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MRA – Mutual Recognition Agreement on Marine Equipment between the U.S. and the European Commission

**Signed
February 27th, 2004**

General

The European Community (EC) and the United States of America (USA) have negotiated and signed an Agreement on mutual recognition of certificates of conformity for marine equipment.

At the request of the U.S. Coast Guard (USCG), the United States Trade Representative (USTR) proposed to the European Commission (EC) the negotiation of a mutual recognition agreement on marine equipment under the Transatlantic Economic Partnership (TEP) in December 1998. The Community's legal basis for the Agreement is Article 133 and 300 of the Treaty.

The Council endorsed the Action Plan for the TEP on November 1998 and authorised the Commission to enter into negotiations with the U.S. in view of concluding bilateral agreements in the field of, inter alia, technical barriers to trade.

After consultations of the 133 Committee, and in accordance with the negotiation authorisation, the commission commenced negotiations with the U.S. on a mutual recognition agreement for marine equipment in September 1999.

The Agreement was initialled on March 21st, 2003.

The Agreement on Technical Barriers on Trade, an agreement annex to the Agreement Establishing the World Trade Organisation (WTO), encourages WTO Members to enter into negotiations for the conclusion of agreements for the mutual recognition of results of each other's conformity assessment procedures, as well as to give positive consideration to accepting as equivalent technical regulations of other Members, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations.

Objectives of the Agreement

The agreement establishes the conditions under which the importing Party's Regulatory Authority shall accept the Certificates of Conformity issued by the exporting Party's Conformity Assessment Bodies (CAB) in accordance with the technical regulations of the exporting Party, hereinafter referred to as "mutual recognition".

The Agreement has also the aim of promoting regulatory co-operation and efficiency, but at the same time respecting the regulatory autonomy of the Parties. This is necessary in order to ensure the functioning of the Agreement and in particular that equivalence can be maintained while ensuring a high level of health, safety and environmental protection. The objective of the Agreement is the facilitation of EC-US trade in marine equipment. This is done by giving manufacturers the possibility of approving their products for the U.S. market with a Conformity Assessment Body (CAB) located in the European Union and according to the technical regulations of Directive 96/98/EC on marine equipment.

U.S. manufacturers will, conversely be able to approve their products for the EU market in the U.S. on the basis of compliance to applicable U.S. laws and regulations. This will reduce the costs related to testing and certification, which only has to be done once for several markets, and to the uncertainty, time and administrative burden of contracting approval bodies in the importing country.

The EC and the USA recognise as Conformity Assessment Bodies (CAB), each other's Notified

Bodies that have been recognised under their respective regulations.

In this respect, the U.S. Coast Guard (USCG) will be the only U.S. Conformity Assessment Body since it is only the USCG that can issue certificates of conformity according to U.S. law. The USCG will be carrying out this function together with the independent laboratories it has recognised under its regulations. From the EU perspective, all Notified Bodies that operate under the Marine Equipment Directive (MED) are both eligible and recognised under the Agreement.

Determination of equivalence and products

Both the EU and the US have to a very large degree based their respective technical regulations related to marine equipment on the international conventions on maritime safety and marine pollution prevention established within the International Maritime Organisation (IMO) in particular the Safety of Life at Sea (SOLAS) and MARPOL (Prevention of Pollution from Ships) Convention, together with the relevant test methods, e.g. those of the International Telecommunications Union (ITU), International Organisation for Standardisation (ISO) and International Electrotechnical Commission (IEC) referred to in IMO Resolutions, Circulars, Codes etc.

In other words, the criteria for determining equivalence is the degree of implementation by the EU and US of the IMO requirements into their respective technical regulations for a specific product. According to the definition of “equivalence of technical regulations” of the Agreement, EU and US technical regulations do not have to be identical, but must be sufficiently comparable to ensure that the objectives of their respective regulations are fulfilled.

From the EU perspective, the potential product coverage of the Agreement is determined by Annex A.1 of the MED. In the US the majority of marine equipment is regulated by the U.S. Coast Guard (USCG) in the Code of Federal Register

(CFR) 46 CFR Parts 159 to 165, while radio communication equipment and navigation equipment using radios is within the regulatory remit of the US Federal Communications Commission (FCC) in 47 CFR Parts 2 and 80.

All regulatory requirements related to a specific product must be examined and found equivalent – product requirements, testing and performance standards and conformity assessment procedures.

