

**BEFORE THE
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C.**

TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP

DOCKET USTR-2013-0019

COMMENTS OF ATLAS AIR WORLDWIDE HOLDINGS, INC.

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COMMENTS OF ATLAS AIR WORLDWIDE HOLDINGS, INC.

Atlas Air Worldwide Holdings, Inc., on behalf of itself and its air carrier operating subsidiaries, Atlas Air, Inc. and Polar Air Cargo Worldwide, Inc., appreciates the opportunity to submit these comments in response to the Notice issued by the Office of the United States Trade Representative (“USTR”) (78 Fed. Reg. 19566, April 1, 2013) inviting comments on the proposed negotiations for a Transatlantic Trade and Investment Partnership (“TTIP”) with the European Union (“EU”). The TTIP presents a unique and valuable opportunity for the U.S. and EU to reduce barriers to trade, explore opportunities to achieve greater regulatory harmonization and enhance cooperation.

Description of Atlas.

Atlas Air Worldwide Holdings, Inc. is the parent company of Atlas Air, Inc., a U.S. certificated air carrier, and the majority owner and controlling shareholder of Polar Air Cargo Worldwide, Inc., a U.S. certificated air carrier (Atlas Air and Polar, collectively “Atlas”). Atlas is the third largest U.S. international cargo airline and the leading global provider of outsourced aircraft operating services.

Atlas also is the world's largest operator of Boeing 747 freighter aircraft, and the only outsource provider that offers Boeing's new 747-8F freighter. The Boeing 747-8F offers greater payload capability, burns less fuel and is environmentally cleaner than any of its predecessors. Atlas has an all-Boeing fleet of 51 aircraft, including 9 modern Boeing 747-8Fs, 24 Boeing 747-400 freighters, 7 Boeing 767 freighters, 4 Boeing 747 passenger aircraft, and 3 Boeing 767 passenger aircraft.

Atlas has a number of operating lines, but the most significant, accounting for over 75% of total block hours flown, is wet leasing (also known as "ACMI"¹) to other airlines and freight forwarders.

Summary of Atlas' Issues.

Aviation issues have traditionally been covered by intergovernmental aviation agreements, including the 2007 air transport agreement between the United States and the Member States of the European Union. As a general rule, Atlas believes that separate intergovernmental aviation agreements, such as the U.S.-EU air transport agreement, are the appropriate forum for resolving aviation issues. However, Atlas wishes to focus attention in these comments on two aviation issues that have a direct impact on transatlantic trade and TTIP objectives. While not necessarily seeking direct resolution through the TTIP process, Atlas hopes that the USTR will identify these issues as trade barriers and obtain a commitment from its EU counterparts to address (or, in the case of the second issue, to continue to address) them.

The first is an important issue of unfairness and imbalance in relation to the treatment by the EU of **wet leasing** by U.S. airlines of U.S. aircraft to EU carriers,

¹ ACMI stands for Aircraft, Crew, Maintenance and Insurance.

compared to treatment accorded to EU air carriers by the United States. The EU has created unfair and unnecessary barriers to U.S. wet lease service providers such as Atlas, which should be eliminated as quickly as possible.

In addition, air cargo airlines face **global security** threats, including those affecting both the U.S. and the EU. Both sides could significantly improve their capacity to address such threats through harmonized, common approaches to air cargo security—including security protocols, regulations, and risk and information management. While significant progress has been made, there is more to accomplish. Atlas urges the USTR to obtain an EU commitment to address these matters promptly and effectively.

Discussion.

I. Aircraft Wet Leasing.

The USTR's Notice seeks comments on reducing “existing barriers to trade in services between the United States and the EU” and to find “opportunities for greater transatlantic regulatory compatibility...” 78 Fed. Reg. at 19567.

An important area for trade-barrier reduction and regulatory compatibility is in the provision of wet leasing (outsourcing) of aircraft between U.S. and EU air carriers. Aircraft wet leasing involves the provision of an aircraft with crew, where the wet lessor (i.e., the service provider) maintains operational control over the aircraft and the wet lessee holds out service to the public under its own call sign and markets the aircraft to consumers as if it were its own.

Wet leasing provides significant service and growth flexibility to the airline industry and for that reason has become an important, beneficial and universal component of the aviation system. It contributes to global economic growth, substantially enhances operating efficiencies and produces significant consumer benefits. It has enabled international air carriers to serve new markets effectively and efficiently and expand their capacity and global reach, without having to develop new protocols to operate a new aircraft type, hire additional employees and invest in extraordinarily expensive new aircraft and related assets.

Atlas is one of the world's leading providers of wet lease, outsourced U.S. services to foreign airline customers throughout the world. In the years since Atlas commenced service in 1993, its wet lease customers have included Air China, Air France, Air New Zealand, Alitalia, British Airways, Cargolux, China Airlines, China Eastern, China Southern, Emirates, Etihad, FedEx, KLM, Lan Cargo, Lufthansa, Qantas and UPS.

