



29 October 2012

Jean-Luc Demarty
Director General
Directorate General for Trade

Miriam Shapiro
Deputy U.S. Trade Representative
Office of the U.S. Trade Representative

Dear Mr. Demarty and Ms. Shapiro,

The Express Association of America (EAA) and the European Express Association (EEA) welcome the opportunity to respond to the request to stakeholders from the European Commission and the U.S. Government for comments on improving transatlantic regulatory compatibility. We strongly support the ongoing efforts of the High Level Working Group on Jobs and Growth to achieve deeper economic integration between the European Union and the United States, notably through consideration of a comprehensive free trade agreement. Greater regulatory harmonization would be a significant step toward forging a stronger economic partnership across the Atlantic.

EAA and EEA members are DHL, Federal Express, TNT and UPS, the four largest express delivery service providers in the world, providing fast and reliable service to the U.S. and more than 200 other countries and territories. Our member companies have estimated annual revenues in excess of \$200 billion, employ more than 1.1 million people, utilize more than 1700 aircraft, and deliver more than 30 million packages each day.

Efforts to strengthen the current U.S.-EU economic relationship should include coordinated policy approaches across a range of mutually supportive areas, such as: the elimination of tariffs and non-tariff barriers to trade in goods; the removal of market access barriers to trade in services; achievement of a much higher level of regulatory convergence, removal of barriers to investment, and alignment of standards and practices, whether through harmonization, mutual recognition, adoption of international standards, or other methods. Given the sheer size of trans-Atlantic trade, even marginal convergence in the aforementioned policy areas could have substantial positive effects for business.

The millions of customers utilizing the services of EAA and EEA members ship an extensive variety of commodities domestically and internationally, and will benefit significantly from improved regulatory compatibility between the U.S. and the EU. This effort would result in accelerating regional economic integration by facilitating trade, easing burdens on doing business within and between the U.S. and EU, and increasing the connectivity and efficiency of

supply chains. Therefore, in view of their potential to promote trade flows, EAA and EEA members fully support regulatory cooperation initiatives in all different sectors of the economy.

We welcome further Trans Atlantic inter-agency and regulatory cooperation in policy areas that affect our sector. The mutual recognition decisions in the field of AEO-CTPAT and, more recently, Air Cargo Security that were signed by the US and EU are a major step forward and provide a basis for further efficiency gains for users and service providers.

In this document you will find recommendation for further inter-agency cooperation in related areas such as:

- advance cargo screening;
- advance cargo information for risk assessment;
- customs clearance and release processes;
- payment of customs taxes;
- increase and harmonization of de minimis levels;

and other areas related to our industry

We also see great value for the transatlantic dialogue in the development of procedures and standards that can ultimately serve at a global level. This would result in additional efficiency gains for users, business and private consumers, around the globe.

EAA and EEA look forward to working with EU and U.S. authorities as the US-EU negotiations move forward to ensure this important agreement achieves the goals of opening markets, facilitating trade and stimulating economic growth. Greater regulatory harmony is a critical part of this process.

For additional information or to answer any questions please contact our respective associations:

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Sincerely,



Jaap Mulders
Chairman
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Michael C. Mullen
Executive Director
Express Association of America

SUGGESTED AREAS FOR REGULATORY CO-OPERATION

I. Air cargo Security

- Relevant regulatory agencies
 - EU: Directorate-General for Mobility and Transport (DG MOVE)/Directorate-General for Customs and Taxation (DG TAXUD)/ Directorate General for Home Affairs (DG HOME)
 - US: Customs and Border Protection (CBP)/Transportation Security Administration (TSA)
- Relevant regulatory and/or statutory provisions for each jurisdiction
 - EU: Regulations EU 859/2011, EU 185/2010
 - US: Air Cargo Advance Screening/TSA Standard Security Program
- Regulatory differences to be addressed: The EU and the US are taking differing approaches in an effort to improve the security of the international operations of air cargo carriers bringing shipments into each jurisdiction from third countries. The US approach is based on Emergency Amendments, including specific measures for cargo identified as high threat. The EU has adopted the ACC3 (Air Cargo or Mail Carrier operating into the Union from a 3rd country airport) program which is based on airport, operator specific designation and validation, and verification of screening entities and other players in the supply chain. The EU approach is further combined with special measures for “high risk” cargo. However, the EU and the US have different definitions of “high risk” cargo.
- Possible solutions for bridging these differences: The 1st of June 2012 agreement between the EU and US which recognize each other’s air cargo security regimes for shipments originating within each jurisdiction is a useful model, but the provisions for mutual recognition need to be strengthened as the mutual recognition is not resilient enough to withstand a potential future incident. In addition, this agreement only recognizes the validity of each side’s programs – it does not harmonize regulations. Therefore, in addition to strengthening the mutual recognition of each side’s programs, the relevant EU and US agencies should enter into a regulatory dialogue to develop a harmonized approach to air cargo security regulations and procedures that includes, inter alia:
 - Common definition for high risk cargo
 - Common standards for accepted security equipment and screening methods
 - Common requirements for staff training and
 - Better cooperation towards intelligence sharing

