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INTERNATIONAL POSTAL POLICY

HEARING

BEFORE THE

SUBCOMMITTEE ON THE POSTAL SERVICE

OF THE

COMMITTEE ON
GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

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INTERNATIONAL POSTAL POLICY

THURSDAY, MARCH 9, 2000

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE POSTAL SERVICE,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:40 a.m., in room 2154, Rayburn House Office Building, Hon. John M. McHugh (chairman of the subcommittee) presiding.

Present: Representatives McHugh, Fattah, Owens, Davis, and Waxman.

Staff present: Robert Taub, staff director; Heea Vazirani-Fales and Loren Sciurba, counsels; Jane Hatcherson, professional staff member; Abigail Hurowitz, clerk; Tony Haywood, minority counsel; Denise Wilson, minority professional staff member; and Earley Green, minority assistant clerk.

Mr. MCHUGH. We are already some 35 minutes behind schedule which I understand by congressional standards is not particularly bad but it bothers the ranking member and myself, so I am going to enter what I thought was a rather eloquent opening statement into the record rather than share it with you. I know you will all want to look that up. It will be available in the Congressional Record coming to a theater near you.

I would like to say that I think the topic of the hearing today is a very important one. We, in America, have had the opportunity and opportunity we have seized upon to become leaders in promoting free trade and international competition in a variety of sectors throughout our economy, most notably the telecommunications and airline industries. In spite of that leadership, we find ourselves with a postal system that certainly has not measured up to the accomplishments in other areas.

We are here today to look at the circumstances surrounding the international mail system, particularly as it relates to the U.S. Postal Service, how it serves its customers, how it serves the taxpayers of this country, how it affects its ability to compete and how it impacts those who compete against it.

I do want to say that we are fortunate to have three panels today ranging in expertise from the General Accounting Office, our dear friends who have appeared with us many times before, to the Postmaster General, the heads of two of the premiere corporations not just in the United States but in the world, Federal Express with Mr. Fred Smith, and also a number of panelists from various departments of the U.S. Government—the Department of State, the Department of Commerce and the International Trade Association,

the Office of the Trade Representative, the Customs Service, Treasury, the Justice Department, their Antitrust Division, and the Postal Rate Commission.

I want to pay particular thanks to our international panelists who have joined us today—Mr. Uwe Doerken of the Deutsche Post, as well as Ms. Simone Bos of the TNT Postal Group—who have traveled a great distance at their own expense, I might add, to come and share with us what those of us who have had the opportunity to examine the circumstances surrounding those two postal operations view as a very exciting, very innovative approach to the postal system. We particularly want to thank them for their presence.

We look forward to the testimony of everyone. We appreciate your being here.

As you heard, we have just been called for a vote but before we run off and do that and then try to come back as quickly as we can, it is my honor to yield to the ranking member of the subcommittee, the gentleman from Pennsylvania, Mr. Fattah.

Mr. FATTAH. Thank you, Mr. Chairman.

I would also like to welcome our guests here today.

I will enter my formal statement for the record.

[The prepared statement of Hon. Chaka Fattah follows:]

STATEMENT OF THE HONORABLE CHAKA FATTAH

SUBCOMMITTEE ON THE POSTAL SERVICE

HEARING ON INTERNATIONAL POSTAL POLICY

THURSDAY, MARCH 9, 2000

Mr. Chairman,

I am pleased to join you at today's hearing on international postal policy. That last time we addressed international postal issues was in 1996, at a joint hearing between this subcommittee and the Senate Subcommittee on the Post Office and Civil Service. The topic for that hearing was "A Look at Other Countries' Postal Reform Efforts." The Government Accounting Office (GAO) looked at the postal reform efforts of eight foreign countries: Australia, Canada, France, Germany, the Netherlands, New Zealand, Sweden, and the United Kingdom. I am pleased to note that two of the countries looked at by the GAO in the 1996 report, Germany and the Netherlands, not only have embarked on a most impressive course of reform of their postal operations, they have been invited to testify today to present their views on the development of the European international postal policy.

In October of 1998, language was included in the Omnibus Emergency Supplemental Appropriations Act, which transferred primary responsibility for U.S. policy concerning the Universal Postal Union (UPU) from the postal service to the Department of State. The State Department began immediate steps to fulfill their new role and prepare for the August 1999 UPU Congress held in Beijing, China. This was no small job!

I would like to take this opportunity to personally thank Ambassador E. Michael Southwick and his staff for their enormous effort and success in meeting the new UPU obligation. You have held open meetings, coordinated with other government agencies and worked to facilitate calls for reform. You have done this and more in a very, very short time frame. You may not be all things to all people, but I think you have done well and I look forward to working with you to provide the tools you feel you need to carry out State's UPU role.

Mr. Chairman, I am pleased to welcome the very distinguished list of witnesses present for our hearing. We have much to review and learn as it applies to international postal matters. There appears to be no shortage of issues to be addressed today and I for one, welcome the opportunity to explore the issues and perhaps shed light on the many factors involved in international postal reform - from customs treatment of postal service household items, to treatment of U.S. postal carriers in foreign companies, and the extent to which federal agencies will need to address and respond to postal matters, both domestically and internationally.

Thank you.

Mr. FATTAH. I think it is noteworthy that we have not looked at this whole question of international postal policy since 1996 when there was a joint hearing with our Senate colleagues, the Senate Committee on Postal Reform and Civil Service. At that time, we were looking at some of the reform efforts in a number of countries. I am pleased to see that both Germany and the Netherlands are represented on today's panel to talk about their extensive reform efforts. I would like to thank the Ambassador for his efforts and thank you, Mr. Chairman, for convening this hearing.

I look forward to eliciting from our witnesses a greater understanding of the challenges and issues confronting us.

Thank you.

Mr. MCHUGH. I thank the gentleman both for his leadership and for his participation here today.

Before we adjourn briefly for the vote, I would be happy to yield to any of the other Members who may wish to make a comment.

[No response.]

Mr. MCHUGH. With that, we will run over or walk over and vote and we will come back. When we do, we will administer the oath which is required of all witnesses, so those who are about to appear may want to search their conscience before we get back.

With that, we will see you in a few moments.

[Recess.]

Mr. MCHUGH. With the kind permission of the minority given the hour already, we are going to proceed even though some of the Members are still voting. I think it is important to get this underway.

With that, I would call our first panel comprised of Mr. Bernard Ungar, Director, Government Business Operations Issues, accompanied by Ms. Teresa Anderson, both representing the U.S. General Accounting Office.

As I said in my opening comments, you are no strangers to this subcommittee, to this room. We welcome you once again. As in the past, we appreciate your efforts and that of your offices in assisting the subcommittee in the work we have undertaken. Today's topic is international mail. You have done what I view to be another fine job in surveying the lay of that land as it surrounds the U.S. Postal Service.

With that, as is our custom, all of your testimony will be submitted for the record in its entirety, as will all of the witnesses' testimony, and as we have done in the past, I would turn over the microphone to you, Mr. Ungar, and encourage you to proceed in whatever way you feel is appropriate. Welcome, and thank you for being here.

STATEMENT OF BERNARD L. UNGAR, DIRECTOR, GOVERNMENT BUSINESS OPERATIONS ISSUES, GAO, ACCOMPANIED BY TERESA ANDERSON, ASSISTANT DIRECTOR

Mr. UNGAR. Thank you, Mr. Chairman. We are pleased to be here.

As requested, I will summarize our statement and then be available for questions.

As you know, in October 1998, legislation was enacted that shifted the primary responsibility for U.S. policy development, coordina-

tion and oversight from the U.S. Postal Service to the State Department. This was done basically to ensure that the policy development process was fair, open, and even-handed and that neither the Postal Service nor private providers or others got undue or unreasonable preference through policy that the UPU developed and implemented.

In addition, the law that shifted this responsibility to the State Department also required consultation by both the State Department and the Postal Service with various stakeholders involved in UPU issues, including private providers, users of international postal services, and the general public. This was not previously a requirement by legislation. You asked that we look at how well the State Department implemented its responsibilities under the statute.

Despite the short time period that the State Department had between enactment of the legislation and the UPU congress which was in August and September 1999, which wasn't a very long time, we reported that the State Department did a reasonably good job. It made a lot of progress despite the short timeframe.

It provided stakeholders with an opportunity to input, including the private sector participants. It had open meetings that were available to the public. It consulted with organizations; it provided materials on the UPU that were not heretofore available to all folks who were interested.

We talked to a number of the stakeholders, both public and private organizations who were involved in this process, who observed this process, and basically, they concurred that the State Department was fair and even-handed, and certainly attempted to do what it could to entertain views, and comments and to get input from the various parties.

In addition, at the UPU congress that took place in the summer, the State Department certainly signaled a new direction in policy for the United States with respect to the UPU. It included private sector participants in the U.S. delegation which had not been done before. It was instrumental in getting the UPU to establish a couple of new groups, one to consider reform issues with the UPU, another which was an advisory group set up that included members of the private sector who could provide advice to the UPU. They may not seem like significant issues, but considering the pervious 125 or so years history of the UPU, this was a big event.

There are also some policy issues, such as the terminal dues issue, that the State Department, working with the Postal Service and others, was able to get on the table and began to work toward changes in those particular policies. So there were some substantive as well as process-oriented changes that were taking place.

In spite of the progress or in addition to the progress that has been made in that short period of time, we also identified two broad areas where we thought the State Department could improve its operation.

One was in terms of the process used. I am sure largely because of the short time period, the State Department didn't really have a structured, well documented, laid out process to get input. As a result, or at least partially as a result of that, there was short notice in advance of some meetings so that the participants didn't

have a long time period in some cases to prepare, or be ready and available for the meetings.

In some cases, materials were not distributed before the meetings. A couple of meetings were held right before the deadline at which the State Department or the United States was to submit proposals to the UPU. In some cases there weren't any minutes of the meetings that were held, so there was no real public record of the views presented or the rationale for any decisions. Obviously, the short time State had for the whole process of policy development was a factor there.

The second concern that we identified had to do with the need for the State Department to provide for continuity of expert staff. The UPU deals with very highly complex issues; these are not things people can learn overnight. During the period between October or December 1998 when the State Department really got going and the summer, it experienced a great deal of turnover in staff for a variety of reasons.

We and the stakeholders felt it was very important for the State Department to provide in the future for a sufficient number of staff, whatever that number might be, and to provide for continuity and expertise.

We made two recommendations to the State Department. One was that it develop and document a process that would be used in the future to obtain input and develop policy. The second was that it provide some assurance that there would be sufficient staff with the necessary expertise and knowledge to carry out its responsibilities.

The State Department responded to these. It was receptive in its written comments to our recommendations and in discussions we have had with the Ambassador and his staff. The dilemma that we saw, however, unfortunately was that although the State Department seemed receptive, it wasn't very explicit in specifying exactly what steps it would take in terms of laying out a structured process. What would this process be? How much notice would there be before meetings? Would materials be distributed in advance? What would be distributed or made available after the meetings? Not that the State Department isn't doing these things, but it was not clear what the process would be.

Second, it really didn't spell out in specific terms what it was going to do about the staffing issue. We are not certain how many staff are needed. One of the options we pointed out was perhaps a needs assessment—what kind of knowledge and experience were needed, and what are the various ways to attain them.

I think we would end by urging the subcommittee to discuss this issue with the State Department and urge the State Department to be more specific in writing on what steps it is going to take.

With that, I will conclude our summary and be available for questions. I will take the easy ones and Ms. Anderson will take the hard ones.

[The prepared statement of Mr. Ungar follows:]

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on the Postal Service
House Committee on Government Reform

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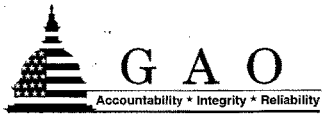
POSTAL ISSUES

The Department of State's International Postal Responsibilities

Statement of Bernard L. Ungar
Director, Government Business Operations Issues
General Government Division



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Summary

The Department of State's International Postal Responsibilities

The Department of State assumed primary responsibility for U.S. policy on Universal Postal Union (UPU) matters in October 1998 from the U.S. Postal Service. State has made progress in implementing its UPU responsibilities by taking steps to consult with the Postal Service, other federal agencies, postal users, private providers of international postal services, and the general public. In addition, State clearly signaled changes in U.S. policy on issues related to UPU reform. This progress was notable because State assumed its expanded responsibilities for the UPU less than a year before the UPU Congress met in August and September 1999 to update binding agreements governing international postal service.

While GAO recognizes the progress made by State in its first year of responsibility for UPU matters, GAO also identified opportunities for the Department to improve its process for developing U.S. policy on these matters and the institutional continuity and expertise of its staff working in this area. GAO identified some shortcomings relating to the timing and notification for public meetings, and the distribution of documents discussed at these meetings, that may have limited the opportunities for stakeholders to provide meaningful input. GAO also found that State's policy development process on UPU matters resulted in little public record of agency or stakeholder positions, which may make it difficult for Congress and others to fully understand the basis for U.S. policy positions. Further, staff turnover made it more difficult for State to develop the institutional continuity and expertise to fulfill its leadership responsibilities. GAO made recommendations to State that addressed these areas.

GAO recommended that State establish a more structured, timely, and open process for developing U.S. policy on UPU matters, with the objective of developing a process that would be conducive to meaningful stakeholder input and the development of a readily accessible public record. GAO also recommended that State provide sufficient staff continuity and expertise to handle its UPU responsibilities. However, it was not clear from State's response what specific actions State has taken or plans to take to address the recommendations.

Statement

The Department of State's International Postal Responsibilities

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to participate in the Subcommittee's hearing on how the Department of State has implemented its responsibilities for U.S. policy regarding U.S. participation in the Universal Postal Union (UPU), a specialized agency of the United Nations that governs international postal service. In my testimony, I will summarize the main findings and the recommendations of our recent report on State's performance since it assumed primary responsibility in October 1998 for U.S. policy on UPU matters from the U.S. Postal Service.[1] Overall, we highlight State's progress in implementing its responsibilities and also identify opportunities for improvement.

Department of State Progress in Implementing UPU Responsibilities

The Department of State made progress in implementing its UPU responsibilities by taking steps to consult with the Postal Service, other federal agencies, postal users, private providers of international postal services, and the general public. In addition, State clearly signaled changes in U.S. policy on issues related to UPU reform. This progress was notable because State assumed its expanded responsibilities for the UPU less than a year before the UPU Congress met in August and September 1999 to update binding agreements governing international postal service.

The Department of State Consulted and Coordinated With Interested Parties

Congress intended that State would develop U.S. policy toward the UPU in a manner that was fair, evenhanded, and open to all interested parties. State took steps to consult with interested parties and to coordinate with the Postal Service, other federal agencies, and private-sector stakeholders. State also made UPU-related documents publicly available. These actions represented progress in providing stakeholders and the public with relevant information and giving them an opportunity to offer input.

Specifically, State held public meetings and interagency meetings to discuss U.S. policy on UPU issues. State also held meetings with individual stakeholders, such as coordination meetings with the Postal Service and other stakeholders in the U.S. delegation to the UPU Congress. Stakeholders said that State was receptive to input and evenhanded in its consideration of views. In addition, State sponsored a 1-day conference to discuss the future of the UPU and of the international mail system.

The Department of State made U.S. proposals to the UPU Congress available to the general public for the first time by posting them on a new

[1] Postal Issues: The Department of State's Implementation of Its International Postal Responsibilities (GAO/GGD-00-40, Jan. 31, 2000).

Department of State Internet home page devoted to international postal policy and the UPU. State also gave interested parties access to UPU documents on the UPU's Internet site for the first time. According to a State official, these actions addressed concerns about access to UPU-related documents that had been expressed before State was the lead agency responsible for U.S. policy on UPU matters.

Further, State included representatives of two private-sector organizations—the Air Courier Conference of America and the Direct Marketing Association—in the U.S. delegation to the 1999 UPU Congress. This was reportedly the first time that representatives of private-sector organizations had been included in the U.S. delegation to a UPU Congress.

The Department of State Clearly Signaled a New UPU Policy

The Department of State clearly signaled a new direction for U.S. policy on UPU reform issues. In particular, State submitted U.S. proposals to the UPU Congress related to UPU reform. State officials said that the United States raised issues concerning UPU reform that gave impetus to the UPU's decision to establish a process to consider reform issues. Representatives of other organizations in the U.S. delegation to the UPU Congress agreed that State's positions and emphasis on UPU reform represented a new direction for U.S. policy.

U.S. Proposals to the 1999 UPU Congress

The United States made proposals to the UPU Congress that signaled changes in U.S. policies and were intended to promote UPU reform, open the UPU policy formulation process to be more inclusive of interested parties, and change some UPU rules governing international postal operations. A key U.S. proposal called for the UPU to convene an Extraordinary Congress in 2001 to consider reforms to the UPU's mission, role, and policies. The 1999 UPU Congress did not approve this proposal. However, the UPU Congress established a High Level Group to consider the UPU's future mission, structure, constituency, financing, and decisionmaking. The United States is a member of the High Level Group.

At its first meeting in December 1999, the High Level Group established a plan to review proposals for UPU reform, with the objective of reaching conclusions by October 2001. After the High Level Group completes its work, the UPU may convene a special meeting in 2002 to consider specific proposals for UPU reform.

State Can Improve Its UPU-Related Process and Staffing

While we recognize the progress made by the Department of State in its first year of responsibilities for UPU matters, we also identified opportunities for the Department to improve its process for developing U.S. policy on these matters and the institutional continuity and expertise

of its staff working in this area. We identified some shortcomings relating to the timing and notification for public meetings, and the distribution of documents discussed at these meetings, that may have limited the opportunities for stakeholders to provide meaningful input. We also found that State's policy development process on UPU matters resulted in little public record of agency or stakeholder positions, which may make it difficult for Congress and others to fully understand the basis for U.S. policy positions. Further, staff turnover made it more difficult for State to develop the institutional continuity and expertise needed to fulfill its leadership responsibilities. We made recommendations to State that addressed these areas. However, it was not clear to us from State's comments on our draft report what specific actions State has taken or plans to take to address our recommendations.

Limitations Relating to Public Meetings

We reported that stakeholders may have had limited opportunities to provide meaningful input on UPU matters for several reasons. State gave only 9 to 17 days of advance notice of the public meetings and conducted limited outreach shortly in advance of some meetings to notify interested parties. State did not distribute some materials that were discussed at the public meetings either in advance of the meetings or after the meetings. Further, the first two public meetings were timed to occur shortly before UPU deadlines for submitting proposals for consideration by the UPU Congress.

In addition, State distributed two important proposals at the public meetings after they had been submitted to the UPU. For example, the main U.S. proposal relating to UPU reform was not made publicly available before it was submitted to the UPU. This U.S. proposal called for the UPU to convene an Extraordinary Congress in 2001 to consider reforms relating to its mission, role, and policies.

We reported that the Department of State had several options available to develop a more structured and open process for obtaining stakeholder input. We found that State could take steps to ensure better and more advance notification of public meetings and more advance distribution of materials prior to these meetings. State has acknowledged that it did not give sufficient advance notice of public meetings on UPU-related matters and that minutes should have been kept at those meetings to build a concrete record.

Specifically, we reported that State could schedule public meetings further in advance of key UPU deadlines, give better and more advance notification of public meetings, and expand advance distribution of

materials relating to these meetings. We also reported that State could use the Federal Advisory Committee Act (FACA) process to form an advisory committee on UPU-related matters. Such a committee would be governed by requirements intended to ensure that such committees are balanced in terms of the points of view represented, that committee proceedings are documented and as open as possible to the public, and that Congress is kept informed of committee activities.

In its comments on our draft report, State said it could achieve the intended results of FACA without establishing a formal advisory committee through open meetings, adequate public notice, and preservation of meeting minutes. State said that it intends to publish more UPU-related material on the Department's Internet site and to periodically notify stakeholders of important documents that appear on UPU's Internet site.

At the most recent public meeting on February 1, 2000, a State official said that more advance notice of public meetings on UPU matters will be given in the Federal Register and through outreach to notify stakeholders. State gave about 1 month of advance notification for this meeting, which was advertised in the Federal Register, through outreach to selected stakeholders, and on the Internet. State also made some of the materials discussed at the public meeting available in advance on its Internet site.

Limitations Relating to the Development of a Public Record

The Department of State developed policy on UPU matters in a way that resulted in little public record of agency or stakeholder positions in this area. For example, State did not create minutes of the public meetings on UPU issues or solicit written comments on policy proposals that would have been publicly available. The limited public record of agency or stakeholder positions on U.S. policy concerning UPU issues may make it difficult for Congress and other interested parties to fully understand the basis for U.S. policy positions.

We reported that a more complete and readily accessible public record would inform interested parties of matters under consideration as U.S. policy is developed. We said that a more readily accessible public record of stakeholder positions on U.S. policy relating to the UPU could also help interested parties understand the basis for U.S. policy, as well as facilitating input as the Department of State continues to develop policies and positions on UPU matters.

We reported that State had several options available to develop a more complete and accessible public record on UPU policy. These included

using a notice and comment process to provide a structured process for obtaining public input and creating an FACA advisory committee in this area. We also reported that State could make documents available as part of the public record, such as minutes of public meetings, a transcript of the proceedings, and other input received on international postal policy. We are encouraged that a State official recently said that State plans to start maintaining minutes of its public meetings on UPU matters.

Although the Department of State started an Internet home page in April 1999 called "International Postal Policy: Universal Postal Union,"[2] this Internet site did not realize its full potential, partly because it was updated only twice before the 1999 UPU Congress. However, State has recently updated and enhanced its UPU-related web site, which now includes summaries of recent UPU meetings and other UPU-related documents. State will continue to post on its Internet site some UPU documents on which policy is based, according to a State official.

ecommendation Relating to State's Policy Development Process

We recommended that State establish a more structured, timely, and open process for developing U.S. policy on UPU matters, with the objective of developing a process that would be conducive to meaningful stakeholder input and the development of a readily accessible public record. While State has made some recent improvements to its process, it is not clear to us what process State intends to use to formulate and coordinate U.S. policy on UPU matters. For example, State did not address in its comments on our draft report whether it would distribute materials in advance of public meetings, make key U.S. proposals available before they are submitted to the UPU, and schedule meetings in a manner conducive to meaningful stakeholder input. In addition, State did not make clear what UPU-related documents will be made publicly available so that Congress and other interested parties can understand the basis for U.S. policy positions. For these reasons, it is not clear to us whether State will fully implement our recommendation concerning its process for developing policy on UPU matters.

Limitations That Relate to State's Institutional Continuity and Expertise

Turnover among Department of State staff involved in UPU issues occurred repeatedly in the period leading up to the UPU Congress. This turnover made it more difficult for State to develop the institutional continuity and expertise needed to fulfill its leadership responsibilities. Stakeholders told us that staff turnover affected State's ability to fully understand the implications associated with various UPU policy issues.

[2] See http://www.state.gov/www/issues/io_upu_hp.html.

Turnover also reportedly affected State's ability to fully understand how to build support for U.S. policies in the UPU.

Turnover is a continuing challenge for the Department because while the UPU operates on a 5-year cycle, State's Foreign Service Officers usually rotate to new responsibilities every 2 or 3 years. State told us last fall that 9 of the 11 officers who had been involved with UPU matters were career Foreign Service Officers subject to normal rotational assignments within the Foreign Service system.

Key stakeholders we interviewed agreed that continuity and expertise are important to understanding complex UPU issues and to working effectively with UPU stakeholders. Specifically, they said that

- policy development for the UPU Congress typically takes place over a multiyear period, and that many UPU issues are complex and long-standing;
- staff with sufficient continuity and expertise can understand and synthesize conflicting stakeholder input, handle day-to-day oversight tasks, and develop an understanding of how to deal with developed and developing countries in the UPU; and
- advocacy of U.S. policy in the UPU is aided by development of personal relationships with representatives of other countries—relationships that develop over an extended period through interaction at UPU meetings.

This is a pivotal time for the UPU, which is turning to the issue of whether to fundamentally reform its mission, role, and policies. UPU issues have implications for the Postal Service and the international postal and delivery services sector, which is a critical part of the world's and this nation's infrastructure for international communications and trade. This sector is expected to become even more vital over the next decade with the continued growth of trade and electronic commerce and the globalization of postal and delivery service providers. In this context, it will be critical for State to enhance its institutional continuity and expertise for developing policy on UPU matters.

We reported that the Department of State has several options available to develop institutional continuity and expertise on UPU matters. These include assessing its staffing resources, assigning career staff to work on UPU matters, and assigning a high-level staff member to this area for an extended period.

Recommendation Relating to State's Continuity and Expertise

We recommended that State provide sufficient staff continuity and expertise to handle its UPU responsibilities. State officials have told us that they recognize that, if State intends to play a leadership role in the UPU, it will need to provide sufficient institutional continuity and expertise on UPU matters. However, based on State's comments on our draft report, it is not clear how State plans to develop the institutional continuity and expertise to handle its UPU-related responsibilities. In its comments on our draft report, State acknowledged that staff rotation will automatically generate a certain lack of continuity in the handling of UPU matters, but that its career Foreign Service Officers are accustomed to short lead times in developing new expertise. State also said that at least one career staff member not subject to frequent rotation will be involved in UPU activities.

However, State's comments did not indicate whether the Department has conducted or plans to conduct a needs assessment to determine the number and type of staff it will need in the UPU area. Nor did State indicate how it plans to reduce the frequency of staff turnover given the turnover that occurred within the first year. As a result, we do not know whether State will provide sufficient institutional continuity and expertise for State to play a leadership role in handling complex UPU issues and dealing with domestic and international stakeholders.

Mr. Chairman, that concludes my statement. I would be pleased to respond to any questions you or the Members of the Subcommittee may have.

Contact and Acknowledgments

For further information regarding this testimony, please contact Bernard L. Ungar at (202) 512-8387. Individuals making key contributions to this testimony included Teresa Anderson and Kenneth John.

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Mr. MCHUGH. I am not sure which mine will be, probably to Ms. Anderson.

Having read your report, I think it is fair to say that by and large your findings were more positive than less. I certainly got the impression, and you have restated it here today, that particularly given the timeframe involved, which I couldn't agree with more, being as short as it was that they have done a pretty credible job in taking over an issue that was certainly not familiar to them.

It is probably worth noting that this is a job that the State Department I should say was lobbying for. In fact, you could make the argument they were lobbying against it. I understand that. So if you look at all those circumstances, you really can't criticize them too much.

I think the challenge for certainly the subcommittee, and for the industry as well, is where were shortfalls a result of that understandable lack of expertise, that unavoidable short timeframe and where are they more systemic and likely to endure. Would you agree with that? That is an easy one.

Mr. UNGAR. Yes.

Mr. MCHUGH. What I get from your testimony, the written one and what you have said here today, is this whole thing is focused on three or four areas that need specificity rather than at this point at least needing some sort of definitive, hardhanded legislative action. You don't see anything right now, based on the information you received from your study and the responses, that would require any five alarm fires. Is that a fair statement and is that an easy question?

Mr. UNGAR. That is an easy question—I think it is an easy question. I think it is a fair statement. I think the important area that might involve legislation at some point would be what process the State Department is going to lay out. In our report, we identified some options, one of which was the Federal Advisory Committee Act.

Mr. MCHUGH. That was going to be my next question. Apparently that is easy because you knew it was coming, so keep going.

Mr. UNGAR. OK. That legislation and that program spawned a very specific set of procedures that basically are aimed at ensuring the public decisionmaking is open and fair and people who have stakes have a chance to comment. It specifies a minimum amount of time that should be provided as advance notice for public meetings, that minutes should be taken and there is a report that has to go to the Congress from the President as a result of that on all advisory committee efforts that GSA puts together.

It does require some rigor and it does require some work to adhere to the process. There may be some alternatives that the State Department could come up with that basically meet that same intent. From our perspective, that would be fine too. I think the important thing is to have a structured process and to make sure that people who want to have input and need to have input have a fair opportunity to do that and that the people who are stakeholders, the public, and the Congress have an opportunity to see what the basis is for whatever policies are developed by the State Department in terms of what the various views are and how the State Department reconciled them.

I think any formal process that the State Department could come up with would certainly be helpful. I suspect it will, but if it doesn't come up with a structured process that is documented, and open and clear to everybody, then maybe the subcommittee may want to pursue a legislative route.

Mr. MCHUGH. I thank you for that. So your opinion is the Federal Advisory Committee Act is not necessarily the only way and that something other than that formalized process wouldn't necessarily be totally abhorrent?

Mr. UNGAR. Correct. We haven't really looked at it.

Mr. MCHUGH. I understand but in theory because that is what we have here.

Let me ask one more question. You mentioned the advisory role of some of the private sector individuals leading up to and into Beijing. I was not sure either from what you said this morning or from your written testimony, you viewed that as a good step, the first time in 130 years that anybody had been allowed to act in that capacity. Do you think that is as far as it should go or should that evolve into a more formal role?

I know, for example, that advisory role precluded those people from being official observers at all of the meetings and all of the conferences in Beijing. Do you have an opinion on that?

Mr. UNGAR. Half of your question was easy and I will take it. The other half, I will have Teresa answer.

One thing, just to clarify. In the past, I don't think the private sector was totally excluded from any participation. When the Postal Service did have that responsibility, it did have information sharing with the private sector. I don't think it was very structured. It seemed to be quite ad hoc. In fact, we issued a report to you comparing the Postal Service's process with respect to the UPU in comparison to how the telecommunications area was handled, which was quite different.

On that score, I think there was some opportunity but it wasn't very structured and it wasn't very formalized. I believe the private sector probably didn't have as much opportunity as today's situation in the world probably would suggest.

The second part, I will ask Ms. Anderson to address.

Ms. ANDERSON. I think the UPU is struggling with the issue of exactly how should the private sector be involved in their activities. I think that the U.S. delegation, by having private sector representatives on the delegation, pushed this issue to the forefront at the Beijing Congress. It is one that they are continuing to struggle with.

They have set up an advisory group to further discuss this, but indeed, I think that is not a settled question and is one that both here in the United States and in the UPU, they are going to need to continue to push forward.

Mr. MCHUGH. I may come back to yet another question on ratification of the Beijing and UPU report but I am going to defer the ranking member, Mr. Fattah.

Mr. FATTAH. Thank you for your testimony. Let me see if I can ask you a couple of quick questions.

From a substantive point of view, could you determine whether or not the State Department's involvement was a net plus or a net

minus in terms of the negotiations with the UPU? Did the lack of experience in any way create a deficit position for our negotiations with other entities?

Mr. UNGAR. I will start and I will let Ms. Anderson take part of that too, Mr. Fattah.

I think on the one hand, obviously the State Department did not have a huge amount of expertise in this area. However, it was supported quite heavily by the Postal Service and other agencies that were familiar. So from that end, I don't think it was a case of the State Department being over there without any technical support and help.

I know from what we have seen on some of these complex issues, the people with the right expertise and knowledge were involved in those working groups and the individual areas where expertise was needed. So on that score, it certainly wasn't the State Department there by itself.

I would let Ms. Anderson add to that.

Ms. ANDERSON. The feedback we heard from some of these stakeholders who were part of the U.S. delegation was that certainly the U.S. delegation having a new head and having new faces as part of the delegation, did have some impact on the dynamics that took place at the UPU congress.

Some of the U.S. proposals were not accepted at the Congress. Whether they would have been is hard to say but I think certainly a lot of the relationships that are developed within the UPU have some influence on how proposals get accepted and passed.

I think certainly with more experience and the more you get to know people in that organization, the more influence you are likely to have. It would be hard to characterize just what happened at the Beijing Congress as positive or negative.

Mr. FATTAH. Thank you very much.

How large was our delegation?

Ms. ANDERSON. I think there were officially about 50 people on the delegation.

Mr. FATTAH. That included staff and technical support?

Ms. ANDERSON. There were some additional staff that were not official U.S. delegates, mostly in a support capacity.

Mr. FATTAH. Would you care to estimate the number of staff and technical support?

Ms. ANDERSON. I couldn't say offhand because we just saw the list of those who were on the official U.S. delegation which comprised both members of the State Department, the Postal Service and some of the private sector representatives.

Mr. FATTAH. As I recall, the cost of this is absorbed by the Postal Service. Mr. Ungar, how does that work? Does the State Department just name a number and the Postal Service pays?

Mr. UNGAR. Yes, there is supposed to be reimbursement. We really didn't look at that, sir. In terms of how it actually took place, we didn't follow through on it.

Ms. ANDERSON. There was an agreement and there was a figure that was agreed upon between the Postal Service and the State Department and the Postal Service, I think, did reimburse the State Department on that.

Mr. UNGAR. We didn't specifically look at that, so we can't give you specific information on that.

Mr. FATTAH. Would you happen to know what the number was?

Ms. ANDERSON. No. Off the top of my head, I don't know that.

Mr. UNGAR. I am sure probably the Postal Service folks or the State Department could probably provide you an answer there.

Mr. FATTAH. Just in terms of the earlier conversation, it is true that there is a very structured approach to setting up Federal advisory committees and through a legislative process. I guess we could cause that to happen. I am not one that believes that we need a law for every problem. I am hopeful that, especially given the fact this is the State Department's rookie season at this, that we will give them a chance to find their way through it before we legislate some restrictive approach to how it is they might have to conduct their affairs.

Nonetheless, I want to thank you for your insights.

Mr. MCHUGH. Thank the gentleman.

I am not sure you will be prepared to respond to these. Maybe you can ponder them and get back to us.

In his testimony, we will hear Mr. Fred Smith of Federal Express suggest that the United States not adopt the UPU convention, that it behave as many other nations do and just follow its conventions but don't lend to it any validity through ratification.

I would wonder if you have an opinion about that, but are you aware of the background of that—I don't want to say claim because I am not questioning the veracity of what he says but the history of that. Is that a normal practice for other nations, not to ratify it, and if so, has there been any effect, good or bad, from that?

Mr. UNGAR. I will let you take that one.

Ms. ANDERSON. We haven't looked at the legal issues that would be associated with that, so I am not sure exactly, under international law, what the ramifications of that would be. We do understand that issue has come up and it will be looked at by the interagency group. They still have not received the actual package for ratification as I understand it.

As far as whether all the countries have signed on and actually ratified the agreements in the past, again, I have heard similar anecdotes that you have and I don't know how many have not. Again, what the ramifications of that would be from a legal standpoint would need to be clarified.

Mr. MCHUGH. Second and probably last, there has been a lot of discussion, some of it contentious, about what particularly the private sector views as the continued formal government role of the USPS in this whole system will be. They would argue that the intent of the 1998 legislation was to take sole authority out of the U.S. Postal Service for being the representative to the UPU because it is, after all, the Postal Service that is the main actor in the results of that, and yet under the new system with the Department of State, it appears the Postal Service is still given a very formal role which provides access and some have charged, even veto authority over whatever the Department of State had considered bringing to Beijing and the UPU.

Did you see any evidence that the Postal Service had not just a formal role, but veto power? Did the Department of State put for-

ward any kinds of recommendations at Beijing that came from anywhere other than the Postal Service that you are aware of?

Ms. ANDERSON. I am not aware of anything of that nature.

Mr. MCHUGH. You saw no evidence of a Postal Service veto authority for lack of a better phrase?

Ms. ANDERSON. No, because the State Department actually put the proposals together and sent them over, so I think State would have the ultimate say in what they were sending.

Mr. UNGAR. I guess from a practical standpoint, Mr. Chairman, obviously the Postal Service had the market and the corner on the knowledge and expertise that would be required to address some of these issues at least in this round. So I think the State Department would be somewhat dependent upon the Postal Service. I don't know about the veto issue. That is one of the reasons we are focusing on making sure the State Department does have a sufficient amount of knowledgeable and expert folks who can weigh the Postal Service's views along with the other stakeholders and make independent judgments on what makes the best sense for the United States.

Mr. MCHUGH. So if it did happen, it shouldn't happen in the future, certainly to an extreme?

Mr. UNGAR. It would not appear that it should be based on the legislation.

Mr. MCHUGH. Thank you.

Mr. FATTAH. I would just say, because I think this is an important issue, that it is obvious given the fact that this is the State Department's first role of this kind since well before me or the chairman were alive, that it would have to rely on someone who had some knowledge or it would misrepresent the interests of the United States in these international negotiations.

I think I have heard you testify that not only the Postal Service but the private sector players and stakeholders were formally involved on the team and participated. So it appears, from everything you said in terms of a factual rendition of the record, that the State Department tried to carry out the intent of the legislation.

It is also clear to me that the U.S. Postal Service, as a single entity among a family of postal interests, paid for whatever services were taking place, which is interesting to me, but nonetheless, thank you for your testimony.

Mr. MCHUGH. I thank the gentleman.

I thank you both for being here.

[Followup questions and responses follow:]

United States General Accounting Office
Washington, DC 20548

General Government Division

May 3, 2000

The Honorable John M. McHugh
Chairman, Subcommittee on the
Postal Service
Committee on Government Reform
House of Representatives

Dear Mr. Chairman:

As you requested in your April 3, 2000, letter, enclosed are our responses to various questions that you and Representative Fattah asked following our testimony at the Subcommittee's March 9, 2000, hearing on international postal policy.

If you need further information or have additional questions about the responses, please call me on (202) 512-8387 or my Assistant Director, Teresa Anderson, on (202) 512-7658.

Sincerely yours,

Bernard L. Ungar
Director, Government Business
Operations Issues

Enclosure

Enclosure

GAO Responses to Questions After the Hearing on International Postal Policy Held on March 9, 2000

Questions for GAO From Chairman John M. McHugh

Question 1. The Department of State was able to make considerable progress in implementing its Universal Postal Union (UPU) responsibilities in a very short period of time. You have presented a number of opportunities for improvement. They range from better timing and notification of public meetings, to better public records of agency and stakeholder positions, to less staff turnover and more staff expertise. How quickly in your estimation should it take State to implement your "opportunities for improvement"?

GAO response: The State Department has already made a number of improvements to its process for implementing its UPU-related responsibilities. For example, it improved the timing and notification for recent public meetings, as well as making better use of its Internet site to provide UPU-related information, such as providing minutes of public meetings and summaries of UPU meetings. These improvements have increased the opportunities for meaningful stakeholder input. In addition, since the 1999 UPU Congress, State has retained experienced staff to handle its responsibilities in this area.

Although State has made substantial progress in improving its process, we believe that one additional improvement that State needs to make is to specify the process that it intends to use to implement its UPU-related responsibilities. We understand that State plans to do so in a forthcoming written statement that would be posted to its Internet site.

Question 2. Ambassador Southwick, in his testimony, addresses the issue of staff turnover. He praises the rotational personnel system at State and sees this as a positive factor. He states that "... rotations also bring in fresh ideas and new perspectives." How do you view the rotational personnel system at State? Is it a hindrance in State's role in representing U.S. interests in the UPU? If so, why and to what extent?

GAO response: As we stated in our January 2000 report entitled Postal Issues: The Department of State's Implementation of Its International Postal Responsibilities (GAO/GGD-00-40), providing sufficient institutional continuity and expertise will be essential if State intends to play a leadership role in handling complex UPU issues and dealing with domestic and international stakeholders. Although we recognize the benefit of staff rotations, continuity and expertise would be helpful in developing U.S. policies concerning complex and long-standing UPU issues, and in building support for those policies among diverse stakeholders. Continuity and expertise will be particularly important in the 1999-2004 UPU cycle, where the UPU will continue to discuss (1) whether to make fundamental reforms to its mission, role, and policies; (2) the structure of payments that postal administrations make to each other for the delivery of inbound international mail; and (3) the degree to which the UPU will allow interested parties to observe its deliberations and participate in discussions of UPU matters. Although we have not assessed State's rotational system, Foreign Service Officers generally rotate every 2 to 3 years, whereas the UPU operates on a 5-year cycle. To ensure the necessary continuity and expertise in this area, State has provided

an experienced career-level staff person in addition to a Foreign Service Officer. We believe that having a career-level staff member will continue to be a necessary component of State's staffing in this area.

Question 3. What additional steps, if any, should Congress take to assist State with its U.S./UPU role? Is State in need of greater funds to carry out its mission? Should the Postal Service be allocating funds to State to carry out the UPU activities for the United States?

GAO response: Based on our discussions with Department of State and Postal Service officials, it appears that current resources are sufficient for State to handle its UPU-related responsibilities at the present time. Department of State officials recently told us that they have sufficient resources in this area given their current statutory responsibilities. Officials of the Postal Service—which reimburses State for some of its UPU-related expenses and support staff—concurred that State currently has sufficient staffing in this area. However, State officials also told us that State would need additional staffing resources if its statutory responsibilities were increased.

Question 4. On page 5 of your testimony, you reported that, "State could use the Federal Advisory Committee Act (FACA) to form an advisory committee on UPU-related matters." State said that it could achieve the intended results of FACA without establishing a formal advisory committee. What is your reaction to State's comment on this matter? Shouldn't State be given time to achieve the intended results of FACA? If not, why not?

GAO response: The Department of State has indicated that it can meet the intended results of FACA without forming a formal advisory committee. However, as a State official has recognized, it would need, at a minimum, to publish a written statement specifying the process it intends to use to implement its UPU-related responsibilities. In our testimony, we noted that it was not clear to us what process State intends to use to formulate and coordinate U.S. policy on UPU matters. Specifically, we said that State had not addressed in its comments on our draft report whether it would distribute materials in advance of public meetings, make key U.S. proposals available before they are submitted to the UPU, and schedule meetings in a manner conducive to meaningful stakeholder input. In addition, we said it is not clear what UPU-related documents will be made publicly available so that Congress and other interested parties can understand the basis for U.S. policy positions. State should be given time to clarify how it will handle these matters so that stakeholders including Congress can assess whether the process established will enable State to achieve the objectives of FACA to provide an open, inclusive, and transparent process.

Question 5. Last week, the Air Courier Conference of America (ACCA) released a study critical of how U.S. Customs processes express shipments coming into the U.S. through the Postal Service. Based upon your expertise in this area, does the Customs Service engage in disparate treatment between the Postal Service and the express industry? Please explain and discuss the differences between the type of items contained in international mail and express

shipments carried by postal and private couriers and how duty fees differ based upon type or category of item brought into the country. Also, please explain the difference in customs treatment of these items by type of courier, (public vs. private).

GAO response: We issued a report in June 1998 entitled U.S. Postal Service: Competitive Concerns About Global Package Link Service (GAO/GGD-98-104) that discussed the differences in the customs clearance requirements and processes for parcels shipped by private express carriers and certain bulk mail shipments (Global Package Link, or GPL) shipped by the U.S. Postal Service. Our report explained that these differences in customs procedures developed historically along separate tracks for postal and cargo shipments because of the differences in the nature and value of the items entering a country by mail versus commercial cargo. International mail primarily consisted of written letters and low-value packages containing items for personal consumption. On the other hand, international express cargo tended to be time-sensitive shipments sent from a business in one country to a business in another country for the purpose of generating revenue. Thus, Customs officials told us that historically customs clearance was intended to be simple for individuals sending parcels by mail to other individuals overseas, and that more requirements have been imposed on commercial cargo than on postal parcels. These officials also noted that with the development of the direct marketing industry through catalog sales, and more recently, through on-line computer orders, some of the historical distinctions between mail parcels and cargo have been blurred. Consumers are increasingly purchasing merchandise goods directly from businesses by mail, telephone, and the Internet and having the goods delivered to their residences. In addition, the need for faster clearance prompted the private carriers in the late 1980s to request special customs requirements that would provide expedited clearance.

Our report also discussed how duties are assessed. Duties are charges that a government imposes on the goods that are brought into the country, which generally are not based on whether they are shipped by postal administrations or private express carriers. Using a Harmonized Tariff Schedule, each country can establish its own rates, which may vary with the type of goods and sometimes with the country of origin. For example, U.S. Customs noted that goods entering the United States are eligible for duty-free treatment if they are valued less than $200 and are accompanying a traveler, while (unaccompanied) goods valued less than $100 and specified as a bona-fide gift are eligible for duty-free treatment. As we reported, Japanese law allowed imported goods to be valued at their wholesale, rather than retail, values if the goods were deemed to be for the personal use of the importer or a gift to a resident in Japan and are deemed to be for the personal use of the recipient of the gift.

Our report further explained the differences in customs treatment of GPL parcels shipped by the U.S. Postal Service versus parcel shipments by private express carriers from the United States to the three countries included in our review—Japan, Canada, and the United Kingdom. We identified 11 major categories of customs requirements and practices that potentially differed between postal and private express parcel shipments. The 11 categories, only the first of which involved requirements imposed under U.S. law, included (1) U.S.

Customs inspection of outbound parcels, (2) preparation of import shipping documentation, (3) electronic submission of shipping data, (4) use of licensed customs brokers, (5) calculation of duties and taxes, (6) the timing of payment of duties and taxes, (7) payment for customs clearance outside of regular business hours, (8) posting of bonds or other security to customs services for storage facilities, (9) retention of shipping records, (10) liability for importation of restricted or prohibited parcel contents, and (11) liability for incorrect or missing customs declarations. Under U.S. law, the private express carriers were required to submit their parcels to U.S. Customs for inspection prior to export, but the Postal Service was not subject to this requirement for its outbound parcels.

The extent of the differences in customs treatment in each foreign country reflected the Postal Service's use of different types of GPL delivery agents. For example, in Canada, the Postal Service used a private express carrier to deliver its parcels, while in Japan and the United Kingdom, the Postal Service used the public postal services for delivery. Thus in Canada, GPL and private express parcels were subject to the same customs requirements. Differences in foreign customs treatment of GPL and private express parcels were greatest in Japan, where private express carriers were subject to significantly more requirements, including those relating to the preparation of shipping documentation and payment of duties and taxes, that did not apply to GPL parcels. In the United Kingdom, the Postal Service was voluntarily providing customs information similar to that provided by private express carriers, as well as calculating and paying duties and taxes owed on GPL parcels, but other differences in customs requirements remained. In both Japan and the United Kingdom, private express parcels apparently were cleared through customs in less time than GPL parcel shipments.

Question 6. Is there a reason why the Postal Service has to provide Customs with automated data?

GAO response: According to Customs, the manifest requirements for international mail shipments that went into effect April 1, 1999, allow Customs to track the quantity of mail arriving into the United States. Customs also noted that as the Internet grows as a means for conducting business for a fast-paced U.S. economy, it would increase the need for faster international small parcel delivery services. Private express carriers are required to provide more detailed automated manifest information than the Postal Service in advance of the arrival of the parcels in their express consignment shipments. This advance notice allows Customs to perform advance targeting, selecting specific shipments for review, and quickly releasing shipments not selected for review. With the exception of express mail, Customs is unable to do advance reviews and targeting of postal shipments. Customs noted that the Postal Service has been working to develop the electronic data that would support an automated system. Customs has reported that it has been invited to serve as an adviser to a European Community project to improve the level of automation in this area and to develop uniform information for mail shipments for the European Community, the United States,

Canada, and possibly Australia. Customs' effort is intended to improve its enforcement capabilities and ensure that parcels are assessed the appropriate Customs duties and fees.

Question 7. Congress worked with the express industry in the late 1980s to develop law that required that the Customs Service provide special expedited service for the industry. In turn, express couriers agreed to reimburse the government for personnel, equipment, and facilities needed for this special customs clearance. Why is the reimbursement for expedited clearance more of an issue today?

GAO response: The private express industry has expressed a concern about the differences in the customs clearance requirements for postal and private express parcel shipments and the associated costs that express carriers incur compared with postal administrations shipping postal parcels. The blurring of lines between public postal administrations and private express carriers have led to more direct competition between private express carriers and postal administrations for certain types of shipments. As a result, the private express industry has placed increasing emphasis on the differences in customs requirements that apply to postal and private shipments. We noted in our 1998 report that costs and workload burdens are a concern to all parties and that efforts to find more efficient and cost-effective customs clearance procedures could benefit all parties.

Questions for GAO From the Honorable Chaka Fattah

Question 1. Since it will be another 5 years before the next UPU Congress is held, what are some of the key challenges that the Department of State should focus on between now and then?

