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ATTORNEYS AT LAW

NEW YORK, NY



# A Legal and Policy Analysis of U.S. – Algerian Trade and Investment

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## Investment Climate in Algeria

### Foreign in Investment in Algeria

- Freedoms granted to foreign investors
  - Freedom to invest in any sector
  - Freedom to create a business entity governed by Algerian law
  - Freedom to enter into a partnership with one or more persons or legal entities
  - Freedom to share in an existing Algerian company's capital
- Guarantees to Foreign Investors
  - Right to private property and freedom from expropriation
  - Right to equitable compensation and equitable treatment



## Tax Exemptions on Foreign Investments

### Tax Exemptions

- Algeria provides tax exemptions on foreign investments.
- The level of exemption depends on the importance of the project to the Algerian national economy.
- These exemptions are managed by the National Agency for Investment Development (ANDI).
- The individual investors and ANDI can come to an agreement on the nature of the investment and the level of exemption it will receive.



# Tax Exemptions on Foreign Investments

## Tax Exemptions for “Scheme for Areas to be Developed”

- Scheme for areas to be developed
  - Investments in projects in areas that need to be developed
  
- Investment Phase
  - Exemption from the VAT on certain goods
  - Exemption on custom duties on imported equipment
  - Exemption from transfer taxes on real estate transactions



## Tax Exemptions on Foreign Investments

### Tax Exemptions for “Investment Agreement Scheme”

- Investment Agreement Scheme
  - Investment projects that are of particular interest to the national economy.
  
- Investment Phase
  - Exemption from taxes and duties on all imported or locally purchased goods and services.
  - Exemption from transfer duties on real estate acquisitions and legal advertising
  - Exemption from registration duties
  - Exemption from Land Tax



## Tax Exemptions on Foreign Investments

### Limitations on tax exemptions

- Reinvestment requirement
  - Companies must re-invest within 4 years the value of any tax incentives back into Algeria
  - Failure to do so will result in a 30% tax penalty
  - This law was added to prevent capital flight that had occurred throughout 2007.
  
- Double Taxation
  - Algeria has signed 12 bilateral treaties to prevent double taxation.
  - No current treaty with the U.S. for double taxation
  - U.S. provides tax credit or deduction for foreign taxes paid on overseas investments.



## Imports to Algeria

### Import Regimes

- Local Consumption
  - Most imported goods for local consumption in Algeria are subject to VAT and Customs duties.
  - VAT rates ranges from 0 to 17% (mostly 17%).
  - Custom duties range from 0 to 30% depending on the type of goods.
  - Foodstuffs are subject to further quality control including meat and meat byproducts which require a “Halal Certificate.”



## Imports to Algeria

### Import Regimes

- VAT Exempt
  - **Free Admission:** Imported goods that are identical to goods available locally AND used for manufacturing products which have been exported are exempt from VAT.
  - **Inward Processing:** Goods imported for the production, transportation, refining and processing of products that are for export ONLY are exempt from VAT. Such products are mainly hydrocarbons and chemicals.
  - **Temporary Admission:** Goods imported for a specific project or exhibit and will be re-exported out of Algeria in the same state are exempt from VAT.





## **Imports to Algeria**

### The US Could Benefit from the Same Experience as the European Union

- Goods from the European Community
  - The EU and Algeria have entered into a bilateral Association Agreement.
  - The Agreement affects many areas of foreign relations, but also works to liberalize trade between the two eventually leading to free trade.
  - Goods originating in the European Community with the EUR-1 form receive reduced custom duties in Algeria.
  - Trade volume between EU and Algeria increased 9.5% and in 2008, EU exports to Algeria reached \$20.3 billion.



## Imports to Algeria

### Import/Export Policy

- Need Stronger Relations with the U.S.
  - Algeria needs to have similarly strong trade relations with the U.S. Algerian exports to the U.S. already receive preferential treatment.
  - In contrast to EU, U.S. exports to Algeria in 2008 reached only \$1.2 billion.
  - A bilateral trade agreement will help boost U.S. exports to Algeria.
  - Reduced custom duties on goods from the U.S. will also incentivize investment by U.S. companies in Algeria.

