

**TESTIMONY OF  
THE  
EXPRESS ASSOCIATION OF AMERICA  
TO THE  
COMMITTEE ON WAYS AND MEANS  
UNITED STATES HOUSE OF REPRESENTATIVES  
HEARING ON: U.S. TRADE POLICY AGENDA  
April 3, 2014**

Express Association of America (EAA) 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. These four EAA 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.

EAA strongly supports ongoing trade negotiations with a range of our international partners and believe these talks will open significant possibilities for facilitating trade, expanding regulatory cooperation, and forging stronger economic partnerships globally. Specific express industry objectives for the Trans-Pacific Partnership (TPP), the Trans-Atlantic Trade and Investment Partnership (TTIP), and the Trade in Services Agreement (TISA) are provided below. These agreements should include coordinated policy approaches across a range of mutually supportive areas, such as:

- Eliminating tariffs and non-tariff barriers to trade in goods
- Removing market access barriers to trade in services
- Achieving a much higher level of regulatory convergence
- Removing barriers to investment
- Aligning standards and practices, whether through harmonization, mutual recognition, adoption of international standards, or other methods
- Eliminating restrictions on cross-border data flows (the free flow of data across borders is critical to the express industry)
- Prohibiting forced localization (including in-country requirements for servers and data storage)
- Developing disciplines on state-owned enterprises (SOE) and state-supported enterprises (SSE) to ensure fair competition between these entities and the private sector

Given the sheer size of our trade with the EU and TPP partners, even marginal convergence in these policy areas could have substantial positive effects for business.

The millions of customers utilizing the services of EAA members ship an extensive variety of commodities domestically and internationally, and will benefit significantly from the completion of comprehensive, high standards TTP, TTIP and TISA agreements. These efforts would result in accelerating regional economic integration by facilitating trade, easing burdens on doing business, and increasing the connectivity and efficiency of supply chains. Successful completion of these agreements also would serve as global models for ensuring future regional and

multilateral trade agreements contribute more effectively to economic prosperity and employment creation.

Rapid Congressional passage of Trade Promotion Authority (TPA) is the critical step necessary to achieving U.S. goals in the TPP, TTIP, TISA and other potential agreements, and we urge the Committee to move TPA legislation forward for floor consideration immediately. The benefits of passing strong TPA legislation are outlined below.

## **TRANS-PACIFIC PARTNERSHIP**

The overall goal of the TPP negotiations should be to reach a high-standard, 21<sup>st</sup> century trade agreement with a membership and coverage that provides economically significantly increased market access opportunities that will stimulate growth and promote employment and prosperity. TPP will set an important precedent for future agreements, and therefore it is critical that it establish high standards. The TPP agreement should be FTA-plus and expand the trade liberalization and facilitation measures already agreed upon in previous regional and bilateral agreements.

Significant progress has been made in previous rounds on the TPP Customs Chapter issues. To achieve the goals outlined above in this chapter, the express industry considers the following standards to be critical to reaching a commercially meaningful result in the negotiations:

- The TPP agreement should establish the highest possible de minimis level to allow lower value goods to be exempted from duties and taxes and cleared on a consolidated basis. This level should be at least \$200. The benefits of a higher de minimis level include:
  - Lower costs for small and medium enterprises and individual consumers who ship proportionally larger numbers of low value shipments.
  - Resource savings for government as customs officials will be relieved from processing numerous low value shipments and can focus efforts on higher risks such, as detecting counterfeit goods or attempted tariff evasion.
  - A higher baseline de minimis level would provide a more balanced regime and offset the current wide disparity in the region among existing de minimis levels.
- The TPP agreement should maintain the language from earlier FTAs that expedited customs treatment will apply without regard to an express shipment's weight or customs value. Attempting to apply weight and value distinctions to the definition of what constitutes an express shipment in the context of customs treatment introduces significant complications and delays to the clearance process that will cause customer commitments to be missed.
- The TPP agreement should provide a time limit for the release of goods in the express environment that is lower than the four hour limit (after submission of customs documents and arrival of the goods) in recent FTAs. Establishing this release standard assumes customs

officials will be available to clear shipments based on the operating schedule of the express industry.