GAO Response: Four key challenges that the Department of State needs to focus on include (1) formulating U.S. policy on UPU issues, particularly issues concerning whether the UPU should make fundamental reforms to its mission, role, and policies; (2) participating in UPU groups that include both UPU councils and the High Level Group that is to prepare recommendations concerning UPU reform; (3) consulting and coordinating with other agencies and domestic stakeholders using a process that is more structured, timely, open, and conducive to meaningful stakeholder input; and (4) reaching out to other UPU member countries to develop support for U.S. positions.

Specifically in the short term, the State official who headed the U.S. delegation to the 1999 UPU Congress told us that he plans to make a written statement on U.S. policy principles on UPU issues. Such a statement could clarify U.S. policy in this area as well as fostering meaningful stakeholder input and congressional oversight. Further, State is coordinating with the Postal Service and the Postal Rate Commission on a study that is intended to provide insight into complex issues involving UPU rules that govern how postal administrations handle and reimburse each other to deliver inbound international mail. State will have the challenge of interpreting the results of this study and considering whether changes are

needed to U.S. policy concerning these UPU rules. In the long term, State will have the challenge of ensuring effective stakeholder consultations to obtain input on key U.S. policy positions and proposals before they are finalized and submitted to the UPU. Finally, as State carries out its UPU-related responsibilities, it will face the additional challenge of maintaining the institutional continuity and expertise needed for it to effectively handle its multiple UPU-related responsibilities.

Question 2. In your written testimony, it states that 1 month prior to a recent public meeting on UPU issues, the State Department gave notice in the Federal Register, on the Internet, and through outreach to stakeholders. In addition, some materials for that meeting were made available on State's Internet site. Assuming that this will be the practice for future public meetings, do you believe that these measures are sufficient to address GAO's concerns about proper notice and dissemination of materials?

GAO Response: State's recent practice of giving at least 1 month advance notice in both the Federal Register and on its Internet site, as well as making outreach to stakeholders, should be sufficient to address our concerns about proper notice. State took these steps to notify stakeholders of its April 19, 2000, public meeting. A range of stakeholders attended this meeting, including representatives of the Postal Service, federal agencies, major mailers, and Postal Service competitors. Attendees included representatives of some major mailers who did not attend similar public meetings last year.

Question 3. In your testimony, you stated that there are alternatives to the FACA process that State can employ to achieve the same objective. What are these measures?

GAO Response: State could implement alternatives to FACA by issuing a public document that would specify the process it intends to use to ensure a more structured and open process for obtaining stakeholder input. Such a process could include adequate advance notification of public meetings, public access to relevant documents, such as minutes of public meetings, and opportunities for public input. Another alternative could involve using the State Department's web site to provide notification of meetings, public access to documents, and to obtain public comment on proposed U.S. positions related to UPU matters.

Question 4. The Department of State has stated that it expects to have at least one career Civil Service member, not subject to frequent rotation, involved in UPU issues. Is this measure sufficient to address the staffing concerns GAO has raised?

GAO Response: Based on recent discussions with both State Department and Postal Service officials involved in UPU matters, most seemed to believe that State's current staffing, which includes one career Civil Service member, was sufficient to handle current UPU activities. However, the adequacy of this staffing arrangement would need to be reassessed depending on the proficiency of the individuals assigned, the extent of non-UPU responsibilities assigned to the staff involved in UPU matters, and the extent and timing of UPU activities. As

the 5-year UPU Congress draws near, the current staffing level may not be sufficient. Thus, we would emphasize the need to continuously reassess the staffing needs in this area.

Question 5. Fred Smith of FedEx has suggested that the U.S. refuse to ratify the UPU Convention until there has been more progress towards reform. What is GAO's opinion of this suggestion? Is this a common practice among UPU members? What are the ramifications of such an act?

GAO Response: If the United States refused to ratify the UPU Convention, it could undermine the efforts and leadership put forth by the State Department, which was granted authority in this area by Congress in October 1998. It could also raise many operational difficulties if, as some officials in the State Department have suggested, such a refusal could terminate U.S. participation in its existing UPU-related agreements. The United States might then have to negotiate separate bilateral agreements with different countries in order to operate in the international mail arena. Postal Service officials told us that refusal to ratify could result in disruptions to international mail service. According to these officials, some countries may not have taken action to formally ratify the UPU Conventions in the past. However, they did not know of any countries that had made a decision not to ratify the UPU Convention. Such an action might also damage U.S. credibility and undercut U.S. efforts to work for UPU reform, according to State Department officials.

Mr. MCHUGH. Our next panel is comprised of the Postmaster General of the U.S. Postal Service, Mr. William Henderson; the chairman and Chief Executive Officer of FedEx Corp., Mr. Fred Smith; as I noted before, Ms. Simone Bos of the TNT Postal Group; as well as Mr. Uwe Doerken of Deutsche Post AG.

I would note that last year's Postmaster General and the very fine head of FedEx have always cooperated and particularly given their largely competitive position toward each other. We are both delighted and honored to have both of you here today.

As I tried to indicate in my opening remarks, we are particularly delighted with our two friends from across the pond who have come to share their insight and wisdom. I can say it is indeed insightful and full of wisdom. I spent some time reading, as I do all the testimony, but particularly that rendered by you two. I want to commend you as the leaders who have taken what was a very fine dream but only a dream and a theory of politicians—and I know a bit about that when I say it—and have made it come alive in very exciting ways. Certainly I look to learn more from you this day.

It would normally be our custom to start off with the Postmaster General but with his permission, given the long way they have traveled, I would be honored to begin with our two visitors. I will leave it to you to decide. Either of you, please start.

It is the committee's rule to take your full testimony and submit it to the record. Because of the time, we certainly don't want to throw you off script and we all want to hear every word you wish to share with us, but if you choose to compress it, that would be fine too. Welcome and we look forward to your testimony.

STATEMENTS OF SIMONE BOS, VICE PRESIDENT, TNT POST GROUP, N.V., MEMBER, MAIL BOARD, AND MANAGING DIRECTOR, BUSINESS UNIT, INTERNATIONAL AND CONSUMER MAIL; UWE DOERKEN, MEMBER, BOARD OF MANAGEMENT, DEUTSCHE POST AG; WILLIAM J. HENDERSON, POSTMASTER GENERAL, CHIEF EXECUTIVE OFFICER, U.S. POSTAL SERVICE; AND FRED SMITH, CHAIRMAN, CHIEF EXECUTIVE OFFICER, FEDEX CORP.

Ms. BOS. Thank you, Mr. Chairman.

On behalf of the TNT Post Group, I would like to thank the subcommittee for giving us the opportunity to present our views on this very important issue of international postal policy.

My statements, both my written one and my oral one, will be based also on my own experience. I am not going to describe the entire history of my life, but my experience in the Post is 8 years long. I have seen changes in the marketplace, tremendous changes in our own company because when I joined the company we started out as a domestic postal operator and now we belong to the leading operators in express, mail and logistics.

I think it is particularly interesting for you that I have seen developments also in domestic and international regulatory framework. I think what is important there is that we have seen that the roles of the governments is really to enhance the existence of a good service for all customers, be it provided by public or private operators.

In my written statement, I have given you an overview of all the elements I believe to be important in this whole field. I will just mention some things: globalization, liberalization, consolidation in the postal world.

If I was asked to give you one core message, then I would like to say that I firmly believe that government should take the lead in reshaping the international regulatory framework because they should create a level playing field for all parties. They should try to establish, although I realize it is very difficult because I have worked for the government in the past and I know it is not that easy, international generic rules so that you don't have different rules made by different bodies so that it is easy for those parties operating in the market to know what you can and cannot do.

This level playing field will be, to my mind, an enormous move forward for the whole sector and for the benefit of the customers. I think that is often what we forget to think about, that we do all this for our customers.

Saying there should be a level playing field implies there isn't a level playing field at the moment. I would like to explain a little bit why I think that is not the case.

If you look at the history of postal operators, it was quite normal in the past that they worked in their domestic environment only and maybe managed a little bit of international traffic as well. You had a domain ruled by monopolies. Now this has completely changed. It has changed in the European context very rapidly over the past 5 years if I may say so.

What you see is that public postal operators compete with each other in many areas already and they also compete with private operators. When you look on the other hand at international rules and regulations for the postal sector, you see that there are certain rules which are not applicable for the public postal operators, that are applicable for private operators. At the same time, they compete in the same market and offer commercial services.

I think that is not the right thing to do because there is no reason to have special delegations for those public postal operators anymore. I also talk about my own company because we are a hybrid company, partly express and partly mail. So I think I know what I am talking about.

If you ask: suppose government removes all those differences, will we have a level playing field, again? I say no, we won't have a level playing field to my mind. I think what is important as well is that governments give their public postal operators the commercial freedom they need to really build a normal company. What they need is distance from the government. I have seen it in our own case and I think also Deutsche Post sees it very clearly, that helps the company to provide services according to market standards.

Many partners in the UPU context are often too afraid to lose when we open up for competition. It is important that public postal operators should be able to set their rates in a normal way like other companies do, they should be able to invest and though I don't think it is such an issue here but in Europe it is, to be able to negotiate their own collective labor agreements with their personnel.

Yes, of course I understand if those companies, those public postal operators, still have special rights and special obligations, there should be a very good framework from the government side to make sure there will be no abuse of a dominant position, no abuse of monopoly powers, no illegal cross subsidization.

The point is that this can be arranged. I know you have that also in your bill and we have in the Netherlands the experience as well, that those elements can coexist together. On top of that, I think at least in Europe, also the public postal operators are susceptible to the normal competition rules that are there for other companies as well. I think that is an important fact, so everybody who is not satisfied with what is happening can complain—private individuals, companies, everyone.

Now where does all this lead in the UPU context? I think the UPU needs to change as well. As was said before, the UPU has spoken about it. At the first UPU conference I attended here in Washington in 1989, already they were taking about change, they were talking about the changing environment and the need to change. We saw it also at the Beijing Congress. Everybody talks about it but not a lot happens.

I have to be frank. Some progress has been in the UPU. There has been some opening up, at least we talk to customers. I think it is important that also the UPU will advance to the changes that we see around us. I think everybody should agree it is unacceptable that a specialized United Nations organization like the UPU still doesn't have a clear separation between the regulatory and the operational powers. They still promote commercial services of public postal operators to the disadvantage of others in the market. They don't allow interested parties like private operators, but also other interested parties to attend their meetings et cetera.

I think that should change and I realize that maybe the interests of the developing countries have to be taken into account like on any other United Nation organization. At least between the industrialized countries, we need change.

I believe that can be done in several ways. I will not expand on that. There are many possibilities to do that. We have U.N. examples where that happens like in the International Telecommunications Union.

I believe governments, especially like-minded governments—and I know also the United States Government has taken that stance during the last Beijing conference and worked together also with my government—they have to make sure that in the international regulatory framework, fair competition and the provision of a universal service for the international postal traffic can go hand in hand to the benefit of all parties.

Thank you.

[The prepared statement of Ms. Bos follows:]

HEARINGS BEFORE THE SUBCOMMITTEE ON THE POSTAL SERVICE
Of the Committee on Government Reform and Oversight
U.S. House of Representatives
March 9, 2000

STATEMENT OF THE TNT POST GROUP by Mrs. Simone Bos, Member of the Board of Directors of Mail and Senior Vice-President, International

On behalf of the TNT Post Group I thank the Subcommittee for this opportunity to present our views on the development of international postal policy, especially from the European Perspective.

1. INTRODUCTION

I believe that international postal policy must be seen in the broader context of the rapid developments on the market for the cross-border exchange of documents and parcels. More and more businesses are focussing on the trade in goods and services not only on a domestic scale but also on an international scale, and their ability to compete depends crucially on the quality and reliability of cross border physical and electronic networks and supply chains. Because of the impact of international regulations on such networks and chains, governments and inter-governmental organisations play a key role in fostering, or impeding, international communication and trade. In developing an international policy towards delivery services, the role of government merits careful consideration both in the preparatory phase at national level as in the phase of negotiations between governments at international level.

In this statement and as a contribution to your important deliberations, TNT Post Group (TPG) will focus on the following conclusions, which are based on its own experience and on the common experiences of European Union generally.

2. GENERAL CONCLUSIONS

- With regard to international postal traffic -- as well as the multi-modal transport and other related sectors -- there are today far too many different rules and regulations. Moreover, these rules are established in too many different national and international bodies. As a consequence, there is insufficient transparency, artificial barriers to entry, unequal competitive conditions, discrimination against both service providers and end users and unnecessary losses in overall efficiency. In their international policies, it is vitally important for governments to streamline these rules through better co-operation and reform. Better co-operation is needed both in the preparation of international initiatives and in international negotiations.

- Better co-ordination is needed in the activities of different international organisations, including the World Trade Organization (WTO), World Customs Organization (WCO), European Union (EU), Organisation for Economic Co-operation and Development (OECD), and similar bodies.

- Competition law should be fully applicable to all activities of Public Postal Operators. Before being concluded, all treaties and agreements should be tested against competition rules. Treaties and agreements should also ensure that Public Postal Operators do not use their Universal Service Obligations (USO) to derive any anti-competitive advantage.

- Developments in the market generally, in the activities of the specific service providers (public and private) and in the postal laws in various countries, are so profound, that they make necessary a fundamental revision of the role of the Universal Postal Union (UPU) and the Universal Postal Convention.

- In the interest of the survival of the UPU, governments of reform-minded countries should work closely together in the matter of reforming the UPU and international postal regulations. A realistic approach should be pursued, taking into account the legitimate interests of developing countries.

- A complete separation is necessary between the jurisdictions and tasks of "regulators" (the UPU term for governmental authorities) and operators within the UPU. Public Postal Operators, even

if still part of a government, should be placed at a distance from the regulators within the UPU to put an end to the current entanglement of tasks and interests.

In explaining these conclusions, our full statement is organised in the following sections:

- TPG background and recent history
- Postal services as part of the international communications market
- Regulatory developments in the postal sector in Europe
- Scenarios of strategic development for postal operators
- International postal policy and the need to reform the UPU
- Conclusion

3. TPG BACKGROUND AND RECENT HISTORY

Public postal operators have become important players on the transport and delivery market, the main part of their volumes being offered to them by business customers. Dominant change drivers like globalisation and commercialisation are affecting public postal operators heavily.

Governments all over the world are reconsidering the position of their postal operators. They are aware that in the end, both the international and domestic postal market, will inevitably be fully liberalised and that non-traditional services must become a significant part of their activities to stay in the market and even to survive. It means that public postal operators are starting to compete with each other and with other service providers. In most OECD countries this has clearly been the case for a while.

Some governments have made up their mind. They want to reduce their involvement in postal activities and to create more customer oriented organisations and healthier competition conditions. For those reasons it becomes necessary that they separate regulatory and operational responsibilities and change the status of their postal operators. The Government of The Netherlands, in a bold move, did this already in the Eighties without endangering the provision of universal service by its postal operator. The result was the TNT Post Group, a company differing in many aspects from other operators. As the first part of this statement it seems useful to give some information about the development of our company, since it shows how public postal operators can become "normal" companies.

Brief History

PTT Post, the public postal operator of the Netherlands, was corporatised in 1989 as a subsidiary of its holding company Koninklijke PTT Nederland NV (KPN). The other subsidiary was the national telecom operator. Postal financial services had already been demerged from Post and Telecom and privatised in 1986.

Initially, the Dutch Government retained 100% of the shares of the holding company . Then, in 1994, it embarked upon a two-phase privatisation plan of selling KPN shares to third parties (30% in 1994 and 26% in 1995). In that same year, KPN was first quoted on the stock market. Today, the Dutch Government still holds 44 percent of both the telecom (KPN) and post (TPG) activities It is expected more shares will be sold to the public in the near future .

Since 1989, PTT Post has become an enterprise operating fully in accordance with normal company law, with no intervention from the state, except for supervision in the areas of postal universal service obligations and the monopoly. PTT Post is still the national public postal operator, fulfilling the universal service on the basis of a concession, which is a sort of contract between the government and the company. The concession consists of mandatory postal services (non-bulk documents and parcels up to 10 kg.) and letters within a monopoly. This monopoly was already one of the smallest in the world and the limits this year will be set at only 100 grams for personalised letter mail or three times the basic stamp price (NLG 0.80 or US$ 0.35). Outside these limits, the market is open for competition. The concession concerns both the domestic and international postal services. The latter according to the UPU rules.

Already in 1989, the new postal legislation provided for the complete separation of regulatory and operational tasks and responsibilities. The Dutch Ministry of Transport develops the postal policy and fulfils the regulator tasks for the sector (national and international). A completely independent supervisory authority, OPTA, supervises the application and implementation of postal regulations. Amongst other things, OPTA has to check the implementation of the regulations with respect to the prevention of illegal cross-subsidisation. In addition to publishing an Annual Report, which is obligatory according to normal company law (and for the USA according to Securities and Exchange Commission Form 20 F), PTT Post has to draw up an annual "Concession Report" giving details of , inter alia, the financial results of the monopoly services, separated from the

results of the mandatory universal services offered in competition and its other services offered in full competition.

PTT Post is also subject to general Dutch and European competition law, whose application is overseen by the National Competition Authority, NMa, as well as the European Union Competition Authorities. Competition law focuses very much on the prevention of abuse of monopoly power and dominant market position.

For PTT Post, a new management team, drawn largely from the private sector and headed by current TPG CEO Ad Scheepbouwer, was put in place in 1988. The corporatisation moved PTT Post to become a more market-driven and commercially oriented company. As a result, PTT Post achieves efficiency and service levels that are among the highest in the world, while at the same time offering one of the lowest price levels in Europe.

Realising that the growth of the traditional postal business was limited and that the Dutch postal market is relatively small (16 million inhabitants), PTT Post looked to expand its activities outside the Netherlands and outside its traditional realm of mail. A co-operation with the public postal operators of Germany, France, Sweden and Canada in GD-net in 1991 and the formation of a Joint Venture on international express between GD-net and TNT Ltd was the first step towards globalisation. In 1996, PTT Post bought out its partners in GD-net and acquired the whole business of TNT, as the major second step in its process of business expansion. TNT provided PTT Post with substantial Express and Logistics activities and our experience of the market over the last few years has shown that the three activities of Mail, Express and Logistics are becoming more and more integrated. We are now able to offer a complete range of delivery services to customers world-wide.

The acquisition of TNT dramatically changed PTT Post. Before the acquisition, 90 percent of revenue was generated in Holland; after the acquisition, that figure fell to 40 percent. Before the acquisition, about 95 percent of the company's activities were in Mail; afterward only 45 percent .

The culture of PTT Post had changed after corporatisation in 1989 but still was rather traditional; TNT's culture was far more entrepreneurial and fast moving. The result, after completing the integration of the two companies, is even more market orientation and customer focus.

The most recent key development in PTT-Post's history to date was the demerger of KPN into two legal entities: KPN Telecom and TNT Post Group (TPG). The demerger took place in January 1998 and TPG was listed on the stock exchanges of Amsterdam, New York, Frankfurt and London on 29 June 1998. Today, TPG's market capitalisation is approximately $15 billion.

Key facts

- TPG is the name of the holding company which has two brands, PTT Post and TNT.
- TPG is the first and, until now, the only publicly listed company with roots in the public postal sector in the world.
- TPG's worldwide revenues in 1998 were about $ 9 billion, with a net profit of $ 0.4 billion.
- About 40 percent of TPG's revenue is generated in the Netherlands.
- TPG employs more than 100.000 people all over the world
- The company has its own operations in 60 countries and agents/representatives in 150.
- TPG operates three divisions: Mail, Express and Logistics. Mail represents about 45 percent of revenue; Express accounts for about 40 percent; and Logistics for the remaining 15 percent.
- In 1999, Fortune added TPG to its list of most admired companies. TPG rated number three in the global Mail, Package and Freight Delivery industry after UPS and FedEx.

Strategic ambitions

Along with FedEx, UPS and DHL, TPG is one of the four global integrators in the world. While TPG has a global presence, its main focus of activities and operations is concentrated in Europe. TPG's mission is to further strengthen its position in Europe and to expand its global presence and capabilities. TPG's objectives by division include:

Mail

Because the postal market in Europe is moving towards liberalisation, TPG has started to establish a presence in several countries with the ambition to become "the" European provider for cross-border and domestic mail. Its rate of development is, however, subject to the freedom provided by UPU, European Union and national rules and regulations. TPG continues to develop new mail products for domestic and international markets while continuously improving performance and profitability at home. TPG advocates full market liberalisation in Europe as soon as possible.

Express

TPG provides local, regional and global Express services mainly under the TNT-brand. Global services are offered to and from the more than 200 countries in which TNT operates. To be the leader in Europe, TPG needs to grow substantially each year, which it is achieving. We continue our Express strategy of maintaining a strong customer focus and providing high quality services aided by leading-edge IT systems. Ongoing efforts to improve financial performance are also part of the Express strategy, as is further developing activities outside Europe.

Logistics

TPG's Logistics division is among the largest logistics providers in the world. Focusing on targeted industries, including automotive and electronics, TPG's Logistics business is growing at between 15 and 25 percent per annum. TPG aims to further penetrate the automotive and electronic segments while expanding activities into new segments, including consumer products and retail.

TPG recently announced the launch of a newly designed Demand Chain Management system, staking the ground in global fulfilment services for the business-to-business e-commerce market. TPG can link and re-link its own logistics and distribution networks with customer assets to meet the specific needs of businesses buying and selling over the Internet.

As shown above, TPG has developed into a unique company with a hybrid character through its diverse, but connecting services. The developments in the postal sector confirm that the Dutch government had a forward-looking vision and made the right choices. The reduction of government influence, the strict separation between regulator, operator and supervisory authority, the application of competition rules, as well as the possibility to enter other markets under normal market conditions, have been crucial elements in its success.

4. POSTAL SERVICES AS PART OF THE INTERNATIONAL COMMUNICATIONS MARKET

The global marketplace at present is changing extremely fast. Companies are increasingly operating across national frontiers and want to do business with suppliers who offer full service plus a guaranteed global reach. This need among the world's business community explains the numerous take-overs and buy-ins in the communications industry. The direction the market is taking is very clear. As in the rest of the communications industry, we also are seeing in the postal and delivery sector a trend towards increasing internationalisation and commercialisation. This intensifies the co-operation between mail, express and logistics service providers.

A parallel development is the emergence of all kinds of technological alternatives to mail. Companies that find it unattractive to send out their mail-shots by post will spend their budgets elsewhere. The options are available: like advertising in magazines with a large readership among a certain target group; like direct response television; like tele-marketing; like the Internet. To my certain knowledge, one very large international direct mail company over the past four years has spent more than half of its "direct mail" budget on direct response television and tele-marketing.

Furthermore, as electronic commerce is developing, so the nature of trade is evolving and the express delivery services are developing the tools to facilitate it. Already e-commerce has increased opportunities and revenues for companies all over the world. It presents enormous opportunities for consumers and businesses alike especially with new developments like mobile data and voice communications.

Many goods can be ordered but not delivered electronically. Even if the advertising, order processing and payment are made electronically, these goods still need to be delivered using physical modes of transport. Thus, electronic commerce will only reach its full potential if the barriers -- including regulatory ones to international delivery services -- are removed. Again the important role of governments becomes clear. They should facilitate and act pro-actively in fostering this new phenomenon of domestic and international trade. E-commerce is in the take-off phase but will develop rapidly in the first decade of this new century. In 1998 the value of e-commerce worldwide has risen to ca. $11.2 billion. The value of goods traded on the net in 2020 is

forecast to hit $ 327 billion[1]. There will be no e-commerce without logistics and physical modes of delivery of the goods ordered. The relative importance of the delivery of parcels compared to the delivery of letters will increase. Private operators, but also public postal operators are investing heavily in their networks and IT in order to service the needs of their e-customers.

While international business and trade are growing at a tremendous rate, postal operators' share of international trade is diminishing. In fact, postal operators have lost a significant share of the fast-growing total market for communication and distribution: in the 90s at a rate of almost 1 percent a year. A UPU study shows that in 1995, about 20 percent of communication messages were conveyed via physical mail. Although be it in a very fast growing total communications market a reduction to less than 15 percent is forecast for 2005.

Delivery services no longer consist simply of the mass transport of documents and parcels from A to B; the introduction of new technologies enables new ways of doing business and of communication. Improved communication methods, flexibility in supply chain design and dis-intermediation create entirely new business models, not only for services from business to business but also from business to consumer.

Information technology is rapidly creating alternatives for physical mail for businesses and consumers. Currently, substitution amounts to only 2 percent annually, but this pace is likely to accelerate strongly in the next decade. Hiding behind the quasi-safety of their monopolies, most postal operators have no incentive to embrace new developments in the marketplace: internationalisation; e-commerce; higher speeds; and the shift from a push- to a pull-economy, where receivers decide how and when they want to receive the delivery of their communications and purchases.

The result of these developments will show very clearly the postal sector is becoming, de facto, an integrated part of the total (and global) communication and delivery services sector and postal operators need to be allowed and encouraged to play an active part in this integration. It could even be argued that the protection from market and competitive forces provided to postal operators by their monopoly and their non-commercial status has only delayed their transformation into efficient, integrated businesses and restricted the customer's choices of service, quality and price.

[1] Forrester Research, quoted in Facilities Management, 2-9-99

5. REGULATORY DEVELOPMENTS IN THE POSTAL SECTOR IN EUROPE

What is happening at our side of the ocean in the postal regulatory arena?

In Europe important changes are taking place in the postal field. Business in general and communication in particular between the Member States of the European Union are growing fast. This is to a large extent due to the establishment of the Single Market and its basic principles enshrined in the EU Treaty: the freedom of movement of persons, capital, goods and services. Many economic barriers are thus lifted between the Member States.

The telecom and postal services fall in the categories for which a single market will be created through EU legislation. In the early Eighties, the first steps were taken for the telecom sector, which recently has been fully liberalised. In 1989 the EU Council of Ministers decided to also reform the postal sector. In 1992, the European Commission published a 'Green Paper' detailing their plans. The Council of Ministers adopted the Postal Directive in 1997, setting the first careful steps in implementing the 'Green Paper'. Harmonisation and liberalisation were and are the main objectives, which should go hand in hand with better services for the customer and the prevention of abuse of the dominant position by monopolists. The minimal universal service level is defined and will be provided as an obligation guaranteed all over the EU.

The EU postal market will eventually become fully liberalised, including cross-border mail. Postal operators will compete directly with each other and with other delivery companies who choose to enter the market. Through liberalisation, there will be more freedom for the customer to choose a service provider and more service options for both domestic and cross-border delivery of his mail.

An important aspect is that all the provisions of the EU-competition law already now apply to postal services. The postal operators entrusted with the operation of services of general economic interest are subject to the competition rules contained in the EU Treaty insofar as these do not obstruct the performance of the particular tasks assigned to them. However this rule must be interpreted very strictly. A special or exclusive position such as a monopoly is only allowed provided the public service objective defined can not be achieved by other means which restrict

competition less. Also the development of trade must not be affected to an extent contrary to the interests of the EU.

Furthermore, the European Postal Directive of 1997 contains provisions on the system of compensation between the public postal operators for the delivery of cross-border mail ("terminal dues"). These compensation-systems are supposed to be based on the actual costs of distribution and on service quality levels. However, at present these compensations are related to the domestic postal tariffs, which, due to the existing monopolies, have not been established in a competitive environment. TPG is not convinced that they reflect actual costs and as a result are often too high. Even if they do reflect real cost, these costs themselves are often too high due to the lack of efficiency drive.

As a result of the Single Market, there is no longer a customs system for trade between the EU Member States. For trade with third countries, the National Finance Departments of the Member States request more and more similar procedures for both public postal and private operators. Standardisation and the use of automated systems form an important tool in this process. TPG is in favour of this development. Under equal conditions the same customs rules should apply. To apply the "de minimis" rules for private operators in the same way as for public postal operators is a logical and desirable step.

To promote the development of e-commerce, a tax moratorium on cross-border selling must be applicable to all service providers. TPG is a major advocate of such rules and requests an extension of this moratorium within the WTO framework.

VAT (Sales Tax) will phased in through EU regulation for domestic and cross-border postal services, but, due to the politically sensitive nature of the tax dossier and the consequences for the private user, the time frame for the introduction of VAT is not yet decided. Ultimately, this competitive difference in comparison with other, private service providers will disappear.

In accordance with the provisions of the present Directive, the European Commission will propose draft legislation on further liberalisation of the European postal sector from 2003, and submit it for approval to the Council of Ministers and the European Parliament. The European Commissioner for the Internal Market is expected to come forward with new proposals before this summer.

TPG position on liberalisation

TPG promotes a second European postal Directive aimed at complete liberalisation of the postal market at the *fixed date* of 1-1-2003 .TPG has long been a staunch supporter of postal liberalisation because it leads to more choice for the customer, more demand and higher market growth. Efficient companies operating in a competitive, liberalised market will develop new products and enter new markets more quickly than monopolists and create new jobs. But, most importantly for TPG, competition will have a beneficial effect on the pricing and quality of products and services. This means that our customers will benefit from liberalisation. In our opinion this is the best argument to support the challenges the postal sector has to face.

The Single Market of the EU for postal services will one day be achieved, as it is the case for all other economic sectors and for the other communications markets. In the meantime, a fragmented, protected postal market impedes growth to such an extent that it will hamper the growth of the small and medium-sized businesses, on which the European Union focuses much of its economic efforts. Last but definitely not least: it would be to the detriment of the customer.

The consequence of this development in the postal regulation in Europe is that for the fulfilment of cross-border postal services within the EU a completely differing regulatory system arises in comparison to the UPU system (and possibly also compared to other international rules for the transport and delivery sector). A major part (approximately 50%) of global cross-border mail volumes is now exchanged within the EU, with all the ensuing consequences. For that reason the EU Member States have declared at the Seoul and the Beijing UPU Congress that they will apply the UPU Acts only in accordance with their obligations pursuant to the EU Treaty.

6. SCENARIOS OF STRATEGIC DEVELOPMENT FOR POSTAL OPERATORS

Market developments, EU developments and also national developments have led to huge differences between public postal operators. The key question is, of course, where does this lead to?

At this moment we see three likely scenarios of strategic development for the national public postal operators. Those are:

1. Some Posts will defend their current position well and be able to maintain a role as the market leader domestically. They will expand their commercial interests in the traditional postal business area of letters, parcels and express and also develop interests within the electronic commerce, communication and hybrid mail market. Some of the business areas may be operationally managed via new subsidiaries, alliances and co-operation arrangements with specialist companies.

2. Other Posts want to become global market players. Provision of one-stop shopping and global logistics solutions are core to this strategy. They will actively seek to develop their commercial interests through mergers and acquisitions and invest in electronic commerce and the communications area. Strengthening of an already strong domestic position is core to this strategy as is geographic expansion and global integration of networks and systems. These posts are building up their global networks of specialist parcel operators, freight forwarders, logistics providers and express/couriers.

3. Yet other Posts may lack financial strength, commercial and political freedom to adopt either scenario 1 or 2. They may not be able to defend their current positions nor to exploit the new business opportunities. They may form new partnerships with the posts that have implemented one of the two scenarios above, but will be managing mainly the domestic universal service. These Posts will find the new market environment increasingly challenging to operate in.

In fact we see all of the three developments already in practice. Only a limited number of postal operators are able to follow scenario two. Clear examples are TPG and Deutsche Post. TPG considers substitution to be an opportunity, and not just a threat. We have become a hybrid company beginning to develop hybrid products, placing the market and the customer in the centre of our strategy. Operators like TPG also acknowledge that the communication market is an international market. In the 'global village', communication and distribution ignore borders. International companies want to do business with partners offering a total service-package and a global reach.

Indeed, only a few market participants in the postal sector are responding actively to the changing demands of the market. This must not hamper them to remain the service providers for the universal service. A sound legal framework is necessary to ensure the application of general competition law and to guarantee a clear separation between public postal services and services in full competition. Only in this way can abuse of their dominant position be prevented. On the other hand, the weight of public service obligations must not limit the postal operators to offering only those public services.

In The Netherlands, the Government has the intention to liberalise the postal market fully at the beginning of 2003. Commercial freedom, a position at arm's length from the government, privatisation and becoming part of the total transport and delivery sector are the best conditions to guarantee a universal service, tailored to the real needs of the business and private consumer.

We are convinced other Governments and Postal operators should follow the same pattern, especially in the industrialised world. Even in some less developed countries the governments are seriously thinking about this policy for the postal sector.

7. INTERNATIONAL POSTAL POLICY AND THE NEED TO REFORM THE UPU

Where does the above analysis leave the aspect of international regulation at world level?

In our opinion governments should create globally fair competitive circumstances for ALL players, to the benefit of the customer. When the market has changed as much as our market has, regulations based on a former situation become a barrier and must be adapted to market reality. In that process, streamlining of activities between international organisations and all interested parties is essential.

The UPU no doubt plays an important role in this respect as it has a world-wide coverage of 189 countries. However, the above analysis shows that the environment in which the UPU has to fulfil its task as a specialised UN organisation, is undergoing rapid changes. The separate, almost non-competitive international market for documents and parcels, transported by government organisations or state-owned companies, no longer exists. This is not a temporary transitional situation, but a process that is here to stay and will end in the integration of the 'traditional' postal

market into a totally restructured "Services" market. This "Services" market will, as mentioned before, see a wide variety in the demands of senders, in the offerings of providers and in service levels and combinations.

Moreover, the differences between the various UPU-Member States and their public postal operators, both in the industrialised and in the developing countries, will increase significantly. The three scenarios of strategic development (see part 6), show clearly the direction.

There is no other conclusion possible than that this will have major implications for the conditions under which postal services are offered, for the way in which agreements on these conditions should be concluded, and also for the organisation, working methods and decision making procedures in the UPU. The remarkable thing is that within the UPU these changes have been acknowledged for some time and that even a number of meetings have been dedicated to the discussion of them. Already during the UPU Congress in Washington in 1989 and in Seoul in 1994 the topic was tabled. Another good example is the High Level Postal Strategy Meeting in November 1998 in Geneva. There the UPU already came to the clear conclusion that major reforms would be necessary. However, in the following period, including during the Beijing Congress last year, no real decisions on follow-up actions were taken, except for continuing discussions, studies and again questionnaires.

With the High Level Group, set up during the last Congress, a new effort is made. However, it is open to question whether this will result in the urgently necessary changes, due to the strong internal focus and the decision-making procedures in the UPU. Again and again, the conservative forces within the UPU, headed by a few influential Member States, prove to be very strong. Moreover, it seems that the implementation of potential decisions to reform can only take effect around 2005. The timing is thus completely incompatible with market developments. At TPG, we are extremely concerned by the apparent lack of urgency shown by the UPU members.

The UPU has to make important choices on its role and organisation. Of course it can not be the UPU itself that decides, but its Member States that have the mandate and the responsibility. Given the phase of development which the outside world and the market have reached, TPG believes that fundamental changes are necessary and a few merely cosmetic changes of the current regime will no longer be sufficient. Perhaps first, we need to decide whether international postal services, as part of the communications, transport or delivery market, justify their own specialised UN

organisation in which only governments and related Public Postal Operators are allowed, or whether it is now time to adapt this organisation fundamentally as regards constitution, scope and participants. The point of departure should be the facilitating role that regulation can and must play in a healthy and balanced development of worldwide trade and communication. On the one hand this has to lead to adequate international regulation containing as few as possible hindrances and distortions of competition. On the other hand promotion of common interests and growth has to be stimulated through co-operation of all the stakeholders (not only the public postal operators). Active and direct co-operation with private operators can already be realised for e.g. customs regulations, security issues, environment, standardisation, GATS classification of services and other WTO issues.

The Dutch government and TPG have been and still are strong advocates of "opening up" the UPU in this way and have made several proposals to the UPU to realise this. However the last Congress has again put concrete decisions on the shelf. They will be "studied" further.

The letter of invitation for this hearing of the Honourable Representative John M. McHugh already phrased the need to broaden the discussion and involvement of others very clearly! The composition of the panels for this hearing already bears witness to that. There is a clear role for the many parts of the governments of the Member States which deal with these aspects and not just for those Departments that are responsible for postal policy. Also in the Netherlands for some time now, other stakeholders are being included in the development of the position that the Dutch representatives in the UPU and the High Level Group promote. Private operators already form part of the Dutch delegation to the UPU Congress.

The general trade interests which are at stake are too important for a limited focus, directed at solely the postal aspects and the role of the public postal operators. The public postal operators have to present themselves in this discussion as service providers for others. Their own interests and the preservation of the monopoly should not be the only objective. Regrettably, it is easy to see that a number of public postal operators have difficulties in defining that role and get support for that position from their governments.

TPG is of the opinion that, also within the UPU, a clear separation between jurisdictions and tasks of the regulator and the operator has to be implemented. Practice will have to show whether it will be possible to continue with one organisation, or whether splitting up will be necessary.

A related problem of the current UPU-system is the use of "government-power" (in the broad sense of the word) for commercial reasons, which causes distortion of competition. A good example is EMS, the postal services express product. TPG is of the opinion that the development of the EMS product, which competes heavily with the express services of private operators, should not be allowed in this context. What is more, this development is subsidised by means of UPU membership fees. Some Member States consider it normal that their national postal operator should be allowed to gain advantages with services, which do not belong to the standard postal services and are exercised in direct competition, through the UPU or UPU regulations. The Congress in Beijing has decided though, to put an end to this situation with EMS (but only starting from 2005).

In the opinion of TPG there are two other issues within the UPU that need urgent reassessment, namely the Terminal Dues system and the anti-remail clauses (art. 40). These UPU regulations do not at all reflect the realities of the present market and the choices which senders of large quantities of international mail need in practice. Besides, these rules cause market distortion and frequently lead to lengthy legal procedures. Because of the concurrence of these UPU-regulations and European competition law, various cases have ultimately been brought before the European Court of Justice. During these procedures, which take three years or more, the uncertainty continues and companies have to postpone important decisions about their operational management. The problem is that the UPU convention starts from the hypothesis of a market for letter mail in which the public operators of the different UPU member states do not compete. But that is a too narrow and now completely outdated approach, which protects and preserves an artificial division of the market into national segments. TPG believes the current UPU terminal dues system, especially for the exchange of cross border mail between industrialised countries, is not sustainable for much longer. Also the anti-remail clauses (art. 40) must be deleted as soon as possible.

In the context of the start of the GATS 2000 negotiations, another problem of concurrence has clearly arisen during the UPU Beijing Congress; the current and future WTO agreements and the "again to be decided" rules of the UPU convention. This had led to very confusing discussions because there were and still exist many uncertainties on the legal implications of the WTO rules in the postal sector. Various governments, like the USA and the EU Member States, have therefore made reservations on this point. Clarifications are necessary, as soon a possible, for this type of uncertainty is certainly not beneficial for the sector as a whole. TPG therefore advocates a much

better correlation of international regulations, with a strong preference for general instead of sectoral rules.

As a consequence of the changed market situation, TPG would like to raise one other point for discussion. Member States are not obliged by the UPU to use their national public postal operator to exploit a collective international postal network . The UPU convention should be directed towards the creation of pre-conditions for the inter-operability and the facilitating of international mail exchanges, especially when the market does not provide for that sufficiently. International postal operations are merely a side issue for many of the public postal operators (often less than 5% of total traffic). The focus and expertise rests with domestic mail, while the international exchange is complicated and demands other provisions. Governments can give the Universal Service Obligation (USO) to one or more operators. Other service providers, more specialised in international transport and the delivery market should, on the basis of a license from the national governments, get equal chances to carry out postal services for cross border mail. In that way major efficiency and quality improvements could be gained. For that reason the UPU Convention should be screened for the possible limitations it contains which hinder the operation of USO through other providers.

The preservation of this international universal service is one of the core points in the discussions on the reform of the UPU and the UPU convention. Especially the worldwide service provision of private mail is at stake. However, similar to domestic postal traffic, in international traffic private mail only forms a small part of total volume. In the opinion of TPG, the international USO for private mail has to remain guaranteed, but only as a standard service provision of good quality and against an affordable tariff. Moreover, this social objective needs to be interpreted and expressed in terms that are relevant and useful to the specific geographic area. Flexibility is needed in the interpretation. There can be no generic universal service obligation and therefore the UPU can not determine what the worldwide minimum standard should be. Yet, a safety net for private mail guaranteed by governments and only used when the market does not offer the minimum required in as specific situation, could be the right answer to this problem.

TPG gives its opinion both from the European perspective and based upon its own global experiences. In our view the above mentioned issues are crucial for the discussion on the future direction of international postal policy and on which topics reform-minded Member States need to focus. It is important to keep in mind that about 80% of cross border traffic is exchanged between

industrialised countries. Given their importance these countries have to take the lead in the process of change. Although the legitimate concerns of the developing countries have to be taken into account, the UPU regulations and especially the decision making process would need to recognise and take account of the actual relations and circumstances. Other international organisations have preceded the UPU in this.

7. CONCLUSION

The above analysis shows that for the postal and related sectors there are or will be in the short term, far too many different rules, established in the different decision making bodies. Through this concurrence the rules are often opaque and discriminatory and create artificial trade barriers, to the detriment both of the senders and of the service providers. What is more, market relations have changed so much that revision of UPU regulation is urgently necessary. In the opinion of TPG now is the right time for governments to perform the important task of streamlining as much as possible the postal regulations with the various treaties and agreements. The concerned international organisations as the WTO, the EU, OECD, WCO, transport organisations, standardisation organisations etc., have to play their role in this process.

Bearing this in mind, the mission and tasks of the UPU have to be redefined. The continued relevance of the UPU is unlikely to be achieved by a formal and artificial equality within its structures but better by recognising that market developments and differences between postal operators, especially in focus, interests and ambitions, are real. Anti-competitive regulations do not fit anymore in an international governmental organisation. Designing new methods of working to achieve specific common objectives -- both by and for public and private operators and other interested parties -- is in the interest of international trade and of the business and private customer. If the UPU is able to change as a platform in this direction it is thanks to its history and status best placed to provide this. However, without fundamental reform key postal decisions will start to bypass the UPU completely. Governments and operators then will rethink their membership of this organisation. This will be detrimental to the universal service which they want so much to uphold.

TPG sincerely hopes this Hearing will result in a clear call for action of governments to take a pro-active role in this process. We also hope this will be supported in a positive way by *all* interested parties, public and private suppliers and customers.

No international organisation can survive without a proper balance of interests and needs of its members, involving other stakeholders in its decision making process and having clear views on the developments in its external environment. Only in this way appropriate international regulations can be established.

Thank you for your consideration of the views of the TNT Post Group.

Mr. MCHUGH. Thank you. Appreciate that.

Mr. Doerken.

Mr. DOERKEN. Mr. Chairman, Congressmen, ladies and gentlemen, first of all, I would like to thank you very much for the opportunity to testify here and particularly to you, Mr. McHugh, you have put a lot of effort into postal reform in the United States which we think is a very appropriate and interesting subject.

I would like to treat you to a couple of comments about our history as Deutsche Post, what happened in the last 10 years and transformed us from a government bureaucracy into a worldwide transportation distribution company, a couple of words on the globalization of markets, on how we see the results of the European market today from this first push of globalization and maybe some concluding remarks on e-commerce and what our type of service means for unleashing the potential of e-commerce.

I have been with Deutsche Post for 10 years. I was one of the first managers who was brought in when the post reform happened in 1990. At that time, the company was hugely lossmaking, even more so after we had to digest the postal service of Eastern Germany after unification in 1991. So we started with the major integration of these two postal services and had to reform and restructure from the bottom of the company.

We rebuilt almost our entire logistics infrastructure, new parcel and letter centers for all of the newly united Germany. We rebuilt our international export/import infrastructure and within about 5 years, we turned the company around for its domestic business.

We then concluded that on the basis of the market situation and our customer needs, just staying a German distribution company alone would neither satisfy our customers nor bring us a sustainable business in the long run, it would endanger the employment of our people and the universal service for the German citizens.

So we departed on an internationalization strategy that was also a diversification into a variety of insular services which together now form a service portfolio in the logistics transportation distribution field. Nowadays we base our business on the mail business, mainly Germany and cross-border mail worldwide on a European platform for parcel and pallet distribution and on a worldwide platform for logistics and forwarding services, plus a banking service in Germany.

To give a couple of key numbers, we have over this 10 year period increased our revenue from $9 to $30 billion; we have decreased our staff in the original postal service from 380,000 to less than 240,000 people, all without any major layoffs, only through attrition and in an amicable and cooperative way with our unions. We are a highly unionized company. By extending this over a long period of time, it was possible to achieve this without major social upheavals.

We have invested a lot of money in our infrastructure and in our additional service menu. We have turned the company around from a heavy loss of more than $500 million in 1990 to a profit bigger than that in 1998. The 1999 numbers are not officially out yet.

What has been the result? I think we have positioned the company for a globalized marketplace that seeks service providers who

can provide postal services in connection with worldwide transportation logistics and distribution services.

Second, we have fulfilled the universal service obligation. In Germany, which is the only country where we have it and where we have a reserved area too, it can be provided in an affordable way and by Deutsche Post who can do this on its own account, even with a very limited reserved area. Our reserved areas in Europe, particularly in countries like Germany and Holland, are rather small, smaller than the European directive suggests while our universal service obligation, at least in Germany, goes beyond the European directive. We can digest it due to our business activities in these additional fields.

Third, I think we have created an interesting market landscape in Europe. As an example, I take the parcel distribution industry or market in Europe that is about as large as in the United States, about $25 to $30 billion. In the European market, we now have five major networks, four of them backed by postal operators, which makes for a vastly competitive market situation. No provider has more than 15 percent market share. The consolidation has taken place to provide the customer with continent-wide consolidated networks but with a choice among several of those networks.

This leads me to e-commerce. We do see the e-commerce revolution taking-off in Europe like it has already in the United States. We do see that e-tailors, e-commerce customers, companies who want to provide their services via the Internet need strong service providers and distribution networks to deliver their products to the customer. In Europe there is now a choice of networks which can meet these needs. We believe this to be actually an asset in terms of helping the e-commerce revolution. We have a couple of players of about equal weight and equal ability for the benefit of the customer.

This summarizes in a nutshell my introductory comments. I will be glad to further explain any of these aspects and to answer the questions as they come along.

[The prepared statement of Mr. Doerken follows:]

"International Postal Policy"

Hearing before the Subcommittee on The Postal Service
U.S. House of Representatives,
March 9, 2000

Testimony of Mr. Uwe R. Doerken
Member of the Management Board of Deutsche Post AG

(check against delivery)

Mr. Chairman, Members of Congress, Ladies and Gentlemen, thank you for the kind invitation.

I appreciate the opportunity to participate in this important and timely hearing. Let me share with you the perspective of Deutsche Post with regard to the changing international environment and international postal policy.

A. There is a growing trend towards globalization in postal markets

The international competitive environment of traditional postal services is today determined in particular by

- the globalization of markets
- the growing demand of customers for full services in one-stop-shopping
- and the liberalization and privatization of the postal sector.

Approximately 20 percent of global GDP is already being produced and consumed in global markets. In 30 years' time, it will be 80 percent. Global markets are characterized mainly by the fact that customers have access to all the products and services of these markets. This calls for the provision of infrastructures, which facilitate the ordering of goods and merchandise from all over the world and delivery to all parts of the world. Due to the development of e-commerce, these trends are being expedited even further.

Deutsche Post recognized these challenges and therefore adopted a global strategy in 1998. This strategy is based on three pillars:

- the increased provision of logistics value-added parcel services (e.g. warehousing, billing, call center support)
- expansion of the international express business
- development of its own efficient European parcel transport network.

Deutsche Post has implemented this strategy in recent months, inter alia, with acquisitions and strategic alliances. Similar trends can also be observed at the other postal operators.

The challenges of globalization and the pressure to adapt to the rapidly developing communications market can only be taken on in a liberalized postal market, because it is only in these markets that service providers have an incentive to orient their services to the changing needs of customers, to venture into new markets and to organize production according to the principle of efficiency.