- Assessment of the effects of enhanced regulatory compatibility: A common EU/US approach to air cargo security would generate significant benefits and increased efficiency in terms commonly applied and consistent operational procedures, personnel training and technology costs. Having a harmonized EU and US approach would assist in the development of global standards (as supported by the International Civil Aviation Organisation) around which all countries could agree and incorporate. This would lead to significant improvements in Air Cargo Aviation Security.

II. Advance cargo information for security risk assessment

- Relevant regulatory agencies
 - EU: Directorate-General for Mobility and Transport (DG MOVE)/Directorate-General for Customs and Taxation (DG TAXUD)/ Directorate General for Home Affairs (DG HOME)
 - US: Customs and Border Protection (CBP)/Transportation Security Administration (TSA)
- Relevant regulatory and/or statutory provisions for each jurisdiction
 - EU: Air Cargo advance cargo information pilots in Belgium, France, Germany and UK (no statutory requirements yet)
 - US: Air Cargo Advance Screening program (no statutory requirements yet)
- Regulatory differences to be addressed: In the US, there is the “ACAS” (Air Cargo Advance Screening) pilot program. In the EU, advance cargo information pilot programs are being conducted in Belgium, France, Germany and the UK. No regulatory requirements have been developed (yet) but going forward it is essential that there will be a common EU/US approach.
- Possible solutions for bridging these differences: Potential future regulatory differences need to be prevented, notably by developing common requirements for data on each shipment (e.g. 7 raw data elements as the basis for risk assessment), common protocols in communication with carriers/forwarded (e.g. for referrals and ‘Do Not Load’ messaging) and common risk criteria.
- Assessment of the effects of enhanced regulatory compatibility: A common EU/US approach to advance air cargo information would generate significant benefits and increased efficiency in terms of data structure, IT resources, personnel training, technology costs and operational efficiency. Having the world’s two largest air cargo markets adopting similar regulatory requirements for advance air cargo information would provide a strong impetus for generating a global standard around which all countries could agree and incorporate through the International Civil Aviation

Organization and the World Customs Organisation. In this way a significant additional security layer could be applied to Air Cargo.

III. C-TPAT (US) / AEO (EU)

- Relevant regulatory agencies
 - EU: Directorate-General for Customs and Taxation (DG TAXUD)
 - US: Customs and Border Protection (CBP)
- Relevant regulatory and/or statutory provisions for each jurisdiction
 - EU: Authorized Economic Operator, (AEO) - Article 5a Regulation (EC) No 648/2005
 - US: Customs-Trade Partnership Against Terrorism (C-TPAT) – Voluntary program authorized by SAFE Act of 2006
- Regulatory differences to be addressed: Introduction and harmonization of benefits for entities having a C-TPAT / AEO certification.
- Possible solutions for bridging these differences: The EU-US C-TPAT/AEO mutual recognition agreement is a welcome step in harmonizing trans-Atlantic trusted trader programs. Going forward, it is important to ensure that the agreement is implemented and that certified entities obtain concrete benefits, such as automatic known consignor status in terms of air cargo security. Air cargo received from such shippers should be viewed as secured and not subject to additional security controls and given unimpeded priority (fast track) processing through customs. Another key benefit would be ensuring that an applicant who is certified in one program is also certified in the other program, without the need to file separate applications for each program.
- Assessment of the effects of enhanced regulatory compatibility: Improved facilitation of secure cargo through the supply chain allowing greater attention to higher risk consignments.

