer	Address of manufacturer