KUWAIT

TRADE SUMMARY

The U.S. trade deficit with Kuwait was $1.7 billion in 2004, an increase of $941 million from $770 million in 2003. U.S. goods exports in 2004 were $1.5 billion, up 0.8 percent from the previous year. Corresponding U.S. imports from Kuwait were $3.2 billion, up 41.9 percent. Kuwait is currently the 53rd largest export market for U.S. goods.

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

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, on which tariffs remain at 100 percent.

Import Licensing

Kuwait prohibits the importation of alcohol and pork products, and requires a special import license for firearms.

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 manage customs services, including customs clearing. The implementation of a state-of-the-art computer system should also make the import process less complicated.

Customs Valuation

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

Textiles

Textiles accounted for approximately seven percent of Kuwait's imports in 2003, and tariffs are five percent.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Kuwait maintains restrictive standards that impede the marketing of some exports. 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 of 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 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 WTO 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 (KCAS.) 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 specify 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, would require amending the GCC countries' unified agreement.

In January 2002, the Kuwaiti government transformed its offset program into the major mechanism for inducing foreign investment in Kuwait. The offset requirements imposed an offset obligation on civilian contracts with the Kuwaiti Government of 10 million Kuwaiti dinar (approximately $33 million) or more and on defense contracts of KD 1 million (approximately $3.3 million) or more. The obligation amounted to 35 percent of the contract value, which had to be invested in an approved offset business venture. A supplier had to sign a memorandum of agreement with the Offset Program Division at the Ministry of Finance before the contract was 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. A six-month review of the program was to take place, at the end of which the offset program would either be modified, reinstated or discontinued. No contracts awarded during the review period will carry an offset requirement.

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

EXPORT SUBSIDIES

The Industrial Bank of Kuwait offers below market rate loans to local industry. Land is also provided at low cost.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Kuwait's copyright law must be amended to make it consistent with its obligations under the TRIPS Agreement. The government is currently in the process of drafting these amendments, but has not yet set a date by which these will be submitted to the National Assembly. Kuwait's revised patent and trademark legislation took effect on January 14, 2001. Enforcement of these laws remains inadequate to prevent widespread marketing of pirated products. Moreover, it appears that Kuwait does not provide for the protection of geographical indications.

Following Kuwait's elevation to the Special 301 Priority Watchlist in 2004, the Ministry of Commerce and the General Administration of Customs have increased their efforts to protect intellectual property rights. However, the Ministry of Information (which is statutorily responsible for ensuring intellectual property rights) does not place a high priority on IPR protection and the Ministry of Interior has declined to use its police resources for enforcement efforts. Consequently, sales of pirated 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 violating intellectual property rights.

SERVICES BARRIERS

Insurance

Pursuant to a November 2003 Council of Ministers resolution, foreign investors may establish insurance companies in Kuwait with the Ministry of Commerce and Industry's approval.

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. In August 2004, BNP Paribas was the first foreign bank granted a license to operate in Kuwait; other foreign banks have also submitted applications.

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 direct foreign 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. Foreign-ownership in banks was limited to 49 percent with the additional restriction that any foreign-ownership above 5 percent must be approved by Kuwait's Central Bank. In 2004, this restriction was eliminated and foreign ownership may now be 100 percent.

In March 2001, the National Assembly passed a direct foreign 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 up to 10-year tax-holidays 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 changed 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. Implementing legislation brought before Parliament in January 2004 would allow for limited, controlled investment in the petroleum sector. 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. Kuwaiti-listed companies are not subject to income tax, but are required to make an annual zakat (charitable) contribution of 2.5 percent of their net profits to the Kuwait Foundation for the Advancement of Sciences (KFAS). They must also contribute 2.5 percent of their net profits toward a National Labor Force Fund.