

Legal aspects of doing business in Egypt



by Steven E. Hendrix*

Egypt's economy has undergone many changes in recent years, making it an attractive market for U.S. goods and services. Lately, foodstuffs, industrial machinery, transport and construction equipment, capital equipment and spare parts, healthcare products, telecommunications and agricultural machinery and services have all been in demand in Egypt. Therefore, U.S. exporters have been eager to learn about the legal system of that Nile River nation.

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In most cases, Egypt's imports are governmentally regulated and often subject to customs duty. The procedures for importation are numerous, and advance permission from the Egyptian authorities is also often required.

Egypt's legal system is based on English common law, the French Napoleonic codes and Islamic law. The currency, the Egyptian pound, is tied to the U.S. dollar at the official rate of 0.70 pounds to the dollar. This conversion rate is available only to the public sector, and the government uses it to import essential foodstuffs, insecticides and fertilizers. A "floating rate" is available to airlines, shipping companies, and a few other entities. Most transactions, however, use the "free market rate," which is applicable to imports by both the public and private sectors.

As of January 1, 1989, both the United States and Egypt became signatories to the United Nations Convention on Contracts for the International Sale of Goods. This should greatly assist U.S. exporters in their analysis of the many legal implications of doing business in Egypt, as the U.N. Convention contains the terms exporters are already accustomed to using for transactions in other parts of the world.

Trade Restrictions and Regulations

In many ways, U.S. business executives should be comfortable dealing with the Egyptian market. Since Egypt is a member of the General Agreements on Tariffs and Trade (GATT), exporters ex-

perience few problems in Egypt concerning anti-dumping duties, subsidies or countervailing duties. Similarly, government intervention in countertrade is non-existent. Indeed, Egypt has adopted no specific legislation on the topic and offers no incentives to encourage countertrade in the private sector. With respect to pre-shipment inspections, no government regulation requires an exporter to have its goods inspected, although the Egyptian importer will likely request such a provision.

The government completely bans a list of over 200 goods from being imported into Egypt. Generally, the list includes consumer, luxury and other goods already produced in Egypt. However, it is possible to obtain exceptions to this list for products related to the production of certain goods. Goods financed with bilateral or multilateral assistance, components imported by licensed local manufacturers, assembly units and free zone imports all fit into this latter category.

Interest payments require prior authorization from the exchange control authorities. This applies to normal and penalty interest clauses that may be found in exporters' sales contracts to Egyptian purchasers. Only after authorization is obtained will government authorities permit payments to be made abroad. The maximum rate of interest is also subject to government approval.

Duties: Egypt uses the Customs Co-operation Common Nomenclature System to classify imports for tariff purposes. Most goods brought into the country

are taxed on an ad valorem basis, using the c.i.f. value. A few goods are taxed based on weight. Special rules apply to capital equipment, which receives preferential treatment under the Investment Law. Most duties fall in the 10% to 40% range; however, alcoholic beverages are faced with a 3000% barrier to entry, while basic foodstuffs enjoy duty free status. It is advisable to check with the Ministry of Finance for an advance ruling regarding the exact duty payable in any given instance. Interestingly, Egypt does not employ significant non-tariff barriers to deter imports, other than

the list of items completely banned.

Currently, Egypt is a member of the Arab Common Market. This organization has as its goal the elimination of tariffs on agricultural, animal and natural resource commodities within the Market. Egypt already has removed tariffs on most manufactured products for Market members, creating a free-trade area in many sectors of the economy.

Similarly, Egypt has maintained contacts with the European (economic) Community (EC). In 1977, the EC and Egypt entered a "cooperative agreement" covering trade, financial aid, and technical

and economic cooperation. This allows Egypt to trade for hard currency and diversify the nations with whom it transacts business.

Taxes: There are seven main taxes on imports into Egypt. First, a "statistical tax" applies to all non-wheat imports. This tax is calculated to be 2% of the c.i.f. value of the imported goods. Second, a "development tax" of 10% of the c.i.f. value is charged to most imports. Third, the "municipal duty" must be paid at the rate of 3% of the combined value of the customs duty and the

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development tax, plus any additional excise duties that may be applicable to the import. Fourth, a "portage duty" is payable based on the type of good and the weight of the good. Rates generally range between 0.20 and 0.40 Egyptian pounds per metric ton. Fifth, a "marine tax" is based upon 0.25% of the c.i.f. value of any goods imported through one of Egypt's ports. Sixth, some items confront an additional 8% cus-

the agreement between the parties governs the relationship except to the extent that the agreement conflicts with existing law. The agreement must stipulate (1) the responsibilities of each party respectively, (2) the nature of the work of the agent, (3) the commission, and (4) the form of payment of the commission including currency of payment.

Interestingly, only Egyptian citizens, Egyptian legal entities, or

often cover trademarks, patents and "know-how." Because Egypt has signed most international agreements and conventions on patent and trademark protection, this method has many benefits. Yet, all licensing agreements involving the payment of foreign royalties must receive approval from the General Organization for Industrialization (referred to as GOFI). In the past, long delays have resulted from this approval process. GOFI has approved arrangements running five to ten years, with subsequent automatic renewals. Royalties approved by GOFI have most often ranged from two to five percent of total sales revenue. GOFI also has accepted once-off lump sum payments as compensation.



