KUWAIT

TRADE SUMMARY

The U.S. goods trade deficit with Kuwait was $2.4 billion in 2005, an increase of $649 million from $1.7 billion in 2004. U.S. goods exports in 2005 were $2.0 billion, up 30.0 percent from the previous year. Corresponding U.S. imports from Kuwait were $4.3 billion, up 34.2 percent. Kuwait is currently the 47th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Kuwait in 2004 was $478 million.

The United States and Kuwait signed a Trade and Investment Framework Agreement (TIFA) in February 2004, providing a forum to address U.S. concerns. There were no TIFA-related meetings in 2005.

IMPORT POLICIES

Tariffs

As a member of the Gulf Cooperation Council (GCC), Kuwait applies the GCC common external tariff of five percent for most products, with a limited number of country-specific exceptions. Kuwait's exceptions include 417 food and agriculture items, which will remain duty-free, as well as tobacco products, which are subject to a 100 percent tariff.

Import Licensing

Kuwait prohibits the importation of alcohol and pork products, and requires a special import license for firearms. Also prohibited are any books, periodicals, or movies that insult religion and public morals, and all materials that promote political ideology.

Documentation Requirements

In Kuwait, the import clearing process is time-consuming, requiring numerous transfers, large quantities of paperwork, and numerous redundancies. This process is prone to errors and fraud, since human judgment plays a major role in processing the transactions, especially auditing, valuation, and inspection. In most instances, the same task is repeated two or more times at different stages of the process in order to gather customs-related data or to validate documentation. However, the Customs Department is currently undergoing a major privatization effort. Customs has contracted with a private company to provide customs support services, including customs clearing software. The implementation of a state-of-the-art computer system should also make the import process less complicated and more efficient. On October 17, 2005, Customs began implementation of the Micro-Clear system at the Kuwait airport, and will begin implementing the system at other ports of entry soon.

Customs Valuation

Kuwait began implementation of the WTO Customs Valuation Agreement in September 2003.

Textiles

Textiles (dutiable at 5 percent) accounted for approximately six percent of Kuwait's imports in 2004.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Kuwait maintains restrictive standards that impede the marketing of some products. Kuwait strictly enforces government-mandated shelf life standards on 44 of 75 food products listed in Gulf Standard 150/1993, but recognizes the shelf-life established by manufacturers on all other food products. Shelf-life requirements for processed foods are far shorter than necessary to preserve freshness and result in processed U.S. goods being non-competitive with products shipped from countries geographically closer to Kuwait. Standards for medical, telecommunications, and computer equipment tend to lag behind technological developments, with the result that government tenders frequently specify the purchase of obsolete, often more costly items.

In late December 2004, Kuwait removed its December 2003 ban on imports of U.S. beef and beef products, originally imposed due to concerns over Bovine Spongiform Encephalopathy (BSE), but kept in place a ban on imports of beef originating in the state of Washington. Such a regional ban has caused concern in the U.S. industry.

In December 2002, Kuwait notified WTO members of its proposal for an International Conformity Certification Program (ICCP). Kuwait's proposal was similar to a program maintained by Saudi Arabia. According to Kuwait, the program was necessary because it lacked laboratory facilities to properly conduct its own inspections of product conformity to specified standards. On March 17, 2003, Kuwait implemented the ICCP, which applies to five import groups: (1) household appliances and electronics; (2) new and used cars and vehicles; (3) chemicals, including motor oil and paint; (4) building materials, including cement, gypsum, and bricks; and (5) paper and plastic items. Covered products must be tested and certified by a single private company before being exported to Kuwait.

In July 2004, the regulatory authority responsible for the ICCP, the Public Authority for Industry (PAI), held a one-year review of the program. At that time, the PAI said that over 30,000 individual products had been issued ICCP certificates, and that it was considering expanding the types of products requiring certification. Importers and representatives of foreign businesses all voiced serious concerns with the program. The United States and other WTO members have raised concerns about the ICCP bilaterally and during meetings of the WTO Technical Barriers to Trade Committee.

In November 2004, the PAI indicated that it would introduce changes to the ICCP and transition, over a period of 18 months, to a new Kuwait Conformity Assessment Scheme (KUCAS). However, Kuwait has recently announced that once the contract with the company administering the ICCP expires in March 2006, the program will be discontinued and replaced by the KUCAS. The United States is evaluating the potential impact of Kuwait's proposed changes and their conformity with WTO requirements.

GOVERNMENT PROCUREMENT

Kuwait's government procurement policies require the purchase of local products when available and prescribe a 10 percent price advantage for local firms in government tenders. In 2004, the Council of Ministers agreed to increase this price advantage to 15 percent. Implementation of this increase, however, requires amendment of the GCC countries' unified agreement, which has not yet occurred.