The products listed in Annex II is an initial list of products for which there is equivalence. This list contains 43 product items, of which 11 are life saving appliances, 12 fire protection equipment and 20 navigation equipment. There are approximately 50 equipment items that are candidates for future inclusion in Annex II of the Agreement, of which 24 are life saving appliances, 5 pollution prevention equipment, 10 fire protection prevention equipment, 9 navigation equipment and 1 radio communication equipment. It is in particular within the area of radio communication where equipment equivalence can not be established. This is mainly due to that the US conformity assessment procedures for these products are at the moment not deemed to be equivalent to those prescribed by the MED and that the relevant US technical regulations are not always in line with the applicable ITU recommendations.

Assessment of the Agreement

In general, mutual recognition agreements have two objectives: facilitating trade by reducing costs related to conformity assessment and promoting regulatory co-operation and efficiency.

The Agreement is innovative in a sense. It is the first international agreement related to goods the Community would enter into that is based on equivalence with the regulatory requirements of another country.

The application of the Agreement will cover ships in international voyage that are entitled to fly the flag of one of the Parties or one of the Parties’

Member States. The EU merchant flag is much larger than that of the US, both in terms of existing ships and those under construction.

It is evident that there is an unbalance to the disadvantage of EU manufactures of marine equipment. The MRA opens a large market to the US marine equipment manufacturers and a miniature market to the EU manufacturers! In addition to that it facilitates the access to European know how and technology for the US industry primarily via product testing. The Agreement seems to be more driven by shipbuilders than by equipment manufacturers with respect to reduced costs and increased competition between the manufacturers worldwide.

The MRA in itself will not guarantee benefits automatically to economic operators. It offers possibilities for facilitating market access and reduction of costs, but it is up to the economic operators and in particular to the marine equipment manufactures to exploit the possibilities offered.

	EU	US
Total number of ships	10 973	5 792
Number of cargo ships	5 018	442
Number of other ships	5 955	5 363
Number of passenger ships	744	33
Total gross tonnage	62 572 051	11 110 901
Total gross tonnage passenger ships	2 129 766	107 612

Surprisingly the relevant European industry federations have all given their support for the MRA.

Co-operation between regulatory authorities will not only lead to greater transparency in applicable regulations, but also to an exchange of knowledge and experience between regulators. In other words access to the intellectual property of the Parties.

The Agreement does not contain specific measures to take into account of the particular situation of small and medium sized firms although the Commission claims to have on several occasions consulted with the relevant European industry federations, among others with European Marine Equipment Council (EMEC).

Consultations

Differencies have appeared, for various reasons e.g. due to “gaps” in IMO standards, in EU and US marine equipment requirements although they are both based on the existing international instruments of the IMO.

Equivalence between EU and US requirements must therefore first be established with a view to achieve the envisaged MRA + concept. The USCG comparative study into EU and US marine equipment conformity assessment legislation and the verification study commissioned by the Commission services and carried out by Bureau Veritas will cope with the industry’s clearly stated interest in the MRA + concept.

Currently the MRA only includes 43 items (!). There are provisions in the text for the adding of additional equipment to this list after the Parties conduct further examination of the technical regulations with a view to establishing, to the extent possible, mutual recognition.

It should be noticed that the USCG will not be accepting the MED “Wheelmark” in place of a USCG approval! Where the regulations require USCG approved equipment, the equipment must still have a USCG approval. The only change is that instead of the approval given by the Coast

Guard, it may have been done by an EC Notified Body under the terms of the MRA.

Currently the EC is completing the ratification process among its Member States. Once the MRA is ratified an exchange of letters between the U.S. and the EC will take place confirming that all required procedures are complete. The MRA will enter into force on the first day of the second month after the letters are exchanged.

Under the MRA, the U.S. and EC have agreed to make available to the public their lists of products for which they have issued Certificates of Conformity.

The U.S. Coast Guard will accomplish this via the “CGMIX” website at

<http://cgmix.uscg.mil/Equipment/>

This website is the modern replacement of the paper book “Equipment List, COMDTINST M 16714.3 Series”.

While the last edition of 15 May 1994 (!) is still considered a valid Coast Guard document, it no longer reflects the current status of approved equipment. The information at the “CGMIX” website is based on the information contained in MISLE and is updated automatically every week.

USCG approvals issued by a European Notified Body will not be entered into MISLE and therefore will not be found at the “CGMIX” website!

The EC will use the MarED website of the DG Enterprise’s favourite consultant Balance from Bremen, which is the website for the implementation of the Marine Equipment Directive.

<http://www.mared.org>

Finally it can be noted that both the MED and the MRA are to a certain extent “alibi actions” of the two Commissioners Lloyola de Palacio and Pascal Lamy, while Erkki Liikanen has failed to engage himself actively into the interests of the (SMEs) i.e. the marine equipment manufacturers and the protection of Europe’s intellectual property.

All reliability lies with the manufacturer, while it is evident that claims out of the MRA/MED will be originating, will lack the backup of applicable international law.

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