



Al Alawi & Co
Advocates & Legal Consultants

CONSIDERING OMAN'S FREE TRADE AGREEMENTS (PART - 1)¹

FREE TRADE AGREEMENT
BETWEEN THE UNITED
STATES AND OMAN

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Whether one is a proponent or believer in the endless march towards globalization or whether one believes the next wave in trade relations will be dominated by regional, rather than global priorities, the fact remains that cross-border trade is the hallmark of civilization, both modern and ancient.

And while the importance of trade cannot be overstated, trade relations amongst countries have tended to ebb and flow – from the stridently liberal and free flowing – to the restrictive and protectionist.

Historically, the Sultanate of Oman (although it was not always referred to as that), has occupied a strategically important geographical location when it came to trade, including being located on the southeast end of the Arabian Peninsula, having its coast forming on the Arabian Sea (Indian Ocean), Gulf of Oman, and the Arabian Gulf, and being one of two countries in control of the vital Strait of Hormuz. Upon forming trading ports and harbors across its coastal lines, Oman had a huge advantage in the distribution of goods and became

known as one of the important and active actors in trade in the region.

Southern Oman, now known as 'Dhofar', was known as the lucrative center of frankincense – some historians date its trade as far back as 5000BC. Frankincense was traded with India for spices and distributed across all of Arabia being part of the historical Spice Route, also trading with the Far East for silks and other commodities via the now legendary Silk Route. By the 6th century 'Sur' (east of Oman), became the center of trade with East Africa. Sur was also famous for building wooden ships which would sail to China, India, Persia and East Africa, linking up trade in those areas.

In more recent times, Oman has demonstrated a number of intentions with respect to establishing its economic interests and global profile. These interests include being recognized as an international and regional hub for logistics and the desire to promote "home grown" industry and entrepreneurship – which are apparent from its accession to the World Trade Organization on the 9th of November 2000.

Oman's strategic location and its expanding infrastructure provide immense potential for American businesses (in particular) as a gateway to the regional markets. This combination of factors may explain the impetus behind the U.S.-Oman Free Trade Agreement, which, notwithstanding the U.S.'s longstanding ties to the region, is the only bilateral trade agreement between the U.S. and any Gulf Cooperation Council country.²

Free Trade Agreements ("FTAs") are international bilateral treaties entered into by individual governments or pan governmental organizations.

FTAs aim to encourage "free" trade between the signatory countries by granting their respective national firms "preferential access" to each other's markets. This preferential access generally comes in the form of reduced trade restrictions vis-à-vis tariffs, taxes, customs duties, quotas or similar regulatory barriers and availability of special investment privileges.

FTAs may also touch upon intellectual property rights, government procurement schemes and dispute resolution, as well as cross-border movement of labour and capital.

Proponents of FTAs argue that they tend to reduce the price of products for national consumers, increase the variety of products available in a given market and promote an increase in quality as a result of greater competition.

This note is the first part of a series which considers certain of the FTAs currently operative within the Sultanate of Oman, whether as bilateral arrangements in the case of its agreement with the United States or multi-lateral as a consequence of its membership in the GCC.

In that regard, this note is Part 1 of a series considers:

- US – Oman FTA (Part 1);
- Singapore – GCC FTA (Part 2); and
- European Free Trade Association – GCC FTA (Part 3).

THE UNITED STATES – OMAN FREE TRADE AGREEMENT (US- OMAN FTA)

Oman is one of only 20 countries in the world that have an FTA with the United States.

The US-Oman FTA entered into force on January 1, 2009,³ and provides for reciprocal trade liberalization between the United States and the Sultanate of Oman. As a result, American investors are accorded preferential treatment in business, as the agreement removed most customs duties immediately upon coming into effect, with the

remaining tariffs being phased out over a period of ten years.

The US-Oman FTA was an important step in Oman's continuing efforts to reform its economy, to create jobs and to move away from dependence on revenues generated from its oil exports. The agreement also emphasizes Oman's effort at economic diversification and has opened the country to greater foreign participation in its economy.⁴

The US-Oman FTA is comprised of three basic parts:

- New tariff schedules;
- Broad commitments to open markets and provisions to support those commitments; and
- Protections for labor and the environment.

