



European Commission
DG Enterprise & Industry
DG Trade

Brussels, 30 October 2012

CONTRIBUTION TO EU-US TRADE FACILITATION EU-US High Level Working Group on Growth & Jobs

Dear Mr Roeland,
Dear Ms Emberger,

European Boating Industry warmly welcomes the EU-US joint initiative to look at how regulatory regimes across the Atlantic can be simplified in order to facilitate trade between these two regions. North America and the European single market have been the traditional markets of European companies for the last 50 years, although the economic crisis has strongly affected the boating markets in both regions since 2008. It would be a significant improvement for the European industry if trade conditions with the US could be facilitated in this sector, as European companies, which are mostly small and medium-sized companies, offer competitive and innovative products, are highly export orientated but are equally discouraged by US requirements when considering exports to that country.

About the boating industry in Europe

European Boating Industry is the European industry federation formed of 19 national associations from 15 EU countries, Norway and Switzerland. The boating industry in Europe consists of all sectors relating to boating and water sports:

- Boat builders (sailing, motor and inflatable boats),
- Equipment manufacturers for boats (e.g. engines, safety equipment, electronics, rigging, interiors, sails, paints, etc.),
- Equipment manufacturers for water sports (e.g. diving, wind and kitesurfing, kayaking, canoeing, clothing & lifejackets, etc.),
- Infrastructure builders and operators (marinas), and
- Service providers (trade & maintenance, chartering, schools, maritime expertise, financial and insurance services, etc.)

The boating industry in Europe accounts for approximately 37,000 companies (with 98% being small and medium-sized companies), directly employing over 234,000 people and generating a turnover of approximately 20 billion EUR in 2011.

Trade difficulties for European companies in the USA

When trading with the US, European Boating Industry and its members have identified the following issues and would urge the European Commission to look for solutions:

- Lack of recognition and acceptance of the EU directive on recreational craft;
- Lack of recognition and acceptance of international ISO standards;
- Obligation to meet the US Coast Guard requirements and approval for sales;
- Privileged status for the private ABYC / NMMA certifications over international ISO standards and CE-marking;
- Bureaucratic requirements under the US Lacey Act for imports of products containing wood (like boats).

These issues are illustrated in the document below through two cases involving recreational craft (case A) and lifejackets (case B), which is followed by a discussion on the reluctance of the US to accept international ISO standards, resulting in effectively blocking the access to the US market for European companies unless they decide to set up operations across the Atlantic.



Case A – Exports of recreational craft (boats) to the US

A. 1. Overview of the EU legislation applying to recreational craft

The EU directive on recreational craft 94/25/EC as amended by Directive 2003/44/EC is a New Approach directive, which lays down the essential safety and environmental requirements for the design and construction of recreational craft (boats) and personal watercraft (jet-skis) from 2.5m to 24m. The Directive defines 4 design categories, which are linked to the boat's stability in 4 categories of wind force and significant wave height (which represent the 2 environmental conditions to be taken into account when going at sea). Manufacturers building boats under the higher categories A, B and C must use a notified body (independent third party) to carry out conformity assessment procedures, while category D boats can be self-assessed by the manufacturer. The Directive is supported by over 60 harmonised EN ISO standards, which have been developed over the last 15 years at international level through the ISO.

In Europe, any recreational craft that is CE-marked according to the Directive, carrying the Declaration of Conformity and the owner's manual can be freely imported, distributed and sold on the single market at no additional cost. Imports of second-hand US boats have been problematic for many years in Europe since these boats were not built for the EU market, thus not bearing the necessary CE-markings or being accompanied by the Declaration of Conformity, the owner's manual and the Post-Construction Certificate as required by the Directive. European Boating Industry has repeatedly called on Member States' market surveillance and custom authorities to undertake more controls in order to limit the arrival in Europe of such "grey imports", but with limited success to date.

A. 2. Requirements for European companies exporting boats to the US

When a European company wants to export a boat to the US, it has to meet the requirements of the Code of Federal Regulation, which is referred to as the "US Coast Guard (USCG) requirements for boating"¹. Unlike the EU directive, which sets out essential safety and environmental requirements and leaves the choice to the manufacturer about how he/she will fulfil the requirements (using harmonised standards or another route), the USCG requirements represent approximately 220 pages of detailed technical requirements, which are mandatory for boats below 6m (20 feet) in length. The USCG requirements make no reference to the ISO standards developed at international level (with the significant contribution of the US delegation) as a means to fulfil the requirements. Another difference with Europe is that the conformity to the USCG requirements is based on the manufacturer's declaration but does not require the intervention of a third party for assessment.

The American Boat & Yacht Council (ABYC), with the support of the National Marine Manufacturers Association (NMMA) as the US boating industry body, developed voluntary private ABYC standards, which enable manufacturers to fulfil the USCG requirements. The ABYC private standards are however different from the international ISO standards. Because of the lack of use and recognition of ISO standards by the US Coast Guard, European companies, especially the small and medium-sized companies, are discouraged from entering the US market at all.

¹ The detailed relevant parts of the Code of Federal Regulation is available on the US Coast Guard website: http://www.uscgboating.org/regulations/federal_regulations.aspx



Case B – Exports of lifejackets to the US

B. 1. Overview of the EU legislation applying to lifejackets

The EU directive on personal protective equipment 89/686/EEC lays down the basic health and safety requirements for products including lifejackets (or personal flotation devices - PFDs as they are called in the US). The requirements are supported by the series of harmonised EN ISO 12402 standards developed at international level through the ISO.

In Europe, any lifejacket that is CE-marked according to the Directive can be freely imported, distributed and sold on the single market at no additional cost. Imports from third countries, especially from Asian countries which are often not compliant with the Directive's and ISO standards' requirements, have damaged the reputation of lifejackets among the boating community and prompted European Boating Industry to ask for more stringent market surveillance at national level.

