

**ITI COMMENTS ON COMPLIANCE WITH TELECOMMUNICATIONS TRADE AGREEMENTS
(USTR FR Doc. 04-26033)**

The Information Technology Industry Council (ITI) welcomes the opportunity to respond to the Office of the US Trade Representative's *Request for Comments Concerning Compliance with Telecommunications Trade Agreements* as announced in *Federal Register* Doc. 04-26033, Volume 69, Number 226.

ITI represents the 30 leading providers of information technology (IT) products and services. ITI is the voice of the high tech community, advocating policies that advance industry leadership in technology and innovation; open access to new and emerging markets; promote e-commerce expansion; protect consumer choice; and enhance the global competitiveness of its member companies.

ITI advocates for the adoption of national regulatory policies based on one standard, one test, and a supplier's declaration of conformity (1-1SDoC). This 1-1SDoC model offers regulators a way to meet their objectives in the least trade-restrictive manner. It also allows governments to direct scarce resources to specific products they identify as the most likely to require regulatory attention, while eliminating redundant requirements that prevent innovative IT products from reaching consumers most efficiently.¹

These comments concern telecommunication trade agreements including the **WTO Basic Telecommunications Agreement, the WTO Technical Barriers to Trade (TBT) Framework, and the North America Free Trade Agreement**. In particular, ITI would like address regulatory processes for conformity assessment procedures (CAPs) as they apply to electromagnetic compatibility (EMC) and product safety in the countries of **Mexico, Brazil, Argentina, Korea and Thailand**.

These countries have or are proposing CAPs for safety and/or EMC that do not allow for SDoC. As a result, requirements such as in country testing, fees, and labeling requirements create significant barriers for importers and threaten trade agreements. The following section addresses specific issues within each country, assesses their impact on trade agreements, and offers recommendations for improved compliance. ITI looks forward to continuing to work with the USTR to advance international trade initiatives, particularly those aimed at opening foreign markets and expanding trade in IT products and services, as well as global e-commerce.

I. Country Specific Issues of Concern

1. Mexico

Issue: Proposed conformity assessment procedures of the Comisión Federal de Telecomunicaciones (COFETEL)

¹ 1-1SDoC has three stages: (1) the supplier's declaration of conformity to one standard, proven by one test, performed by a laboratory demonstrated to be competent (2) relevant, post-market surveillance to detect potentially non-compliant products and (3) penalties on manufacturers whose products are found not to comply. When implemented as part of this unified process, 1-1SDoC preserves legitimate regulatory objectives while maintaining a role for certification and accreditation bodies, which can offer expert, value-added services. With 1-1SDoC, manufacturers may voluntarily choose to use third party testing and certification services on an efficient, market-driven basis.

Impact: The requirements in COFETEL's proposed CAPs are unnecessarily burdensome with respect to real-world risk management and are some of the most onerous of any telecommunications regulator in the world. They would encourage redundant testing and certification and result in time-to-market delays and unnecessary costs for Mexican domestic IT manufacturers and foreign importers seeking to provide the latest technologies for their global customers. If implemented, these requirements could result in the creation of unintentional, non-tariff barriers to trade, as defined by the WTO, potentially damaging the highly valued trade relationship between the United States and Mexico.

The requirements would have a widespread negative impact by setting a legal obligation for all future ICT regulations, including proposed mandatory EMC regulations (NOM-125). These procedures for unintentional radiators are unlike those of the U.S. and Canada, which allow for self-verification or declaration of conformity and require no interaction with the regulatory body. (Personal computers and personal computer peripherals are tested utilizing an ISO 17025 accredited laboratory for testing in the US.)

Recommendations: In the interest of making these CAPs as least trade restrictive as possible, ITI has repeatedly urged COFETEL to 1) recognize foreign and domestic test reports 2) recognize effective use of Supplier's Declaration of Conformity, 3) allow for family definition in the proposed regulations, 4) remove unjustified quality management certification requirements and allow for English language documentation and schematics, and 5) deregulate commercial ITE. ITI has also recommended that implementation and enforcement be delayed until there is sufficient infrastructure for conformity evaluation.

However, more than three years of discussions with COFETEL have unfortunately not resulted in substantive improvements to this proceeding. COFETEL has not addressed the concerns of domestic and international information technology industries, nor has it acted on those expressed by the US government.

2. Brazil

Issue: Non-acceptance of foreign test reports, overly burdensome and redundant testing requirements

Brazil's ANATEL will not accept foreign test data for certification of wireline and wireless devices. Test data will only be accepted when it is taken by a lab located in Brazil, and when witnessed by an approved certification body. ANATEL has also expanded its mandatory type approvals to include IT equipment including devices connected to data networks. Currently, ANATEL is also planning to expand its conformity assessment procedures to include EMC for ITE. Early reports indicate that testing for EMC will only be permitted in country through Brazilian accredited labs, without the option for acceptance of third party test reports or SDoC. Market surveillance requirements paralleling those of Argentina are reportedly under consideration.

