II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

(1) INTRODUCTION

1. The UAE conducts an open trade policy and has a relatively liberal trade regime, although a number of limitations and conditions are set on foreign investment. In broad terms, its foreign trade strategy aims at promoting trade relations, increasing the contribution of foreign trade to GDP, and fostering foreign investment flows. Improved market access for its products through multilateral trade liberalization and bilateral and regional trade agreements is a main trade policy objective.

2. The UAE has been an active participant in the DDA, presenting proposals to eliminate tariffs and non-tariff barriers (NTBs) on raw materials, and submitting an initial offer in the area of trade in services. During the period under review, the UAE advanced in the process of regional integration, through its participation in the GCC. However, the full consolidation of the GCC's customs union was still pending in mid-2011, and was expected for the end of the year. Free-trade agreements have been signed between the GCC and EFTA, and the GCC and Singapore, but in late 2011, were still awaiting implementation.

3. The UAE's open trade regime contrasts with its relatively more closed investment regime. An important change during the period under review was the initiation of the drafting of a new Investment Law to expand foreign participation and foster foreign investment and transfer of know-how. However, foreign investment continues to be subject to limitations, and all investment projects must have 51% domestic capital. Also, the use of local agents to conduct business continues to be mandatory, and although legislation to enforce agency contracts was amended during the review period, it is still skewed in favour of the agent, making the termination of a contract by the investor rather difficult.

(2) GENERAL CONSTITUTIONAL AND LEGAL FRAMEWORK

4. The United Arab Emirates (UAE) was established in 1971 as a federal state comprising seven emirates: Abu Dhabi, Dubai, Sharjah, Fujairah, Umm al Qaiwian, Ajman, and Ra's al Khaimah.[1] According to the Federal Constitution, which was provisional until 1996, each emirate has its own jurisdiction and local government, but the federal authority has overall responsibility for, *inter alia*, foreign affairs, foreign trade, security and defence, nationality and immigration issues, education, public health, currency issues, banking, Customs, postal services, telephone and other communications services, air-traffic control and licensing of aircraft, and labour issues. All responsibilities not granted to the federal government are reserved to the local governments.[2]

5. The federal system comprises five separate authorities represented in: the Federal Supreme Council, the President and the Vice President, the Council of Ministers, the National Council, and the Federal Judiciary. These authorities may fall under the Executive, the Legislative, and the Judiciary.

(a) Executive

6. The Executive branch consists of the Prime Minister, and a Council of Ministers (the Cabinet). The Federal Supreme Council is composed of the rulers or emirs of the seven emirates. The Supreme Council elects and appoints the President, the Vice President and the judges of the Federal Supreme Court. The Supreme Council also formulates government policy at the federal level,

[1] Ra's al Khaimah formally acceded to the federation in 1972.

[2] Articles 120 and 121 of the Federal Constitution stipulate the responsibilities of the federal authority. Articles 116 and 122 state the responsibilities at emirate level.

proposes and ratifies federal laws, and ratifies international treaties. The President, elected by the Board of Rulers, exercises a range of powers, and has the right to convene and preside over meetings of the Supreme Council. The President is also responsible for signing laws, decrees and decisions sanctioned by the Supreme Council. The Cabinet is the Executive authority for the Government, overseeing the enforcement of legislation and regulations. Currently, the Ruler of Abu Dhabi holds the presidency, and the Ruler of Dubai is the Vice President and Prime Minister.[3]

(b) Legislative

7. The Federal National Council (FNC) is entrusted with legislative powers. The FNC consists of 40 members drawn from the 7 emirates.[4] While traditionally directly appointed, a process of electing FNC members was established in 2006, with the aim of eventually having a wholly-elected Council. As a result, half of the FNC members are elected to serve four-year terms and the other half are appointed by the rulers of the constituent emirates.[5] The FNC plays the role of a consultative assembly and has both legislative and supervisory responsibility, as provided by the Constitution. The FNC functions more as a review body of national legislation than as a legislative body. Laws are prepared by ministries and approved by the Supreme Council. The main tasks of the FNC are to, *inter alia*: (i) discuss constitutional amendments and draft laws, which may be approved, amended or rejected; (ii) review the annual draft budget of the Federation; (iii) debate international treaties and conventions; and (iv) influence the Government's work through discussion, question and answer sessions, recommendations and follow-up on complaints.

8. Each Ministry negotiates international agreements within its own jurisdiction, as per Federal Law No. 1 of 1972. However, only the Ministry of Foreign Affairs is authorized to sign such agreements; and it may delegate its authority to other ministries.[6] The Supreme Council is responsible for ratifying and endorsing international agreements.[7] The Government is obliged, under the Constitution, to notify the FNC of international agreements as decided by the President, and to present them to the FNC for discussions prior to ratification. International treaties and agreements, once ratified, prevail over domestic legal instruments. In descending legal order, the Constitution is followed by laws, decree-laws, ordinary decrees, and regulations.

9. Policies, including trade policy are formulated and implemented by means of legislation. Bills are proposed by the relevant ministries; they are presented first to the Cabinet, then to the FNC, and finally to the President for approval.[8] Upon ratification by the Federal Supreme Council, the bills are signed by the President and proclaimed as federal laws through publication in the *Official Gazette*.