- The agreement should provide a separate and expedited customs procedure for express shipments. Putting express packages in the same line as all other shipments (for which those customers have not paid a premium for expedited services), regardless of how efficiently they are processed, cannot, by definition, constitute an “expedited” service. The agreement should include a clear statement of the need for expedited procedures without any qualifiers that could be used to claim exemptions from the requirement. The concept of separate and expedited treatment can be defined as having relevant government officials available at the time and place when express operator aircraft are arriving at a port of entry and offloading shipments in order to complete the border clearance process as rapidly as possible.
- The agreement should include a strong endorsement of using automated risk management systems for targeting and evaluation that provide rapid separation of high from low risk shipments and facilitate entry of the low risk goods.

## **TRANS-ATLANTIC TRADE AND INVESTMENT PARTNERSHIP**

### **I. A Single, Government-wide, Unified Border Clearance Process**

- The United States and the EU should commit to establish a single window through which importers and related parties can electronically submit all information to comply with customs and other government agencies information requirements. In practice, this would be one single window for the United States and one single window for the European Union, but these should include a common set of import and export data elements for customs, security, and other government agency data requirements. The single window would decrease the transaction costs of trade and particularly facilitate trade for small and medium-sized businesses. It would also promote efficiency and improve security and safety targeting for government agencies.
- Creating a “one government at the border” approach to border management should include common processes for goods clearance. The TTIP should include requirements of all government agencies with border authority in the United States and all EU member states to converge and coordinate inspection activities for agencies with hold authority. This would include all security, customs, product safety and other requirements to be cleared with a single release.

### **II. Stronger, Commercially-meaningful Partnerships with the Trade Community**

- Partnership between the private and public sectors on supply chain security has become a cornerstone for security and trade facilitation. The United States and the EU should reaffirm their commitment to a multi-layered and risk-based approach to customs enforcement and security procedures. The risk-based method provides the greatest possibly security while simultaneously facilitating legitimate trade. Given the

tremendous amount of trade that goes between the U.S. and EU, commitments should be made to converge or mutually recognize each other's processes. This includes the future development of supply chain, customs and other government agencies border procedures and regulations. Supply chain security mutual recognition agreements must provide commercially meaningful results for the private sector. Commercially meaningful results would include the following:

- Full convergence of the Customs-Trade Partnership Against Terrorism and the Authorized Economic Operator programs;
- One online application process accepted in the U.S. and EU member states;
- Single validation and revalidation visits with the results accepted by both sides;
- Demonstrable benefits that include reduction of the likelihood of inspections;
- Front of line privileges for members' shipments when inspections are required;
- Expedited handling of members' shipments in post-incident recovery operations;
- Common information requirements where the export declaration of one side is accepted as the import declaration of the other side; and
- Allow members to provide required documents and commercial information post-release.

### III. Higher De Minimis Level

- A higher *de minimis* value covering the entry process for low-valued goods is a critical tool in trade facilitation. It is also critical to reducing trade barriers for small and medium sized businesses by facilitating their access to international markets. The TTIP should include a commitment to a minimum *de minimis* level of \$800, covering both duties and all taxes, and linking future increases in *de minimis* to the consumer price index. This level should be applicable regardless of country of origin.

### IV. 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. The TTIP should include a commitment to harmonize 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.

### V. Payment of Customs Taxes in Arrears

- The TTIP should include a commitment 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.

## VI. Air Cargo Security

- The EU and the US should adopt a similar approach to improving 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 3<sup>rd</sup> 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.
- The 1<sup>st</sup> 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 TTIP should contain a commitment that relevant EU and US agencies would 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

## VII. Advance Cargo Information for Security Risk Assessment

- To provide advance information on air cargo, the United States has developed the Air Cargo Advance Screening (ACAS) pilot program. In the EU, advance cargo information pilot programs are being conducted in several member countries. As both the EU and the U.S. are expecting to develop regulatory requirements on air cargo information in the near future, it is essential that a common EU/US approach be adopted. The TTIP should include a commitment to develop common requirements for data on each shipment, common protocols in communication with carriers, and common risk criteria.