Germany plays a leading role in respect of the liberalization of the European postal market. By law, the exclusive license is due to expire on 31 December 2002. The monopoly area remaining until then lags clearly behind the permissible weight and price limits (350 g) under the EU Directive. Apart from market liberalization for letters weighing more than 200 g, direct mail in particular has been greatly liberalized (50 g instead of 350 g). A large number of exceptional regulations are already allowing competitors to operate in the area of the exclusive license (e. g. same day delivery as a higher quality service). Meanwhile, most of the other Member States have also

implemented the EU Directive on the liberalization of postal markets – albeit with a slight delay and often making use of the permissible price and weight limits. It is anticipated that another proposal on further liberalization by the EU will be submitted in May.

B. The reform of the postal market in Germany

In 1990, the state-owned public administrative authority Deutsche Bundespost was divided up into three state-owned companies (Postdienst, Postbank, Telekom), in order to obtain greater flexibility against the backdrop of growing competition.

The set-up of independent public limited companies (in the case of Postdienst, Deutsche Post AG) took place in 1995. From then on, postal services were provided in private industry following relevant legal amendments.

When the new Postal Law entered into force on 1 January 1998, the traditional mail area was also partly liberalized (the freight area had always been fully open to competition).

The Post in Germany has managed to turn a deficit-ridden state-owned company into a state-of-the-art postal and services company. The IPO is scheduled for autumn of this year.

The quality of services provided meets top international standards (J+1 – mail quota approximately 95 percent).

Since 1990, revenue increased steadily from DM 16.8 billion to DM 44.2 billion in 1999. Consolidated Group revenue will be around DM 55 billion in the year 2000. The result in 1990 was in the region of minus DM 624 million. In 1998, the result was around DM1.3 billion. In 1999 the result had improved yet again.

This was possible because

- New infrastructures were implemented (high quality and better cost structure) and product structures were implemented in the field of mail (Letter Mail Concept 2000: 83 state-of-the-art letter mail centers with a high degree of automation were built)
- An efficient logistics network was created in the field of freight mail (new freight concept: development of 33 state-of-the-art freight centers)
- Cross-border mail processes were optimized
- Cost reduction measures were taken and service improvements were made in the field of postal retail outlets
- The workforce was reduced from 379,000 in 1990 to 235,500 in 1999 (-143,500) without layoffs by way of attrition.

C. General conditions required for the privatization and liberalization process

For postal operators, the obligation to provide universal service is sometimes associated with special burdens in view of their participation in competition. The

contents of the German Universal Postal Services Ordinance do not just extend beyond the regulations of the EU Directive in terms of product scope, the network density of postal retail outlets and tariff provisions. It also extends above and beyond the minimum range of services "generally regarded as essential". This generates additional costs for Deutsche Post each year that reach into the billions and are unusual in competition. These are incurred, for instance, by the obligation to run postal retail outlets itself, to deliver 6 days a week and to deliver mail daily in rural areas nationwide at a standardized rate. As we take the final steps towards fully liberalized markets, the finance of these universal service costs must be considered, and national postal service providers must be afforded an appropriate transitional period that will allow them to cope with burdens from the past (such as pension obligations).

Within the scope of the European discussion about further liberalization, Deutsche Post believes that universal service should be organized in conformity with the market. This means flexibility in pricing as well as in standards of service. A large number of competitors will only operate in market segments that are profitable because of lower production and delivery costs and larger volumes of mail (e.g. urban areas, business customers). These segments do not require carriers to provide a cost-intensive nationwide network of postal retail outlets and letterboxes. This explains why newcomers to the market are able to charge less than the universal service provider, even though they may be less efficient in their production and delivery processes-- they serve only the business with the most profitable customers.

Thank you very much. I look forward to your questions.

Mr. MCHUGH. Thank you both very much.

I intended to first go to questions but the ranking member has explained that he has an unavoidable meeting in the Senate in a few moments, so I wanted to give him the advantage of hearing as much of our two remaining witnesses as possible.

Let me thank you again for being here. We will come back to you for questions. Frankly, I should be visiting you. How is the weather over there now?

Mr. DOERKEN. Not as good as here at the moment.

Mr. MCHUGH. Well, I will wait until October. The ability to get that kind of structure through a political system is something I have come to admire, so I thank you for that.

With that, let me go next to our esteemed Postmaster General. Bill, welcome. Thank you for being here. We look forward to your comments.

Mr. HENDERSON. Thank you, Mr. Chairman.

First of all, I want to thank you for your leadership in passing the legislation that we supported to reform our role. I think the world is really changing. As you can see from this panel, the UPU, 10 to 15 years ago, was a collection of government agencies and that simply is not the case today. You have Germany, which will be a public entity with an IPO in the not too distant future, you have other privatized posts like the Dutch and these are very competitive private sector organizations. I think they are going to make a huge difference in the UPU and how it operates.

You are not going to have purely government entities sitting there; you are going to have people who are very competitive worldwide and I think it is appropriate for companies like Federal Express to express concern that some sort of competitive advantage would be gained by not being at the table, especially since not everyone at the table looks alike anymore.

I think reform is very important and I think after Germany goes public the world is going to be forever changed because there is going to be a rash of reactions to that around the world including more privatizations, more splitting away from the government. The role of the UPU is an interesting question.

I would also say there has to be some mechanism to assure that Americans have global, universal service. That means there is some mechanism to set terminal dues. The UPU plays that role now and whatever evolves in the future, there has to be some mechanism or else Americans will be denied universal global access.

Finally, I would conclude by saying Ambassador Southwick, in my view, did an excellent job. He merged three different cultures. The Postal Service, having done this historically, came to the table with the attitude of making it work. The private sector was there and the State Department. So it was a very short timeframe and there might have been some administrative glitches here and there, but from my viewpoint, he did an excellent job.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Henderson follows:]

Statement of
William J. Henderson
Postmaster General and Chief Executive Officer
United States Postal Service
before the
Subcommittee on the Postal Service,
Committee on Government Reform, U.S. House of Representatives
March 9, 2000

Thank you, Mr. Chairman.

I am pleased to share with you today my perspective on the changing international postal scene, including our new and productive relationship with the State Department. We are working closely with State in developing this nation's international postal policy.

We hope that this discussion also will illuminate the continuing need for legislative reform to position the Postal Service to remain relevant in the future. A vibrant Postal Service is vital to our nation's economic and social well being, and what is happening internationally affects our ability to deliver at home.

The international mail market is characterized by accelerating competition that affects the domestic postal world as well. Throughout the world, traditional and non-traditional competitors—including the foreign posts represented here today—are aligning themselves to compete aggressively. The cooperation among the foreign posts that existed only a half decade ago has yielded to the sharper edge of competition as liberalization and deregulation have taken root overseas. Many posts are entering into alliances and businesses they would not have contemplated a short time ago. They have awakened to the realities of changing information technology, the blurring of borders, and public sentiment for deregulating network monopolies in all areas of public services, including telecommunications, utilities, and the posts.

Although the pace of deregulation has varied worldwide, the Postal Service has not considered itself immune to this sweeping trend as it has looked to the future.

Competition and technology already are making our letter monopoly less relevant, and we have to get better and better at anticipating and meeting the changing needs of our customers. We are committed to staying ahead of change and assuring that the American people not only have continuing access to affordable, universal service, but also continue to receive the best postal service of any nation.

We believe that the successful postal systems of the future will be competitive. They will have developed value-added services to keep mail relevant to their customers. They will have figured out how to use the Internet and the electronic communications world to expand access and the services offered to their customers. And, they will have leveraged their universal service requirements to provide high-quality, low-cost delivery and returns of merchandise.

That is why we support H.R. 22. Its reforms would increase our flexibility to introduce and price our products and services competitively and balance competitive freedom for the Postal Service with the interests of our many competitors.

Achieving the same balance in the international arena was the challenge presented to the State Department in its new role in leading the United States' delegation to the Universal Postal Union. The delegation to the Beijing Congress was unique. For the first time, it included the representatives of private delivery operators that compete directly with postal administrations, and State's charter was, clearly, to lead the Universal Postal Union in the direction of reform and opening up to the private sector in a strong but balanced manner. The Postal Service, which assumed the role of State's advisor and facilitator for this Congress, believes that State's efforts to reduce trade barriers and to promote the interests of American industry are consistent with the public policy and business objectives of both our nation and the Postal Service.

In that context, it is certainly timely to review the recently-completed Congress of the UPU in Beijing and our efforts to provide technical advice and facilitate acceptance of the State Department's new role as the lead policy agency in the relationship with the UPU. Today, I would like to address the implementation of State's new role, offer our view of the UPU Congress' outcomes, and, finally, put international mail policy into the larger context of needed postal reform.

In terms of the State Department's new role, I commend them for the immediacy with which they acted to develop a plan and strategy for the UPU Congress. They conducted a series of interagency and public briefings and consultations regarding UPU Congress issues. Ambassador Southwick personally chaired most of these sessions. He invited all participants to raise issues, submit proposals, and provide comment on proposals from other stakeholders. From our perspective, the process was open, transparent, and provided all interested parties with an opportunity to contribute.

This is not to say that there were no difficulties. State Department staff clearly faced a steep learning curve in becoming familiar with the issues and in evaluating input. The Postal Service and other interested parties had to work hard to provide an education in mail industry issues. Despite strong differences on some issues, I believe there was a common interest in making the new legislation work and in helping the United States present a unified set of proposals to the rest of the world.

Early in the process, the courier industry submitted a package of proposals calling for dramatic changes in the UPU Acts. These proposals sought to transform the UPU immediately from its focus on the development of the global postal network, the needs of developing countries, and cooperation among universal service providers to a focus on market competition to promote the development of all global delivery services, public and private, and to assure fair competition among all operators.

From our perspective, the issues raised by the courier package deserved serious attention on the part of the UPU. While several aspects had been discussed and debated before, they had never before been bundled together and presented as a comprehensive and radical proposal for reform. State consulted other countries and interested parties in the United States and gained agreement on an alternative approach to UPU reform. Specifically, they proposed forming a High Level Group of UPU members to consider the issues on an urgent basis and to present recommendations to an extraordinary Congress two years before the next UPU Congress in Abidjan, the Ivory Coast, in 2004.

Another key element called for the elimination of UPU Convention provisions protecting postal administrations from remail. The Postal Service strongly opposed going forward with this proposal without a more objective and in-depth analysis of its implications for our domestic revenue base and our ability to assure adequate revenues to finance our universal service obligations. Our preliminary estimates indicated that we could lose over a billion dollars and perhaps as much as five billion dollars. We did not have sufficient time to resolve this issue prior to the Beijing Congress, so we agreed to set it aside until afterward. We are now in the process of arranging for a more thorough study in cooperation with State, the Postal Rate Commission, and other interested parties.

In terms of reviewing the Beijing Congress, we believe the outcomes were mixed. As would be expected of any new policy initiative, there was some initial apprehension on the part of all of the parties. Some of the delegates, including many from nations that have been traditionally supportive of U.S. proposals, were confused and even suspicious about our support of an aggressive UPU reform agenda. We appeared to be giving greater priority to the interests of private sector competitors than to the interests of universal service providers. This provoked some contentious debate early on.

In the end, however, the Beijing Congress approved our UPU reform proposal in a modified form. It decided to constitute the High Level Group to pursue the reform issues we had raised and to report the results to the UPU Council of Administration in 2002. It did not agree to an Extraordinary Congress before Abidjan, but it left open the possibility for such a session. This will depend upon the recommendations emerging from the High Level Group and the results of the effort over the next two years to inform and educate UPU members regarding the issues.

The Congress adopted a new terminal dues structure that moves the UPU significantly closer to a cost-based system for postal administrations to reimburse each other for the cost of delivering each other's mail. This development is very important for the further progress we will seek on UPU reform in general.

The Congress also instructed the UPU Council of Administration to establish an Advisory Group to serve as a forum for greater private sector access and input into UPU decision making. This will hopefully provide opportunities to bridge the culture gap between the market focus of the private sector and the universal service focus of postal administrations. The Congress did not, however, agree to the recommendation of the 1999 UPU Council of Administration that representatives of the International Express Carriers Conference (IECC) be permitted to attend the Congress as observers. A majority of members voted against IECC's attending most of the committee and plenary sessions in which they were interested. This unfortunately deprived both the Congress and the IECC of an opportunity to gain a better understanding of each other's concerns and interests. We worked hard to gain support for their participation, but we were unsuccessful. This illustrates the adjustments with which the UPU will be struggling and the leadership challenge for State.

Nonetheless, we all gained a great deal from the experience, including a better understanding of how the more commercially aggressive postal administrations, such as Deutsche Post and TPG, are doing business and the impressive investments in technology, network expansion, and development by private operators such as UPS and Federal Express. We will continue to support State's efforts to provide an effective forum for stakeholder consultation and public education regarding the issues we face.

Finally, Mr. Chairman, I would like to comment briefly on the larger issue of postal reform and its relevance to the competitive environment of international mail. Private operators are investing heavily in global expansion. The private carriers hold about two thirds of the revenue in the outbound international mail market, and they are clearly dominant in the higher growth segments of the market, including expedited services. Many of the foreign posts are privatizing or have received authority from their governments to acquire new assets and to aggressively market their services in other countries, including the United States. Meanwhile, most of the world's postal administrations have not yet achieved the strategic advantages of a Deutsche Post AG or the Netherlands' TNT Post Group. They remain highly dependent on each other for delivery outside their national borders.

To date, the Department of State and the intergovernmental agency representatives participating in the UPU process have supported a balanced approach to UPU reform issues. They understand and respect that the Postal Service must fulfill its universal service obligations and continue to cooperate with other postal administrations for the delivery of our international mail. Unlike private sector companies, and even Deutsche Post and TPG, who can set up their own delivery operations abroad, we continue to be dependent on our ability to negotiate commercially viable arrangements for delivery services with other postal administrations.

In simplest terms, Mr. Chairman, we are, by and large, disadvantaged in the new competitive world. As you well know, H.R. 22 reflects a significant process of give and take and, on balance, it is a reasonable reform package supported by the Postal Service. It includes a number of measures that would affect the Postal Service's international business and that respond to competitive concerns of the private carriers. We believe that we can operate within the framework these changes would create, as long as they occur in concert with the other proposed changes in the legislation. But it would be unfortunate—and perhaps fatal—if the efforts to open up the UPU and the international market to greater competition were accomplished by closing down competitive opportunities for the Postal Service.

Thank you, Mr. Chairman. That concludes my statement.

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Mr. MCHUGH. Thank you.

Batting cleanup, appropriate, you always have your power hitter in the fourth slot, right, Fred. Again, no stranger to this subcommittee or this hearing room, a man who I think has done an amazing job in balancing the very considerable interests of one of the most important companies in the world against what I think is fair to say he recognizes is the importance of the delivery of the mails to every citizen of this country. We are greatly appreciative for his leadership and for his courage. Can you give us your statement in 5 minutes or we can break and come back. I don't want to cut you short.

Mr. SMITH. I am fine. It is your pleasure, Mr. Chairman.

Mr. MCHUGH. Why don't you go ahead.

Mr. SMITH. I can make my points very briefly here, four points.

First, as demonstrated by the panel and by the testimony so far, delivery services are becoming global businesses that include elements of postal express and logistic services, but the primary legal framework, the Universal Postal Convention is outdated and it needs to be revised to be much more pro-consumer, pro-competitive, pro-global and pro-reform.

Second point, despite the good effort by the United States, under your leadership as Postmaster General Henderson mentioned, the 1999 UPU convention remains anticompetitive and antireform. The United States should implement operational provisions but as you noted in your comments with the GAO folks, we believe you ought to give serious consideration to withholding formal ratification of the convention.

Third point, transferring policy responsibility of UPU to the Department of State was, in our opinion, a major step forward but additional legislation is urgently needed.

The fourth point is that as part of this legislative effort, the United States needs to undertake a major review of its policy goals and options in this regard.

We appreciate being able to make those four points to you, Mr. Chairman.

[The prepared statement of Mr. Smith follows:]

Hearings before the
Subcommittee on the Postal Service
of the Committee on Government Reform And Oversight
U.S. House of Representatives on
U.S. International Postal Policy
March 9, 2000

Statement of Frederick W. Smith
Chairman, President, and Chief Executive Officer
FedEx Corporation

On behalf of the management and 200,000 employees and independent contractors who make up the FedEx family, I would like to thank the Subcommittee for this opportunity to present our views on U.S. international postal policy

There are four main points that I would like to make:

- While the delivery services sector is rapidly evolving into a global business that includes elements of postal, express, and logistics services, the primary legal framework for this sector, the Universal Postal Convention, is outdated; it needs to be fundamentally revised so that it is pro-consumer, pro-competitive, pro-global, and pro-reform.

- Despite the best efforts of the U.S. delegation, the new UPU Convention concluded in Beijing in 1999 is anticompetitive and anti-reform; the United States should allow the Postal Service to implement operational provisions of the Convention but give serious consideration to withholding formal ratification (like most nations).

- The act transferring policy responsibility for the UPU to the Department of State was a major step forward but experience has demonstrated that additional reforms envisioned in H.R. 22 are urgently needed.

- The United States needs to put the case for reform of the international legal framework directly to other governments, but first it needs to undertake a major review of policy goals and options.

GROWTH OF EXPRESS SERVICES IN THE UNITED STATES

FedEx was founded twenty seven years ago, on April 17, 1973, to be exact. In less than three decades, our company and other express services have changed the way all of us in the United States think about delivery services. Since then -- thanks

in large part to wise decisions to deregulate both air and surface transportation -- the delivery services sector has evolved rapidly into a universal nationwide infrastructure that includes elements of postal, express and logistics services.

Our industry in general – and, indeed, FedEx in particular – has been very fortunate to be at the right place at the right time to take advantage of four very powerful macro trends shaping the national economy.

- First, there has been an undeniable rise of high-tech and high-value-added goods as a percentage of economic activity – an issue that Federal Reserve Chairman Alan Greenspan has addressed on numerous occasions.

- Second, those high-tech goods are increasingly sourced and sold on a nationwide, indeed global, basis.

- Third, to compete in this high-tech, global economy, companies have turned to fast-cycle logistics to help streamline their entire supply chain.

- And, fourth, just within the past decade, this business model has intensified with the application of e-commerce capabilities that add both velocity and visibility of goods in transit.

These macro trends have helped propel the United States into the longest period of economic prosperity in the history of our country.

EVOLUTION OF GLOBAL DELIVERY SERVICES

Economic trends which have powered the growth of the national economy are rapidly transforming the global economy as well. The air express industry has been a primary facilitator of this global economic advance. Air transport accounts for less than 2 percent of the weight of goods shipped internationally, but more than 40 percent of value. As I said in recent testimony on the accession of China to the WTO, no country can expect to operate a modern economy or be at the forefront of trade in the twenty-first century without a strong air express service.

Express companies were the first type of international delivery service to harness the potential of these technologies. Specializing in the collection and delivery of urgent documents and parcels, international express companies have developed a seamless global service that is the same locally and internationally. Looking to the future, however, the implications of modern technology are not confined to express operations. Today, systems developed for international express services are being adapted to the movement of international mail and high value freight. Distinctions between international express, postal, and high-end freight services are disappearing.

Global delivery services are becoming a central feature of the global economy.

A NEW INTERNATIONAL LEGAL FRAMEWORK

There is no question this is the way the world is going to work. But there is a question, a serious question, whether the international legal structure will help or hinder the process.[1] I believe it is imperative to shape a new international legal structure that is pro-consumer, pro-competitive, pro-global, and pro-reform.

Pro-consumer

The basic legal framework of international delivery services is the Universal Postal Convention. Although it has been amended and reorganized, the fundamental concepts of the Convention have not changed since the end of the nineteenth century. A century and a quarter ago, the Universal Postal Union (UPU) was a good idea, facilitating the exchange of international mails between national postal administrations. Today, the UPU is an anticompetitive anachronism impeding development of an important element of the global infrastructure.

The fundamental flaw of the UPU is this: it is an inter-governmental organization of the post offices, by the post offices, and for the post offices. Yet post offices today do not speak for their governments. They speak for their own commercial self-interests, as they compete more and more aggressively against private operators and other media. Nor, with a handful of notable exceptions, are post offices in the vanguard of changes that are reshaping the global delivery services sector. What the majority of post offices have in common is a shared interest in dividing the sector into national markets dominated by post offices.

The present UPU Convention is focused not on the needs of the international economy but on the welfare of nationally based public postal operators. The Convention mentions the "user" or "customer" or "consumer" of postal services only twice (once to encourage preferential rates for major users). Postal administrations are mentioned more than 200 times. Private operators are not referred to at all. The present Convention is not concerned with facilitating international postal service; it is concerned with promoting national postal operators.

In the twenty-first century, the UPU Convention needs to be rededicated, this

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[1]See, e.g., Organisation for Economic Co-operation and Development, "International Parcel Delivery" (1997); "Competition Policy and International Airport Services" (1998); "A Global Marketplace for Consumers: Simplifying Customs Clearance Procedures" (1999); "Promoting Competition in Postal Services" (1999), and "Regulatory Reform in International Air Cargo Transportation" (1999). In contrast, nearly 90 percent of shipments handled by private express companies were assessed proper duty.

time with an unwavering focus on the needs of the consumer rather than on advancing the interests of one class of operators. Governments, not post offices, must make international law, and all interested parties -- users, public postal operators, private operators, and employee groups -- should have equal access to the decision making process.

Pro-competitive

The present UPU Convention distorts and retards international postal service by establishing a non-economic system of charges for the delivery of international mail. When the Postal Service receives mail from a foreign post office, it charges the foreign post office a rate called "terminal dues." Terminal dues charges do not correspond to U.S. domestic postage. In fact, terminal dues have nothing to do with the Postal Service's cost of delivering international mail. In many cases, terminal dues rates are below cost. For example, a typical single-piece domestic letter weighs about 8 ounces, and the Postal Service charges an American mailer 33 cents to deliver it. But the Postal Service charges a foreign post office only about 7 cents to deliver the same letter (23 cents from some European countries). It is as though the Postal Service had printed two sets of stamps, one set for Americans and one set for foreign post offices. This practice is indefensible.

Not only does this practice discriminate against American mailers, it also discriminates against private operators. If a foreign post office and international private operator arrive in the United States with the identical bags of foreign mail, the Postal Service will charge the foreign post office the low terminal dues rate and the private operator the higher domestic postage rate. Terminal dues are available only to post offices.

Another way to look at the special treatment which the Postal Service gives to foreign post offices emerges from the Postal Rate Commission's recent International Mail Report (1998). This report shows that the cost coverage for inbound international mail was 113.5% while the cost coverage for domestic mail was 159.5%. If the Postal Service had charged overhead costs to foreign post offices in the same proportion as to American mailers, it would have collected approximately $176 million more in revenues. In essence, the Postal Service gave foreign post offices a 38 percent discount off of normal domestic postage rates.

Private operators like FedEx face the same postal discrimination abroad. The German post office, for example, gives the Postal Service one rate for the delivery of U.S.-origin letters and gives FedEx a different, higher rate if we tender identical letters for delivery.

Even worse, to protect this artificial terminal dues scheme against arbitrage, post

offices intercept international mail that is posted in a country other than the country where post offices believe it should be posted. For example, suppose a large U.S. bank uses FedEx to send monthly credit card statements in bulk to the Dutch post office for forwarding to its European customers. A destination post office -- for example the German post office -- might intercept this mail and refuse to deliver it because it was not posted with the U.S. Postal Service. In essence, the German post office would be acting to protect its sister post office, the Postal Service, against competition by FedEx and the Dutch post office. This practice is flatly contrary to antitrust principles, yet the UPU Convention condones it on a worldwide basis.

In the twenty-first century, the UPU Convention must be cleansed of anticompetitive provisions which distort international commerce and depress investment. The Convention should not choose sides in the commercial competition among different operators, whether public or private. It should be commercially neutral. Global services should be facilitated, not impeded.

Pro-global

The UPU Convention also hinders overdue reform and simplification of customs laws which reinforce national barriers to emergence of the global economy. Customs simplifications found in the UPU Convention, which were once desirable, have become set in concrete and inhibit further reform.

The first UPU agreement on international parcel post was adopted in 1880. From the start, parcel post was shaped by customs considerations. Parcels were treated separately from letter-post mail because of fear that customs control of parcels would lead to delays for all mail. Over the years, the UPU worked with customs officials to develop simplified customs procedures for postal parcels. In 1977, the UPU and the Customs Cooperation Council (predecessor of the World Customs Organization) included in an international customs treaty (the "Kyoto Convention") a provision that authorizes post offices to use very simplified customs forms prescribed in the UPU Convention. Moreover, the Convention exempts post offices from liability under customs laws.

When international express operators developed in the mid 1970s and early 1980s, customs authorities treated us as carriers of freight. We faced complex documentation procedures originally developed for clearing shiploads of goods. Over the years, express companies have worked with customs authorities to simplify and speed up these procedures, primarily through adaptation of computer technology and establishment of dedicated customs facilities, often at great cost to us.

In this manner, two quite different modes of customs clearance have developed for international documents and parcels: a postal mode and an express mode. Postal

mode is simple, slow, and cheap. When a typical postal parcel enters the United States, the Postal Service is not required to fill out a customs form; it simply tenders the parcel to Customs. Using information on the package supplied by the mailer, a Customs inspector prepares a simple form called a "mail entry" and clears the parcel. If duty is owed, the Postal Service collects if it from the addressee and remits it to Customs. Many times, Customs inspectors skip the mail entry and waive the duty. If there are errors in the documentation, the Postal Service bears no liability.

The express mode of customs clearance is fast, but it is also complicated and expensive. When a typical express parcel enters the United States via FedEx, we fill out (either physically or electronically) a detailed customs form for each parcel and provide substantial backup documentation. We must calculate and pay the duty to Customs before Customs will clear the parcel. Often we do not get the duty back from the addressee because it is too costly to collect small sums of money. Since the Customs Service does not have to do the paperwork, it never waives duty on parcels cleared by express mode. If there are mistakes in the documentation, FedEx is liable for hefty fines or worse.[2]

I do not object to two modes of customs clearance. Different modes of customs clearance for different types of articles may be sensible: for example, cheap clearance for non-urgent household goods and expensive clearance for time-sensitive commercial goods. What I do object to is treating different operators differently in the clearance of identical shipments. Public postal operators can choose between postal mode and express mode of customs clearance. We have access only to express mode and are thus handicapped from competing for the transportation of parcels that lend themselves to the postal mode of customs clearance.

In the twenty-first century, the postal mode of customs clearance defined in the UPU Convention must be made available to all operators. It may, as some authorities argue, have to be revised to accommodate the needs of modern customs law. But there is no excuse for an international convention that establishes a simplified system of customs clearance and makes it available to only a portion of operators in a competitive market.

Pro-reform

In addition, in a twenty-first century rewrite of the UPU Convention, I believe

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[2]In 1998, U.S. Customs described differences between postal and express modes of clearance in "A Review of U.S. Customs Treatment: International Express Mail& Express Consignment Shipments." Last week, the Air Courier Conference of America released a study by Wirthlin Worldwide which shows that only six percent of all express shipments coming into the United States through the U.S. Postal Service are properly processed and assessed customs duties and fees.

we should go beyond fixing existing flaws. We need to consider additional principles to facilitate the exchange of international documents and parcels. Inspiration is provided by the "reference paper" in the Basic Telecommunications Agreement adopted by the World Trade Organization in 1997. The reference paper embodied regulatory guidelines which signatory countries agreed to incorporate into their national law. A similar approach should be included in a modern UPU Convention. For example, in a revised UPU Convention, signatory countries might pledge that they will:

- apply national laws equally to all international operators (in particular, competition, customs, and tax laws);
- not grant public postal operators (or other national operators) special or exclusive rights in the export or import of documents and parcels except where, and to the extent, demonstrably necessary to protect the provision of universal postal service at the national level;
- ensure that post offices with special or exclusive rights cannot use revenues derived from such rights to gain a competitive advantage in the international sector (in particular, at a minimum, prices of international services should bear the long run marginal costs of such services and a proportional share of common overhead costs);
- ensure that post offices with special or exclusive rights in the domestic sector provide all international operators and shippers equal access to non-competitive services;
- ensure that public postal operators with special or exclusive rights that provide international services keep accounts for such services separate from accounts for domestic services and treat jointly incurred costs in a transparent manner; and
- ensure that an impartial and independent regulator is established to enforce regulatory provisions.

As experience in the telecommunications sector demonstrates, we need a global agreement to limit national restrictions on international service.

ACTS OF THE BEIJING CONGRESS

In August 1999, the UPU convened a general congress in Beijing to draft a new Convention and related acts. The new Convention will apply during the five-year period January 1, 2001 to December 31, 2005. In preparing for this congress, the

major parties were well aware of the flaws in the present Convention. From postal reforms at national level and the telecommunications agreement in the WTO, the general path to reform was well lit and visible to all.

Several countries urged the Beijing Congress to take the UPU's first steps down this path. The United States and Germany urged the Congress to study reform for two years and convene an Extraordinary Congress in 2001 to adopt necessary measures. The Netherlands proposed that the UPU open its meetings to representatives of all interested. Australia argued that terminal dues should be brought into conformance with the principles of the WTO's General Agreement on Trade in Services (GATS). New Zealand suggested leaving terminal dues to commercial contracts between post offices. The United States urged limitations on the right of post offices to intercept mail not posted in accordance with the UPU's implicit division of the world into national markets.

Unfortunately, a coalition of anti-reform post offices blocked all these reforms. The only vestige of reform to emerge from Beijing was establishment of a "High Level Group" to study future reform. Even so, the High Level Group is subsumed to existing UPU institutions and powerless to convene an Extraordinary Congress.

Legal repartee in respect to terminal dues was particularly acute. The United States, citing "the growing blur between private delivery services and competitive services of the postal operators," added a mild reservation to the Convention stating that the U.S. would implement UPU terminal dues in a manner consistent with pro-competitive provisions of GATS and future GATS agreements. In response, *sixty-five* countries added a second reservation declaring that, in respect to them, UPU terminal dues must be observed regardless of GATS and future GATS agreements. Even by UPU standards, this is a remarkably anticompetitive position.

Far from separating commercial and governmental functions, as advocated by reformers, the Beijing Congress moved in the opposite direction. The UPU Postal Operations Council, a body limited to postal officials, has become an international postal legislature. This body is now vested with authority to adopt, amend, and repeal about three-quarters of the UPU's binding legal texts. At the same time, this same Postal Operations Council is responsible for a laundry list of projects intended to promote the commercial fortunes of post offices. Market analysis, competitive analysis, customer satisfaction, parcel and express services, email and e-commerce, freight services, direct marketing, and financial services -- all are on the agenda of the Postal Operations Council.

In short, despite the best efforts of the U.S. delegation, the Beijing Congress of the UPU did not take the path leading to reform of the Convention and adaptation to the twenty-first century. The Beijing Congress acted to preserve the UPU as an inter-

governmental organization of, by, and for post offices until 2006. Anticompetitive provisions were extended for five years, as was customs favoritism for postal articles. And anti-GATS provisions are incorporated by reservation. The Beijing Convention is antithetical to the whole American approach to modernization of international trade in services.

The new UPU Convention is so deeply flawed that I believe the United States should give very serious consideration to simply not ratifying it. Ratification is a formal step that binds the United States to its provisions. Without ratification, international postal service will continue unimpeded. The Postal Service and foreign post offices will implement the Convention as an agreement among post offices. In fact, the great majority of UPU member countries do exactly this; they never ratify the UPU Convention.

Rather than binding ourselves legally to the Beijing Convention for the next five years, the United States should actively press for reform in the international legal structure before the end of 2005. We cannot impose our will on other governments, nor should we try to do so. But we can and should make every effort to work closely and cooperatively with reform-minded governments, both within and without the UPU, to develop a legal framework suited to the new century.

LEGISLATION NEEDED

In 1998, Congress transferred lead authority in UPU policy matters from a commercially interested party, the Postal Service, to an impartial government agency, the Department of State. This was a long-needed, highly desirable reform. FedEx has been actively working with the Department of State in the field of international postal policy. I am happy to commend Ambassador Michael Southwick and his team for their hard work and evident dedication to advancing the interests of all Americans.

Despite these improvements, however, much remains to be done to render the process of developing U.S. policy open, even-handed, and informed. After a year and half, the decision making process is still opaque. Key UPU policy documents are unavailable. Interested parties have only a general idea of who advocates what position or why. No written record exists to illuminate the bases for U.S. policy determinations. The Postal Service continues to insist that it is both interested party and government decision maker, a dual status which Congress rejected in 1998 but the Department of State seems unwilling to confirm. The long term aims and purposes of U.S. international postal policy are a blank slate awaiting the chalk's mark.

To complete reforms well begun in 1998, additional Congressional input is needed. Most of the necessary steps were foreshadowed in the international

provisions of H.R. 22, the Postal Modernization Act of 1999. A year ago, I testified to this Subcommittee in support of H.R. 22. Experience in the last year has demonstrated forcefully the need to enact H.R. 22's reforms in the international policy area. In particular, I would emphasize the importance of the following points:

- a legislative statement of pro-competitive national policy goals;
- a unambiguous designation of the Department of State as the sole government agency authorized to negotiate and conclude international conventions in the name of the United States;
- a legislative mandate to adopt open, transparent decision-making procedures in the development of U.S. international postal policy; and
- a requirement of equal application of U.S. customs laws to postal and private shipments.

In addition, I believe the need for several additional provisions has also been indicated.

- First, the wrangle over public disclosure of the International Mail Report by the Postal Rate Commission should be resolved. I believe the Postal Rate Commission should be required to publish a public report on international mail that is consistent with public disclosure requirements adopted in general postal rate cases.
- Second, I suggest that U.S. law should make crystal clear that, in the field of international delivery services, the Postal Service is an operator and not a regulator and can be given no greater access to the governmental policy making apparatus than other interested parties.
- Third, I believe that the persistently anticompetitive nature of the UPU indicates that the United States should, like the European Union, make antitrust laws applicable to the international agreements among post offices.

A U.S. Policy Review

Finally, before the United States can make the case for reform as I have urged, it needs to do its homework. The U.S. should initiate a broad review of its policies towards the international exchange of documents and parcels. The Executive and Congress need an objective description of the market and market trends, a comprehensive survey of approaches of other governments, and an identification of

long term policy options. Following the example of the European Commission in 1998, the U.S. government should retain independent expert consultants to gather and refine much of this information. I pledge that FedEx will do all that we can to cooperate with the government in this effort.

Thank you for your consideration of the views of FedEx.

Mr. MCHUGH. Thank you, Mr. Smith, for being here today. I deeply regret the timing of these bells all morning that have disrupted very important testimony.

You have all made some points that, because of your courteous accommodation of our time constraints were not addressed in your comments. Hopefully we can get a chance to talk about some and all of those. As we hear from you and listen this morning, and having read your testimony, it seems we are all on the same page. I think that is wonderful.

We do have some nuances and differences that I would like to touch upon and work through. So with your patience, we will try to run over, vote and come back as soon as we can.

We stand adjourned. Thank you.

[Recess.]

Mr. MCHUGH. I understand that Mr. Smith has some other pressing engagements. I appreciate his being here and generously giving us his time. I again apologize for how this has not worked out, so let me start with you.

You mentioned in your comments about the talk of new legislation to arrive at the outcomes in this new form of UPU that you think is fair. Could you share with us what kind of specific legislative enactments you feel are necessary at this time?

Mr. SMITH. We think at its heart the problem with the 1999 UPU convention is that it remains anticompetitive and antireform, and a that a new legal framework is required which would be very clear that the No. 1 consideration is the consumer rather than the provider.

Despite the fact that the State Department is now in charge of these negotiations, and I heard the testimony by the GAO folks, our belief is, and I think correctly, that the UPU delegation is in the main, perhaps because they don't have the expertise or what have you, controlled by the USPS based on historical requirements rather than the requirements of the future.

We would be happy to submit to the committee with great specificity those things we think should be in the legislation but it needs to address, first and foremost, the fact that it is pro consumer rather than pro provider.

One of the areas that is a hot button, and we have talked about this before in your hearings, is the issue of customs clearance, that there are very, very different requirements for clearance of postal items versus those carried by private companies. It is not a good situation from the standpoint of security and safety issues and it certainly is not a level playing field. So that would be one thing that for sure needs to be in there.

Last, it needs to be very clear that it is pro reform, that the convention which the United States stands to recognize is the requirement to reform the international delivery systems and it is largely silent on that fact today. Yet, you have entities like Deutsche Post and TNT which are quasi or completely privatized and still the U.S. Postal Service, which is very constrained, whether you agree with that or not. As you know we supported your legislation, H.R. 22, to try to put some balance in that. I am not so sure we weren't wrong-headed in that but that is what we did. In any case, the UPU convention ought to push those reform measures.

Mr. MCHUGH. Am I correct in assuming you heard GAO talk about more formal process in terms of assuring the private sector's input and participation. They expressed, I think I am being fair, a theoretical support of something less formalized than the Federal Advisory Committee Act but would I be correct if I did imagine that you would support and feel it was necessary to go with that formal structure that is provided under the FACA?

Mr. SMITH. I think it should be codified and as formal as possible to ensure that the private sector interests have a place at the table. It is one thing to talk about all these things here in Rayburn, but it is quite another to be on the ground in Beijing or what have you and I think the GAO's characterization based on what our people told me, was the most charitable way you could present that. I am not saying they were wrong.

Mr. MCHUGH. Less interpretation makes for a fairer and more predictable outcome. I understand.

You mentioned customs and we have customs folks here on the third panel and we will talk to them about that. Let me get to another point that was brought up in your testimony that I know is a prominent concern amongst the private sector. That is the terminal dues agreement. I think it is important for the record to have, or if you would like to submit later, your feelings and how you believe that fosters an unfair, insurmountable cost factor in terms of operation of business.

Mr. SMITH. Well, I would like to submit something later formally and in greater detail, but I would just say in the most general terms, the problem with the terminal dues situation is that it in essence creates a cartel-like mentality or an arrangement between postal entities who perform delivery services for substantially less money than they provide delivery services for their own citizens.

If you start with the premise, which I did, that the UPU convention the United States ratifies needs to be pro-consumer, it is very difficult for me to rationalize the thinking behind the terminal dues structure to begin with because it is only for those who participate within these postal units. Yet it is subsidized by domestic mailers. I don't understand the logic.

I am sure my good friend, Postmaster General Henderson, has some but it is hard for me as a civilian to figure out why that makes sense.

Mr. MCHUGH. We will give the Postmaster General his opportunity certainly.

You did mention, I brought up before, and you stated it in your written presentation as well as in your oral comments, your interest in not having the United States ratify the UPU convention. Do you want to tell us if in your mind a symbolic gesture that sends a message, I would assume to UPU that the status quo is unacceptable or is there a practical effect you are trying to implement as well?

Mr. SMITH. I don't think the United States of America, the bastion of free enterprise and in the interest of consumers and the average person against the interests of big organizations and what have you, should sanctify a treaty which is not pro consumer. It is just that simple.

This goes on all the time. In fact where I have to go at 1 o'clock is on exactly the same thing over at DOT about a totally anticonsumer relationship between the United States and the United Kingdom in its aviation treaty. It was built many years ago not to advantage consumers, it was built to advantage British Airways.

So I don't think the United States, in that case, should countenance a continuation of that treaty which is for the benefit of a large organization and its stakeholders against the interest of the many anymore than I think the United States ought to codify the UPU convention of 1999 which does the same thing except it is postal interests here that are protected as opposed to British Airways.

Mr. MCHUGH. You heard the GAO talk about what was still an unprecedented participation of outside groups, private groups in the United States delegation to Beijing. I think you agree with that as a statement of reality but obviously as I mentioned, you were excluded from even an observer status in many of the sessions. We cannot control the UPU in its deliberations. I know you understand that, but my question would be what was your impression with respect to the Department of State's carrying what was at least officially the U.S. position that you be allowed to participate in an observer status? Do you think they fought hard enough?

I got the impression from your testimony that by and large they did a pretty good job making that case but maybe I misinterpreted it.

Mr. SMITH. I concur with Postmaster General Henderson. In terms of commending the leadership of you and the committee to having taken the step to begin with and I think the State Department made a very good faith effort based on that legislation and there was a transition period. So it was quite natural that most of the competency and historical institutional memory came from the postal officials that were there and so forth.

Having said that, the facts of the matter are the Beijing activities were still much more of a postal service to postal service ambiance than we think is appropriate given the competitive realities of the worldwide market today.

Mr. MCHUGH. Fair enough. Any thoughts or suggestions, forgetting for the moment the domestic realities of legislative change you are interested in, as I just mentioned we can't really compel the UPU to do something that collectively their members of the body don't wish to, but what can the United States do to perhaps reengage that fight and win the next time. Not to ratify is one thing I have heard you say to send a message of being serious about wanting to make these changes, but are there other things that we could be doing symbolically or in some other fashion that could drive home the point to UPU that these are changes that have to come and the United States is willing to fight as hard as we can to achieve them?

Mr. SMITH. I am not sure that there are other things that we can do that you are not already doing with H.R. 22 and those initiatives. At the end of the day, the facts of the matter are that the rest of the world has changed and we have not. The people sitting here to my right are perfect examples of that.

Deutsche Post began this buying spree that it was on because it was permitted to do so legislatively by the German Government. The same thing was true in the Netherlands and they took those cash-flows and moneys and put them into private business. You can agree with that or not agree with it but that is what they did and they did it, quite frankly, at rates that private companies would not have paid.

I think those two governments made the decision that there were substantial private interests, probably the employees and the stakeholders, that needed to be accommodated by this reform and so they did it.

In this country, that is exactly what you were trying to do with H.R. 22. Our position has been that there is no public interest served whatsoever in the Postal Service being able to do things that can be adequately done in the private sector. This thing goes back almost 100 years. The debates in this Congress at the turn of the century on whether the Postal Service should be in parcel post or not. You can almost take them out and read them today and they sound like they are relevant.

We don't think that should be. There is no public policy interest in doing that at all, but there are substantial private interests, and there are the 700,000 postal workers, the management of the Postal Service and so forth. So your bill, which we supported, gave that evolution a chance to take place.

I have written the Postmaster General about this. We got very hot about our position on this matter being portrayed as being against the Postal Service being allowed to compete. You know better than anybody, Mr. Chairman, that is nonsense. I am sure Bill didn't control his PR department who wrote that magazine article about it but that is why I said I think we may have been wrong in supporting that because if you say the Postal Service should be given the freedom to take these enormous cash-flows and go into private business and subsidize those activities, quite frankly the way that was permitted in Germany and the Netherlands, we think that is very, very bad policy.

I think based on what we have seen that is what they want to do. It really isn't a compromise that they want. If that is their position, then we strongly oppose them being liberalized.

Mr. MCHUGH. I understand that. Let me say for the record, and I tried to indicate it in my introduction, you are as you should be, the strongest advocate for your company's interests. No one with half a gray cell would ever suggest you should do anything differently.

From our very first meeting, you have made it imminently clear throughout that you have not just an appreciation but an abiding interest in ensuring the viability of the U.S. Postal Service but in a fair and balanced way. I want to make clear I have never had 1 second in which I had to question that. I commend you for it and I know it has not been an easy position for you to take. It showed great courage and I think great insight—of course I am somewhat biased.

Thank you, Fred. We gave all the tough questions to Mr. Davis and now he will have to submit them for the record.

I would be happy to yield or I can go on to the next witness. Let me yield to the gentleman from Illinois.

[Followup questions and responses follow:]

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FedEx Corporation

May 16, 2000

The Honorable John M. McHugh
Chairman, Subcommittee on Postal Service
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-8143

Dear Chairman McHugh:

Attached is a corrected copy of the answers to your follow-up questions, which we sent to you on May 12. We appreciate the opportunity to provide additional input for the hearing record. Please let me know if I can be of further assistance.

Sincerely,

A. Doyle Cloud, Jr.

A. Doyle Cloud, Jr.
Corporate Vice President
Government Affairs

Attachment

cc: Frederick W. Smith
Kenneth R. Masterson

Questions for FedEx Corporation Following the March 9, 2000, Hearing on International Postal Policy

Answers of Frederick W. Smith
Chairman, President, and Chief Executive Officer
FedEx Corporation
12 May 2000

1. The GAO found that the Department of State clearly signaled a new direction for U.S. policy that was intended to promote UPU reform, open the UPU policy formulation process to be more inclusive, and change some UPU rules governing international postal services. Do you agree the Department of State signaled a new direction for U.S. international postal policy? Are you pleased with their direction and what opportunities do you see, as a private operator, to open up the UPU to all providers of international postal services?

Answer. I agree that the Department of State has signaled a new direction for U.S. international postal policy. The general direction is positive, as evidenced by the U.S. proposal at the Beijing Congress to convene an Extraordinary Congress in 2001 for the purpose of modernizing the basic instruments of the Universal Postal Union. Nonetheless, it is clear that the Department of State (i) did not propose elimination of key anticompetitive provisions in the 1999 Convention nor file reservations against such provisions and (ii) has not adopted transparent and commercially neutral procedures for development of U.S. policy. These are serious shortcomings.

Opening up the UPU to all providers of international postal service is desirable, but it is not the primary reform that is needed. Allowing a handful of private express operators to participate in UPU meetings will change little unless two other structural reforms are adopted. *First*, governmental functions must be separated from commercial functions. Operators, whether public or private, should not have the authority to legislate international law. *Second*, the legal framework must be revised so that it applies equally to all operators. In addition, it would be desirable for the international legal framework to positively facilitate evolution of global delivery services.

2. What additional legislation do you believe is necessary to refine the 1998 Act designating the Department of State's UPU-related responsibilities?

Answer. The international provisions of H.R. 22 should be enacted even if the entire bill is not. In this regard, it should be noted that the persistently anticompetitive nature of the UPU indicates that the United States should, like the European Union, make antitrust laws applicable to international agreements among post offices. I mention this because extension of the antitrust laws to international postal agreements is included in the main body of H.R. 22 but not specifically in the international provisions. In addition to what is already in H.R. 22, I believe the need for two additional provisions is indicated. First, the wrangle over public disclosure of the International Mail Report by the Postal Rate Commission should be

resolved. I believe the Postal Rate Commission should be required to publish a public report on international mail that is consistent with public disclosure requirements adopted in general postal rate cases. Second, U.S. law should make crystal clear that, in the field of international delivery services, the Postal Service is an operator and not a regulator and can be given no greater access to the governmental policy making apparatus than other interested parties.

3. In the past, Postal Service officials have stated that, because competitors have no duty to provide the services established by the UPU Acts, they have no special claim to directly participate in UPU decision making processes relating to what are essentially postal obligations and services. How do you respond to those who believe that postal competitors have no right to participate in UPU decision making?

Answer. This question touches on basic principles of just and orderly government. In general, FedEx does not accept the proposition that legislation, whether international or national, should be left to the parties most affected. Under such a principle, bank robbers would be left to legislate bank robbery laws. On the contrary, FedEx believes that governmental policy should be set by disinterested officials in a manner that is open to public comment and criticism. Public participation in governmental decision making by way of observation and comment is both characteristic of a just democracy (because ultimately the government is the servant of the public) and an attribute of orderly government (because the government is forewarned of misguided decisions). Of course, open government must accommodate a degree of confidentiality to promote a free exchange of views among governmental officials and to protect national security. Nonetheless, outside parties, especially interested parties, should have essentially equal access to the open portion of the decision making process. I believe the United States should adhere to these principles in its own decision making and policy-making processes and advocate them in inter-governmental organizations.

The UPU is an inter-governmental organization, which adopts international laws that affect private operators by distorting the competitive market in which private operators do business. Because of the UPU, public operator competitors enjoy special treatment under international customs and postal laws, benefit from a governmental status that often implies special treatment under national laws, and receive public funds to pay for certain activities that normal companies cover from competitively earned revenues.

While acts of the UPU do affect private operators, this should not be the basis of U.S. policy on this issue. The United States should support private operator participation in the governmental decision making processes of the UPU, in the same measure as public operators, because this position is consistent with basic principles of just and orderly government. For the same reason, the United States should support responsible participation in the UPU by mailers, consumers, employee unions, and the public generally.

Finally, it should be noted that the obligations imposed on public postal operators by the acts of the UPU are easily overstated. Acts of the UPU do not, for example, regulate prices or service levels of international postal services. There is no international equivalent to the national obligation to provide universal first class letter service at a uniform price.

