Issues and Requests Relating to Foreign Trade and Investment - United Arab Emirates

	Category	No	Issue	Issue Details	Requests	References
1	Restrictions on Entry of Foreign Capitals	(1)	Restricted Majority Foreign Ownership	- As foreign investment is restricted the majority foreign ownership is disallowed in the United Arab Emirates (UAE). - UAE enterprises' capital contribution of 51% or more (60% or more for energy related industries such as petroleum and gas etc.) is necessary for foreign funded enterprises (FFEs) to establish a local legal entity outside the free zone in UAE. In addition, UAE nationals' or UAE enterprises' sponsorship is required for establishment of a representative office in UAE. Legislative overhaul is under way with the view to enable FFEs to establish local legal entity with 100% foreign ownership in UAE. Its development is keenly watched.	- It is requested that GOU repeals the restrictions on the majority foreign ownership.	- UAE Company Act, Article 22, Ministerial Decision 1989 (No.71)
				- Incorporation of a company by more than 51% of foreign fund ownership is prohibited in UAE. (A member firm considers setting up a company in free zone, where the prohibition does not apply.)	- It is requested that Government of UAE (UAEG) repeals the prohibition foreign fund enterprises (FFEs) entry into UAE.	
				- An Abu Dhabi local influencial person's guarantee is necessary for license to open an office, renew licence and acquisition of entry visa for expatriates.	- In the Mid-East Gulf Area this kind of sponsorship has existed from a long past. However, there has been a move toward its discontinuation in some areas. It is requested that Abu Dhabi also follows suit.	
				(Actions) - The foreign ownership is restricted to 49% in establishment of foreign funded enterprises locally in UAE. While the requirement for 51% or more of local ownership remains in principle, it is possible to establish 100% foreign owned enterprises in the Free Zones (FZs), should any of the followings applies: -- Branch Office or Resident Representative Office (RRO) (Requiring, however, "Service Agent", an UAE individual or an enterprise with 100% UAE capitalisation, generally called "Sponsor". Sometimes, petroleum related enterprises are allowed to establish RRO without a Sponsor.) -- Sole Proprietorship in Specialist Work (Medical service, Legal consultant, etc.), provided, however, that a Sponsor is required. -- In the case of FZs: --- Where 100% UAE capitalisation is legally compelled, --- Where the business is in the sector in which 100% GCC capitalisation is authorised, --- In the business sector where a 100% GCC capitalised enterprise enters into partnership with UAE nationals.		

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		(2)	Restricted Participation in Service Business Sector	- Due to the Regulation that restricts provision of service / maintenance on machineries and equipment only to joint venture company (JVC), a firm's subsidiary in Dubai is unable to provide such service from Dubai.	- It is requested that GOU repeals the Regulation.	
9	Restrictive Export/Import Trade, Duty, and Customs Clearance	(1)	Certificate of Origin Requirement	- Since 1 January 2003, in order to protect and foster the domestic industries in the GCC Countries (the Gulf Cooperation Council Countries, comprising of 6-Countries, UAE, Bahrain, Kuwait, Oman, Qatar, and Saudi Arabia), they have begun requiring certificate of origin issued by the respective government.	- It is requested that GOU repeals the requirement for certificate of origin or streamlines the procedures.	
				(Actions) - Since 1 January 2003, the GCC has formally implemented the customs union. As part of responsibility under the GCC customs union, UAE applies non-special preferential tariff rules identical to the remaining 5 GCC member states on import from Third countries. The GCC origin is granted to products totally produced or manufactured in the GCC member states, in which the domestic added values exceed 40%.		
		(2)	Complex Advance Registration System	- Since 2010, GOU has introduced and formally implemented the system, requiring advance registration of medical equipment, etc. under the jurisdiction of Ministry of Health. This system is quite complex, defying comprehension. While registration deadline is repeatedly extended, its drastic solution is imperative.	- It is requested that GOU: -- reviews the system to make it clear and simple, and -- coordinates with the international framework toward simplification of the system.	
10	Restrictive Measures for Operations in Free Trade Zones ("FTZs") and Special Economic Zones ("SEZs")	(1)	Implementation of Unreasonable Scheme concerning Free Zone	- Free zone: A firm now negotiates with customs over the import duty levy on goods purchased from the UAE domestic enterprise in Abu Dhabi for resale to a purchaser in a city in Abu Dhabi, after storing the goods in Jebel Ali free zone (JAFZA), Dubai. It is beyond comprehension how GOU can levy import duty on products domestically manufactured in UAE and resold to a domestic purchaser in UAE. Already two-months have passed since the issue surfaced without conclusion, although the Firm has kept consulting with the Customs Authority (CA) over the question, if such transaction form has ever existed in JAFZA, possible impact on other enterprises, as well as implementation of tax levy upon other firms.	- It is requested that CA clearly defines the transactions for the UAE domestic products between the parties in and out of the free zone. Should such transactions incur import duty, the firm's effort for business expansion gets materially impaired. - It is requested that the CA makes a fair decision in favour of the firm. Should CA levies tax on such transactions, it will impair the firm's effort to expand sales of the UAE domestic products.	