Early reports indicate Brazil plans to implement mandatory safety certification requirements on IT equipment. Type approval and Conformity assessment procedures paralleled to those of ANATEL (in country testing, field surveillance, etc.) may well be expected. Timelines are not firm but the requirement may be installed before 2007.

Impact: These requirements are counter to WTO agreements by adding cost and delaying market availability without any increase in value to Brazilian consumers. They also make it difficult for legitimate manufacturers and importers to compete in a market saturated with grey market and counterfeit goods. If these EMC requirements are implemented in Brazil, other South American countries are likely to follow in adopting such trade-restrictive conformity assessment procedures.

Recommendations: ITI supports ANATEL reforms that 1) Allow manufacturers to manage their own test process to minimize cost and redundancy, and declare conformity with Brazilian requirements in the manner described in ISO/IEC 17050 Part 1 and Part 2. ANATEL could then focus more attention on enforcement and less on equipment certification. This would also provide innovative products to Brazilian consumers sooner and at lower cost than under current requirements. 2) Permit acceptance of foreign test reports and 3) Engage in MRAs, if necessary, to facilitate acceptance of foreign test reports

3. Argentina

Issue: Market surveillance controls

In addition to requiring initial product safety certification and factory audits, verification of essential safety requirements call for a minimum of one sample to undergo testing for each five certified product families. However, a definition of “family” has not been supplied. For type certification, verification testing occurs 2/year. For mark certificate, verification testing occurs 1/year. Additionally, the manufacturer is responsible for verification of identity and if a product does not pass verification, then the original certification is canceled. This will stop the marketing of the product. If it is a serious non-conformity, a product recall may be necessary.

Impact: These disproportionate and costly market-based surveillance requirements are highlighted by the fact that testing labs do not have the local resources necessary to manage product examinations in a timely way. Imports are unnecessarily delayed and manufacturers must pay the full cost of verification units, resulting in higher costs being passed down to consumers.

Recommendations: ITI supports more proportionate and streamlined approach to surveillance requirements for ICT products that have proven to pose little safety risk. We also believe that “family” may best be defined by the product standard to which a product is approved.

4. Korea

Issues:

1) Ministry of Information and Communication (MIC) identification numbers are available only when certification is completed.

2) There are no exemptions for sample tests for huge and complex products.

3) Foreign lab reports are not accepted, and in country EMC testing is mandatory.

4) Confidential product documentation, such as schematics are required by the Radio Research Laboratory (RRL) as part of the approval process regardless of evidence that the product already complies with the applicable requirements (such as CB reports).

Impact: 1) Waiting for the ID number becomes a bottleneck, resulting in delays in product time to market. This hurts Korean consumers as well as manufacturers, as the consumers do not have affordable access to the latest technologies. This process would also seem to cause additional administrative costs to RRL to produce the certificates.

2, 3) No exemptions and required in country testing result in delayed Korean market availability. They also contribute to duplicative testing, adding cost to manufacturers, importers and ultimately consumers, without providing any additional benefits.

4) Schematic information is intellectual property (IP) and should be protected as much as possible. Many times the IP is also on third party devices such as power supplies and telecom

cards with approvals already in place. In attempts to protect IP via Non Disclosure Agreements, the process becomes almost impossible with third party agreements.

Recommendations: 1) Provide the same Company ID or provide advance ID approval number, such as blanket advance approval to manufacturers. Note: The Korean government has informed ITI that there will be an announcement regarding this policy in 2005.

2) ITI recommends that Korea accept foreign reports for huge and complex products which are a) supported and installed by trained IT specialist, b) installed in controlled environment and provided with specialized power, accessible only by trained professional IT personal and c) are mission critical by function.

3,4) MIC should directly accredit foreign test labs, manufacturers or 3rd party certifiers (similar to the process used by Taiwan/BCIQ/BSMI prior to their agreements to accept NVLAP/A2LA and other ISO-17025 accreditations). Alternatively, Korea might consider accepting any ISO-17025 accredited test laboratory report similar to the way that Korean test lab reports are accepted in the US via the TCB.

ITI also urges Korea to accelerate MRA implementation and accept CB reports "as is," encouraging their movement towards SDoC.

5. Thailand

Issue: Thai Industrial Standards Institute's (TISI) proposed EMC conformity assessment requirements

Impact: ITI is encouraged by TISI's recent proposal to establish a globally aligned EMC standard based on the IEC's CISPR 22, as it will greatly facilitate Thailand's international trade in ITE. However, these benefits could be diminished if Thailand adopts unique regulatory requirements for conformity assessment. ITI believes that testing, approval and certification requirements should not be more trade-restrictive than necessary to fulfill their legitimate regulatory objectives and should be inline with WTO objectives as outlined in the WTO Technical Barriers to Trade Agreement. ITI will be working with TISI in the coming months to help ensure these proposed requirements meet this goal.

