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**RECENT REVISIONS TO COMMERCIAL AGENCY LAW
IN THE UNITED ARAB EMIRATES**

by

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The United Arab Emirates - despite its general reputation for free trade and limited government regulation of business - has had (for over two decades) the most onerous 'dealer protection' law in the Middle East.

Very recently, however, pro-competition (or anti-monopoly) sentiment within certain UAE government circles resulted in enactment of a new federal law and two UAE Ministry of Economy resolutions that collectively reflect a weakening of those dealer protections. For example, Minister of Economy Sheikha Lubna Al Qasimi observed:

The new amendments will certainly boost the competitive economic climate in the UAE. ... This law was promulgated out of the desire to enhance and maintain stability in prices and ensure that agencies are not manipulated to increase prices.¹

The following summary highlights some of the more significant aspects of current UAE commercial agency law, including a look at those recent amendments. (I have prepared an

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¹ "Lubna hails commercial agency law" (18 June 2006), posted at the UAE Interact web-site, www.the-emirates.com.

English translation of the UAE Commercial Agency Law, including the 2006 amendments, appended at the end of this summary.)

1. Background

Most analyses of UAE commercial agency law begin with the enactment in 1981 of Federal Law No. 18, the "Commercial Agency Law". In light of the recent changes to the Commercial Agency Law, we might benefit from a brief look at the legal rules applicable to UAE commercial agencies before 1981.

The Emirate of Abu Dhabi enacted Law No. 17 in 1969, entitled the Law Organizing Commercial Agencies. Based on preliminary research, I believe that Abu Dhabi Law No. 17 (1969) was the initial effort to regulate commercial agencies in that emirate, with a primary focus on import and export activities conducted by commercial agents. (Interestingly, Article 4(1) of Abu Dhabi Law No. 17 (1969) emphasized that "no person is allowed to conduct any commercial activity except upon obtaining a license in accordance with the Commercial License Law of 1969". The Abu Dhabi government's inclusion of such a rudimentary provision, only indirectly related to commercial agency law, might indicate the challenges that the government was facing at that time in implementing the basic regulation of commercial activities.)

Abu Dhabi Law No. 17 (1969) was repealed four years later, with the enactment of Abu Dhabi Law No. 11 (1973), also entitled the Law Organizing Commercial Agencies. Unlike the 1969 law, however, Abu Dhabi Law No. 11 (1973) did not broadly address general matters of commercial registration, import or export -- but rather limited its focus to the operation and regulation of commercial agency activities. In that regard, Abu Dhabi Law No. 11 (1973) bears a closer resemblance to 'modern' Arab laws governing commercial agency. For example, Law No. 11 (1973) imposed local nationality and other qualification requirements for commercial agents working in Abu Dhabi; required that the commercial agent have a direct relationship with the original principal; and described various rules for registration of commercial agents in a special Registry at the Abu Dhabi Ministry of Economy and Commerce -- including a rule that no claims would be heard on unregistered commercial agency agreements. (We will examine similar provisions in the current UAE Federal Commercial Agency Law, further below.)

Abu Dhabi Law No. 11 (1973) contained some notable differences from the UAE Federal Commercial Agency Law that was ultimately enacted in 1981. For example, the 1973 Abu Dhabi Law

did not state that commercial agents would be deemed to have exclusive rights to the products and territory constituting the subject matter of the parties' commercial agency agreement. Consequently, the 1973 Abu Dhabi Law did not prevent a principal from appointing multiple commercial agents in Abu Dhabi for the same products. Notably, the 1973 Abu Dhabi Law did not contain any 'dealer protection' provisions allowing a qualified commercial agent to claim special compensation in the event the principal terminated (or failed to renew) the agency without adequate justification.

