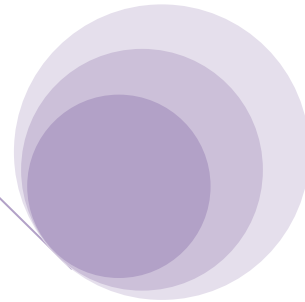
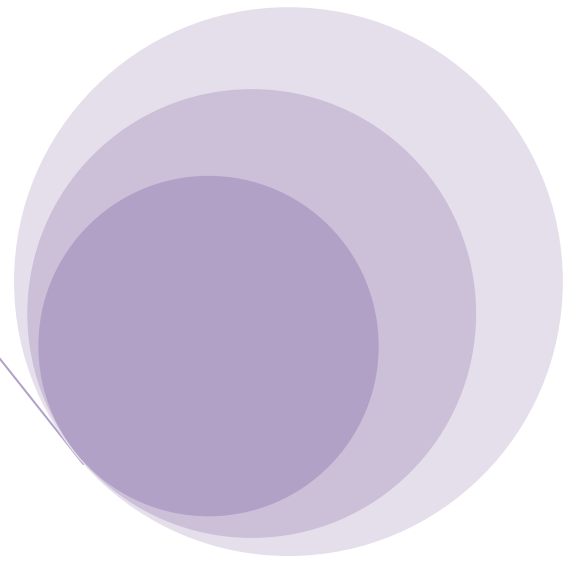


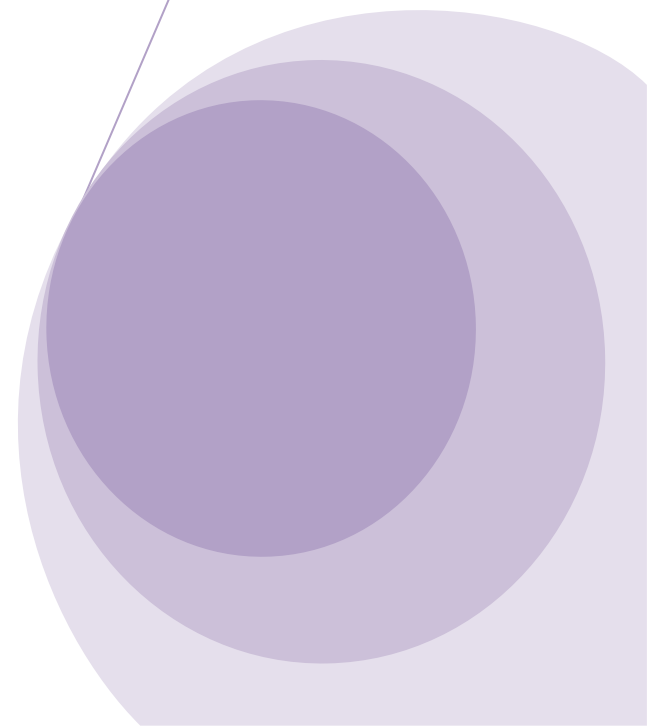
**Eurasia Partnership Foundation
Europe Program**



Towards Eastern Partnership Civil Society Forum

Occasional Policy Brief: Barriers to External
Trade in Armenia
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Barriers to External Trade in Armenia

Introduction

Armenia-European Union (EU) relations are governed by the Partnership and Cooperation Agreement signed in 1996. Afterwards, Armenia was included in the EU Neighborhood Policy, as part of which a five-year Armenia-EU joint action plan was developed and approved in 2007. Under this program, Armenia was obliged to implement legislative and administrative reforms regulating the areas of trade and the economy. Armenia is included in the EU's comprehensive Generalized System of Preferences (GSP+), which allows all goods of Armenian origin, except weaponry, to be imported into EU territory with either zero or a preferential customs duty.

Armenia, after its inclusion in the EU's Eastern Partnership (EaP) program, received the opportunity to negotiate and sign an Association Agreement with the EU, which also assumes the signing of an Armenia-EU Deep and Comprehensive Free Trade Agreement (DCFTA).

