

THE REGIONAL IMPACT OF FISCAL TARIFF PREFERENCES  
FOR THE IMPORT OF GOODS IN NON-EU COUNTRIES

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1. The origin of preferentiality and non-preferentiality
2. Types of certificate for goods circulation
3. Rejecting the source certificate
4. EUR 1 and EUR MED certificates
5. Conclusions

**Abstract**

*The common customs tariff of EU implies, besides applying customs taxes, granting a preferential regime to third countries whom EU agrees to do so.*

*The origin of goods represents the „economic” nationality of the goods being the object of international trades.*

*As far as that origin protocol is concerned, in order to establish a unitary work practice and eliminate ambiguities and the direct consequences they bear upon the traders and the local of budget structure, it is recommended that the evaluated goods should be assigned an as exact and through classification as possible.*

*This study is also based on the explanations provided by the central authority of customs on the purpose of emphasising the economic effects of the goods origin and the strong protective character of the customs tariff in the international trade relations.*

**1. Preferential and non-preferential origin**

The preferential proof of origin is provided for only in certain countries where the goods complied with certain criteria. These criteria are established according to protocols defining the notion of original products which are appendixes of the free trade agreements; they are also, as a rule,

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identical, irrespective of the country or group of countries the actual free trade agreement had been made on.

The preferential origin criteria require, in general, that the goods should be (sufficiently) processed or transformed besides everything that would be necessary for obtaining the non-preferential origin. However, the criterion of products obtained completely (in a country or group of countries) is applied both for non-preferential and preferential origin.

Thus, in order to benefit by the tariff advantage for import, the goods must comply with one of the following conditions: to be a product obtained completely, to be sufficiently transformed or processed, or both.

The processing or transformations providing the origin proof to the goods obtained from non-original raw materials are listed in the appendixes accompanying each origin agreement or protocol. The rule of cumulation says that goods are considered original if manufactured from raw materials going through processes which make up for insufficient supplies.

The essential fact is that granting tariff preferences for import of goods implies the presence of a document of preferential origin.

The document of preferential origin is the EUR 1 or EUR MED certificate of origin and the declaration on the invoice or the declaration on the EUR MED invoice, respectively Type A certificate or declaration on invoice for the case of the generalised system of preferences.

The form of the certificate of origin and the wording of the declaration on the invoice are internationally established and reciprocally notified, lest the confusion should be avoided in case of a great variety of forms or variants of printed documents.

Most of the situations in which the origin document is rejected derive from the incorrect filling in of the document of origin.

For a document of origin not to be rejected, the following aspects should be taken into account:

- the declaration must be made out by an „authorised” exporter and the value of the goods should be less than 6.000 EUROS;
- the declaration on invoice must be given to the customs authorities of the import country within two years from the import to which it refers;

In all these cases, the customs authorities of the import country can demand the "a posteriori" control, the result of which will determine the granting of tariff preferences.

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If the declaration contains unimportant errors of form and there are no other reasons for rejection, the customs authorities of the import country can grant the tariff preferences provided by the protocol, but it is advised that the document should be forwarded to the "a posteriori" control.

### **2. Types of certificates for the circulation of goods**

#### **2.1. Type A Certificate**

The Type A certificate is used by the countries which benefit by the preferences stipulated by the General System of Preferences (the GSP EU granted unilaterally facilities for the import of goods coming from these countries and complying with the criteria of origin provided by Reg. 2454/93).

The model of this certificate is in appendix 17 accompanying Reg. 2454/93, and the reasons for which the granting of tariff preferences can be rejected are similar to those mentioned for EUR 1 and EUR MED certificates.

#### **2.2. A.TR. Certificate**

The A.TR. certificate is not a proof of origin, but a proof of the condition of goods ready to circulate freely in Turkey (or in the Community) in the Customs Union between EU and Turkey.

In case of suspicions, the customs authorities of the importing country can refuse the granting of customs taxes exemption if they have consistent reasons and they also can send the document to the "a posteriori" control.

#### **2.3. Declaration on invoice**

The declaration on the invoice represents a proof of origin achieved in a simplified manner by the exporter.

A declaration on the invoice can be made out by:

- any exporter for a transport consisting of one or more parcels with original goods with a total value of no more than 6.000 EUROS

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- any authorised exporter, in case the value of the parcels or goods in a transport is over 6.000 EUROS.

In Romania, the legal basis for authorising the exporters for issuing in a simplified manner the documents of preferential origin within the scope of the agreements that rule the preferential trade between the Community and the partner countries and of the A.TR. certificates confirming the condition of goods freely circulating within the EU - Turkey Customs Union is represented by the Methodological Norms approved by the Decree of the ANV Vice-president no. 4822 of 13 April 2007.

The text on the declaration on invoice is written on an appendix of each protocol of origin. For the GSP, the text of the declaration on invoice is given in appendix 18 of Reg. 2454/93 - RVC.

A declaration regarding the origin of the goods can be made on the invoice which accompanies the goods, on the delivering document or on another commercial document, by typewriting, stamping or printing it, only if the goods to which it refers comply with the criteria for conferring preferential origin.

