



Manufacturer of flexible metal hose and gas piping products

May 9, 2013

*Via electronic submission*

Mr. Douglas Bell,  
Chair, Trade Policy Staff Committee.  
Office of the United States Trade Representative  
600 17th Street, N.W.  
Washington, DC 20508 Washington, DC

Subject: **Transatlantic Trade and Investment Partnership  
USTR-2013-0019**

Dear Mr. Bell:

Omega Flex, Inc. is a small publicly-traded manufacturing company headquartered in Connecticut with a manufacturing facility in Pennsylvania. Overly restrictive product specifications maintained by European manufacturers currently threaten our efforts to develop international markets (including the European Union). Those burdensome specifications were implemented without technical justification, and prohibit the sale of our product in such markets – despite the fact that OmegaFlex products were legally in the European market prior to the adoption of the restrictive product specifications. We would urge that Office of the United States Trade Representative in its negotiations regarding the Transatlantic Trade and Investment Partnership to require that both parties to the contemplated partnership be treated equally, and that this particular issue be resolved to permit our products to continue to be sold in the European Union.

By way of background, the main product line of OmegaFlex is corrugated stainless steel tubing (“CSST”) used for fuel gas applications in residential, commercial and industrial buildings. Our first CSST product was introduced in the United States in 1997 and quickly gained wide acceptance due to its advanced features and ease of use. In 1999, we began our effort to develop European markets by establishing a sales office in England, and in 2000, we had our product qualified to the British Standard for the CSST product (BS 7838, *Specification for corrugated stainless steel semi-rigid pipe and associated fittings for low-pressure gas pipework of up to DN 50*) and received a Kitemark from British Standards Institute evidencing the product conformance to the British Standard. At that time, both the US and British products were made from a 304 grade of stainless steel (having a minimum 8% nickel content), which is widely used in Japan and the United States for this application. The analogous material classification in Europe is 1.4307. OmegaFlex began selling its CSST product using the 304 / 1.4307 grade of stainless steel material in Britain and also in the Netherlands, Ireland and other EU countries.

In 2004, OmegaFlex became aware that the European Commission had issued a work order for the draft product standard covering CSST products in Europe. This effort was pursuant to the Construction Products Directive (89/106/EEC), which sought to harmonize technical standards for construction products (such as CSST) across the member states to further the goals of European economic integration. The work order was issued to Comité Européen de Normalisation (CEN or

European Committee for Standardization), which delegated the standard drafting to a technical committee TC 342 (covering metal hoses, hose assemblies, bellows and expansion joints) and the WG 1 working group of that technical committee. The membership of the technical committee is constituted by representatives of the member states having expertise in the area. In the case of TC 342, it is entirely composed of representatives of European manufacturers of metal hose products, all of whom are also members of the trade group Euro-Qualiflex. The stated objective of Euro-Qualiflex is to act as an “association of leading European manufacturers of flexible elements, dedicated to pool the whole industry knowledge.”

One issue that became immediately clear on review of the draft product standard (EN 15266, *Stainless steel pliable corrugated tubing kits in buildings for gas with an operating pressure up to 0,5 bar*) was that the material specifications for that product standard did not provide for use of 304 grade of stainless steel; rather the materials permitted several grades of stainless steel, including 304L (minimum 10% nickel content). This is referred to in Europe as 1.4306 grade of stainless steel. OmegaFlex as a manufacturer was not permitted to participate in the efforts of the TC342/WG1, but that concern and other technical comments were communicated to the TC342/WG1 in 2004.<sup>1</sup> However, the TC342/WG1 ignored the comments and concerns of OmegaFlex and continued to prohibit the use of 304/1.4307 stainless steel under the draft EN 15266 standard.

This material prohibition has no basis in the requirements for the product performance. The percentage of nickel content, in the stainless steel alloy makes the material more or less resistant to corrosion. Yet the grades of stainless steel currently listed in EN 15266:2007 present no benefit over 304/1.4307 stainless steel in fuel gas applications, as internal corrosion from fuel gases and possible contaminants has been proven not to be a threat to the 304 / 1.4307 stainless steel material. First, natural gas and propane are not by their nature heavily acidic and contaminants are routinely eliminated through the gasification process. (The possible variation of the gas supply is governed by Directive 2003/55/EC and CBP 2005-001-01 Gas Quality Harmonisation to eliminate those potential corrosion issues.)