Duty Free Access. The US-Oman FTA provides for reciprocal duty-free access for almost all consumer and industrial goods, with certain special provisions for agriculture, textiles, and apparel.⁵

However, the criteria for being considered as an originating good (thereby being eligible to receive preferential tariff treatment) under the US-Oman FTA is as follows:

- ✓ The good should be imported directly from the territory of one party into the territory of the other party;
- ✓ It should be a new or different article of commerce grown, produced or manufactured in the territory of one or both of the parties; and

✓ The sum total of the following elements should not be less than 35% of the appraised value of the good at the time it is imported into the territory of a party:

- Value of materials produced in the territory of one or both of the parties; and
- Direct cost of processing operations performed in the territory of one or both of the parties.

Industrial Goods. Industrial goods represent a significant percentage of Oman's US imports, and under the FTA, the vast majority of such imports receive duty-free treatment. Infrastructure-related goods and machinery can be exported to Oman duty free under the agreement, offering US companies a potential advantage in bidding on large projects. In 2013, as a result of the US-Oman FTA, Oman imported more than a billion US dollars worth of the above mentioned goods from the United States.

Additionally, while construction equipment and building products, such as drilling and boring equipment and prefabricated structural components, which account for a significant percentage of total US non-textile industrial exports to Oman, were previously subject to a 5% tariff, under the US-Oman FTA, they now receive duty-free treatment. The US-Oman FTA also reduces or eliminates tariffs on other US industrial exports to Oman including chemicals, medical equipment and civil aircrafts in addition to non-industrial goods such as agricultural products and textiles. In 2013, as a result of the US-Oman FTA, Oman imported more than \$1.5 billion

worth of the above mentioned goods from the United States.

Intellectual Property Rights.⁶ The US-Oman FTA also addresses various intellectual property rights (“IPRs”) aspects, providing:

- protection for copyrighted works;
- more efficient, transparent, and less-abusive procedures for registering and maintaining trademarks as well as resolving trademark disputes;
- stronger protections for patents and trade secrets; and
- tough penalties for piracy and counterfeiting.⁷

Professional & Financial Services.

Professional and financial service providers also see benefits flowing from the US-Oman FTA – as Oman’s economy grows, so will its demand for services in areas such as finance, telecommunications, architecture, construction, computer services and energy.

To that end, the agreement contains very few limits on professional services. FTA proponents contend that open, transparent financial sectors are key to higher economic growth – countries with fully open financial services sectors grow one percent faster, on average, than those without such access. Moreover, US financial services companies can establish branches, subsidiaries and joint ventures in Oman and offer a full range of financial services.

Insurance. Previously, insurance services providers faced a foreign ownership restriction of 70 percent when establishing a commercial presence in Oman. The US-Oman

FTA removes this restriction for US service providers. Additionally, the FTA provides for expedited approval of new insurance products – 30 days for non-life insurance and 60 days for life insurance.

Private Investment. Since 1999, Oman’s privatization process has led to increased foreign direct investment. US direct investment in Oman has increased significantly in recent years, reflecting both growing investor confidence in the country and sustained economic growth. US investors, however, continue to cite red tape and delays in official decision-making as disincentives to investment. The US-Oman FTA commitments are aimed at improving transparency and removing barriers to investment.

The US-Oman FTA has a number of key investment related provisions, including:

- ✓ Comprehensive coverage under the agreement for all investment types/forms, including enterprises, debt, concessions, contracts and intellectual property.
- ✓ US investors enjoy in most circumstances the right to establish, acquire and operate investments in Oman on an equal footing with local investors and with investors of other countries.⁸
- ✓ Under the agreement, US investors and their investments in non-restricted sectors are granted “national treatment” (in similar circumstances, US investors/ investments are offered no less favorable treatment than that offered to Omani nationals) as well as “most favored treatment” (in

similar circumstances, US investors/ investments are offered no less favorable treatment than that offered to nationals of any other country in Oman).

- ✓ In the case of incorporation of companies in Oman, the national treatment offered by the US-Oman FTA increases the US shareholding allowance to 100% and reduces the minimum capital requirement to OMR 20,000 (about USD 51,800) for a limited liability company – as opposed to (generally) 70% shareholding allowance for a foreign investor and minimum capital requirement of OMR 150,000 (about USD 390,000).
- ✓ The US-Oman FTA commitments seek to improve transparency in the investment sector by providing an effective, impartial and transparent investor-state dispute settlement mechanism. This mechanism provides US investors recourse outside of Omani courts (in the form of binding international arbitration).⁹
- ✓ The agreement draws from US legal principles and practices to provide US investors in Oman a basic set of substantive protections that Omani investors currently enjoy under the US legal system.^{10 11}

Government procurement. The FTA also provides guarantees of non-discriminatory treatment (“**national treatment**”) and the most favored nation treatment (“**MFN**”) in and fair access to the procurements of the largest government purchasing entities in Oman. This access includes the majority of Oman’s central government entities including key

ministries and significant state-owned enterprises.