4. After almost ten years of discussion the UPU finally invited the International Express Couriers Conference (IECC) of which FedEx is a member to the UPU congress as an observer. The UPU has been accused of removing this invitation by refusing the IECC admittance to virtually all meetings in Beijing. Who are the members of the IECC? What are the objectives of the IECC as it relates to the UPU?

Answer. The International Express Carriers Conference is an international trade association of major international private operators founded in 1983. Current members are: Federal Express, TNT Post Group, and United Parcel Service. DHL, a founding member, left the IECC in 1989 but is expected to rejoin in the near future. The objectives of the IECC in respect to the UPU have been the subject of a recent submission to the UPU's High Level Group. A copy is being submitted to the Subcommittee separately.

5. What is the status of the UPU Private Operators contact committee? What are the accomplishments of this committee as it relates to improving relation between public and private operators? Has the work of the committee resulted in any meaningful exchange with regard to legal policy or technical issues? Will the private operators groups continue a direct dialog with the UPU on reform? Will the private operators actively participate in the UPU Council of Administrations' recently created Advisory Group? If not, why not?

Answer. In September 1999, the Beijing Congress of the UPU voted to reconstitute the private operators contact committee. To date, the International Express Carriers Conference has not received an invitation from the UPU to participate in a new contact committee. Predecessor contact committees met irregularly beginning in 1992. In meetings of the contact committee, the IECC exchanged views with members of the UPU on certain issues relating to reform of the UPU, customs, and other operational issues. Some of these exchanges were informative, but they seem to have had little effect on UPU policy or practices. Nonetheless, in the hopes of more meaningful dialog in the future, the IECC intends to continue to participate in the contact committee if invited and to participate in the Advisory Group

6. Recently, Fed Ex participated with UPS in an ACCA-sponsored study that compared U.S. Customs' appraisal and collection of duties on packages imported by the Postal Service with those imported by Express Consignment Operators. This report found that Customs assessed and collected duties on nearly all of the packages imported by private operators, and on very few of those imported by the Postal Service. However, as you note in your written testimony, customs procedures for packages shipped through Postal Service are not as stringent as those required of private operators. How would you respond to the suggestion that this report illustrates the need to increase requirements for the Postal Service and not to decrease requirements for Express Consignment Operators?

Answer. The fact that full duty is rarely assessed on postal imports means that, in fact if not in law, the *effective* duty rate for postal imports is quite low. The Postal Service argues that most postal imports are low value goods intended for non-commercial use. If so, a low rate of duty on low value non-commercial imports is not obviously bad public policy so far as I can see. Even so, the current process is obviously misguided in two respects. First, it is so convoluted that some postal users are selected at random and charged a lot more duty than

other users. Second, customs procedures are applied so unevenly that the *effective* rate of duty for postal shipments is significantly lower than for identical private shipments.

Customs procedures and customs duty should be uniformly applied to similar tenders of similar packages, regardless of whether tendered by public postal operator or private operator. This is not to say that low value, non-commercial shipments of the sort generally imported by the Postal Service should be subject to a restrictive one-size-fits-all customs policy. A simplified procedure, with lower rates of duty, for low value, non-commercial imports may well be in the public interest. The ACCA study does not suggest otherwise, and FedEx is inclined to support such an approach, although we would like to look further into the practicalities.

In supporting a "regular" and "simplified" approach to customs clearance of low value shipments, I am not arguing for an uncritical extension of current procedures. That is, I am not suggesting that the regular mode of customs clearance for all shipments should be what we now think of as the "express mode" and the simplified approach for non-commercial shipments should be what we now think of as the "postal mode." I would agree that the ACCA study implies that present "postal mode" of customs clearance does not result in uniform application of law (even to postal shipments) and therefore is in need of review. Although outside the scope of the ACCA study, I would argue as well that the present "express mode" of customs clearance needs review. For express shipments, costs of customs compliance are out of proportion to public benefits conferred. Imagine what would happen if FedEx were required to clear customs on all low value interstate shipments. Would such a procedure result in seizure of a few shipments of drugs or collection of some taxes that otherwise might have escaped collection? Possibly. But the cost to the economy would be so enormous that no sensible person would propose interstate customs regulation in preference to, for example, a modest increase in the budget of appropriate federal authorities for policing interstate commerce. In general, this same mismatch between societal costs and benefits applies to international commerce. In both cases, we need to rethink how customs laws are applied to low value shipments.

7. FedEx and other private operators have taken the position that the Postal Rate Commission should be required to release all of the Postal Service data contained in its recent report on international mail costs, volumes, and revenues. Why should the Postal Service be required to divulge commercially sensitive information to its competitors when private operators are permitted to keep such information confidential?

Answer. The Postal Service should be required to make public sufficient information to demonstrate that it is not using public benefits -- benefits conferred by the postal monopoly and other forms of legal favoritism -- to gain an unfair or illegal advantage over private companies in competitive markets. The Postal Service should not be allowed to use public benefits to gain an unfair advantage in competitive markets because, in general, undistorted competitive markets advance the general welfare. Public disclosure is necessary because it is the only way to generate public confidence in government policy and because public disclosure is, by itself, a powerful prophylactic. The same burden does not fall on private competitors because they do not have access to public benefits.

Public disclosure of the commercial data of the Postal Service should be limited to such public ends. Some data may be of such commercial sensitivity that initial public inspection should be limited by protective order. The balance between public ends and commercial sensitivity is properly a matter for impartial determination by the Postal Rate Commission. Moreover, FedEx has accepted the concept, embodied in H.R. 22, that the Postal Service could be authorized to engage in some competitive activities through a separate private law corporation. Assuming the separate corporation is insulated from public benefits enjoyed by the Postal Service, it could operate under the same terms of commercial confidentiality as applicable to any private company.

8. How does the current terminal dues agreement foster an unfair cost factor in terms of business operations?

Answer. In brief, the Postal Service delivers inbound international mail at a substantial discount compared to rates charged American mailers. In return, the Postal Service is able to have its outbound international mail delivered at substantial discounts by foreign post offices. These discounts are available only to the Postal Service and other post offices, not to private operators. Discounts for foreign postal delivery are reflected in the Postal Service's international mail rates, and thus give the Postal Service a commercial advantage. This practice of trading discounts for postal delivery is protected by the UPU; the terminal dues and related agreements which sustain this practice would be illegal under antitrust law if engaged in by private operators. Meanwhile, the implicit cost of the discount which the Postal Service gives to inbound international mail is, in effect, paid for by domestic mailers who are captive customers because of the postal monopoly. Private operators cannot force domestic customers to cover the costs of such business practices.

Questions from the Honorable Chaka Fattah
Thursday, March 9, 2000
Subcommittee on the Postal Service Hearing on
International Postal Policy

Answers of Frederick W. Smith
Chairman, President, and Chief Executive Officer
FedEx Corporation
12 May 2000

1. In your testimony you state that the U.S. needs to "undertake a major review of policy goals and options." Do you support the creation of a presidential commission to address domestic and international postal reforms? If not, why not?

Answer. I believe that the domestic and international postal policy reforms embodied in H.R. 22 are sound and should be enacted without delay. However, the delivery services sector is changing very quickly, and H.R. 22 is essentially incremental in nature, especially when compared to legislative reforms adopted or under consideration in other countries. For the longer term, more fundamental reform will be needed. A properly structured presidential commission could be an appropriate means of evaluating longer-term policy options.

2. On page 6 of your testimony, regarding customs clearance, you state that you are, "handicapped from competing for the transportation of parcels that lend themselves to the postal mode of customs clearance." Are you advocating "simple, slow and cheap" for your customers?

Answer. I believe customs procedures and customs duty should be uniformly applied to similar tenders of similar packages, regardless of whether tendered by a public postal operator or a private operator. A simplified procedure, with lower rates of duty, for low value, non-commercial imports may be in the public interest. FedEx is inclined to support such an approach to low value, non-commercial imports, although we would like to look further into the practicalities. If it is determined that a simplified procedure, with lower rates of duty, for low value, non-commercial imports is in the public interest, then such a procedure should be available to private operators like FedEx on the same terms as it is available to public postal operators.

In supporting a "regular" and "simplified" approach to customs clearance of low value shipments, I am not arguing for an uncritical extension of current procedures. That is, I am not suggesting that the regular mode of customs clearance for all shipments should be what we now think of as the "express mode" and the simplified approach for non-commercial shipments should be what we now think of as the "postal mode." The ACCA study implies that present "postal mode" of customs clearance does not result in uniform application of law (even for postal shipments) and therefore is in need of review. Indeed, I would argue

that the present "express mode" of customs clearance needs review also. For express shipments, costs of customs compliance are out of proportion to public benefits conferred. Imagine what would happen if FedEx were required to clear customs on all low value interstate shipments. Would such a procedure result in seizure of a few shipments of drugs or collection of some taxes that otherwise might have escaped collection? Possibly. But the cost to the economy would be so enormous that no sensible person would propose interstate customs regulation in preference to, for example, a modest increase in the budget of appropriate federal authorities for policing interstate commerce. In both cases, we need to rethink how customs laws are applied to low value shipments.

3. Last week, the Air Courier Conference of America (ACCA) released a study critical of how U.S. Customs processes express shipments coming into the U.S. through the postal service. Specifically, what was your involvement in the Wirthlin Worldwide study commissioned by ACCA?

Answer. As a member of ACCA, FedEx supported ACCA's decision to sponsor the study and assisted in preliminary work on the design of the sample. Costs of the study were underwritten by another member of ACCA. FedEx took no part in final development and execution of the study nor in the preparation of the report.

4. Currently, the postal service will allocate to State any funds available to the postal service, reasonable sums for State to carry out its new US/UPU duties. Should this arrangement continue? If not, why not? If so, why?

Answer. I believe that U.S. policy should serve the interests of the United States generally, and the cost of developing and implementing that policy should be borne by the United States generally. In this respect, implementation of U.S. international postal policy is no different from implementation of any other governmental policy. On the other hand, UPU activities which are commercial in nature -- i.e., which pertain to commercial operations which would normally be undertaken by a private company -- should be borne by those postal operators (public or private) that benefit from the activities.

5. What additional steps, if any, should Congress take to assist State with its U.S./UPU role? Is State in needed of greater funds to carry out its mission?

Answer. I believe Congress can best assist the Department of State in the field of international postal policy by providing legislative guidance in several areas including:

- a legislative statement of pro-competitive national policy goals;
- a unambiguous designation of the Department of State as the sole government agency authorized to negotiate and conclude international conventions in the name of the United States and a concomitant clarification that the role of the Postal Service is that of an operator, not a governmental decision maker; and
- a legislative mandate to adopt open, transparent decision-making procedures in the development of U.S. international postal policy.

It appears from the outside that the Department of State itself needs to devote more resources to the field of international postal policy and that it can and should do more to draw on the resources of other federal agencies, particularly the Postal Rate Commission and the Department of Commerce. Whether this implies increased funding for these agencies or a reallocation of existing funds is for Congress and the agencies to determine.

6. Congress worked with the express industry in the late 1980's to develop law that required that the customs service provide special expedited service for the industry. In turn, express couriers agreed to reimburse the government for personnel, equipment, and facilities needed for this special customs clearance. Why is the reimbursement for expedited clearance an issue today?

Answer. In the early days of the international express industry, private express operators agreed to pay for customs services adapted to the needs of express traffic because there was no other way to get the industry up and running. Handicapping express services with delays routinely experienced by ordinary freight would have nullified the value of the industry. Given the small size of this industry, express carriers had no choice but to agree to special fees for the customs services required.

Today, the express industry has demonstrated its economic value to the United States. The express industry accounts for the majority of low value ("informal entry") imports into the United States. It is thus appropriate to ask whether the makeshift policies of the early days represent sound policy for an established industry. This is especially true in light of two considerations which were not part of the policy calculus in the early days. First, the level of competition between the private express industry and public postal operators has increased substantially so that traditional differences in customs treatment -- including reimbursement arrangements -- have become a significant issue. Second, it has become clear that the U.S. Customs Service practices regarding reimbursements, if copied by other customs administrations, could impose significant costs on U.S. exporters.

Without trying to address these issues in detail, I would offer the following general comments. First, I do not think it is sound public policy to assess specific groups the costs of exercising government police authority. . Second, I believe that customs policy -- including in matters such as reimbursement -- should be uniformly applied to all operators. Finally, in assessing the public benefits of any special levy on inbound international commerce -- whether deemed "reimbursements" or "user fees" or something else -- the United States must carefully take into account potential adverse effects on U.S. outbound international commerce.

7. Is there a reason why the postal service has to provide customs with automated data?

Answer. It seems to us that it should be possible to develop non-discriminatory (i.e., applicable to all operators) procedures for clearance of documents, non-dutiable items, and low value items that are simple enough for the Postal Service to comply with yet sufficiently detailed to answer the needs of Customs (such procedures might or might not involve a minimal level of electronic data entry). FedEx has recently circulated a first draft of a proposal along these lines to Customs and the Postal Service for their consideration.

8. Would you support raising the standards of the postal service to the level enjoyed by your industry? If yes, why?

Answer. Only as a very last resort to achieve competitive parity. As explained above, I believe that Customs, the Postal Service, and private operators should work together to develop non-discriminatory procedures that meet the needs of Customs, public postal operators, and private operators. We have recently circulated a first draft proposal in this respect. In general, I believe that the customs procedures currently applicable to postal and private shipments are both in need of careful review. I do not believe that the best or proper solution is to impose on all postal imports the same complicated procedures now applicable to private operators. However, whatever procedures Customs finally determined to be appropriate should apply equally to all competitive shipments. If the security and revenue needs of the United States demand a certain set of procedures when documents and parcels are imported by private operators, then the security and revenue needs of the United States require no less when documents and parcels are imported by the Postal Service.

Mr. DAVIS. Thank you very much, Mr. Chairman.

I must confess that listening to the exchange has certainly been interesting and is fraught with a great deal of complexity. I think that is how all of us are approaching not only this hearing but approaching restructuring of the postal system if that is to happen in our country.

I want to thank all of the witnesses. Perhaps I will begin with you, Ms. Bos. From your testimony it is pretty evident that TNT Post has been successfully spun off into a fully private corporation. The Post caters to 16 million people as opposed to the U.S. Postal Service in this country which actually services 17 times as many.

When you look at the magnitude of difference between the amount of service that is involved, do you view it far more difficult to do that with the capacity of dealing with 17 times as many people?

Ms. BOS. I think that it is obvious that if you look at the different amounts of people and look at the geographical difference between my tiny, tiny country and the United States. It would appear it is a lot more difficult to provide a universal service in the States than it is in the Netherlands or any other European country.

In principle there may be more difficult for your postal transportation system but I believe firmly that it is possible for every public postal operator who provides universal service countrywide to reshape the company in such a way that they can still provide a good service, maybe even a better service at low rates if they get the possibilities from the government to reshape in such a way.

I think that it is crucial to the postal service to be able to act as a normal, commercial company. I heard yesterday—forgive me if I am impolite—that it takes about 10 months before the USPS can get rates endorsed. That is your system and I am not going to say anything about that but if you want a company to react to the market and to respond in an efficient and good way, those things could not to my mind help that. It is necessary that these issues will be changed. I think then the USPS will have a fair chance to go forward like I think it should.

Maybe it is not allowed under your committee's procedures but I would like to react to what Fred Smith said. He is not here now but probably someone who represent his company is here. Fred Smith said that my company used the money we earned with the monopoly to buy into the private sector. I just would like to say for the record, and also for your information, that the moment we started to buy, our big acquisition was the TNT company, we were already a fully, publicly listed company. You have shareholders, a supervisory board, on tope of that and we have in the Netherlands a system that gives us the obligation to have a clear separation between what is earned in the monopoly area and what you do in other areas.

So in no way have those things been mingled or mixed. Also we have always had from the European competition authorities full endorsement for those acquisitions.

Mr. DAVIS. I would also note that you encourage complete separation between jurisdictions. I guess my question becomes is there

any other option other than the completeness of jurisdictional separation? Is there any room in another option to have some mix?

Ms. BOS. There may be but I have not thought about it because I think you cannot be half alive so it is important that you actually make sure there is a clear distinction, especially because you have other players in the market. You have consumer interests, customer interests, so you need to have a governmental power which is completely separate from those who execute the operations. Maybe as a transitional phase that could be sort of in between but I think that should not take too long.

Mr. DAVIS. Thank you.

Mr. Doerken, let me be one of those to congratulate both you and the Deutsche Post on your corporate success. I think what you have been able to do is obviously phenomenal.

It seems to me the ability to handle first class mail of the 274 million Americans at a unit price of 33 cents is an accomplishment that we are very proud of and that I think most Americans appreciate.

In your conclusion, you talked about domestic flexibility in pricing and in service standards. Let me see if I can understand. Are you suggesting by any chance that the pricing should be in some way based upon distance or based upon variables in delivery rather than a straight, across the board cost?

Mr. DOERKEN. Thank you, first of all for your congratulations. I would absolutely agree with you that in our opinion, the USPS is doing a fine job and providing a good service at very affordable prices in the United States.

With regard to your question about pricing policies, first of all, I am completely in agreement with Simone Bos. You need a strong, independent regulatory authority that oversees pricing and policies. As one of the best models. I can again refer to Holland as the one that is being applied there, where the pricing authority or the regulatory authority sets a band, I think it is based on a formula, for the overall revenue increase that is allowed in the reserved area, and then leaves it to the company to set the exact pricing policy within that umbrella formula which sets the ceiling for the overall increases that are allowed.

I understand this formula includes certain elements of productivity increase, and you have a guaranteed price rise that is below the general inflation rate, you then leave it to the operator to flexibly react. This flexible reaction can indeed in certain market segments contain elements of differentiated pricing per delivery area based on density.

As an example, in Germany we have a universal service obligation to deliver newspapers but we do not have a reserved area for newspapers. It is a free market and anybody else can deliver newspapers as well. What you get is that private players of course concentrate on the dense delivery areas like the big city centers and do not serve the countryside.

So we had to adopt a pricing system where delivering newspapers in the countryside is more expensive than in the city centers or else we would not have been able to compete anymore with the private players who can cherry pick areas, and who do not have a universal service obligation. We can then propose a differentiated

pricing system, we can review it with our regulators and in this case, it has been approved along those lines.

In other segments like universal service obligation for the private citizen, it is a question of whether you want this or don't want it, I think this is for the regulatory authority to oversee.

In terms of quick reaction to the market, I think an umbrella formula is best that allows the private operator to charge flexibly the right prices without overcharging. This would be denied by the ceiling set by the formula.

Mr. DAVIS. Have you had enough experience to discern any negative impact on universality as a result of this kind of flexible arrangement?

Mr. DOERKEN. It is always a question of what is enough experience. We have had this pricing policy for newspapers for some years now, maybe 4 or 5 years. This has not in any way dented the availability of newspapers be it in subscription or other channels to any citizen in Germany at all.

Mr. DAVIS. I must admit it is intriguing. It does concern me a bit in terms of just wondering what the impact certainly would be on our system in terms of the main ingredient that we hold so very dear. That is the availability of every person to just about know that they are going to be able to get their first class mail but thank you.

Mr. Postmaster, on page 4 of your testimony you indicated the Postal Service could lose $1 billion if UPU remail reforms are enacted and that specifically the cause for the elimination of UPU protections regarding remail. Could you further elaborate?

Mr. HENDERSON. Sure. Under those provisions a situation called ABA, you take mail in the United States and you fly it to Venezuela. You postmark it, bring it back into the United States and the postage is a dime. We are forced to deliver it as foreign mail. That violates Article 40 and there would be a lot of mail that would migrate to these smaller countries where the exchange rate is to their advantage. I think the $1 billion is a conservative estimate.

Last, in your testimony, you expressed support for H.R. 22. I have seen some drafts of legislation that would repair the rate relationship between nonprofits and regular rate publications and other mail. How do you feel or do you know if this language will be added to H.R. 22 to be addressed or will it be addressed separately?

Mr. HENDERSON. I don't really know. I would defer to Congress for that answer. I know we support that change in our nonprofits and we are very supportive of what the chairman has done in H.R. 22. I think if you look at the postal situation across the whole world, the U.S. Postal Service cries for reform. I think H.R. 22 is an appropriate first step in that regard. We are hopeful that the Congress will do something with H.R. 22.

Mr. DAVIS. But you definitely have some sensitivity to the plight of not-for-profit?

Mr. HENDERSON. Absolutely.

Mr. DAVIS. Thank you very much, Mr. Chairman.

Mr. MCHUGH. Thank you, Mr. Davis.

Just for the record, I think we should note that we have in H.R. 22 very specific provisions for nonprofits that I can't speak for

every nonprofit in America but I think the larger organizations represented, supported and recognized would be sufficient to protect their interests because indeed we share that as well.

Ms. Bos, let me just say you were not being impolite. Many of us believe the 10-month process is unnecessarily long. That is, by the way, not a criticism of the Postal Rate Commission. You may have meant it, and I doubt you did, but when I said is not necessarily a criticism of the Postal Rate Commission, I don't think it is possible for them to meet the charge they labor under with respect to intervenors, hearings and such in any quicker time. The problem lies within the structure. So many of us share that.

I would also I am not being impolite when you mentioned the analogy of being half alive and that is not possible. I understand you are saying if you have had an opportunity to spend enough time in the House of Representatives, you would know it is indeed possible to be half alive. [Laughter.]

Just for future edification.

We are very fortunate to have been joined by the ranking member of the full committee, the gentleman from California, Mr. Waxman. We are delighted to have him with us. I would be happy to yield to him at this time.

Mr. WAXMAN. Thank you very much, Mr. Chairman. I appreciate you recognizing me to pursue some questions.

There have been allegations that Deutsche Post is unfairly competing in the international parcel post business by using revenues from its public first class mail monopoly to subsidize its private, international parcel post business.

These allegations concern me. I do not support cross-subsidization. In fact, last July I introduced H.R. 2535, the Post Service Enhancement Act. The legislation directly addresses the issue of cross-subsidization by expressly prohibiting the U.S. Postal Service from using revenues from one class of mail to subsidize the cost of delivering another class of mail.

Mr. Doerken, how does Deutsche Post address the issue of cross-subsidization? Do you use moneys from your letter monopoly to support competitive activities? If yes, to what extent? Is this legal given your current governmental status?

Mr. DOERKEN. This is an issue that has been debated a lot over the last year. It was actually examined closely by the German antitrust authorities a couple of years ago and there is currently still one case pending before the European antitrust authorities. It will probably be finished during the course of this year.

It is true that we have invested a lot of money in our parcel service in order to restructure this sector and we had to overcome a lot of barriers and burdens from the past. That is why wwe have had losses in the past. We are able, however, as we prepare for the stock market, to publish accounts that separate the activity in our reserved area from all other commercial areas in which we are active. It can be derived from these numbers that we are not cross-subsidizing. That was also the conclusion of the German antitrust probe that was finished 4 years ago with exactly that result.

We are therefore calmly looking at the outcome of the European probe because cross-subsidization does not take place.

Mr. WAXMAN. So it is your testimony that there is no cross-subsidization taking place?

Mr. DOERKEN. Yes.

Mr. WAXMAN. Could you describe the extent of your commercial nonmonoply activities? Are your commercial activities acquisitions and ventures self-supporting? Do you receive financial assistance from the German Government or moneys from your monopoly activities to subsidize your commercial ventures? If so, how much financial assistance do you receive?

Mr. DOERKEN. First of all, our monopoly service or our reserved area is only a relatively small portion of our overall business. I mentioned earlier that we now have revenue of about $30 billion for the Deutsche Post Worldnet Group. Of that only about a quarter is in the reserve area; the rest are all business activities outside the reserve area, where it never existed.

In addition, according to the current legal situation, our last monopoly will finish at the end of the year 2002. There is a plan to have a complete or additional partial liberalization throughout Europe for the letter service. Regarding parcels, let alone logistics and banking, there has never been any reserved area, so those are businesses where we have been competing freely since our existence.

In terms of your question about whether we received any other subsidies from the government, we have not. Deutsche Post and its preceding organizations have been on a separate budget from the government since 1920. So everything that was invested in the postal service has always come out of the revenue that the postal service got from its customers. That is true for all pieces of real estate that have been purchased.

When the postal service was put into a corporatized structure in the beginning of the 1990's, the infrastructure that was necessary to support the service came with it. That included a lot of operational infrastructure that was at the time necessary to provide the service. It included also some additional assets of our company.

Our company was a little bit like an integrated Chinese or Russian communist company. We owned the apartments in which our employees lived. We owned even some hotels in which they spent their vacations and so on.

These assets were not actually of great benefit in the beginning because they were all underperforming, they were in a bad condition, the rents were below market rates, and all the real estate was not saleable when we took it over in 1990.

We then restructured, as I have explained. For example, we rebuilt our operational infrastructure. Let me describe how that typically worked. In the past, we would have had relatively small hubs in almost every medium-sized or bigger city typically on top of the central railway station in a given city, and we would still use the railway a lot for connections.

Our new structure is based on much larger sorting centers, and fewer larger centers, typically on greenfield sites outside the big cities, and based on trucking traffic and branching into railway only through container exchange.

The result was that for say, one big center we built, we would typically free five or six smaller ones in downtown locations, typically next to the railway station. These were not always, but often

interesting real estate locations. Only after we had done that, after a couple years of restructuring, we redeveloped or sold those downtown sites. Indeed we could in the end make more money from selling these sites than it cost us to build the new factories on the greenfield sites.

I would, however, not call this a subsidy. This was just restructuring and an asset change that we did in our balance sheet.

Mr. WAXMAN. Let me understand. In other words, you had real estate that was owned by Deutsche Post where it was government run?

Mr. DOERKEN. Yes.

Mr. WAXMAN. And that real estate was sold and the funds from the sale of that real estate went into this new corporate organization?

Mr. DOERKEN. I guess it worked the other way around. We first had to do a reorganization and invest in a new structure because all this real estate was necessary for our business. Those were the sorting centers in which the Post worked when we took it over in 1990. Only through our restructuring could some of this real estate be freed, and as a corporation that focuses on providing a service, you sell unnecessary assets and invest the proceeds into the service you provide.

As far as the other assets are concerned like apartments or hotels, we had to put in many years of restructuring, of raising the rates to market rates, in many cases reinovating and rebuilding part of the buildings. Also then those could be sold in the last 2 years and those proceeds were used and put into our strategy.

Mr. WAXMAN. Those funds were used to?

Mr. DOERKEN. To invest in either our new infrastructure or some of the acquisitions we have made. So you could say we first restructured our assets, we brought them back to market value, and then we sold unnecessary assets and invested in assets that have an importance for maintaining our service as a distribution logistics company.

Mr. WAXMAN. The Department of Justice will formally present testimony on the next panel stating that "In the years since the reorganization of the U.S. Post Office, we have opposed efforts to erect restrictions on competition in international mail services." To what extent is Deutsche Post engaged in restrictions on competition in postal services in Germany?

Mr. DOERKEN. First of all, we don't have any authority over the regulation of the postal market in Germany. That is handled by an independent regulatory authority that is responsible for both the postal and the telecom regulation. This regulatory organization is dealing on an equal footing with both ourselves and private players in the market.

The only difference between us and the others is that we have both a universal service obligation which is actually larger than the one prescribed by the European Union and a reserved area to compensate for the cost of this universal service obligation. Incidentally, our reserved area is smaller than the maximum allowed according to EU regulation.

I might add that in practice our regulatory authority is even allowing our competitors to compete within our reserved area. This

is called pilot tests, when a competitor is seen to, for example, transport letters below 50,000 which is normally protected by our reserve area. So it does play a role of opening the field for competition.

Of course we protest, we have to because we have a small reserved area to protect and we have to use those funds to provide for the universal service obligation. I might add we understand the way our regulatory authority works because it sees its task to create a market for the customer.

Mr. WAXMAN. Thank you for your answers.

Mr. Chairman, I would yield the balance of my time.

Mr. MCHUGH. Thank the gentleman.

Postmaster General Henderson, having read your testimony, I think I am being fair in saying that in broad principle, you would agree with Mr. Smith's statement that the old structure of the UPU, postal provider to postal provider, no longer works and that you are supportive of bringing in outside private sector groups as participants in the process? Did I misread that?

Mr. HENDERSON. No, that is correct. In fact that is being precipitated by the change in the foreign posts themselves. They are going to be private sector entities, so it is only right, especially in the United States, that all of the private sector come to the table.

Mr. MCHUGH. So we are all on that same page. The issue now becomes how do we take the next step if at all. You heard the GAO, as I mentioned to Mr. Smith, make the comment, perhaps we need something like the Federal Advisory Committee Act to formalize a system by which that input and participation can be realized but they would certainly think that something less than that particular enactment but something structured and defined could serve the same purpose.

Do you have any thoughts from your perspective on how that next step should occur? Would FACA be an appropriate step or do you think that is further than we necessarily need to go?

Mr. HENDERSON. My own view is that is further than you necessarily need to go. I think what you have historically seen here in the short history we have had is really the scrambling to implement a piece of legislation under some rapidly changing conditions.

I think the State Department is perfectly capable of setting up the procedures that can bring everybody to the table. I think they ought to be given a chance to do that before we impose something on them.

Mr. MCHUGH. Wait and see what they do. Do you have a view on the suggestion that we send a message to the UPU by not ratifying the most recent convention?

Mr. HENDERSON. I have a view that I am opposed to that, yes. I think that you send delegates there, they negotiate in good faith and then if you at the last moment say you are not going to do it or you don't agree with it, I don't know what that does to your delegation. Two, I don't know what the legal implications are of that.

For example, what if that meant the Postal Service no longer was concerned about remail? That would have a dramatic impact on us as aggressive private entities took advantage of that. So I am not sure what that means. I think without fully understanding

what it would be, what the consequences would be, I wouldn't be in favor of doing that.

Mr. MCHUGH. So your opposition at the moment is predicated more upon the uncertainty of the full impact of that rather than just a hard core against it for A, B, C, or D reason?

Mr. HENDERSON. There is a second point to that. Yes, you are right on the first point. The second point is you send a delegation to the UPU to negotiate in good faith and I think that would reflect poorly on the delegation and on the new legislation. It would be an odd position to take.

Mr. MCHUGH. A few days ago, AP had a story, dateline Washington, where a variety of private shippers, through the auspices of the Air Courier Conference of America, had contracted a private study that found that the Postal Service was losing, I believe, $1 billion in lost customs dues because of the way in which the Postal Service currently interacts with Customs activities.

You heard Mr. Smith talk about that bifurcated process of customs clearance under which you operate versus theirs. Do you have any comments as to either the findings of this particular study or the operation of the bifurcated customs procedure that now exists?

Mr. HENDERSON. At the risk of putting words in Fred's mouth, these subjects are two different things. That study that was circulated is, in our view, nonsensical. It took 63 packages and mailed them to a single location and it concluded from that experience that we had 35 million pieces of mail inbound. We keep numbers, we track that, so we actually have 7.1 million inbound packages and about 30 percent of them pay customs. So I don't think you can read that study and draw any kind of legitimate conclusion.

On the other subject as to what Fred was talking about, it is true, there are two ways in which you can approach or go through customs in foreign countries. We are all for the commercial approach. He has a commercial entrance which means that he manifests and he gets personalized treatment. I don't mean him, but Federal Express gets personalized treatment. They pay for 24-hour customs clearance.

The posts of the world just go through customs normally and 95 percent of our mail is someone mailing a package or a letter to someone overseas. To manifest or electronically manifest one piece is ridiculous. So there are two different systems but we don't act, for the most part, as a commercial entity. We did with GPL, Global Package Link with Japan, and we did electronically manifest that.

Canada, for example, has a large shipping business in the United States and electronically manifest that. That is to tell Customs and everyone else what is coming. However, for one piece to go commercially would not be practical, they are just two separate systems. We are dealing household to household primarily in our international market right now and Federal Express is business to customer or business to business.

Mr. MCHUGH. So would you support the theory that identical mail should be cleared in identical ways?

Mr. HENDERSON. I would, absolutely.

Mr. MCHUGH. You heard the discussion about terminal dues. You heard Mr. Smith's comments that what that does is allow the Postal Service to treat foreign mailers in a way that is more advan-

tageous financially, lower costs, than we treat domestic mailers. I believe I also heard him say that the difference there can subsidize other operations but I don't want to go into that necessarily unless you do.

I would like to hear your view on terminal rates on the dues because on the surface, it certainly seems that someone mailing from a European country coming in and paying whatever the terminal dues fee would be—17 or 18 cents, whatever—is enjoying an advantage over the 33 cent domestic mailer. What would your response to that be?

Mr. HENDERSON. First of all, the UPU sets the terminal dues process and it is what is called a global averaging. Because it is a global averaging, some countries have lower costs than other countries upon entry into the United States, entry into our network. That is how, for example, remail occurs.

If you go to Venezuela and postmark it in Venezuela and bring it to the United States, the postage rate is much lower than it is in the United States. So there are instances in which other countries enjoy because of global averaging, lower costs than what we provide our own citizens. That is true.

In a number of other countries, their costs are much higher and the global averaging represents to us about 32 cents in costs and close to that in revenue. So when you see a rate of 7 cents, for example, you are looking really at a country that is on the very low end of the global averaging and their entry to the United States is low based on the costs in their country.

The global averaging creates the disparity and it is not something that is under our unilateral control. That is the real purpose of the UPU. If you want universal service, global universal service to assure that if an American mails a letter to Germany or to the Netherlands, that it gets delivered by that foreign post, then you have to have some exchange rate. This exchange rate has been what the UPU has negotiated over the years. It is not something we use for any kind of competitive advantage. It is a result of negotiations within the UPU.

Mr. MCHUGH. So I am hearing you say that if you look at the totality of the system, the mean would be somewhere around 32 to 33 cents?

Mr. HENDERSON. That is right.

Mr. MCHUGH. I would appreciate, and it would take some time, but a breakdown of the global average to see who is paying what in terms of mailing into the United States. Give me an example of a country where they actually pay more than 32 cents?

Mr. HENDERSON. I cannot off the top of my head, I just know they do.

Mr. MCHUGH. OK, that is fair. I would like to see that because the impression one gets is that if not all, certainly the vast majority of those countries in this agreement with the United States are below 33 cents at the disadvantage of a domestic mailer.

Let me turn to our friends from Europe. Tell me, how did your two countries and your two postal services handle representation within the UPU? Ms. Bos.

Ms. BOS. Our Ministry for Transport and Public Works is the responsible government body for the policies on international issues

in the post. We were part of the delegation. PTT Post is the official public postal operator, we have the international universal service obligation, so we participated. There was one other representative from an association in the Netherlands that represents competitors, especially in the parcel and express industry. He was there not because there were no others admitted to this delegation but because the Ministry tried very hard, but there were no more interested parties to join the Congress in Beijing, and probably they are quite right.

You were talking about maybe half alive, well, Beijing or the UPU congress are a fine example of that too. I think it is important that often, although as I said there are also very relevant issues at stake during the UPU congress, but many of the things are often also overrated. We talk amongst postal operators on the clear operational issues on, for instance, how labels should look, when you mail should they be white, blue or whatever. So the vast majority of what is called detailed regulations are actually pretty boring. That has nothing to do with anticompetitive rules or regulations.

But as I already said in my statement there are certain other aspects which we do not like as a postal operator in the UPU and our government definitely doesn't like them either.

Mr. MCHUGH. But you do have private representation. Or at least you did?

Ms. BOS. We did.

Mr. MCHUGH. Are you absent the controversy you have heard here today with respect to others who felt excluded? I just heard you say there wasn't anybody else who expressed an interest, so I guess the answer to that would be yes?

Ms. BOS. I think what is important is that it depends very much on what sort of interests are at stake. I must say also from our side, the TNT Post Group, we represent also the private industry part so I think it is important for us that there is a good balance in the decisionmaking and there was another group in the Dutch delegation representing other interests for the Netherlands.

I can understand especially for private operators if you do not know what is going on there and you know some things like customs are they are to the advantage of the post, then you get terribly anxious of what is happening there. I think that is one of the reasons why private operators should be admitted as well. I am convinced they will also see that some elements are very important to them are other elements are less relevant. I think also that will make it possible for all interested parties to find the right solutions for the whole sector on different subjects, for instance standardization as well as security.

Mr. MCHUGH. Mr. Doerken.

Mr. DOERKEN. In Germany, in our case, the delegation is headed by a representative ultimately from the Ministry of Economics which is responsible for overseeing us but mainly staffed by people from this independent regulatory authority which formally reports to the Ministry of Economics, but is independent in terms of its judgment and what it does in regulating us.

We also had delegation members from service providers, a similar situation where there was no great interest by German service providers to be present but the possibility is there. We did have a

delegate from DHL in the organization and I think we didn't even find an organization representative to come with us but there is no impediment here.

The UPU, in general, yes, deals with a lot of boring operational issues which nevertheless are important because they impact the way we do our business. To go a bit into some detail, the UPU has two major parts—the administrative council and the operational council. Typically the issues in the operational council are almost entirely taken over and worked through by the post because that is the entity of their concern. In the administrative council the major decisions like elections of delegates and terminal dues decisions are being made. There the regulator takes the lead so that he can make an even-handed decision and not just allow one party to be advantaged.

A final word about terminal dues, I subscribe to what has been said that the UPU has an essential role in making sure there is a worldwide postal territory that can be used by everybody. Everybody who sends a letter in the world will know he or she has access to all the other countries.

Therefore, there needs to be some kind of basic terminal dues system as well which then has the problems Mr. Henderson has described so well. It is not perfect but it exists, and it is agreed to in principle by all the governments or the plenipotentiaries, as they are called, of the world governments who subscribe. That is very valuable.

One can say it is essential for maybe 80 percent of the world's surface but only maybe for about 20 percent or less of the world's international mail flows. There is no necessity to base ourselves on the UPU terminal dues agreement for the relationships among industrialized countries.

In Europe over the last 5 years we had long negotiations which led to an agreement called REIMS about terminal dues among countries in Europe. REIMS was negotiated and established completely separate from the UPU. It avoids many of the difficulties and mistakes of the UPU system by establishing a regime much closer to real costs and real market prices.

That agreement has been signed by all EU countries but one—sitting next to me here. [Laughter.]

And by most other major mailers in Europe. This shows that there is a bilateral or multilateral type of agreement that could be reached with countries like the United States and Canada as well. So we don't even need the UPU for 80 percent of the mailstream. We need it mainly to give access to those remaining 20 percent and there I think there is a lot to be said for giving those countries, as long as it is really only the mail from these countries, access to the system.

I have to completely agree with the Postmaster General about the unfairness of ABA remail, ABA meaning that these rates would be used by other postal companies to divert domestic mail into pseudo international mail to take advantage of these rates. This is ridiculous, particularly as these rates as everybody knows are too low and constitute an unfair advantage.

We have always strongly protested in legal proceedings against this practice. We just recently won a landmark decision against

ABA remain. Our regulator agrees that this is a special route that should be open to developing countries, but should not be usable to divert domestic mail.

Mr. MCHUGH. Did both of your countries formally adopt the current Beijing UPU convention? Have you ratified that?

Ms. BOS. The process in the Netherlands is such that it takes a full year before the implementation can take place. Full ratification will take place and the government is working on it. As far as I know, yes they will ratify it.

If you would let me comment a little on your question to the other parties at the table on the signal that the United States would send to the UPU by not ratifying the UPU convention. My personal opinion would be if the United States would like to give a signal, it is not the best signal not to ratify because I agree with Bill Henderson that the delegation was there, they participated and there was some reservations finally made in the text but nobody from the U.S. delegation actually mentioned that things were so awful and unacceptable that there were plans not to ratify.

When discussing in the U.N. context also the UPU, I think the State Department and maybe also other U.S. Government bodies could send a very clear message that the UPU should change because I think it is the last international organization under a U.N. umbrella functioning like this.

So there are, and I think around this room a lot more people are aware of those, a lot of other possibilities to give that signal to the UPU. A lot of lobbying and talking to people, to the International Bureau of the UPU by different parties apart from State Department, might help a lot more than not ratifying.

Mr. MCHUGH. I appreciate that. I think Mr. Smith is expressing a frustration that is understandable to the extent that this is not the first time that the UPU has met and in theory, dedicated itself to reform. I think he is looking for a somewhat new way by which to say they are more serious this time.

I am not suggesting he is right or wrong; I am just trying to say it, but I appreciate your comments.

Is the German Government expected to ratify the Beijing UPU convention?

Mr. DOERKEN. Same situation, it takes about a year. We are in the process and it is expected to be ratified.

[Followup questions and responses follow:]

Deutsche Post

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Managing Director International

The Hon. John M. McHugh
Chairman of the Subcommittee on Postal Service
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USA

15 May 2000

Dear Mr. Chairman,

Please find attached our thoughts on your questions sent on April 3. We hope they will help you to compile a comprehensive hearing record.

Also to me the hearing was most interesting and instructive. Against the background of globalization I think it is becoming more and more important to exchange the different ideas and approaches.

If you need any further information do not hesitate to contact me.

With best regards,

Uwe Dörken

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Answers on Questions for Deutsche Post, following the March, 9, 2000, Hearing on International Postal Policy

Question 1

In your testimony, you suggested that the universal service obligation should be organized in conformity with the market, thereby accounting for the difference between urban, high profit routes and rural, low profit routes. How could such a pricing scheme remain compatible with the objective of a universal service mandate, that is, to ensure affordable service to all mailers?

Certain parties argue repeatedly that the uniform tariff is the central element of universal service and that this cannot be maintained in a liberalized market. It should be noted in this regard that in principle the EU Directive also provides for cost-oriented tariffs for universal services. In the grounds for the Directive it is stated that rates charged for universal service should be objective, transparent, non-discriminatory and cost-oriented in the interest of efficient provision of universal service and in order to avoid distortions in competition. The uniform tariff, which is mandatory in most Member States, is compatible with this Directive, but it is not stipulated as being compulsory. Moreover, Deutsche Post holds the view that a cost-oriented pricing structure, which for instance leads to lower tariffs for items being sent to densely populated areas, and hence to higher tariffs for items being sent to sparsely populated areas, must be affordable from the consumers' point of view. With this arrangement, the inhabitants of rural areas would not be at a disadvantage because they would have to pay relatively low prices for letters being sent to conurbations as well. Deutsche Post also holds the view, however, that for business reasons the uniform tariff would be maintained in a liberalized market for private and small business customers - and only they are ultimately dependent on the protection of universal service. Differential prices would be difficult to implement in this market segment which is only subject to limited competition anyway, they would incur high transaction costs (in particular revenue control) and, above all, be difficult to communicate as well. Rather, the crucial point - and this is also meant when it is said that the universal service must be structured in conformity with the market - is that universal service providers must have the possibility of using the instrument of pricing policy to win over lucrative key accounts. Price-differentiation measures (e.g. quantity discounts) should or must be allowed for this very reason. These measures are not deemed anti-competitive so long as the price is not lower than the average incremental costs incurred by the respective service. Discount models should therefore be structured objectively. This means that all customers who meet certain requirements (quantity, revenue, etc.) would be entitled to the respective discount.

Question 2

You have noted that Deutsche Post's increased revenue resulted from upgrading your infrastructure, improving the efficiency of operations, and reducing costs.

Specifically, what reform measures were necessary in order to effect these improvements?
For the most part, a new production and logistics concept has been implemented. This facilitated, among other things, a minimization of processing steps, a higher degree of automation, the use of state-of-the-art information and control systems and a reduction in, and standardization of, business plants. Due to the newly implemented letter mail concept, it was possible to reduce costs and enhance quality. The share of items which reached their addressee the day after posting (J+1) rose from 86 percent in 1994 to 95 percent in 1999. Cost reductions were also achieved through outsourcing measures. Moreover the continual shedding of staff contributed to a reduction in the total costs of the enterprise. Revenue was increased by focusing on marketing and distribution activities and by developing and expanding new markets. Due to the continual expansion of the Deutsche Post Group, revenue has more than doubled over the past 10 years. Revenue has risen from EUR9.5 billion in 1990 by 130 percent to EUR22.4 billion in 1999.

Question 3

Please explain your country's international postal policy-making process. Are meetings open to the public? Is the consultative process formal or informal? Are meeting announcements issued publicly? Are minutes of meetings taken and made publicly available? How does your government assure that its policy development consultations are competitively neutral? Specifically, how are the concerns of your competitors incorporated into the policy formulation process?

The international postal policy-making process does not differ from the national policy-making process. Generally speaking, policy is determined by the Ministry of Economics, partly in consultation with the independent Regulatory Authority for Posts and Telecommunications. This is the watchdog responsible for keeping postal and telecom markets competitive. It is responsible for granting licenses and supervising the activities of the various players in the market. The Regulatory Authority is not part of the government, thus guaranteeing a neutral view of competitor's concerns.

Question 4

It appears to be the case that an ever-increasing volume of traffic is exchanged based on commercial arrangements outside the UPU system. Would it make sense to recognize this and simply limit the role of the UPU to assuring, perhaps, letter mail delivery in areas where the commercial market fails to deliver? On the other hand, like the IATA the UPU might be reformed so as to provide a multilateral venue to address the multitude of common operational issues among public and private operators. What is your vision of the UPU future?

Indeed, postal companies conduct much of their business on the basis of commercial arrangements outside the UPU system due to the liberalization and deregulation of the postal markets. The UPU should therefore become an institution for the industry which focuses on standards and international quality. This includes a clear

separation being made with regard to operators and regulators - which has been done with IATA and ICAO.

Question 5

The "regional UPU" of Europe (now the Conference of European Posts and Telecommunications Administrations) implemented fundamental reforms as far back as 1993. Have these reforms been successful?

They have been successful in the sense that operators now have their own organization for European postal operators: PostEurop.

Question 6

Is there any UPU provision that would allow the U.S. and other reform-minded countries to adopt, before 2004, a new agreement to govern the exchange of documents and parcels among themselves?

There is always the possibility for bilateral and multilateral agreements subject to the condition that they are not any less favorable than those agreed upon in the Universal Postal Convention.

Question 7

To what extent have you already bypassed the UPU system? Approximately what percent of your total cross-border traffic is directly inserted by accessing inland bulk tariffs or special inland rates? To what extent do you utilize private operators to deliver cross-border non-reserved letter mail?

Based upon the conditions mentioned above, there is considerable cross-border postal traffic that is conducted on the basis of more progressive schemes than those of the UPU, especially when it comes to remuneration (terminal dues) of the service offered (delivering imported postal items). There are now seventeen European countries that have signed the REIMS II Agreement. The compensation they pay each other is related to the achievement of fixed quality goals. Germany, for instance, has fixed its inbound quality at 93% for J+1 from July 1 onwards. With a view to the fact that Europe plus Canada and the United States account for more than 60 % of worldwide cross-border mail traffic, the UPU system is being bypassed to a large extent. This clearly indicates the necessity to reform the UPU system. We use private operators when it is obvious that the quality standards we have promised to our customers cannot be met by traditional partners. Additionally, respective national regulations must permit the use of private operators.

Question 8

If terminal dues were aligned with domestic postage on mail exchanged with industrialized nations, what would the effect be on the costs, revenues and rates associated with international mail? Would there be any need for an anti-remail provision in the UPU Convention if post offices aligned terminal dues with domestic postage?

Terminal dues should cover the costs for the delivery of cross-border mail in the country of destination. In general, terminal dues for the delivery of cross-border mail in industrialized countries are at present below costs, thus leading to poor quality of service due to the lack of incentives to improve processes. In the future UPU system as well as in the present REIMS II system, terminal dues will be slowly increased from the present level to reach cost-coverage levels. The alignment of terminal dues to domestic postage has been chosen in order to use the domestic prices as a proxy for the costs.

At the same time, the terminal dues have been linked to the quality of service, i.e. the better the quality, the higher the rates - measured from the time of entry at the office of exchange in the country of destination to delivery at the final destination. REIMS shows that the system has led to substantial improvements in the quality of service in the participating member organizations.

The effect of such a system on costs, revenues and rates depends therefore on the level of domestic prices and the quality of service offered in the country of destination. In general, an increase in the costs incurred by the sending postal operator, an increase in the revenues of the receiving postal operator and an increase in the rates can be seen as being in line with significant improvements in the quality of service. The latter can be attributed to incentives to invest in modern machinery and to improve the processes to the profit of customers.