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				- Where an Firm in the UAE free zone imports goods from abroad and resells such goods to a domestic purchaser in UAE (DPU) holding import duty exemption licence (IDEL), it requires quite a complex, onerous procedure before DPU gets the tax exemption. The firm must obtain from its parent (member firm) the power of attorney (POA) stamped by Japan chamber of commerce & industry, and further endorsed either by Japan Ministry of foreign affairs (MOFA) or Japanese consular office in Dubai.	- The free zone (being a kind of off-shore), it is requested that GOU obviates the need for the firm's POA to enable firm's purchasers benefiting from the tax exemption measures (under IDEL). Moreover, the going scheme precludes the firm's direct purchase from parties other than the headquarter office, since the firm is unable to import direct competitive products from third countries. To the firm's purchasers, as well, it means the loss of business opportunities.	
12	Exchange Controls	(1)	Rapid Exchange Fluctuations	- Radical exchange fluctuations prevail. As it stands, member firm's subsidiary (MFS) benefits from exchange gain on a direct export transaction in yen. Nevertheless, negotiation for raise in price is difficult. In a transaction with its parent company, the prevailing Yen depreciation enables MFS to offer special prices to its customers. However, MFS runs on a thin margin, so that if the exchange rate swings toward appreciation of Yen, it will instantly show operational loss: such is the severity of the fluctuation band.	- It is requested that GOP takes step to: -- stablise foreign exchange fluctuations, and -- holds the fluctuation band within a few percents in 6-months.	
16	Employment	(1)	Compulsory Employment of Local Workers	- The requirement under Emiratisation to employ UAE nationals at high remuneration poses problems in profitability and operation. - In an office with 50-employees or more, employment of indigenous workers of 2% or more (5% in insurance sector, and 4% in banking sector) is compelled. However, it is difficult to recruit indigenous local workers that match the required terms and conditions.	- It is requested that GOU: -- repeals Emiratisation requirement, -- eliminates the gaps in wages, and -- enhances higher education. - While Member Firm appreciates the need for employment of indigenous workers, it is requested that GOU constitutes a structure that supplies workers with diversified competencies.	- Ministerial Decision 2005 (No.41, 42, 43)

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17	Implementation of Intellectual Property Rights ("IPRs")	(1)	Absorption of Cost for Disposal of Counterfeit Goods	- A firm's subsidiary conducting annihilation of counterfeit goods is faced with the problem of the various costs incurred for the confiscated counterfeit goods, i.e., storage, transportation, and disposal costs.	- It is requested that GOU: -- reinforces implementing rules of intellectual property right -- tightens clamp down at customs, -- introduces simple, import injunction measures, and -- alleviate financial burdens upon authorized importers related to confiscated goods.	- The Anti-Counterfeiting Trade Agreement (ACTA), October 2010
22	Environmental Pollution and Waste Disposal	(1)	Abrupt Amendment of Energy Efficiency Regulation	- Product development cannot catch up with the amendment in Energy Efficiency Regulation, which was announced in April and enforced from September. A member firm's subsidiary is unable to import products for distribution in UAE for 6-months or more, due to development of products that satisfy the requirements under Amended Energy Efficiency Regulation and lead-time from manufacture to shipment.	- It is requested that the Government of UAE (GOU) releases the energy efficiency regulation, etc. 2 to 3-years ahead of enforcement.	
		(2)	Mandatory Use of Oxo-Biodegradable Plastic Bags and other related Packaging Materials	- Mandatory use of oxo-biodegradable plastic bags and other related packaging materials enforced from 1 January 2014 under UAE Ministerial Decree No.118-2013 expands the scope of the items subject to regulations from the previous shopping bags only to 15-items of packaging materials. (Although it is uncertain, it includes) packaging materials for electric/electronic products. In addition, the Decree requires submission of sample packaging materials using the ESMA approved additives for further approval by the Emirates Authority for Standardization and Metrology (ESMA) and attachment of mark for certification of conformity. Use of oxidatively decomposed packaging materials susceptible of oxidation, in lieu of the sturdy, ruggedly composed materials, which are prerequisite for quality assurance of products, goes beyond the reasonable extent of protecting the products in transit.	- It is requested that GOU exempts packing materials of electric/electronic products from the scope of the goods subject to the Ministerial Decree.(DE of EU and KEA of R.O.K. already despatched letters to ESMA, requesting clarification of the subject products, and postponement of its enforcement. Furthermore, Gulf Petrochemicals and Chemicals Association (GPCA) submitted its Position Paper to UAE, to the effect that this regulation is not an optimum correct policy, as it gives negative impact among others on plastic recycling efforts, etc.)	- United Arab Emirates / Ministry of Environment & Water Office of the Minister Decree No.118-2013 (Law) - United Arab Emirates/ Ministry of Environment & Water Office of the Minister UAE Ministerial Decree No.118-2013