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[3] Sheikh Zayed bin Sultan Al Nahyan was the first President of the UAE and Ruler of Abu Dhabi until his death in November 2004. His son, Sheikh Khalifa bin Zayed Al Nahyan was elected by Members of the Supreme Council as the new President on 3 November 2004. Sheikh Mohamed bin Rashid Al Maktoum, has been the Ruler of Dubai, Vice President, and Prime Minister of the UAE since January 2006.

[4] Article 68 of the Constitution. Article 71 prohibits any member of the FNC from holding any other post in the Federal Government, including ministerial positions.

[5] The number of seats assigned to each emirate is based on its population; Abu Dhabi and Dubai hold the largest number, with eight seats each.

[6] Articles 47/4, 60/7, and 91 of the Constitution treat the same issue.

[7] Article 47 of the Constitution. Under Article 49 of the Constitution, substantive decisions by the Supreme Council must be taken by a majority of five of the seven members, and include the votes of Abu Dhabi and Dubai. Decisions relating to procedural matters are taken by simple majority.

[8] Chapter 1, part 5 of the UAE Constitution (Articles 100-115), regulates the legislative procedures at the federal level.

(c) Judiciary

10. The judiciary in the UAE comprises a federal and a local judiciary.[9] The Federal Judiciary, which is accorded independence under the Constitution, includes the courts of first instance, courts of appeal and the Federal Supreme Court. Traditional Sharia courts are separate from this hierarchy. Cases are first taken to the courts of first instance, which comprise a body of judges. Criminal, civil, and commercial cases are heard by a single judge and a decision is taken unless the law stipulates otherwise.[10] The Court of Appeal comprises a panel of three judges whose decisions become final. The Federal Supreme Court comprises five judges appointed by the Supreme Council. The judges decide on the constitutionality of federal laws, and arbitrate on inter-emirate disputes between the Federal Government and the emirates. They may also enquire into the role of public officials in governance in cases of corruption and fraud.[11]

11. There are no specialized courts in economic/commercial matters at the federal level. However, Law No. 338 of 2009, issued by the Minister of Justice, established a specialized department at the courts of first instance to deal with consumer protection cases. Abu Dhabi is the only emirate to have a commercial court. Established in May 2008, the court is specialized in trade and investment-related cases. Commercial disputes are increasingly being handled in traditional Sharia courts based on Islamic law.[12]

12. Each of the seven emirates has its own local executive council that functions in parallel and in coordination with the federal government. The emirate of Abu Dhabi has an Executive Council, which oversees separate departments that function like ministries. It also has several autonomous agencies and a 60-member National Consultative Council with a role similar to that of the FNC. Dubai and Sharjah also have an Executive Council. In other emirates, the Ruler has a *diwan* (office) through which the concerns of citizens may be directed to the Government.

(3) DEVELOPMENT AND ADMINISTRATION OF TRADE POLICY

(i) Agencies involved in trade policy implementation

13. Since 2008, the development and administration of trade policy has been under the responsibility of the Ministry of Foreign Trade (previously the Ministry of Economy and Planning), in coordination with other ministries at the federal level and trade-related bodies and local departments. These include, *inter alia*, the Ministry of Economy, Ministry of Finance, Federal Customs Authority, Ministry of Environment and Water, Emirates Authority for Standardization and Metrology (ESMA), Ministry of Labour and Social Affairs, Ministry of Justice and Islamic Affairs, Ministry of Public Health, Ministry of Energy, and the municipalities of Abu Dhabi and Dubai.

14. Private-sector participation in trade policy formulation is through the Federation of UAE Chambers of Commerce and Industry (FCCI). A draft law is sent to the FCCI, and is forwarded to the

[9] At the time of unification under the Federation, the emirates were accorded the constitutional right of joining the federal judicial system or retaining their independent systems. Four of the emirates opted to join the federal system; Abu Dhabi, Dubai, and Ras-al Khaimah maintained their local judiciary.

[10] Article 116 of the Constitution states that all matters not specifically stipulated as falling within federal jurisdiction may be considered within the emirate concerned.

[11] Litigation in Ras-al Khaimah remains at the two levels: Court of First Instance and Court of Appeal. Abu Dhabi and Dubai both have three levels of litigation: Court of First Instance, Court of Appeal, and Court of Cassation (highest court of appeal).

[12] For further information see emirate of Abu Dhabi – Judicial Department online information. Viewed at: www.adjd.ae.

chambers in each emirate for comments. Prior to trade negotiations, the private sector is consulted and its interests are taken on board by the Ministry of Foreign Trade.

15. After the launch of the Doha Development Agenda, a National Committee (NC) was set up (in 2002) to deal with WTO matters. Under the supervision of the Ministry of Foreign Trade, the NC acts as an advisory body to the UAE negotiating team. The NC is supported by five sub-committees, covering market access for non-agricultural products, intellectual property rights, protection of domestic production, trade in services, and trade facilitation.

(ii) Main trade laws

16. The main trade-related laws are the GCC Common External Customs Tariff (2007) and GCC Common Customs Law (2007); Federal Commercial Companies Law No. 8 of 1984 and amendments; and Federal Commercial Agencies Law No. 18 of 1981 and amendments. The main trade-related laws and regulations of the UAE are presented in Table II.1.