In January 2002, the Kuwaiti government transformed its offset program into the major mechanism for inducing foreign investment in Kuwait. Under that program, an offset obligation applied with respect to any civilian contracts with the Kuwaiti Government valued at 10 million Kuwaiti dinar (approximately $33 million) or more and any defense contracts valued at KD 1 million (approximately $3.3 million) or more. A supplier was required to invest 35 percent of the contract value of any such contract in an approved offset business venture. The supplier had to sign a memorandum of agreement with the Offset Program Division at the Ministry of Finance before the contract could be signed. The supplier also had to present a bank guarantee totaling 6 percent of the value of the offset obligation.

In September 2004, the Council of Ministers decided to suspend implementation of the offset program for all new government contracts in the military and civilian sectors pending further review by the Finance Ministry. During the review, the Finance Ministry announced that the program would be reinstated in modified form. All contracts awarded during the review period were not subject to the offset requirement. The offset program was re-started in March 2005, after the review was completed. However, no changes or modifications have been announced and, thus, the program remains the same as the previous iteration.

Kuwait is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Kuwait has drafted amendments to its copyright law to implement the TRIPS Agreement and has submitted them to the National Assembly, but the draft has not yet been taken up for discussion. Kuwait's revised patent and trademark legislation took effect on January 14, 2001. It appears that Kuwait does not provide for the protection of geographical indications. In 2005, however, Kuwait's IPR enforcement efforts improved a change from previous years.

Following Kuwait's elevation to the Special 301 Priority Watch List in 2004, and its retention of that ranking in 2005, the Ministry of Commerce and the General Administration of Customs have increased their efforts to protect intellectual property rights by conducting more frequent

raids. These raids have decreased the number of retail vendors openly selling pirated and counterfeit goods, but have not curbed their growth. The Ministry of Information (which is statutorily responsible for ensuring intellectual property rights) has started to place a higher priority on IPR protection, but the Ministry of Interior has generally declined to use its police resources for enforcement efforts. Kuwait Customs is now more aggressive and effective in enforcing IPR. Notwithstanding these recent efforts, sales of pirated and counterfeit goods remain high in Kuwait, and the use of unauthorized computer software continues in private enterprise. Uncertain and slow judicial action remains a hurdle, and penalties, when imposed, generally are inadequate to deter future crimes. In August 2004, the government submitted a draft law to the National Assembly that would increase penalties for those convicted of infringing intellectual property rights, but the Assembly has not approved the law.

SERVICES BARRIERS

Banking

Under Kuwait's 2001 Foreign Direct Investment law, foreigners could own up to 49 percent of existing or newly formed Kuwaiti banks, subject to approval by the Central Bank. In January 2004, the National Assembly gave final approval to a bill permitting 100 percent foreign ownership of banks. However, foreign-owned banks are restricted to opening only one branch. In August 2004, BNP Paribas was the first foreign bank granted a license to operate in Kuwait. Applications were approved in 2005 for HSBC and Citibank, and HSBC opened its branch in October 2005.

Agent and Distributor Rules

According to Kuwait's Commercial Agencies Law of 1964, only Kuwaiti nationals and corporations may act as agents and distributors for foreign companies and exporters.

INVESTMENT BARRIERS

Kuwait currently maintains restrictions on foreign direct investment and applies discriminatory taxation policies. In May 2000, Kuwait's National Assembly approved legislation that allows foreign nationals to own up to 100 percent of all listed companies on Kuwait's stock exchange, except banks, which are subject to the restrictions noted above.

In March 2001, the National Assembly passed a foreign direct investment bill that authorizes majority foreign ownership in new investment projects and 100 percent foreign ownership in the following sectors: infrastructure projects such as water, power, waste water treatment or communications; investment and exchange companies; insurance companies; information technology and software development; hospitals and pharmaceuticals; air, land, and sea freight; tourism, hotels, and entertainment; housing projects and urban development. The law also authorizes tax holidays of up to 10 years for new investors. The law went into effect on February 23, 2003. Despite this legislation, foreign companies still report numerous delays in getting approval to operate in Kuwait and the law does not appear to have significantly improved Kuwait's investment climate. Foreign firms still may not invest in the upstream petroleum

sector, although they are permitted to invest in petrochemical joint ventures. Legislation introduced into Parliament in January 2004 would allow for limited, controlled investment in the petroleum sector, but it has not been passed. This law was submitted specifically to allow for investment in, and development of, Kuwait's northern oilfields, but may be used to allow for other investment in the petroleum sector in the future.

ELECTRONIC COMMERCE

Kuwait and the other GCC member states are currently negotiating a unified electronic commerce law.

OTHER BARRIERS

Corporate Tax Policies

Foreign firms are currently subject to a maximum income tax rate of 55 percent, although the government is currently drafting a new law that would reduce the tax rate.

In 2005, a number of corporations reported receiving income tax bills from Kuwaiti tax authorities although the companies had no commercial presence in Kuwait. Bills were typically sent to the companies' Kuwaiti distributors and often included years of back taxes. Some companies have challenged the tax in court and others are working with the U.S. and Kuwaiti governments to seek a legislative or regulatory solution.