

DOCUMENT: TERMS OF SAUDI ARABIA'S ACCESSION TO THE WTO

This material is a summary prepared by Loeffler Tuggey Pauerstein Rosenthal LLP on behalf of the Royal Embassy of Saudi Arabia.

In the course of The Kingdom of Saudi Arabia's accession to the WTO, The Kingdom significantly liberalized its markets and, at the same time, restructured its legal regimes and expanded fundamental economic goals. These changes, all of which lead to a more open and balanced economy, indicate a growing acceptance of Saudi Arabia's role as an important member of the international trading community. Saudi Arabia understands both the importance of foreign participation in the Saudi economy and that this participation is predicated on stability and predictability, which it has secured by making structural changes to its economic and legal regimes and committing to economic diversification and privatization.

The ambitious reform program creates new opportunities in Saudi Arabia for foreign and Saudi entities. In addition to creating new commercial legal structures and reducing bureaucracy to the benefit of all parties, Saudi Arabia's accession will benefit non-Saudi manufacturing, services and agricultural interests by increasing and safeguarding access to Saudi markets and greatly enhancing protection of intellectual property rights. Although certain Saudi entities will face increased foreign competition due to the market opening measures discussed below, others will benefit from the very same measures, e.g., in the form of reduced cost for imported inputs. Moreover, certain benefits will accrue to Saudi companies across the board. For example, during meetings with Saudi companies in Riyadh and Jeddah, the opacity of government decision-making and its negative effect on business planning and predictability was a common refrain. Many of the changes Saudi Arabia was required to make to join the WTO will address these issues. Saudi industries will benefit across the board from the streamlining of bureaucracies and increased access to important information, such as existing and proposed regulations and governmental decision-making processes.

THE BEDROCK—A STRONG COMMITMENT TO TRANSPARENCY AND RULE OF LAW

Increased Transparency: Saudi Arabia has committed to fully transparent legal regimes. Indeed, its commitments extend beyond WTO requirements. They include publishing laws, regulations and administrative and judicial decisions in an official gazette prior to their taking effect. To ensure maximum public access, Saudi Arabia has agreed to post all measures on an official website. In addition, it will provide a reasonable comment period prior to adopting new measures. Also, various regulatory regimes have been simplified and Saudi Arabia has created sector-specific government enquiry points to

allow foreign and domestic traders to quickly obtain accurate information regarding the Saudi legal regime and how it regulates trade with and in Saudi Arabia.

Commitment to Rule of Law: The Kingdom has committed to establish and maintain the rule of law in Saudi Arabia. This is seen in its renewed commitment to enforcement of intellectual property rights (discussed below), as well as in a variety of cross-sectoral initiatives. For example, new laws and regulations establish legal procedures that provide the right to appeal adverse administrative and legal determinations. These reforms are far-reaching and demonstrate a fundamental shift within Saudi Arabia. Together, they will increase transparency and predictability, which serve as a basis of the global economy.

RELAXED RESTRICTIONS ON COMMERCIAL ACTIVITIES—TRADING AND DISTRIBUTION RIGHTS, FOREIGN INVESTMENT AND GENERAL REQUIREMENTS FOR DOING BUSINESS IN SAUDI ARABIA

Creation of Trading and Distribution Rights: Foreign entities now have trading and distribution rights, subject to commercial registration with the Ministry of Commerce and Industry (which applies to Saudi and non-Saudi entities).

Relaxed Restrictions on Foreign Investment: With regard to investing in projects in Saudi Arabia, foreign entities are no longer required to take Saudi partners (except as specified in the Saudi Services Schedule, as discussed below regarding banking and insurance services). Foreign investment may take one of two forms: (i) a joint venture with a Saudi partner (with no minimum share requirement for the Saudi partner); or (ii) a 100-percent foreign-owned enterprise.

Also, foreign investors now are permitted to own real estate in Saudi Arabia for company and housing purposes. In addition, the Kingdom has withdrawn the minimum capital requirements that had applied to agriculture, industrial and services projects.

REDUCED RESTRICTIONS ON TRADE IN GOODS

Reduced Tariffs for Imports of Goods: Saudi Arabia has decreased tariffs on a wide range of imports, with additional staged reductions to follow. The Kingdom has eliminated tariffs on civil aviation and information technology goods related to the Agreements on Trade in Civil Aircraft and Information Technology. Moreover, The Kingdom has agreed to participate in the Chemical Harmonization Initiative and has eliminated import tariffs on all major chemical products (and reduced import tariffs to 5.5 or 6.5 percent for other chemical products).

New Standards Regime: The Kingdom has implemented a new Technical Barriers to Trade (TBT) Regime, created in 2000 and modified significantly in 2005 to reflect additional concerns of WTO Members. The new TBT Regime complies with WTO rules and international standards. To increase transparency and predictability, draft standards and technical regulations are available at the website of the Saudi Arabia Standards Organization (SASO) (www.saso.org.sa). The regime is administered by SASO, which is the sole Saudi standardization body and Saudi Arabia's enquiry point for all TBT issues.