Table II.1
Main federal trade-related laws, 2011

Area	Legislation
Tariff	GCC Common External Customs Tariff
Customs regulations; import and export procedures; rules of origin	GCC Common Customs Law of 1 January 2007 (Decision of the Supreme Council of the GCC regulating the customs procedures for the establishment of the customs union; 21-22 December 2002)
Commercial companies law	Federal Company Law No. 8 of 1984 concerning commercial companies and the amending laws and decrees thereof
Regulation of commercial agencies (exclusive distribution rights)	Federal Law No. 18 of 1981 concerning the organization of commercial agencies, as amended by Federal Act No. 14 of 1988; No.13 of 2006 and No. 2 of 2010
Commercial register	Federal Law No. 5 of 1975
Trade	Federal Law No. 13 of 2007 on Commodities subject to Import and Export Control Procedures
Civil transactions (Civil Code)	Federal Law No. 5 of 1985
Commercial transactions	Federal Law No. 18 of 1993
Contingency trade measures	Federal Law No.7 of 2005 promulgating the GCC Common Law on Anti-Dumping, Countervailing Measures and Safeguards
Government procurement	UAE Federal Order No. 16 of 1975 (the public tenders law)
	Ministerial Decision No. 20 of 2000 on Administration of Contracts System
	Federal Law No. 7 of 1976 establishing the State Audit Institution
Regulation of industrial affairs	Federal Law No. 1 of 1979 organizing industrial affairs
Intellectual property rights	Federal Law No. 7 of 2002 concerning copyrights and neighbouring rights as amended by Law no. 32 of 2006
	Federal Law No 37 of 1992 on trade marks as amended by Law No. 8 of 2002
	Federal Law No. 17 of 2002 on the industrial regulation and protection of patents, industrial drawings and designs as amended by Law No. 31 of 2006
Pharmaceutical profession and pharmaceutical companies	Federal Law No. 4 of 1983 on the Pharmaceutical Profession and Pharmaceutical companies
Financial services	Federal Law No.8 of 2004 regarding Financial Free Zones
	Federal Law No. 10 of 1980 concerning the Central Bank, the monetary system and organization of banking
	Federal Law No. 4 of 2000 (Stocks and Commodities Authority)
	Federal law No. 6 of 2010 regarding the Credit Information

Table II.1 (cont'd)

Area	Legislation
Insurance services	Federal Insurance Law No. 6 of 2007
Telecommunications	Federal Law by Decree No. 3 of 2003 regarding the organization of the telecommunication sector, the amended Federal Law of 1991, and the Executive Order of the Supreme Committee No. 3 of 2004
Postal services	Federal Law No. 4 of 1985 and Federal Law No. 8 of 2001
Legal services	Federal Law No. 23 of 1991 concerning the practice of the advocate profession and amending laws, respectively, No. 20 of 1987 1997 and No. 5 of 2002
Information technology	Federal Law No.1 of 2006 concerning Electronic Transactions and E-Commerce
Consumer Protection	Federal Law No. 24 of 2006 concerning Consumer Protection

Source: Information provided by the UAE authorities.

(4) TRADE POLICY OBJECTIVES

(i) General trade policy objectives

17. The UAE has a relatively liberal trade regime, although a number of limitations and conditions are set on foreign investment. The broad strategy set by the Ministry of Foreign Trade aims to, *inter alia*, promote the UAE's trade relations with its trading partners; increase the contribution of foreign trade to GDP; maintain the commercial and investment interests of the country; and increase foreign investment flows to its markets.[13] Improved market access for its products through multilateral trade liberalization and bilateral and regional trade agreements is a main trade policy objective. The UAE coordinates its engagement in regional agreements with its participation at the multilateral level through relevant committees, which hold regular meetings. For example, GCC trade and customs officials conduct regular meetings in Geneva to discuss and coordinate their trade policies and negotiating positions at the WTO level.

18. As part of its Vision 2021 strategy, the UAE is striving for sustainable development by moving towards economic diversification away from oil.[14] In order to achieve this long-term vision, a tri-annual government strategy is implemented; the current strategy is for 2011-13. The UAE aims to transform its economy into one that is knowledge-based, highly productive, and competitive. It aims to do so by upgrading the regulatory framework of existing key sectors, while supporting the development of new ones, mainly high value-added industrial sectors, as well as by empowering nationals to take the lead in developing the economy. Trade will be a key component of this strategy, as it will help expand the UAE's diversified exports.

19. The Federal Government is responsible for the broad framework of policymaking in the UAE. Each emirate, however, sets its own strategy, which is integrated into the overall federal plan. The emirates of Abu Dhabi and Dubai have formulated long-term development plans, Abu Dhabi Economic Vision 2030 and Dubai Strategic Plan 2015, each providing a roadmap to modernize and diversify their economies. The future strategic growth of Dubai is based on six key economic sectors: tourism, trade, transportation, finance, construction, and professional services. To achieve its Vision 2030 objectives, Abu Dhabi will continue to diversify its economy, investing in capital-intensive, export-oriented sectors in which it has or can build a competitive advantage in regional and international trade. Abu Dhabi also plans to set up an export promotion agency. Abu Dhabi's economic vision focuses also on a number of strategic sectors, *inter alia*: oil and gas;

[13] The Ministry of Foreign Trade, in coordination with the Ministry of Foreign Affairs, has set up commercial offices for the UAE in China, Germany, India, Switzerland, and the United States.

[14] See UAE 2021 online information. Viewed at: http://www.vision2021.ae

petrochemicals; metals; aviation, aerospace, and defence; pharmaceuticals and biotechnology; tourism; transportation; and telecommunications.

