United States-Bahrain Free Trade Agreement – Impact on State and Local Governments

I. Introduction

The United States-Bahrain Free Trade Agreement (FTA or Agreement) is a comprehensive, high-quality free trade agreement that will provide American workers, consumers, and businesses unprecedented economic opportunity in Bahrain. It is another step forward in the President's plan for a Middle East Free Trade Area (MEFTA) by 2013, and will open trade with a friend and ally in the Persian Gulf. States will clearly benefit from the Agreement, as 100 percent of bilateral trade in consumer goods and industrial products will become duty-free immediately upon the entry into force of the Agreement. Under the Agreement, which covers all agricultural products, Bahrain also will provide immediate duty-free access for U.S. agricultural exports in 98 percent of agricultural tariff lines, and will phase out all remaining tariffs within 10 years. In 2002, U.S. goods exports to Bahrain totaled over $419 million, including aircraft, machinery, vehicles, pharmaceutical products, toys, games, and sports equipment. U.S. agricultural goods that will benefit from the Agreement include meats, fruits and vegetables, cereals, and dairy products. Additionally, Bahrain will substantially open its services market, streamline trade in digital products, protect intellectual property rights, and facilitate government procurement, which are all issues of interest to states.

One of the statutory advisory committees of the Office of the United States Trade Representative (USTR), the Intergovernmental Policy Advisory Committee on Trade (IGPAC), provides advice from the perspective of state and local government. It is comprised of representatives and associations from the executive, legislative, and judicial branches of state government, as well as representatives of counties and cities. The Council of State Governments (CSG), the National Conference of State Legislatures (NCSL), the National Association of Attorneys General (NAAG), the National League of Cities (NLC), and the National Association of Counties (NACo) are among the organizations represented on the IGPAC. In 2003 and 2004, USTR revitalized and significantly expanded the membership and geographic representation of the IGPAC to include "State Points of Contact" designated by the Governors' offices, as well as state legislators and attorneys general nominated by NCSL and NAAG, respectively. In February 2004, USTR appointed Ms. Kay Wilkie, a public official from the State of New York, as IGPAC Chair.

Pursuant to the Trade Act of 1974, each of the statutory advisory committees, including the IGPAC, was required to produce a report on the impact of the FTA on U.S. state and local governments. In particular, in its report on the FTA (available in full at www.ustr.gov), the IGPAC recognizes that:

> *"This agreement with Bahrain, a long-standing ally of the US, would foster trade ties and deepen economic integration throughout the Middle East….IGPAC members understand that bipartisan efforts in*

> *Congress…indicate active federal support for economic reform and trade liberalization in the greater Middle East….Building upon prior FTAs with Israel and Jordan, as well as the FTA with Morocco signed 6/15/04, the US-Bahrain FTA should substantially improve the business environment and advance civil society development objectives, while increasing trade capacity and investment opportunities between the US and this critically important world region….US economic interests, entrepreneurs and employees would benefit from improved market access for goods, services, agricultural products, and from better access to government procurement opportunities….Provisions to promote workers rights, labor standards and environmental protections, and to advance regional development through trade capacity building, technical assistance and the integration of civil society, are appreciated and essential."*

The committee further states that:

> *"The US-Bahrain Free Trade Agreement is supported by most IGPAC members, as the agreement advances strategically critical and comprehensive trade development and market reform objectives in a manner generally beneficial to our national, regional and local economies….The laudable US-Bahrain [FTA] objectives of economic growth, employment creation, sustainable development, geo-strategic market reforms and improvements to living standards and market opportunities should be pursued in a manner consistent with principles of US constitutional federalism and public policy obligations to state and local constituents."*

Based upon IGPAC's report and other comments received regarding the potential impact of free trade agreements on sub-federal governments, this report addresses three main areas of interest to states and localities in the Agreement: (1) government procurement; (2) services; and (3) investment. Additionally, USTR has taken into account states' and localities' overall interest in preserving sub-federal regulatory abilities and prerogatives.

II. Chapter Nine: Government Procurement

The Agreement requires that covered Bahraini government purchasers not discriminate against U.S. firms, or in favor of Bahraini firms, when making covered government purchases in excess of agreed monetary thresholds. As a result of such provisions, U.S. and Bahraini suppliers will have increased certainty in each other's markets due to strong and transparent disciplines on procurement procedures.

