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**White Paper by the Express Delivery & Logistics Association  
Regarding Implementation of Section 405 of  
The Postal Accountability and Enhancement Act of 2006**

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This paper details the position of the Express Delivery & Logistics Association (XLA) regarding implementation of Section 405 of the Postal Accountability and Enhancement Act of 2006 (PAEA). XLA is the trade association representing the express delivery services industry; our members include large firms with global delivery networks, such as DHL, FedEx, Purolator, TNT and UPS, as well as smaller businesses with strong regional delivery networks, such as International Bonded Couriers and Midnite Express. Together, our members employ approximately 700,000 American workers. Worldwide, XLA members have operations in over 200 countries and territories; move more than 20 million packages each day; employ more than 1 million people; operate 1,200 aircraft; and earn revenues in excess of \$80 billion annually.

Section 405 of the PAEA amends 39 USC 407 to create a new subsection 407(e)(2), which reads:

"With respect to shipments of international mail that are competitive products within the meaning of section 3621 that are exported or imported by the Postal Service, the Customs Service [now the Bureau of Customs and Border Protection] and other appropriate Federal agencies shall apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies."

Implementing Section 405 requires that two major steps be taken. First, "competitive products" must be defined with respect to this provision. Second, the regulations that are currently applied by the Bureau of Customs and Border Protection (CBP) and other U.S. government agencies to international shipments by private companies that are similar to USPS' competitive products must also be applied to those competitive products.

In the following sections, XLA discusses an appropriate definition of "competitive products" and outlines the requirements imposed by CBP and other U.S. government

agencies on XLA member shipments which, under Section 405 of PAEA, should now be applicable to competitive postal products.

### **Competitive Products**

In the reply comments submitted by the U.S. Postal Service (USPS) to the Postal Regulatory Commission (PRC) on May 7, 2007, in connection with the PRC's ongoing assessment of PAEA implementation issues, USPS proposes a structure for delineating competitive and market dominant products. As outlined in the table on page 33 of the USPS statement, market dominant products would comprise single-piece letters less than 12.5 ounces, LC postcards, matter for the blind, international reply coupons, and special services (a la carte). Competitive products would comprise single piece letters equal to or greater than 12.5 ounces, EMS/express international, GXG, Air CP/Priority International, International Priority Airmail (IPA), International Surface Air Lift (ISAL), bulk letters (via air and surface modes), bulk packages (via air and surface modes), commercial direct entry (bulk letters and packages), m-bags, outbound publishers' periodicals, outbound other articles (AO), special services relating to the previous categories, and international money orders.

XLA agrees that this structure presents a reasonable classification of the product lines falling within the market dominant and competitive categories. However, we disagree with the footnote accompanying the table (USPS footnote 99), which argues that "The Postal Service does not consider that inbound international mail is subject to the same substantive or procedural requirements as outbound international mail, whether market dominant or competitive." We believe the language of the PAEA is quite clear in this regard. Section 405 of the PAEA, which is quoted in the introductory section above, explicitly references shipments of USPS competitive products that are "exported or imported" and also states that "the Customs Service and other appropriate Federal agencies shall apply the customs laws of the United States *and all other laws relating to the importation or exportation* of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies" (emphasis added). This language leaves no room for doubt: the rules and regulations applying to *imports and exports* of private company shipments of products similar to USPS' competitive products are to be applied, in a similar manner, to *imports and exports* of USPS' competitive products.

### **CBP and Other U.S. Government Requirements**

XLA members offer products that compete with virtually all the USPS products identified above as falling within the new competitive category. Thus, the requirements imposed on XLA member shipments by CBP and other U.S. government agencies must be extended to competitive postal products as required by the PAEA. This section presents an overview of those requirements.

## ***Imports***

*U.S. Customs and Border Protection (CBP):* XLA members must provide advance electronic data to CBP for all imported products, in accordance with the data elements and timelines required by CBP pursuant to the Trade Act of 2002. XLA members must provide the data via automation systems that are approved by CBP, and must comply with CBP's differing requirements for Section 1321, informal and formal entries, including collection of merchandise processing and any other relevant fees.

In addition, under Part 128 of CBP's regulations, express consignment operators must reimburse Customs for the cost of CBP personnel at express consignment facilities, and must also provide CBP with appropriate facilities and equipment to conduct its work. XLA members are held to strict adherence and are subject to penalties for noncompliance with CBP regulations.

*Food and Drug Administration (FDA):* Pursuant to the Bioterrorism Act of 2002, XLA members may register many of their facilities with the FDA and must comply with FDA regulations regarding maintenance of the registration. In addition, XLA members must provide prior notice, in the form of advance electronic notification, to FDA of shipments covered by the Act in compliance with timelines specified by FDA.

*U.S. Department of Agriculture (USDA):* Agricultural shipments sent via express operators are subject to a variety of requirements that vary depending on the nature of the product.

*Fish and Wildlife Service (FWS):* For shipments of commodities regulated by FWS, express operators must provide separate electronic notification to the agency including all data elements required by FWS. CBP may not clear the shipment until it has received notification from FWS authorizing clearance.

## ***Exports***

*Denied party screening:* Express operators must screen outbound shipments against several denied party screening lists, including those of Treasury's Office of Foreign Assets Control, Commerce's Bureau of Industry and Security, and the State Department (terrorist watch list). Express companies face hefty fines should they transport a shipment from any parties on these lists.

*Bureau of Census:* Express operators must complete a Shipper's Export Declaration (SED) for any shipment valued over \$2,500 and submit the SED to Census. In addition, express operators must provide automated data via the Automated Export System (AES) in compliance with existing regulations.

*Bureau of Industry and Security (BIS):* Express operators must comply with BIS's Export Administration Regulations (EAR) governing exports of so-called "dual use"

items. The EAR requires licenses for certain shipments and imposes significant penalties for failure to obtain the necessary licenses.

*Department of State:* Under the International Traffic in Arms Regulations (ITAR) and the Arms Export Control Act, State Department licenses are required for certain shipments on the U.S. Munitions List. Again, violators face substantial penalties.

### ***Imports and Exports***

*Transportation Security Administration (TSA):* Additionally, for both imports and exports, XLA members must comply with a wide range of TSA requirements. XLA members are subject to penalties for noncompliance and, potentially, could lose TSA certification to ship.

### **Conclusion**

As noted above, XLA members must comply with numerous requirements on imports and exports imposed by several government agencies. Failure to comply may result in significant penalties or, in certain cases, suspension of shipping rights. Under the PAEA, these requirements must be extended to postal shipments of competitive products.

XLA would welcome the opportunity to meet with the U.S. government team responsible for implementing Section 405 of the PAEA, to explain in greater detail the regulations that we must comply with and to discuss how to extend them to postal competitive products. We look forward to working with the relevant agencies to ensure implementation of this important provision.