

COMMENTS FROM THE EUROPEAN UNION REGARDING NOTIFICATIONS

G/TBT/N/EGY/114 AND G/TBT/N/EGY/115

MINISTERIAL DECREE No. 43/2016

MINISTERIAL DECREE No. 991/2015

The European Union (EU) would like to thank the Egyptian authorities for providing the opportunity to comment on the "*Ministerial Decree No. 43/2016*" and the "*Ministerial Decree No.991 /2015*" notified on 1 February 2016.

As a preliminary remark, the EU notes that, according to the notification forms, the notified measures have been respectively adopted on 16 January 2016 and on 30 December 2015. They entered into force on 16 March 2016 and on 31 December 2015, as also indicated in the notification forms. The EU would like to recall that according to Article 2.9.2 of the TBT Agreement "*notifications shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account*" and according to Article 2.9.4 of the TBT Agreement Members shall "*allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account*".

In this light, the EU would like to ask Egypt to suspend the measures and re-notify them under the TBT Agreement giving the WTO Members reasonable time to make comments that could still be taken into account.

In addition, the EU would like to refer to Article 2.12 of the TBT Agreement. Given the very short period between the adoption of these decrees and their entry into force and the difficulties that exporters may be facing following their entry into force, the EU would like to ask the Egyptian authorities to postpone the date of entry into force of the notified measures. This would also provide the opportunity for further consultations on the content of the notified measures and on arrangements for their practical implementation and would also allow foreign economic operators to adapt to the new framework.

The EU would also like to ask the Egyptian authorities what is the relationship between Decree No. 43/2016 and the earlier Decree No. 992/15 which, in the EU's understanding, is still in force. If Decree No. 992/15 is still in force, the EU considers that it should be notified under the TBT Agreement.

The EU would also appreciate clarification on the relationship between the two notified measures. The notification form for Decree No. 991/15 does not provide sufficient information about its implementation. In this context, the EU would like to ask the Egyptian authorities in particular to clarify what entities are authorised to carry out the pre-shipment inspections and issue the certificates, and conformity to which concrete standards should be assessed by these inspections. In addition, the EU would like to ask about the practical aspects for the registration of companies which is required to avoid the burdensome obligation to submit a pre-shipment certificate with each consignment. Has registration according to Decree 991/2015 been replaced by registration according to Decree 43/2016 or are there now two

different and parallel registration requirements for importing companies – one according to each of the above Decrees? In the latter case, the EU would like to ask the Egyptian authorities to explain the objective of this double registration, which would appear to be burdensome and costly for companies, and why it would be needed for all the categories of products concerned. Moreover, registration according to Decree 43/2016 is now obligatory for all the listed categories of products; can the Egyptian authorities confirm that this registration is necessary even if importing companies use the other alternatives enumerated in the notification form G/TBT/N/EGY/115, such as accompanying each shipment with an inspection certificate?

The EU considers that the absence of legal clarity in this case creates confusion for business operators.

The EU would also like to raise the specific issues below related to notification G/TBT/N/EGY/114:

1. Registration by the General Organization for Export and Import Control

The notified measure lists a wide range of products covered by its requirements. According to the notified measure, imports for commercial purposes of the listed products will only be allowed into Egypt provided that the manufacturing plants or the companies owning the trademarks or their distribution centres are registered in a register managed by the General Organization for Export and Import Control ("GOEIC"). The EU understands that only either the manufacturer or the trademark owner has to be registered and would like to ask the Egyptian authorities to confirm this interpretation. The EU would also like to seek clarification on the situation of intermediaries or trading houses. Do they need a separate registration? How is an importer required to prove that the goods he wants to clear through customs come from registered factories, if he is not importing directly from the manufacturer?

The EU notes that, in order to be registered by the GOEIC, economic operators need to provide several documents. The EU considers that the notified measure does not provide sufficient information on the registration procedure and that the nature of the documents requested is not adequately defined. Therefore, the EU would like to ask the Egyptian authorities to provide additional information on them. In addition, the period of validity and the cost of the registration are also not clear. Finally, the EU considers that transparency of the register and of the registration procedure should be granted.