Remailing is often used in order to benefit from price differentials between countries (arbitrage). If the terminal dues were directly linked to the price for each domestic product, arbitrage remailing would probably disappear. Due to the calculation schemes for terminal dues as well as for the settlement of payments, it is very unlikely that remailing will disappear. Therefore, we believe that anti-remail provisions in the UPU Convention will continue to be needed.

Question 9

There is speculation that UPS is considering acquisitions on the continent. Industry speculation has intensified recently that UPS and TNT could link up as a response to the expansion drive of Deutsche Post and to strengthen the UPS position in Europe. Some feel the expansion of state-owned European post offices in the express and parcels market would pressure prices downwards in the short-term but could lean to higher prices long-term. In your view what will be the impact of the expansion of state-owned European post offices on price and service in the international express and parcel market?

The development of prices and services in the express and parcel markets depends, at least in Europe, on market forces. There is no reserved area for these markets. By law, postal companies are not allowed to use resources generated in the reserved areas for reallocation to business units operating in non-reserved areas. Thus, in this regard it does not matter whether the postal companies are state-owned or not. As we have seen in Europe, there will be always enough players in the market to keep prices at bay.

Questions 10 and 11

What accounting mechanisms do you have in place to guard against cross-subsidy between reserved and non-reserved products and services?

What accounting systems do you have in place to guard against cross-subsidy between international and domestic products and services?

Deutsche Post has efficient process cost accounting in place. This is based on SAP/R 2. The costs incurred within the framework of the added value process with the individual activities are recorded under cost centers and then set off, in accordance with the principle of causation, against the respective cost units (products and services) which these processes run through. This guarantees that all business segments and product categories (reserved/non-reserved services, national/international services, etc.) can be transparently delimited from one another.

Question 12

Please discuss your government's process of review and approval for proposed acquisitions and mergers as well as tests for cross-subsidy between reserved and non-reserved products and services. Please discuss the roles of your government organizations (regulator, competition ministry, legislator and the courts) and non-governmental organizations (competitors, consumers, mailers. unions, etc.).

The government does not play any direct role in acquisition and merger projects. Major projects require the consent of the Supervisory Board - just as with other corporations. Here the government in its capacity as shareholder plays a role as decision-maker along with the other members of the Supervisory Board. As soon as acquisition and mergers with other companies take on dimensions exceeding certain revenue thresholds, projects have to be registered either with the national anti-trust authorities or the EU Commission. The latter has been the case, for example, with regard to the larger acquisition projects of Deutsche Post.

Deutsche Post in its capacity as a market-dominating company which still has a monopoly in sub-areas of the letter market is subject to strict, sector-specific regulation. The regulatory tasks are performed by a regulatory authority which for the most part issues decisions autonomously. It is subordinate to the Federal Ministry of Economics and Technology. In terms of the law on competition, Deutsche Post - just like every other market-dominating company in Germany - is subject to the regulatory

supervision of the Federal Cartel Office. In accordance with the regulatory remuneration provisions set forth in the German Postal Law, Deutsche Post is not allowed to reduce the price of its services if this would adversely affect the competitive opportunities of other companies in a market for postal services in an abusive manner (predatory pricing). Furthermore, rates are not allowed to include any surcharges that Deutsche Post is only able to enforce because of its market-dominating position in certain market segments. Surcharges are justified, however, if they are used to finance the costs of the universal service, for example. These regulations are aimed at preventing Deutsche Post from engaging in any anti-competitive cross-subsidization of services which are subject to competition. Pursuant to the provisions set forth in the Postal Law, Deutsche Post in its capacity as a market-dominating company also has to guarantee that its accounting system is structured in such a manner that the financial relations between the various business divisions are transparent. These requirements are met by the accounting system of Deutsche Post, as stated in the foregoing.

Question 13

In the States there is a debate regarding cost and accounting for international postal services. The Postal Service argues that inbound and outbound international revenues and costs by products should be accounted for and reported separately. Private operators on the other hand argue that inbound and outbound revenues and costs should be accounted for and reported in combination. When setting tariffs for international outbound mail for each product and service, do you include in the cost base the loss, if any, from the equivalent inbound product and service? If not, how are the losses recovered?

The accounting system of Deutsche Post provides for a strict separation between inbound and outbound international mail. This involves various cost units. If losses occur with regard to inbound international mail, these are not set off against costs incurred by outbound international mail. This is done if need be by means of a separate loss listing within the framework of the divisional statement for international mail.

Question 14

Looking at the experience of Deutsche Post, it appears that deregulation and privatization have been accompanied by diversification. As a result, the movement of domestic mail now represents a smaller percentage of your total operations. Do you expect this trend to continue, and if so, what safeguards are in place to ensure affordable, universal service in your country? How can affordable universal service be preserved without a postal monopoly?

It is true that the percentage of domestic mail business in the overall revenue generated by the Deutsche Post Group has dropped over the past few years. Nonetheless, revenue in this segment has actually increased in absolute terms. Forecasts of a drastic decline in the traditional mail business have thus not come

about. Although Deutsche Post does not expect to see any high growth rates in this market segment in the future, similar to those achieved in the telecommunications sector, there is nevertheless interesting potential for growth in the area of direct marketing. The ability of the company to provide nationwide universal service consisting of high-quality services at affordable prices in the future as well should thus not be endangered.

In a liberalized market, there is a possibility that contribution margins which may be required internally to finance additional costs incurred by universal service requirements that are not in line with the principles of free competition may not be earned because it may not be possible to enforce relevant price markups in the market. For this reason, Deutsche Post is calling for a structure for universal services which is in line with the principles of free competition. This demand relates not only to the prices for universal services, but also the respective standard of services provided.

The countries of the European Union are allowed under European law to set up an infrastructure fund to finance universal services which are not in line with the principles of free competition in order to ensure that the objectives of competition aimed at increasing efficiency do not conflict with fulfillment of the public mandate to provide universal service. In the view of Deutsche Post, this fund should be financed directly by the government because this would have hardly any detrimental effect on the market allocation mechanism. Financing from general tax revenues would also conform to the idea of public welfare which tasks of general economic interest are based on.

Question 15

What is the principal objective of the partial privatization of Deutsche Post? Is it to raise revenue for the government in the public offering? Has the government as the majority shareholder any plans to declare dividends or will it invest net income back into operations?

In the long term high-quality, innovative postal services can only be rendered in a liberalized postal market if these keep pace with the changing preferences of consumers. It is only in a competitive environment that providers have sufficient incentives to produce efficiently and promote technical innovation. The privatization of Deutsche Post is a logical consequence of these facts. As a result of changing economic conditions, there is no longer any need for the government to engage in business activities in the postal area. Its role can be limited to exercising controls to ensure the public mandate to provide an infrastructure is met. The revenue which the government will generate as a shareholder in the course of the stock market flotation will be used exclusively to finance the pension obligations for postal and telecommunications staff. The extent to which Deutsche Post distributes profits in the form of dividends or retained earnings will be decided by the Shareholders' Assembly - just like any other company whose shares are quoted on the stock market.

Question 16

In light of your experience with postal reform laws in your country, what do you suggest are the most important steps that a country should take to modernize its postal laws?

First of all, it should be noted that postal markets are undergoing radical changes all over the world. Customers are demanding high-quality, cross-border postal services. In addition to traditional postal services (mail and parcel), there will be a growing demand for value-added services and logistics services in future. Customers expect service providers to offer complete solutions nowadays. This trend makes it necessary for the postal sector to be organized in a competitive manner. Postal companies must be able to react flexibly to market requirements. State-owned companies must be transformed into privately owned companies quickly. The goals of market efficiency and guaranteeing of a nationwide supply of services can probably be reached most easily through competition in the long term because it is only in a competitive environment that providers will have an incentive to foster innovations and produce more efficiently. State-owned postal companies are often subject to a host of restrictions, however, which lead to cost structures and relatively high costs that are uncommon in a competitive environment. This is why a postal law should provide for a reasonable transition period to deal with these burdens from the past. A sector-specific regulatory system in the postal sector is basically only needed so long as monopolistic markets continue to exist. This implies temporary price regulation. A postal law should also contain regulations relating to universal service. Universal service should be defined by law to be a mandate to provide a nationwide supply of services. However, the details should be left up to the companies themselves. Open network access is not necessary in the postal sector. Since the postal network is not an essential facility (monopolistic bottleneck), competitors can also enter the market without having to make use of the network of the established company.

Question 17

What has been the effect of the application of antitrust laws to postal services in Europe? Have they affected the provision of universal service? Have they created excessive liability?

The consistent application of European rules of competition is of paramount importance for the continued development of postal markets. This also applies to national postal enterprises which have a dominant position in the market and who are entrusted with public duties. Cross-subsidization of services which are rendered in a competitive environment should only be compatible with the rules of competition if these competitive services are at the same time part of universal service and if cross-subsidization serves the purpose of making up for additional costs incurred by universal service. The EC Treaty expressly provides for such an arrangement. Hence, the rules of competition have not had any adverse effect on universal service.

Question 18

What effect has increased competition had on postage rates? Are rates generally held down by competition? Has there been an adverse effect on any particular type of mailer?

It is frequently observed that the level of prices falls due to competition. However, this probably applies to a lesser extent to the postal sector due to the high level of personnel-intensity. With a view to the liberalization of other markets which has already taken place, e.g. the telecommunications market, it appears that price decreases do not just result for business customers, but for residential customers as well. As a result of the fact that, in addition to the price, the quality of services is also important from the consumers' point of view - and the provision of high-quality services incurs relevant costs - a pure price battle, which can lead to ruinous competition, is less realistic.

Question 19

There has been much talk in the U.S lately about the possibility of a decline in mail volume as a result of the Internet and electronic commerce. What is your view? What are your projections for the diversion of mail to electronic alternatives?

The prediction that the traditional mail business would decline or even collapse as a result of the rise in technical forms of communication has proven to be false. On the contrary: the mail business of Deutsche Post has grown steadily. With regard to the Internet and electronic commerce, it should be noted that new quantities of items have been generated thanks to these technologies (invoicing, advertising, etc.).

Answers to Questions from the Honorable Chaka Fattah

Question 1

Mr. Doerken and Mrs. Bos, what concerns should the U.S. government have for U.S. interests, now that foreign companies have entered the U.S. mail market?

We do not think that the U.S. Government should be especially concerned about foreign investment in the U.S. mail market. This situation will be the same as in other industries, i.e. it will create new opportunities for all parties involved.

Question 2

Do you foresee any access market problems for U.S. companies as they compete in your countries for international mail service and delivery? If so, please describe and discuss the extent to which this may occur.

No.

Question 3

Mr. Doerken. Do you agree that Deutsche Post's "competitive", or non-reserved sector activities must be self-supporting, with no financial assistance from the German government or from its monopoly activities? If not, why not? If the answer is yes, how soon will you be able to end cross-subsidies from your monopoly activities to your competitive activities?

It is not disputed that business segments which are subject to competition should finance themselves. Generally speaking, financial compensation by the government or from the monopoly area should not be necessary to ensure financial viability. Cross-subsidization of services rendered in a competitive environment is compatible with European rules of competition, however, if cross-subsidization serves the purpose of making up for the additional costs incurred by these services. With regard to the concrete question: it is completely unfounded. Cross-subsidization of activities performed in competition does not take place from the monopoly business. As one can see in our 1999 Annual Report, all business divisions had positive results. The express and parcel area which you probably have in mind is no longer deficit-ridden either, so cross-subsidization is no longer necessary. Deutsche Post has pointed out several times and explained in detail elsewhere that cross-subsidization in previous years served the exclusive purpose of financing additional costs incurred by universal service and political burdens from the past due to the company's former structure as a state-owned company.

Question 4

Mr. Doerken. Is it not necessary to have than just separate accounts, to eliminate the possibility for cross subsidization? Please elaborate.
It should first of all be noted that cross-subsidization represents a widespread instrument used in the economic process with companies which produce several products in order, for instance, to temporarily finance the development of new products. A distinction should therefore be made between such cases of cross-subsidization and cases involving compensation for losses with the aim of squeezing competitors systematically out of the market. Such cross-subsidization can be made transparent if financial relations can be shown within the enterprise. This can be implemented within the framework of appropriately structured cost accounting. A structural separation is also of benefit here. Deutsche Post carries out separate reporting broken down into divisions (mail, express, logistics and financial services) in accordance with international accounting standards (IAS). There is no need to separate the divisions in companies which have their own legal form.

Question 5

Mr. Doerken. Does Deutsche Post pay value-added tax on parcels? If not, why not?

Laws in Germany and currently valid provisions under European law state that all universal services are exempt from value-added tax. The mailing of parcels weighing up to 20 kg is considered to be one of the obligatory universal services in Germany. Thus it is not necessary for Deutsche Post to charge value-added tax in the parcel area. Nevertheless Deutsche Post has been charging value-added tax on those parcels which face competition since the beginning of 1999 mainly because of demands made by competitors; these encompass all parcels which are not accepted over the counter at retail outlets but rather are affixed with the proper postage by large-volume mailers themselves and which are delivered by them to the relevant post offices accepting bulk mail.

Mr. MCHUGH. Welcome to democracy.

Ms. Bos, do you want to comment on your views on remailing provisions?

Ms. BOS. I could talk for 2 hours or whatever you want but I know you don't have the time to do that.

It is quite a complex issue because the way we talk about it may make it look unfair if you reroute traffic and yes, in some cases I admit. In the case Bill Henderson mentioned, yes, you take domestic mail that is simply intended to be domestic mail out of the country just to abuse a sort of historical system in terminal dues. Yes, I agree, that is not the way it should be.

However, when you talk about for instance hybrid sorts of mailstreams where you get data flows into a specific country from abroad, you print it there, then mail it abroad to other countries. Is that mail originating in that country or is it international mail? That sort of discussion is very complex and difficulty. I think it is too easy to state either case.

I would like to ask whether you would allow us to send you a written statement on this complex issue so you can see our views a bit better because I think otherwise this session would become far too lengthy. There is some disagreement between some parties around the table as you know. We will put that down in writing.

[Followup questions and responses follow:]

Questions for TNT Post Group Following the March 9, 2000, Hearing on International Postal Policy

1. In your written statement, you say that the Netherlands will "fully liberalize" the postal market by 2003. Specifically, what do you mean by "fully liberalize?" Does this include abolition of the Dutch postal monopoly?

2. Do you expect that a proposal to eliminate all national postal monopolies will be included in the next European Postal Directive?

3. Please explain your country's international postal policy-making process. Are meetings open to the public? Is the consultative process formal or informal? Are meeting announcements issued publicly? Are minutes of meetings taken and made publicly available? How does your government assure that its policy development consultations are competitively neutral? Specifically, how are the concerns of your competitors incorporated into the policy formulation process?

4. It appears to be the case that an ever-increasing volume of traffic is exchanged based on commercial arrangements outside the UPU system. Would it make sense to recognize this and simply limit the role of the UPU to assuring, perhaps, letter mail delivery in areas where the commercial market fails to deliver? On the other hand, like the IATA the UPU might be reformed so as to provide a multilateral venue to address the multitude of common operational issues among public and private operators. What is your vision of the UPU of the future?

5. The "regional UPU" of Europe (now the Conference of European Posts and Telecommunications Administrations) implemented fundamental reforms as far back as 1993. Have these reforms been successful?

6. Is there any UPU provision that would allow the U.S. and other reform-minded countries to adopt, before 2004, a new agreement to govern the exchange of documents and parcels among themselves?

7. To what extent have you already bypassed the UPU system? Approximately what percent of your total cross border traffic is directly inserted by accessing inland bulk tariffs or special inland rates? To what extent do you utilize private operators to deliver cross border non-reserved letter mail?

8. Please provide a detailed explanation of TPG's views on UPU re-mailing provisions.

9. If terminal dues were aligned with domestic postage on mail exchanged with industrialized nations, what would the effect be on the costs, revenues and rates associated with international mail? Would there be any need for an anti-remail

provision in the UPU Convention if post offices aligned terminal dues with domestic postage?

10. There is speculation that UPS is considering acquisitions on the continent. Industry speculation has intensified recently that UPS and TNT could link up as a response to the expansion drive of Deutsche Post and to strengthen the UPS position in Europe. Some feel the expansion of state-owned European post offices in the express and parcels market would pressure prices downwards in the short-term but could lead to higher prices long-term. In your view what will be the impact of the expansion of state-owned European post offices on price and service in the international express and parcel market?

11. What accounting mechanisms do you have in place to guard against cross-subsidy between reserved and non-reserved products and services?

12. What accounting systems do you have in place to guard against cross-subsidy between international and domestic products and services?

13. Please discuss your government's process of review and approval for proposed acquisitions and mergers as well as tests for cross-subsidy between reserved and non-reserved products and services. Please discuss the roles of your government organizations (regulator, competition ministry, legislator and the courts) and non-governmental organizations (competitors, consumers, mailers, unions, etc.).

14. In the States, there is a debate regarding cost accounting for international postal services. The Postal Service argues that inbound and outbound international revenues and costs by products should be accounted for and reported separately. Private operators on the other hand argue that inbound and outbound revenues and costs should be accounted for and reported in combination. When setting tariffs for international outbound mail for each product and service, do you include in the cost base the loss, if any, from the equivalent inbound product and service? If not, how are the losses recovered?

15. Looking at the experience of TPG, it appears that deregulation and privatization have been accompanied by diversification. As a result, the movement of domestic mail now represents a smaller percentage your total operations. Do you expect this trend to continue, and if so, what safeguards are in place to ensure affordable, universal service in your country? How can affordable universal service be preserved without a postal monopoly?

16. In light of your experience with postal reform laws in your country, what do you suggest are the most important steps that a country should take to modernize its postal laws?

17. What has been the effect of the application of antitrust laws to postal services in Europe? Have they affected the provision of universal service? Have they created excessive liability?

18. What effect has increased competition had on postage rates? Are rates generally held down by competition? Has there been an adverse effect on any particular type of mailer?

19. There has been much talk in the U.S. lately about the possibility of a decline in mail volume as a result of the Internet and electronic commerce. What is your view? What are your projections for the diversion of mail to electronic alternatives?

Questions for TNT Post Group Following the March 9, 2000, Hearing on International Postal Policy

Answers of Mrs. Simone Bos, Member of the Board of Directors of Mail and Senior Vice-President, International, TNT Post Group

Question 1

The Dutch Government has announced its intention to fully liberalise the postal market as of January 1, 2003. At the same time, the government has said that following through on this intention will depend on whether the European Union makes further progress on measures to liberalise the European postal sector generally. If the Dutch government is able to liberalise as planned, it will completely abolish the Dutch postal monopoly after nearly 200 years in existence. There will be no requirement for a license to provide postal services; the postal sector will be considered as a normal part of the transport and distribution market without special or exclusive rights. Although there will be special regulations to ensure that the market as a whole continues to provide necessary universal postal services at affordable rates, no tax or compensation fund is envisioned to defray the costs of universal service.

Question 2

Although discussions on the EU postal policy started in 1989, the European Commission has adopted a gradual approach towards liberalisation of the postal sector. The next stage of opening up the European postal market will be described in the second Postal Directive, envisaged to come into force on January 1, 2003. The market segments to be liberalised in this next stage are currently under discussion.

Generally, the European Commission is of the opinion that abolition of all postal monopolies is a necessary incentive for the public postal operators. Only in that way can postal administrations be pushed towards an attitude which is more market driven and customer oriented, and only in that way can postal administrations become competitive enough to face the challenges of the fast changing communication market. Indeed, because of these challenges, TPG believes the present gradual approach is taking much too long. However, because of political considerations in some EU-countries (mainly the fear of loss of labour places in the public postal organisations), we expect that this second Postal Directive will still not require all Member States to fully liberalise the market. A third Directive (foreseen for 2007) will probably do so.

Question 3

In 1989, a Dutch postal regulation provided for the complete separation of regulatory and operational tasks and responsibilities. The Dutch Ministry of Transport is responsible for developing the postal regulatory policy (domestic and international). A

completely independent supervisory authority supervises the application and implementation of postal regulations. Every year, as part of budget development, the Minister must make public his/her intentions with regard to postal regulatory policy (including international postal policy) in a written document submitted to the Dutch Parliament. The subcommittee on postal services of the Second Chamber of the Parliament discusses this document with the Minister. All documents and minutes are publicly available. The hearings are open to the public to attend.

In addition, Members of Parliament always have the right to ask written and oral questions which the Minister has to answer in public. All stakeholders (including TPG) make their opinion clear directly or by a lobbying process. In practice these activities often result in questions to the Minister and the sending of letters on specific postal issues to the Subcommittee. The lobby by private operator organisations is relatively strong.

Because of the postal liberalisation process in the EU, especially in The Netherlands, the Government is keen on creating a truly level playing field in the postal and distribution sector. It is fair to say postal policy is not a very much contested issue in the Netherlands.

Finally, with regard to developing a regulatory policy for the sector, there are several independent advisory councils for the Ministry. One of them, the Council for Transport, recently published a report on " a postal market without frontiers" in which views were given on the period after 2003. All stakeholders were interviewed by this Council . This shows all interested parties have ample opportunity to influence the decision making procedures on postal policy and the outcome of it..

For preparation of the positions the Dutch delegation takes at the UPU Congress, the Dutch Government begins a consultation procedure well in advance of congress. The general issues and the proposals are discussed in advance and every interested party / organisation is invited to take part. Private operators are represented in the official Dutch delegation to the UPU Congress. The Dutch delegation has an official mandate agreed by all other relevant Ministries like Foreign Affairs, Economic Affairs and Finance (for Customs related issues).

When a new UPU Treaty is completed, it has to be notified to the Parliament before ratification by the Dutch Government.

Question 4

The UPU rules and regulations have to accommodate and include the services of all 189 member countries, which calls for simplicity and uniformity. This environment makes it very difficult to meet the specific needs of these large customers. The UPU must provide a basis for the general exchange of international mail. Without this basis, the mail exchange will very likely turn into chaos. Under these circumstances, those postal operators that carry most of the mail (roughly the operators in the OECD countries) have sought alternative solutions for mail streams that cannot be dealt with properly under the UPU Convention and concluded commercially oriented

multilateral and bilateral arrangements (e.g., agreement for payment on delivery). In addition, large customers, as well as commercially oriented postal operators, will find a way to directly access domestic postal systems (public and private) in other countries when this offers them better opportunities in terms of price, services or quality.

Moreover, national law sometimes prevents application of UPU rules and regulations.

About TPG's views on the future of the UPU in general, please refer to our prepared statement. More generally, TPG is a member of the International Express Carriers Conference and supports the IECC's 7 April 2000 statement to the High Level Group of the UPU. This statement encourages UPU member countries to develop a new convention that would reflect complete separation of governmental and commercial functions and facilitate international commerce in documents and small parcels without favouritism for any group of operators.

Question 5

The UPU Constitution allows and promotes regional organisations (restricted unions) of the type mentioned in the question. Until 1993, the Conference of European Posts and Telecommunications Administrations (CEPT) was the regional organisation both of the UPU and the International Telecommunications Union. At first, the telecommunications activities were split off. Subsequently, because of the principle of separation of postal operators and regulators (later embodied in the European Postal Directive), two new organisations were created: the Conference of European postal regulators (CERP) and the Conference on European postal operators (PostEurop). At this moment 42 postal operators are members of PostEurop (EU countries, Switzerland, Norway, Iceland and Central-Eastern European countries).

Notwithstanding considerable differences in the development of the associated postal operators and divergence in their points of view, PostEurop offers a good forum to discuss common issues and to take positions. There are several Committees of PostEurop for specific subjects like Customer relations, UPU coordination, EU-Contact Committee, Quality etc. In general, in terms of the split between the operators and the regulators, the reform can be seen as successful.

Question 6

The UPU Convention allows its member states to adopt among themselves separate provisions with regard to the exchange of international mail, but only on condition that these provisions do not create an inferior level of international postal service. Several such non-UPU agreements have been concluded, both between governments and between postal operators themselves. The European Postal Directive and the agreements on Terminal Dues are good examples of this possibility as well as the bilateral and multilateral agreements on parcel exchange.

Question 7

The percentage of TPG mail that is directly injected into the domestic postal systems is commercially sensitive information that TPG does not release publicly.

Use of private operators as an alternative to postal delivery is limited. This is due to the lack of liberalisation in most of the countries. As a result, private operators in the mail sector are not easily available to deliver incoming cross-border mail. Hence, the exchange of international mail is very dependent on international postal regulations and restrictions. As already noted, this situation makes it very difficult to respond to the legitimate requirements of big international companies and mailers, especially when market conditions are changing very fast. Services have to be offered at the right price/quality ratio. It is not only a problem of too high prices as is often thought.

Question 8

In addition to the explanation already given in TPG's written statement we would like to give the following remarks on the remailing provisions of the UPU.

The present article 25 of the UPU Convention creates a right to intercept letterpost mail and not to forward or deliver it. It is important to note at the outset that this right is given to the UPU member countries, not to the national postal administrations themselves. Therefore it is essentially a matter of national postal regulators to formulate a transparent policy in respect of remail and make this policy public.

The UPU remailing provisions date back to the year 1924, to an era wherein, measured to current standards, free global trade hardly existed. Words like globalisation, liberalisation, and non-physical remail were totally unknown in those days. All postal operators were state-owned and had a monopoly for nearly all postal products; free competition in the postal market was unheard of. Since about the late 1980s the external circumstances have changed dramatically. The word remail is used in many cases where there is only real cross-border mail involved. Therefore the word "remail" does not represent a common defined area of mail. Also remail is often looked upon as 'unfair' business practice, which in many cases merely depends on your definition.

The evolution of the UPU-provisions on remail has not kept pace at all with developments in the world of trade and electronic communication. Realisation of a free flow of people, goods and services within the European Union and the subsequent growth in cross-border commerce have raised the question of whether UPU remail provisions are compatible European competition rules. With regard to this issue TPG has always taken a firm stand in favour of those individuals and companies wanting to enjoy the advantages of a free internal European market.

As a result, in TPG's view, public postal operators today should in principle refrain, and be prevented, from invoking the UPU remail provisions. Only in exceptional cases such use should be permitted, e.g. where the economic viability of the universal service obligation could be at stake. PTT Post (a 100% TPG subsidiary) in practice never seeks enforcement of these provisions by the Dutch government, even in an obvious case of physical ABA remail (i.e., where a Dutch resident causes items

completely ready for posting for Dutch addressees to be posted in an other country with the sole object of profiting by the more favourable rate conditions there).

In TPG's view, the UPU remail provisions nowadays should be invoked in very limited cases and exclusively on the basis of a clear and transparent policy formulated by independent regulators. A strict definition of these cases is difficult to give, without going very much in detail, and would also have to depend on the local situation. A crucial aspect that needs to be taken into account is the question whether the economic viability of the universal service would be endangered by the existence, continuation, or extension of so called remail activities. While remail is considered by some to be a problem rather than a service to customers, this attitude will change once terminal dues are geared to costs and postal operators start to recognize that they are each other's largest customers and must be treated accordingly. As large mailers, foreign post offices should enjoy broad access to domestic bulk mail rates, the same rates applicable to mail consolidated from private business senders and prepared according to domestic bulk mail provisions. Indeed, domestic bulk mail rates and current terminal dues levels are already rather close, especially those used between OECD members.

In general, in cases where items destined for country A are transported abroad and in some way are subject to a process that adds substantial value, such mail in our view cannot be considered as remail-items.

By the nature of things so called "non-physical remail" (items printed and posted in an other country then the country of residence of the interested party) should never, in our opinion, be considered as falling within the scope of the UPU remail provisions. In its recent Citicorp judgement, the European Court of Justice left several important questions unanswered. As regards cross-border electronic data transmission, the Court has not made clear how it looks upon this increasingly more important element of the information chain. This issue will no doubt come up again in the near future.

Daily practice seems to demonstrate that the cases in which residents of one country intentionally take the effort of rerouting their mail to another country with the *sole* object of profiting by a lower tariff there, without having any organisational connection with that country, do not occur on a big scale and do not in any way affect the financial viability to provide universal service.

Unfortunately postal operators in some countries, in and out of the European Union, resort much more freely to the UPU remail provisions to block both ABA remail (currently, UPU Article 25, paragraphs 1 to 3) and ABC remail (currently, Article 25, paragraph 4). The ABC remail provision is applicable to mail prepared by a sender resident in country A and destined for addressees in country C, which the sender has posted with the postal operator of Country B. Too liberal use of the UPU's remail provisions is, in TPG's opinion, an "abuse of dominant position" and hence inconsistent with the European competition laws.

Generally speaking, postal operators who make frequent use of the UPU's remail provisions base their approach on a very broad interpretation of the so-called "actual

sender" doctrine. That is, if international mail is addressed to residents in Country A and makes reference to a branch-office, agent or subsidiary located in Country A, some post offices insist that the "actual sender" of such mail is the local branch office, agent, or subsidiary and that therefore the mail must be posted as domestic mail at domestic postage rates. This approach prevents a company in Country A from consolidating mail preparation in the hands of a branch office or outside contractor located in Country B, even where the mail is to be posted in Country B for delivery to addressees in a third country, Country C..

In connection with legal questions certified to the European Court of Justice by the District Court of Mainz (Germany) arising in the Deutsche Post AG / Landal Green Parks BV case, the Court has been asked to give a preliminary ruling which will hopefully clarify the question who is to be considered the sender of a postal item. The UPU Convention does not define "sender" and postal operators acting under a monopoly seem unable to apply an interpretation of this notion which is compatible with competition law. In TPG's view, a return address in the country of destination cannot be regarded as sufficient to establish the domestic nature of what otherwise is international mail. A decision in the Landal Green Parks case is expected by the end of this year.

Companies active in all kinds of industries, trades, and services look around the globe for the best solutions to their specific needs in order to gain a competitive edge. The rapid developments in electronic communication enable international organisations today to centralise their mail-related activities in the country and company best suited to their needs. In this manner, an international organization can not only select the postal operator of its choice but also take advantage of other valuable pre-postal services such are marketing services, art and layout consultants, data-processing, specialized printing, and so on. Many years ago TPG anticipated this trend by introducing and developing its "Print & Mail" concept. TPG has expended considerable efforts to design and offer "tailor-made" solutions to international companies willing to concentrate activities like marketing, data-processing, billing and printing in the Netherlands and to use the high quality and efficient postal services of PTT Post to distribute their mail to existing and potential customers within and outside Europe. Furthermore, apart from considerations of mail preparation and postal service, companies often have other legitimate reasons for concentrating certain activities in a one country rather than another. Examples of such considerations include flexibility of working times of their employees, a good general infrastructure, availability of suited office sites and production facilities etc.

Free choice in the location of international offices is threatened when postal administrations continue to rely on outdated remail provisions to prevent international companies from using third country postal administrations for sound commercial reasons. Our experience is that it is getting more and more difficult to explain to our customers why their freedom to engage a service provider of their choice should be restricted by such strict interpretation of the UPU remail provisions.

Question 9

In principle we favour cost related Terminal Dues. While postal tariffs can be used as a proxy for costs, this practice often relies too heavily on retail postage rates for single-piece mail. In their mutual relations, postal operators are acting as very big customers bringing in large volumes of mail. Therefore, it would be more appropriate for postal operators to look to domestic bulk mail rates when determining terminal dues instead of single item rates. For most postal operators, fear of ABA-remail is directly linked to their wish to exploit their monopoly as far as possible. Today's terminal dues are already substantially in line with domestic bulk mail rates in most industrialised countries. Nevertheless, postal operators are complaining about the low terminal dues and the consequences of remail without ever substantiating the alleged threat to the economic viability of the universal service. Blindly aligning terminal dues with domestic single item postage rates will cause most of the larger customers to look for their own solutions based on direct access to domestic bulk rates in foreign countries. Also, if single item postage rates are relied upon excessively to reform terminal dues, many international rates will have to be increased further than is justified by the standard of domestic bulk mail rates. In short, in our view, there is already today very little justification for the UPU anti-remail clauses.

Question 10

At the outset, it should be noted that, while the process of corporatisation of public postal operators is only now getting underway in a serious fashion in Europe and in some other countries in the world, in the Netherlands this process was started in 1989. The Dutch model in many cases served as an example to others. After corporatisation, TPG became one of the forerunners in the process of privatisation. It became the first stocklisted national postal operator. The majority of the TPG's shares are no longer owned by the State. TPG is convinced other postal operators will follow and will become market-oriented companies as well, operating under normal market conditions. This evolution also will imply a ban on governmental subsidies and other forms of state aid, like is already for a long time the case in the Netherlands. In this context it is very important that the same competition law applies both to public postal operators and to their competitors.

These developments have been driven by the conviction of governments that they should reduce their involvement in postal activities and that they must liberalise the postal market to make postal operators more efficient and to force them to diversify their activities. As in other economic sectors, globalisation and consolidation/ alliances in the postal, express and logistics markets are the logical next step. In our prepared statement, TPG suggests three likely scenarios of strategic development for national public postal operators.

TPG firmly believes that the end result of this evolution will be better quality and prices and more customer orientation also in the international express and parcel market.

Question 11

Under current law (paragraphs 6.4 and 6.5 of the Postal General Regulations Decree), TPG, as the "concessionaire" (i.e., beneficiary of the postal monopoly concession), is subject to the following requirements:

6.4 In respect with activities for the implementation of the universal postal service the financial accounting has to be separated from that in respect with other activities of the concessionaire

6.5 To the implementation of the provision of paragraph 6.4 concerning separate financial accounting in respect with activities of the universal service and in respect with other activities the following Directives shall apply:

a. The concessionaire shall establish a cost and revenue allocation system;

b. The system mentioned under a. needs the consent of the OPTA;

c. The declaration of the auditor required under paragraph 6.4 which has annually to be submitted to the OPTA, shall apply also to the implementation of the cost and revenue allocation system established with the consent of the OPTA."

To ensure that it is in compliance with paragraph 6.4, TPG must to submit annually to the Independent Postal and Telecommunications Authority ("OPTA") a declaration of an independent accounting auditor appointed by OPTA. In order to further guarantee the correctness of this audit, OPTA has engaged a second auditor to check the audit structure and results (peer review)

Furthermore, under paragraph 6.6 of the Postal General Regulations Decree, PTT Post is legally obliged "to ensure that no cross-subsidisation takes place from the activities for the implementation of the universal service to the other activities it operates."

PTT Post does not practice cross-subsidisation. To this end, TPG maintains a separate internal financial accounting system for each of the business lines within the universal service, i.e. the reserved service area and the non-reserved areas of the universal service. The internal accounting system is operated on the basis of consistently applied and objectively justifiable cost accounting principles.

While the present postal regulation provides a legal obligation to abstain from cross-subsidisation from the universal postal service to activities outside the universal postal service area, the new postal law (to enter into force by the 1st of June) provides for still tighter restrictions. Under paragraphs 6.4 – 6.6 of the revised Postal General Regulations Decree, PTT Post shall also have the legal obligation to abstain from cross-subsidisation from the reserved area to non-reserved areas of the universal postal service and to keep separate accounts within its internal accounting system for the following:

-reserved area

-non-reserved areas of the universal postal service

-activities outside the universal postal service.

However, because of our internal financial accounting system discussion above, this legal obligation will not create practical changes for TPG.

Question 12

PTT Post's activity based costing system, described above, also prevents cross-subsidy between international and domestic products and services. PTT Post's business units bill each other for services rendered (intra-company invoicing). The business unit "international" must pay the same fee as other business units for the sorting, domestic transportation and distribution of incoming international mail. Any financial deficit resulting from differences between terminal dues received from other countries and the inter company fees the business unit "international" has to pay, must be covered from the other revenues of the business unit "international".

Question 13

With regard to tests for cross-subsidy, please see our reply under question 11

TPG is subject to preventive control of international mergers and acquisitions by the European Community Merger Control Regulation. For important mergers and acquisitions within Holland, the Dutch Competition Act imposes a similar set of rules. Observance of the Dutch Competition Act is supervised by an administrative authority, the Dutch Competition Authority ("*Nederlandse Mededingingsautoriteit*" or NMa), which acts as an independent authority within the Dutch Ministry of Economic Affairs. After formal notification of a proposed merger or an acquisition to either the European Commission's Merger Task Force or to the NMa, interested parties (competitors, consumer groups, unions) are publicly invited to provide their comments before any decision is taken. In both cases, notification is required only if it concerns a major merger or acquisition that might be of influence in a specific market.

Under Dutch law, TPG has to deal with two regulators:

1. OPTA is the sector-specific supervisor for the proper implementation of the universal service (check on quality of service, check on price cap system, tests on prohibition on cross-subsidisation).

2. NMa is the supervisor for other, more general, competition law issues (mergers & acquisitions, possible abuse of power in the implementation of the universal service or otherwise, possible cross-subsidisation).

Both OPTA and NMa can start investigations either on their own authority or based on complaints by competitors, consumers or non-governmental organisations.

The State owns approximately 44% of the Ordinary Shares in the share capital of TPG. Apart from being a major regular shareholder, the State holds a "Special Share", which gives it the right to approve decisions that lead to fundamental changes in the group structure of TPG, such as mergers, demergers and dissolutions with respect to TPG and PTT Post. The State has indicated that it will exercise its rights only to safeguard the general interest in having an effectively operating postal system and not solely to protect TPG shareholder influence unwanted by TPG.

Question 14

The answer to this question is already given under questions 11 and 12. See also TPG's prepared statement.

Question 15

With regard to our views on trends in the mail industry and how TPG is preparing for these changes, we would like to refer to our prepared statement. Again, our view is that commercial freedom for the postal operator, a position at arm's length from the government, privatisation, and becoming part of the total transport and delivery sector are the best conditions to guarantee a universal service.

The effect of abolishing the postal monopoly may be that there will be more differentiation in tariffs and service for various groups of users. More dynamics are profitable to the large-scale users in the sense of new services and/or lower tariffs. The fear that particular groups in society will not be serviced anymore is not justified in the view of TPG. It is expected that large-scale users will require that postal companies ensure that the ´widow in the middle of nowhere´ will get her mail on a regular basis and that she will have a guaranteed access to postal services to ensure mutual contact. Furthermore, as benefits of scale are essential in the postal market, there is a direct economic incentive for postal companies to accept and deliver mail to and from citizens and mail to and from small and medium-sized companies, as well as bulk mail from large-scale users.

The provision of universal service can in TPG's opinion be ensured by the market itself, as practice has already shown in the express and parcels segments. As to mail, the universal service obligation should be considered as a ´safety net" guaranteed by the government at a certain standard quality level for collection, transport and delivery of mail.

Moreover, in the rapidly changing communication market, universal services should not be seen as a static concept. Public interest goals need to be interpreted and expressed in terms that are relevant and useful to specific user groups and geographic areas. The advisory council of the Dutch Government mentioned in the answer to Question 3 has recently issued a report concluding that the importance of the postal service as a network for information exchange to the consumer (citizen) and society has declined. The market offers many alternatives already for receiving and

forwarding messages, such as e-mail, fax and (mobile) phone. Universal service in the traditional meaning and for traditional postal services may become an obsolete concept.

However, if it is determined by competition authorities that a universal service obligation represents an unfair financial burden for the universal service provider, one could establish a compensation fund to be administered by an independent body. The European Postal Directive enables a member state to set up such a fund. The European Commission will check if this measure relates directly to the net additional costs of universal service, having regard for the need for universal service to be assured in an economically efficient manner.

Question 16

There are two different but related important steps to take in the process of modernisation of postal laws. Our views on this issue are covered extensively in our prepared statement and in the answers above. Summarising very briefly:

The first step concerns the status of the public postal operator. Corporatisation, commercial freedom, and bringing the company at arm's length distance from the government will give the postal operator strong incentives to become a normal company operating under market conditions. A clear separation between the jurisdictions and tasks of governmental authorities and postal operators is the first and most essential condition to fulfil.

The second step concerns the regulations on the implementation of the postal services. Those regulations should bring liberalisation, the application of normal competition law to prevent cross subsidisation and abuse of dominant position. Diversification of services must become possible. The weight of public services must not limit the postal operators to offering only those public services. The end result must be a level playing field between the different service providers. The only safeguard needed for equal entry is anti-trust law. Sector-specific supervision should end in case of total liberalisation.

Question 17

Application of the competition rules of the EC Treaty to post offices was recognized in a decision by the European Court of Justice in 1985. More recently, the full implications of antitrust laws for postal services in the EU have been spelled out in the first EU Postal Directive and the Notice of the Commission of 1997. Case law is developing now. The main lesson seems to be that also public postal operators are not allowed to abuse their dominant position. Also, antitrust authorities are now reviewing in depth requests for approval of acquisitions by postal operators and will refuse such requests in some cases TPG always had the appropriate approvals for all its relevant acquisitions and JVC's.

Application of the antitrust laws has not affected in any way the provision of universal service, nor created excessive liability.

Question 18

A competitive market demands continuous efficiency and quality improvements. In the Dutch postal regulations, a price cap system exists that links price amendments for mandatory services to published external indices. However, because of market considerations, PTT Post has not raised tariffs the full amount allowed under these indices. The tariff for a first-class letter in the lowest weight class has not been changed since 1991 and is almost the lowest in the EU. Nonetheless, to prevent market distortion and to stop cross subsidisation, preferential tariffs for publishers have been discontinued over the years. The raising of these tariffs was done gradually and in mutual agreement with the publishers. Distribution of advertising mail, magazines, periodicals, and newspapers is done in full competition with other service providers.

Question 19

The postal market is closely knit with communications markets and transport markets. These markets are characterised by more and more dynamic changes, international competition and innovation. The postal market will have to adapt to these developments. The size of the traditional postal services volume is expected to keep growing with 2 to 4 % in the coming years, despite the fact that the growth of electronic messages will be much bigger and is substituting part of the letter mail. The parcel volume will keep growing considerably, mainly due to e-commerce business. Also express and logistics are fast growing businesses. The relative importance of letter mail for communication in industrialised countries is diminishing. However, in the opinion of TPG, this decline is accelerated by the lack of progress in the liberalisation process of the postal market in many countries.

QUESTIONS FROM THE HONORABLE CHAKA FATTAH

THURSDAY, MARCH 9, 2000

SUBCOMMITTEE ON THE POSTAL SERVICE HEARING ON

INTERNATIONAL POSTAL POLICY

QUESTIONS FOR Deutsche Post and TNT POST GROUP

1. **Mr. Doerken and Mrs. Bos**, what concerns should the U.S. government have for U.S. interests, now that foreign companies have entered the U.S. mail market?
2. Do you foresee any access market problems for U.S. companies as they compete in your countries for international mail service and delivery? If so, please describe and discuss the extent to which this may occur.
3. Mr. Doerken. Do you agree that Deutsche Post's "competitive," or non-reserved sector activities must be self-supporting, with no financial assistance from the German government or from its monopoly activities? If not, why not? If yes, how soon will you be able to end cross-subsidies from your monopoly activities to your competitive activities?
4. Mr. Doerken. Is it not necessary to have more than just separate accounts, to eliminate the possibility for cross subsidization? Please elaborate.
5. Mr. Doerken. Does Deutsche Post pay value-added tax on parcels? If not, why not?

Questions from the Honorable Representative Chaka Fattah, Thursday, March 9, 2000, Subcommittee on the Postal Service Hearing on International Postal Policy

Answers of Mrs. Simone Bos, Member of the Board of Directors of Mail and Senior Vice-President, International, TNT Post Group

Question 1

Our statement at the hearing has clearly shown the best way forward is to give the postal operators more commercial freedom and to create a really level playing field. The postal market is not separated anymore from the transport and distribution market. However, as long as there is a postal monopoly in the USA, clear regulatory constraints are necessary for the incumbent operator. After opening up of the postal market, the application of normal competition law will be sufficient.

For the moment, the U.S. government does not need to be concerned about the entry of foreign companies into the U.S. market. Competition from foreign companies involves only a relatively small part of the U.S. mail market. Foreign mail companies are focussing on outgoing international mail and are offering tailor made solutions for international senders. They also have extensive knowledge of the European market and regulations and create in this way added value to their services. The percentage of outgoing international mail is roughly 5% compared to the domestic mail market in the U.S.

Question 2

As long as there exist postal monopolies in the world, foreign companies will not be able to offer services in the reserved area. Outside this reserved area and after full liberalisation, foreign companies should have the same access to the market as other domestic operators.

To create a level playing field it would be also desirable to ensure that operators can offer their services under equivalent conditions, so that operators based in countries which have opened up their domestic postal markets to competition do not suffer the competitive disadvantage of having to compete against operators from other countries whose domestic markets remain protected by a monopoly. For example, GATS negotiations on liberalisation of services in the postal and courier sector could create such a situation.

E.g. in practice, because of the huge U.S. market, U.S. companies with a (big) domestic market share have a considerable advantage in entering foreign markets.

Mr. MCHUGH. We try to draw in as much differing opinion as we can, so we would welcome written comments not just about that but any other topics that have come up here today.

I say this to the Postmaster General without looking at him because he has heard it many times before, but to you, it is our custom to save time, which it is hard to believe that on occasion we do that, to submit other questions that have perhaps not come up for the record. I understand you are very busy and I am so grateful that you have come as far as you have to share the very interesting insights you already have been so gracious in doing.

If you do have the opportunity to respond to those as well, it would be very helpful to us. You leave today with much appreciation, much admiration, not just on this side of the podium but throughout the audience here from folks who understand the very innovative and bold steps that your governments have authorized and you have articulated in your actions. We appreciate that.

I was only half joking about coming to your countries. I was in Germany about 6 months ago, in Garmisch. It is lovely. But we would work, I promise you that. With that, I do thank you.

Postmaster General Henderson, I will go to you because you look like someone who wants to say something.

Mr. HENDERSON. No.

Mr. MCHUGH. Speaking for the record, Steve LaTourette, the gentleman from Ohio whom you know has been one of the most active members of this subcommittee, sometimes not to my liking by the way, but very interested in postal activities has sent word he was delayed. His plane ran into some problems, so he wasn't able to be here but he has asked that we submit a question to you. It does not deal with the topic directly of this hearing but an issue that he brought up before about local government control and such and State laws as they interface with the organization that we are going to submit.

He says he has not gotten a response from his previous submission so I would direct your attention to this because I know you are going to want to get back to him.

Thank you all very much for being here today. We deeply appreciate it.

[Followup questions and responses follow:]

Questions for the U.S. Postal Service Following the March 9, 2000, Hearing on International Postal Policy

1. **In what ways has the Postal Service supported the Department of State in developing expertise on the policy aspects of the UPU system of terminal dues, regulations and protocols? Has the Postal Service initiated any briefings to educate the Bureau for International Organization Affairs on the highly technical and complex aspects of UPU policy?**

Answer: Since legislation was adopted in October of 1998 giving the Department of State the policy lead on UPU matters, the Postal Service has either initiated or otherwise participated in a number of briefings of the Department of State on the UPU terminal dues issue and other UPU policy issues. Some of these briefings have involved only State Department and Postal Service participation and others have involved representatives from other U.S. Government Agencies as well as international mail users and private operator competitors.

These briefings provided the Department of State with an opportunity to understand the perspectives of the various stakeholders on the terminal dues issue. They provided the basis for the U.S. Government position on the terminal dues issue at the Beijing Congress. The Postal Service has fully supported this position.

2. **As the State Department prepared for the UPU Congress in Beijing, The Postal Service was actively involved in assisting and educating State Department staff on international postal issues. Some have said that State was too reliant upon the Postal Service's expertise. Did staff turnover within the State Department play any part in the extent of the Postal Service's advisory role?**

Answer: The schedule of consultations and briefings conducted by the Department of State in preparation for the Beijing Congress provided information and perspective on UPU issues from a variety of stakeholders, including international mail users, private operator competitors, and other U.S. Government Agencies. Staff turnover did increase pressure on the State Department to become informed in less time than would have been desirable. However, State's ability to obtain advice from a cross section of stakeholders within and outside of the government and to use the expertise of other U.S. Government Agencies, including the Postal Rate Commission, mitigated this handicap.

