Legal Assessment of the Kuwaiti Investment Rules in Light of the WTO Agreements

Dr. Mohammad Alhihi
Kuwait International Law School

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This paper aims to examine the level of conformity between Kuwaiti law and the WTO agreements in relation to international foreign direct investment (FDI). Essentially, the conformity between countries’ national rules and the WTO agreements is necessary to avoid the violation of the WTO obligations and to prevent any legal challenge by any member of the WTO.

The state of Kuwait has adopted an ambitious strategy called New Kuwait Vision 2035. This was designed to limit the dependence on oil as the major economic source and to diversify economic activities by enabling the private sectors to engage in more investments in order to play a leading role in the country’s economic development. The benefits of this strategy were expressed clearly by his highness, the Emir of Kuwait, “[Vision 2035] will transform Kuwait into a financial and trade center, attractive to investors, where the private sector leads the economy, creating competition and promoting production efficiency”. The implementation of this strategy has started with the Silk City Project between China and Kuwait. The value of the first phase of the agreement is about $86 billion. This is a major step by the Kuwaiti government to adopt the foreign direct investment model.

Generally speaking, in order to achieve the goals of foreign direct investment in any country, many rules and regulations have to be introduced or modified to create the suitable legal environment to attract FDI. Therefore, Kuwait legislated the Law No. 116 of 2013 regarding the Promotion of Direct Investment in Kuwait beside modifying other laws such as company law, and other laws and regulations that have connections to foreign investment.

From an international legal perspective, there are many organizations and agreements that have existed to improve international trade and investment by obliging countries to minimise national restrictions against foreign goods and investment. For instance, the World Trade Organization (WTO) has some general rules within the General Agreement on Tariffs and Trade (GATT), which are applicable to international trade and investment.\(^1\) The WTO also has an agreement called Trade-Related Investment Measures (TRIMS), which aims to minimise countries’ restrictions against foreign investment.

\(^1\) Kuwait is a member in the WTO since 1 January 1995, and a GATT signatory on 3 May 1963.
The violation for the WTO agreements by its members in the area of international investment stems from the measures that the investment hosting countries have to make in order to create favored conditions for the investors to attract them and to help them achieve their goal. When such special treatment is offered for certain investment and not offered for other competitive companies, then that will be considered as a violation of the WTO rules. The main measures, which could be necessary to achieve the aims of FDI as well as guarantee favored conditions for investors, are the imposition of local input requirements, tariffs on certain imported goods and services, and measures to create trade balance.

Overall the paper is a critical appraisal of the current WTO rules that are related to FDI and the ability of such rules to create an unrestrictive legal environment for FDI in the national market of Kuwait in particular and other countries in general. Furthermore, the paper will assess whether the Kuwaiti investment rules are developed in light of the WTO rules, or they do not and therefore may constitute a source of legal challenge by some members of the WTO.

The following are the tentative headings for the different parts of the paper:

1. Introduction
2. Foreign Direct Investment and international agreements
3. The WTO’s Legal Framework Which Is Related To International Investments
   a. The GATT Rules
   b. The Agreement On Trade-Related Investment Measures (TRIMS)
   c. The General Agreement On Trade In Services (GATS)
   d. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)
   e. The Agreement on Government Procurement
      a. The Agreement on Subsidies and Countervailing Measures
4. Host Country and Discriminatory Investment Restrictive Measures
5. Kuwaiti FDI Rules In light Of the WTO Rules
6. Potential Benefits and Costs of FDI To Kuwait
7. Kuwaiti Bilateral FDI Agreements
8. Legitimate Measures To Protect Investors
9. Possible Future Legal Challenge For Kuwait
10. Conclusion And Recommendations