IV. Customs

- Relevant regulatory agencies
 - EU: Directorate-General for Customs and Taxation (TAXUD)
 - US: Customs and Border Protection (CBP)
- Relevant regulatory and/or statutory provisions for each jurisdiction

- EU: COUNCIL REGULATION (EEC) No 2913/92
- US: CFR 19, SAFE Port Act of 2006
- Regulatory differences to be addressed:
 - Immediate Release

Through greater mutual cooperation the EU and the US could develop considerable opportunities to streamline customs processes and speed up the flow of commerce through ports and airports. Consideration should be given to harmonizing processes for customs clearance with a goal of the immediate clearance of goods on arrival. With the levels of advance customs data already transmitted to the EU and US, customs authorities can carry out risk assessments well in advance of arrival, thus offering pre-clearance and the immediate release of goods. Immediate release of shipments should not be solely reserved to businesses which are C-TPAT or AEO members, nor to a particular kind of trader. Such treatment should be available to any shipment that meets a set list of criteria such as, for instance, those laid out in Article 7 (Expedited Shipment) of the WTO draft negotiating text on trade facilitation.
 - Payment of Customs Taxes in Arrears

In addition consideration should be given to collecting duties and taxes after importation and clearance from C-TPAT and AEO shippers without the need for a guarantee. Customs duties and taxes are the only taxes generally collected on a transactional basis in advance or at the time that the tax is due. These shippers will normally pay all other taxes, (which are often much more than customs duties) in arrears and without a guarantee. If they are trusted to pay businesses taxes in arrears then the same logic should apply to customs duties. Such an approach would support immediate release of consignments, saving costs for both businesses and Customs administrations in time. It also enables customs authorities to target limited resources at areas of higher risk.
 - Raising the de minimis level, the value under which shipments are not subject to duty and taxes or formal customs procedures.
- Possible solutions for bridging these differences: The regulatory dialogue between CBP and DG TAXUD should aim to introduce facilitation measures such as immediate release and payment of customs taxes in arrears, as well as measures to harmonize and increase the “de minimis” level.
- Assessment of the effects of enhanced regulatory compatibility:

Facilitation measures such as immediate release and payment of customs taxes in arrears will promote trade, increase efficiency, reduce costs for businesses and

customs administrations and allow customs administrations to target limited resources to areas of higher risk.

A high 'de-minimis' level for duties and taxes will reduce regulatory and financial burdens for shippers, particularly SMEs, and support economic recovery as a whole in both markets. The large volume of low-value shipments today incur high processing costs that often outweigh the value of the taxes being collected. With the development of e-commerce being a priority in both markets and with a desire to make shipping more efficient, there is an urgent need to review the de minimis threshold and bring it in line with the new reality of the economy. According to estimates from the Asian Development Bank, the direct and indirect costs associated with border procedures and documentation represents up to 7-10% of global trade. Streamlining those procedures would make such costs obsolete and increase the economic competitiveness.

Establishing a higher de minimis value should also take into account the costs that shippers incur in processing entries and the value to customers (business and households) of faster delivery. While a higher de minimis exemption might reduce government revenue, it will also cut overall compliance costs, reduce delivery times, and encourage low-value imports, especially direct purchases by consumers and small business companies from foreign suppliers. Moreover, it will free up resources of customs authorities to deal with security, IPRs and product safety issues.

However, even with "de minimis" designed to reduce requirements for imported goods, the US maintains a list of goods under the Harmonized Fact Sheet 30, which requires formal customs entry even below "de minimis". Trade would benefit from this list being abolished.

V. Regulating Aircraft Emissions

- Relevant regulatory agencies
 - EU: European Commission, Directorate General for Climate Action (DG CLIMA)
 - US: Department of Transportation/Environmental Protection Agency
- Relevant regulatory and/or statutory provisions for each jurisdiction
 - EU: Directive 2008/101/EC of 19 November 2008 on the inclusion of aviation in EU Emissions Trading Scheme (EU ETS)
 - US: None
- Regulatory differences to be addressed: The EU and the US are at odds regarding the imposition of the Emissions Trading Scheme (ETS), designed to regulate air carriers operating to and from EU airports. This dispute has the potential to adversely affect trade in services, particularly global air transportation of goods and passengers.

- Possible solutions for bridging these differences: The EU and US should continue a productive dialogue on this issue and move forward constructively to arrive at a global agreement in ICAO for the achievement of important goals like the reduction of greenhouse gases. Importantly, the EU and US must avoid any result that may serve to harm a transportation provider's ability to effectively and efficiently serve its customers in either market or unfairly impose competitive disadvantages. A global agreement in ICAO is the most appropriate instrument to address aviation emissions.
- Assessment of the effects of enhanced regulatory compatibility: A common and coordinated EU/US approach to arrive at a global agreement in ICAO will be the most effective way to avoid a trade conflict.