The declaration on invoice must be signed by hand (holograph) in original by the exporter, save the case in which the exporter is authorised and handed a written commitment to the customs authority from the exporting country by which they take the responsibility for each declaration of origin identifying them.

Taking into account the conditions a declaration on invoice need to carry out, the importing customs office can refuse reasonably the granting of tariff preferences in the following situations:

- when the text of the declaration differs significantly from the text stipulated in the agreements;
- when the declaration is made by an „unauthorised” exporter and is not and the original is not hand-signed;
- when the invoice is presented in copy;
- when there are incongruities between the documents and the goods they refer to;
- the stamp which was used is not the notified one (even when the stamp is new but it was not notified yet);
- the certificate is presented in copy (of any kind);
- the countries mentioned in columns 2, 4 or 5 are not parts of the Agreement considered (eg., Ukraine or Cuba);

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The Customs office to whom the EUR 1 or EUR MED certificate is presented can offer other reasons of refusal, besides those mentioned above, if they can justify them.

In case a Customs office needs to reject a EUR 1 or EUR MED certificate, the following mention should be written on it: "**UNACCEPTED DOCUMENT**", and also the reason or reasons which led to the rejection should be given, returning it to the importer, so that the latter could obtain a new EUR 1 or EUR MED certificate. In this case, the import customs office will not grant tariff preferences and will keep a copy of the rejected certificate.

Failure to accept an EUR 1 or EUR MED certificate represents a reason for issuing an "a posteriori" certificate.

Also, the import customs office accepts the certificate but refuses to **grant the tariff preferences** in the following cases:

- the certificate is presented beyond the effect period (4 months from the issuing date, except the special case of the "Copy" EUR 1 or EUR MED certificate, which is also effective for 4 months, but starting from the issuing date of the first certificate). In such situations, the importer will present a new certificate issued "a posteriori". Taking into consideration the conditions in which an "a posteriori" certificate can be issued, such a certificate must not be accepted for granting tariff preferences;

- when there are discrepancies between the dates contained in the certificate and those in the other documents which accompany the goods. In this situation, the respective certificate will be sent to the "a posteriori" control, granting or not granting the tariff preferences depending on the answer received. If, within 10 months passed from the request of the control, no answer is received, the import customs office can decide if they grant or not the tariff preferences, taking into consideration the specific elements that they have (including the reason for which the control was demanded);

- when there are errors of form in filling in the certificate, which do not influence the content, the customs office will grant the tariff preferences, sending the certificate to control at the same time.

In the situation in which an EUR 1 or an EUR MED certificate was issued after the goods it refers to were exported, the following mention should be made in box 7: "*issued retrospectively*".

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In case an EUR 1 or an EUR MED certificate was issued instead of a previous one, which was lost, destroyed, etc, in box 7 the mention "*duplicate*" will be made. This is an exact copy of the first certificate.

In the situation in which the goods were supervised by the customs authority, an EUR 1 or an EUR MED certificate (substitute) will be issued based on the original document, but the norms do not provide a special mention for box 7. However, the mention "*it replaces EUR 1 (EUR MED) no...*" or similar ones may be made.

In all the cases, at the import customs office, granting the tariff preferences can be requested only presenting the original EUR 1 or EUR MED certificate. It would be impossible to issue a duplicate or a substitute certificate for a certificate which was considered incorrect and therefore refused.

### 3. Rejecting the certificate of origin

In order to apply the preferential tariff rules, the customs authorities in the import country will check both the goods and the certificate of origin, with the accompanying documents presented by the importer.

In case the document is correctly filled in and there are no discrepancies or good reasons of suspicion, the facilities provided by the import customs tariff will be given according to the agreement between the customs authority and the holder of the import customs declaration.

An EUR 1 or EUR MED certificate of origin can be rejected for "*technical reasons*", if it was not made or filled according to the legal procedures from the agreements concluded. Rejecting a certificate of origin for technical reasons is one of the reasons for issuing an "*a posteriori*" certificate.

The technical reasons leading to an EUR 1 or an EUR MED certificate to be rejected are as follows:

- the certificate was made out on a form other than the one which was established (eg. without a special background, or which differs from the form agreed upon regarding the sizes, form or colour, which has no series or number or which is printed in another language than one of the official languages etc.);
- one of the mandatory columns was not filled in (ex. R1, R8, R9 etc.);

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- lack of stamp and signature (ex. R11);
- the certificate is approved by another (customs) authority than the one which was designated and notified;
- the certificate is not approved (at all) by the competent authority.

### **4. EUR 1 and EUR MED certificates**

These certificates are presented as sets containing the certificate form, the application form and the exporter's declaration. These forms are filled in by the exporter or by its representative. The boxes without the note "*optional mention*" must be obligatorily completed.

When the certificate is approved, the customs authorities keep the application form and the declaration of the exporter. The following aspects will be considered when completing the application:

- when it is handwritten, capital letters will be used, as well as ink or pen;
- the declaration of the exporter must contain the reasons for which the respective goods are considered original (the criteria of origin taken into consideration), as in the applicable agreement;
- the exporter must be able to hand in to the customs authority all the documents and information which support the request for the certificate and the statement regarding the origin of the goods;
- the exporter or their representative is obliged to sign the declaration.

