



October 30, 2012

Mr. L. Daniel Mullaney  
Assistant U.S. Trade Representative for Europe and the Middle East  
Office of the United States Trade Representative  
600 17th Street, NW  
Washington, DC 20508

RE: Docket No. USTR-2012-23613  
Request for Comments from the Public on Promoting U.S. EC Regulatory Compatibility

Dear Mr. Mullaney:

On behalf of Deutsche Post DHL ("DHL"), I would like to submit comments in reference to the Federal Register Notice of September 28, 2012 regarding the U.S. and European Commission efforts to promote "Regulatory Compatibility." We appreciate the opportunity for submissions to this important endeavor.

DHL is a world leader in express delivery, transportation and supply chain management. DHL Express was established in 1969 in San Francisco. Today, the footprint of the DHL group in the U.S. combines four business units (DHL Express, DHL Supply Chain, DHL Global Forwarding, and DHL Global Mail). Each DHL business unit plays a critical role in the transatlantic and global supply chain.

Our more than 25,000 direct employees in the U.S. provide a broad product portfolio for our U.S. customers: millions of international express shipments each year, complex logistics services for major U.S. manufacturers, heavy freight movements (ocean and air) as well as the management of postal products, including our work share partnership with the U.S. Postal Service.

The trade and investment flows across the Atlantic in terms of volume and value still dominate global commerce. DHL is a major player in the transatlantic market place. Our business – and commerce in general – will be *directly* impacted by regulatory actions taken as a result of the U.S.-EU High Level Working Group.

Trade and the free flow of goods is the lifeblood of our industry. DHL experiences every day how regulatory incompatibility will produce delays and inefficiencies at the border. These non-tariff barriers add unnecessary cost to trade.

DHL has identified four primary areas where greater collaboration and regulatory compatibility between the U.S. and EU would greatly improve the speed and efficiency of the cross border movements between our two interdependent economies:

1. Support Mutual Recognition of Customs Programs and Products:

- a. **Implement the AEO-CTPAT Recognition:** DHL commends the efforts of the U.S. and EU to establish mutual recognition of the existing trade partnership programs: the *Customs-Trade Partnership Against Terrorism* (C-TPAT) for the U.S., and within the EU the *Authorized Economic Operator* (AEO). DHL has been a member of both trusted-trader programs. DHL strongly supports the mutual recognition, expansion and eventually harmonization of both programs. The engagement of more industry partners would further improve the efficiency of C-TPAT and AEO. U.S. and EU regulatory authorities should swiftly implement this agreement through commitments that provide commercially meaningful benefits to carriers and shippers. Given that many industry partners in these programs are already engaged, one possible benefit could be a single recertification instead of the separate recertification requirements involved in both programs. Providing commercially meaningful benefits is both feasible and fully supported by the World Customs Organization (WCO).
- b. **Expand Recognition to Include Customs Program Credentials:** Beyond the programs themselves, DHL supports mutual recognition of credentials issued by the customs authorities on both sides of the Atlantic. Even though the U.S. and EU have recognized the existing trade partnership programs, all trade partners to these programs must still acquire separate credentials for each program. Credentials issued by one customs authority in a recognized program should provide the same access and benefits as credentials from the other recognized program without additional cost in time, filing fees, and management of the duplicative credentials. To illustrate: It would severely burden mobility if an individual in the U.S. be required to obtain 50 different state drivers licenses. And it is similarly unnecessary for C-TPAT and AEO programs to require their "own" credentialing when the underlying programs have been accepted.

2. Harmonize Transportation Security Requirements:

DHL's high cargo security standards globally are second to none. We fully recognize that the terrorist threat to commerce does not stop at national borders. We therefore propose:

- a. **Implement the EU-US agreement on air cargo security:** DHL commends the U.S – EU agreement on mutual recognition of the air cargo security regimes, with the long term goal of harmonizing both security regimes. Its rapid implementation would reap concrete benefits of this recognition, thereby reducing non-tariff barriers associated with divergent and overlapping security screening requirements. In addition, as new security programs and initiatives are developed, greater effort is needed to harmonize standards to prevent future divergence, including in the area of pre-lading information for air cargo used for risk based targeting.
- b. **Develop ACAS as an Internationally Accepted Regime:** DHL and industry have already worked with the U.S. Department of Homeland Security (DHS) and CBP/TSA to establish a collaborative Air Cargo Advance Screening (ACAS) program. ACAS is a risk-based system that utilizes a subset of cargo manifest data to target higher risk shipments for screening. The (still voluntary) ACAS

pilot program will eventually move into a (mandatory) regulatory environment in both the U.S. and the EU. It is critical that the U.S. seek early alignment with the EU and other multilateral organizations to develop internationally-recognized standards, procedures and processes for advanced shipment data provision. The objective is to a) minimize the variety of systems and requirements, and b) to avoid non-productive duplication of data submission and security risk assessment. The U.S. and EU regulations should start by recognizing the lessons learned from the existing pilots, namely:

- Industry and government should closely cooperate. Penalties should be reserved for gross negligence only instead of being imposed as a means of “motivating” an already motivated party.
- A limited data set (raw data elements about the shipment at a house bill level disassociated from carrier information) will suffice to effectively target risk.
- Advanced data analysis is provided for security purposes only, as the overriding objective remains to keep any explosive off any air plane.
- Flexibility in IT systems and operational models is critical in recognizing the variances between industry partners to avoid competitive disadvantages.
- Timely information sharing between government and industry, including relevant intelligence information, is key to protect the supply chain against terrorist threats.