(5) TRADE AGREEMENTS AND ARRANGEMENTS

(i) Participation in the WTO

20. A contracting party to the GATT since 8 March 1994 and a WTO Member since 10 April 1996, the UAE is a strong supporter of the multilateral trading system. The UAE grants at least MFN treatment to all WTO trading partners, except Israel. The GCC customs tariff does not discriminate between WTO Members and non-members; MFN treatment is granted to all. The UAE does not participate in any of the WTO plurilateral agreements, with the exception of the Information Technology Agreement. The UAE has not been involved in any WTO dispute settlement cases since it became a WTO Member in 1996.

21. In the current Doha Round of multilateral negotiations, the UAE is seeking meaningful liberalization in the area of industrial products under the non-agricultural market access (NAMA) negotiations, and further liberalization of trade in services. In NAMA, the UAE sponsored a proposal in 2003 to eliminate tariffs and non-tariff barriers (NTBs) on raw materials, mainly primary aluminium.[15] In March 2009, Australia co-sponsored the UAE's proposal[16], and in January 2011, both Members tabled a proposal on draft modalities for sectoral tariff elimination for raw materials.[17] The UAE also submitted its initial offer on trade in services.[18] The UAE is an active participant in the Arab Group.

22. The UAE's notifications to the WTO between January 2005 and October 2011 are listed in Table II.2.

Table II.2
Notifications to the WTO, January 2005 to October 2011

WTO Agreement	Description of requirement	Most recent notification	Comment
Agreement on Implementation of GATT Article VI (Anti-dumping)			
Article 16.4	Anti-dumping	G/ADP/N/209/Add.1 26 April 2011	No AD actions taken during 1 July-31 December 2010
Article 16.5	Competent authority	G/ADP/N/14/Add.30 22 October 2010	Anti-dumping, subsidies & countervailing duties and safeguards
Agreement on Sanitary and Phytosanitary Measures			
Article 7, Annex B	Sanitary and phytosanitary Measures	G/SPS/N/ARE/13-21	Emergency measures
Agreement on Subsidies and Countervailing Measures			
Article 25.11	Countervailing measures	G/SCM/N/219/Add.1 26 April 2011	No countervailing action during 1 July-31 December 2010
Article 25.12	Competent authority	G/SCM/N/18/Add.30 22 October 2010	Anti-dumping, subsidies and countervailing duties, and safeguards

Table II.2 (cont'd)

[15] WTO document TN/MA/W/37, 20 May 2003, and Adds.1, 2, 3, 4, and 5.
[16] WTO document TN/MA/W/37/Add.6, 23 March 2009.
[17] WTO document TN/MA/W/37/Add.7, 7 January 2011.
[18] WTO document TN/S/O/ARE, 4 July 2005.

WTO Agreement	Description of requirement	Most recent notification	Comment
Agreement on Technical Barriers to Trade			
Article 2.9	Proposed and adopted technical regulations	59 notifications made during period 28 February 2006-8 March 2011	
Article 5.6	Conformity assessment	G/TBT/N/ARE/14 G/TBT/N/ARE/16 G/TBT/N/ARE/53 1 November 2011	
Article 15.2	Implementation and administration of Agreement	G/TBT/2/Add.96 11 September 2007	
Annex 3C	Code of Good Practice	G/TBT/CS/N/166	
Agreement on Trade-Related Investment Measures (TRIMs)			
Article 6.2	Laws and regulations	G/TRIMS/N/2/Rev.20/Add.3 18 January 2011	

Source: WTO Secretariat.

23. Notifications in a number of areas were pending as at end-October 2011, including: agriculture (export subsidies and domestic support, for which the last notifications to the WTO date from 2002), subsidies (new and full notification due in 2009), intellectual property, import licensing, and services.

(ii) Preferential trade agreements

24. The UAE attaches great importance to regional trade agreements as a valuable complement to, though not a substitute for, a rule-based and non-discriminatory multilateral trade system. The UAE is a founding member of the Gulf Cooperation Council (GCC). In addition, through its participation in the GCC, the UAE has signed preferential trade agreements with Singapore and the European Free Trade Association (EFTA). The UAE is part of the Pan Arab Free Trade Agreement (PAFTA). In 2010, the UAE's total preferential trade amounted to US$38,531.5 million (18.8% of the UAE's total trade), of which almost 73% was with PAFTA (Table II.3).

Table II.3
Trade under preferential agreements, 2010
(US$ million)

FTA	Exports	Imports	Total	Percentage of total FTAs	Percentage of total trade
PAFTA[a]	16,441.7	11,657.1	28,098.7	72.9	13.7
GCC	8,812.8	6,082.1	14,894.9	38.7	7.3
GCC-EFTA	5,143.1	3,329.7	8,472.8	22.0	4.1
GCC-Singapore	578.6	1,381.3	1,960.0	5.1	1.0
Total preferential agreements	22,163.4	16,368.1	38,531.5	100.0	18.8
UAE total trade	73,231.0	132,175.3	205,406.3	..	100.0

.. Not available.

a Includes GCC members.

Source: UNSD, Comtrade database.