3. **What will be the overall impact of the new terminal dues rates on the price of Postal Service international products and services?**

Answer: The impact of the new terminal dues rates on the cost of foreign delivery will be, on average, an increase of about 6 percent in 2001 and about 10 percent in 2003. As terminal dues represents approximately 60 percent of our international letter and printed matter costs, our international rates will have to be increased to reflect these new costs. The increase in terminal dues costs by themselves would add about 4 percent to rates in FY 2001 and another 2 percent in FY 2003. Given the new terminal dues structure that recognizes cost distinctions between industrialized and developing countries, costs to some countries will be impacted more than others.

4. **Please explain the global averaging process by which the UPU sets terminal dues, and provide a breakdown of what each UPU member nation pays to enter its mail into the U.S. delivery network.**

Answer: The UPU has traditionally set terminal dues rates every five years at its Congresses. The UPU terminal dues flat rate is a function of the average number of items per kilogram exchanged between UPU members. Studies between Congresses determine this parameter. Costs are also developed according to the inward land rates reported by UPU members between Congresses. All UPU members pay the UPU flat rate of 3.427 Special Drawing Rights (SDR) per kilogram. Exceptions are Canada, 13 European countries, and Hong Kong.

5. **When, if at all, do you anticipate raising prices to cover at least the increase in terminal dues?**

Answer: January 2001 is the anticipated timeframe for implementing international rate adjustments.

6. **If terminal dues were aligned with domestic postage on mail exchanged with industrialized nations, what would the effect be on the costs, revenues and rates associated with international mail?**

Answer: If delivery charges for letters and printed matter were aligned with full domestic postage rates, the cost of delivery for outbound mail would be substantially increased. Cost recovery through higher outbound postage rates would have a volume effect that would reduce revenue and contribution. For foreign origin mail, inbound revenues would increase above breakeven. On balance, total international mail, both inbound and outbound combined, would be diminished.

7. **Would there be any need for an anti-remail provision in the UPU Convention if post offices aligned terminal dues with domestic postage?**

Answer: The member countries of the Universal Postal Union have been debating whether, how, and to what extent terminal dues could be aligned with domestic postage for decades. Because of the complexity and diversity of domestic rate structures, it is generally agreed that a perfect alignment of terminal dues with domestic postage is not reasonably achievable. The debate has been between those who favor moving toward alignment and those who favor a system based upon global average costs.

Many of the higher cost industrialized countries have favored moving toward alignment while most of the lower cost developing countries have opposed this. Developing countries, household and small volume mailers in most countries, and universal service traffic in general have generally benefited from a terminal dues structure based upon global average costs rather than a country-specific, tariff linked structure.

Remail has emerged as a service available essentially for bulk business mailers, primarily in the higher cost industrialized countries, that exploits the gap between terminal dues and domestic postage. Those who favor elimination of this gap correctly see this as a key to the elimination of UPU prohibitions against remail. The debate revolves around who benefits and who loses from a closer alignment of terminal dues with domestic postage and how this might be achieved in a way that minimizes the negative impact on those adversely effected. The

Postal Service, in cooperation with the Department of State and the Postal Rate Commission, is undertaking a study of these issues.

8. What percentage of the Postal Service's letters, parcels and Express Mail international outbound products and services and inbound items are exchanged based on UPU terminal dues, parcel and FMS agreements?

Answer:

The percentages for FY 1998 are as follows:

	Outbound	Inbound
Letters	49%	35%
Parcels	76%	72%
Express Mail	100%	100%

9. What agreements does the Postal Service have for the exchange of letters, parcels and Express Mail outside the UPU system? Please provide a copy of such agreements. What percentage of the Postal Service's letters, parcels and Express Mail international outbound products and services and inbound items are exchanged based on such agreements?

Answers: Nearly all agreements are within the Universal Postal Union system as the UPU Acts provide for bilateral or multilateral deviations. The only exception would be bilateral parcel agreements with those countries that are non-signatories to the UPU Postal Parcels Agreement. While these countries do not formally participate in the UPU Parcels Agreement, however, in practical terms the Postal Service and these countries do implement the provision of the UPU Parcels Agreement, including delivery charges, for the exchange of parcel post. Only 5 percent of the Postal Service's parcel volume is exchanged with these countries. Also, all arrangements for the exchange of mail with Taiwan fall outside the UPU system.

The Postal Service has signed bilateral agreements, while within the UPU system, that provide for rates that deviate from those rates applied uniformly among all UPU members. For letters, we have such bilateral agreements with Canada and 13 European postal administrations. For parcels, we have such bilateral agreements with Canada, New Zealand, and 9 European postal administrations. Express Mail agreements are all bilateral but are within the UPU system as Article 57 of the UPU Convention (Seoul 1994) provides for such agreements.

10. What percentage of the Postal Service's letters, parcels and Express Mail international outbound products and services and inbound items are directly entered using domestic rates?

Answer: The Postal Service has direct entry programs with a limited number of foreign postal administrations. These programs represent about 1 percent of our total international inbound and outbound volumes.

11. What has been the percentage of total pieces that have been exchanged at UPU rates, over the last ten years (for outbound and inbound mail separately)?

Answer: The percentage of total pieces that have been exchanged at UPU rates have been relatively unchanged over the last ten years.

The percentages for FY 1998 are as follows:

	Outbound	Inbound
Letters	49%	35%
Parcels	76%	72%
Express Mail	100%	100%

12. Under the new law the Postal Service can, with the consent of the president, negotiate and conclude certain postal treaties and conventions, subject to the requirements of the new law, which specifies that Postal Service actions shall be consistent with the policies of the Department of State. Since the law was passed in October of 1998 has the Postal Service negotiated and concluded agreements outside the auspices of the UPU, such as bilateral agreements? How has the Service determined that such treaties or agreements were consistent with the policies of the Department of State? Did the Department of State review these agreements? In the future how do you intend to validate that such treaties are consistent with the policies of the Department of State?

Answer: The Postal Service has negotiated and concluded agreements on a bilateral basis since the law was passed in October of 1998 that gives the State Department policy oversight of these agreements.

As indicated in the response to question 1, the Postal Service and the Department of State have participated together in a number of meetings and briefings on international mail issues during the course of preparations for the 1999 UPU Congress in Beijing. The Postal Service has also participated in similar briefings since the Beijing Congress. Some of these briefings have involved representatives from other U.S. Government Agencies as well as international mail users and private providers of international delivery services. During the course of these meetings and briefings, the Postal Service has had the opportunity to become acquainted with the policies of the Department of State regarding international mail. The bilateral agreements we have negotiated are consistent with these policies.

The Department of State has not reviewed all bilateral agreements entered into by the Postal Service since the October 1998 law.

The Postal Service has begun a process of providing information to the Department of State about all of the kinds of bilateral agreements the Postal Service has either already made or is considering. The Postal Service will provide copies of all agreements in which the Department of State may have an interest, whether for policy reasons or otherwise. The Postal Service has agreed to inform the Department of State in advance of entering into the negotiation of new bilateral agreements and to support a policy review process for such agreements. This will assure that all bilateral agreements are consistent with State Department policies.

13. How much does the Service expect to pay into the Quality of Service Fund in each of the five years from 2001 through 2004? How will this fund be administered? On what basis will the funds be dispersed to the developing nations? Will the funds be dispersed to the public postal administration or will they be dispersed to the national treasury? Will the fund issue loans?

Answer: Estimates are that the USPS would pay $7-8 million USD into the UPU Quality of Service Fund (QSF) in 2001. (As information, it is anticipated that the total amount in the QSF annually will be $18 million USD). This is just an estimate and the amount beyond 2001 could vary depending on mail volume trends, etc. The 7.5 percent increase will remain the same for the life of the QSF.

A "Quality of Service Deed of Trust" covering the financial management and other aspects of the QSF has been drafted and will be considered at the upcoming UPU Postal Operations Council in May.

As envisioned in the Deed of Trust, the financial aspects of the QSF would be administered as follows. Industrialized countries will pay the increase of 7.5 percent on annual terminal dues amounts (not including M bags, bulk mail, or mail subject to the revision mechanism) into individual developing country accounts managed by a "Trust Agency". These funds will be held in these accounts until accessed to fund approved quality of service projects based on projects proposals submitted by developing countries. Developing countries can combine their applications into regional projects. Reserve funds (funds not currently being used for projects) will be invested to generate returns that may be used to offset the administrative costs of running the QSF.

The timing of disbursal of funding for approved projects will be based on project size, complexity, duration, and associated risk factors.

A key factor in the QSF is that funds will be deposited in individual country accounts in a Trust Agency and can only be accessed by the UPU member postal administration representing that country. The QSF will not issue loans; however, in principle, QSF funds could be used as "co-financing" to obtain loans from development institutions such as the World Bank.

Subject to approval by the UPU Postal Operations Council in May, at the termination of the QSF, all unspent funds would revert to the UPU Special Fund to be used for quality of service projects.

14. What controls will the UPU and the U.S. government have over the expenditure of the funds dispersed to each country? Specifically, will the receiving country be contractually obligated to expend the funds for a specific project or program directed to improving a stronger and more effective postal administration? How will we know if the additional spending produces results? Will this fund be audited and by whom?

Answer: As currently proposed under the Trust Agency concept, QSF funds and project approval would be managed by a Board of Trustees (designated as countries, not as individuals). There will be nine Trustees, including one each from the industrialized and developing countries of the Western Hemisphere. Therefore, the U.S. Government has the opportunity to seek election to one of the positions on the Board of Trustees and thus have a hand in management of the QSF.

QSF project proposals will have to demonstrate strategies to improve postal operations for universal service mail in one of six areas: access to services; speed and reliability; security; liability and treatment of inquiries; customer satisfaction; and development of cost models. Post implementation auditing, particularly of larger projects will be conducted to make sure that funds have been properly disbursed and that projects have achieved their projected goals. By adhering to the QSF Deed of Trust, beneficiary counties will be agreeing to spend QSF only on approved projects. The Deed of Trust will include penalties for deviating from this policy.

Every effort will be made to establish quality of service baselines and measurement criteria both on a global and an individual country basis so that the effectiveness of the QSF approach can be evaluated. This information will be used at the UPU Abidjan Congress (2004) to determine whether this method for improving the quality of service should be maintained beyond 2005. The financial management of the QSF will be subject to external auditing according to the standard procedures used for other United Nations trust funds.

15. In your written testimony, you stated that the Postal Service opposed the elimination of UPU provisions on re-mailing, in part because preliminary estimates indicate that a loss of between one to five billion dollars could result. How were these losses calculated?

Answer: In March of 1999, the private couriers pressed the U.S. Government to submit to the UPU Congress a proposal to eliminate Article 40 of the UPU Convention. This provision, *inter alia*, allows a postal administration to collect domestic postage rates for domestic mail which is posted abroad for delivery back in its territory (ABA remail). These provisions were established to protect the domestic revenue bases of postal administrations, which are needed to support a government-mandated universal service network, from arbitrage gaps between domestic postage rates and terminal dues rates.

Recognizing the impossibility of predicting the amount of domestic mail that would actually migrate to international mail if Article 40 provisions were repealed, the Postal Service estimated potential revenue loss based on a range of reasonable scenarios for those mail classes it viewed as most susceptible to ABA remail. The Postal Service considered these classes, over time, to be First-Class and Standard (A). The Postal Service estimated a one billion dollar revenue loss if only one percent of its domestic First-Class single-piece non-presorted mail, ten percent of its First-Class domestic presorted mail and ten percent of its Standard (A) mail migrated to international mail as ABA remail. The Postal Service estimated a loss of five billion dollars if the losses of First-Class presorted mail and Standard (A) mail increased to 50% of domestic volume. These estimates were considered conservative, particularly as they did not account for the increased costs of handling domestic First Class and Standard (A) presorted and/or automated mail diverted to inbound international mail. This particular type of mail would no longer be subject to any presortation or automation requirements.

More specifically, the revenue loss was estimated by comparing the domestic revenue for a mail piece at an average weight in each of the First-Class and Standard (A) categories to the terminal dues the Postal Service would receive to deliver this same piece as international mail. The Postal Service then applied this per piece revenue loss to the percentage of total domestic First-Class and Standard(A) volumes indicated above in order to come up with an overall estimated revenue loss. In making these estimates, the Postal Service took note of

the fact that terminal dues revenue only falls below domestic rates in certain weight steps and rate cells. These estimates were based only on those First Class and Standard (A) categories in those rate cells and weight steps where the terminal dues fell below the domestic rate. On average, however, it is important to emphasize that there is a far narrower gap between domestic rates and terminal dues.

The Postal Service initially applied the terminal dues rate of 3.427 SDR per kilogram currently in place, as it viewed the likelihood very high that developing countries would continue to pay this rate to the Postal Service when the new UPU terminal dues system took effect in 2001. In fact, this was the rate approved by the Beijing Congress for mail from developing to developed countries. While some protections were adopted that would allow the Postal Service to collect higher rates for remail from developing countries, the feasibility of administering these rates is uncertain.

The Postal Service did make even more conservative estimates, however, by comparing domestic rates to the higher UPU bulk mail terminal dues rates of .14 SDR per item and 1 SDR per kilogram. Even using these rates, the Postal Service still estimated a revenue loss of between $100 and $600 million using the same scenarios for First Class and Standard (A) mail migration. It is important to note that these higher bulk mail rates could only be applied for mailings that meet certain volume requirements and would need to be operationally separated and accounted for by the Postal Service. As of 2001, the Postal Service will also be able to apply to some remail from developing countries the higher rates to be paid by other developed countries through the newly adopted system harmonization mechanism. However, the administrative feasibility and financial effectiveness of this system is also uncertain.

Recognizing the significant implications of eliminating Article 40, particularly on the domestic revenue base of the Postal Service and its ability to offer consumers affordable prices for a universal service, the Postal Service and the Postal Rate Commission have recently finalized a Statement of Work to hire a third party organization to study this issue in depth. Part of the contractor's responsibilities will be to quantify the impact on the Postal Service's revenue base. The contractor will also be asked to consider the kind of terminal dues structure that would minimize arbitrage gaps between domestic rates and terminal dues which provide an economic incentive for remail. The contractor will be asked to consider as well the impact on rates and services available to domestic and international mailers.

16. Is there any UPU provision that would allow the U.S. and other reform-minded countries to adopt, before 2004, a new agreement to govern the exchange of documents and parcels among themselves?

Answer: Yes. Under Article 8 of the UPU Constitution, UPU member countries may make special agreements concerning the international postal service, "provided always that they do not introduce provisions less favorable to the public than those provided for by the Acts to which the member countries concerned are parties."

Questions from the Honorable Stephen LaTourette for the U.S. Postal Service Following the March 9, 2000 Hearing on International Postal Policy

1. **I would like to follow up on a question I asked the last time you were before this Subcommittee. As you know, I have taken an interest in how the Postal Service deals with situations where state law and postal regulations are in conflict. I also know it is of interest to those in the mailing community. Therefore, I ask that you expand on the answer given to my earlier question: Would you please detail for this Subcommittee the specific procedures the Postal Service uses when your customers, the mailers, are subject to conflicting postal regulations and state laws? Exactly how does the Postal Service resolve these conflicts without unduly penalizing a mailer who is "trapped' by adhering to a state law which is in conflict with a postal regulation?**

Answer: Questions involving a perceived conflict between a state law and a postal statute or regulation generally must be resolved case-by-case with the affected mailer. It would accordingly be difficult, if not impossible, to prescribe a uniform set of "procedures" for dealing with such situations. In the vast majority of cases, the objective of our trained customer service representatives would be to assist mailers to comply with the applicable postal requirements in a manner that did not violate state law. In the rare instance where there appeared to be an irreconcilable conflict between a postal statute or regulation and a state law, we would expect our customer service personnel to seek guidance from field counsel to help resolve the problem.

QUESTIONS FROM THE HONORABLE CHAKA FATTAH
THURSDAY, MARCH 9, 2000
SUBCOMMITTEE ON THE POSTAL SERVICE HEARING ON
INTERNATIONAL POSTAL POLICY

1. **On page 4 of your testimony, you say that the postal service could lose a billion dollars if UPU remail reforms are enacted, specifically the calls for the elimination of UPU protections regarding remail. Could you elaborate further on this**?

Answer: Article 40 of the UPU Convention in part protects the domestic revenue base of postal administrations from ABA remail. The Postal Service, like all postal administrations that provide a government-mandated universal service obligation, relies upon domestic revenues to provide delivery to all households at uniform, affordable prices. Elimination of Article 40 could foster the migration of domestic mail to international inbound mail (ABA remail) as mailers take advantage of terminal dues rates which are below domestic rates. Commercial mailers in particular, who are most sensitive to costs, could have an incentive to engage in such activities. It is important to point out that terminal dues revenue only falls below domestic rates in certain weight steps and rate cells of domestic mail. On average, there is a far narrower gap between domestic rates and terminal dues.

There is therefore an economic incentive for domestic mailers to engage in remailing activities in order to access lower rates, with no make up requirements. Many consolidators, including more commercially oriented foreign postal administrations, would be eager to attract mail from U.S. mailers, post it in a developing country for delivery back into the United States, at much lower prices. In addition to a loss in revenue for the Postal Service, there is an even greater loss in contribution as the costs of international mail are higher.

Migration of domestic mail to inbound international mail in significant quantities may not only be a threat to the Postal Service's revenue base. It is a threat to retail consumers who may not have the ability to engage in remail activities. It would be these single-piece mailers and small businesses who must make up for this revenue loss in the form of higher domestic postage rates. Higher postage rates mean lower domestic volume. Thus, it is also a threat to the jobs of the over 800,000 postal workers who may not all be needed to handle the reduced domestic volumes. Lastly, it could pose a threat to American labor. If there is a worthwhile financial gain for U.S. businesses to access lower postage rates for delivery of mail into the United States at lower rates, over time there may be an incentive for them to move their physical printing and distribution operations overseas, or simply to consolidate mailings electronically overseas for delivery back into the United States.

2. **You further state that the PRC, Department of State and others, are arranging for a more thorough study on this issue. What is the purpose of such a study, when will such a study begins and how long will it take to complete?**

Answer: The purpose of the UPU Convention provisions on remail is to provide a means for a UPU member country to protect the domestic revenue base of its postal service, a revenue base that it considers to be essential to the fulfillment of the universal service obligation. The purpose of this study is to analyze the risks and benefits of eliminating UPU protections against remail. The study will include: (1) an analysis of the economic incentives for remail in the context of current terminal dues structures as well as terminal dues structures coming into effect beginning in 2001; (2) an analysis of the risks to domestic revenues of eliminating UPU

provisions on remail in the context of these terminal dues structures; (3) consideration of alternative approaches to terminal dues that would minimize such risks; and (4) an analysis of the impact of such changes on domestic and international mail users and on service providers.

The study is expected to begin by July of this year and to be completed by March of 2001.

3. **Currently, the postal service will allocate to State any funds available to the postal service, reasonable sums for State to carry out its new US/UPU duties. How much has the postal service spent to date? Do you have estimates as to how high such an allocation could go? Do you wish to continue this requirement? If so, why? Should the postal service be reimbursing State for the UPU activities or should this be a separate authorization.**

Answer: For FY99 the Postal Service transferred to the Department of State $160,000 to carry out its new responsibilities related to formulation of US government policy within the UPU. These funds were allocated for personnel, travel and administrative costs. The Department of State used approximately $130,000 of this allocated sum for FY99 and transferred back to the Postal Service the unused $30,000.

For FY2000, the Postal Service transferred $203,000 to the Department of State. The Department estimated higher costs to maintain additional personnel to support UPU-related activities. The Postal Service has no estimates of how this allocation could go.

The Postal Service, in cooperation with the Department of State, views these amounts to be reasonable and appropriate for the Department to carry out its new UPU-related responsibilities. While the Postal Service would be willing to continue with this funding at these levels, in principle it prefers that the Department of State bear the costs of coordinating U.S. Government policy in the UPU as a separate authorization.

4. **In your testimony, you express support for H.R. 22. I have seen drafts of legislation that would repair the rate relationships between nonprofit and regular rate publications and other mail. Will this language be added to H.R. 22 or be addressed separately, either through passage of a nonprofit bill or be added in the appropriations process?**

Answer: We are working with Postal Service Subcommittee staff, along with nonprofit and commercial association representatives, to craft legislation to adjust nonprofit ratemaking, either as a provision of H.R. 22 or as a separate bill.

5. **Last week, the Air Courier Conference of America (ACCA) released a study critical of how U.S. Customs processes express shipments coming into the U.S. through the postal service. Why doesn't the postal service have to maintain records for customs review? Why does the postal service not reimburse customs for the processing of inbound international mail? Why doesn't the postal service have to have a customs bond? Why doesn't the postal service let customs inspect in-transit shipments of international mail? Why doesn't the postal service let customs inspect outbound international mail?**

   a. **Why doesn't the Postal Service have to maintain records for customs review?**

Answer: The USPS, as a postal administration, does not maintain records for customs review due to the nature of universal service traffic that the USPS handles, which is mainly universal service traffic moving to households. The individual receiving the item is responsible for paying any applicable duties. In contrast, private couriers handle mainly business traffic.

Universal service traffic is made up of single-piece items sent by individuals and addressed to individuals. Examples are personal letters, postcards, parcels sent between family members and publications. This traffic is generally of low-value, intended for personal use, and is not usually dutiable.

The business traffic handled by private couriers is made up mostly of items sent by known business shippers to business consignees. This traffic is often dutiable and of an urgency that attracts relatively high prices paid by the senders. Also, these are frequently multiple items sent as one shipment to one consignee.

Under postal customs clearance procedures, all pieces of inbound international mail are subject to inspection by U.S. Customs. However, since postal administrations do not use computerized systems for customs clearance of universal service traffic, no electronic records on inbound postal items are available to U.S. Customs for these items. The USPS nevertheless shares all customs-related data for which we do keep a record with Customs. This includes the number of dispatches from foreign countries, weight of the mail, type of mail. Customs inspectors often seek certain information at the local International Mail Branch, and we share any information for which we have a record as part of our normal accounting operations.

   b. **Why does the Postal Service not reimburse customs for the processing of inbound international mail?**

Answer: The USPS has never reimbursed Customs for clearing mail, except when we ask for overtime outside normal working hours during Christmas. This is because the recipient of dutiable items pays a $5 fee to Customs for processing dutiable mail. The Postal Service collects this fee on behalf of Customs and remits the fee to Customs.

   c. **Why doesn't the postal service have to have a customs bond?**

Answer: As government agency, the USPS is not required or expected to post a customs bond.

d. Why doesn't the postal service let customs inspect in-transit shipments of international mail?

Answer: Transit mail is mail that is being shipped from one country to another through the United States. It is not intended for delivery within the United States. Under the UPU Constitution and Convention, all member countries are required to provide freedom of transit. This means that all member countries must accept transit shipments and forward such shipments to the destination country by the fastest means it uses for its own mail or to allow the transfer of mail between flights or other modes of transportation without interference. Customs inspection of transit mail would violate the obligation not to obstruct the transportation of mail.

e. Why doesn't the Postal Service let customs inspect outbound international mail?

Answer: Starting with Ex Parte Jackson, 96 US 606 (1878) the Supreme Court has consistently recognized that when a customer turns over its papers or belongings to the then Post Office, he or she maintains the same rights to protection from unreasonable search that they have in their own home. Section 3623(d) of title 39 to the U.S. Code is merely a codification of long standing 4th Amendment law. In fact, 3623(d) is already an attempt to balance the need for inspection and the right to privacy, in that it requires only one class of mail that is sealed, rather than requiring that all mail be sealed.

Were Congress to amend the USPS provision that requires us to maintain one class of mail sealed against government intrusion, U.S. residents would lose the only remaining shipping alternative available to maintain their privacy. Opening sealed mail to warrantless search would present a situation unlike other instances where courts have found that the 4th Amendment authorized warrantless search. Many of those cases focus on the availability of alternatives that enable Americans to maintain their privacy. For example, a traveler that is concerned about privacy invasions in airports retains the option of traveling by bus or private vehicle. Short of worldwide personal delivery, there would be no viable alternative to sealed mail.

The expectation of privacy analysis is two pronged. Did the person demonstrate an actual expectation of privacy, and is that expectation considered to be reasonable by the public. The Supreme Court just reconfirmed this expectation of privacy on April 17, 2000, in Bond v. US, 2000 Lexis 2520 (April 17, 2000) (bus traveler does not lose reasonable expectation of privacy by placing hand carried luggage on overhead rack). Based upon nearly 125 years of the public's firm expectation that their mail would not be subject to search, it is doubtful that that expectation could be changed merely by legislation.

The courts have found that, where a person has turned their property over to a private third party (UPS, for example), they cannot have any expectation that their information will be kept private, as a disclosure of the contents has been made by virtue of turning over the property. This is not the case with sealed mail, which has been protected from intrusion at least since the 1878 Ex Parte Jackson.

Recent laws aimed at electronic communications, and the case law interpreting those laws, have also maintained the distinction between disclosure to private entities and disclosure to the government. For instance, under the Electronic Communications Privacy Act, a purveyor of Internet services may legally turn over private information it obtains from its customers to another private entity. However, that same service provider may not turn over that same

information to a governmental entity in the absence of a search warrant, or in certain circumstances, a subpoena. US v. Hambrick, 55 F. Supp 2nd 504 (W.D. Va. 1999); 18 USC 2701, *et seq.*. "[T]he ECPA's concern for privacy extends only to government invasions of privacy. ISPs [Internet Service Providers] are free to turn stored data and transactional records over to nongovernmental authorities." Hambrick at 507.

Finally, the public has, of late, demonstrated increasing concern over their perceived diminution of privacy rights in many aspects of their lives. Privacy has been of great concern in the 106th Congress. More than 100 bills pertaining to privacy have been reported in the two sessions of the 106th. While many of these relate to privacy and the changes brought by the Internet, each bill reflects the public's expectation that their effects should be kept private, much as they have always expected for their personal mail. The prospect of the USPS as an intrusive "Big Brother" would not be consistent with this important public expectation.

6. To what extent do terminal dues not fully compensate the postal service for the delivery of inbound letters and printed matter? How can this be corrected and how soon does this need to occur?

Answer: Since the UPU Washington Congress, terminal dues compensation received by the Postal Service has tended to improve relative to breakeven or being marginally close to this result. The principles adopted at the Beijing Congress acknowledged that the future direction of terminal dues should be country-specific and cost-based. It is expected that a major step in this direction will be achieved at the next UPU Congress.

7. Please provide this subcommittee with exact figures for how much the postal service has budgeted and spent on advertising international mail products and services for the last fiscal year.

Answer: The United States Postal Service spent $17,023,430 on advertising of international mail products and services for Fiscal Year 1999.

Mr. MCHUGH. Our third panel of consists of considerable numbers. We will be joined by Ambassador Michael Southwick, Deputy Assistant Secretary, Bureau of International Organization Affairs, U.S. Department of State; Mr. T.S. Chung, Deputy Assistant Secretary, Services Industry, U.S. Department of Commerce-International Trade Administration; Mr. Joseph Papovich, Assistant U.S. Trade Representative for Services, Investments, and Intellectual Property, Office of U.S. Trade Representative; Ms. Elizabeth Durant, Director, Trade Programs, U.S. Customs Service, U.S. Department of Treasury; Ms. Donna Patterson, Deputy Assistant Attorney General, Antitrust Division, U.S. Department of Justice; and Mr. Robert Cohen, Director, Office of Rates, Analysis and Planning, U.S. Postal Rate Commission.

To you all, thank you for your patience, particularly for your efforts to join with us. I have read all of your testimony that was submitted by the weekend and we are looking forward to your comments. As I mentioned earlier, all of your testimony, as prepared, will be submitted in its entirety to the record. We are looking forward to your comments.

You are all seated comfortably but it is the requirement of the committee that witnesses be sworn, so if you would please rise.

[Witnesses respond in the affirmative.]

Mr. MCHUGH. The record will show that all six panelists responded to the oath in the affirmative.

With that, let me begin with Ambassador Southwick. Thank you for being here. We are looking forward to your comments. We will turn our attention to you, so please proceed in the fashion you deem most fitting.

STATEMENTS OF MICHAEL SOUTHWICK, AMBASSADOR AND DEPUTY ASSISTANT SECRETARY, BUREAU OF INTERNATIONAL ORGANIZATION AFFAIRS, U.S. DEPARTMENT OF STATE; ROBERT COHEN, DIRECTOR, OFFICE OF RATES, ANALYSIS AND PLANNING, U.S. POSTAL RATE COMMISSION; T.S. CHUNG, DEPUTY ASSISTANT SECRETARY, SERVICES INDUSTRY, INTERNATIONAL TRADE ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE; JOSEPH PAPOVICH, ASSISTANT U.S. TRADE REPRESENTATIVE FOR SERVICES, INVESTMENTS, AND INTELLECTUAL PROPERTY, OFFICE OF THE U.S. TRADE REPRESENTATIVE; ELIZABETH DURANT, DIRECTOR, TRADE PROGRAMS, U.S. CUSTOMS SERVICE, U.S. DEPARTMENT OF TREASURY; AND DONNA PATTERSON, DEPUTY ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, U.S. DEPARTMENT OF JUSTICE

Ambassador SOUTHWICK. Thank you, Mr. Chairman.

I am very pleased to be here to describe the role that we have performed as a result of this committee's work over the past year or so. As you know, we did submit a written statement. I think what I will try to do here is summarize briefly some of the main points.

As everyone here knows, this is not a particular job that the State Department sought. Having said that, I think it is a job that is extremely important. As I got into this work over a year ago, I found that profound issues of public policy, economic policy, and

competitive policy for the United States were at stake, and I think the work of this committee is helping to build a platform where the United States can bring itself up to date with what is going on in the rest of the world.

In that respect, I would like to play particular tribute to the role that the Netherlands and Germany have played in our work as we have worked with the Universal Postal Union. They have been, before we were, in the forefront of efforts to get reform in that institution.

Just a word about the GAO report. There are some things obviously we don't like. We have to admit that we were a little bit ragged as we got into this job. We didn't have the proper staff, we were on a very steep learning curve, and we had a big event that we had to prepare for, as people know, the Beijing Congress. But we did set to work.

The criticisms made by the GAO, I think, have been addressed. We have done a lot of things with websites, public information, getting word out in a more timely fashion, creating records for what we do. I think, as has been suggested, that we will put down on paper for the benefit of all the stakeholders the process that we are pursuing. I think it does meet the spirit of what the FACA process is supposed to accomplish. We will do our utmost to make sure that all stakeholders are treated fairly.

As far as the UPU is concerned, the UPU is one of the stranger bodies in the U.N. system. In my job I deal with 47 different agencies of the U.N. system. Until this responsibility came to us, we at the State Department frankly did not pay a whole lot of attention to the UPU because it was basically the job of the Postal Service.

When we started looking into the UPU, we found that this was an organization which was in danger of being eclipsed by developments in the sector where it was supposed to be a major player. It is an old organization, a venerable organization, that has done very good work in many, many ways over the years. I am happy to say that it is lead by an American, an American elected to the position. This is a rarity in the U.N. system. As a matter of fact, Mr. Tom Leavy is unique in that respect. I think he has done a very distinguished job.

The UPU is an organization which had the markings of a kind of private club. I think when it was formed over 100 years ago, the members felt they were representing the public interests. But as time has gone on, and the sector has widened, it is very clear the UPU is more an organization for other organizations, in this case, traditional, old line state monopoly postal services. So we found there was a lot of reform that was needed in that organization that, if we had been on our toes, we would have tried to pursue even before the legislative mandate came our way.

As for the process, there are several aspects to mention. Externally, we wanted to show we were consulting with other countries. One of the advantages I think the State Department has brought to this work is that we can use the whole diplomatic structure of the Foreign Service and use our diplomatic missions abroad to engage not just the postal services of different countries, but their economic ministries, their foreign ministries, their trade ministries and so forth, so that postal policy as we discuss it with those coun-

tries is something that we bring to a wider audience abroad, as we have done here in the United States. We have found, though, that in many countries, postal policy is very localized and is done in a kind of forgotten corner of the government, particularly in developing countries.

Internally with the U.S. Government, I think we have tried faithfully to follow the mandate that is prescribed in the legislation by involving all of the stakeholders. I spend a lot of time talking to the major actors in this sector everyone frankly who wants to talk about one aspect of it or another. We have had many public meetings, we have an open door policy, we get a lot of input. I will say something in that regard with respect to expertise.

We realized at the outset that we didn't have postal expertise, but we do have diplomatic expertise, we do have expertise in dealing with international organizations. At first when I saw this responsibility, I thought we were going to have to develop a big staff of our own. But I like things to be lean. As we were developing our work in this area, we found that we had a lot of help. There was no dearth of offers to help us do our job from various folks around town who had plenty of advice to give. We created, I think, a very synergistic process, the interagency process, with public input, learning what views are to help us guide our work.

I think there is enough creative tension in this process that various folks are kept honest. We are hoping to be smart enough to make sure they stay honest as this process continues.

On policy, it was very clear that this organization, the UPU, needed to be opened up. Most organizations in the U.N. system have some kind of method for dealing with what we call non-governmental organizations or the public in general.

The UPU had done this to some degree quite successfully with the direct mailers but not with their competitors, not with the private couriers. That is where the rubber hit the road. We wanted to open that up. One of the steps I took immediately was to make sure that UPU documents were available to all, that we included private sector people on our delegation as we did to Beijing—this will be a regular feature of what we do—and that this access and participation problem would not be so acute as it was in the past.

Beyond that kind of procedural step, we did find there were issues that were of deep concern from an economic and trade police point of view: this Article 40 issue which has been mentioned, customs which has been mentioned, and the terminal dues structure. We developed our positions on these issues. I think it is fair to say there are hundreds of different proposals that were presented to Beijing. No entity, private or public, exercised any kind of veto on what the State Department did. As a matter of fact, we ourselves injected some things into this process. The State Department, for example, was the author of the reservation on the terminal dues agreement that was agreed upon in Beijing because we in fact do have reservations about it.

We went to Beijing with a kind of radical agenda. We wanted to change that institution. We had to speak out loudly and clearly, at times I would have to say stridently. This was not appreciated by a number of countries that like this kind of private club atmos-

phere that had developed over the years, the decades, in that organization.

Nonetheless, we did accomplish many of our objectives in the sense that we opened up the process for reform and we sent a signal about the terminal dues structure that that needed to be changed over the long term. We also got this advisory group process formed which is very limited, not what we wanted really. We wanted something more far reaching but I think this arrangement will be helpful as a kind of intermediate step in getting input into the UPU from the private sector.

This high level group that was created has had a couple of meetings. I attended the first meeting which occurred in early December. I must say there was a sea change in the attitude and the atmosphere at that meeting compared to what we had experienced in Beijing. We heard it from practically everyone. We heard it from the Director General of the UPU. We heard it from a number of countries that had been opposed to us in Beijing.

Clearly there is a serious reform process underway. I think it is very incumbent on the United States as the author along with several other countries of that reform process to try to make it work. There is a timeframe for this. We have to come up with some recommendations over the next year. In 2002, there will be an opportunity to present formally those proposals in a way where they could be adopted before the next congress of the UPU which will be held in Abidjan in 2004.

I think we are at a critical point with this high level group. I want to end on that, in the sense that we are trying now to get input. The UPU is trying to get input from interested stakeholders on what they see in the UPU, how they would like to see it change. We will have meetings on this on an interagency basis, and we will have, later on, a public meeting on this. We want people to give voice to their concerns.

It is not enough to say that we don't like the UPU. We have to say in a very articulate form how we want to change it. I will say this, having had many years in international diplomacy and with the U.N. system: nothing happens unless the United States is solidly behind it. If we can get a good plan formulated after all this process goes forward, I think we can work with our allies to get that job done.

Thank you.

[The prepared statement of Ambassador Southwick follows:]

Subcommittee on the Postal Service
Committee on Government Reform and Oversight
House of Representatives

Hearing on International Postal Policy

Statement of Ambassador E. Michael Southwick
Deputy Assistant Secretary
For International Organization Affairs
Department of State
March 9, 2000

Thank you for the opportunity to speak with you today about the new and expanded responsibility assigned to the Department of State in relation to the Universal Postal Union (UPU). We in the State Department have taken this new assignment very seriously, and we believe that we are making progress on redefining and achieving U.S. objectives in the UPU. Our interpretation of the new GAO report on this subject is that the GAO generally concurs that State's work on this issue has been constructive, and we appreciate that analysis.

The GAO report also points out that there were some procedural shortcomings as we undertook these new responsibilities. We believe we have addressed them. We also are aware that there remains some concern about continuity of staffing in the handling of our new role, and I hope to reassure the committee on that score. The rotational personnel system at the Department of State should be seen as a positive factor. It provides a constant supply of talented officers who understand trade and other economic issues, know how to work toward consensus with counterparts in other countries, have access to a network of colleagues in U.S. embassies around the world, and know how to do business in the United Nations system. Their rotations also bring in fresh ideas and new perspectives. To help provide continuity and help assure effective coordination, we will also continue the current arrangement in which staffing includes a career civil servant.

The Reform Process

I come from the Bureau of International Organization Affairs in the Department of State -- the bureau that handles the United Nations and all of its affiliated agencies. For years in this Bureau, we have been promoting reform in multilateral agencies. Part of that reform is a quest for openness and transparency. Throughout the multilateral system, that means increasing interaction with the private sector -- with non-governmental organizations, with industry, with private citizens. We know that the major tasks that face the UN system agencies cannot be achieved with the limited resources and staffing that these agencies have available. The UN agencies must draw into their orbit the portions of the private sector that are relevant to their work, seeking both to stimulate new ideas and to learn from the broad experience of the private sector.

We approached the UPU from that perspective and from our legislative mandate -- one that we regard as a mandate to promote reform. Frankly, we were very disappointed in what we initially found a year ago. Not only was the UPU relatively closed to outside interests, especially the private-sector courier industry, but most of its member states seemed to support that private-club approach. Some countries that traditionally are allies of the United States in promoting reform in the United Nations system even seemed to be opposing reform in the UPU.

Nevertheless, we undertook our task with determination, with the goal of opening up the UPU to the private sector and stimulating an international postal delivery system that would provide the greatest benefits to the consumer. It is our hope that this reform process in time will result in a UPU that:

- is open and transparent in its work,
- fosters and encourages a more open and competitive system,
- provides maximum entry opportunities to all stakeholders,
- ensures fairness to all competitors,
- and above all provides postal consumers with valuable benefits, including lower costs, faster delivery times, and a greater choice of services.

We recognize that these may be seen as general objectives. It is our intention to build upon them, linking them in ever stronger fashion to our overall foreign economic policy objectives and to our legislative mandate. We will use our new role to reach out to other U.S. Government agencies, to the Congress, and to the private sector in this country, and to seek consensus on the specific attributes of a reformed UPU.

Results of the Beijing Congress

As you know, the UPU convenes a major Congress once every five years to establish new directions. We in the State Department took on our new responsibility only a few short months before the UPU Congress in Beijing, China, in August 1999. I must tell you that this was a major challenge for us. Nevertheless, I am certain we have made a difference. For the first time in UPU's 125-year history, the United States delegation was headed by a senior official of the Department of State representing a government-wide perspective. Also, for the first time, the U.S. delegation included representatives of the private sector -- both couriers and mailers.

Both of these changes were very much noticed by the UPU secretariat and by the other member states as well. To some, these were actually astonishing developments, and it was clear to others that the United States was going to take a new approach to the UPU. Over the last year, in UPU meetings and in other interactions with foreign governments, we have made many references to the legislation of October 1998 in making clear the interest of our Congress in ensuring that the private sector in the United States has more opportunity to be informed about the UPU and to participate in its activities.

Within the United States, we have opened up a special section of the Department of State's website to make available more information and documentation relating to the UPU. We have made key UPU documents available to interested U.S. "stakeholders." We have convened U.S. Government interagency meetings as well as public meetings to discuss UPU issues. And we have provided the UPU with a list of U.S. stakeholders in UPU issues so that they might be consulted regarding UPU policies.

Largely as a result of our initiatives, the UPU has convened what is called the "High Level Group on the Future Development of the UPU," a 24-member body that is studying reform and that has been asked to make recommendations for specific action by September 2001. We are playing a major role in this group.

I want to acknowledge that it is not easy to promote reform in an agency that has traditions going back 125 years, and I do not wish to paint too rosy a picture about what we might achieve. Nevertheless, there is a very significant difference between the outright defiance and resistance to reform that we encountered in Beijing seven months ago, and the attitudes that we now see in the new High Level Group.

The senior officers of the UPU are now speaking in terms that suggest reform of the UPU is inevitable, and the majority of the High Level Group is also demonstrating this attitude. There are some members that remain resistant, but there has been no back-tracking thus far, only progress, and I am convinced that we can convert this new atmosphere into reforms that will significantly change the UPU, and that will make it more relevant.

Thus far, the High Level Group has been primarily sorting out its workplan and developing information for consideration at a later stage. But two developments are very important:

First, the Group has brought in panels of experts on the postal sector and on reform to provide different perspectives on the issues before the group. At its next meeting, in May, the Group will hear from representatives of the private couriers, the mailers and the customers, to find out from them what improvements they believe can be made in UPU policy and operations.

Second, the High Level Group has decided to solicit the opinions of the major stakeholders in UPU affairs. The Group has created a questionnaire that has been sent out to both government and non-government agencies with concerns about the UPU. The responses will be collated and presented in a report to the Group when it next meets. We in the government sent the questionnaire to about 30 U.S.-based stakeholders, and we strongly encouraged them to respond frankly and fully, sending their replies directly to UPU.

In addition to the High Level Group, I want to point out that the Beijing Congress created another opportunity for participation by the private sector. This is the formation of a new Advisory Group to the UPU Council of Administration. About 30 international private-sector agencies and associations are being invited to meet with the UPU staff and representatives of about 20 governments to discuss their interests in UPU and their concerns about it. The

first meeting will be held in May. This was a U.S. proposal in Beijing. The outcome was not as far-reaching as we preferred, but it was the best attainable at the time. We strongly recommend that the interested international agencies take advantage of this opportunity to make themselves heard in a UPU forum.

In more substantive terms, we were pleased that the Beijing Congress agreed to a transitional system for "terminal dues." These are the amounts that one country pays another for postal delivery services. This new plan provides for lower rates to be paid by developing countries and establishes a special fund to assist them in improving the quality of service. At the UPU Congress, we made clear our view that these terminal dues arrangements should eventually move to a non-discriminatory cost-based system.

With regard to customs issues, we have used our interagency group to stimulate discussion and to ensure that positions taken by the United States Government are fully coordinated.

Relations with Other "Stakeholders"

Overall, I want to emphasize that we in State are committed to a fair and open process for dealing with the UPU. We are attempting to carry out our new role in an even-handed manner, as set forth in the "sense of the Congress" portion of the 1998 legislation.

As the legislation made clear, we in State have primarily responsibility for relations with the UPU, and this encompasses the important role played by our Postal Service in a variety of detailed and technical areas. We have developed a good spirit of teamwork with the Postal Service. I can honestly say that we are working together well in the High Level Group and elsewhere to generate the reform that we all know is essential in the UPU. We also have an active interagency consultation process, with about half a dozen agencies sharing their views. This wider participation in the development of policy toward the UPU is a definite benefit to us in the Department of State.

We intend to continue our public meetings and other outreach to interested parties in the private sector. Reform of the UPU is not going to occur overnight, but we sincerely believe we are making good progress, and we pledge to keep you informed as that work goes forward.

Mr. MCHUGH. Thank you, Mr. Ambassador. I appreciate your comments.

I think it would be fairest if we just continued down the line and go to open questions, hit or miss.

Mr. Cohen, as I mentioned before, is Director of Office for Rates, Analysis and Planning for the U.S. Postal Rate Commission. Welcome, sir. We look forward to your comments.

Mr. COHEN. Thank you, Mr. Chairman, for inviting us to testify. I will very briefly try to summarize my written testimony.

We talk in the testimony about our first international mail report which was submitted to the Congress last June. That report contains some redacted material because our understanding of the statute is that information a private business wouldn't normally disclose should not be released.

The report's most important conclusion was that international mail is not cross-subsidized, but it makes a much smaller contribution to institutional costs than does domestic mail. The highlights of the report are contained in my written testimony.

Commissioner Goldway and I actively participated in all of the activities that the State Department organized prior to the Beijing conference: the public meetings and the advisory group meetings. We attended the conference in Beijing, and I also attended the first meeting of the high level group in Bern. I also worked with my staff and with Postal Service staff on developing a schedule of work for a study of remail and terminal dues. We circulated that schedule of work to interested parties, and we hope to incorporate their comments and finally release a contract for a study.

My testimony does describe the role of the UPU in creating a single, worldwide postal territory. That is an important contribution of the UPU. We also go on and point out that while the worldwide postal territory is abetted by the universal service obligation, that is not a good reason not to have fair and open competition in international mail. The USO is not supported by international mail activities. It is supported by a domestic mail monopoly, which is more than sufficient in the United States and other countries to support the USO.

As I mentioned, I was at the high level group meeting and I, too, was surprised at the great change in the attitude of the delegates to the high level group as compared to Beijing. I also am optimistic about the prospect for reform.

The last thing I mention in my testimony are recommendations with regard to the State Department's process. The Rate Commission believes that State has exercised its authority in an extremely competent and skillful manner. It believes, however, that Congress should call on State to establish an advisory commission under the FACA. Such a committee would institutionalize a consultative process.

The Commission also suggests that when appropriate, State should issue and make public statements of policy under procedures resembling notice and comment rulemaking. This would memorialize decisionmaking and prevent arbitrary changes in policy.

Finally, the Commission suggests State may wish to augment its staff with some additional expertise.

Thank you.

[The prepared statement of Mr. Cohen follows:]

Testimony Of

Robert Cohen

On Behalf Of The

Postal Rate Commission

Before The

U.S. House Of Representatives
Committee On Government Reform
Subcommittee On The Postal Service

March 9, 2000

DRAFT
R.Cohen

Testimony

Chairman McHugh, members of the Committee on Government Reform, Subcommittee on the Postal Service, I am pleased to testify here today on behalf of the Postal Rate Commission. I am the Director of the Commission's Office of Rates, Analysis and Planning. For a number years I have prepared studies for international mail conferences and worked with members of foreign postal administrations. Consequently, the chairman gave me the responsibility of working with the State Department when it became responsible for dealing with the Universal Postal Union (UPU). For this reason he also asked me to testify here today.

First I intend to discuss briefly the Commission's international mail report. Because Chairman McHugh's letter of invitation indicated that this hearing will concentrate on U.S. policies concerning the international exchange of documents and parcels, most of my testimony will deal with the recent transfer of authority for UPU policy and representation to the State Department.

The Commission's Report to the Congress

As you know, legislation amended Title 39 of the U.S. Code in November, 1998, and required the Commission to provide Congress with a comprehensive report on International mail costs, volumes and revenues. The Commission completed its first report and transmitted it to Congress on June 30, 1999.

In order to carry out its new responsibilities, the Commission first asked interested parties for their views on 1) what the scope of the report should be, and 2) what data the Commission should require from the Postal Service in order to prepare

the report. The Commission sent a number of requests for data and information to the Postal Service. The Service provided the data requested by the Commission, but it also pointed out that under existing law, Postal Service business information that a private firm would not normally disclose must be kept confidential. For that reason, the Commission has not made its entire report public. Instead it has provided the public with a version from which a small amount of sensitive information has been redacted. The highlights of the report are contained in the Attachment to this testimony.

After our report was issued, the Commission provided additional analyses in response to a request from Chairman McHugh. One of the more difficult questions still outstanding is the extent to which inbound and outbound mail flow data can, or should, be combined. The Commission has tried to accommodate interested members by providing data in disagregated form so that it can be combined as the user sees fit.

Since the preparation of the report did not involve a section 3624 proceeding, members of the Commission's Consumer Advocate's staff worked with the advisory staff on the study. In preparation for its second report the Commission has just completed a formal rulemaking on the scope of the report and the data to be supplied by the Postal Service. The Service will be submitting the data by March 15, and the Commission will commence work on its second report.