A global regime should harmonize data requirements and eliminate duplication between the U.S. and EU, i.e. shipment data should only be submitted to one country for a single security risk assessment. It should then be accepted by any other country involved in the global supply chain. This eventual consolidation of data entry will allow international trade partners to share information globally without delay. As a result unnecessary cost and complexity will be reduced while governments’ risk assessment capabilities will be improved.

- c. ***Facilitate Cross-Border Data Flows – Especially for Customs and Security Purposes:*** Our customers are concerned about current impediments on open cross-border data flows both to facilitate trade and improve the security of the supply chain itself. DHL shares this concern. As we “move the border out” to capture early on electronic global transactions for risk-based security evaluations, we will become more dependent on a stable cross border flow of information. These data flows are utilized to determine risk, facilitate commercial entry, and support payments and other normal business transactions. Unfortunately, the current international rules governing the transfer of data (as well as the flows of digital goods, services, and other commercial data) are incomplete at best and lack a consistent and transparent framework. Today’s inefficient patchwork of national, bilateral and global arrangements does not allow for the effective and efficient regulation of crucial data flows for the storage, transfer, disclosure, retention and protection of personal, commercial and financial data. DHL fully supports the U.S. and EU as they develop transparent and high-quality international rules, norms and best practices on cross-border data flows. There may well be legitimate philosophical differences in regulatory approaches concerning privacy and security between the U.S. and EU, but measures that unduly restrict legitimate cross-border data flows should be avoided at all cost.

3. Increase "De Minimis" Import Values and Eliminate the Formal Entry List:

- a. ***Increase and Harmonize "De Minimis" Thresholds:*** When considering tariff related burdens on the flow of commerce, DHL supports a commercially meaningful "de minimis" threshold for imposition of customs duties and fees for both markets. Currently, both the U.S. and EU apply "de minimis" values well below the levels that would be meaningful for small exporters, creating significant barriers. A unified, higher "de-minimis" level would reduce regulatory and financial burdens for shippers, in particular for the small businesses broadly accepted as the backbone (job creators) of our linked economies. Uncertainty due to complex cross-border shipping requirements and hard to calculate full landed costs has deterred small enterprises from entering the global marketplace. The adverse impact on e-commerce and job creation is obvious.

Streamlining cross-border procedures for low-value shipments by way of the establishment of a harmonized and commercially meaningful "de minimis" threshold would increase the economic competitiveness of both the U.S. and EU markets. Recent empirical studies by the *Peterson Institute for International Economics* in Washington, DC, *ITS Global* and the *Centre for Customs and Excise Studies* in Australia have demonstrated that higher "de minimis" values provide substantial benefits to the supply chain and the local and national economies. The U.S. Congress is already considering a significant increase for the U.S. "de minimis" value from the current \$200 level to a higher level of \$800 to \$1,000. Raising the "de minimis" in both the U.S. and EU to a common, high value will reduce regulatory and financial burdens for small and medium sized enterprises and will allow host country border and customs authorities to better allocate often scarce resources towards real risks.

- b. ***Elimination of the "Formal Entry List":*** Further, even with "de minimis" and informal entry levels designed to reduce requirements for imported goods, the U.S. maintains a list of goods under the *Harmonized Fact Sheet 30*, which requires formal customs entry procedures even below the formal entry level of \$2,000. CBP reduced this list in 2009 in recognition of the expiration of textile quotas and the implementation of WTO trading rules. However, several low value items in four sections of the *Harmonized Tariff Schedule* list still require formal entry. Clear legislative authority exists for any items remaining on the list of exceptions, and we encourage abolishing the list completely. As a result, the efficiency and cost for cross border shipments would be reduced.

4. Open Investment Structure for Ownership and Control of Airlines:

***Equitability in Current Ownership & Control Standards:*** U.S. and EU ownership and control standards for the airline industry should be liberalized and aligned. Non-EU citizens are prohibited from owning 50% or more of EU air carriers in terms of both equity share and voting stock. By contrast, non-U.S. citizens are limited to 25% voting rights in U.S. airlines as a matter of statute and 49% equity share as a matter of practice. DHL fully supports removal of all foreign investment and control restrictions in the airline industry sector. The current ownership restrictions have become obsolete and hamper much-needed consolidation and capital formation within the industry. Beyond ownership standards, regulatory convergence of competition rules more broadly should be aligned. Throughout these discussions, important considerations such as safeguards for national security, the CRAF program and CFIUS in the U.S. should and can be adequately addressed by modernized regulation. In the long term DHL supports the full liberalization of aviation markets worldwide, especially in the Trans-Atlantic economic space, which lends itself to becoming a "Single Aviation Area." The economic benefits would be a "win-win" for the U.S. and EU. A gradual shift towards a more liberal ownership regime could start with the all-cargo industry, similar to the U.S. airline deregulation phased in during the late 1970's.

DHL's consistent priority has been the protection and integrity of the global supply chain. DHL's record speaks for itself. Towards that priority DHL will continue to cooperate closely with the U.S. government, and with all governments within the EU and beyond. To organize the transatlantic supply chain more efficiently will create jobs and will benefit the consumer on both sides of the Atlantic. We believe that our specific proposals listed above will both further enhance security and expand economic opportunities.

For further information or clarification, please don't hesitate to contact us at 202-293-9380.

With kind regards,



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