The Dubai government was not as quick to enact commercial agency regulations, particularly regulations like those in Abu Dhabi that restricted commercial agency activities to local nationals. Even decades ago, the Dubai economy had a lively re-export and entrepot trading tradition, and Dubai's ruler (Shaikh Rashid) welcomed foreign businesses. However, the enormous growth in economic activity witnessed by the UAE in the late 1970s (largely attributable to increased regional oil wealth) flooded the federation with more foreign businesses, and even the well-established Dubai trading families became more inclined to seek legislative protection.² Explaining the change in local attitudes at that time, a U.S. Embassy official opined: "The motive here is not simple greed, but the desire to foster the development of an [indigenous] managerial and entrepreneurial class which can control the country's economic future".³

Even in that changing business environment, there was not monolithic local support for broad 'dealer protection' legislation in the UAE. For example, when the UAE Federal Ministry of Economy and Commerce recommended mandating UAE-wide exclusivity for commercial agents and the products subject to their agreements, the Abu Dhabi Chamber of Commerce reportedly

² To some extent, "foreign businesses" for these purposes included nationals of other Arab Gulf states. One published report after enactment of the 1981 Commercial Agency Law had this to say: "Bahraini and Kuwaiti merchant barons are particularly incensed. The Zayanis, Kanoos, Jalals and other potent merchant families, many of whom had been doing business in the emirates long before oil turned up, see the possibility of all valuable agencies here being picked off by eager U.A.E. nationals." See "New Agency Law To Be Vigorously Enforced", Middle East Executive Reports (May 1982), at p. 26.

³ American Embassy (Abu Dhabi) Unclassified "Airgram", Message Reference No. A-61 (12 October 1975); copy on file in the author's Chicago office.

opposed that recommendation, believing that such a proposal would give monopoly rights to a commercial agent and result in higher prices for imported commodities.⁴

2. Current Commercial Agency Law

The current UAE Commercial Agency Law was enacted by Federal Law No. 18 (1981), and subsequently amended on a few occasions over the years -- including by Federal Law No. 13 (2006). In addition, the UAE Commercial Transactions Code (1993) contains various provisions on the operation of commercial agencies, and the UAE courts look to these provisions if the Commercial Agency Law fails to address a particular issue. More generally, the UAE Civil Transactions Code (1985) contains provisions on agency arrangements, to which the courts might refer in particular matters concerning commercial agencies.

Under the UAE constitution, federal law supersedes inconsistent emirate law. As a result, Abu Dhabi Law No. 11 (1973) was effectively repealed by enactment of the Commercial Agency Law in 1981.

The Commercial Agency Law defines the term "commercial agency" as representation "for distribution, sale, display or provision of any commodity or service" (emphasis added). Therefore, the Commercial Agency has been applied to distributors as well as commercial agents.

Although franchises and commercial agencies share a few common features, many local legal advisors believe that a franchise agreement should not be deemed subject to the provisions of the Commercial Agency Law. However, some UAE government officials have reached a different conclusion, and at least one lower court has decided that franchises do fall within the definition of "commercial agency".

3. Qualification Requirements

Article 2 of the Commercial Agency Law states that commercial agency business shall be conducted only by UAE nationals, whether natural persons or companies wholly-owned by UAE natural persons.

⁴ See Choudhury, "Proposed Federal Agency Rule Unlikely To Be Accepted; Agency Law Reviewed", Middle East Executive Reports (August 1979), p. 4.

In addition to the UAE nationality requirement, a commercial agent should have a valid and appropriate commercial license in each emirate intended to be within the commercial agent's territory. The commercial agent should also be registered with the Chamber of Commerce in each relevant emirate.

4. Direct and Exclusive Relationship

Article 4 of the Commercial Agency Law requires a direct relationship between a UAE commercial agent and the foreign principal, without any intervening regional or multi-country sales agent. An exception is made for an authorized exporter or sole distributor of a foreign principal -- when the latter does not conduct its own marketing.

Article 5 of the Commercial Agency Law states that a qualified commercial agent will be deemed exclusive in its territory, but allows a foreign company to appoint a separate commercial agent for each emirate or combination of emirates, or one commercial agent for the entire UAE. In practice, it has been possible for a foreign principal to appoint different commercial agents for different "product lines", or even different brands or types/models of the same general product.