SUBSTANTIAL LIBERALIZATION OF TRADE IN SERVICES

Restrictions on foreign service providers have been significantly relaxed. The liberalization affects all major services sectors. Among the most important of the changes are the ability to operate in Saudi Arabia through branches and guarantee of majority foreign shareholders' right to control company operations. Also, Saudi Arabia now permits foreign ownership of joint venture companies of up to 60 percent in the banking and insurance sectors and, within three years of accession, of up to 70 percent in the telecom sector.

Saudi Arabia has simplified the process by which investments in the services sector are evaluated and approved, and has established the right to challenge adverse administrative determinations. In addition, it has established the Saudi Arabian General Investment Authority (SAGIA) as a "one-stop shop" for issues relating to investments in the services sector.

Banking Services: The Kingdom has removed many restrictions on foreign entities that wish to provide banking services in Saudi Arabia. Under the new Saudi regime, a foreign entity may engage in: (i) direct branching (a foreign bank may establish and operate a branch in Saudi Arabia); and (ii) joint-venture banking (a foreign entity may establish a public jointstock company to operate as a joint-venture bank (JV Bank) in Saudi Arabia and may hold up to 60 percent of the shares). Direct branches and joint-venture banks are subject to prudential requirements addressing capital adequacy, liquidity, profitability and corporate governance. For foreign branches, the parent bank's capital will be considered in determining capital adequacy. Foreign banks still may not open representative offices in Saudi Arabia.

Insurance Services: The Kingdom has established a cooperative insurance system based on Islamic Law and has taken a number of steps to liberalize the regime, as permitted by Islamic Law. The most important steps are: (i) permitting distribution of surplus of insurance operations between the shareholders and policy holders in the ratio of 90/10, respectively; (ii) allowing foreign insurance providers to establish and operate branches in Saudi Arabia (implementing regulations expected before May 2006); and (iii) providing a three-year transition period (starting April 13, 2005) during which foreign entities already providing non-cooperative insurance services in The Kingdom may continue to do so and, moreover, may offer new products and services to clients, as set out in the Saudi Services Schedule.

STRENGTHENED IPR LAWS, INCLUDING ENFORCEMENT MECHANISMS

The Kingdom has completely *revamped its IPR regime*, including establishing new IPR laws and enforcement mechanisms. The Kingdom's new laws and implementing regulations provide full protection for all intellectual property rights, as required by the WTO TRIPs Agreement and related international conventions. The Kingdom has promulgated new laws and implementing regulations in the following areas: copyrights; trademarks; geographical indications; trade names; commercial data and protection of confidential data; border measures; and patents, layout designs of integrated circuits, plant varieties and industrial designs.

As for *strengthening enforcement*, the rights established by each of the laws noted above are coupled with the necessary enforcement mechanisms and enforcement capacity. Provisions for penalties for violations have been substantially strengthened.

In addition, The Kingdom is working diligently to reduce the patent backlog. The Kingdom has taken a number of steps, including streamlining the application process and hiring new patent examiners to substantially increase staffing levels.

OPENING THE AGRICULTURE SECTOR

Saudi Arabia has substantially increased *market access for agricultural and processed food products*. It has opened Saudi agricultural and processed food markets through tariff reductions and reduced restrictions on distribution. Also, it has reduced the role played in Saudi agriculture markets by the Saudi Grain Silos and Flour Mills Organization (GSFMO) and has included GSFMO on the list of government entities subject to privatization.

In addition, Saudi Arabia has established a *new Sanitary and Phytosanitary (SPS) Regime*. Saudi Arabia has conformed its SPS regime to the provisions of the WTO SPS Agreement and other international standards. As part of this process, Saudi Arabia withdrew the “shelflife standard” (which many WTO Members had criticized) and replaced it with the widely used (and WTO-consistent) system of “use-by” dates. The Kingdom also reexamined and explained all of its SPS measures, removing several to which some WTO Members had objected. Saudi Arabia has established a Standing Committee on SPS Measures to ensure continued compliance with WTO rules and international standards. The Ministry of Commerce and Industry has been named the enquiry point for all SPS issues to streamline the process by which problems and issues are raised and resolved.

LOOKING TO THE FUTURE

As a WTO Member, Saudi Arabia will participate in the ongoing Doha Round of multilateral trade negotiations. Saudi Arabia’s full participation in the global trading system will increase opportunities for companies wishing to invest and do business in Saudi Arabia and, at the same time, provide opportunities for Saudi business entities. Saudi Arabia’s participation will increase economic stability and predictability, and will strengthen the ongoing processes by which Saudi Arabia’s economy and legal regimes become more open and transparent.