



August 24, 2008

*Via electronic mail to notifyus@nist.gov*

National Center for Standards and Certification Information (NCSCI)  
National Institute of Standards and Technology (NIST)  
100 Bureau Drive, MS-2160  
Gaithersburg, MD 20899-2160

RE: WTO TBT Notification Issued on June 24, 2008 from the People's Republic of China,  
CHN 399: Draft Amendment to Regulations on Compulsory Product Certification

Dear Sir/Madam:

On behalf of the Information Technology Industry Council (ITI), I am writing to express our concerns with the People's Republic of China's (China) notification on its proposed amendment to the regulations on compulsory product certification (hereafter, Amendment). ITI is a trade association representing many of the leading global hardware and software manufacturers of information and communications technology (ICT) products, most of whom have significant trade relationships with China. Our member companies that import into China are required to certify products according to CNCA requirements and are concerned that the proposed changes in the Amendment will add unnecessary obligations to an already complex approval system. These changes may not meet their regulatory objectives and could potentially result in unintended barriers to trade.

We are appreciative of the Chinese for meeting their WTO responsibility and notifying their global trading partners of these proposed changes. We also understand that efforts are being made to harmonize and streamline China's certification and testing programs. We welcome that change and that the well-intentioned effort to achieve it. However, we raise the following questions and concerns because we would like more clarity on the draft and want to ensure that trade and market access is indeed improved, not disrupted.

The following is a list of our concerns about the Amendment.

Comment Period and Effective Date of the Amendment

China did not set a specific implementation date in the cover to the WTO notification, but the text of the proposed changes, states that this Amendment will be effective as of July 1, 2008, and the previous regulations will be abolished at the same time. This left those countries wishing to offer comment less than one month to review and understand the Amendment. Given the broad impact of these changes that apply across all industries, it would have been beneficial for the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China (GAQSIQ) to have provided an English translation to assist with the comment

process. We also have concerns that the 60-day comment period ends over a month after the Amendment goes into effect. This leads us to question the extent to which any comments can be considered, even though there are areas that still require clarification in the Amendment.

#### Standards Requirements

We believe that the Amendment implies that in addition to GB standards, Chinese industry standards and technical requirements may be included in the certification requirements. We are concerned that this runs the risk of creating China-unique approaches that may or may not align to international standards for most mass-market products. Harmonization with international standards and technical requirements are necessary for product interoperability and functionality, especially for ICT equipment and for global manufacturers. For example, ISO/IEC 15408 provides this context around ICT security, and could be useful here.

In order to have more transparency in the regulatory process, CNCA and ISCCC should provide the technical comparison information that describes how a Chinese standard aligns with international standards or provide an appropriate and similarly-accepted framework and standard for companies applying for certification.

#### Confidentiality of Information (Article 6)

ITI would like to ask CNCA to please provide more information on the confidentiality rules described in Article 6 of the Amendment. These rules require that organizations and their employees will have to secure any technical or commercial secrets and production technology obtained through the certification process. ITI requests that CNCA forward copies of the Non-Disclosure Agreements (NDAs) that the organizations and employees are required to sign.

#### Provision of Certification-Related Technical Information (Article 11)

ITI believes that technical information required for certification application should not include information relating to purchase and sales nor should it include manufacturing licensing contracts. We respectfully request that these requirements be deleted from the Amendment.

#### Issuance of the Certificate for Compulsory Certification (Article 16)

In order to avoid unnecessary and costly delays in bringing products to market it is critical that certification be issued in a dependable and timely manner. Therefore, ITI recommends that the qualifying statement, "under normal circumstances," be removed from this Article to better ensure that the stated time period of within 90 days of the date of receipt will be met.

#### Frequency of Follow-up Inspections (Article 19)

While the Amendment mentions various factors that will determine follow up inspection frequencies, ITI believes that further details are needed. For example, CNCA should specify under what circumstances a factory will require follow-up inspections. Will this be based on a known existing history of violations? ITI recommends that, in general, follow-up inspections should not exceed more than one time per year, except in cases of a manufacturer with documented and repeated violations.