Further, the 304 grade has been used in Japan and North America for over 30 years to convey fuel gases in buildings without any internal corrosion issues. In North America, over 750 million feet of product has been installed without any such corrosion issues. In Europe, OmegaFlex has sold millions of meters of product without any issues.<sup>2</sup> Finally, the TC342 has not stated the internal corrosion levels that the material must satisfy to comply with the standard. They have not defined the threat that the product must meet to conform to a performance level. Without that specification, there is no performance requirement for resistance to internal corrosion in the standard, and therefore attempts to limit material choices on that basis have no technical justification. Unfortunately, it would appear real world experience has been rejected out of hand by the experts on the TC342 in favor of burdensome and unnecessarily restrictive technical specifications.

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<sup>1</sup> It should also be noted that part of the overriding principle of the European Commission in drafting harmonizing technical standards was that no product legally on the market prior to the implementation of new standards was to be prevented or prohibited as a result of the new standards.

<sup>2</sup> In 2007, OmegaFlex opened a small manufacturing facility in England to supply the European market.

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In 2007, the EN 15266 standard was published but it was not sent for harmonization through publication of the European Journal. Rather, an amendment was being drafted to correct some other technical issues in the standard.<sup>3</sup> In 2009, when it the draft standard was audited by the CEN consultant, they found that the concerns of Omega Flex regarding the material issue first raised in 2004 had never been satisfactorily resolved. Further, the consultant informed the TC that attempts to prohibit grades of material without reference to specific performance requirements in the standard were likewise prohibited under the EC/CEN guidelines (see N213 attached). To refute the negative assessment by the CEN consultant, the TC attempted to convene a meeting of experts in 2009 to provide the necessary authority to demonstrate the need for the higher material requirements; however, no experts were found that could make that statement.

Since that time there has been a tortured administrative *danse macabre* where CEN attempted to force the TC342 to amend the standard to permit the use of 304 / 1.4307 grade of stainless steel (see N146 attached). However, rather than submit, the TC342 voted (ostensibly as representatives of their member states) against a ballot to approve the technical amendment, which would have also resolved the material issue. The TC342 then voted to exclude the standard from a list of harmonized standards (see N223 attached). At this point the European product standard EN 15266 is in limbo, with the EC rejecting the actions of TC342 and requiring CEN to publish a harmonized standard in accordance with the rules of the Commission (see attached), but without the means to overcome the unrelenting resistance of embedded protectionist interests sitting on the TC342 technical committee that refuses without technical justification to permit the use of the material used by OmegaFlex. There is also a significant concern that if and when a product standard may be harmonized, the individual member states may impose additions restrictions or prohibitions on installation of those products under national legislation or regulatory authority – effectively curtailing access to those markets.

Therefore, as part of the negotiation of the Transatlantic Trade and Investment Partnership, the European Commission must require that its standard setting bodies implement product standards that are based on legitimate performance characteristics, and not based on attempts to protect markets for European companies. In particular, we request that the USTR bring its influence to bear on this issue to permit our product to be sold and installed without undue restriction in the European community. We will also note that your office, in particular the help of Sylvia Mohr in Brussels and Lori Cooper in Washington, have been of tremendous assistance over the years, and we appreciate their past efforts, and look forward to working with you in any capacity you may wish to resolve the small part of the larger issues. Thank you again for your assistance.

/s/ Kevin R. Hoben,  
President & CEO

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<sup>3</sup> At the same time and in an attempt to continue to open up markets for its CSST products on the continent, OmegaFlex had its product tested to the EN 15266:2007 standard, and obtained certification of conformance to the standard. As part of that effort, OmegaFlex voluntarily began making CSST product under EN 15266:2007 using 304L / 1.4306 in those countries that recognized the standard and in an effort to avoid disruption and confusion in the marketplace. However, we also continued to make product using 304 / 1.4307 material in countries where that is permitted, most notably in the United Kingdom.