B. 2. Requirements for European companies exporting lifejackets to the US

A European company willing to export personal flotation devices (PFD or lifejackets) to the US has to be granted the USCG type approval, which requires all products to be tested by Underwriters Laboratories, Inc. (UL), the USCG's Recognized Laboratory. The US Coast Guard will do a pre-approval review of any new concept prior to submitting it for testing to the laboratory. Unless it is a new concept, most recreational PFDs may be submitted directly to the laboratory for approval. The corresponding UL standard for each PFD type² contains detailed test procedures to be employed to determine compliance with the regulation requirements. The laboratory will evaluate and test the design against the requirements in the applicable Coast Guard specification subpart and UL Standard(s).

This whole procedure is nearly impossible to complete if the company is not based in the US. The cost is also prohibitively expensive as British lifejacket manufacturers recently estimated the cost to be up to 75,000 USD and were given advice to produce in the US rather than import from Europe. Both are significant barriers to trade.

Finally, it is important to note that from a safety point of view, the international ISO 12402 standard used by European companies can be considered as offering a similar level of safety to the user as the USCG specifications and the UL standards, although the testing procedures can be different for certain aspects.

² The possible USCG types for approval of personal flotation devices are I, II, III and V



Discussion – Why are ISO standards and certifications not recognized in the US?

The US have always played and are playing an active role in the elaboration of ISO standards, currently chairing the ISO TC 188 in charge of developing all standards applying to small craft. The US is similarly involved in the ISO TC 188 SC1 in charge of developing the standard applying to personal flotation devices / lifejackets.

However, once the ISO standards are developed, voted and adopted with the positive support of the US, the US administration fails to recognise the value of ISO standards at national level and their value for products being ISO-certified (like recreational craft and lifejackets). In both cases, recreational craft and lifejackets in the US are required to meet the national requirements of the US Coast Guard (USCG) which differ from the ISO standards, as it was highlighted in the cases A and B.

As a result, European products, which are built according to EU directives and international ISO standards and are CE-marked accordingly, cannot be directly exported to the US since they have to meet the mandatory USCG requirements and, in the case of boats, also the voluntary ABYC standards for commercial advantage.

Description of the voluntary ABYC & NMMA standards for boats

The American Boat & Yacht Council (ABYC) was created in 1954 as a non-profit organization to develop safety standards for the design, construction, equipage, repair and maintenance of boats. ABYC has evolved into the alternative to mandatory government regulation of the marine industry. Today, ABYC's 'Standards and Technical Information Reports for Small Craft' (previously known as 'Standards and Recommended Practices for Small Craft') contain over 65 standards. Many of these standards are similar to the international ISO standards, yet different. Moreover, ABYC participates in all of the ISO TC 188 meetings on international standard development but yet continues to develop its own diverging production of private US standards (which are not the official US ANSI standards).

A European company that imports to the US can only become member of the US industry association NMMA if it participates in the NMMA "Boat & Yacht Certification Program". The programme requires boat manufacturers and importers to submit applications for all models, to undergo a physical inspection by an NMMA inspector annually to ensure that their boats are built against ABYC applicable standards and to inform the public of such compliance. To achieve the NMMA certification, a manufacturer must demonstrate that all variances found during the inspection have been corrected. The manufacturer is responsible for ensuring that all production units are manufactured in compliance with the certified design.

NMMA Program participants must certify all recreational models (except racing craft) marketed in the USA for non-commercial use. Although the membership to the NMMA is voluntary, it is virtually impossible for a European company to commercialize a boat in the US without the ABYC/NMMA certifications, which can be compared to barriers to trade. Customers are strongly advised to prefer ABYC-certified boats against ISO-certified boats, by both ABYC and the US industry association NMMA.



The requirements of the US Lacey Act for wood-containing articles

The US Lacey Act combats trafficking in “illegal” wildlife, fish, and plants. The 2008 Farm Bill (the Food, Conservation, and Energy Act of 2008), effective since 22 May 2008, amended the Lacey Act by expanding its protection to a broader range of plants and plant products. The Lacey Act now, among other things, has made it unlawful, since 15 December 2008, to import certain plants and plant products without an import declaration. The European counterpart of the US Lacey Act is the Timber Regulation (EU) No 995/2010 laying down obligations for the placing on the market of timber products.

In theory, European companies exporting boats and/or equipments containing plant products such as wood (found on the boat’s decks and interiors) are required to declare their shipment under the Lacey Act.

In practice, the implementation of the Lacey Act is a bureaucratic nightmare for boatbuilding companies, both in the US and in Europe. Unlike its European equivalent which prohibits the trade of illegally harvested timber and provides rules for timber traceability and due diligence, the Lacey Act does not provide any list of specifically prohibited plants because the Act applies to all plants, as defined in the statute. The enforcement of the Act is also subject to a phase-in schedule to be announced in the Federal Register, which makes it difficult for European companies not based in the US to understand when declarations will have to be made. Since boats are not wooden articles but simply contain some of it, many European companies are either not aware of the US requirements or how they should declare components when exporting to the US.

Industry recommendations to the EU-US High Level Group

In conclusion, European Boating Industry urges the European Commission and the EU-US High Level Working Group on Growth and Jobs to look at effective measures of simplification in order to recognise the value of ISO standards and ISO-based certifications as the worldwide benchmark being globally developed and accepted.

Moreover, simplification of the requirements and more guidance on how to fulfil the requirements of the Lacey Act when exporting to the US would be appreciated.

European Boating Industry and its members remain at the disposal of the European Commission and the EU-US High Level Group for any clarification and additional information on these important issues for European companies.

Yours sincerely,

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