Additional provisions of the 1981 Commercial Agency Law bolstered a qualified UAE commercial agent's exclusive right to market designated products within its territory. For example, Article 7 of the Commercial Agency Law entitled a qualified UAE commercial agent to commission for all sales made within its territory, regardless of how these sales were made. Moreover, Article 23 of the Commercial Agency Law generally prohibited the importation into the UAE of any products covered by a registered commercial agency, except with the approval of the commercial agent or the Ministry of Economy and Commerce.⁵

UAE Federal Law No. 13 of 2006 has amended Article 23, eliminating the right of a UAE commercial agent to block imports in certain categories of goods specified by decision(s) of the

⁵ Historically, the UAE has been much more active than other Arab Gulf states in enforcing the exclusivity rights of a qualified local agent. For example, in the mid-1980s (shortly after enactment of the Commercial Agency Law), Dubai municipality required new applicants for trade licenses to execute a written undertaking not to directly import products that were the subject of a registered commercial agency agreement. "Dubai: Protection for Agencies", U.S.-Arab Commerce magazine (June 1985), at p. 19.

UAE Council of Ministers. One such Council of Ministers' decision had already been issued in 2005 -- allowing traders to freely import various categories of basic foodstuffs.⁶

Some UAE government officials described that 2005 decision as directed against manipulation of prices by "exclusive agents or monopolists". However, price increases alternately could be attributed to the inflationary pressures that have broadly existed in the UAE for many years. In addition, over a decade ago, the UAE courts had rejected a law suit challenging commercial agency exclusivity as violative of anti-monopoly principles that exist within Islamic law.⁷ But when UAE government officials began to attribute high prices to the statutory exclusivity rights granted to local commercial agents, then most observers expected changes to the Commercial Agencies Law, regardless of the countervailing arguments.

In the early 1980s, a generally similar scenario unfolded in Lebanon, as a populace weary of civil war also become frustrated with high prices for basic commodities. In 1983, Lebanon enacted a decree stating that only distributors of "luxury" products (to be defined in implementing regulations) would be entitled to enforce exclusivity rights against third parties. Another Lebanese decree subsequently defined 'non-luxury' products to include foodstuffs (for human and animal consumption), medicine, detergents and other cleaning products. For these products, therefore, a distributor's exclusivity rights would not be effective against third party importers.⁸

⁶ The UAE Council of Ministers' decision, enacted on 3 October 2005, allows traders to directly import staples such as milk powder and condensed milk; canned and frozen vegetables; fish, poultry, and meat products; pasta, rice and wheat; tea, coffee and sugar; all types of cheese; and baby formula and disposal diapers. See "UAE cabinet allows direct import", Hilal & Associates Newsletter (October 2005), p. 1.

⁷ See, e.g., "Agencies Law Do Not Encourage Monopoly", Trade & Industry magazine (March 1994), prepared by the Legal Affairs Department Director at the Dubai Chamber of Commerce & Industry, and which describes the UAE Supreme Court (Constitutional Division) ruling in Claim No. 1 of Judicial year 20.

⁸ "Lebanon cancels exclusive commercial representation for consumer goods", Sawt al-Kuwait newspaper (12 March 1993), p. 9 (in Arabic). The restriction on exclusive commercial representatives was contained in Article 15 of Legislative Decree

5. Registration Requirements

The UAE Commercial Agency Law requires all local commercial agents to register with the Ministry of Economy. A number of supporting documents must accompany the application for registration, including a copy of the commercial agency agreement, legalized by the UAE embassy or consulate in the foreign principal's country and translated into Arabic.

Although the Commercial Agency Law requires all commercial agencies to be registered, in practice many are not. A commercial agent conducting business under an unregistered commercial agency agreement is technically in breach of the Commercial Agency Law. (Article 22 of the Commercial Agency Law states that a person performing commercial agency in violation of the law's requirements shall be subject to a fine of not less than UAE Dirhams 5,000 -- approximately US\$ 1,350.) In practice, however, an otherwise qualified commercial agent's failure to register does not result in prosecution. In addition, the Commercial Agency Law does not impose any direct penalties on a principal who works through a local commercial agent under an unregistered agreement.

