KUWAIT

TRADE SUMMARY

The U.S. goods trade deficit with Kuwait was $1.8 billion in 2006, a decrease of $514 million from $2.4 billion in 2005. U.S. goods exports in 2006 were $2.1 billion, up 8.1 percent from the previous year. Corresponding U.S. imports from Kuwait were $4.0 billion, down 8.2 percent. Kuwait is currently the 52nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Kuwait was not available in 2005 ($380 million in 2001) (latest data available).

The United States and Kuwait signed a Trade and Investment Framework Agreement (TIFA) in February 2004, providing a forum to address U.S. concerns and needed economic reforms.

IMPORT POLICIES

Tariffs

As a member of the Gulf Cooperation Council (GCC), Kuwait applies the GCC common external tariff of 5 percent for most products, with a limited number of country-specific exceptions. Kuwait's exceptions include 417 food and agriculture items, which 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. Used medical equipment and automobiles over five years old cannot be imported. 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 has historically been time-consuming, requiring numerous transfers, large quantities of paperwork and numerous redundancies. However, the Customs Department is currently undergoing a major privatization effort, contracting with a private company to provide customs support services. The implementation of a state-of-the-art computer system has made the import process less complicated and more efficient. In October 2005, Customs began implementation of the Micro-Clear system at the Kuwait airport and completed implementation at all ports of entry in early 2006.

Customs Valuation

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

Textiles and Apparel

Textiles and apparel products (dutiable at 5 percent) accounted for approximately 6 percent of Kuwait's imports in 2005.

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 March 2003, Kuwait implemented an International Conformity Certification Program (ICCP) requiring that covered products be tested and certified by a single private company before being exported to Kuwait. The program applied to imports of: (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. In July 2004, the Public Authority for Industry (PAI), the regulatory authority responsible for the ICCP, 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 voiced serious concerns with the program. The United States and other WTO Members 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 to a new Kuwait Conformity Assessment Scheme (KUCAS). The KUCAS does not appear to differ substantially from the ICCP. The United States is evaluating the impact of KUCAS in order to determine whether it has alleviated previous concerns.

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. However, implementation of this increase will require amendment of the GCC countries' unified agreement, which has not yet occurred.

In January 2002, the Kuwaiti government transformed its offset program into a mechanism for promoting foreign investment in Kuwait. The program was briefly suspended in September 2004 in order to study its effectiveness, but in August 2005 the Ministry of Finance announced that Kuwait would reactivate its offset regime for both civil and defense contracts. In April 2006, Kuwait established the National Offset Company, which has been charged with managing, enforcing and reviewing all offset proposals. The company is designed to be a one-stop shop for all matters related to offsets.

Offset obligations will be established for military contracts of a value equal to or above KD3 million (about $10 million), civil/government contracts of a value equal to or above KD10 million (about $34 million) and oil/gas contracts. Oil and gas exploration and production contracts are excluded from the offset program. Offset obligations amount to 35 percent of contract value with offset multipliers being

established to target investment into determined sectors of the Kuwaiti economy. The foreign contractor will be subject to an unconditional financial guarantee equal to 6 percent of the contract value.

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Kuwait is drafting amendments to its copyright law to implement the WTO TRIPS Agreement, but has not yet submitted them to the National Assembly. 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.

Following Kuwait's elevation to the U.S. Government's Special 301 Priority Watch List in 2004, the Ministry of Commerce and the General Administration of Customs 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. Kuwait Customs is now more aggressive and effective in enforcing IPR. Kuwait's renewed vigor in protecting IPR, and its success in decreasing the visibility and availability of pirated material through targeted raids and effective Customs enforcement, led to Kuwait being lowered from the Priority Watch List to the Watch List in 2006.

Notwithstanding these efforts, sales of pirated and counterfeit goods remain high in Kuwait, and the use of unauthorized computer software continues in private enterprises. 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, can only offer investment banking services and are prohibited from competing in the retail banking sector. In August 2004, BNP Paribas was the first foreign bank granted a license to operate in Kuwait, followed by approvals in 2005 for HSBC and Citibank; HSBC opened its branch in October 2005, and Citibank in late 2006.

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 a variety of 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 companies listed on Kuwait's stock exchange except banks.

The foreign direct investment law that took effect in February 2003 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; and housing projects and urban development. The law also authorizes tax holidays of up to ten years for new investors. Despite the new law, foreign companies still report numerous delays in getting approval to operate in Kuwait and the law left in place several important investment restrictions. For example, foreign firms still may not invest in the upstream petroleum sector, although they are permitted to invest in petrochemical joint ventures. Legislation introduced in Parliament in January 2004 would allow for limited, controlled investment in the petroleum sector, but it has not been passed. The legislation specifically authorizes investment in and development of Kuwait's northern oilfields, but, if enacted, it may cover other investment in the petroleum sector in the future.

OTHER BARRIERS

Corporate Tax Policies

Foreign firms are 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 received 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.