Documentation requirements for exports to Egypt

All shipments to Egypt should be accompanied by (a) a commercial invoice, (b) a bill of lading (or airway bill), (c) a certificate of origin, (d) a packing list, (e) a proforma invoice and (f) appropriate special certificates. The Egyptian authorities do not require consular or customs invoices.

toms duty. Seventh, a "supplementary duty" is added to certain luxury items. This rate ranges between 10% and 20%.

Agency Agreements: Entities that are not Egyptian-owned must use an Egyptian agent to import goods. In any case, advance authorization and enrollment in an "importers register" are often required of Egyptian importers. Since 1983, special regulations have been in effect governing foreign agency and commercial broker representation in both the public and private sectors in Egypt. Under this new legislation,

long-term naturalized Egyptians may act as representatives of foreign principals. These representatives must be registered with and approved by the Ministry of Economy and Foreign Trade. Several other limitations and restrictions on agency agreements also apply. U.S. exporters wishing to establish an agency relationship should seek legal advice before agreeing to any such arrangement.

Intellectual Property Protection: Besides agency arrangements, licensing agreements can also be used to enter the Egyptian market. Licensing agreements

(a) The Commercial Invoice:

There is no set format requirement in Egypt for commercial invoices. Still, invoices must contain all the information normally provided, including a complete description of the goods, the price (including freight, packing and other charges, minus discounts), the net and gross weight of the shipment, and so on. The invoice also should include a statement of product origin and manufacture, including the origin of any components.

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Finally, the name and address of the exporter should appear on the invoice. There should be at least three copies of the invoice sent, more if the importer requests additional copies.

Exporters also must certify and legalize commercial invoices. The American-Egyptian Cooperation Foundation located in Chicago will notarize and certify documents for this purpose. Once this has been done, the exporter can forward the invoices to the Egyptian Consulate for legalization.

(b) The Bill of Lading:

Bills of lading have no special requirements in Egypt. Commonly used "To Order" bills are often sufficient. Exporters should take care, however, that the bills are consistent with the information shown on the packages and on the invoices.

(c) The Certificate of Origin:

These certificates should contain the same basic information exporters include in certificates of origin for sales to most countries. The exporter should include the weight of the shipment in kilograms. The exporter also should state that the goods are of U.S. manufacture or origin. If any foreign piece or component is included in the shipment, that country of origin should be stated with the percentage. Full names and addresses of U.S. manufacturers must be included as well. As with commercial invoices, exporters should anticipate the necessity of the certification and legalization of the certificate of origin. Normally, an importer will request at least three copies of this certificate.

(d) The Packing List:

Packing lists are optional for exports to Egypt. They are, nevertheless, recommended. Packing lists help with the clearance of goods. As with bills of lading, exporters should take measures to insure that information contained in packing lists is consistent with information contained in other documentation.

(e) The Pro-Forma Invoice:

The pro-forma invoice serves two important functions. First, it supports the importer's application for importation. Second, it supports the importer in opening a letter of credit (or as the start in the negotiation of the import contract). Exporters should send an original and four copies to the importer. Included on the pro-forma invoice should be the name of the importer, the country of origin, the type of commodity to be imported, the customs tariff, the unit, the quantity, the price on a per unit basis, the basis of the contract, and finally the amount owed in foreign currency.

(f) Appropriate Special Certificates:

Several additional documents may become necessary before the transaction can go forward. First, an "insurance certificate" may be required. If this is the case, the Egyptian importer will normally obtain this document. A "steamship company certificate" also may be needed by the importer. Public sector imports usually require an additional "exchange allocation" to obtain foreign currency for repayment of the obligation. An "import license" is required for imports by private sector entities. (This license is also necessary for the opening of a letter of credit.)

Exporters also should be aware that the U.S. Government may require a "U.S. shipper's export declaration" if the value is greater than \$2,500 (\$500 if the transaction involves shipment through the U.S. Postal Service). In rare instances, the Egyptian authorities may require a disinfection certificate or a sanitary certificate, depending on the item imported.

Air cargo shipments are treated a bit differently. First, of course, airway bills are used in place of bills of lading. Second, the number of copies of the airway bill required will depend on the airline used and the importer's demands. Third, normal international rules regarding the transport of hazardous material, labeling and packaging, restricted goods and shipper's certificate apply. The airline is an exporter's best contact for the specific rules involved.

Like air cargo, mail and parcel post are also treated separately. Postal documentation replaces the bill of lading. An invoice must be contained inside the parcel. Exporters also should mark packages with the words "A.R.E. Import Not Required" or "A.R.E. Import Permit No. (insert the number)," as the case may be.

As is true with all documentation, the exporter should make certain that any paperwork signed by the exporter does not violate any U.S. laws or regulations. This is especially important with the insurance certificate, the steamship company certificate, and any other documentation that the importer requests of the exporter.

In summary, there are a number of legal considerations an exporter should address when considering trade with Egypt. But for those who plan ahead and subsequently avoid legal pitfalls, Egypt provides a ready market of over 50 million consumers.

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