Article 3 of the Commercial Agency Law instructs the UAE courts not to hear any claims brought under an unregistered UAE commercial agency. A similar provision had appeared in Abu Dhabi Law No. 11 (1973), and the intent of the provision in both laws appeared to be obvious: the creation of a powerful incentive to encourage registration of commercial agencies. For a number of years following enactment of the 1981 Commercial Agency Law, local legal advisors debated whether the UAE courts would (or should) enforce Article 3 strictly -- i.e., no claims would be heard of any nature under an unregistered commercial agency, in effect denying even the contractual validity of the parties' agreement.

A number of UAE court decisions did in fact strictly interpret Article 3.⁹ In one reported case, for example, a foreign supermarket franchisor sold product on credit to a UAE

No. 73 of September 1983 (addressing various economic and anti-trust matters).

⁹ See, e.g., Abu Dhabi Court of Cassation Judgment No. 227 &315/18 (31 May 1998), as reported in Price and Al Tamimi, United Arab Emirates Court of Cassation Judgments 1998-2003 (Kluwer, 2005), at pp. 9-10.

franchisee, and later sued in the UAE courts for payment. The UAE franchisee counter-claimed, alleging losses suffered by the franchisor's mismanagement. However, the UAE court concluded that, according to the Commercial Agency Law, no claims could be heard relating to unregistered commercial agencies, the foreign franchisor's relationship with the UAE franchisee (and their respective claims for payment) arose from an unregistered commercial agency, and therefore the court dismissed both claims in their entirety.¹⁰

As a result of the analysis reflected in that court decision, foreign principals were cautioned to carefully structure their unregistered commercial agency agreements to avoid the need for recourse to the UAE courts -- for example, by requiring payment in advance, by letter of credit, or at least minimizing the amount of product sold 'on account'.

Despite the literal language in Article 3 of the Commercial Agency Law, some members of the UAE legal community supported a more equitable interpretation of that text, i.e., it should be interpreted to mean that an unregistered commercial agent would not enjoy the statutory 'dealer protections' available under the Commercial Agency Law, but otherwise that the unregistered commercial agency should be treated as an enforceable agreement under general principles of UAE contract law. Recent (and apparently persuasive) UAE court decisions have adopted this more equitable interpretation.¹¹

Such an equitable, less stringent interpretation of Article 3 was almost certainly not anticipated by the UAE legislator when the Commercial Agency Law was enacted in 1981. That interpretation has led to any interesting dichotomy: the notion that two types of commercial agencies exist under UAE law, registered agencies and unregistered agencies. Various UAE legal counsel regularly advise on this distinction between registered and unregistered commercial agencies, seen to exist not simply as a matter of UAE practice but also as a matter of UAE law. (Of course, customary practice is recognized as a source of law under both the UAE Commercial Transactions Code and the UAE Civil Transactions Code.)

¹⁰ "Franchise Held To Be Agency Agreement", Middle East Executive Reports (July 1994), p. 6.

¹¹ See Abu Dhabi Court of Cassation Judgment No. 484/19 (26 October 1999), as reported in Price and Al Tamimi, United Arab Emirates Court of Cassation Judgments 1998-2003 (Kluwer, 2005), at pp. 23-25.

This more equitable interpretation of Article 3 has begun to 'get traction' in recent years, not only within the legal community but perhaps also within UAE government circles. And anecdotal evidence suggests, perhaps not coincidentally, that it is becoming increasingly common for foreign principals to structure their commercial sales activities in the UAE through unregistered commercial agencies -- thereby placing the relationships outside the dealer protections of the Commercial Agency Law. (There are still limits on what a foreign principal might accomplish in the UAE market through an unregistered commercial agency. For example, some UAE government purchasers insist on dealing through registered commercial agents.)