Sub-central (*i.e.*, state and local) government procurement is not covered by this Agreement.

IGPAC notes that:

> *"As a matter of general principle, IGPAC members support the goal of improving transparency and increasing fair market access in government procedures and regulatory decisions that are related to procurement, while preserving the independent authority of state and local governments to adopt legislation, standards and procedures consistent with their experience and interests….In the event that future negotiations are undertaken to expand the Bahrain FTA's coverage to include state procurement, state procurement officials would need to be actively consulted during the negotiation process."*

III. Chapter Ten: Cross-Border Trade in Services

Chapter Ten covers the supply of services on a cross-border basis, which includes services supplied from the United States into Bahrain or vice versa, including supply via electronic means, services supplied by a national of a Party in the territory of the other Party, and consumption of services in the other Party. Services supplied by an investment are generally covered under the United States-Bahrain Bilateral Investment Treaty (BIT), but also enjoy the protection of certain provisions in Chapter Ten. While state and local governments are subject to the obligations of this Chapter, they will not be required to make any changes to existing laws or regulations that currently may be inconsistent with Agreement obligations such as market access, national treatment, and most-favored-nation (MFN) treatment. To be sure, in its market access commitments the United States includes a reservation for existing state level non-conforming measures ("a grandfather clause"); existing local level non-conforming measures are given the same protection through the text itself.

Nothing in Chapter Ten or any other provision of the Agreement requires the privatization or deregulation of any government service, including water supply or distribution services, education services, or health services. The Agreement also excludes services supplied in the exercise of governmental authority from such liberalizing provisions.

The implementation of Chapter Ten should not require an additional commitment of financial resources by state and local governments.

The IGPAC report comments further that:

> *"State and local governments generally support objectives to liberalize trade in services industries as a means of increasing market access for US firms and for reaching trade development objectives. IGPAC members equally assert that the independent exercise of state and local legislative and regulatory power is critical to protecting citizens' interests and safeguarding the federal system."*

The IGPAC report also notes that a general exemption for existing state and local measures could leave open the possibility of disputes about future changes, highlighting the need for USTR to educate and consult with state and local entities so that they are aware of such constraints upon future actions.

IV. Chapter Eleven: Financial Services

Chapter Eleven covers measures relating to U.S. and Bahraini financial institutions and cross-border trade in financial services from the territory of one Party into the territory of the other Party (including via electronic means), consumption abroad, or nationals who travel abroad to supply financial services. The Chapter includes supplementary provisions for financial institutions, while maintaining flexibility with respect to public retirement plans and social security systems. While state and local governments are subject to the obligations of this Chapter, they will not be required to make any changes to existing laws or regulations that currently may be inconsistent with Agreement obligations such as national treatment and MFN treatment. Again, in its market access commitments, the United States includes a reservation for existing state level non-conforming measures ("a grandfather clause"); existing local level non-conforming measures are given the same protection through the text itself.

The implementation of Chapter Eleven should not require an additional commitment of financial resources by state and local governments.

V. Investment

U.S. investors will continue to benefit from protections accorded under the BIT, which has been in effect since 2001. In light of this existing agreement, the Agreement does not include a chapter on investment.

VI. Regulatory Interests

The Agreement does not affect the right of the United States and sub-federal governments to establish, maintain, and fully enforce domestic laws protecting consumers, health, safety, and the environment.

VII. Conclusion

States and localities are poised to benefit under the Agreement. This comprehensive agreement would eliminate tariffs, generating export opportunities for U.S. goods and creating jobs for American farmers and workers. It also would provide increased access for U.S. firms to Bahrain's services sector, including opportunities in the financial services, distribution, energy, construction and engineering, health services, education and training, tourism and travel, audiovisual, and environmental services sectors.

Finally, the FTA would support Bahrain's commitment to transparency, openness, and the rule of law, as well as its efforts on environmental protection and labor, making progress toward the eventual goal of a MEFTA.

We do not believe that state and local governments will need additional resources to deal with the effects of increased trade under the Agreement.