



ace europe



## Exporting to the US

*Do you know the risks?*



Unless you know the facts  
you cannot make the right decisions.

## Why choose ACE?

**Exporters are faced with differing potential liabilities in almost every territory to which their products may be sent. ACE understands these liabilities, particularly with regard to the US.**

### Why do business in the US?

There are many reasons why you would want to export to the US:

- In terms of GDP, the US is the world's largest economy<sup>1</sup> and the largest importer of goods and services<sup>2</sup>.
- The UK is the 6th largest importer to the US, worth a staggering \$48 billion per annum to UK companies<sup>3</sup>.

This offers potentially huge opportunities to UK based exporters.

However, there are other considerations:

- Legal costs and awards can be significantly higher than in the UK.
- Plaintiffs' lawyers often employ a 'scattergun' approach to citing defendants calling even on parties that are only peripherally involved in an incident to defend.
- The tort system costs \$254.7 billion in 2008<sup>4</sup> in direct costs, which translates into \$838 per person, and many billions of dollars more in indirect costs.
- The top five product-defect verdicts rose 52 percent in total value in 2009 to \$620 million<sup>5</sup>.

### So what's the difference?

There are strong similarities between the US and UK legal systems. For example, the concept of "duty of care" tends to be based on legal precedent. However, there are some areas that are different, which could potentially lead to an exporter falling foul of the legal system.

It's imperative that you understand the environment to which you export in order to reduce the likelihood of a claim:

1. What actually is a "safe product"?
2. Should you be concerned about what your competitors deem to be a safe product?
3. Why can a simple label on your product affect your ability to defend a claim?
4. How far should you go in complying with the vast array of "standards" that may apply to your product?
5. How do the state and federal systems influence your liability exposure?
6. Does the worker compensation system encourage claims that would not normally have arisen in the UK?
7. Are class actions something you should be concerned about?
8. What does "duty to defend" mean to your bottom line?
9. Are punitive damages something you should be concerned about?
10. How can medical costs affect the value of a final settlement?
11. What is "forum shopping", and why is it something to be aware of?
12. Is it possible to be found 100% liable for an incident where you are not 100% responsible?

**ACE can help answer these questions and provide practical guidance on exporting to the USA.**

### Products Liability

The cost of defending claims in the US is high, and while many of the costs are covered under your policy you could still be faced with the substantial hidden expense of time and money surrounding the investigation and defence of a claim. It therefore makes sense to deal with an insurer which has the experience and resource to help ease the process, thereby minimising the short and long term costs to your business.



The regulatory regime in the US is complex and compliance with mandatory regulations or EU safety standards may not be sufficient. As an exporter or potential exporter to the US, you need to ask yourself these questions:

- Have you researched the market?
- Have you carried out appropriate safety risk assessments?
- Does your product conform to regulatory, voluntary and industry standards and do you know what these standards are?
- If warning labels are required, do they conform with the relevant standard? Generally labelling should comply with ANS1Z535.4, however there may be more specific standards applicable to certain products.

Punitive damages are generally not insurable and if awarded can make up the major proportion of an overall settlement. Non compliance with the relevant USA standards may increase the likelihood of punitive damages being awarded with potential catastrophic effect on the balance sheet of your business.

#### **Does your insurer have experience in the US market?**

ACE is a leading market for US export liability. We have developed considerable experience in the US environment both from an underwriting and claims perspective. ACE is capable of viewing products liability risks in a pragmatic manner and has commonsense standards in helping insure companies who are exporting products into this market.

#### **Does your insurer provide the necessary cover?**

As standard, ACE liability policies provide the following covers:

- Worldwide jurisdiction including USA/Canada
- Vendors extension

#### **Does the insurer have the experience and resource to handle a US claim should it occur?**

ACE accepts that given the nature of the US legal environment there is a substantial risk that at some point in time an insured will become involved and find it necessary to defend a US based product liability suit. ACE has the resources in the US to manage a claim when it happens. We know the legal environment varies from state to state and will not settle a claim prematurely out of fear of the system.

#### **Does your insurer have a percentage limit on turnover for US products?**

Unlike many insurers ACE does not have this limit.

#### **Risk Management**

ACE has developed the following guides to assist customers in relation to the issues faced with exporting to the USA:

- ACE Guidance For Exporting To The USA
- USA Exporter Checklist

#### **Strength**

ACE UK sits at the heart of the ACE Group of Companies, one of the world's leading insurance and reinsurance organisations, employing more than 15,000 people in over 50 countries, and conducting business with clients in more than 170 countries worldwide. Financial strength is key to a secure and long-term relationship with brokers and clients. ACE European Group Limited (in line with other core operating companies within the ACE Group of companies) has a financial strength rating of A+ from the two major rating agencies: Standard & Poor's (S&P) and AM Best.

#### **Stability**

We are first and foremost an underwriting company. We pride ourselves on the fact that we remain true to our core expertise of underwriting and risk transfer. The breadth and depth of both our product range and geographic reach make for a diversified and stable income stream. We offer property and casualty (P&C), accident and health (A&H), personal lines and life insurance solutions to customers from multinational corporations to small and medium-sized enterprises and private individuals. Few of our competitors can match our global network and capabilities.

#### **Service**

We employ market leading technical expertise in underwriting, claims and engineering, supported by a high degree of local empowerment. Superior service standards, including the delivery of timely and accurate policy documentation are key. We are a client focused organisation and actively develop new products to meet the changing risk management needs of our clients and offer innovative products in specialist areas of emerging risk. ACE UK employs strong local expertise through its 11 regional branch offices. This demonstrates our long-term commitment to the market and facilitates local broker and client access to ACE's people and their expertise.

For more information, please visit:  
[www.aceeurope.co.uk](http://www.aceeurope.co.uk)

#### **Sources:**

- 1 The World Bank: World Development Indicators database. World Bank. 1 July 2010
- 2 CIA World Fact Book (Excluding EU)
- 3 International Trade Administration, Dept of Commerce. "Top US Trade Partners" [http://ita.doc.gov/td/industry/otea/tp/Top\\_Trade\\_Partners.pdf](http://ita.doc.gov/td/industry/otea/tp/Top_Trade_Partners.pdf)
- 4 Towers Perrin "2009 Update on U.S. Tort Cost Trends" [http://www.towersperrin.com/tp/getwebcachedoc%3Fwebc%3DUSA/2009/200912/2009\\_tort\\_trend\\_report\\_128\\_09.pdf&sa=X&ei=hZsxTleaDI6UjAelmqjDBQ&ved=0CAAsQzgQoATAA&usg=AFQjCNEabkK1hEiJfhaQ1XC572QzoQ7W3A](http://www.towersperrin.com/tp/getwebcachedoc%3Fwebc%3DUSA/2009/200912/2009_tort_trend_report_128_09.pdf&sa=X&ei=hZsxTleaDI6UjAelmqjDBQ&ved=0CAAsQzgQoATAA&usg=AFQjCNEabkK1hEiJfhaQ1XC572QzoQ7W3A)
- 5 <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=awwb48rn7sQQ>



**ACE European Group Limited**

ACE Building  
100 Leadenhall Street  
London EC3A 3BP  
+44 (0) 20 7173 7000 tel  
+44 (0) 20 7173 7800 fax  
[www.aceeurope.co.uk](http://www.aceeurope.co.uk)

Authorised and Regulated by  
the Financial Services Authority

Registered in England and Wales No.1112892

ACE and ACE Europe are not insurance companies.  
Insurance products and services are sold by the company's  
insurance company subsidiaries.

Published September 2010