

WORLD TRADE ORGANIZATION

G/TBT/N/KWT/4
23 December 2002

(02-7089)

Committee on Technical Barriers to Trade

Original: English

NOTIFICATION

The following notification is being circulated in accordance with Article 10.6.

1.	Member to Agreement notifying: <u>THE STATE OF KUWAIT</u> If applicable, name of local government involved (Articles 3.2 and 7.2):
2.	Agency responsible: The Public Authority for Industry (PAI) Name and address (including telephone and fax numbers, e-mail and web-site addresses, if available) of agency or authority designated to handle comments regarding the notification shall be indicated if different from above:
3.	Notified under Article 2.9.2 [], 2.10.1 [], 5.6.2 [X], 5.7.1 [], other:
4.	Products covered (HS or CCCN where applicable, otherwise national tariff heading. ICS numbers may be provided in addition, where applicable): Group IV: CHEMICAL PRODUCTS <u>Class A (1st stage implementation)</u> IV-01 ENGINE, TRANSMISSION, HYDRAULIC, TURBINE, AND TRANSFORMER OILS, BRAKE FLUID. HS Codes: 2710.00.52 / 2710.00.53 / 2710.00.54 / 2710.00.55 / 2710.00.94 / 2710.00.95 / 2710.00.96 / 3819 IV-02 PAINTS AND PUTTIES. HS Codes: All 3208 / All 3209 / 3214.10 / 3214.90 <u>Class B (2nd stage or deferred implementation)</u> IV-03 PERFUMES AND COSMETICS. HS Codes: 3302.90 / All 3303 / All 3304 / All 3305 / All 3306 / 3307.10 / 3307.20 / 3307.30 / 3307.49.10 / 3307.90.10 / 3401.11 IV-04 DOMESTIC USE PESTICIDES AND INSECTICIDES. HS Codes: 3808 IV-05 ANTI-FREEZE COOLANT AND BATTERY DISTILLED WATER. HS Codes: 3820 / 2851
5.	Title, number of pages and language(s) of the notified document: Implementation of the International Conformity Certification Program (English version)
6.	Description of content: Conformity assessment procedures applied on the Regulated Products at the Countries of Export to ensure their conformity to the applicable Kuwaiti technical regulations and standards. Exporters have the option to choose one of the following routes for compliance: <ul style="list-style-type: none">1) Consignment Inspection and Testing2) Product Registration, Inspection and Testing3) Product Licensing Details published in the ICCP Procedures and Guidelines.
7.	Objective and rationale: <i>“legitimate objectives of protection of health, safety, national security, the environment, public morals (including religious values), and prevention of deceptive practices”.</i>

Implementation of the subject measure constitutes an exercise of a WTO Members' right under Article 5 of the Technical Barriers to Trade Agreement for ***“central government bodies to apply procedures for assessment of conformity to products originating in the territories of other Members in cases where a positive assurance of conformity with Technical Regulation and Standards is required.”***

- 1) Kuwaiti technical regulations and mandatory standards are already applicable to “Class A” Regulated Products. These products have been subject to conformity assessment and verification procedures (CAVP) by PAI in Kuwait. The introduced ICCP applies (CAVP) at the countries of export of the Regulated Products prior to shipment, thereby satisfying the criteria of article 5.1.1 of the TBT Agreement in providing ***“access”*** to manufacturers and exporters, ***“including the possibility to have conformity assessment activities undertaken at the site of facilities and to receive the mark of the system.”***
- 2) In compliance with the provisions of Article 5.1.2 which stipulates that ***“conformity assessment procedures shall be no more strict or be applied more strictly than is necessary to give confidence that products conform to the applicable technical regulations and standards”***, ICCP adheres to the principle of proportionality through providing exporters the flexibility to choose between (3) different methods of achieving compliance, each with a varying degree of shipment intervention and testing. The nature, extent and complexity of CAVP applied depend on the assessed level of conformity to the relevant requirements as revealed through evaluation of test reports, certifications, quality marks ...etc that the product has already acquired. For example, registered products that have demonstrated their conformity through substantiated test reports may be granted a complete waiver from testing for up to (3) years. Other products with deficient conformity will only be tested for the outstanding requirements, thereby avoiding unnecessary duplication.
- 3) Conformity to Kuwaiti technical regulations and standards is a mandatory requirement for imported and locally manufactured products alike. CAVP applied under the Product Licensing option of the ICCP are parallel to CAVP applied under The Quality Mark System for locally manufactured products. Other locally manufactured products not opting for the Quality Mark System are subjected to periodic drawing of samples from production lines and various market locations with subsequent carrying out of conformity assessment testing at PAI or other public or private sector laboratories inside and outside Kuwait. The system can be considered as ***“equivalent”*** (in the spirit and meaning of Article 6.1) to the Registration option under ICCP, notwithstanding any differences between the two systems as long as the ***“assurance of conformity”*** criteria are satisfied under both. In any case, implementation of the ICCP on imported products would free substantial resources of skilled PAI manpower and facilities that can be directed and devoted towards higher level of enforcement on locally manufactured products. Additionally, the PAI is engaged in refining the process by preparing and adopting a more structured program entitled “Conformity Mark” in conjunction with other GCC countries opting for the same. The procedures of this Program are designed to be as much parallel to the Registration option under the ICCP as possible. Development of such a Program would have to take into consideration the pace of development and limitations of local capabilities, infrastructural facilities and technical skills. Nevertheless, the fact remains that apart from exports of oil and petrochemicals, the State of Kuwait is a pure importer of products. Thus, taking into consideration the Developing Country status of Kuwait, shortcomings (if any) in the current implementation of CAVP on locally manufactured products should not prejudice the right of the Kuwaiti consumer to be protected at large against potential non-conformities in imported products that represent the majority of products made available to him in the Kuwaiti market. Should Developed Country Members consider (under their own evaluation) that CAVP applied by the State of Kuwait on locally