(a) Gulf Cooperation Council (GCC)

25. The Gulf Cooperation Council (GCC) is a political and economic union of six Arab Gulf states: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the UAE. Established in May 1981, its main objectives are regional cooperation and integration in areas such as economy, finance, trade, investment, Customs, tourism, and transport. In 2006, the GCC Agreement was notified to the WTO under Article XXIV of GATT 1994, and in March 2008 a notification was made under paragraph 4 (a) of the Enabling Clause. In November 2009, another notification was made pursuant to Article XXIV: 7(a) of GATT 1994.[19]

26. The GCC member states set up a free-trade area in 1983, whereby originating goods were exempt from customs tariffs. Since January 2003, the GCC states have been applying a common external tariff (CET) of 5% across the board on most products, and have followed common customs regulations and procedures based on the GCC Common Customs Law of 2003 and 2007. However, some products, for example alcoholic beverages, are prohibited for import in some GCC countries, (Chapter III(2)(vi)).

27. In January 2008, the GCC liberalized the flow of services, allowing their free movement between the members. The services component of the GCC Agreement is yet to be notified to the WTO. In addition, customs controls between GCC members have been maintained for security and other reasons (e.g. statistics, and to avoid piracy and commercial cheating).

28. Under the GCC Agreement, each member state has its own shortlist of restricted and prohibited products. Restricted products may transit the territory of members who restrict their importation but with the required documentation. Customs duties on goods imported into the UAE and destined for another GCC market are collected at the first point of entry only. However, GCC members are still in the process of reaching a formal agreement on how to allocate customs revenues from applied tariffs. Currently, customs revenue is distributed among the GCC states through a new Electronic Clearing Customs System. The GCC aims to achieve a common market, with equal treatment of GCC citizens in each member state with respect to freedom of movement, work, residence, ownership of real estate, and movement of capital, as well as financial and monetary coordination.

29. In December 2005, an initiative was launched for the adoption of a common currency by 2010. The five macroeconomic and convergence criteria were: a limit on budget deficits as a share of GDP; a limit on public debt as a share of GDP; adequacy levels for foreign exchange reserves; and convergence criteria on inflation; and on interest rates. However, in May 2009, the UAE announced its withdrawal from the monetary union project.[20] In December 2009, Bahrain, Kuwait, Qatar, and Saudi Arabia ratified an agreement to establish a monetary union. In mid 2011, the common currency project had not yet been implemented and the date to achieve a single currency was to be determined.[21]

30. The GCC, as a group is quite an open economy, with trade (imports and exports) representing some 48% of GDP in 2010. However, intra-regional trade among GCC countries is fairly low,

[19] WTO documents WT/REG222/N/1, 20 November 2006, and Corr.1, 31 March 2008; WT/COMTD/N/25, 31 March 2008; and WT/REG276/N/1/Rev.1, 17 November 2009.

[20] Oman had already announced in December 2006 that it would not be able to meet the target date.

[21] *Khaleeji* has been proposed as a name for this currency. If realized, the GCC monetary union would be the second most important supranational monetary union in the world in terms of GDP, after the euro area.

accounting for an average of about 5% of exports and 6% of imports. This is partly explained by the similar factor endowment of the members.[22]

31. As a group, the GCC signed free-trade agreements with Singapore in December 2008, and the EFTA states in June 2009.

32. The GCC-EFTA FTA covers trade in goods and services, investment, competition, government procurement, and intellectual property rights. The agreement covers practically all products in HS Chapters 25 to 97, with a few exceptions. As part of the general FTA framework, the GCC and each EFTA State have concluded agreements on trade in agricultural products on a bilateral basis. Most customs duties on originating goods within HS Chapters 25-97 will be abolished by the GCC at the date of entry into force of the agreement, except those listed in Annex VI.[23] The GCC is to eliminate duties after a five-year transition period on 37 lines at the HS 8-digit level (category B); another 11 lines are not covered by the Agreement (category X, mostly restricted goods in the GCC countries: mixtures of odoriferous substances, retreaded or used pneumatic tyres of rubber, and hides and skins of swine); while the importation of 7 HS lines is prohibited (category P, mainly cocaine and crocidolite, and materials containing asbestos).[24]

33. The chapter on services contains lists of specific commitments tailored after the GATS. The GCC countries' list includes concessions in 11 GATS sectors. Although the coverage is broad, investment limitations are inscribed. Also, the agreement does not contain specific provisions on investment in other sectors. Parties agreed to negotiate on business establishment in non-services sectors within two years after the entry into force of the agreement. Although growing, trade between EFTA and the GCC countries remains small, representing only some 4% of GCC trade. In October 2011, the EFTA-GCC FTA had not yet entered into force; it had not yet been ratified.

34. The GCC-Singapore FTA covers trade in goods, customs procedures, rules of origin, government procurement, and trade in services. Under the agreement, the GCC countries committed to eliminate customs duties on products under 99% of HS headings originating in Singapore, either immediately after the entry into force of the agreement (Group A products), or after a five-year transition period (Group B products). Goods originating in Singapore classified under Group C will not be subject to any elimination or reduction of WTO bound rates under this agreement.[25]

35. The GCC and Singapore agreed to liberalize various services sectors beyond their WTO commitments; in particular, Singapore service suppliers will benefit from preferential access in professional services, for example legal, accounting, and engineering services, as well as business services, such as construction, distribution, and hospital services.

36. Negotiations for an FTA between the GCC and New Zealand were concluded on 31 October 2009, but in late October 2011, the agreement had not yet been signed. The agreement covers nearly 95% of the tariff lines of the Harmonized System (HS), including agricultural products,

[22] Sturm and Siegfried (2005).

[23] Under the agreement, origin is conferred on wholly produced goods or on manufactures in which the value of non-originating materials does not, in general, exceed 60% of the ex-works price of the product; for the products set out in Appendix 2 of the agreement, the percentages are specified for the maximum value of non-originating materials.

