



December 21, 2007

Ms. Gloria Blue
Executive Secretary, Trade Policy Staff Committee
ATTN: Section 1377 Comments
Office of the U.S. Trade Representative
600 17th Street, N.W.
Washington, DC 20036

(As sent via email to: FR0502@ustr.eop.gov)

Dear Ms. Blue:

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* on November 19, 2007 (Volume 72, Number 222).

ITI represents the 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.

These comments concern telecommunication trade agreements including the following:

- World Trade Organization (WTO) Agreement on Basic Telecommunications (BTA) and the associated reference paper
- WTO Information Technology Agreement (ITA)
- WTO Technical Barriers to Trade (TBT) Agreement
- North American Free Trade Agreement

The following section addresses issues with specific countries, assesses their impact on trade agreements, and offers recommendations for improved compliance. These countries use conformity assessment procedures such as mandatory in country testing and unique labeling requirements which create significant barriers for importers and restrict the flow of trade.

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

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The following section addresses issues with specific countries, assesses their impact on trade agreements, and offers recommendations for improved compliance. These countries have conformity assessment procedures such as mandatory in country testing and unique labeling requirements which create significant barriers for importers and restrict the flow of trade. 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.

Country Specific Issues of Concern

1. Mexico

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

Impact: COFETEL's conformity assessment programs for telecommunications equipment are unnecessarily burdensome to industry. Redundant in country testing and certification requirements create significant time-to-market delays. This results in unnecessary costs for both Mexican domestic IT manufacturers and foreign importers seeking to provide the latest technologies for their global customers. These requirements could have a widespread negative impact by setting a legal obligation for all future ICT regulations, including proposed mandatory EMC regulations (NOM-125) for IT equipment. 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 procedures 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, 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. ITI will continue to monitor the impact of these conformity assessment procedures.

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.

2. Brazil

Issue: Non-acceptance of foreign test reports, overly burdensome and redundant testing requirements. Brazil's telecommunications regulator, ANATEL, will not accept foreign test data for certification of wireline and wireless devices. Test data is only be accepted when it is taken by a lab located in Brazil, and when witnessed by an approved certification body. Testing for EMC for telecom devices is only 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. We also remain concerned about the possibility of Brazilian 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.

Issue: ANATEL has also published a mandatory safety and performance standard for cellular phone batteries which will be effective in February of 2008. The proposal requires in country, third party testing by an approved Brazilian lab. The testing is based on two IEC standards (IEC 62133 and IEC 61960) and requires a hologram approval mark with the ANATEL logo. ITI is aware that ANATEL is considering expanding the scope of these requirements to include batteries for additional devices including notebook PCs.

Impact: These requirements are counter to WTO agreements by adding cost and delaying market availability, some certification delays can take 3 to 4 months, 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. These Brazilian requirements may also impact other South American countries which 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 two times per year. For mark certificate, verification testing occurs once a 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. European Union

Issue: Violation of the WTO Information Technology Agreement. The European Communities (EC), like the 69 other WTO members that participate in the ITA, committed to bind and eliminate tariffs on all ITA products -- but it is now applying duties as high as 14 percent on some of those products, including telecom products such as set top boxes. The EU is also threatening to move other ITA covered products into dutiable categories, such as PDAs with GPS capabilities.

In some cases, the European Commission has put in place temporary duty suspensions that are arbitrary and must be renewed. These temporary duty suspensions do not cover entire product categories and, in any event, create uncertainty in the marketplace. Temporary duty suspensions do not equal ITA treatment. Moreover, as technologies continue to advance, more ITA covered products will tend to fall outside the duty suspensions, decreasing the competitiveness of the US IT and Telecom industry.

Impact: Europe's approach is contrary to the letter and spirit of the ITA, and would turn the agreement on its head: the ITA was meant to encourage innovation and the adoption of digital technologies, and the EC approach will stifle it. The EC approach has serious implications for the agreement as a whole and would ultimately undermine the entire value of the ITA given the ongoing innovation in the IT sector.

Recommendations: It is critical to the US IT and Telecom industries that the letter and spirit of the ITA be maintained and that the EU respect the ITA commitment to bind and eliminate duties on covered products.

5. China

Issue: Certification. ITI is encouraged by China's participation in the Worldwide System for Conformity Testing and Certification of Electrical Equipment and Components (IECEE) Certification Bodies' (CB) scheme for the acceptance of safety test reports. However, China's failure to accept those reports from foreign laboratories which meet CB Scheme approval, defeats the efficiencies and intent of the program that is designed to improve market access through the elimination of unnecessary and redundant testing.