Ironically, at about the same time as the U.S. substantially liberalized the ability of foreign airlines to wet lease aircraft to U.S. airlines², the European Union adopted a highly restrictive rule that imposes significant trade barriers by limiting the ability of EU carriers to wet lease aircraft from third countries carriers, including from U.S. carriers. Under regulation EC No. 1008/2008, Article 13, dated September 24, 2008, wet leasing by carriers from third countries to EU carriers is prohibited unless the EU carrier justifies

² On February 29, 2008, the FAA issued new guidance that excluded from the regulatory prohibition against foreign carriers wet leasing aircraft to U.S. carriers, arrangements in which operational control and legal and actual possession of the aircraft at all times remain with the lessor. Virtually all modern wet lease arrangements satisfy these requirements.

the leasing on the basis of a demonstration:

- (i) of “exceptional circumstances”, in which case the lease is limited to only seven months, subject to one seven month renewal, or
- (ii) that the leasing is needed to satisfy a “seasonal capacity need which cannot be satisfied through leasing aircraft registered with the” EU, or,
- (iii) that the leasing is needed to overcome operational difficulties and “it is not possible or reasonable to lease aircraft registered” in the EU.

These restrictions are inapplicable to wet leases from EU carriers. Moreover, they serve no purpose other than to exclude non-EU service providers. The U.S. has no such restrictions. Although the U.S. Department of Transportation requires prior approval of wet leases from foreign carriers to U.S. carriers of more than 60 days duration, the basis for DOT’s public interest review is very narrow: to determine if there is adequate reciprocity between the wet lessor’s homeland and the United States. 14 CFR Part 212.

At Atlas’ request, the U.S. government has raised this issue with EU aviation negotiators without success in follow-up discussions about implementation of the U.S.-EU air transport agreement. The EU response typically has been to comment that these are internal EU matters relating to regulation of EU air carriers. While that may be true, there undeniably is a significant imbalance in treatment of wet leasing by the U.S. and the EU. EU carriers enjoy opportunities that U.S. carriers do not. As a general rule, EU carriers can freely wet lease aircraft to U.S. carriers (subject to the limited DOT review discussed above). However, the EU regulation permits U.S. carriers to wet lease aircraft to EU carriers only under very limited, “exceptional”, and short term

circumstances. These restrictions effectively foreclose the regularized outsourcing of aircraft services (an important component of Atlas' business) by U.S. carriers to EU carriers.

Atlas would rather not have to ask the U.S. to impose market-impairing tit-for-tat restrictions against EU carriers, similar to the EU's regulation. Instead, Atlas would prefer that both parties find a solution that would eliminate this trade barrier and harmonize regulatory treatment — in the spirit of TTIP — thus permitting carriers from the U.S. and EU reciprocal unrestricted opportunities to engage in wet leasing.

II. Air Cargo Security.

It is vitally important that the U.S. Government continue to work closely with the International Civil Aviation Organization (ICAO), the EU, and other jurisdictions to ensure that the global air cargo industry is working within a system of synchronized security protocols. Atlas supports a threat-based, risk management layered approach to aircraft security, including trusted shipper programs and supply chain security programs. 100% screening of cargo on all cargo aircraft is unworkable, ineffective and will not enhance security. In the absence of radical technology advancements, which currently do not exist, screening of all or even a large percentage of cargo is simply not possible, due to the immense volume of cargo and the complexity of the supply chain.

There is an air cargo security agreement between the U.S. and EU dated June 1, 2012. That agreement could be enhanced. Although the agreement recognizes the validity of each jurisdiction's program, it does not harmonize the regulations or establish harmonized definitions across the board. Atlas believes that the U.S. and EU should develop a harmonized approach to air cargo security regulations and procedures, again,

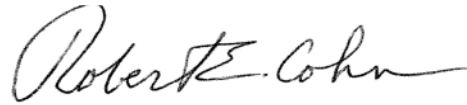
either through a separate intergovernmental agreement or through TTIP, whichever is the most appropriate forum to achieve a prompt result.

With respect to cargo information, there are currently numerous advance cargo information pilot programs underway in the EU in Belgium, France, Germany, and in the UK. The U.S. has the ACAS (Air Cargo Advance Screening) pilot program. To prevent diverging transatlantic requirements, it would serve both the U.S. and the EU, and the goals of the TTIP, to have a common approach through harmonized requirements for data, protocols in communication with carriers/forwarders, and risk criteria. The negotiation of such harmonized cargo security provisions could be conducted either in the traditional context of sector-specific bilateral aviation talks or in the context of the TTIP, which shares a common goal of harmonizing customs, regulatory, and technical barriers to trade (TBT).

III. Conclusion.

Atlas appreciates this opportunity to submit comments and urges the U.S. Government to adopt our recommendations through the most appropriate forum.

Respectfully submitted,



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