A somewhat different aspect of registration practice was addressed by the UAE Ministry of Economy's Resolution No. 168 (2006), permitting registration of a commercial agency agreement only if the agreement contains a clause evidencing the parties' consent to such registration, or the commercial agent attaches a letter from the principal evidencing such consent. Ministerial Resolution No. 168 seeks to remedy prior instances where a UAE commercial agent registered its agreement without the principal being aware of that registration and/or the UAE legal implications of registration.¹²

6. Termination or Non-Renewal

The judicial and administrative protections granted to a qualified UAE commercial agent under the Commercial Agency Law are generally considered to reflect local public policy and, as such, may not be waived in advance through provisions in the commercial agency agreement or otherwise.

The UAE Commercial Transaction Code and Civil Transactions Code do not provide for any such dealer protections in connection with unregistered commercial agency agreements. In the latter case, the unregistered commercial agent must substantiate its claim for compensation in the event the relationship is terminated -- in other words, unlike the rule under the Commercial Agency Law, an unregistered commercial agent does not have a presumptive extra-contractual right to claim compensation under general principles of UAE law.

¹² Although Ministry officials have not confirmed that any particular dispute provided the impetus for Resolution No. 168, there is an uncanny congruence of timing and fact pattern reflected in John Hopkins Health System Corporation v. Al Reem General Trading, 374 F. Supp. 2d 465 (D. Md. 2005).

(a) Commercial Agencies Committee.

In 1981, Articles 27 and 28 of the Commercial Agency Law established a Commercial Agencies Committee empowered to settle any dispute arising from a commercial agency in the UAE. Paradoxically, Article 6 of the Commercial Agency Law was amended in 1988 to also grant jurisdiction to the UAE courts over any dispute between a commercial agent and principal arising from their commercial agency. (As amended, Article 6 went on to state that no effect shall be given to any contrary agreement.)

Over the years, the Commercial Agencies Committee would often take initial jurisdiction over commercial agency disputes coming to the attention of the Ministry; and if either party disagreed with the Committee's eventual findings, recourse could be obtained by filing a law suit before the UAE courts. The UAE Ministry of Justice's Department of Opinion and Legislation issued an opinion to the effect that any dispute between a registered commercial agent and its principal (including the commercial agent's claim for compensation) should be submitted initially to the Committee, prior to instituting a law suit in the UAE courts. This opinion ran counter to a judgment of the Dubai Court of Cassation (No. 54 of 17 November 1991), in which the court concluded that the disputants may resort directly to the UAE courts without first submitting their matter to the Committee.¹³

The 2006 amendments to the Commercial Agency Law included a complete repeal of Articles 27 and 28, thereby eliminating the Commercial Agencies Committee and its role in resolving UAE commercial agency disputes.

(b) Compensation.

Article 8 of the Commercial Agency Law states that a principal may not terminate the commercial agency contract unless there is a valid reasons justifying its termination. Similar textual provisions in other Arab commercial agency laws, and statements by various Arab Gulf government officials over the years, might create the impression that "it is not possible" for

¹³ Legal Report, "Judicial Jurisdiction in Trade Agencies Disputes", Trade & Industry magazine (undated page), at p. 33; copy on file in the author's Chicago office. The opinion of the Department of Opinion and Legislation is published (in Arabic) in Al-Adalah (January 1992), pp. 141-42.

a foreign principal to unilaterally terminate a commercial agency. In fact, the Commercial Agency Law does not entitle a terminated commercial agent to specific performance, i.e., there is no right to demand continuation of its relationship with the principal. Rather, the principal has the power to terminate the commercial agency, subject to the legal consequences of the protective legislation.¹⁴ Thus, Article 9 of the UAE Commercial Agency Law states that if termination of the commercial agency results in damage to either of the contractual parties, that party may claim compensation for the damages sustained.

Until recently, the UAE Commercial Agency Law gave a similar entitlement to the commercial agent if its principal failed to renew their agreement. In probably the most significant liberalization among the 2006 amendments, a foreign principal is no longer subject to special statutory rules on compensation to its UAE commercial agent upon the expiration of the commercial agency agreement.