#### Validity of Certification (Article 22)

Under the previous regulation, certificates were valid for an indefinite period of time. Article 22 of the Amendment specifies an expiration date of five years. ITI members are concerned that limiting certifications to a period of five years may create unnecessary burdens on manufacturers whose products are often sold for a longer time and in limited quantities. ITI would like to ask that additional details be provided regarding the submission of an extension application. If the renewal process is similar to that of China's State Radio Regulation Center (SRRC) or to the IECEE's CB Scheme and will only require additional paperwork, then such

details should be officially written into the regulations. In addition, CNCA should clarify how this new requirement will impact products that have been certified under the previous CCC regulations that do not have a limited validity period. We respectfully request that products which were previously certified prior should be grandfathered and the five year limitation be applied to products certified after the date of enactment.

#### Modification of the Certificate (Article 24)

The Amendment states that with any changes in quality assurance or production conditions, companies need to apply for a certification change. ITI would like to clarify the definition of “change” so as to avoid any misunderstandings among applicants and the certifying organization.

#### Rules for Certificate being Written-off, Suspended or Cancelled (Article 29)

There may be cases where a manufacturer’s factory and products meet certification requirements, but certification is suspended as a result of CNCA or CQC’s delay in inspection. In such situations, the manufacturer should have the right to continue selling products in the market. Therefore, ITI recommends that Article 29 should only be applicable when certificates are suspended due to the breach of requirements under the regulation.

#### Application Rules for Certification Mark (Article 32)

Currently, the authorization period for printing CCC labels is limited to one year. Therefore, manufacturers must obtain authorization letters for products every year in addition to being audited annually. In order to minimize the time and cost associated with this process, ITI would like to suggest that CNCA consider expanding this authorization period to five years.

#### Administrative Compulsory Measures (Article 38)

ITI member companies have serious concerns about the Chinese government’s ability to enter manufacturing and business operations in order to conduct supervisory inspection activities as detailed in Article 38. Some of these procedures are without precedent under the most strict certification regimes in the world, and the review of contracts, accounts and other confidential customer data go well beyond any reasonable request for information related to product certification. For multinational companies this information is often protected under specific legal regimes, not in one consolidated location and may not be available within the time frame required by the Amendment. In addition, we have serious reservations with surrendering such sensitive data to local authorities and would like to know how CNCA will ensure its confidentiality. We believe that in granting such power to local market surveillance departments, it will be difficult to guarantee that it is applied equitably. We respectfully request that the Amendment narrow the scope of the information requested to essential, product-related information such as those contained in a CB Scheme report, , implement any changes only through the national government, as well as determine and announce a timeframe for when any collected confidential information will be destroyed.

#### Recall Rules (Article 39)

ITI would like to request whether specific criteria have been established for manufacturers or importers of a Catalog covered product to determine whether or not their products pose a danger to human health, life, or safety and should therefore be recalled. Additional information is needed on how the State General Administration of Quality Supervision (GAQSIQ) would make the same determination.

Exemption Rules for Compulsory Product Certification (Article 41)

ITI would like to ask if Article 41 item number (2) could be expanded to include control equipment. (i.e. The imported parts and components are required be the production line for the purpose of assessing *or controlling* technical equipment.)

Penalty for Non-Certified Products Listed in Catalog (Article 48)

Article 48 does not include mention of exempt products. ITI would like to propose that penalties only be imposed on non-certified products that are included in the Catalog *and are not otherwise exempt*.

Referenced Chinese Legal Acts (Article 49)

Article 49 states that products listed in the Catalog that are certified but do not comply with other legal requirements will be subject to penalty by the Local Certification Supervision and Administration Department, according to Special Rules of the State Council On Strengthening the Supervision and Management of the Safety of Food and Other Products. However, these rules imply that not all products in the Catalog are covered. ITI would like to ask if CNCA can clarify the relationship between the Catalog and these rules.

Thank you for the opportunity to offer comments on this issue of critical importance to the ICT industry. We remain supportive of the intent of these regulations, which is to improve the product integrity and safety of goods sold to China. We look forward to your reply, and for the opportunity to engage in a dialogue with our technical experts around these important points. If you require further information regarding these comments, please contact Mr. Josh Rosenberg at [jrosenberg@itic.org](mailto:jrosenberg@itic.org) or +1 (202) 626 5738.

Sincerely,



John F. Neuffer  
Vice President for Technology and Trade