A PRC Perspective on the Activities Resulting from the Transfer of Authority to the State Department

In November 1998, at the same time the Commission was given its new international responsibility, Congress also transferred responsibility for UPU policy and representation from the Postal Service to the State Department. Soon after the legislation was enacted, the State Department formed an interagency advisory group consisting of the Justice (Antitrust Division) and Commerce departments, the U.S. Trade Representative, the Postal Service and the Postal Rate Commission. State also held public meetings and sought the views of individuals from the Postal Service and other groups with an interest in UPU policy. Representatives of the State Department

met with officials of several European governments and posts and with officials of the UPU. The State Department officials quickly grasped the complex issues of international mail and formulated policy for the quinquennial UPU Congress. The interagency group approved the policy by consensus. This all happened relatively quickly, beginning in January and culminating with the Congress in August.

At the request of Chairman Gleiman, Commissioner Ruth Goldway and I participated in virtually every interagency advisory group and public meeting. Legal and technical staff of the Commission also attended these meetings. We met informally with other interagency advisory group members to provide background on postal matters and to consider policy issues. The Commission sponsored a presentation for the advisory group on the remail industry by a knowledgeable person from that industry. When the Statement Department expressed an interest in our providing support at the Beijing Conference, the chairman arranged for my attendance and that of Commissioner Goldway.

Commission support of the State Department effort continued in December 1999 when I attended the first meeting of the High Level Group set up to consider reform of the UPU. In addition, Commission staff and I have worked with Postal Service staff in drafting a schedule of work (SOW) for a joint study on remail and terminal dues. The SOW was circulated to the interagency advisory group and other stakeholders on March 2. Our intention is to revise the SOW taking into account the comments we receive. The SOW will be included in a formal request for proposals leading to the award of a contract for the study.

Rationale for transferring authority to the State Department

The Universal Postal Union (UPU) was organized in 1874 to facilitate the international exchange of documents (including letters and cards) and parcels. The goal of the UPU was the creation of a single postal territory composed of all member states. That goal is facilitated by the universal service obligation (USO) imposed on the postal administrations of the member states by their governments. Under this

arrangement, mail sent from any member country is accepted for delivery in any other member country and receives the same universal service as domestic mail.

For a century the UPU quietly succeeded in its purpose. Since there were no alternative means for the regular exchange of documents and parcels, it was only natural that governments (i.e., the members of the UPU) were represented at the UPU by their national postal administrations. The 1970s, however, gave rise to the express and remail industries that competed with the posts by providing more rapid and reliable delivery of documents and parcels. Two domestic express companies, Federal Express and United Parcel Service, became important suppliers to the international market. As private operators siphoned off much of the high end of the market, the UPU began to concentrate on assisting postal administrations now in competition with private operators that had no legally binding universal service obligation.

Meanwhile, Australia, New Zealand, and the European Commission began to question the scope of the mail monopolies enjoyed by their posts and to encourage competition in traditional postal markets. Distinctions were made between governments and postal administrations. Countries began sending representatives of both to the UPU beginning in the early 1990s. This distinction is becoming increasingly important as the scope of mail monopolies is being reduced around the world and as posts are becoming commercialized, incorporated under ordinary commercial law, and privatized.

The international express industry is growing in importance with the globalization of the economy. Indeed, as others have said, the industry makes globalization possible. There is, however, an asymmetry in the way these companies' interests are represented at the UPU. The Dutch post, which participates in the UPU, owns an important international express company, TNT. Similarly, the German post also participates in the UPU and has a substantial minority stake in the international express company DHL. Thus, these express companies at least, are indirectly represented at the UPU.

Given the competition that emerged in the international exchange of documents and parcels, it became increasingly clear that the U.S. Postal Service could not in fairness represent the divergent interests within the United States at the UPU. Recognizing this, Congress transferred responsibility for UPU policy and representation to the State Department.

State Department's UPU Policy and the Universal Service Obligation

In response to the diverse interests of the Postal Service, private operators and international mailers, State's main policy theme developed for the Beijing Conference was that the UPU itself should be reformed to take into account the changes in the international mail market and to be more open to the interests of the private sector. For the first time, representatives of the U.S. express industry and mailing industry were included in the U.S. delegation to the UPU.

Many countries, however, opposed giving recognition to the interests of private operators in Beijing. These countries felt that increased competition from private operators could undermine the ability of national postal administrations to fulfill their universal service obligations at affordable prices, and consequently, endanger the single postal territory.

The question before policy makers is: "How much deference should national postal administrations receive in international mail policy because they have a USO?" In particular, should the U.S. Postal Service be given commercial advantages in international mail because of its USO?

We should first note that international mail volume and revenue account for a small portion of total volumes and revenues for the U.S. Postal Service (and for the other industrial nations' posts). In the United States, international mail accounts for one half of 1 percent of total volume and 3 percent of total revenue. International mail on the whole makes a smaller than average contribution to institutional costs but is not cross- subsidized.

The cost of the universal service obligation is the cost of providing services which would not be performed by a profit-making competitive firm. This cost has not been calculated for the U.S. Postal Service or, as far as I know, for any other postal administration. The Federal government grants the U.S. Postal Service a letter mail monopoly to enable it to provide universal service. The monopoly amounts to a tax on letter mail users, because it allows their rates to be set higher than they could be set in a competitive environment. The domestic letter mail monopoly accounts for more than 80 percent of the Postal Service's revenue and nearly 90 percent of the contribution to its institutional costs. If all international mail volume were lost, it would not affect ability of the Postal Service to pay for its universal service obligation. Thus, no commercial advantage needs to be given to international mail in the United States in order to maintain our Postal Service's USO. I believe this same analysis would apply to all other postal administrations of industrial countries.

This does not mean that the Postal Service does not have a universal service obligation with respect to international mail. Data supplied to the Postal Rate Commission by the Postal Service and displayed at page 39 of our report to the Congress on FY 1998 International Mail Volumes, Costs and Revenues shows that the preponderance of the largest and most lucrative class of outward international mail (air letters and cards), was sent by households. Household mail is also an important constituent of air AO (other objects) and air parcels. Additionally, households account for about 90 percent of all surface parcels. The data we received from the Postal Service do not separately break out small volume non-household mailers. A fair inference would be that they are also important users of the air services that households use. Small volume commercial mailers and household mailers do not have sufficient volumes to interest consolidators, and so have no affordable alternatives to the Postal Service. Their mail is *de facto* monopoly mail. Therein lies the Service's obligation to these mailers.

The Beijing Congress and its Aftermath

The Beijing Congress took two important steps from a U.S. policy standpoint. One was the creation of a High Level Group to consider reform of the UPU. As I mentioned, I attended the first meeting of this group in Bern in December. I must say that I was surprised at the receptiveness of most of the delegations to the concept of reform. This was reinforced by remarks of the Secretary General, Mr. Thomas Leavey. While some delegations were silent about the desirability of reform and one nation was actively opposed, at this time I am guardedly optimistic about a successful outcome from the High Level Group.

The Beijing Congress also ratified a new terminal dues agreement to take effect in 2001. Terminal dues are the rates that the posts of UPU member nations charge each other for letters, cards and *autre objets* (other objects). Because terminal dues are set below domestic postage rates for comparable mail in industrial countries, and because terminal dues rates are available only to postal administrations, terminal dues have competitive implications. The new terminal dues agreement was supported by the State Department because the new rates would be more cost-based than the current terminal dues. State believes the new agreement begins the process of having terminal dues based on costs, which would make them more competitively neutral.

State Department Defers to the Postal Service in Other Areas

The UPU is important to the U.S. Postal Service in dealing with its international mail. The UPU is the means by which products, prices, means of payment, rules of exchange, security and technical assistance for less developed nations are established. The Postal Service has an excellent and dedicated staff that deals with these important matters at the UPU. It is my observation that, except for terminal dues, the State Department defers to the Postal Service on those issues, which are akin to commercial arrangements.

Suggestions for the Policy Development Process

The Rate Commission agrees with the recommendation of the GAO that the State Department set up an advisory committee under the Federal Advisory Committee Act. Such a committee would institutionalize a consultative process which could not be easily discarded. It would also guarantee the participation of interested parties. While the Commission believes the *ad hoc* procedures adopted by the State Department served it well in the hurried atmosphere of preparing for the Beijing Conference, more formal procedures would be helpful at this juncture. The Congress may wish to consider mandating the establishment of such an advisory committee.

The Commission also suggests that when appropriate, State should issue and publish in the Federal Register a formal statement of policy in which it explains the basis for the policy and deals with all stated objections to that policy. We are contemplating a process that is similar to notice and comment rulemaking, in that the State Department should solicit comments prior to issuing a final version. Formal statements of policy would memorialize decisions and explain why they were made. They would prevent arbitrary changes in policy and ensure considered policymaking.

Finally, although the Commission reiterates the view that the State Department has exercised its new authority in an extremely competent and skillful manner, it believes that there is still a lack of expertise on international mail within the State Department. The Postal Service has this expertise, but it is not disinterested in these matters. While the Commission is prepared to continue to provide its support, we believe the State Department may wish to take steps to supplement the knowledge base of its staff so as to better ensure balanced decision-making, in the ongoing representation of the interest of the United States.

Attachment

MAJOR FINDINGS OF PRC REPORT ON INTERNATIONAL MAIL

- International mail as a whole is compensatory. It is not cross-subsidized by domestic mail.

- The overall cost coverage for International mail is 113 percent compared to the systemwide cost coverage of 158 percent.

- Four outbound services fail to cover their costs: (1) Surface AO, (2) Surface periodicals, (3) Global Package Link, and (4) Global Priority Mail. New rates that became effective 5/30/99 may alleviate the problem.

- Two inbound categories are not compensatory: (1) Air LC/AO and (2) Surface LC/AO.

  - Compensation in these categories is based on UPU terminal dues for 42 percent of inbound mail. Bilateral agreements with 14 countries in Europe and Canada account for the rest.
  - Presumably the loss comes from UPU countries but because USPS doesn't have inbound regime-specific costs, we cannot analyze the revenue-cost relationship.

- Settlement costs (terminal dues, inward land charges, and imbalance charges) directly affect outbound rates because the Postal Service includes them in the cost base used to set rates.

  - Rate = (mail processing cost + domestic transportation cost + other domestic cost + international transportation cost + **settlement cost**) x cost coverage.

- The volume, revenue, and cost data are generally reliable and the cost coverages are statistically significant except for inbound air LC/AO and Inbound EMS.

Mr. MCHUGH. Thank you very much.

Now, Mr. T.S. Chung, Deputy Assistant Secretary, Services Industry, International Trade Administration, U.S. Department of Commerce. Welcome, sir. Our attention is yours.

Mr. CHUNG. Thank you, Mr. Chairman. I would also like to thank you for this opportunity to speak to you today. I will also try to shorten my remarks in the interest of time.

The Department of Commerce does recognize that this is an opportunity to advance further the policies that will benefit all U.S. stakeholders in the postal and delivery services sector. As the Federal Government's chief agency with responsibility for promoting the interests of U.S. businesses overseas, we welcome the mandate given to the Department by the Congress to cover postal and delivery services as a part of the International Trade Administration's Service Industries Development Program. I am directly responsible for that program.

Let me say a few words about the role of the State Department in connection with the UPU congress. In short, as stated by several of the previous speakers, the State Department has handled the task very well under a rather challenging set of circumstances.

From the perspective of the Department of Commerce, this change has been predominantly beneficial and has better aligned our international postal policy with U.S. international trade policy in general.

Before, during and after the UPU World Congress, the State Department has tried to create an open and transparent process, ensuring that the views of the interested parties, including the private providers, postal users, general public and other governmental agencies are considered when formulating U.S. positions for the UPU.

For the Commerce Department, obviously we were involved together with the State Department in the UPU congress as a member of the U.S. delegation and we worked closely with them to develop a policy position that we advanced at the Congress.

An important element of the work that went into our preparation for the UPU, for the Commerce Department, was working closely with the business community, conducting extensive outreach to know exactly their concerns and to reflect those concerns to the best of our abilities. This was something we had been doing even before them as the Federal Government's primary export promotion agency.

We work in different fora to improve the international competitive position of U.S. private business providers and that includes the international postal and parcel services sector, as well as a major customer of their services, which is the direct marketing industry. Our involvement in the UPU process has given us a higher profile as well as added expertise that will continue to serve U.S. international interests better in the coming years.

The Department of Commerce, as a general rule, favors measures that will facilitate the movement of goods across borders in the conduct of international trade in an efficient and timely manner. Without the free movement of goods, many of the benefits of liberalized trade, both in goods and services, are stunted.

As practically all of the previous speakers have mentioned, reform in the UPU is critical and we support that and will continue to work with other agencies and private sector companies to bring that about.

UPU does not exist in isolation and that is why the Commerce Department is active in other related areas and fora, working with other U.S. Government agencies and the private sector on relevant issues in the World Trade Organization, and in particular General Agreement on Trade in Services [GATS], the World Customs Organization and in bilateral and other multilateral fora such as air services agreements.

The collective effect of liberalization, removal of barriers and reform will improve the overall international commerce of the United States. For instance, the U.S. express shipping industry has told us specifically that commitments in the GATS are needed to cover extensive aspects of providing express shipping services. We will work with them in the coming months and years to reflect their concerns in the WTO GATS process.

As reflected by the two speakers from Europe, market conditions are changing rapidly here in the United States as well as across international markets. We can expect to see trends such as postal deregulation, partnerships and alliances, increased competition, globalization, electronic substitution and more product service innovations. There will certainly be more competition in postal and delivery services and the consumers of these services should benefit from this enhanced competition and greater service options.

In conclusion, it is clear that international postal and delivery services must serve the global economy as a facilitator of an open and fair trading system. This will require further reforms worldwide such as granting private postal providers similar access to customs facilities as that given public postal service providers and a comprehensive global policy strategy that recognizes the need for change in several different fora.

Thank you, Mr. Chairman, for this opportunity and I will be happy to answer any questions.

[The prepared statement of Mr. Chung follows:]

Statement of
T.S. Chung
Acting Deputy Assistant Secretary
Office of Service Industries and Finance
U.S. Department of Commerce
before the
Subcommittee on the Postal Service
Committee on Government Reform
U.S. House of Representatives
March 9, 2000

Chairman McHugh, Congressman Fattah, Members of the Subcommittee, I would like to express my appreciation on behalf of the U.S. Department of Commerce for the invitation to appear before you today to discuss issues related to the conduct of international postal policy. The Department of Commerce recognizes that this is an opportunity to advance further the policies that will benefit all U.S. stakeholders in the postal and delivery services sector. As the Federal Government's chief agency with responsibility for promoting the interests of U.S. businesses in the global economy, the Commerce Department takes seriously and welcomes the mandate given to the Department by the Congress to cover postal and delivery services as a part of the International Trade Administration's Service Industries Development Program.

Role of the State Department

Chief among the international postal policy reforms recently brought into law by the Congress, through the leadership of this Subcommittee, is the designation to the Department of State of the responsibility for formulation, coordination and oversight of U.S. policy in this area and specifically U.S. participation in the Universal Postal Union. This change, as others also will discuss today, has meant a fundamental shift in direction for U.S. policy in the international postal services arena. From the perspective of the Department of Commerce, this change has been predominately beneficial, and has better aligned our international postal policy with U.S. international trade policy in general.

We have been impressed with the leadership and overall performance of the Department of State in its new responsibility to oversee international postal policy. Given relatively little time to prepare for the most important international meeting of postal administrators and policy makers, the Universal Postal Union (UPU) World Congress, in August 1999, Ambassador Southwick and his International Organizations (IO) staff quickly gained a high level of expertise, and established a policy process that served the development of U.S. international postal policy well.

At the UPU Congress, the State Department encountered entrenched opposition from a large number of countries to change from the status quo concerning several key issues, and, in the face of that opposition, worked to encourage the UPU members to move to more progressive positions. Through the State Department's leadership, the Postal Congress established the groundwork for convening a meeting to focus on UPU reform by 2002, after the so-called High Level Group reviews proposals for UPU reform and refers those proposals to the UPU Council

of Administration for consideration.

Before, during, and after the UPU World Congress, held in Beijing, the State Department has tried to create an open and transparent process, ensuring that the views of the interested parties, including the private providers, postal users, general public, and other governmental agencies are considered when formulating U.S. positions for the UPU.

Commerce, itself assigned an enhanced role in the policy development process, participated in the Postal Congress as a member of the U.S. delegation, supported the efforts of the State Department and advocated policies at the Postal Congress designed to open competition in postal and delivery services. Commerce, also took part in the various meetings and seminars conducted during the lead-up to the Beijing Postal Congress.

I would like to note that the Commerce Department made the same views I have just outlined available to the General Accounting Office (GAO) during its research for the study on the subject of ***State's International Postal Responsibilities***, released last week.

Commerce Department's Role in Postal and Delivery Service Matters
As has been noted, the Department of Commerce was itself assigned new responsibilities for coverage of "postal and delivery services," as a component in the redirection of the U.S. policy process for international postal services. With this new charge in mind, the Department of Commerce has worked very closely with the State Department and other U.S. Government agencies on postal and delivery service issues, coordinating our efforts and analysis in order to present the strongest and most viable possible positions at the UPU Congress. We also have been working hand-in-hand with the business community, conducting extensive outreach through export counseling, developing trade missions, and advocating U.S. commercial interests during bilateral and multilateral negotiations. Like our colleagues at the State Department, Commerce preparations for the UPU discussions required developing a greater knowledge of foreign barriers and industry's needs, sector-by-sector and country-by-country.

Even prior to the new responsibilities having been assigned, DOC had been actively working on a number of fronts to improve the international competitive position of U.S. private business providers of international postal and parcel services, as well as closely working with the users of these services, such as the direct marketing industry. We have since increased our level of participation in international fora, attending last year's UPU Congress; joined together with other USG agencies led by the State Department to develop U.S. international postal policy; developed more productive relationships with the many USG agencies involved in issues related to international postal reform, including Congressional staff and those testifying here today; and, perhaps most importantly, Commerce has increased the level of interaction and cooperation with the many U.S. private sector firms that are stakeholders in international postal reform, as well as the U.S. Postal Service. We believe that not only has Commerce raised its profile on these issues, but it has built an expertise that will better serve U.S. international commercial interests.

The Department of Commerce also consults regularly with two services-related Industry Sector Advisory Committees (ISACs), for Services (ISAC 13) and Wholesaling and Retailing (ISAC 17) on issues affecting the international trade of the United States, which include matters directly related to postal and delivery services. In December 1999, Ambassador Southwick briefed ISAC 17 concerning the issues discussed at the UPU Congress. On an ongoing basis we also work closely with leading services trade associations which are stakeholders in international postal policy, such as the Direct Marketing Association.

The Department of Commerce, as a general rule, favors measures that will facilitate the movement of goods across borders in the conduct of international trade in an efficient and timely manner. The increasingly interdependent global economy necessitates that commercial activity be conducted in such a way; modern business practices such as just-in-time delivery from a manufacturing plant to an assembly plant require this.

The objective of efficient and timely shipment of goods is one that has been clearly and frequently communicated to the U.S. Government not only by private sector express shipping operators, but by the private sector firms that use those services in global commercial activity. In order for U.S. businesses to be competitive internationally, businesses must be able to rely on shipping services that are both fast and efficient. Private sector express shipping companies commonly encounter barriers at foreign customs entry points that make difficult the delivery of time-sensitive goods. Customs facilitation should reflect the emergence of the global economy both in the need for time-sensitive shipping and through the management of economic activity by the use of electronic standards.

Reform in the UPU is critical for improving international postal services for users and making the sector more competitive for private providers. But the UPU does not exist in isolation. That is why the Commerce Department is active in other related areas and fora, working with other USG agencies and the private sector on relevant issues in the World Trade Organization/General Agreement on Trade in Services (WTO/GATS), the World Customs Organization (WCO), and in bilateral and other multilateral fora such as air services agreements. The collective effect of liberalization, removal of barriers, and reform will improve the overall international commerce of the United States.

As a facet of overall and sector-specific services trade policy development, my office has held industry sector roundtables over the past year which addressed the distribution services sector and express shipping sector (courier services in the GATS terminology). We know that industry has a strong interest in achieving liberalization in most services sectors. The U.S. express shipping industry, for example, has told us that commitments in the GATS are needed to cover extensive aspects of providing express shipping services, including intermodal transportation and trucking, air auxiliary services, distribution, warehousing, customs, telecommunications, logistics, brokerage, insurance and freight forwarding. The Commerce Department, during the interagency policy development process for the GATS negotiations, has advocated a U.S. Government policy that would give strong consideration to industry's position.

Impact of Postal and Mailing Services in the U.S. Economy
Movement of goods through the supply chain has become integral to the commercial success in the U.S. and global economies. Distribution services are a critical part of product manufacturing and marketing. No economy can be truly open and efficient if its regulatory regime unnecessarily slows the movement of goods between and among suppliers, manufacturers, wholesalers, retailers and the end users. Without the free movement of goods, many of the benefits of liberalized trade, both in goods and services, are stunted.

Services trade has become a major engine for growth in our economy. We are strongly committed to helping the services sector in this country meet its tremendous export potential. Services, such as direct marketing, and postal and delivery services, are key to the development of international commerce. Cross-border trade in services accounts for more than 22 percent of world trade, or about $1.3 trillion annually. U.S. service exports have more than doubled over the last ten years, increasing from $117 billion in 1989 to $246 billion last year.

In the worldwide mail industry, international competitors increasingly are positioning their companies to not only compete with firms from the United States in international markets, but also here in the United States. International providers of postal and delivery services intend to become leading players in the United States, and have demonstrated their intentions through investments, acquisitions and mergers. These sophisticated companies, many of them with origins as national mail services, provide a full range of high quality value-added services.

Here in the United States, as well as across international markets, we can expect to see trends such as postal deregulation, partnerships and alliances, increased competition, globalization, electronic substitution, and more product/services innovation and risk. With these trends, postal and delivery services providers will meet increased competition, and the consumers of these services should benefit from this enhanced competition and greater service options.

Conclusion
Mr. Chairman, you called today's hearing to discuss international postal services, and the role of the Department of State over the past year in developing U.S. policies and providing leadership at the Universal Postal Union Congress last August in Beijing. I hope that my testimony on behalf of the Department of Commerce has made a contribution toward those goals. International postal and delivery services must serve the global economy as the facilitator of an open and fair trading system. This will require further reforms, worldwide, such as granting private postal providers similar access to customs facilities as that given public postal service providers, and a comprehensive, global policy strategy that recognizes the need for change in several different fora.

Mr. Chairman, I would again like to thank you and the Members of the Subcommittee for the opportunity to discuss these important issues here today. I would be pleased to answer any questions.

Mr. MCHUGH. Thank you, Mr. Chung, and we will have some questions for you, I assure you.

Mr. Joseph Papovich, Assistant U.S. Trade Representative for Services, Investments, and Intellectual Property, Office of the U.S. Trade Representative. Welcome.

Mr. PAPOVICH. Thank you very much.

I too welcome the opportunity to present my agency's views and I will summarize my statement.

With regard to international postal and delivery services from the perspective of my office, opening markets to trade and services is one of our central goals in trade negotiations. Services industries range from finance to telecommunications to distribution to health, education, travel, tourism, construction, engineering, architecture, law, in addition to postal and delivery services. These industries provide over 86 million American jobs and over $5.5 trillion worth of production, nearly 70 percent of our gross national product. The United States is the world's leading exporter of services with $246 billion last year, nearly an $80 billion surplus.

While our services trade policy goals rest upon concrete and specific American trade interests, they are also designed to advance broader goals of great value to our trading partners and their prospects for economic stability, efficiency and technological progress.

With the General Agreement on Trade and Services that we negotiated and concluded in 1995, we took the first step toward creating a set of broadly accepted rules for services trade and specific commitments in many individual services industries. We have since made substantial additional progress with commitments to market access and national treatment in two of the highest value services fields through the agreement on basic telecommunications and the agreement on financial services.

We are now moving on to the next step with the WTO's agreement last month to open broad ranging negotiations on services, together with agriculture. In Geneva, we are developing negotiating proposals for a variety of sectors including financial services, energy, environmental services, audiovisual services, express delivery, telecommunications services, the professions and many of the others I mentioned earlier.

In these negotiations, we will look beyond achieving guarantees for existing rates to the removal of restrictions, opening of markets and ensuring nondiscriminatory treatment for our companies. We will work to prevent any possible discrimination against the new technologies that are now making services exports easier than before.

We are aware of the importance of postal and delivery services in international trade. Exporters and importers rely on these services to deliver their products, documents, advertising material, bills and their payments. Individuals also rely on these services to deliver goods they have ordered from catalogs or from stores they visited while on foreign travel. The growing number of purchases made on the Internet indicates a greater potential of expansion of international postal delivery services.

We are aware of the fundamental changes that are taking place around the world and the structure and competitive status of postal and express delivery services. In a number of countries, particu-

larly Europe, postal services are being privatized or outsourced to private operators. The line between government services and private sector services is becoming obscured and competition is growing more intense. These developments benefit consumers and users of the services by providing them with more choices, speedier deliveries and lower costs.

In our work in preparing for these trade negotiations consistent with the express sense of Congress, we have tried to assure that no special preference is given to any particular party that provides these services. We have held briefings separately for private sector service providers and for the U.S. Postal Service, and on several occasions, we have met with them jointly to discuss trade matters. Of course we also consult with other interested parties including business users and labor unions, including the postal unions.

We have supported the State Department in its role with respect to the Universal Postal Union. Our staff has participated actively in interagency meetings conducted by State to prepare for the UPU discussions, as well as in meetings attended by private sector representatives. USTR did not attend the UPU conference in Beijing last August. However, we did provide guidance on questions relating to these negotiations and about the WTO. We maintained contact with the United States delegation while it was in Beijing.

In this regard, we believe the Department of State has done commendable work in coordinating with us and other government agencies and in pursuing proposals to restructure the UPU to reflect the change in nature of the world's postal and delivery systems.

Once again, thank you, Mr. Chairman, for the opportunity to express our views on this.

[The prepared statement of Mr. Papovich follows:]

STATEMENT OF ASSISTANT U.S. TRADE REPRESENTATIVE
JOSEPH PAPOVICH
ON INTERNATIONAL POSTAL AND DELIVERY SERVICES
BEFORE THE
HOUSE SUBCOMMITTEE ON POSTAL SERVICES

March 9, 2000.

Thank you, Mr. Chairman. I am Joseph Papovich, Assistant U.S. Trade Representative for Services, Investment and Intellectual Property. I welcome this opportunity to present our views on international postal and delivery services from the perspective of the Office of the U.S. Trade Representative (USTR).

As you know, USTR is a relatively small agency -- with about 175 full time employees. It was established in 1962 and organizationally is located in the Executive Office of the President. The agency is responsible for coordinating the formulation of the Administration's trade policy and for representing the United States in trade negotiations. As you know, Ambassador Charlene Barshefsky has been the U.S. Trade Representative since 1997.

Opening markets to trade in services is among our central goals in trade negotiations. Service industries range from finance and telecommunications to distribution, health, education, travel and tourism, construction, engineering, architecture, and law, as well as postal and delivery services. These industries provide over 86 million jobs and over $5.5 trillion worth of production– nearly 70 percent of U.S. gross domestic production.

The United States is the world's leading exporter of services, with $246 billion in private-sector exports last year– nearly an $80 billion surplus, offsetting a considerable portion of our trade deficit in merchandise trade.

Historically, services industries were considered highly sensitive and were in many cases highly restricted; and before the revolution in telecommunications, trade in services was less feasible than it is today. Serious services trade negotiations date back only about ten years; and the first multilateral rules only five.

This inability to deal with services trade restrictions in a negotiation setting has had a substantial cost, not only for American services firms but for our trading partners and for the world economy as a whole. We see in our own economy the importance of services not only as a direct source of prosperity-- but also as an essential part of our industrial economy.

- Strong insurance, accounting, finance and legal industries ensure that farmers and manufacturers have access to capital; that contracts guarantee predictable, transparent and reliable business decisions; and that consumers have high standards of protection.

- Efficient transport and distribution allow farmers to get their products to market without spoilage, and ensures that auto parts reach the plant in time for efficient production.

- Telecommunications, software and news dissemination are essential to the functioning of all modern industries. And new technologies now developing, in particular but not only the Internet and electronic commerce, promise a vast increase in the efficiency, productivity and export potential of American service industries in the years ahead.

Overseas, we can at times see the opposite results in the damage created by restrictions on services trade. Inefficient, pollution-prone power and transport worsen the quality of life and waste investment. Restrictions in distribution reduce the efficiency of farms, fisheries and manufacturers throughout economies, and make exports much more difficult for many American industrial and agricultural producers as well.

U.S. SERVICES TRADE POLICY

While our services trade policy goals, therefore, rest upon concrete and specific American trade interests, they are also designed to advance broader goals of great value to our trading partners and their prospects for economic stability, efficiency and technological progress.

With the General Agreement on Trade in Services in 1995, we took the first step: creating a set of broadly accepted rules for services trade, and specific commitments in many individual services industries. We have since made substantial additional progress, with commitments to market access and national treatment in two of the highest-value service fields through the Agreement on Basic Telecommunication and the Agreement on Financial Services.
We are now moving on to the next step, with the WTO's agreement last month to open broad-ranging negotiations on services together with agriculture. In Geneva, we are developing negotiating proposals for sectors, including financial services and going on to energy and environmental services, audiovisual, express delivery, telecommunications, the professions, private education and training, private healthcare, travel and tourism, and other sectors. We will look beyond guarantees of existing rights to remove restrictions, open markets and ensure non-discriminatory treatment. And we will work to prevent any possible discrimination against the new technologies that are making services exports easier than ever before.

As you know, the Ministerial Conference in Seattle last December did not launch a new round of trade negotiations, that is, a round beyond the mandated negotiations on agriculture and services. Nevertheless, negotiations on services and agriculture have been initiated in the World Trade Organization, in accordance with provisions of the Uruguay Round trade agreement. Technical work is continuing and negotiation groups are being organized to deal with the wide variety of services issues.

We are very much aware of the importance of postal and delivery services in international trade. Exporters and importers rely on these services to deliver their products, their documents, their advertising material, their bills and their payments. Individuals also rely on these services to deliver goods they have ordered from catalogs or from stores they visited while on foreign travel. The growing number of purchases made on the Internet indicates a great potential for expansion of international postal and delivery services.

Postal and delivery services also are essential for companies engaged in wholesale, retail and distribution of products; and for manufacturers, who need parts and components on short notice or for just-in-time production. New technologies, such as the Internet, and new methods of inventory control have enhanced the need for quick and reliable deliveries. These needs can be frustrated by government-imposed measures that hamper or discourage the use of efficient and economical delivery services. One of our general objectives at USTR is to prevent or reduce such obstacles to international service providers and to international sales.

We are also keenly aware that fundamental changes are taking place around the world in the structure and competitive status of the postal and express delivery services. In a number of countries, particularly in Europe, postal services are being privatized or outsourced to private sector operators. The line between government services and private sector services is becoming obscured, and the competition is growing more intense. These developments benefit consumers and users of the services by providing them with more choices, speedier deliveries, and lower costs.

THE UNIVERSAL POSTAL UNION

In October 1998, Section 633 of Public Law 105-277 authorized the Department of State primary responsibility for "formulation, coordination and oversight of policy with respect to United States participation in the Universal Postal Union..." The same law expressed the sense of Congress that "any treaty, convention or amendment" on international postal arrangements "should not grant any undue or unreasonable preference to the Postal Service, a provider of postal services or any other person." Also, it amended the Trade and Tariff Act of 1984 by inserting "postal and delivery services" to the illustrative list, defining "services" for the purpose of trade agreements.

As I mentioned earlier, the Office of the U.S. Trade Representative is keenly aware of the competition between postal services and private delivery services. In our work in preparing for trade negotiations, consistent with the expressed sense of Congress, we have tried to assure that no special preference is given to any particular party on these services. We have held briefings separately for private sector service providers and for the U.S. Postal Service; and on several occasions we have met with them jointly to discuss trade matters. This also reflects our recognition that both postal and delivery services are specifically mentioned in the definition of "services" in trade law. Of course, we also consult with other interested parties, including business users and postal labor unions.

We have supported the State Department in its role with respect to the Universal Postal Union. USTR staff has participated actively in interagency meetings conducted by the State Department to prepare for UPU discussions, as well as in meetings attended by private sector representatives. Although USTR did not attend the UPU Congress in Beijing last August, we did provide guidance on questions relating to trade negotiations and the World Trade Organization and we maintained contact with the U.S. delegation directly in Beijing and through Washington headquarters.

We believe the Department of State has done commendable work in coordinating with us and with other government agencies and in pursuing proposals to restructure the UPU to reflect the changing nature of the world's postal and delivery system.

Once again, Mr. Chairman, thank you for this opportunity to express the views of USTR.

Mr. MCHUGH. Thank you very much.

We next have Ms. Elizabeth Durant, Director of Trade Programs for the U.S. Customs Service, U.S. Department of Treasury. Welcome.

Ms. DURANT. Thank you, Mr. Chairman.

I too will summarize my written statement.

Today I would like to use this occasion to relay to you some of Customs' challenges with respect to the growth of the small package delivery industry. With the enormous growth in trade and particularly in the express industry, all manner of carriers are rushing to meet this market need. Specifically, Customs has seen the blurring of traditional roles between the Postal Service and the express consignment operators. Customs has even been approached by traditional passenger carriers who have expressed interest in expedited clearance of small packages from foreign suppliers.

With the shift in this industry, Customs has found itself wrestling with the way it handles the processing of international mail and express consignment shipments so that it provides no unfair business advantage to one entity over another.

The express industry with its requirements to provide automation, to present outbound shipments for examination and to reimburse us for costs of service have so far enabled us to respond to this growth with minimized risk. However, the lack of this capability and authority in the postal setting has hindered meeting our goals.

Customs is under continuing pressure to move shipments quickly, yet our ability to maintain control of these small parcels is vastly different in the postal and express consignment environments.

I have submitted for the record a report requested by Congress for fiscal year 1998 and prepared by Customs that identifies the differences and disparities in customs treatment of international mail and express consignment shipments. This report is entitled, "A Review of Customs Treatment, International Express Mail and Express Consignment Shipments."

The U.S. Customs Service staffs 14 international mail branches at various postal facilities across the United States. Customs' 14 facilities process over 1 billion flats and parcels per year. We use our resources to target the mail from countries that provide a higher threat for illegal activity. In the mail, this targeting process is entirely manual.

In contrast, express consignment operators have regulations that require them to integrate sophisticated automated systems into their daily operations in exchange for expedited clearance during nontraditional business hours and at locations where we would not ordinarily provide service. Furthermore, advanced manifest information is required for all express consignment shipments so that Customs may prescreen these shipments before arrival to expedite their release automatically.

The availability of advance manifest information allows Customs to target specific shipments for enforcement reviews to ensure that all appropriate revenue is collected. Conversely, over 95 percent of the Postal Service's international mail parcels are not individually manifested.

The second issue pertains to the examination of in-transit and export shipments of mail. The in-transit shipments are those that only temporarily enter the United States on their way to a foreign country. Export shipments originate in the United States and are destined to be delivered to a foreign country.

Customs regulations require express consignment operators to present both in-transit and export shipments for examination. However, the Postal Service is not required to present these same types of shipments to Customs. As such, the shipments are not made available for Customs examination.

Customs believes that our lack of authority to examine the Postal Service's outbound or in-transit mail is an enforcement stumbling block. In the last 2 years, Customs has seized over $17 million during outbound enforcement operations at express consignment operators' facilities. With no outbound inspection authority over the mail, it is likely that in the postal environment, this number could be even greater.

Customs currently provides clearance of international mail at little or no expense to the Postal Service. The Postal Service is not required to reimburse Customs for expenses incurred to examine inbound international mail. These expenses include such items as staffing, rental of offices at facility space, x-ray machines and computers. Express consignment operators are required by statute to fully reimburse Customs for the processing of these shipments.

We feel strongly that Customs and the Postal Service need to work together to fight the illegal shipment of contraband across our borders and ensure that Customs is able to collect revenue on merchandise entering the United States. We know this goal can be realized because we have worked closely with the Postal Service in the past to resolve other important issues.

In summary, Customs acknowledges that a certain level of disparate treatment exists between these two organizations. However, it is not our intent to lower the standards placed on the express industry to level the playing field. In fact, we believe that the standards for processing the Postal Service shipments should be raised. Together with the Postal Service, we are working hard to that end.

As the Internet grows a means for conducting business for a fast paced U.S. economy, it will increase the need for faster international small parcel delivery services. Customs needs tools and authority that can both fairly facilitate legal international trade, yet enable us to stand poised as America's front line protecting our citizens and Nation's borders.

Mr. Chairman, this concludes my statement. I will be happy to answer any questions.

[The prepared statement of Ms. Durant follows:]

TESTIMONY

UNITED STATES CUSTOMS SERVICE

DIRECTOR TRADE PROGRAMS ELIZABETH G. DURANT

HOUSE OF REPRESENTATIVES COMMITTEE ON GOVERNMENT REFORM

POSTAL SUBCOMMITTEE HEARING

MARCH 9, 2000

Chairman McHugh, Mr. Fattah, and members of the Subcommittee.

Thank you for this opportunity to testify. My name is Elizabeth Durant. I am the Director of Trade Programs, within the Office of Field Operations of the U.S. Customs Service. Today I will use this occasion to relay to you some of Customs challenges for the future, particularly with respect to growth of the small package delivery industry.

Our trade partners from the Express Consignment Industry have enjoyed huge growth in their markets since their inception. The Postal Service too has seen significant increases in the use of its Express Mail service. Today, the industry sees opportunity for further growth, not only domestically, but also in the global marketplace. Customs also believes this vision, and that small parcel shipping will dramatically increase as the use of the Internet becomes more prevalent in our society. As an example, the consumer is now able to purchase

goods directly from manufacturers or suppliers via the Internet. This greatly reduces the consumers' reliance on wholesalers and local retailers. As a result, it would be reasonable to assume that the numbers of traditionally large commercial shipments presented to Customs at our ports of entry will decline and the number of individual shipments sent through Express Consignment Operators and the U.S. Postal Service will increased dramatically. Just as this new technology will certainly stimulate the growth of international commerce, it will at the same time change the way the Customs Service does business. We expect a side effect of this change will be the increased demand on Customs resources for the expedited clearance of small packages at non-traditional locations.

With the enormous growth in trade and particularly in the Express Consignment industry, all manner of carriers are rushing to meet this market need. Specifically, Customs has seen a blurring of the traditional roles between the Postal Service and the Express Consignment Operators. Customs has even been approached by traditional passenger carriers who have expressed interest in expedited clearance of small packages from foreign suppliers.

With the shift in this industry and no additional resources, Customs has found itself wrestling with the way it handles the processing of international mail and express consignment shipments so that it provides no unfair business advantage to one entity over another. At the same time, Customs is still charged

with its mission of protecting our borders and the American public, enforcing U.S. laws, safeguarding the revenue, and fostering lawful international trade.

The express industry, with its requirements to provide automation, to present outbound shipments for examination, and to reimburse us for costs of service have, so far, enabled us to respond to this growth while preserving our mission. However, the lack of this capability and authority in the Postal setting has hindered meeting our enforcement and revenue goals. Customs is under continuing pressure to move shipments quickly, yet our ability to maintain control of these small parcels is vastly different between the postal and express consignment environments.

Mr. Chairman, at this time I would like to submit for the record a report requested by Congress for fiscal year 1998 and prepared by Customs that identifies the differences and disparities in Customs treatment of international mail and express consigment shipments entitled, "A Review of Customs Treatment: International Express Mail & Express Consignment Shipments."

AUTOMATION

The U.S. Customs Service staffs 14 International Mail Branches at various Postal facilities across the United States. These International Mail Branches are located at ports of entry with high volumes of cargo, and service more than one mode of transportation. The Customs Service processes approximately 550

million pieces of inbound international mail annually. With less than 220 Customs personnel at these facilities, we, as with all shipments, must take a risk management approach to our day to day operations. Resources are such that we must make conscious decisions to look at some mail, but not all mail. Most often this is done by choosing to scrutinize the mail from countries which provide a higher threat for illegal activity, and allowing the mail from others countries to pass. While the Postal Service is required to present all the international mail to Customs, the selection or targeting process for mail is entirely manual. Customs feels that this "catch as catch can" methodology provides little assurance that we can successfully achieve our enforcement mission, or collect all the duties owed the United States when importers use the mail as their delivery service.

Customs does not encounter the same enforcement difficulties with the Express Consignment Operators. In exchange for expedited clearance during non-traditional business hours and at locations where we would not ordinarily provide service, the couriers agreed to regulations that require them to integrate sophisticated automation systems into their daily operations. Furthermore, advance manifest information is required for all Express Consignment shipments so that Customs may pre-screen these shipments before arrival to expedite their release automatically. The availability of advance manifest information allows Customs to target specific shipments for enforcement reviews to ensure that all appropriate revenue is collected.

Conversely, over 95 percent of the Postal Service's international mail parcels are not individually manifested. By law, Express Consignment Operators are required to maintain extensive records for each shipment or transaction solely for Customs review, whereas the Postal Service is under no such obligation to keep these records.

EXAMINATION OF EXPORT AND IN-TRANSIT SHIPMENTS

The second issue I mentioned pertains to the examination of in-transit and export shipments of mail. In-transit shipments are those that only temporarily enter the U.S. on their way to a foreign country. Export shipments originate in the U.S. and are destined to be delivered to a foreign country.

Customs' regulations require Express Consignment Operators to present both in-transit and export shipments for examination. However, the Postal Service is not required to present these same types of shipments to Customs for examination. The Postal Service contends that because of the Fourth Amendment to the U.S. Constitution and certain international treaties, to which the United States is a signatory, the U.S. Customs Service has no authority to examine this mail. As such, these shipments are not made available for Customs examination. Mr. Chairman, you can plainly see that without this authority our Nation's security is at risk.

Customs believes that our lack of authority to examine the Postal Service's outbound or in-transit mail is one of our greatest enforcement stumbling blocks. We see this loophole as a money launderer's dream-come-true. A drug dealer can simply visit his or her local post office, and have a package of currency delivered anywhere in the world. The money launderer may do this without worrying that it may be inspected or interdicted by U.S. Customs, as we are currently powerless to intervene. We are confident the Postal Service is being used to deliver currency to fund drug purchases around the world. In the last two years, Customs has seized over $17 million dollars during outbound enforcement operations at Express Consignment Operator's facilities. With no outbound inspection authority over the mail, it is certain that in the postal environment, this number could be even greater. I am sure that the traffickers and launderers are well aware of this loophole and are making the most of it, at our Nation's expense.

It is important to remember that this problem is not limited to just money laundering. This same loophole literally creates a haven for smugglers of all kinds. A flawed system such as this can facilitate many other illegal exports and in-transit shipments such as child pornography, items or materials to be used in terrorist attacks, weapons, sensitive military or high tech products not licensed for exportation, the list goes on.

REIMBURSEMENT

Lastly, Customs currently provides clearance of international mail at little or no expense to the Postal Service. The Postal Service is not required to reimburse Customs for expenses incurred to examine inbound international mail. These expenses include such items as staffing, the rental of office and facility space, x-ray machines and computers. For example, in the postal facility in New York, Customs had to pay for repairs to the conveyor belt that brings parcels for examination to the Customs inspection area. In these times of fiscal austerity, without reimbursement, our budget alone cannot afford to continue to provide this level of service, let alone increase our enforcement capability to a level commensurate with the express industry.

On the other hand, Express Consignment Operators are required by statute to fully reimburse Customs for the processing of their shipments. This includes all expenses associated with the Customs operations within the Express Consignment facility. By regulation, Customs office space, personnel and equipment are all paid for by the Express Consignment operator.

We feel strongly that Customs and the Postal Service need to work together to fight the illegal shipment of contraband across our nation's borders and ensure that Customs is able to collect revenue on merchandise entering the United States. We know this goal can be realized because we have worked

closely with the Postal Service in the past to resolve other important issues. For example, Customs and the Postal Service have worked together for the past two years to tighten controls and increase accountability for the processing of inbound international mail shipments. In 1998, we implemented a "first port of entry policy" that required the carriers of inbound international mail to present the mail at one of 14 locations throughout the United States where there is a Customs International Mail Branch. Prior to implementation of this policy, we had no way to determine whether inbound shipments of international mail were bypassing Customs and being entered directly into the domestic flow. It should be noted that the Postal Service was instrumental in ensuring that their contracted carriers were in compliance with this policy.

In 1999, we implemented a policy that required the carriers acting on behalf of foreign Postal administrations to list inbound mail on manifests by the number of containers or bags. Prior to this, most carriers were not manifesting mail at all and there was no way to determine, even at the aggregate level, the quantity of mail arriving into the United States. Again, the U.S. Postal Service was instrumental in communicating this policy to the foreign postal administrations and carriers involved.

The Postal Service has also been working to raise their level of sophistication with regards to automation. I believe they see the benefits of automation, both to support and make more effective their operations, as well as

to increase the ability for Customs to provide them better service. The Postal Service is working to develop electronic messaging data sets that would support a badly needed automated system. This would be similar to the level of data that the Express Consignment Operators are currently providing Customs, Customs desperately needs this information. A cooperative initiative with the European Community is scheduled to begin in April of this year to develop an international electronic message that will provide uniform information for mail shipments for the European Community, the United States, Canada, and possibly Australia. Customs has been invited to serve as a technical advisor to the European Community on this project. The successful results of this initiative would greatly increase Customs enforcement capabilities in our International Mail Branches. In addition, this information will ensure that more parcels are assessed the appropriate Customs duties and fees on inbound mail.

In summary, Customs acknowledges that a certain level of disparate treatment exists between these two organizations. However, It is not our intent to lower the standards placed on the Express Consignment industry to level the playing field. In fact, we believe that the standards for processing the Postal Service shipments should be raised. Together with the Postal Service, we are working to that end.

Customs understands that the nature of the Express Delivery Industry is dynamic and we are working to meet its growing needs. Customs must develop

a plan that will allow us to be effective in this important method of importation. The plan will identify our role and responsibilities to our trade partners, the Express Consignment Operators and the Postal Service, as well as delineate the resources needed to effectively meet these responsibilities. One such resource is the funding to build a new Customs automated system that can more easily handle the diverse and ever-changing international mail and express parcel industry. Currently this funding is nowhere in our foreseeable future. Meanwhile, our current computer system, which is now 16 years old, cannot be easily programmed to meet this need. Our system frequently experiences near-capacity brownouts and becomes more difficult and costly to maintain as time passes. Other assistance, which will be necessary to enable us meet our goals, will be the closure of the loophole that allows drug traffickers and money launderers to avoid Customs inspection for shipments that move in-transit or through outbound mail.

As the Internet grows as a means for conducting business for a fast paced U.S. economy, it will increase the need for faster international small parcel delivery services. The tools and authority that can both fairly facilitate legal international trade, and yet enable us to stand poised as America's frontline, protecting our citizens and Nation's borders.

Mr. Chairman, this concludes my written statement. I will be happy to answer any questions that you or any other Members may have.

Mr. MCHUGH. Thank you very much.

Our last presenter, who just happened to get stuck in that seat and it is no reflection of importance, is Ms. Donna Patterson. I have a question for you. Today's not your birthday. Last year it was exactly on the day of your birthday.

Ms. PATTERSON. Last year, I was here on my birthday but this year my birthday has already passed.

Mr. MCHUGH. So your birthday present was not to have to appear here on the day of your birthday. Happy birthday.

Ms. PATTERSON. Thank you very much.

Mr. MCHUGH. The year has been kind to you.

Ms. PATTERSON. Thank you, and to you as well.

Mr. MCHUGH. Well, we can talk about that but I appreciate the sentiment.

We welcome you. For the record, Ms. Patterson is Deputy Assistant Attorney General, Antitrust Division, U.S. Department of Justice.

Ms. PATTERSON. Thank you and thank you for the opportunity to return and present the Antitrust Division's views on Postal Service reform.

In the interest of time and to give you more time to ask all your questions, I will summarize my summary with two points. First, in addressing the issues raised by the structure of the market for international mail services, our fundamental starting point is that to the extent possible, all who wish to compete should have an equal opportunity to compete for a customer's business. Rules affecting the market should not favor a particular competitor over others without a compelling justification.