For certificate, besides the above mentioned, the following will be considered:

- the information regarding the goods must be specific and allow their identification with ease;
- the column with information about the goods must be completed so that no changes or additional data can be added, without space between lines or words; after the last line a horizontal line will be drawn and the rest of the space crossed;
- if the space for the description of the goods is not sufficient, the exact description will be made on another document (invoice, inventory list etc.);
- the name of the country or the group of countries the goods come from must be written in the form (box 4); it is not mandatory that the country of the group of countries of origin should be the same as the one in which the document of origin was issued (to the extent in which certain pre-established conditions, in the protocols of origin are carried out);

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- for the EUR MED certificate, box 7 must also contain the mention "*cumulation applied with...*" or "*no cumulation applied*".

It is important to keep in mind that on the back of the EUR 1 or EUR MED certificate only official mentions should be made.

### 5. Conclusions

The customs tariff of import is the main instrument for regulating the external commercial exchanges, corresponding to the national economic interests of the states. This practice of the international trade was made legal in art. XI of the General Agreement for Tariffs and Trade (GATT) which stipulates that the contract parts of this agreement will not have and will not back other restrictions for import besides the customs tariffs.

Enacting the Common customs tariff of the EU means, besides the implementation of the customs taxes<sup>1</sup>, based on the clause of the most favoured nation, stipulated by this tariff towards the third countries benefiting by this clause, granting a preferential condition to the third countries, to whom the EU consents such a condition, based on certain association agreements, agreements of free trade on certain plans and preferential customs systems<sup>2</sup>. It is the case of the countries in AELS - Switzerland, Norway, Iceland and Liechtenstein; the Mediterranean countries, with which EU is to create a Euro-Mediterranean free trade area up to 2010 (some association agreements of Israel, Tunis and Maroc with the EU are already effective); the ACP countries (71 countries of Africa, the Caribbean and the Pacific, having participated in the Lomé Convention); the countries of Latin America, with which the EU concluded and will conclude agreements of free trade (Mexico, Chile, Argentina, Paraguay and Uruguay); the countries which took part in the Council for the cooperation in the Gulf - Saudi Arabia, the United Arab Emirates, Kuwait, Bahrain, Oman and Qatar; the countries which benefited from the generalised system of preferences (GSP), all in all about 150 countries and territories at present.

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<sup>1</sup> E.Bălan, *Financial Legislation*, Ed.C.H.Beck, București, 2007, pp.170

<sup>2</sup> D.D.Șaguna, D.Șova, *Fiscal Legislation*, Ed.C.H.Beck, București, 2008, pp.249



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Theoretically, all the products can benefit by the preferential origin. In fact, a country (member of EU) will not grant preferences for the goods it considers be sensitive for its industries (see Table 1 and 2). Therefore, such commercial instruments and fiscal provisions need to be carefully negotiated between the parts of a commercial agreement as they can have an important regional impact for the import of goods from the non-EU countries.

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**Table 1- EA16 trade - non seasonally adjusted data (bn euros)**

EA16 trade - non seasonally adjusted data bn euro Flows	Aug 08	Aug 09	Growth	Jul 08	Jul 09	Growth	Jan-Aug 08	Jan- Aug 09	Gr o wt h
Extra-EA16 exports	116. 5	89.7	-23%	142.5r	116.7r	-18%r	1,045.4	817.8	- 22 %
Extra-EA16 imports	127. 7	93.7	-27%	147.1r	104.4r	-29%r	1,085.9	812.7	- 25 %
Extra-EA16 trade balance	-11.3	-4.0		-4.6r	12.3r		-40.5		5.2
Intra-EA16 dispat-ches 4	107. 7	89.8	-17%	138.2r	110.5r	-20%	1,067.0	834.8	- 22 %

Eurostat - newsrelease Euroindicators 147/2009 - 16 October 2009  
Sursa: <http://ec.europa.eu/eurostat/euroindicators>

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**Table 2 - EU 27 trade - non seasonally adjusted data (bn euros)**

EU27 trade - non seasonally adjusted data bn euros Flows	Aug 08	Aug 09	Growth	Jul 08	Jul 09	Growth	Jan-Aug 08	Jan-Aug 09	Growth
Extra-EU27 ex-ports	99.2	79.3	-20%	121.9	101.0r	-17%r	872.1	701.3	-20%
Extra-EU27 im-ports	127.9	91.4	-28%	145.4	100.4r	-31%r	1,052.7	781.9	-26%
Extra-EU27 trade balance	-28.7	-12.1		-23.4r	0.6 r		-180.6	-80.6	
Intra-EU27 dis-patches 4	192.7	154.3	-20%	237.0	186.6 r	-21%r	1,842.1	1,409.1	-24%

Eurostat - newsrelease Euroindicators 147/2009 - 16 October 2009  
 Sursa: <http://ec.europa.eu/eurostat/euroindicators>