Deep and Comprehensive Free Trade assumes the complete mutual harmonization of the legislative and administrative systems as well as institutions and other tools relating to external trade. As a result of this, it will be possible to have free movement of goods between Armenia and the EU, ruling out tariff or non-tariff barriers of any kind.

Since independence, the legislation governing the trade and economic sphere in Armenia has been developed based on international standards, providing for free economic competition, legislative transparency, reduction in administrative processes, exclusion of bias, the possibility of free external economic activity and so on.

The liberalization of the trade and economic sphere in Armenia truly began with government decision N 124 “regarding the non-tariff regulation of the import and export of goods (labor and services) in the Republic of Armenia (RA)” taken in 1995¹.

In order to keep international trade and economic relations at a decent level, Armenia signed a series of bilateral and multilateral trade agreements.

Through adequate legislation, Armenia also secured its membership in a number of international organizations, in particular the World Trade Organization (WTO). Armenia became a WTO member in 2003.

The government has taken a number of steps aimed at the development of small and medium enterprises (SME) -

- RA government decision number N594-A (2009), according to which inspections in SMEs by state bodies are restricted for certain time
- administrative improvements, a reduction in the number of reports due to be presented to state bodies
- a simplification of the tax system, exemption from Value Added Tax
- a pardon of the penalties accrued by SMEs due to unpaid taxes and fees
- financial support from the state budget
- tax guarantees
- tax delays in some cases (ex. VAT payment at the border for imported equipment),
- numerous privileges for SMEs
- SME support centers and so on

Nevertheless, despite the transparent and progressive legislation in line with international standards, Armenia continues to have a monopolistic economy with corruption and other negative features.

¹ <http://www.arlis.am/>

According to reputable international organizations, Armenia is behind most other countries based on a number of criteria relating to the economy. In particular, based on indicators of anti-trust and economic competition, customs and tax administration, Armenia is part of the bottom ten countries in the world (World Economic Forum²).

Those involved in external economic activity in Armenia often complain about the current procedures at customs borders, the unfairness of the due fees and their lack of justification, the administrative processes, standardization procedures and other issues. As a result of this -

- the value of imported and exported items is increased
- the competitiveness of Armenian businessmen is reduced in foreign markets
- the possibility arises of an unfair environment for competition in the domestic market, as a result of the administrative processes.

The main reasons for the development of these issues are –

- imperfections in the laws and legislative acts
- shortcomings in the system for appealing against decisions taken by state bodies
- corruption risks
- an inadequate level of knowledge among businessmen about the legislation

Evaluation of Customs Value

A very important issue for the improvement of external trade conditions in Armenia is the evaluation of customs value.

In order to determine the customs value, the customs bodies in Armenia either apply the transaction price method (Customs Law article 87) or, more often, a method that is prohibited by the RA Customs Law and international agreements, which is the determination of

² <http://www.weforum.org/issues/global-competitiveness>

customs value based on indicator prices. Based on the clauses on customs value determination in the RA Customs law and the WTO agreement, it is prohibited to determine the customs value through arbitrary methods or the use of minimum or maximum value³.

The use of the transaction price method to determine the customs value is a difficult one and is full of corruption risks. Any case of the determination of the customs value and the calculation of due payments through this method must be presented to the head of the State Revenue Committee for approval. The discussion of each case can take up to 5 days after presentation, which is a serious barrier. At the same time, most cases do not receive a justified negative decision, and if a negative decision is absent, the businessman cannot appeal through a court process against the decision taken by the customs bodies.

International experience shows that the strict fiscal supervision at the customs border is less effective than the relatively liberal customs supervision; instead the supervision at the post-delivery stage is usually made stricter.

The efficacy of the customs supervision and an improvement in Armenia's reputation would be possible **through the introduction of a system of inspections based on risk assessment**. Despite the fact that the Armenian government is receiving support from international organizations to develop and introduce a system of risk assessment and the Armenian legislation is periodically improving in this area, **no changes are being noted in the area of implementation**.

