Barcode:4480810-01 A-831-804 CCR - Changed Circumstances - NME reevaluation 2023

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MINISTRY OF ECONOMY
OF THE REPUBLIC OF ARMENIA
MINISTER

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PUBLIC DOCUMENT

The Honourable Gina Raimondo
Secretary of Commerce
U.S. Department of Commerce
Attn: Enforcement and Compliance
APO/Dockets Unit, Room 18022
14th Street and Constitution Avenue, NW
Washington, DC 20230

Case No. A-831-804
Total Pages: 10
Changed Circumstances Review
CCR- NME Reevaluation 2023

Re: Request for the U.S. Department of Commerce to Initiate a Changed Circumstances Review of the Antidumping Duty Order on Aluminum Foil from the Republic of Armenia

Dear Secretary Raimondo:

On behalf of the Government of the Republic of Armenia ("Armenia"), we hereby respectfully request that the U.S. Department of Commerce (the "Department" or "Commerce") initiate a Changed Circumstances Review ("CCR") of the antidumping duty order on aluminum foil from the Republic of Armenia, pursuant to Section 751(b) of the Tariff Act of 1930, as amended and 19 C.F.R. § 351.216. Changed circumstances sufficient to warrant a review exist because since the dissolution of the Soviet Union, the Government of Armenia ("GOA") has implemented economic and institutional reforms to such an extent that its economy

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Barcode:4480810-01 A-831-804 CCR - Changed Circumstances - NME reevaluation 2023

operates upon market principles of cost and pricing structures so that the sales of merchandise in Armenia reflect the fair value of merchandise according to the factors examined by the Department under section 771(18)(B) of the Tariff Act of 1930, as amended ("the Act"). Specifically, with respect to the convertibility of the Armenian currency, the setting of wage rates, the permission of joint ventures and foreign investments, the extent of government control of the means of production, the extent of government control over the allocation of resources, and other factors, the Armenian economy has transformed to such an extent that Armenia should not be considered a "nonmarket economy" (NME) pursuant to section 771(18)(B) of the Act.

I. Commerce Practice

The Department has treated Armenia as an NME country in all past antidumping proceedings and has not issued a change-of-status memorandum regarding its NME classification. According to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority.

We hereby submit that sufficient evidence exists demonstrating that Armenia has undergone significant structural economic changes and reforms since gaining independence in 1991, which warrants its re-designation as a market economy. These changes are highlighted below.

II. Factors Relevant to NME Determination

Under section 771(18)(C)(ii) of the Act, Commerce may make a determination on whether a particular foreign country is an NME "at any time". Section 771(18)(B) of the Act provides that in making such determinations Commerce shall take into account the following factors:

(i) the extent to which the currency of the foreign country is convertible into the currency of other countries,

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(ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management,

(iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country,

(iv) the extent of government ownership or control of the means of production,

(v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises, and

(vi) such other factors as the administering authority considers appropriate.

Below, we provide a brief account of the developments in the Armenian economy with respect to each of those factors.

A. The Armenian Dram Is Freely Convertible into The Currencies of Other Countries

Following independence in 1991 and the establishment of a domestic monetary system, Armenia took quick steps to liberalize its foreign exchange market and capital flows. In 1992, Armenia joined the International Monetary Fund ("IMF") and assumed obligations under sections 1, 3, and 4 of Article VIII of the IMF Articles of Agreement. Since 1996, Armenia has been maintaining a floating exchange rate regime, consistent with the principles of liberalized capital account operations and implementation of an independent monetary policy. In its latest country report, the IMF acknowledges that Armenia has a floating exchange rate regime.

Armenia's foreign exchange regulation is codified in the 2004 Law "On Currency Regulation and Currency Control", which provides for the absence of restrictions on current currency operations, the right of resident and non-resident entities to trade in foreign currency and transport foreign currency over Armenian border, establishes the principles on which the market for currency exchange in Armenia functions.

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Barcode:4480810-01-A-831-804 GCR - Changed Circumstances - NME reevaluation 2023

In sum, the absence of capital and exchange restrictions, secured by the relevant laws and regulations, ensures the free convertibility of the Armenian dram. The existing relatively liquid foreign exchange market guarantees the convertibility of the dram to major global and regional currencies.

B. Wage Rates in Armenia Are Determined by Free Bargaining Between Labor and Management

The Armenian labor market operates on market principles. This is underpinned by a comprehensive regulatory framework based on international norms and standards. As such, Armenia has ratified 29 International Labor Organization ("ILO") conventions and joined the United Nations Convention on the Elimination of All Forms of Discrimination against Women. The Armenian Constitution and Labor Code provide for protection of workers' rights, including the right to form and join trade unions, the right to decent working conditions, limitation of maximum working hours, daily and weekly rest, paid annual leave, equality of the rights and opportunities of the workers, the right to strike, and the prohibition of any discrimination with respect to employment or wage-setting.