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				- The requirement exists for use of certified oxo-biodegradable plastic packaging materials made from poly-ethylene (PE), polypro-pylene (PP) as raw materials, attaching mark for certification of conformity, but for verbal explanation, accompanying neither formal explanation of the scope of the subject products, nor precise specifications for oxo-biodegradable plastic.Further, should this requirement for packing materials apply to all products, due to the vast varieties of the packaging materials, it is extremely difficult to comply. While member firm's subsidiary (MFS) received from the local authority a verbal confirmation that the Decree does not apply to the finished products, promulgation of its formal written Decree remains pending.	- It is requested that GOU narrows the scope of the subject product categories to those that materially damage the environment, and exclude electric/electronic products and packaging materials for distribution from the scope of the subject products. - While GOU verbally stated that the finished products packed in plastics are outside the scope of the subject products, it is requested that GOU releases formal documents, including FAQ (Frequently Asked Questions) to substantiate the verbal statement.	
23	Inefficient Administrative Procedures, Regimes and Practices	(1)	Risks for Acquisition of Licences	- In the contract with Dubai Electricity and Water Authority (DEWA), state owned enterprise; bidders are responsible to assume the risk of the decision by Ministry of Economy for tax exemption.	- It is requested that the state owned enterprise assumes the risks for the grant of tax exemption measures.	
		(2)	Immature Jurisprudence	- It takes a long time for determination of accounts receivable / payable. Accounts receivable protection (by seizure etc.) is totally impossible. Execution of Dubai court decision in Abu Dhabi requires another deliberation at Abu Dhabi, making the decision of the former court meaningless.	- It is requested that GOU periodically provides a forum for exchange of views between GOU and the enterprises / other interested parties, for provisions of information, request for improvement, etc.	
		(3)	**Difficulty in Succeeding Business and Obtaining License under CCS**	- The Contractor Classification Scheme (CCS) introduced in Abu Dhabi will effectively begin in FY2013. It becomes impossible to succeed a business operation without history of actual business results, or an adequate number of technical and accounting staff on the payroll. Barriers for the new entrants will get steeper, although the policy change will be difficult to make.		

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				- Contractor classification by Department of Economic Development (DED) is devoid of any category that matches the modalities of Japanese Trade Firms (ITFs). It makes difficult ITFs' acquisition of contractor licence. The classification lacks any registration category itself in which ITFs are regarded as contractor.	- It is requested that GOU implements the Regulation in the manner that allows Japanese ITFs to work as main contractor, irrespective of the contractor licence and classification issues.	
		(4)	**Difficulty in Acquiring Authentication on Official Documents**	- Official documents addressed to Turkey, Iraq, UAE, Saudi Arabia, etc. require authentication at Chamber of Commerce & Industries, Notary Public, UAE Embassy in Japan (UEJ), etc. Procedures are UEJ are extremely inconvenient, taking a long time from application to receipt (as its authentication is not issued on the spot of filing application), with the application accepted only during the morning hours and the authentication issued only during the afternoon hours. - UAE's consular office notarization fee (120,000 yen per notarization is by far more severely expensive than that of other countries.	- It is requested that GOT and GOJ review the scheme and employment of the authentication requirement. - It is requested that GOU reduces consular office notarization fees.	
		(5)	Inefficiency in the Administrative Procedures	- Municipal office: While procedures are not excessively complex, nevertheless, due to inefficiency in the clerical work, it takes much work and time.		
24	Indigested Legislation, Abrupt Changes	(1)	The Risks for Legislative Changes	- A contract with TRANSCO (State-owned Enterprise) includes provisions that hold the contractor liable for all risks arising from legislative changes, including the taxation system.	- It is requested that GOU changes the provisions that TRANSCO is liable to assume all risks arising from legislative changes, including the taxation system.	
		(2)	Unrealistic Legislative Schemes	- As exemplified in the Law on maintenance and administration of tyres promulgated in 2012, abundance of inexecutable laws and implementing regulations has been obstructing a sound business activity.		