Impact: Unnecessary, additional and redundant testing in order to obtain the China Compulsory Certification (CCC) mark has resulted in substantial and costly delays of getting products to market.

Recommendation: The product testing and certification process in China remains significantly more difficult than in other markets, resulting in increased costs for manufacturers and consumers. ITI continues to urge China to maximize its engagement in international programs, by supporting the full application of the CB Scheme, including acceptance of foreign test reports. This is essential for ensuring market access and eliminating redundant testing of products at multiple laboratories.

Issue: ITI is also monitoring China's development of mandatory standards for cell phone batteries. Introduced earlier this year, this proposal threatens to stifle innovation by limiting battery sizes and other technical specifications. ITI is concerned that such requirements will set a precedent for additional "universal" standards for ICT equipment, both for China and other countries.

6. Thailand

Issue: Thailand's Industrial Standards Institute's (TISI) has begun enforcement of a mandatory battery safety standard affecting cell phones in addition to portable electronics and IT equipment. (It is ITI's understanding that the scope of the requirements was originally intended to be limited to cell phones. However, through reference of an IEC standard that includes a wide range of products, it was unintentionally expanded to include ITE.) Requirements for TISI certification include mandatory in country testing of a large number of sample batteries. Samples must also

meet Thailand's unique national standard which references an IEC standard not applied to notebook PCs by any other country.

Impact: As currently being implemented, globally unique conformity assessment requirements, have created confusion among importers of batteries and have led to costly delays of products to market, as shipments of batteries intended for use in information technology equipment have been held in Thai Customs.

Recommendations: ITI has met with TISI and requested that in addition to their current requirements, they also recognize certain UL standards and certifications as an alternative option for approval. In comparison, these UL standards are more robust and widely followed than the referenced IEC standard. ITI has documented this in detail for TISI. Additionally, ITI has noted that UL's certification and follow-up service programs are already in place, globally recognized, and have been practiced over many years. These standards and corresponding certification and follow up service programs are also undergoing revisions to further enhance confidence in batteries' safety performance. UL is also seeking to harmonize its standards with those of other standards development organizations including the IEC. ITI members look forward to TISI's response to this proposal, which is currently being evaluated.

7. Malaysia:

Issue: Under Malaysia's Standard and Industrial Research Institute's (SIRIM) labeling requirements for telecommunications and other regulated products, manufacturers must purchase labels from the government with unique serial numbers assigned by SIRIM and apply it to the product. This can only be done by a Malaysian "agent" who must sign the submittal application as the "Malaysian representative" and purchase the labels once the certification is granted. The government will not allow the manufacturer to print the SIRIM logo on the regulatory label, (e.g. as is done in Europe with the CE mark).

Impact: Presently, the required label has a serial number, where SIRIM correlates it with the supplier/importer name and approved product model. The serial number on the label does NOT uniquely identify the supplier/importer or the approved product. SIRIM's original intention was for the importer to paste the label, in-country. However, most manufacturers do not have facilities or resources in Malaysia to paste the label. Consequently, SIRIM started to allow manufacturers to buy labels in advance, where the labeling process may be performed out-of-country. This creates a situation where it is likely for unintentional mislabeling, especially for factories that serve multiple suppliers and manufacture multiple products. The lack of unique supplier ID makes it easy for mistakes to occur in pasting the right label on the right product for the right supplier. In addition, there are significant indirect costs in the form of rework, uncertainty, administrative burdens and overhead. These unique requirements create an unnecessary burden and delay in bringing products to the market. The submittal processes restricts volume control as the number of products shipped must equal the number of available labels. Purchasing labels also requires provision of either ordering documents for import or a monthly production plan.

Recommendations: Since 2005 ITI has had discussions with SIRIM and its parent agency, the Malaysian Communications and Multimedia Commission (MCMC) on this issue. ITI made the following recommendations that would both streamline the process and help MCMC to achieve its regulatory goals.

- Labels should include a unique supplier identifier for each manufacturer. This would put Malaysia at parity with the requirements in United States, Canada, Australia, New Zealand, Japan and other countries.
- ITI also recommended that SIRIM give production control of the mark to the manufacturer without prior communications with SIRIM, as is commonly done in many other countries. (ITI provided MCMC with information on how other countries manage their labeling processes for EMC and supplied contacts at the FCC for further reference.)