[24] For more information on this agreement see EFTA online information. Viewed at: http://www.efta.int/free-trade/free-trade-agreements/gcc.aspx.

[25] This includes, for example, poultry meat, some fish and seafood, used tyres, ammonium products, alcoholic beverages, and beer). Singapore Ministry of Foreign Affairs online information. Viewed at: http://www.fta.gov.sg/fta_C_gsfta.asp?hl=30.

with a few exceptions (mostly restricted goods in the GCC countries: mixtures of odoriferous substances, retreaded or used pneumatic tyres of rubber, and hides and skins of swine). Most customs duties on originating goods will be abolished by the GCC and by New Zealand on the date of entry into force of the agreement, except for a limited number of items on which they will be abolished within 4-7 years. The GCC states are currently negotiating FTAs with Australia, China, the EU, India, Japan, Korea, MERCOSUR, Pakistan, and Turkey. In addition, the GCC has received requests for FTA negotiations from the Association of Southeast Asian Nations (ASEAN); Azerbaijan; Chile; the Common Market for Eastern and Southern Africa (COMESA); Georgia; Hong Kong, China; Malaysia; Peru; and Ukraine.

(b) The Pan Arab Free Trade Area Agreement (PAFTA) (also referred to as GAFTA)

37. The Pan Arab Free Trade Area Agreement (PAFTA), signed on 19 February 1997 to implement the Agreement on Facilitation and Development of Trade among Arab Countries[26], entered into force on 1 January 1998. This agreement encompasses all the members of the Arab League[27], and had as an objective to create a free-trade area by 2007 by dismantling customs tariffs by 10% annually over a decade. On 1 January 2005, all tariffs were eliminated among its members. Therefore, originating goods, including agricultural goods are traded duty free under PAFTA. However, non-tariff barriers, such as customs and administrative procedures and transit fees, still have a negative impact on intra-regional trade. For products imported from PAFTA countries, local value-added of at least 40% is required in order to qualify for preferential treatment. The principal entity responsible for implementing the agreement is the Economic and Social Council of the Arab League. In addition, the Union of Arab Chambers of Commerce has been tasked to produce a half-yearly report on the difficulties encountered by traders with the customs administration and regulatory agencies of individual member countries. Currently, 17 members are implementing the Agreement.[28] The PAFTA was notified to the WTO under GATT Article XXIV.[29]

(c) Bilateral agreements

38. The UAE has signed bilateral trade agreements with Syria, Jordan, Lebanon, Morocco, and Iraq. All tariffs are eliminated for all agricultural and industrial goods traded under the ambit of these agreements. The agreements were made to accelerate the conclusion of PAFTA. The UAE also has a Trade Investment Framework Agreement (TIFA) with the United States. Negotiations to establish a free-trade agreement between the UAE and the United States were launched in 2005 but came to a halt in 2006 and have not resumed. The UAE has bilateral economic agreements with 50 countries/territories.

(d) Other preferential arrangements

39. The UAE does not grant or receive autonomous preferences under the Generalized System of Preferences (GSP) and does not participate in the Global System of Trade Preferences (GSTP) among developing countries.

[26] This agreement dates from 27 February 1981.

[27] The 22 members are: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Mauritania, Morocco, Oman, Palestinian Authority, Qatar, Saudi Arabia, Somalia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates, and Yemen.

[28] Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Morocco, Oman, Palestinian Authority, Qatar, Saudi Arabia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates, and Yemen.

[29] WTO document WT/REG223/N/1, 20 November 2006.

(6) FOREIGN INVESTMENT REGIME

40. The UAE's economic environment is generally liberal and business-oriented and its trade regime open. However, despite some modifications in its regulations, its investment policy continues to limit foreign investment and competition between local and foreign investors, except in the Free Zones, where 100% foreign ownership is allowed. Outside free zones, industrial licences are granted only to domestic companies that are majority-owned by UAE nationals (at least 51%-owned by UAE nationals), or by 100% foreign-owned branches that appoint a local services agent or "sponsor". The purpose of the UAE's investment policy is to maintain a balance of preserving business opportunities for UAE citizens while receiving foreign investment and know-how and promoting dynamism in specific areas. Although FDI flows have been substantial, despite the ownership rules (see Chapter I), the effects of the global financial crisis have been felt in terms of a decrease in investment flows, especially in Dubai, and the Government is currently intent on revising the foreign investment framework (see below).

41. Investment policy is coordinated between the Federal Government and the respective emirates. The Federal Department for Investment, established in 2008 at the Ministry of Economy, is the government entity responsible for assisting both foreign and domestic investors and promoting investment. The Department conducts its main task of promoting foreign investment in coordination with the competent authority at emirate level.[30] It provides advice and technical support regarding the application of the investment regulations, including for the registration and licensing of foreign investment projects, and settles any disputes between the investor and the competent authority with regard to registration, licensing, and the operations of the investment project.

42. Licences are the basic requirement to engage in any kind of business in the UAE. Procedures for local and foreign companies are generally the same, except in the case of branches of a foreign company, for which specific rules apply. Licences may be granted at the federal or at the emirate level, depending on the type of activity. Licensing procedures may vary from emirate to emirate. For example, in Dubai there are three categories of licences for all business activity: (i) commercial licences covering trading activities; (ii) industrial licences, covering an industrial or manufacturing activity; and (iii) professional licences to provide professional services, and for craftsmen and artisans. To obtain a licence, official approval from the Ministry of Economy and the local authority is required.