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# Incentives on Exports of Algerian Products to the U.S.

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## Exports from Algeria

### U.S. – Algeria Generalized System of Preferences

- The Generalized System of Preferences (GSP)
  - The GSP is a system whereby a richer nation will lower tariffs on goods from a developing country without lowering tariffs on other richer countries.
  - This principle is an exception to the WTO general principal whereby all member nations must treat imports from all other nations equally
  
- Application to Algeria
  - The U.S. made Algeria a GSP beneficiary on March 19, 2004
  - GSP gives Algerian exports an advantage in U.S. markets



## Exports from Algeria

### U.S. – Algeria Generalized System of Preferences

- Eligibility under the GSP
  - **Eligible Goods:** Manufactured items and inputs, jewelry, skins, many carpets, certain agricultural products, chemicals, marble and minerals
  - **Non-eligible Goods:** Most textiles, leather goods, footwear, home décor textiles
  
- Top GSP Imports from Algeria in 2007
  - Whole dates
  - Virgin olive oil
  - Couscous
  - Silver Jewelry
  - Silk Dresses
  - Ceramics



## Exports from Algeria

### U.S. – Algeria Generalized System of Preferences

#### – Room for Growth

- Importers have not taken advantage of Algeria’s GSP Agreement
- In 2007, only \$259,106 worth of goods were imported from Algeria under the GSP.
- That amounts to less than 1% of Algerian imports to the U.S.
- Meanwhile, nearby countries have taken more advantage of it.
  - Yemen: 97.4% of imports under GSP
  - Lebanon: 47% of imports under GSP
  - Tunisia: 25% of imports under GSP

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# Current and Future Algerian Investment Policy

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## Current Investment Policies

August 21, 2001 Algeria altered its law to invite more foreign investments.

Algeria experience record growth (around 5% annually).





## Investment in Algeria

### Foreign Investments

- **Generally** (August 21, 2001 Algeria altered its law to invite more foreign investments Algeria experience record growth (around 5% annually).

Foreign investors can invest in any sector

- New laws restrict foreign stake in any investment to 49% (there must be Algerian majority stake).
  - Algerian national energy company, Sonatrach, must be majority stakeholder in investments in hydrocarbons.
- 
- **Expropriation and Nationalization**
    - Constitution of 1996 guarantees against expropriation and confers the right of equitable compensation.
    - The government of Algeria has not engaged in any expropriation actions against the U.S. or other foreign firms.



## **New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards**

**(Algeria and the US are members of the New York Convention)**

- Ratification and Reservation
  - Ratified by 144 states including Algeria and the United States
  - Both nations ratified with reservation that it will only apply to legal relationships considered “commercial” under national law.
- Requires courts of contracting states to:
  - Stay all proceedings in domestic courts that are subject to international arbitration.
  - Recognize and enforce foreign arbitral awards.



## **New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards**

### **Benefits**

- It gave the forums for international arbitration the ability to enforce their final awards in any member state.
- Provided a faster and more cost effective solution to international commercial dispute resolution.
- Encouraged the proliferation of international commerce.



## Investment in Algeria

### Market Entry and Entities under Algerian Law

- U.S. firms can open representational offices or joint ventures with Algerian companies.
- There are three types of organizations
  - **Liaison office**
    - Used to be the only option for foreign firms, now least attractive option. Limited in function and income.
  - **Branch office**
    - Resident Algerian entity without full legal benefits. Strict foreign exchange controls makes repatriation difficult.
  - **Permanent establishment**
    - Full but temporary presence in Algeria. Substantial repatriation, but cannot avail full tax benefits.