Although the Commercial Agency Law does not contain guidelines on the compensation payable to the commercial agent in the event of the principal's unjustified termination of the relationship, experience has shown that the compensation is generally likely to include (i) either a requirement for a foreign principal to repurchase inventory, or damages to reflect the commercial agent's outlay for such inventory; (ii) other investments, expenses or costs undertaken by the commercial agent in promoting the principal's business; and (iii) a multiple of the annual profits from the commercial agency (usually a multiple of between two to five years), as a form of "lost profits" suffered by the commercial agent.

(c) Administrative Protections.

The Commercial Agency Law has historically restricted the circumstances in which the Ministry might de-register a commercial agent and allow the registration of a successor appointed by the principal.

Prior to the 2006 amendments, the UAE Commercial Agency Law stated that -- unless the parties' commercial agency terminated or expired by mutual agreement, or UAE officials found justifiable reason for the termination/expiration -- a principal's new commercial agent would not be permitted to register under the UAE Commercial Agency Law.

¹⁴ See, e.g., Dubai Court of Cassation Case No. 126/2003.

As a result of amendments to the Commercial Agency Law in 2006, as well as Ministry of Economy Resolution No. 381 (2006), the Ministry now has slightly broader (or more explicit) authority to de-register a commercial agency, including not only upon the parties' mutual agreement to terminate the relationship, or upon the issuance of a final court judgment cancelling the commercial agency, but also upon expiration of the registration without the parties' consent to renew, or upon receipt of a letter from the principal stating that it is unwilling to renew the relationship.

Article 1 of Ministerial Resolution No. 381 (2006) reads as follows:¹⁵

A commercial agency agreement shall be de-registered from the Ministry's Commercial Agency Registry in the following cases:

- (1) Submission of a notarized and authenticated letter providing notification of the cancellation of the commercial agency contract upon the agreement of the two [contractual] parties.
- (2) Issuance of a court judgment for the de-registration of the commercial agency contract.
- (3) Expiration of the commercial agency registration, or expiration of the renewal thereof, without agreement between the two parties to extend its effective term during the year before that expiration.
- (4) Submission of the request for de-registration form prepared by the Ministry, signed by the commercial agent or one legally authorized on its behalf, to effect the de-registration.
- (5) Before the date specified in the agreement for renewal, submission of a notarized and authenticated letter from the principal, expressing its desire not to renew the commercial agency.
- (6) The passing of one year after expiration of the agency without the agent submitting a request for renewal of its registration in the Commercial Agency Registry.

¹⁵ My unofficial English translation from the original Arabic text.

(7) Issuance of a Council of Ministers resolution allowing the importation of products that are the subject to a commercial agency registered with the Ministry.

In practice, the Ministry now proceeds more readily than in the past with de-registration of commercial agencies that have expired, or when the principal does not wish to renew or to continue the relationship. In any specific case, however, the Ministry may proceed slowly in response to a principal's request for de-registration, and routinely allows the registered commercial agent to submit a statement in opposition to de-registration. Until a commercial agency is de-registered, any successor commercial agent appointed by the principal will not be able to register with the Ministry. Importantly, de-registration does not extinguish the right of the commercial agent to seek recourse before the UAE courts, by claiming damages for wrongful termination.

Under Article 23 of the Commercial Agency Law, UAE customs authorities should refuse to clear goods encompassed by a registered commercial agency (for example, attempts to import the relevant products by a principal's successor commercial agent), unless upon the agreement of the registered commercial agent or the Ministry. (As mentioned above, the UAE Council of Ministers is authorized to issue exceptions to a commercial agent's exclusive import rights, and the UAE Council of Ministers has already opened some categories of products to be freely imported.)

7. Choice of Law and Dispute Resolution

UAE law generally will respect the parties' contractual choice of foreign law to govern their commercial agreement, so long as that foreign law does not conflict with UAE public policy. Thus, the UAE courts would not recognize a choice of foreign law clause in a commercial agency agreement to the extent that special 'dealer protection' provisions of the Commercial Agency Law are applicable. For example, the UAE courts would not apply a foreign governing law clause if the principal would thereby avoid its obligation to compensate the UAE commercial agent upon termination of the agreement.