43. Under the Federal Commercial Companies Law (No. 8 of 1984) and its amendments, UAE nationals must hold at least 51% of the capital of any company established in the UAE.[31] Exceptions to this provision include: (i) nationals of other GCC countries who are granted national treatment and may have up to 100% ownership in most activities; (ii) investment in companies located in free zones (Chapter III(3)(iv)), where up to 100% foreign ownership is allowed; and (iii) companies registered as branches or representative offices of foreign companies established in Dubai. Under Cabinet Resolution Number No. 4 of 2008, five activities require majority 51% UAE ownership, and may not be carried out by other GCC nationals: Haj and Umra services, commercial agencies, social services,

[30] In Abu Dhabi, the authority in charge of foreign investment is the Department of Economic Development. For more information see: http://www.adeconomy.ae/english/pages/home.aspx. In Dubai, the competent entity regarding foreign investment is the Department of Economic Development. For more information see: http://www.dubaided.gov.ae/english/pages/default.aspx.

[31] Article 22 of Federal Company Law No. 8 of 1984.

cultural activities, and importing labour. The Federal Commercial Companies Law sets out the regulations governing the operations of a foreign business and defines seven types of companies.[32]

44. Under the Federal Commercial Companies Law, foreign companies may also exercise their main activity in the UAE by opening a branch or a representative office. A foreign branch may exercise only the activities for which it is licensed by each emirate. The company must apply to the Ministry of the Economy for this licence, and once approved by the Ministry, the application goes to the economic department of each emirate in which the business is to be undertaken. Some 3,788 branches of foreign companies operate in the UAE, mostly in construction, petroleum, insurance, accounting, tourism, courier, and air transport services.

45. In order to open a representative office or branch of a foreign company in the UAE, a local services agent or "sponsor" must be appointed, which must be a UAE national or company. Regulated by Federal Trade Agencies Law No. 18 of 1981 and its amendments, the local service agent has no capital share or management power but is paid a lump sum and/or share of profits. The agent helps to obtain the required licences and authorizations but is not responsible for any of the financial obligations of the company's branch or representative office within the UAE or abroad.

46. Foreigners may form sole proprietorships to practice certain activities in some emirates in some professional services, such as medical services, engineering consultancies, legal consultants, computer consultants, and non-trading activities. A foreign sole proprietor is required to appoint a local services agent.

47. Changes were introduced in 2009 to Federal Law No. 13 of 2006 (Commercial Agencies Law), which previously restricted the number of agents a foreign principal could appoint, as well as the terms of the agency relationship. The amendment, among other things, introduced modifications to make contracts more easily enforceable for example, it: (a) limited an agency contract to a fixed time period; (b) required mutual consent to renew an agency agreement; (c) allowed either party to file for damages; (d) allowed the importation of liberalized goods (not subject to restrictions) without the agent's approval; (e) eliminated the Ministry of Economy's Trade Agencies Committee, which handled agency disputes; (f) required that a commercial agency may only be deregistered by mutual agreement or pursuant to a court order; and (g) determined that either party (not only the agent) may request compensation for prejudice caused by the termination of the agency contract. The amendments sought to balance the relationship between the parties to an agency contract, as the situation was unbalanced in favour of the agent. Once an agency agreement had been registered, it could not be terminated, under any circumstances, without the agent's approval (except after a decision by the Commercial Agencies Committee of the MOE), even if the agreement was for a limited time-period.

48. Federal Law No. 2 of 2010 introduced further amendments to the Commercial Agencies Law, which seem to have partly reverted changes introduced in 2009. The new amendment stipulates that, a client (i.e. foreign investor) may terminate an agency contract or fail to renew it, only if there is a fundamental reason that would justify its termination or non-renewal. Additionally, under the amendment, it is not permissible for a company to register a new agent contract in the Registry of Commercial Agents even if the previous agent had a fixed-term contract, unless it was cancelled through mutual consent between the agent and the client, or if there were substantial grounds to justify the termination of the services of the agency, or not renewing it, or if there was a judicial verdict for its cancellation. Cabinet Resolution No. 3 of 2011 established a Commercial Agencies Committee to be formed by Ministerial Council, to review disputes that may arise relating to an agency registered

[32] A general partnership, limited partnership, joint-venture, public shareholding (joint stock), private shareholding (joint stock), limited liability, and limited share partnership company.

with the Ministry. Parties to the dispute may not go to court before first presenting it to the Committee, which must examine it within 60 days. Only the Committee's decisions may be challenged at the relevant court, within 30 days of notification of the decision. If not challenged within this period, the decision would be final and cannot be appealed.

49. The UAE's hydrocarbon industry is specifically excluded from the provisions of the Federal Commercial Companies Law. The industry is owned and controlled by the respective emirates, and foreign participation must take the form of joint-ventures. Similarly, electricity, gas, and water utilities are supplied by state monopolies, although the Emirate of Abu Dhabi has announced the partial privatization of several electricity and water plants.

