

**Public Consultation -
EU and US call for input on regulatory
issues for possible future trade
agreement**

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I. Introduction

The German Engineering Federation (VDMA) is the largest federation representing the engineering industry in Europe. Its approximately 3,100 German and international member companies - mainly small and medium enterprises (SMEs) - have a total of approximately 970,000 employees in Germany (June 2012) and turnover of 187 billion euro (2011). The engineering industry is characterized by a large number of SMEs. About 86% of VDMA members are SMEs - according to the EU definition - two-thirds of them even employ fewer than 100 persons.

VDMA represents an extremely export-oriented industry - export share in the German mechanical engineering sector is approximately 76 per cent; of that, approximately 56 per cent is exported to third countries. Our main export markets are China, the USA, France and Russia which is also the reason why we are so strongly supporting the EU in its efforts to negotiate a deep and comprehensive free trade deal with the USA.

From January 2012 until June 2012 our sector has exported goods to the USA that account for more than seven billion Euros. That is an increase of more than 25% compared to the first half of 2011. It is especially power transmission engineering, materials handling and logistics technology and the machine tools section that have proven to be particularly solid VDMA branches.

VDMA covers the entire process chain - everything from components and plant manufacturers, system suppliers and system integrators through to service providers. We reflect the varied customer-supplier relations all along the value adding chain, permitting both industry-specific and intra-industry cooperation.

VDMA was involved at an early stage in the discussion about a further deepening of the EU-US trade relations, as we participated to the first two EU-US consultations launched by DG Trade earlier this year.

II. The situation in brief

Whereas the tariffs for machinery import from the US to Europe account for around 1.5%-3% on average, the tariffs for EU machinery to the US account for around 2%-4.5%. That shows that it is the problems caused by existing NTBs (non-tariff barriers) that should be targeted within the trade negotiations, especially through regulatory cooperation.

III. Potential for more regulatory cooperation between the EU and the USA

It is the manufacturers' duty to comply with the regulations and safety requirements in the country of destination before placing machines and plants on the market. However, the field of "technical compliance" for the export of European machines to the US has proved that it is an NTB.

Basically no US equivalent to the CE marking according to Directive 2006/42/EC is required to enter the US trade area and the manufacturer does not have to hand over any compliance declarations. Nevertheless imported machines must correspond to technical US safety requirements in the form of laws and standards. These are very complex and characterized by a lack of transparency.

Furthermore, there is no American "machinery directive" established for the manufacturer. In general, a very inward-looking approach is pursued in the technical standards. That can be seen from the example that neither ISO nor IEC standards are adopted as a rule. Requirements for machine and plant safety can be found both, in the federal regulations and in the regulations of individual US federal states. On top of that it is many different

organisations and authorities that are in charge of those regulations.

For the European manufacturer it is therefore usually very difficult or sometimes even impossible to find out with sufficient certainty which safety requirements are mandatory. In addition, it is often not clear when certification is needed as a legal obligation or when it is an aspect of market acceptance (imposed by customer, insurance companies etc.)

Examples of lack of transparency:

Occupational safety and health requirements

OSHA (Occupational Safety and Health Administration) standards are rules that describe the methods employers are legally required to follow to protect their workers from hazards. Although actually directed at the US employer or operating company, these also include requirements for the construction and equipment of machines (similar to Directive 2006/42/EC). Compliance with these standards is monitored by OSHA compliance safety and health officers.

Many US states have received OSHA's approval to operate an occupational safety and health (OSH) program in their state. This transfers the responsibility for enforcing OSHA's requirements from the Federal Government to the individual state that may have more stringent or supplemental requirements. Currently 27 federal states have such OSH programmes.

Furthermore, OSHA practices the incorporation of standards into regulation by reference. In that case it is, legally speaking, as binding as a regulation. This referencing technique comes along with a huge workload in terms of research.

Electrical safety

The National Electrical Code (NEC), a standard for electrical installations in buildings, is used in assessing the electrical safety of machines. But the NEC must be adopted by the individual US federal states as a valid law. That leads to a situation where currently the NEC 2011 applies in 19 US federal states and the NEC 2008 applies in 21 US federal states. On top of that different technical product standards can be relevant in addition to the NEC. Municipal Building Codes for electrical installations in buildings and further technical product standards can be relevant in addition to the NEC.

As a source of a potential fire hazard, the electrical equipment in a machine is usually subject to approval by locally responsible inspectors before it is put into service. As a consequence different institutions are responsible in individual US federal states, which are collectively referred to as AHJ (Authority Having Jurisdiction).

As the inspectors do not necessarily need to be experts in electrotechnical safety, the checking of electrical equipment is frequently not done exclusively by them. In order to approve, the inspectors in charge have, e.g. the option to demand the confirmation of compliance with the regulations from a "third party". The usual form of confirmation is a certification from a Nationally Recognized Testing Laboratory (NRTL). One can assume from this: the less specialist knowledge the AHJ has, the more likely it is that it will rely on certification for confirmation.

Certification

The OSHA has accredited several NRTLs (Nationally Recognized Testing Laboratories) which can certify products and components with different scopes of testing. Thus no standard test mark is issued, but every NRTL issues their own. In theory this means fair competition. But the mutual recognition of NRTL certifications is not set down in legislation.

In the engineering and plant construction sector (e.g. pressure equipment, boilers, piping) a very complex system of certification mechanisms and certification requirements applies in the US. But only by some US states (or counties/cities) the ASME Boiler and Pressure Vessel Code is compulsory attended by a mandatory certification.

IV. Possible Solutions

Immediate goal – VDMA calls for: Mutual Recognition of NRTL certificates
US legislation shall oblige NRTLs to mutually recognize the certificates issued by other NRTLs.

Middle-term goal - VDMA calls for: Dialogue among the industry federations on a vision of global harmonization

In the context of the international standards organizations ISO and IEC, representatives of industry from Europe and the US are working constructively together on the creation of relevant safety standards for machines. In Europe these standards are adopted as European standards, almost without exception, through the Vienna agreement between ISO and CEN or the Dresden agreement between IEC and CENELEC. Consequently conflicting regional or national standards have been put aside. In the US the picture is a bit different, since national acceptance of the ISO and IEC standards has only been achieved in a few cases. There are objections to ISO and IEC standards, because there is a multiplicity of US regulators in certain sectors that are in competition with ISO and IEC.

The acceptance of the ISO 12100 (issued in 2003) basic standard for machine safety as ANSI/ISO 12100 Part 1 and 2:2007 is an exception in the US that should set a precedent.

For the mechanical engineering sector, VDMA calls for a dialogue between the industry associations on both sides about a vision of global harmonization. This dialogue should be based on the worldwide recognized principles for machine safety as specified in ISO 12100 and associated international standardization activities for several machine families which are driven by industry experts from EU and Europe.

Middle-term goal - VDMA calls for: Resumption of experts' talks regarding the engineering and plant construction sector

The most promising starting point for "aligning" the conditions and systems between EU and US in the engineering and plant construction sector (in particular the pressure equipment) were experts' talks in the past about the mutual recognition of materials (in particular steels, but also other metals like aluminium). Since to our knowledge these talks were stalled some years ago without any major results VDMA asks for re-starting of these negotiations.

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