Recommendations: As mentioned above, ITI believes EMC regulation should allow IT products be marketed on the basis of SDoC. The supplier shall retain compliance documentation (i.e., description of product, test reports, etc.) providing the basis for the supplier's declaration and make it readily available to the regulator upon request. Enforcement of regulatory requirements will be by means of post-market surveillance.

ITI encourages Thai regulators to recognize any test lab (manufacturer's or third-party's test lab) that attests conformance with ISO/IEC Guide 17025, as evidenced by documentation, or by an accreditation organization's evaluation according to ISO/IEC Guide 58. We also advocate that there are efficient ways to recognize foreign test reports while at the same time ensuring that legitimate public interests are a protected. These requirements will result in cheaper, quicker and more predictable approval processes, and reduced administrative costs for cross-border sales.

ITI suggests that this conformity assessment process should apply only to those peripheral devices that are sold separately, not to those that are subassemblies of the host device. Additionally, If TISI chooses to require compliance marking, ITI recommends that the mark should serve the needs of regulators with the least cost and burden to the supplier. ITI favors the allowance of manufacturer printing of labels. We also encourage that such marking be limited to a compliance mark and not require a text statement. Examples of such desirable marks include the CE, C-Tick, and FCC logos. We would also like to propose that the regulation be applied with

a transition period so that manufacturers have the time to correctly implement the new requirements.

6. Taiwan

Issues:

1) Taiwan has an EMC certification process that has recently been revised to allow the use of DoC for components.

2) Taiwan plans to implement new IT safety regulations in 2005. ITI, and local industry has been meeting regularly with the Taiwanese authorities responsible for drafting and implementing the new regulations and promoting the 1-1 SDoC model. Taiwan has been quite open and forward-looking in the drafting process and will even implement a form of SDoC for certain products.

Impact:

1) Industry is still required to conduct redundant EMC testing for IT products. At least one month of certification turnaround time delays the products to market. Though they have made steps toward simplification, the "RPC" certification process adds a delay in conformity assessment and also results in inconsistencies between application reviewers as they review test reports.

2) Taiwan plans to model the safety conformity assessment process on the existing EMC regulations. This can potentially result in the same difficulties we are experiencing with the EMC processes.

Recommendations: ITI encourages Taiwan to move forward with its efforts to implement streamlined processes for both safety and EMC, based on SDoC and post-market surveillance, rather than pre-market certification.

7. China

Issues:

- 1) Slow type approval for telecommunications products
- 2) China Compulsory Certification (CCC) Mark Procedures Contravene WTO Obligations
- 3) Redundant Testing

Impact:

1) China has become the largest telecommunications market in the world and is now the recipient of a constant inflow of the latest telecommunications equipment. Currently, China's test cycle for the type approval of telecommunications equipment can take as long as 13 weeks, while in the U.S. and Japan, the majority of such approvals are completed within 30 days. Since the lifecycle of IT products is short, long type approval periods can seriously affect production schedules, time-to-market, and revenue flows.

2) We recognize that Certification and Accreditation Administration (CNCA) has unified the development of laws and regulations for safety and electromagnetic compatibility (EMC) and has taken the administration of the China Compulsory Certification (CCC) (which includes electromagnetic emissions and safety testing) under its auspices. Presently, applications for the CCC mark (including electromagnetic emissions and safety testing) are processed by two third-party product certification bodies commissioned by CNCA—the China Certification Center for Electromagnetic Compatibility (CEMC) and the China Quality Certification Center (CQC). ITI's understanding is that the actual testing for safety and electromagnetic emissions, however, is now performed by one of the 70 plus domestic testing organizations approved by the CNCA. According to PRC regulations on certification and accreditation effective November 2003, foreign entities are eligible to apply for accreditation as a CCC certification organization. We continue to

be informed by the Chinese authorities that the market remains closed to non-domestic conformity assessment organizations.

3) In addition to the CCC mark, telecommunication producers often have to undergo two tests administered by two separate departments of the Ministry of Information Industry (MII), the network access test of the Telecommunications Administration Bureau (TAB) and the spectrum interference test of the Wireless Radio Regulatory Bureau (WRRB). The CCC, EMC, TAB, and WRRB have significant overlapping and redundant testing criteria.

Recommendations:

1) Implement the MII Regulations. MII has issued regulations, the *Regulations on Network Access of Telecom Equipment*, which require review and approval or rejection within 60 days. We hope that this time limit will be observed and treated as the longest possible period for consideration.

2, 3) ITI suggests that the Chinese Government simplify and consolidate redundant tests and shorten testing periods.