50. Investment in the industrial sector, other than in free zones, is governed by Federal Law No. 1 of 1979 organizing industrial affairs. This law regulates the establishment of all industrial undertakings in the UAE and the incentives provided for industrial undertakings. It requires a prior industrial licence to be obtained in order to engage in any industrial activity in the country. Investors are expected to fulfil three conditions to obtain the industrial licence: (a) a national entity must hold at least 51% of the shares of the company; (b) the company must have at least 10 employees; and (c) the invested capital must be at least AED 250,000. All companies licensed as industrial companies enjoy duty-free importation of materials needed for the industrial project's licensed production (versus a general tariff rate of 5%). This duty exemption is granted automatically to all companies licenced as industrial companies in the UAE. On 1 June 2009, the Federal Company Law No. 8 of 1984 was amended to allow business partners seeking to establish a limited liability company to determine freely the capital requirements of their new company; previously, there was a minimum capital requirement of AED 150,000for the establishment of such companies. The authorities noted that in mid 2011, Federal Law No. 1 of 1979 was being reviewed, to streamline the licensing process and encourage investment.

51. Certain economic activities are reserved for UAE nationals: (a) Agriculture services; (b) Audio-visual services; (c) Car rental/leasing services; (d) Commercial agencies; (e) Hunting and forestry-related services; (f) Fishing services; (g) Investigation and security services; (h) Natural resources, including oil and gas, electricity, water treatment and distribution; (i) Real estate services; (j) Recreational, cultural and sporting services; (k) Passenger and freight road transport; (l) Pharmacies; (m) Travel agencies and tour operator services; (n) Warehouses for medicines and preventative medicine centres.

52. Foreign suppliers can provide studios for artistic and cinematographic production and photography, theatrical troupes, movie halls, theatres, halls for artistic exhibitions, and sporting activities.

53. Land ownership and property-related transactions in the UAE are in general restricted to UAE nationals, with some exceptions for GCC nationals depending on the emirate. In Dubai, the registration of real estate is regulated under Property Law No. 7 of 2006, under which UAE and GCC nationals are allowed to own freehold property in Dubai. Non-UAE nationals however, are only allowed to hold an interest over land in designated areas; and this may take the form of a freehold or a 99-year leasehold interest. There are currently over 30 designated zones in Dubai in which foreign ownership is permitted.

54. In Abu Dhabi, Law No. 19 of 2005 allows UAE nationals to own a freehold title to land anywhere in Abu Dhabi, while GCC nationals may only own land in certain areas designated by the Government known as "investment areas". In February 2007, the law was amended to permit non-UAE nationals to own floors (excluding the land) of buildings situated in any of the investment zones.

The law also permits non-UAE nationals a right to a 99-year usufruct (similar to a lease) or a 50-year renewable right of *musataha* (right to build) in respect of land situated within the investments zones. There are currently three investment areas in Abu Dhabi.

55. Other emirates have their own regulations and decisions governing land/property ownership, some more liberal than others. For example, Ras Al-Khaimah offers freehold property ownership rights allowing expatriates to purchase in selected developments. In Sharjah, on the other hand, the owner of a property is not permitted to sell it to non-GCC citizens without approval by the Ruler of the Emirate.

56. Since the last review of the UAE in 2006, the Ministry of Economy has been mandated by the UAE Cabinet to implement a National Investment Reform Process aimed at making the UAE more conducive to investments. The authorities indicated that in mid 2011, the Ministry of Economy was preparing a federal law on foreign investment, to serve as a one-stop-shop law reflecting government policies on foreign investment. The new law will regulate foreign investors' rights, protect and promote foreign investments, and give national treatment to foreigners. According to the authorities, the new investment law will also provide incentives for foreign investors, including allowing an investment with 100% foreign equity. The proposed law is aimed at creating favourable conditions for foreign investment and transfer of know-how.

57. Other measures to facilitate FDI will include the registration and licensing of projects within 14 days, and issuance of visas and permanent residency approvals for investors and foreign labour needed for the project.

58. In May 2011, the UAE had signed 39 bilateral investment agreements[33], and 58 treaties on avoidance of double taxation.[34] In 2004, the UAE signed a bilateral trade and investment framework agreement (TIFA) with the United States. The UAE is a member of the Multilateral Investment Guarantee Agency (MIGA).

[33] Algeria, Armenia, Austria, Azerbaijan, Bangladesh, Belarus, Belgium, China, Czech Republic, Egypt, Estonia, Finland, France, Germany, Italy, Jordan, Lebanon, Malaysia, Mongolia, Morocco, Pakistan, Poland, Republic of Korea, Romania, Russian Federation, Singapore, Sudan, Sweden, Switzerland, Syria, Tajikistan, Tunisia, Turkey, Turkmenistan, Ukraine, United Kingdom, Uzbekistan, Viet Nam and Yemen. See Ministry of Finance online information. Viewed at: http://www.mof.gov.ae/En/Publication/Pages/encourageinvestment.aspx.

[34] Algeria, Armenia, Austria, Azerbaijan, Bangladesh, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, China, Cyprus, Czech Republic, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, India, Indonesia, Ireland, Italy, Kazakhstan, Lebanon, Luxembourg, Malaysia, Malta, Mauritius, Mongolia, Morocco, Mozambique, the Netherlands, New Zealand, Pakistan, Philippines, Poland, Portugal, Republic of Korea, Romania, Seychelles, Singapore, Spain, Sri Lanka, Sudan, Switzerland, Syria, Tajikistan, Thailand, Tunisia, Turkey, Turkmenistan, Ukraine, Uzbekistan, Bolivarian Republic of Venezuela, Viet Nam and Yemen. See Ministry of Finance online information. Viewed at: http://www.mof.gov.ae/En/Publication/Pages/doubletaxationavoidanceagreements.aspx.