In line with market economy principles, employees' wages in Armenia depend on the available supply and demand in the labor market, the quality and quantity of labor, the results of the enterprise's activities. The Armenian Labor Code, adopted in 2004, clearly states that an employee's salary depends on the employee's qualification, as well as conditions of employment, quality, amount, and complexity of work.

To protect workers' rights, Armenian law provides for a statutory minimum wage. However, the labor market dynamic is not distorted by the presence of a minimum wage as such, between 2001 and 2023 the statutory minimum wage increased from 5,000 AMD to 75,000 AMD (taxes paid from wages, social or other mandatory payments defined by law, any additional remuneration paid by the employer to the employee are not included), while average monthly nominal wages in the market increased from 24,483 AMD to 262,957 AMD. Wages are higher in regions and sectors that are more productive and lower in regions and sectors with lower productivity.

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For many years, wages offered by organizations in the private sector have been more competitive than the wages offered in the state sector, which facilitated the movement of more than two thirds of the Armenian workforce to the private sector.

C. Joint Ventures or Other Investments by Firms of Other Foreign Countries Are Permitted in Armenia

Armenia maintains a friendly and open foreign investment regime. Foreign investors are allowed to carry out investments in Armenia and create joint ventures in its territory. In addition, Armenian legislation provides various guarantees to investors and protections for their investments, as well as certain privileges.

According to the 1994 Law "On Foreign Investments", foreign investors are entitled to create enterprises, branches, divisions, and representative offices, take ownership of existing enterprises, found joint ventures with Armenian residents, acquire shares in existing enterprises, acquire stocks, bonds and other securities, acquire land use rights and other property rights and perform other forms of investment in Armenia. This law also provides numerous guarantees to investors, including national treatment, free and unlimited repatriation of property and profits, unlimited currency exchange on market rates, duty free import of property for the institution of chartered capital of an enterprise, the right to exploit natural resources through concession contracts, the absence of restrictions for personnel recruitment, and others. In accordance with the 1997 Law "On Privatization of State Property" foreign entities have the same rights of participation in privatization of state assets as Armenian entities.

The applicable legal framework ensures that foreign investors have full access to courts of justice, administrative tribunals and agencies and all other judicial authorities. International arbitration is available to investors whenever investments are covered by bilateral investment treaties ("BITs"), of which Armenia has more than 40 in place.

Armenia's FDI stock increased from non-existent in 1991 and comprised USD 5,2 billion at the end of 2020. As of 2022, there are more than 2,400 foreign enterprises in Armenia.

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Armenia has achieved respectable rankings on some global indices measuring the country's business climate. For instance, World Bank's "Doing Business 2020" report ranks Armenia 47th among 190 countries in terms of favorable business conditions. Armenia is included in OECD Foreign Direct Investment Regulatory Restrictiveness Index, securing a spot in the top 9 among 70 countries. Heritage Foundation's 2023 Index of Economic Freedom ranks Armenia 50 among 176 states.

D. The Government of Armenia Does Not Own or Control the Means of Production to A Significant Extent

Since the declaration of Armenia's independence, legal norms governing access to the means of production have been based on the inviolability of private property and freedom of economic activity. As such, the Armenian Constitution establishes that everyone shall have the right to possess, use and dispose of legally acquired property at his or her discretion.

In furtherance of this principle, the Armenian Land Code, adopted in 2001, provides for right of ownership of citizens and legal entities over land plots which can be acquired through privatization, inheritance, purchase and sale, donation of state and community lands and other transactions.

Armenia's employed population is primarily engaged in the private sector – as of 2022, around 76% of Armenian workers are employed by non-public sector.

Between 2000 and 2021, the share of the public sector's contribution to annual Gross Value Added of Armenia decreased from 20% to 6,2%, while the share of the national private controlled sector's contribution increased from 63% to 69,1% and the share of the foreign sector's contribution increased from 16% to 24,7%. In 2021, the share of population employed in the private sector was 73.1% of the total employed population.

With respect to the financial sector, these developments have been yet more pronounced: as such, the share of gross value added by financial corporations in public ownership declined from 42% in 2000 to just

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2,4% in 2021, while the share of privately-owned financial corporations increased – from 25% to 52% for domestically-owned and from 33% to 45,3% for foreign-controlled corporations.

In 2021, the share of the public sector in the value added of financial sector is 2.4%, national private controlled sector – 52.3%, foreign sector – 45.3%.

All banks in Armenia are privately owned. The banks collectively account for more than 80% of total assets in the financial market. Armenia's loan-to-GDP ratio increased more than tenfold in the last two decades.

Over the past years, Armenia has put in place a functional infrastructure for the sale and purchase of shares, bonds and other securities – in particular, through the adoption of the law "On the Securities Market" in 2007, the creation of the Armenian Securities Exchange and the Central Depositary of Armenia.