## Investment in Algeria

### Repatriation of Revenue

- Foreign investors can repatriate their profits even if the revenues exceed the original investment.
- Foreign Exchange Controls
  - The Central Bank controls repatriation of currency from payments.
  - An Algerian based company can only receive 50% of its exports in U.S. Dollars (other 50% in Algerian Dinar)
  - Companies dealing in hydrocarbons must receive 100% of their export revenue in Algerian Dinar
- Repatriation is often restricted by reporting requirements
  - Revenues from services can be repatriated without pre-approval from Central Bank
  - Revenues from goods require approval

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## **Investment in Algeria**

### **Overseas Private Investment Corporation (OPIC)**

- OPIC is a U.S. government agency doing business in over 150 countries.
- OPIC provides political risk insurance and investment loans for private companies doing business overseas.
  - Political risk covers inconvertibility, political violence and expropriation
- OPIC can finance projects in developing or emerging markets where private finance institutions are reluctant or unable to lend.
- OPIC supported a \$250-million water desalination project in Algeria in 2008.

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## Recent Developments

### Reversals in foreign investment laws

- New measures include that all new ventures in Algeria must have majority Algerian ownership
- Reasons for reversals
  - Unemployment rate (high rates among those under 30)  
(Unemployment amongst Algerians rose to 13%.  
Unemployment rate has reached 30% among those under the age of 30.
  - Capital flight (\$7 billion transferred out of Algeria in 2007)



## **Recent Developments**

### Orascom Sale and the East West Highway

#### – **Sale of Orascom**

- Algeria awarded cement contract to Egyptian company Orascom
- Orascom subsequently sold 100% of its cement company to French cement giant—LaFarge without consent from Algerian government
- Foreign company took a major market share in national economy without Algerian government control

#### – **East West Highway**

- China-Japan consortium awarded contract to complete ambitious public works project
- Chinese companies brought 50,000 Chinese workers, failing to provide jobs for Algerian youth

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## Policy Considerations

### Ways to Prevent Foreign Profiteering and Create Jobs for Algerians

#### – The Algerian Work Force

- Algerian workers could not outcompete Chinese workers for construction jobs even though Chinese workers took higher wages.
- Algeria should focus on training the Algerian work force specifically in the sectors of anticipated growth (i.e. construction)
- In addition, legislation should require a minimum quota on foreign companies to hire local workers.
  - For example, Chinese companies would be required to hire a 25% Algerian work force on any government contract.



## **Policy Considerations**

### Ways to Prevent Foreign Profiteering and Create Jobs for Algerians

#### – **Reforms**

- Algeria does not need to scale back or limit foreign investment to protect its economy.
- More foreign investment properly channeled can help Algerian economy.
- Reforms should focus on increased training of Algerian work force in both blue collar and white collar sectors.



## Policy Considerations

- The Algerian Work Force (cont.)
  - Quotas would ensure jobs for Algerians.
  - However, it is important to provide a basic training and education to Algerian workers.
  - Foreign companies would provide the job specific training.
  - The foreign companies should be allowed full repatriation of their profits to entice their investment in Algeria.



## **Policy Considerations For Algerian Investment**

- Restraints on Foreign Investment is not the Solution:
  - Expansion of Foreign Investments can benefit both the Algerian Economy and the foreign corporation
  - Algeria should deal with government contracts to foreign companies on a contract by contract basis.
  - For example, government contracts should limit the transferability of the contract to a third-party without the consent of the Algerian government
    - Such a clause would have prevented the Orascom case.



## Policy Considerations

### **The Role of Lawyers**

- Such a clause is not unreasonable and does not restrain foreign investment.
- This emphasizes the role of lawyers in Algeria's employ.
- This knowledge will help negotiating and drafting major government contracts with full protection against foreign opportunism.



## **US Corporation are encouraged to invest in this New Environment**

### **US Companies Characteristics:**

- Long term objectives
- Employment policies
- Labor Standard
- Environmental standards
- Sensitive to Algerian Economic Development



## **U.S. Opportunities to Invest**

### The Role of U.S. Companies in Investment in Algeria

- Algerian Ministry still seeking U.S. investments
  - Algerian ministers are seeking U.S. to help bolster technology, pharmaceutical, tourism and fishing industry
  - U.S. companies have an advantage with advanced technology and long term business objectives
  - U.S. companies can provide growth as well as create wealth and jobs for Algeria
  - Positive U.S. involvement in Algerian economy may return favorable foreign investment laws



This presentation is intended for informational purposes only. It does not intend to offer any legal advise. For further advise on a case by case basis:  
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