KUWAIT

TRADE SUMMARY

The U.S. goods trade deficit with Kuwait was $1.6 billion in 2007, a decrease of $261 million from $1.9 billion in 2006. U.S. goods exports in 2007 were $2.5 billion, up 19.1 percent from the previous year. U.S. imports from Kuwait were $4.1 billion, up 3.5 percent over the corresponding period. Kuwait is currently the 52nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Kuwait was $600 million in 2006 (latest data available).

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 GCC approved 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 Prohibitions and Licensing

Kuwait prohibits the importation of alcohol and pork products, and requires a special import license for firearms. Used medical equipment and automobiles over 5 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 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 10.4 percent of Kuwait's imports in 2005.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Standards

As part of the GCC Customs Union, the six Member States are working toward unifying their standards and conformity assessment systems. However, each member state currently continues to apply either its own standard or a GCC standard, causing confusion among some U.S. businesses. GCC Member States do not consistently notify measures to WTO Members or the WTO Committees on Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT) or allow WTO Members an opportunity to provide comments.

The GCC Standards Committee has recently approved two new standards that will replace existing standards for the labeling and expiration periods of food products. While the new standards appear to attempt to incorporate international guidelines and address some longstanding issues, particularly in relation to expiration periods, some requirements that have previously complicated the import process remain. All member states are expected to adopt these two standards as national standards in order to implement them.

The GCC shelf life standard establishes mandatory expiration periods for 22 perishable products or product categories such as chilled meats, chilled offal, fresh dairy products, baby foods, fruit juices, and table eggs. This standard also establishes voluntary expiration periods for a range of frozen and processed products. Manufacturers have the option of using the actual expiry period in lieu of the voluntary expiration periods established in the standard. The standard also exempts a number of products from expiration periods, including salt, white sugar, dried legumes, dried vegetables, spices and certain condiments, tea, rice, vinegar, and fresh fruits and vegetables, including potatoes that have not been peeled or cut.

The new standards eliminate the long standing requirement that at least one-half of a product's shelf life be valid when a product reaches the port of entry. However, they would still require both a production date and an expiration date on nonperishable food items, forcing U.S. producers to re-label products exported to the GCC, thereby leading to increased costs. The new standards appear inconsistent with international standards (*e.g.*, the standards do not appear to reflect Codex guidelines) and do not appear to have a clear scientific basis. The United States has outlined its specific concerns with these standards and has established a dialogue between U.S. and GCC technical experts to discuss a possible resolution of the concerns raised.

In May and October 2007, respectively, Bahrain and Oman notified WTO Members of recently proposed procedures meant to harmonize food safety import requirements for all GCC member states. The United States and other WTO Members provided comments outlining significant concerns with the procedures, which, as currently drafted, create unnecessary obstacles to trade and would substantially disrupt food exports to GCC member states from its trading partners. The GCC member states are reportedly developing a response to these comments, and the United States has established a dialogue between U.S. and GCC technical experts to discuss the procedures and potential amendments to address the concerns raised.

Kuwait maintains restrictive standards that impede the marketing of some products. 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.

Conformity Assessment

In March 2003, Kuwait implemented its International Conformity Certification Program (ICCP), a pre-shipment certification program requiring that covered products be tested and certified by a single private company before being imported into Kuwait. The program applied to imports of: (1) household appliances and electronics; (2) new and used cars and other 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 1 year review of the program. At that time, the PAI stated that over 30,000 individual products had been issued ICCP certificates, and that PAI 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 directly with Kuwait and during meetings of the WTO TBT 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 raises the same concerns as the ICCP raised.

The GCC Standards Committee is currently developing a conformity assessment scheme to be adopted ultimately by each of the six Member States. The United States is working to establish a dialogue between U.S. and GCC technical experts to discuss this proposed scheme with the goal of helping to ensure that it is developed, adopted, and applied in accordance with WTO rules.

GOVERNMENT PROCUREMENT

Kuwait's government procurement policies require the purchase of local products, where 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, the increase has not yet been implemented as it requires amendment of the GCC countries' unified agreement, which has not yet occurred.

In 2002, the Kuwaiti government transformed its offset program into a mechanism for promoting foreign investment in Kuwait. In 2006, Kuwait established the National Offset Company to manage, enforce, and review all offset proposals. The company is designed to be a one-stop shop for all matters related to offsets. In October 2007, the National Offset Company launched the Offset Fund with variable capital up to KD 1 billion ($3.5 billion).

Offset obligations apply to military contracts with a value equal to or above KD3 million (about $10 million), civil government contracts with a value equal to or above KD10 million (about $34 million), and oil and 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 specified sectors of the Kuwaiti economy. Foreign contractors are 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's current intellectual property legislation regarding copyrights, data protection, geographical indications, trademarks, patents, and customs is not fully consistent with its obligations under the WTO TRIPS Agreement.

Although Kuwaiti officials, particularly Kuwait Customs, continue to make progress on copyright enforcement and pursue cases through the judicial process, the lack of deterrent criminal penalties in the copyright law limits their effectiveness. Sales of pirated and counterfeit goods remain high in Kuwait, and the use of unauthorized computer software continues in private enterprises.

As part of the GCC Customs Union, the six Member States are working toward unifying their IP regimes. In this respect, the GCC has recently approved a common trademark law. All six Member States are expected to adopt this law as national legislation in order to implement it. The United States has outlined specific concerns with the trademark law and has established a dialogue between U.S. and GCC technical experts to ensure that the law complies with the Member States' international obligations.

SERVICES BARRIERS

Banking

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. Furthermore, foreign banks are subject to a maximum credit concentration equivalent to less than half the limit of the largest local bank and are expressly prohibited from directing clients to borrow from external branches of the bank or taking any other measures or arrangements to facilitate such borrowing.

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.

Telecommunications

A U.S. trade association has expressed concern over actions by Kuwaiti government officials to prevent the use of Voice over Internet Protocol technology for the provision of telephone calls. The government has reportedly been blocking a number of websites offering Internet enabled voice services, denying consumers access to affordable long-distance calling.

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. In January 2004, the National Assembly gave final approval to a bill permitting 100 percent foreign ownership of 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 10 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 have allowed for limited, controlled investment in the petroleum sector, but the draft legislation has been shelved. 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

On December 26, 2007, the Kuwaiti National Assembly passed legislation reducing the tax rate on foreign companies from 55 percent to 15 percent.

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. Kuwaiti law and judicial decisions are ambiguous in defining what does or does not constitute taxable presence.