E. The Government of Armenia Does Not Have Significant Control Over the Allocation of Resources or Over the Price and Output Decisions of Enterprises

Freedom of economic activity, protection of economic competition, improvement of business environment, promotion of entrepreneurship, as well as protection of consumers' interests, are among the basic rights guaranteed by the principal legal acts applicable in Armenia.

The Armenian Civil Code, adopted in 1998, defines doing business as making a profit from the use of property, the sale of goods, the performance of works or the provision of services. Armenian civil legislation guarantees free movement of goods, services and financial means throughout the country's territory, equality of subjects, autonomy of will, freedom of contract, judicial protection, inviolability of property, private affairs, inadmissibility of arbitrary interference in private cases, etc.

Prices in Armenia are set freely by market forces, with limited exceptions for public services (natural monopolies) where the state intervenes in the tariff-setting process to various extents. These include the provision of water, electricity, natural gas, fixed telephony (partially) and universal postal services. However,

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numerous initiatives of the independent national regulatory authority in cooperation with the Government of Armenia are implemented with a view to liberalizing sectors where tariff regulation is present. In particular:

(i) The scope of tariff regulation in telecommunication sector has been reduced; and

(ii) From 1 February, 2022, the electricity wholesale and retail markets switched from a fully regulated model to a new, more liberal model.

According to the Civil Code, the Code of Civil Procedure, adopted in 2018, and the law "On Bankruptcy", adopted in 2006, bankruptcies are allowed in Armenia. The World Bank estimates that the parameters of the insolvency procedure in Armenia are comparable to OECD averages.

Armenia's government procurement accounts for 7-9% of its GDP and, as enshrined in the 2016 law "On Procurement", is chiefly organized through competitive procedures. Armenia has been a Member of the WTO Government Procurement Agreement since 2011.

F. Other Factors Indicate That the Armenian Economy Operates on Market Principles

Armenia is persistent in its fight against corruption. It has introduced various mechanisms to ensure that corruption is eradicated in public service. These include wide-ranging declaration requirements for public officials, broad mandates for anti-corruption authorities, judicial reform and promotion of ethical and anti-corruption compliance in the private sector. In 2017, Armenia enacted a law "On the Corruption Prevention Commission", which foresaw the creation of an independent anti-corruption watchdog.

On November 19, 2019, the Parliament elected the first composition of the Corruption Prevention Commission, which essentially initiated the activities of the Commission. Now, the Commission carries out the full function of preventing corruption at the level of the entire Republic. One of the functions already established and implemented by the Commission is the receipt and analysis of declarations on property/assets,

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income, interests, and expenses of public office holders and their family members. The total number of declarants is around 35,000.

A separate specialized department of the Commission monitors and supervises public officials and public servants' compliance with the incompatibility requirements defined by the national legislation. This is a key function in the separation of official duties and business activities, as well as the separation of business interests and the public interest. The Law on Public Service imposes an absolute ban on business activities by public office holders and public servants. Additionally, efforts have been underway since 2022 to improve a trust management institute.

The Commission also conducts integrity check for candidates for various state positions, particularly judges, prosecutors, and investigators. This practice serves as a means of preventing unscrupulous individuals from entering the public system.

As a result, Armenia's score in the Transparency International Corruption Perceptions Index has significantly improved in the last 10 years: from 36 in 2013 to 46 in 2023.

Over the past decades, Armenia's inclusion into the global trading environment became much more pronounced, as its exports and imports grew dramatically – from below USD 1 billion total in 2001 to USD 5.4 billion for exports and USD 8.8 billion for imports in 2022.

Armenia has been a Member of the WTO since 2003. Joining the WTO marked a significant milestone in Armenia's economic development and integration into the global trade system. As a member of this influential international organization, Armenia committed to various trade liberalization measures, including eliminating trade barriers, and adhering to international trade rules. WTO membership has opened up new opportunities for Armenia by facilitating easier access to international markets, encouraging foreign investments, and promoting economic growth. It has also encouraged the country to implement reforms that align its trade policies with international standards, fostering a more transparent and predictable trading environment for businesses and investors. Through its WTO membership, Armenia continues to actively

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engage in the global trade, fostering economic cooperation and strengthening its position in the international trade landscape.

Armenia ratified the Trade Facilitation Agreement and deposited its instrument of acceptance of the Protocol on 20 March 2017.

Armenia became a party to the Government Procurement Agreement on 15 September 2011. In June 2015, it acceded to the Revised Government Procurement Agreement.

III. Conclusion

For the above reasons, the GOA respectfully requests that the Department initiate a changed circumstances review to evaluate the current economic status of Armenia and to determine that the Department should no longer treat Armenia as an NME country pursuant to section 771(18)(B) of the Act.

Sincerely,

VAHAN KEROBYAN

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