manufactured products are inadequate in any way, they are under obligation in accordance with Article 11 to provide Technical Assistance to the State of Kuwait in developing its CAVP and bodies.

- 4) The PAI have chosen and appointed a Program Management Company to administer the ICCP globally on its behalf pursuant to a competitive bidding process resulting in the selection of the bidder with the lowest fees and highest qualification points. The fees charged cover the costs of testing, evaluation, registration and product licensing, and are in line if not more competitive than prevailing market rates. Consignment inspection fees have a graduated decreasing scale against larger consignments with the fee in each scale consisting of a fixed and a variable component based on % of the FOB value of the consignment, subject to a minimum charge, thereby providing uniformity and equitability among products originating in different countries. All fees charged under the ICCP are paid directly to the bodies conducting the CAVP. No part of the fees or benefits is paid directly or indirectly to PAI or any other Kuwaiti government body. As such, the fees are equitable and ***“are limited in amount to the approximate cost of services rendered and does not represent an indirect protection to products or a taxation of imports or exports for fiscal purposes”***.
- 5) The ICCP meets the criteria of Articles 5.2.2, 5.2.3, 5.2.4, 5.2.6, 5.2.7, and 5.2.8 in relation to processing periods and avoiding of delays, information and confidentiality requirements, the siting of facilities, and the handling of complaints, as explained in detail in the Procedures and Guidelines document.
- 6) The ICCP complies with the provisions of Article 5.4 in that all CAVP applied by the Program are based on the relevant International Guides and Recommendations. A classical example of such Guide is ISO 28 on which the ICCP's product licensing is based.
- 7) The ICCP accepts results of CAP issued by internationally or nationally accredited or recognized bodies, or bodies with which mutual recognition agreements had been concluded, in as much as they offer an assurance of conformity to the applicable technical regulations and standards.
- 8) The State of Kuwait is allowing a reasonable period from the date of this notification for other WTO Members ***“to make comments in writing”*** and expresses its intent to ***“discuss these comments upon request, and take these written comments and the results of these discussions into account”***. Additionally, the PAI will during the notification period ***“publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties in other WTO Members to become acquainted with it, that it proposes to introduce this conformity assessment procedure”***. This will take the form but is not be limited to notification and forwarding of copies of the ICCP Procedures and Guidelines to foreign Embassies in Kuwait, Kuwait Chamber of Commerce & Industry, the Kuwait Industries Union, Kuwaiti Embassies in exporting countries, International Joint Chambers of Commerce, major manufacturers associations of the Regulated Products, as well as publishing of articles in the local newspapers and conducting information and discussion seminars about the Program for local businessmen and importers.

8. Relevant documents:

- 1) International Conformity Certification Program at Exporting Countries – Comprehensive Procedures and Guidelines (13 pages plus Appendices A to J)
- 2) List of Kuwaiti Standards applicable during 1st stage of ICCP

9.	Proposed date of adoption: Proposed date of entry into force:	}	1 February 2003 for 1 st Stage of Program on Class A Products. The date of enforcement for Class B Products has not been determined yet.
10.	Final date for comments: 31 January 2003		
11.	Texts available from: National enquiry point [X] or address, telephone and fax numbers, e-mail and web-site addresses, if available of the other body: PAI Web site: www.pai-iccp.com		