Similarly, in many instances UAE law would not respect the parties' contractual choice of a foreign forum to resolve commercial agency disputes. Article 6 of the Commercial Agency Law empowers the UAE courts to resolve disputes arising under a UAE commercial agency agreement, and "no effect shall be given to

any agreement contrary hereto." Based upon this provision, a UAE court would likely exercise jurisdiction over any such dispute presented to it.¹⁶

Nonetheless, provisions in a UAE commercial agency agreement referring to foreign governing law or to a foreign dispute resolution forum might be useful for "defensive" purposes, if disputes are litigated outside the UAE (for example, if a UAE commercial agent attempts to enforce a UAE judgment in the courts at the foreign principal's home jurisdiction). In this context, the UAE has acceded to the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the 1958 New York Convention).

* * * *

According to at least one report, the number of commercial agencies de-registered from the Ministry's Commercial Agency Registry in the twelve months following enactment of the 2006 amendments almost quadrupled in comparison to the prior twelve month period.¹⁷ As a result of vociferous protests by the UAE commercial agency community, the Ministry has more recently been notifying commercial agents upon receipt of de-registration requests from their principals -- allowing a commercial agent time to protest (and initiate a lawsuit before the UAE courts). As in the past, such disputes between the local commercial agent and foreign principal might result in products being blocked from entering UAE markets during the (often lengthy) litigation.

Many UAE commercial agents protest that the 2006 amendments to the Commercial Agency Law went too far toward market liberalization. Meanwhile, many foreign principals complain that the 2006 amendments did not go far enough. At least one local legal observer expressed the view that, given the dissatisfaction expressed by both local commercial agents and foreign principals,

¹⁶ See, e.g., Abu Dhabi Court of Cassation Judgment No. 221/14 (20 March 1994), as reported in Price and Al Tamimi, United Arab Emirates Court of Cassation Judgments 1989-1997 (Kluwer, 1998), at pp. 243-44. This case is also discussed in a brief note by Michel Chaloub, "Agency and Arbitration", 1998 International Arbitration Law Review (Issue 6), p. N-103.

¹⁷ "Top legal firm urges overhaul of commercial agency law process", www.ameinfo.com/140634.html .

perhaps the 2006 amendments to the Commercial Agency Law struck the correct balance between the parties' conflicting interests.¹⁸

In my view, the 2006 amendments should not be measured by that benchmark. Elsewhere in the Arab world, as well as (I am told) in Europe and Latin America, local courts are empowered to resolve disputes concerning a principal's termination of a commercial agency agreement, in the process assessing both the principal's alleged justifications and the commercial agent's alleged damages. But very few countries also entitle a commercial agent to prevent a principal's products from entering the market during the pendency of the litigation, an entitlement that is almost universally seen as unfairly favoring the commercial agent, not only to the detriment of the foreign principal, but ultimately (and perhaps more importantly) to the detriment of local consumers.¹⁹

Another way we might measure the 2006 amendments to the UAE Commercial Agency Law: to what extent does UAE law and procedures now allow the foreign principal and its UAE commercial agent to operate without undue involvement by the Ministry of Economy or UAE administrative officials generally?²⁰ By this benchmark, the 2006 amendments have taken us quite a distance down the road, but I do not believe that we have yet reached our final destination.

¹⁸ UAE lawyer Essam Al Tamimi recognizes that "both sides may feel that the [2006] revision does not meet their wishes and expectations." Al Tamimi, "Impact of the Amendment to the UAE Commercial Agencies Law", Law Update (August 2006), p. 12.

¹⁹ The trend away from statutorily mandated exclusive import rights (and the related statutory right to block another's imports of the relevant products) is evident in recent amendments to other Arab Gulf 'dealer protection' laws -- such as in Bahrain, Oman, and Qatar -- where a qualified local agent nonetheless retains the statutory right to claim damages for a principal's unjustified termination of the commercial agency agreement.

²⁰ Al Tamimi, supra note 18, at p. 15.