The EU considers that the lack of clarification contained in this measure may result in long and burdensome administrative procedures and is already creating unnecessary obstacles to trade as of its entry into force on 16 March 2016. According to information received from EU companies, serious difficulties and in particular long delays are experienced with the registration. The situation of goods in transit at the time of entry into force of the Decree is unclear as they are also being blocked in customs despite of the notice on the GOEIC website which states that they would be excluded from the registration requirement if shipped before 16 March. The EU would like to ask the Egyptian authorities to confirm this statement and take steps to remedy this situation.

In the light of these considerations, the EU would like to ask the Egyptian authorities for the rationale and the justification of this procedure.

In addition, the EU would like to obtain clarification on how the new provisions may affect the exports of agri-food products into Egypt where provisions related to the register of exporting premises and companies already exist. Will the new decree duplicate/overlap with already existing arrangements/requirements? Will this result in a double administrative task for exporters in the agri-food sector?

The EU understands that all the documents to be provided have to be certified by a Chamber of Commerce, approved by an Egyptian embassy and translated by an accredited translation centre. If this information is confirmed by the Egyptian authorities, further burdens would be added to those already mentioned above.

2. Exemption

The EU notes also that according to the notified measure *"Registration in or strike off from this register shall be decreed by the Minister of Foreign trade who also has the authority to allow for an exemption from some or all the requirements for registration"*.

The notified draft does not specify according to which criteria the Minister of Foreign trade will allow for an exemption. The EU would like to ask for further information on these criteria and on the applicable procedure. The EU would also like to ask how the Egyptian authorities consider that such a broad power of discretion fits with the announced goal of the notified measure, which is to promote product quality and consumer safety. The EU would also appreciate additional clarification on the procedures available for appealing possible refusals of the registration.

3. Quality control system

Among the documents required for the registration, the notified measure includes a certificate that the producer and the trademark owner maintain *"a quality control system. The certificate should be issued by entities accredited by the International Laboratory Accreditation Cooperation (ILAC) or the International Accreditation Forum (IAF) or an Egyptian or foreign governmental entity approved by the Minister of Foreign Trade"*.

The EU considers this provision to go beyond what is necessary in order to achieve the objective of protecting consumers and limiting trade in counterfeited goods. In addition, there is no clarity on which Egyptian or foreign governmental entities will be allowed to issue the quality control system certificate and on the benchmark against which the quality control of the products will be evaluated. On this last point, the EU would like to ask the Egyptian authorities to provide more information on the *"quality control system"*.

In addition, the EU would like to obtain clarification on how the new provisions may affect provisions related to the exports of agri-food products into Egypt where requirements of quality control systems for exporting premises and companies already exist. Will the new decree duplicate/overlap with already existing

arrangements/requirements? Will this result in a double administrative task for exporters in the agri-food sector?

The EU would also like to ask the Egyptian authorities if the requirement provided for in Decree No. 992/15, according to which the above-mentioned certificate has to prove also that the factory "*abides by the environmental standards and complies with the standards of the International Labor Organization*", will still apply or whether only proof of a quality control system will be requested.

4. Inspection

The notified measure states that: "*Based on a request from the applicant, inspection of the company or manufacturing plant may take place to verify the validity of the documents after having the approval of the Minister of Foreign Trade*". As mentioned above, the EU already considers the provision of a certificate on the quality control system to be a burdensome requirement. The delivery of such a certificate would demonstrate that an inspection has already taken place in the company or manufacturing plant in the country of production and no further control should be imposed. In addition, the bodies that will be entitled to inspect the company or manufacturing plant are not mentioned.

In addition, the EU would like to obtain clarification on how the new provisions may affect the inspections of exports of agri-food products into Egypt where requirements of quality control systems for exporting premises and companies already exist. Will the new decree duplicate/overlap with already existing arrangements/requirements? Will this result in a double administrative task for exporters in the agri-food sector?

With reference to the above comments, the EU notes that in line with Article 5.1.2 of the TBT Agreement "*conformity assessment procedures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. This means, inter alia, that conformity assessment procedures shall not be more strict or be applied more strictly than is necessary to give the importing Member adequate confidence that products conform with the applicable technical regulations or standards, taking account of the risks non-conformity would create*".

The EU would be grateful if the above-mentioned comments could be taken into account and replied to.