The noteworthy provisions of the US-Oman FTA relating to government procurement include:

- ✓ For procurements conducted by covered entities that are above the chapter thresholds, US suppliers will receive non-discriminatory access to Oman's procurement market equal to that of Omani and other GCC member states suppliers.
- ✓ The government procurement chapter requires the use of fair, transparent and predictable procedures in all aspects of the procurement process.
- ✓ The agreement provides for impartial oversight of the procurement process, requiring timely and effective domestic review procedures to address complaints concerning any aspect of the tendering process.
- ✓ As a result of the FTA, Oman may more fully utilize electronic technology to make tendering opportunities and other relevant

procurement information available to all potential suppliers.

- ✓ Under the agreement, the United States also secured coverage of important state-owned enterprises such as the Oman Oil Company (the national oil company) and the Oman Gas Company (the national gas company).

Implementation. Implementing the US-Oman Free Trade Agreement is in the best interest of both countries insofar as it not only eliminates tariffs but also reduces barriers for services, protects intellectual property, ensures regulatory transparency and encourages investment initiatives.

Having said that, there have arisen over the years several implementation issues, for instance, the accordence of Omani national treatment to US companies that have some percentage of non-US ownership. The position generally taken by regulatory authorities in Oman is that, as matter of principle, the national treatment benefits under the US-Oman FTA (such as the right to hold 100% ownership of an Omani

limited liability company) should apply only to companies that are both (i) incorporated in the US and (ii) wholly owned by US natural persons. However, we have seen from experience that the regulatory bodies are willing to sometimes evaluate on a case-to-case basis having recognized that larger American companies often have broad ownership structures, particularly publicly traded companies.

Another issue regarding the US-Oman FTA which has been under a certain degree of debate is the availability of tariff privileges to goods that have been exported from US to Oman (or vice versa) while passing through a third country (say, United Arab Emirates) on account of ease from a logistics point of view.

The respective governments would do well to clarify the above and several other relevant implementation issues to ensure that the US-Oman FTA, well and truly, serves as a model for all such future agreements.

Notes:

¹ At Al Alawi & Co., we support our clients in application of FTAs, conduct customized research on the available FTAs, advise on investment opportunities for foreign individuals/corporates emanating therefrom (and implementation of transactions aimed at utilization of such investment privileges), and assist in determining the corresponding preferential duties based on companies' current / proposed supply chain.

²The Gulf Cooperation Council (GCC) is comprised of the Kingdom of Bahrain, the State of Kuwait, the Sultanate of Oman, the State of Qatar, the Kingdom of Saudi Arabia, and the United Arab Emirates.

³ The FTA was signed on the 19th of January 2006. The Minister of Commerce and Industry at the time hoped, "that it will cause an increase in the trade between economies, lead to job creations, establish a knowledge based industry in Oman and show growth in the tertiary sector of the economy."

⁴The Central Bank of Oman's Executive President, His Excellency. Hamood Sangour Al Zadjali, told Reuters in an article published on the 27th of October 2015 – "Despite the damage caused by low oil prices in Oman, one of the key goal(s) before the government and the CBO is to strengthen the growth process and give a fillip to the diversification process".

⁵ Neither party may adopt any new waivers of custom duties or expand it with respect to existing customs duties explicitly or implicitly on the base of the fulfillment of a performance requirement.

⁶ Oman is also a signatory to the Agreement on Trade-Related Aspects of Intellectual Property (“TRIPS”) as well as to the New York Convention on Arbitration.

⁷ Oman has a body of intellectual property laws consistent with its commitments to IP organizations such as the WTO, TRIPS and the Agreement on Trade Related Investment Measures (“TRIMS”) to regulate copyrights, trademarks, Industrial secrets, geographical indications and integrated circuits.

⁸ Certain business sectors are excluded from the treaty – e.g. real estate brokerage, manpower agencies, publishing and printing.

⁹ Chapter 10 of the FTA provides a mechanism for an investor of a party to pursue a claim against another party in an unbiased and authorized tribunal.

¹⁰ Among the rights afforded to US investors (consistent with those found in US law) are due process protections and the right to receive the fair market value for property that has been expropriated.

¹¹ Investor rights are backed by an effective, impartial procedure for dispute settlement that provides for transparent panel hearings and allows interested parties to submit their views.

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