KUWAIT

TRADE SUMMARY

The U.S. goods trade deficit with Kuwait was $1.8 billion in 2009, down $2.6 billion from 2008. U.S. goods exports in 2009 were $2.0 billion, down 28.2 percent from the previous year. Corresponding U.S. imports from Kuwait were $3.8 billion, down 46.7 percent. Kuwait is currently the 57th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Kuwait was $1.5 billion in 2008 (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 tobacco products, which are subject to a 100 percent tariff, and 417 food and agriculture items, which are duty-free.

Kuwait is not a signatory to the WTO Information Technology Agreement.

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 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

The import clearance process in Kuwait has historically been time consuming, requiring extensive paperwork and involving numerous redundancies.

GOVERNMENT PROCUREMENT

The "Public Tenders Law" (Law No. 37 of 1964) requires that any government procurement in Kuwait greater than KD5,000 (approximately $18,500) be conducted through the Central Tenders Committee. The Kuwaiti government requires the purchase of local products where available and allows a 10 percent price advantage for local firms. Although the Council of Ministers increased this price advantage to 15 percent in 2004, it has not yet been implemented because the increase requires amendment of the GCC unified agreement, which has not yet occurred. Over the past few years several government tenders, including Kuwait Petroleum Corporation's fourth refinery project, have been cancelled or retendered, often at significant cost to the companies participating in the procurement.

Kuwait transformed its offset program into a mechanism for promoting foreign investment in 2002. Offset obligations apply to military contracts equal to or greater than KD3 million (approximately $11 million), civilian contracts equal to or greater than KD10 million (approximately $37 million), and oil and gas contracts (with the exception of exploration and production contracts). Offset obligations amount to

35 percent of contract value with offset multipliers being established to target investment in specified sectors of the Kuwaiti economy. Foreign contractors are subject to an unconditional financial guarantee equal to 6 percent of the contract value. Kuwait established the National Offset Company in 2006 to manage, enforce, and review all offset proposals. The National Offset Company launched the Offset Fund in 2007 with variable capital up to KD1 billion (approximately $3.7 billion).

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Kuwait was listed on the Watch List in the 2009 Special 301 report. Key concerns cited in the Report included Kuwait's failure for many years to draft and implement revised IPR legislation to implement the WTO TRIPS Agreement in areas such as copyrights, patents, trademarks, geographical indications, customs, and the protection of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. Concerns also include a lack of deterrent criminal penalties, high rates of piracy and counterfeiting, and the use of unauthorized computer software in private enterprises.

As part of the GCC Customs Union, the six Member States are preparing a common trademark law, as well as a common unfair competition law to protect from unfair commercial use undisclosed information submitted for marketing approval of pharmaceutical products. The United States is engaged in a dialogue with GCC technical experts to ensure that the trademark law and unfair competition law will facilitate Member States' implementation of international and bilateral obligations.

SERVICES BARRIERS

Banking

The Central Bank has granted licenses to ten foreign banks, eight of which have active operations in Kuwait. Foreign-owned banks are limited to one branch office and the branches are not allowed to compete in the retail banking sector but can only offer investment banking services. 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 branches of the bank located outside Kuwait or taking any other steps 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.

INVESTMENT BARRIERS

Kuwait's investment climate is marked by major barriers to foreign direct investment, including limitations on foreign entities participating in the petroleum and real estate sectors, long bureaucratic delays in starting new enterprises, and a local business culture based on family relationships that often preclude foreign participation. The Parliament is skeptical of major deals involving foreign companies and can significantly delay or derail major projects. During 2009, a $17.4 billion joint venture agreement between a U.S. investor and a subsidiary of the state-owned Kuwait Petroleum Corporation was canceled by the Kuwaiti government after several weeks of relentless criticism by a number of Members of Parliament.

OTHER BARRIERS

Corporate Tax Policies

A number of U.S. companies received income tax bills from Kuwaiti tax authorities in 2005 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 a taxable presence in the country.