- 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 Organization.

## TRADE IN SERVICES AGREEMENT

The TISA is providing an opportunity to achieve higher levels of transparency, regulatory coherence and stakeholder consultation across a range of industries that comprise the largest part of the U.S. economy. Express delivery services (EDS) goals for the TISA include:

- **Fair Competition/Level Playing Field.** The TISA should seek to liberalize trade in package delivery services further by ensuring a level playing field for all competitive services offered outside those supplied in the exercise of governmental authority, particularly with respect to state-owned and state-supported enterprises (SOE/SSE). There is a need to secure more ambitious commitments and disciplines for domestic regulation and fair competition by allowing free market principles to govern the highly competitive express sector, or where necessary, independent regulation and a level playing field with competing services offered by Posts such as express mail services. Exclusions and non-conforming measures (NCMs) for postal services should be drawn as narrowly as possible, for example, by using a reasonable price/weight multiple.
- **Transparency, Regulatory Coherence, and Private Sector Consultation.** To encourage greater transparency, coordination, consultation, and partnership between express delivery services and regulators, the TISA should include the establishment by each party of a national coordinating body, process, or mechanism, to ensure a whole-of-government approach, regulatory coherence, and institutionalized private sector input. Parties should also include mechanisms to review the impact of current or proposed measures and provide appeal opportunities should a measure not achieve desired results.
- **Integrated Approach, Particularly for Customs Processes.** The TISA should focus on removing barriers to express delivery services, recognizing that EDS faces antiquated policy environments in some countries, including onerous regulations on cross-border transport, inefficient border clearance procedures and domestic regulations that distort fair competition. To respond adequately to the nature and scope of the services this industry provides, the TISA must address the unique needs of express delivery service providers, including the need for an integrated approach for customs clearance, seamless regulation across multiple modes of transport, and commitments to immediate release, single-window, and electronic border clearance.

## **TRADE PROMOTION AUTHORITY**

Since President Franklin D. Roosevelt in the 1930's, every President through 2007 has had authority from Congress to negotiate trade agreements that open new markets for American companies and workers and help ensure a rules-based system for two-way trade. More recently known as Trade Promotion Authority (TPA), or "fast track," this type of authority was last enacted in 2002, and it lapsed in 2007. Over the last decade, many new challenges to doing business in the global marketplace have emerged. Updating TPA and its negotiating objectives would help to address strategically such issues across the range of current U.S. trade negotiations, as well as in the future.

TPA helps shape a strategic vision for U.S. trade policy and the goals the United States wants to accomplish in trade negotiations. It provides a framework for Congress and the President to work together to shape that vision, and it helps define the critical constitutional relationship between Congress and the President with respect to foreign commerce. Over time, it has provided our trade negotiating partners with a degree of comfort that the United States is committed to the international trade negotiating process and the trade agreements we negotiate.

The United States is pursuing one of its most ambitious and diverse range of trade negotiations ever, including the Trans-Pacific Partnership (TPP) negotiations with 11 other Asia-Pacific countries, a Transatlantic Trade and Investment Partnership (TTIP) with the European Union (EU) (and its 28 member states), the Trade in Services Agreement (TISA) with 48 other economies (including the EU member states), and multilateral negotiations on a trade facilitation agreement.

These negotiations involve important 21<sup>st</sup> century trade issues, such as foreign restrictions on cross-border data flows, unfair competition from state-owned enterprises, and international regulatory cooperation that have evolved or emerged since TPA and its negotiating objectives were last written more than a decade ago. TPA negotiating objectives and procedures would help lay out a structured framework and pathway for addressing issues before, during and after the negotiations and obtaining Congressional approval of any legislation needed to implement a trade agreement. Updating TPA and its negotiating objectives is critically important for achieving U.S. goals across this range of trade negotiations, and TPA legislation should be passed by Congress immediately.

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