Non-tariff Regulation

Besides tariff regulations, goods being moved through a customs border are also subject to non-tariff methods of regulation. The mechanisms of non-tariff regulation are outlined by laws regarding Technical Barriers to Trade, legislation regarding Sanitary and Phytosanitary activities as well as permits and legislations regarding licensing. Armenia does not apply any quantitative

³ RA Customs Law article 93 and article 7 of the WTO agreement on customs value determination, the commentary of the WTO technical committee on the determination of customs value http://www.wto.org/english/docs_e/legal_e/legal_e.htm#artvii

or price limits for import or export (quotas). In some cases, for imported goods, especially in order to avail of a privileged customs status⁴, it is necessary to produce a certificate regarding the origin country. The rules regarding the origins of goods are defined by the Customs Law and are in harmony with the clauses in the WTO “Rules of Origin” Agreement.

In Armenia, a certificate of origin is given by the Chamber of Commerce and the necessary expertise is provided by ArmExpertise, created by the Chamber of Commerce. In order to begin the negotiation of a free trade agreement with the EU it is necessary to take a number of preparatory actions, one of which is the transfer of the right to provide the certificates of origin to a state body, like the RA Customs Body.

The main legislative acts regulating the technical barriers in Armenia are -

- The Law on Standardization
- The Law on Evaluation of Correspondence
- The Law on Uniformity of Measurements
- Legislation regarding consumer rights

In order to gain membership to the WTO, Armenia has developed its legislation regulating Technical Barriers to Trade mainly along the lines of WTO requirements. However, during the course of DCFTA negotiations with the EU, a need has arisen to review the legislations and make it correspond to international best practice and EU requirements.

The DCFTA can have a positive impact for the Armenian economy and economic actors in the country only when non-tariff mechanisms of regulation are harmonized with EU procedures. Merely the reduction of customs tariffs to zero would not lead to benefits from Armenia-EU trade and would damage the Armenian economy: income for the state budget would reduce on the part of customs fees. Furthermore, in case of zero-level customs fees, the

⁴ The free trade agreement in place among CIS countries, the system of import privileges (GSP) provided to the Republic of Armenia by the EU, USA, Canada

prices of goods imported into Armenia would decrease, which would have a negative impact on the competitiveness of local goods in the domestic market.

Legislative improvements

The issues mentioned above are obstacles for the development of small and medium enterprises in Armenia and work in favor of further monopolization of the economy in Armenia⁵.

In order to achieve sustainable development of the economy, it is necessary to rule out any possible ambiguity in the implementation of legislation, to clarify procedures and reduce corruption risks.

The importance of technical barriers in customs and trade as well as options for their resolution have also been presented as part of the pre-conditions outlined by the EU in their direct budget support program⁶.

The current laws and the institutional field lead to the operation of an unproductive infrastructure. They do not fully reflect the norms, guidelines and proposals of international organizations such as ISO/IEC, OIML and WTO. In particular, as part of cooperation efforts with the WTO and EU, Armenia is obliged to make the implementation of national standards voluntary and leave only technical mechanisms for mandatory implementation, but national standards continue to be mandatory to this day, in contradiction with international obligations.

Conflict of interest

In order to rule out conflict of interest, the main structures in the quality system – the National Standards Institute, the National Institute of Metrology, the Accreditation Agency and the Quality Inspection - must not be interconnected, but they are all under direct subjugation to the RA Ministry of Economy, which makes their political independence impossible. The

⁵ <http://www.heritage.org/index/country/armenia>

⁶ http://ec.europa.eu/europeaid/documents/aap/2010/af_aap_2010_arm.pdf

collaboration of these structures with other stakeholder structures is not clear, in particular, with the Ministries of Health, Nature Protection, Agriculture and Emergency Situations⁷.

An important obstacle to the development of national standards is the certification work done by the National Standards Institute, which leads to a conflict of interest. The standardization process in Armenia is not open and transparent and it does not reflect the interests of the participating parties. For example, producers and consumers are presented inaccurately in the standardization process.

The Accreditation Agency, being under direct subjugation to the Ministry of Economy, is not recognized outside of Armenia. From a political point of view, the agency is not independent because it is part of the Ministry of Economy and the accreditation bears the signature of the Minister.

The council developing accreditation policy and the technical council taking accreditation decisions are also not separated.

The shortcomings mentioned above are technical barriers to trade and go against the obligations taken on by Armenia, in particular, against the WTO Agreement on Technical Barriers to Trade⁸. These shortcomings allow the use of ambiguous approaches, which do not facilitate external trade in Armenia or allow an improvement in the investment field in the country. These shortcomings are a source of baseless administrative procedures and increase the costs of external trade.

Conclusion

Thus, the system for the evaluation of customs value and technical barriers to trade, being “border” issues, are the main obstacles against the development of business in Armenia and the formation of a fair and competitive environment.

In order to improve the business environment, investment rating and competitive atmosphere, it is necessary to implement a coordinated reform program aimed not just at legislative changes, but also at implementation of the legislation.

⁷ <http://www.mineconomy.am/upload/file/Karl-Christian%20Goethner.pdf>

⁸ Report of the Working Group on Armenia’s Membership to the WTO, published by the RA MFA, 2004.06.11/2(10)

The issues mentioned are also an obstacle to the further development of Armenia-EU economic relations. While these issues are present, it will not be possible to have a free trade regime with the EU, which has also been confirmed through studies conducted by EU experts and the preconditions stated before the initiation of DCFTA negotiations⁹.

Proposals for the Improvement of the Customs Sector

Customs law in Armenia largely corresponds to international standards and the country's obligations, but the issues arise in applying the law. Suitable proposals are -

- to raise awareness among subjects involved in Armenia's external economic activity about the rights provided to them through the current legislation.
- to encourage the development and independence of the representative agents of business community – unions and NGOs – which would defend the interests of the businesses and facilitate their protection.

Businessmen, having a certain dependence on state bodies - particularly customs bodies - and being deprived of an effective mechanism to dispute the decisions taken by customs bodies, have an objective concern that disputing those decisions could have a negative impact on their further operations. However, independent organizations with a high level of awareness, which are less vulnerable to injustice by state bodies, can be more effective in fighting for the protection of businessmen's interests.

Proposal for the Removal of Technical Barriers to Trade

There is a need for legislative and institutional reforms in the field of quality management. To this end, the government developed and, in 2010, accepted the Strategy for the Reform of the Quality Infrastructure System in Armenia¹⁰. However there are no indicated funds in state budget as of 2011.

⁹ Preparatory process for possible future negotiations of a deep and comprehensive free trade agreement (DCFTA) between the EU and Armenia. Follow-up of the European Commission's services' fact-finding trade mission to Armenia on 18-19 February 2009

¹⁰ Government decision N 1693, dated 16 December 2010, regarding "the approval of the Strategy for the reform of the Quality Infrastructure System in Armenia"

- Taking into consideration the fact that the issues mentioned cannot be solved for all sectors at the same time, it is proposed to select those groups of industrial goods which have great perspective for Armenia as export goods, and to arrange the harmonization of legislation, sub-legislative acts, infrastructures and other systems with EU legislation and procedures for these goods¹¹.

¹¹Directive 98/34/EC, Regulation (EC) No 765/2008, Decision of the European Parliament and the Council No 768/2008, European New Approach Directives, Directive 2001/95/EC, Directive 85/374/EEC, etc.

EPF's Europe Program exists since January 2009. Its goal is contribution to productive implementation of the Eastern Partnership in Armenia. EPF disseminates information about the European Union and EU-Armenia relations, develops mechanisms for productive reform in the system of higher education, etc.

In May, 2011 EPF invited leading experts to conduct 5 researches on various aspects of the Eastern Partnership implementation in Armenia. The present summary introduces major outcomes of one of the papers.

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Authorship and Disclaimer

This analysis has been conducted by a lead expert on economic integration and external trade issues, Vahagn Ghazaryan, at the request of the Eurasia Partnership Foundation (EPF) as part of its Europe program, with the support of the Swedish International Development Agency (SIDA). The conclusions are those of the author and do not necessarily reflect the views of EPF and SIDA.