Second, in our view the 1998 legislation transferring responsibility for negotiation of international postal agreements to the Department of State was a major advance for competition. We think that has aided in the advance of competitive interest.

I will answer any questions you may have.

[The prepared statement of Ms. Patterson follows:]

DEPARTMENT OF JUSTICE

Statement by

DONNA E. PATTERSON
Deputy Assistant Attorney General
Antitrust Division
U.S. Department of Justice

Before the
Subcommittee on Postal Service
House Government Reform Committee

on
International Postal Policy

Washington, D.C.
March 9, 2000

I am delighted to have the opportunity to submit to the Subcommittee the views of the Department of Justice on the role of competition in shaping the future of markets for international mail services. This Subcommittee knows the vital role that competition plays in the American economy, and the importance of the antitrust laws in preserving that competition. As international markets take shape, it is extremely important that the United States' membership in multinational organizations such as the UPU is consistent with fundamental national policy objectives, and ensuring competition is one of the most fundamental. At the outset, I would like to provide a brief overview of the antitrust laws of the United States and then turn to thoughts about certain international postal issues.

THE ANTITRUST LAWS OF THE UNITED STATES

I would like to start by discussing the purpose and scope of the antitrust laws. For over a century, the United States has committed itself to protecting free and unfettered competition in the vast majority of markets in the economy. The Sherman Act, passed in 1890, has been called the Magna Carta of free enterprise. In general, the United States operates a free-market economy subject to the antitrust laws. Time and again, relying on free-market competition has allowed consumers numerous benefits, including more innovation, more choice and lower prices than that of economies where free competition has been limited.

The main provisions of the Sherman Act are Section 1 and Section 2 of the Act, and they are, in conjunction with Section 7 of the Clayton Act, the primary antitrust enforcement tools. Section 1 of the Sherman Act prohibits contracts and conspiracies in restraint of trade. Section 2 of the Sherman Act prohibits monopolization or attempts to monopolize. Section 7 of the Clayton Act prohibits mergers or acquisitions that may tend to substantially lessen competition.

PAST JUSTICE DEPARTMENT VIEWS ON INTERNATIONAL POSTAL ISSUES

The normal presumption in a market economy is that private enterprises should provide goods and services in competition with each other. Competition between private companies yields cost efficiencies and innovations. In testimony before this Committee last year, I have stated the Department's support for the application of the federal antitrust laws to competitive activities of the Postal Service.

Since the enactment of the Postal Reorganization Act of 1970, the Department has engaged in an active program of competition advocacy with respect to international postal issues. In the years since the reorganization of the United States Post Office, we have opposed efforts to erect restrictions on competition in international mail services. These are some of the international issues we have addressed:

- In 1986 the Antitrust Division prepared comments urging the USPS to suspend or limit its International Priority Airmail Service pending development of a factual record adequate to ensure against anticompetitive cross-subsidization; in a separate proceeding the Antitrust Division urged the USPS to reject proposed rules that would restrict the ability of remail services to compete for international mail traffic.

- In 1988 the Antitrust Division submitted comments critical of the USPS proposal for modifications to the terminal dues system for delivery of international mail.

- In 1991 the Antitrust Division reiterated its opposition to the USPS proposal for modifications to the terminal dues system.

- In 1998, we took an active role in urging support for a legislative amendment transferring responsibility for international postal policy from the USPS to the State Department. The President signed the measure into law, thus formalizing the end of the USPS' direct representation of US interests at meetings of the Universal Postal Union, the international standards-setting body. We feel very strongly that the following "Sense of Congress" resolution included in that legislation is appropriate policy:

  "It is the sense of Congress that any treaty, convention,

> or amendment entered into under the authority of section 407 of title 39 of the United States Code, as amended by this section, should not grant any undue or unreasonable preference to the Postal Service, a private provider of postal services, or any other person."

Pub. L. No. 105-277, Div. A, 101(h), Oct 21, 1998.

Today, we are addressing the interests at stake in markets for international mail services, and the role that competition policy should have in shaping international agreements affecting the structure of international markets. In addressing these issues, there is a fundamantal starting point -- that to the extent possible, all who wish to compete should have equal opportunity to compete for a customer's business. Not everyone can be a winner in a competitive marketplace, but the rules affecting the market should not be such that they favor a particular competitor over other competitors without a compelling justification.

As a result of legislation enacted in 1998, the Secretary of State is responsible for the negotiation of international postal agreements on behalf of the United States. This was a major advance for competition in our view. The Department of State replaced the USPS, which otherwise could have potentially favored its own parochial interests at the expense of competing private parties. With this change, all affected parties will have the ability to provide appropriate input to the State Department before a policy on behalf of the United States is adopted and expressed.

In our view, the State Department, in a very short time, has obtained several important concessions from the UPU executive committee and member countries on key reform initiatives that implicate competition. That is not to say that everything is perfect. We are aware of the recent General Accounting Office Study on the implementation of the Department of State's role

that, while generally positive, noted that process improvements could be made.

Particular substantive areas of interest to the Antitrust Division -- and to the subcommittee and participants at the hearing today -- include commitments and concessions in policy affecting remail activities and terminal dues fees.

Remail and Terminal Dues

The UPU sets the basic principles and guidelines for the exchange of mail between member countries. Unlike first class (non-urgent) letter mail within the United States — which is subject to a statutory U.S. Postal Service ("USPS") monopoly — outbound international mail has been open to competition since 1986. Parties competing in the delivery of international mail — known as "remailers" — collect outbound international letter mail from their customers, sort it, bag it by country of destination, and directly deposit it into the foreign postal system. Remailers may be private competitors but also may be postal administrations that establish operations in other countries. Competition between remailers and the USPS has provided consumers with greater options in mail delivery, and significant benefits in the price and quality of international mail service.

Remail can take at least three different forms: (1) mail from an originating country deposited directly in a foreign postal system for ultimate delivery back to the originating country, called "ABA" remail; (2) mail deposited directly in the mail system of a foreign country for ultimate delivery in that country, called "ABB" remail; and (3) mail deposited directly into the mail stream of one foreign country to be ultimately delivered in a third country, called "ABC" remail.

The UPU currently recognizes a restrictive policy toward remail, a policy that attempts to deter remailing activity through the imposition of penalties by postal administrations for remail intercepted in transit. Specifically, Article 40 allows a country that is the final recipient of ABA and ABC remail to intercept that mail and claim additional compensation. It allows postal administrations a great deal of discretion in their handling of remailed materials. Postal administrations may refuse delivery of remailed materials outright or they may demand additional postage payment for delivery.

The receiving country may claim the additional postage due from the mailer or from the foreign postal administration where materials were posted. If no party agrees to pay the additional postage fees, a postal administration may return materials to the sender. Paragraphs 1 through 3 of Article 40 allow postal administrations to demand payment of the full domestic tariff when ABA mail is intercepted. Paragraph 4, which is generally applied to ABC remail, allows a charge of up to eighty percent of that country's domestic tariff.

To compensate member countries for the cost associated with delivering inbound international mail, the UPU authorizes postal administrations to collect "terminal dues" when an administration receives more mail from a particular country than it sends. The current terminal dues rate is a flat rate based on worldwide average cost, which does not fully compensate most industrialized countries for the actual cost of delivery because an industrialized country's cost for delivering inbound international mail is typically above the global average.

In general, the most efficient allocation of economic resources will occur when the price of a product or service is set at its marginal cost. Here, in addition to fostering an inefficient allocation of economic resources, a terminal dues structure that is not based on the cost of actual

delivery can distort competition between remailers and postal administrations, because remailers are not subject to terminal dues. A low terminal dues rate for outbound international mail may provide a postal administration with a competitive advantage over a remailer that, for certain types of remail, may pay as much as the domestic tariff of the destination country. On the other hand, a low terminal dues rate may not fully compensate that postal administration for its actual cost of delivering inbound international mail. This may place the postal administration at a competitive disadvantage if regulations require it to make up this shortfall in its outbound international rates.

Additionally, a terminal dues structure that is not based on the cost of actual delivery can distort the flow of international and domestic mail. For example, if terminal dues rates were set lower than the actual cost of delivery, it might create incentives to direct certain mail through the international mail system, possibly through ABA remail, rather than through the domestic system. Moreover, if the terminal dues rates of only some countries were set lower than the actual cost of delivery, it could create additional incentives to route mail inefficiently, through either ABA remail or ABC remail.

We are pleased with the concession the US Delegation obtained at the Beijing Congress on terminal dues reform. The UPU has endorsed transition to a cost-based assessment, and although the timetable is somewhat longer than the US Delegation proposed, the five-year transition plan reasonably reflects the political realities attending this issue. The Antitrust Division recognizes the concern that too swift a dismantling of protections may result in diversion of domestic mail to ABA remailers, and that this could result in large revenue losses. A cost-based terminal dues structure would eliminate much of the incentives for any such

diversion. We support calls for progress at a pace that is constructive for all parties.

We also support efforts by the State Department to promote competition between postal administrations and remailers in international mail, while ensuring that terminal dues are cost-based. If terminal dues are cost-based, anti-remail penalties can work as a artificial device to protect postal administrations at the expense of consumers and innovative approaches to efficient and economical message transfers. Such restrictions on mail flow can hamper a multinational firm's normal business operations, and likely result in increased costs and fewer service options. Consumers should be free to use the international mail provider that offers the best service at the lowest price, without fear of mail interception or the imposition of additional charges.

CONCLUSION

Competition principles are at the core of the American economy and should be maximized to the fullest extent possible. We look forward to continuing to work with the Subcommittee on the issue of postal reform.

Mr. MCHUGH. You have definitely become briefer in the interim year. I appreciate that. I did read your entire presentation so all of that information is not lost upon us.

Let me return to the beginning with Ambassador Southwick. I think you and your Department have fared well in this hearing. I think most people have spoken very positively and I would join them in that. As you mentioned, this was not high on your list of wishes and I understand and respect that. Given that, given the undeniable lack of subject matter expertise, I fully agree with your observation about the extraordinary people you have in your charge who have equally important abilities and attributes, but subject specific expertise and the timeframe, enormously compressed, you have done better than sufficient. I think you have done very, very well.

The challenge that we all face now is what do we do next to continue a pretty impressive record. Obviously the basic intent of this entire initiative was to level the playing field to give those on the outside, particularly the private sector, a voice, input and say. You attempted to do that. Some would like to see that not just go a step further, I think you would agree with that as you refine it, but to formalize the process. You heard Mr. Smith talk about implementing the Federal Advisory Committee Act.

I have read your testimony. You feel that is excessive but I would like to hear you expound a bit upon the process you have undertaken and how you expect, hope that will meet all of the basic concerns about ensuring a definable process of input for the future.

Ambassador SOUTHWICK. Thank you for those kind words. It is very encouraging. I will say it all wouldn't have been possible without some very good help from all the agencies that have worked with us—the Postal Service, the Postal Rate Commission and the others who have offered tremendous support.

The FACA is a legal instrument and it has a lot of requirements to it. When we look at it, we see it as being kind of difficult to administer. We think we can meet the spirit of what the FACA is trying to accomplish if we refine and improve the procedures that we are developing.

Already we are committed to having written records of the interagency meetings; we are committed to putting all relevant kinds of documents on our State Department website; we are committed to giving greater notice to the public meetings where we get together with the private sector and others outside of government, interested parties. Those kinds of things can help.

As I said, we will put down a kind of written precis of this, of what the process looks like. Maybe in the process of doing that, maybe we can see some other things we can do. I would ask that we be given more time to make this work. If we find in time down the road that it is not satisfactory, maybe we should go to a FACA. I think I would probably leave it at that.

Mr. MCHUGH. You heard Mr. Ungar's comments about what they found to be a less than specific response to some of their concerns. Can you assure us today that you are striving toward specificity—I think there were four basic points but the points they had raised? Maybe the two of you need to get your offices together. I am not

sure where the lack of understanding derived from but more interested in seeing that area is clarified.

Ambassador SOUTHWICK. I think part of it is this process, Mr. Chairman, that I mentioned which we will put down on paper. What we are striving to do is to put together a policy document which would clearly enunciate what our policies are. Some of this you could derive from the statements we made here, the written statement, the oral statement. If somebody wants to look at the record of what we did in Beijing, I think it emerges loudly and clearly that the United States is for reform, for opening the process, for giving this whole sector more of a competitive, deregulated tilt, something that is fair to all players. It is not fair now.

Mr. MCHUGH. I probably will come back to you but let me go to Mr. Papovich.

You almost got this job. We were initially looking at the USTR. History demonstrates how that didn't come about. Because you were an early candidate, not you specifically but your office, it was interesting to me—and I am not sure if it was interestingly good or bad—but you did not participate as members and you mentioned that in your comments. Why did that occur? What was the determining factor that you weren't formal participants, given you almost had the whole portfolio?

Mr. PAPOVICH. In fact, it probably would have been me if USTR would have gotten the job.

Frankly, we are a small agency with a small budget. We husbanded an enormous amount of our travel resources for this Seattle ministerial that occurred in December. I had to make decisions and it was my decision as to whether or not we attended the Beijing conference.

As a general rule, USTR heads negotiations on a whole range of trade issues. Quite honestly for us to spend our really scarce resources to send somebody to Beijing, which is very expensive for a number of weeks, I didn't think I could afford.

We did stay in close touch with the team in Beijing, there was communication. We sent proposals to them, so we were all but present.

Mr. MCHUGH. Honest answer. I appreciate that and I understand your point.

Define for me a bit more then in-country before Beijing. You mentioned you were in contact with them. What kind of interaction did you have with the Department of State as they were formulating and getting ready to go? What was a normal interaction? Were you able to assign specific people or was it kind of ad hoc?

Mr. PAPOVICH. No, it was a specific person.

Mr. MCHUGH. How many people?

Mr. PAPOVICH. One person. For the most part, if I have this correct, our contribution was ensuring that the delegation understood the interrelationship between what the UPU does, and what they would be discussing in Beijing, with this General Agreement on Trade and Services that we are responsible for. That is what we would bring to the discussion. We don't have any particular expertise in the postal services, for example, but that is our contribution, describing how these two agreements and bodies interact with one

another, or at least trying to describe how the WTO and the GATS interact.

Mr. MCHUGH. I wasn't clear from your comments. Is it your intention or have you already placed postal services on the agenda for WTO or are you deferring that to UPU?

Mr. PAPOVICH. Postal services per se, no, but express delivery, yes, and it is a little complicated. In fact, in preparing for this hearing I probably learned more than I had before about the interrelationship.

The GATS, General Agreement on Trade and Services, deals with interaction, in the first instance, between operators. The GATS excludes services supplied by governments, provided those services are provided on a noncommercial basis and that there is not other competition. For example, the delivery of first class mail in the United States would not be something that is covered by the GATS, by our commitments to the GATS.

Clearly trade in the service of providing package delivery is covered because there is competition there. We have received advice from private sector groups that this is something they want us to pursue aggressively and something we intend to do.

A big part of the UPU's activities is the letter delivery business and that is not really a part of GATS, unless we reform our domestic situation and make first class mail delivery subject to competition. It wouldn't be any more part of a GATS negotiation than would say the delivery of service for public education. We wouldn't put our public school system on the bargaining table, for example, anymore than we would put something like first class delivery where it is a government service and there is no competition permitted.

[Followup questions and responses follow:]

Followup on March 9, 2000 Hearing on International Postal Policy

QUESTIONS FROM HONORABLE JOHN M. MCHUGH, CHAIRMAN HOUSE SUBCOMMITTEE ON POSTAL SERVICES

Q1 Does the UPU and its laws and agreements enhance trade? How does UPU impact the competitiveness of the United States in the global delivery market?

A1. *As an organization of postal administrations worldwide, the UPU performs an important function of coordinating and assisting in the development of national postal policies and in formulating rules to facilitate the exchange of mail and packages that cross national borders. The availability and efficient operation of national postal systems contribute to the flow of merchandise in international trade in several ways. Merchandise delivery can be made directly through the mail stream, and billings and payments often are made by mail, regardless of the mode of delivery of the traded goods. The second part of the question addresses the services aspect of trade rather than the goods aspect, that is, the competitiveness of U.S. delivery services in the global delivery market. In this respect, we see that changes are occurring in international delivery and postal services around the world. Some national postal administrations are becoming more commercialized and changing the scope of their operations. They are becoming more engaged in door-to-door deliveries internationally and are offering services directly to mailers in other countries, rather than simply cooperating with the existing postal operators in those countries by exchanging mail for international delivery. Thus, they are changing the nature of competition for postal operators in their home markets. Yet, newly commercialized postal entities retain their membership status in the UPU. This complicates matters for public postal operators in the UPU, who share the table with postal services that have become their competitors. It also calls attention to the lack of UPU representation for private delivery services of the United States and other countries, whose competitors, public and private, continue to participate in decision making at the UPU. The extent to which this affects competitiveness of the various public postal services and private carriers, including those in the United States, is not clear, but the unevenness of organizational participation is evident. The structure and functioning of the UPU, therefore, need to be thought through carefully, and work has just begun on this in the High Level Group established by the UPU.*

Q2 In your opinion does the UPU convention as well as our other bilateral or multilateral agreements comply with nondiscriminatory policies that serve the interests of all American participants in the postal and delivery sector whether public or private?

A2 *With respect to the UPU Convention, please note that the UPU is currently looking into the organizational issue, as noted in our response to Question 1. With respect to trade agreements, we will be working with our trading partners to see what can be done in the context of services negotiations. As in the past, we will continue to consult on these matters with U.S. public and private entities in the postal and delivery sector.*

Q3 Was a Trade Representative official assigned to the U.S. delegation to the Seattle Ministerial Conference to be responsible for issues related to postal and delivery services issues? How do the Trade Representative and the Department of State plan to coordinate strategies for policies affecting postal and express delivery services in both the UPU and the WTO?

A3 *Joseph Papovich, Assistant U.S. Trade Representative for Services, Investment and Intellectual Property, and Peter Collins, Deputy Assistant U.S. Trade Representative for Services, who are responsible for all services trade issues at USTR, including postal and delivery services, were present at the Seattle Ministerial Conference. USTR and the State Department will continue to coordinate on UPU and WTO issues by participating in planning and preparations for upcoming meetings in their respective interagency processes. Agencies recognize there is a division of labor – with USTR taking the lead in WTO and State Department taking the lead in UPU.*

Q4 I understand the UPU Council of Administration has established a Project Team that is focusing on relations with the WTO. Is the U.S. on that project team? If so, is an official from the U.S. Office of the Trade Representative on the delegation? If not, why not?

A4 *The United States is on the Project Team. USTR is involved in the work of the Project Team as part of the interagency coordination process.*

Q5 You noted that one of the general objectives of the Trade Representative is to prevent or reduce government-imposed measures that act as obstacles to international services and sales. Does the Trade Representative support standardizing customs requirements for all operators to match the expedited procedures currently available only to the Postal Service? How do you respond to the concern raised by the U.S. Customs Service that liberalizing current customs requirements will impede law enforcement?

A5 *In general, we would like to see nondiscriminatory treatment of similar services. But there are many different types of services and some differences in treatment may be justified. With respect to customs matters, there is a legitimate need to maintain adequate enforcement, but at the same time, there may be alternative procedures that can be used to attain that objective, while facilitating trade and postal and delivery services. We intend to work with U.S. Customs on this. With regard to customs treatment overall, our objective is to enhance both the transparency and efficiency of the trade transaction environment faced by U.S. exporters. Achieving such systemic rules-based improvements worldwide also enhances administrative capabilities of governments for ensuring effective compliance by the trade community with applicable legal requirements.*

Q6 Sixty-five nations have filed a reservation to a U.S. reservation declaring that we will implement terminal dues provisions of the UPU in accordance with the General Agreement on Trade in Services. What are the legal implications of these provisions?

A6 The purpose of the U.S. reservation is to avoid making a commitment in the UPU that would affect our negotiations in the WTO. We expect that other countries have taken reservations so as not to be committed to the UPU requirements if the United States is not so committed.

QUESTIONS FROM HONORABLE CHAKA FATTAH
HOUSE SUBCOMMITTEE ON POSTAL SERVICES

Q7 What concerns, if any, do you have for U.S. interests now that foreign firms have entered the market for U.S. international mail? For domestic mail?

A7 The U.S. Postal Service has a monopoly on first-class mail delivered domestically. For other types of delivery, USPS is competing with private operators, both domestic and foreign. From the standpoint of U.S. mailers, the availability of alternative service providers, both domestic and foreign, provides additional choices and helps to bring down costs. Our general objective in trade negotiations is to assure that competition is fair and built on rules that are transparent, objective, and nondiscriminatory.

Q8 How do you respond to accusations by commercial mail operators that the UPU and other intergovernmental agreements such as terminal dues and Article 40, are anti-competitive?

A8 Terminal dues and Article 40 are complex issues, which we have been examining. USPS is in the process of inviting bids for an independent study to be made to analyze the issue. We welcome such a study and expect it will be completed in an expedited manner. Perhaps, the study will shed new light on the matter.

Q9 GAO has testified that, "State could use the Federal Advisory Committee Act (FACA) to form an advisory committee on UPU-related matters." State said that it could achieve the intended results of FACA without establishing a formal advisory committee. Should State be given an opportunity to achieve the intended results of FACA, without creating a formal advisory committee?

A9 As indicated in our testimony, we believe the State Department is doing a good job in fulfilling its responsibilities with respect to the UPU. The Department recognizes the need to improve transparency and is taking steps to give more timely notice of public meetings and to make documents and other information publicly available . We believe the State Department should be given the opportunity to continue this work without creating a formal advisory committee.

Mr. MCHUGH. Mr. Cohen, you mentioned redacted material with respect to the Postal Service's submissions. That, as I know you are aware, has been a topic of some controversy. It has been alleged that the Postal Service uses that shield as a means by which to go far beyond what would be the obvious intent of it, to protect truly proprietary data and information, to keep information from the general public, particularly competitors. It is not unrelated to the issue of does your body receive all of the material it necessarily needs in a rate case.

Were you able to make any determination as to the appropriateness of the so-called redacted material or did you feel constrained that if the claim was made, it had to be shielded?

Mr. COHEN. If this material were part of a rate case, a domestic mail rate case, the material would be public information. It is the same kind of information the Postal Service makes available to the Rate Commission and the public in Express Mail and Parcel Post and its other services.

However, I am not an attorney, and I don't understand the FOIA very well, but FOIA contains a provision that, for the Postal Service at any rate, allows it not to disclose any information that a commercial, ordinary business would not have to disclose. We took the position that the cost coverage information is the kind of information that ordinary businesses don't disclose. You usually don't see cost information disclosed by Federal Express or United Parcel Service. We didn't think, given that interpretation of the FOIA, that such information should be disclosed from the Postal Service either.

Mr. MCHUGH. So you concurred with the subject matter of the redacted material? There wasn't any controversy in your judgment?

Mr. COHEN. No.

Mr. MCHUGH. You mentioned in your comments that international mail covers its cost but does not make the same percentage of contribution as other classes of mail. Is the PRC troubled by that?

Mr. COHEN. The PRC has no jurisdiction over the setting of international mail rates.

Mr. MCHUGH. I understand that.

Mr. COHEN. I don't know what the views of the Commissioners are on that. I am sorry.

Mr. MCHUGH. Steve and George are here; we should ask them.

You will probably give me the same answer on this but I am going to ask it anyway. What about terminal dues? You have heard the discussion with respect to what some have argued and others have refuted, but what some have argued is an inequitable treatment, a favorable treatment of foreign mailers over domestic mailers?

Mr. COHEN. We agree with that. In fact, in my testimony, I comment that the terminal dues arrangement has a significant competitive implication. I would just point out one other side of the matter and that is that the United States is a net exporter of mail, so these terminal dues arrangements redound to the credit of American mailers on balance. That is something that has to be considered along with the competitive interest of the carriers.

[Followup questions and responses follow:]

POSTAL RATE COMMISSION
Washington, DC 20268-0001

Office of Rates, Analysis & Planning

June 6, 2000

The Honorable John M. McHugh
Chairman
Subcommittee on the Postal Service
Committee on Government Reform
And Oversight
Washington, D.C. 20515-3224

Dear Mr. Chairman:

Enclosed are my responses to the written questions transmitted with your letter of April 3, 2000.

Sincerely,

Robert Cohen

Robert H. Cohen

Enclosure
RHC:as

cc: The Honorable Chaka Fattah
Ranking Democratic Member
Subcommittee on the Postal Service

1333 H Street NW • Suite 300 • (202) 789-6850 • www.prc.gov

Questions from Chairman McHugh for the Postal Rate Commission

1. Has the Office of the Consumer Advocate been consulted or involved in the international policy development process?

The Office of the Consumer Advocate does not act as an independent entity with regard to the development of international policy in asmuch as international policy is not developed through formal proceedings before the Commission. Members of the staff of the Office of the Consumer Advocate participated in preparing the Commission's first annual Report to the Congress on international mail (June 30, 1999). The Office of the Consumer Advocate is not participating in the preparation of the second annual report because its involvement in ongoing dockets, especially the R-2000 Rate Case, is fully utilizing its staff.

The Director of the Office has attended Commission briefings on the International Mail Report and participated in staff discussions of international mail issues. The Director reviewed a draft of Mr. Cohen's testimony for the subcommittee and provided comments.

2. What information is needed to properly analyze the impact of international agreements on U.S. operators (including the Postal Service) and their customers?

International agreements concerning mail affect U.S. operators primarily in the areas of terminal dues, remail and customs. Terminal dues, the amount destination countries charge origin countries for the delivery of international mail, are generally below the domestic postage rates of industrialized countries. As a result international mail destined for the U.S. is making less contribution to institutional costs than domestic mail and thus, domestic mailers must bear a larger institutional cost burden than they

would if terminal dues were equal to domestic postage. On the other hand U.S. international mailers are presumably paying lower rates than they would otherwise.[1] In order to estimate the impact of current terminal dues arrangements on international and domestic mailers, we would have to have the volume by weight, shape and domestic subclass of international mail flows.

Current terminal dues arrangements raise a separate problem. Private U.S. operators do not have access to favorable terminal dues rates which places them at a competitive disadvantage vis-à-vis the Postal Service. In order to estimate the affect of terminal dues on the Postal Service and private operators, we would have to be in a position to estimate market shares before and after terminal dues reform.[2] In the longer run, international mail flows would change, perhaps profoundly, but it is difficult to foresee how, thus it is difficult to ascertain what additional data would assist in analyzing this.

The issue of ABA remail is currently being addressed in a joint study by the Postal Service and the Rate Commission with the assistance of the State Department's Advisory Group on the UPU. That study seeks to estimate the volumes and financial impact on the Postal Service if ABA remail were allowed. It will involve collecting data on likely mailer response.

To estimate the impact on postal and private operations of the current separate customs arrangements for postal and private operators would require data on the volumes of similar traffic which currently get disparate treatment.

3. Competitors argue that the financial analysis of international mail flows should be done combining inbound and outbound information whereas the Service looks at international inbound and outbound separately. The competitors claim that because the terminal dues is an averaged rate and not, as it should be, based on country-specific costs, analyzing inbound and outbound separately is inappropriate. Has the PRC developed a position with regard to this issue? Please explain.

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[1] Approximately half of the total attributable cost of outward international mail is for terminal dues and similar charges.

[2] The State Department has stated that US Policy toward terminal dues is that they should be set much closer to domestic postage rates for each destination country.

Because the Commission has no direct responsibility in this area, it has not taken a position on the issue. In its Report to the Congress the Commission presents the data combined and separately so that the numerical consequences of both positions are apparent.

Questions from Congressman Fattah for Robert Cohen

1. How do you respond to accusations from Postal Service competitors that the Postal Service engages in cross subsidization of international mail rates with domestic mail rates and with international mail products and services?

The Commission's Report to the Congress on international mail for 1998 shows that overall revenues for inbound international mail are below attributable costs and thus, are cross-subsidized. Revenues for inbound and outbound international mail combined exceed incremental costs and thus, are not cross-subsidized. Sometimes postal observers use the term "cross subsidized" loosely to mean that a product is not making a sufficient contribution to institutional cost. If the competitors mean that international mail is not a making a contribution as large as domestic mail, then by this definition, they are correct as shown in the Commission's Report to the Congress.

2. Would you support legislation requiring the PRC to set international postal rates for the postal service? Please explain?

The Postal Rate Commission is certainly competent to set international rates. Its procedures for setting domestic rates could easily be applied to international rates. They allow for public participation in the development of an open evidentiary record for decisions made by disinterested commissioners and subject to legal review. This is a much different model than currently employed by the Postal Service in setting international mail rates. I know of no special impediment that would hinder the Commission if it were given such authority.

3. Currently, the Postal Service will allocate to State from any funds available to the Postal Service, reasonable sums for State to carry out is new US/UPU duties. Should the Postal Service be allocating its funds to State to carry out the UPU activities for the United States?

The UPU's only function is to facilitate the exchange of international mail. US/UPU duties are necessary for the maintenance of international mail service. State has been assigned these duties by law. Thus, it is appropriate for the Postal Service to allocate funds to State to carryout UPU activities for the United States under the principle that current rate payers should pay for the cost of mail service. If the UPU were to expand its area of concern to include more generally the international exchange of documents and parcels, then the funding situation would be quite different. Under these circumstances private as well as Postal Service interests would be the subject of UPU activities. Accordingly, the Congress might wish to fund UPU representation partially or totally out of the treasury or set up a mechanism for private operators to participate in the funding.

4. On page 5 of GAO's testimony, Mr. Unger reported that "*State could use the Federal Advisory Committee Act (FACA) to form an advisory committee on UPU-related matters.*" State subsequently testified that it could achieve the intended results of FACA without establishing a formal advisory committee. What is your reaction to State's comment on this matter? Shouldn't State be given time to achieve the intended results of FACA? Please explain.

A major purpose of FACA is to facilitate and formalize the process by which the government receives input on policy matters from interested parties. The State Department has set up FACA like procedures for formal meetings with the interested public. These meetings are used by State to disseminate information rather than to consult with the public, as is envisioned by FACA. State consults widely but informally with interested parties. The Commission believes that these consultations should be formalized under FACA.

In addition to meeting with the interested public, State consults with the relevant government agencies through an advisory group. The Postal Service is a member of

the group. This creates, at the least, the appearance of unbalanced decision making because private operators are not members of this advisory group although they are affected by UPU decisions. A formal FACA process would include private operators and thus solve the problem of decision making without formal input from all interested parties. Perhaps more importantly, State has not produced formal policy documents related to the UPU. As I stated in my testimony, a formal Advisory Committee would memorialize decisions and explain why they were made. I suggested that State use a process similar to Notice & Comment rulemaking. State would notify interested parties through the Federal Register that it was preparing a policy document on specific subjects, and invite comments and reply comments. State would then issue a policy document that would summarize the positions of the parties and explain its conclusions.

Currently, State's UPU Policy depends on the views of the personnel involved. Were they to be replaced, State's UPU policy could change abruptly. For this reason, State should memorialize its policy decisions affecting the UPU.

5. To what extend do terminal dues not fully compensate the Postal Service for the delivery of inbound letters and printed matter? How can this be corrected and how soon does this need to occur?

Inbound letters and printed matter is the major component of what is called *lettres, cartes et autre objets* (LC/AO). LC/AO mail revenue was only 66 percent of its cost in FY 99. This in turn caused total revenue for all inbound mail to be below cost. The revenue source for inbound LC/AO mail, is of course, terminal dues. The answer to the question "to what extent do terminal dues not fully compensate the Postal Service for LC/AO?" has two possible answers. The first would be the additional revenue needed for LC/AO to break even ($89 million). The second would be the additional revenue needed for LC/AO to make the same contribution as domestic mail with the same weight, shape and subclass characteristics. We do not know the detailed composition of inbound LC/AO mail and so we cannot determine what the contribution to institutional costs would be for similar domestic mail. The average contribution for domestic mail as

a whole in FY 99 was 54 percent of attributable cost. In general, domestic letter mail makes an above average contribution.

In order to increase inbound international LC/AO mail's contribution to institutional cost, terminal dues must be increased. Terminal dues are set in bilateral treaties with Canada and 14 European countries[1], and in a multilateral arrangement with the rest of the world under the auspices of the UPU. The latter will not be renegotiated until the next UPU Congress in 2004. The bilateral treaties account for most of the LC/AO mail we receive. Presumably these agreements could be renegotiated at any time with the agreement of both sides. Although the State Department has authority over U.S. dealings with the UPU, the Postal Service retains authority over its bilateral terminal dues treaties.

The UPU terminal dues treaty that takes effect at the beginning of 2001 moves terminal dues closer to costs, but will not go very far towards making inbound LC/AO mail compensatory.

Because the revenues and costs for inbound LC/AO mail are small in comparison to USPS totals, the overall financial condition of the Service is not affected in an important way by the revenue shortfall of inbound LC/AO mail. However, the current situation puts private delivery firms and remailers at a competitive disadvantage to the worlds' postal services and favors U.S. mailers who send outbound LC/AO mail at the expense of domestic mailers.[2] The speed at which a more cost based terminal dues system will be negotiated depends on U.S. Policy on these matters. Policy responsibility is now split between State and the Postal Service.

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[1] The European countries (with the exception of the Netherlands) have concluded a treaty on terminal dues that moves them much closer to the domestic tariffs of each country.
[2] Approximately half of the total attributable cost of outward international mail is for terminal dues and similar charges.

Mr. MCHUGH. I am glad you said that. I am surprised you are the first to say it frankly. It reflects your brilliance but whether that is a sufficient argument or not, I am not stating but it is indeed another part of the equation that at least ought to be out there and discussed.

Mr. Chung, I want to jump over to you. You heard discussion today about the challenge that the State Department had with respect to in-house expertise. I don't think anybody really expected them to have it at the outset but the concern is now because of the personnel rotation policy of DOS that normally 2 to 3 years a person moves to another posting, that there is going to be a decided lack of subject matter expertise. Do you find that troubling or do you concur with that; do you think it is surmountable? I think Ambassador Southwick would say the overall personnel policies of his department engender other kinds of attributes that are just as valuable because I think you folks dealt with them pretty intimately.

Mr. CHUNG. A reasonable person could differ on that; we have within Commerce and the International Trade Administration a similar setup, the Commercial Service, where we have officers rotating around the world amongst about 70-plus different posts. They spend 3 to 4 years and then they go to a different place. They learn new languages and gain new expertise.

I think State has been doing their work on this rotational system for years. I don't think they claim to be the repository of substantive expertise on this subject to begin with. With the assistance of all the other agencies involved in this effort, plus the in-house expertise that they have gained and they will continue to gain, I believe they can meet their challenge.

Mr. MCHUGH. You have to balance your interest, you said that. As part of Commerce, you obviously have a concern about the private sector, about the ability to compete. Do you have any thoughts as to the need and the effort we all agree needs to happen in formalizing and structuring more soundly the means by which the private sector has input into this UPU process, an opinion as to does it need to be structured upon a formal FACA, Federal Advisory Committee Act requirement or can it be done as Ambassador Southwick has suggested, through a published but somewhat less onerous and formal declaration?

Mr. CHUNG. I believe either is possible. In the Commerce Department, I work with two industry sector advisory committees very closely. Those are within my jurisdiction so to speak. One is on services in general and the other one deals specifically with wholesaling and retailing. Those are FACA committees.

They have worked fairly well for us in that regard but the success of any FACA committee depends on the commitment of the industry and the interest level of the industry to participate in it on an ongoing basis.

The other thing that needs to be pointed out from an administrative point of view is that FACA committees are very resource intensive. They demand a lot of attention from the staff as well as the management. One advantage FACA committee members do have is access to some classified material that we receive from our trading partners. For instance when they are involved in trade negotiations

such as GATS, trading partners make certain offers to us and the FACA committee members are shown that so that they can comment and provide advice to us. So that is a plus that will not be available in a non-FACA committee situation.

[Followup questions and responses follow:]

UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

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The Honorable John M. McHugh
Chairman, Subcommittee on the Postal Service
Committee on Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I wish to express to you my appreciation for the opportunity to testify on behalf of the Department of Commerce before your subcommittee on March 9. Attached are my responses to the questions forwarded to me after the hearing. I trust that this additional information will contribute to a furthering of the objectives of the subcommittee in the area of international postal policy.

Sincerely,

T.S. Chung
Acting Deputy Assistant Secretary
for Service Industries and Finance

Enclosure

Questions for the U.S. Department of Commerce Following the March 9, 2000, Hearing on International Postal Policy

1. *Does the UPU and its laws and agreements enhance or impede trade? How does the UPU impact the competitiveness of the United States in global delivery markets?*

   The Universal Postal Union (UPU) is an intergovernmental organization affiliated with the United Nations that was established to develop a "single postal territory" for member countries. The UPU intends not to interfere in matters within the domain of national postal services and makes recommendations to promote the free flow of international mail. In general, it establishes the rules for the exchange of "letter post," parcel post items, money orders, and certain other services. At present, some of these rules do have a potentially negative impact on the international commerce of some U.S. companies. In particular, terminal dues, an intricate compensation system for the exchange of mail among national postal services, does not fully account for the differences between domestic and international postal costs.

   The Commerce Department participated in the 1999 UPU Congress in order to emphasize the need to make the global postal and delivery system more open to international competition.

2. *In your written testimony, you state that regulatory regimes must not unnecessarily slow the movement of goods and services. You also noted that postal deregulation, increased competition, and product/services innovation are continuing trends that will benefit consumers. Do you believe that the current postal regulatory scheme is sufficient to meet the needs of American consumers and operators in the international postal market?*

   The Commerce Department supports an international postal regime which provides guaranteed delivery of mail items sent by U.S. mailers. We also support private sector competition with the national postal administrations in the international mail arena. This competition is in the commercial interest of U.S. firms, because it puts downward pressure on prices and provides a greater range of service options than would be available otherwise. As such, we would like to see further liberalization in the Universal Postal Union to encourage more competition, while maintaining the ability to guarantee delivery of mail items.

3. *Does the Department of Commerce support standardizing customs requirements for all operators to match the expedited procedures currently available only to public operators? How do you respond to the concern raised by the U.S. Customs Service that liberalizing current customs requirements will impede law enforcement?*

   Internationally, the Commerce Department in the past has heard the concerns of private sector express shippers related to customs facilitation and treatment, and we have

advocated a policy that would provide for similar treatment of similar shipments. This was the U.S. policy at the UPU Congress.

Commerce has consistently advocated for similar treatment for similar shipments, whether made through the U.S. Postal Service or through private sector express shippers. We recognize that issues of concern to law enforcement must be addressed. Our policy process should examine how customs facilitation can be improved, to meet both the demands of express shipments and the legitimate law enforcement concerns of the U.S. Customs Service. We should also be mindful of the fact that in other countries, customs treatment has been used as a market barrier against U.S. private sector express shippers, and U.S. policy needs to be consistent with our ongoing efforts to improve customs treatment internationally.

4. *Does the Department of Commerce have any concerns regarding the entry of foreign posts and their subsidiaries into the U.S. market? To what extent do you anticipate foreign penetration into the U.S. market? In what ways can postal reform increase American competitiveness in the international postal market?*

Commerce has been monitoring the global trend of purchases by foreign postal administrations of companies involved in areas such as air freight or logistic services, including purchases of U.S. companies. There is a discernable strategy by those postal operators to compete on a broader basis and to provide more and better services to customers. The acquisitions of U.S. companies were made in accordance with U.S. laws and regulations. The extent of competition in the U.S. domestic market depends on several factors, including reservations within U.S. domestic law and the market strategies of the companies. Therefore, it is important that postal reform in the United States proceed, to allow our postal administration more flexibility in pursuing efficient business opportunities internationally.

We must recognize that postal reform in the UPU is not isolated. That is why Commerce is active in other related areas and fora, working with other USG agencies and the private sector on relevant issues in the World Trade Organization/General Agreement on Trade in Services (WTO/GATS), the World Customs Organization (WCO), and in bilateral and other multilateral venues such as air services agreements. The collective effect of liberalization, removal of barriers, and reform will improve the overall international commerce of the United States.

5. *What are the implications of the European Court of Justice's recent decision in the Deutsche Post - Citicorp re-mailing case? Specifically, how will this decision affect re-mailers and those businesses that increasingly rely on electronic data transfer?*

The European Court of Justice's recent decision concerning the re-mailing case creates more uncertainty in the direct marketing industry sector and more unanswered questions.

It is Commerce's understanding that Citicorp will appeal the decision.

From the perspective of a U.S. direct marketer, this ruling hinders a direct marketer's ability to develop confidently a competitive plan that relies upon an open market for postal services in Europe, and possibly other regions. Some direct marketers also contend that the ruling will reinforce the ability of postal operators to protect national markets despite reform within EU through several initiatives to liberalize postal markets. Businesses increasingly are transferring data from and among subsidiaries, suppliers, and clients/members to achieve greater efficiencies and the benefits of economies of scale. However, decisions such as that in the Citicorp case could hinder this basic commercial activity in the information age, and, in particular, limit the growth of electronic commerce.

6. *What is your view of the case brought by UPS alleging that Deutsche Post has used revenue from its monopoly to compete in the European market - particularly in light of the Commission's decision to limit any potential penalty against Deutsche Post to the reimbursement of state funds and not a forced reorganization of Deutsche Post as UPS had requested?*

These are EC regulatory issues. UPS has sought a ruling from the EC for some time. We have urged Brussels to make a finding on the merits of the cross-subsidy case. We understand a ruling is expected in the next few months. A forced reorganization was not part of the original complaint by UPS.

Questions from the Honorable Chaka Fattah
Thursday, March 9, 2000
Subcommittee on the Postal Service
Hearing on International Postal Policy

Questions for USTR and Commerce

1. *What concerns if any, do you have for U.S. interests now that foreign firms have entered the market for U.S. international mail? For domestic mail?*

Commerce has been monitoring the global trend of purchases by foreign postal administrations of companies involved in areas such as air freight or logistic services, including those purchases of U.S. companies, a discernable strategy by those postal operators to compete on a broader basis and to provide more and better services to customers. The acquisitions of U.S. companies were made in accordance with U.S. laws and regulations. The extent of competition in the U.S. domestic market depends on several factors, including reservations within U.S. domestic law, and the market strategies of the companies. Therefore, it is important that postal reform in the United States proceed, to allow our postal administration more flexibility in pursuing efficient business opportunities internationally.

We must recognize that postal reform in the UPU is not isolated. That is why Commerce is active in other related areas and fora, working with other USG agencies and the private sector on relevant issues in the World Trade Organization/General Agreement on Trade in Services (WTO/GATS), the World Customs Organization (WCO), and in bilateral and other multilateral venues such as air services agreements. The collective effect of liberalization, removal of barriers, and reform will improve the overall international commerce of the United States.

2. *How do you respond to accusations by commercial mail operators that the UPU and other intergovernmental agreements such as terminal dues and Article 40, are anti-competitive?*

The Universal Postal Union (UPU) is an intergovernmental organization affiliated with the United Nations that was established to develop a "single postal territory" for member countries. The UPU intends not to interfere in matters within the domain of national postal services and makes recommendations to promote the free flow of international mail. In general, it establishes the rules for the exchange of "letter post," parcel post items, money orders, and certain other services. At present, some of these rules, such as those related to terminal dues, an intricate compensation system for the exchange of mail among national postal services, however, do have a potentially negative impact on the international commercial activity of some U.S. companies.

The Commerce Department participated in the 1999 UPU Congress in order to emphasize

the need to make the global postal and delivery system more open to international competition and open.

3. *GAO has testified that, "**State could use the Federal Advisory Committee Act (FACA) to form an advisory committee on UPU-related matters.**" State said that it could achieve the intended results of FACA without establishing a formal advisory committee. Should State be given an opportunity to achieve the intended results of FACA, without creating a formal advisory committee?*

Although it is worthwhile to consider an advisory committee for international postal services, it is only one alternative. Industry support must exist for such a committee, and any committee must be inclusive enough to represent all relevant interests, including the U.S. Postal Service. And, it should be understood that advisory committees are resource-intensive. Commerce, through its experience with the Industry Sector Advisory Committee (ISAC) program, has found that such bodies provide the U.S. Government with a valuable source of information and guidance in the formulation of policies that affect those industries. The Office of Service Industries and Finance administers two ISACs, one for Services (ISAC 13) and one for Wholesaling and Retailing (ISAC 17). U.S. business representatives on the ISACs receive a security clearance in order that they may review sensitive information not only from the U.S. Government, but also from our trading partners, for example when offers are submitted during GATS negotiations.

Mr. MCHUGH. Thank you.

Ms. Durant, you mentioned that you perform services for the Postal Service at no charge. I couldn't tell if you thought that was good or bad, fair or unfair.

Ms. DURANT. It just is. We believe that it is a cause of the disparate treatment. We feel we are understaffed in Customs with the trade that is coming at us in practically every arena, so we do use automation and risk assessments to decide what it is we examine. We do feel a bit overwhelmed in the international mail arena without any reimbursable arrangement.

There is a mail fee of $5 per package on international mail that we open, that we collect but it does not begin to offset what it costs us to operate in the international mail arena.

Mr. MCHUGH. I appreciate that. I am sure those against whom the USPS competes in certain areas would argue that is a decided unfair advantage.

Ms. DURANT. They would argue that decidedly, yes, sir.

Mr. MCHUGH. I would be interested to know what is the avoided cost to the Postal Service? Has anybody ever made an estimate or done a study on that?

Ms. DURANT. We have not done a formal study, however, particularly in the express mail arena, we are working some overtime and some off-hour weekend time that does cost us overtime to our inspectors that we do pay for. We could do that if you like.

I do know that the macro cost is we collect $1.2 million in the mail fee and it costs us about $26 million to run our mail operations. We have facilities, rent, conveyor belts and repairs to conveyor belts and computers that we do pay for.

Mr. MCHUGH. I don't want to burden an already overburdened department, and I mean that sincerely. I represent several hundred miles of Canadian border and I know the very, very difficult circumstances under which you are operating and I admire the abilities of your people to do all that they do.

If that would not be too much of me to ask, that analysis on avoided costs would be very interesting. I don't want to make any predictions on what we might do with it but it certainly would be worth having if you could do that.

Ms. DURANT. Yes.

Mr. MCHUGH. Let me also in sense of fairness say I mentioned to the Postmaster General the story that appeared February 29 out of a study contracted by the Air Courier Conference of America that found—and I said billion and I want to correct that—the study according to the report found millions of dollars in customs duties that aren't being collected on packages coming into the United States via the U.S. Postal Service. They charge, them being the competitive company, that puts them at a disadvantage. Do you have any response to that?

Ms. DURANT. We did run that study of those very few packages that the express industry sent through the Post by our statistical people. We work on a statistical basis to determine risk and he agreed with the Postmaster General that was not a valid sample in terms of making those sorts of extrapolations in the Post.

Mr. MCHUGH. OK. Let us accept that, not a valid sample means not necessarily true but it doesn't necessarily mean incorrect?

Ms. DURANT. Correct.

Mr. MCHUGH. Has anybody ever done what your department with Customs or anyone else would consider valid?

Ms. DURANT. In a formal way, on extrapolating duties, no, sir, not in Customs.

Mr. MCHUGH. Informal? You haven't done it informally either. It is an interesting question. The lack of that kind of data I think is part of the whole problem we have of trying to find the best path to resolution because we are not exactly sure what is real and what isn't. There too, I would be interested if your department would have a comment as to the necessity, the advisability, the interest in seeing that kind of analysis done in a valid way so that we would have some better understanding as to what is happening.

[Followup questions and responses follow:]

Questions for the U.S. Department of the Treasury Following The March 9, 2000, Hearing on International Postal Policy

1. **What is Customs doing to support non-discriminatory customs policies at the World Customs Organization? How can progress be made toward implementation of non-discriminatory customs treatment in other countries as well as in the United States?**

ANSWER: U.S. Customs has consistently supported the adoption of modern, efficient customs procedures by members of the World Customs Organization. The U.S. strives to promote non-discriminatory policies – when discriminatory practices come to light, the U.S. seeks consensus to adopt non-discriminatory policies, i.e., the U.S. strongly supported WCO development of guidelines to harmonize customs formalities with respect to express courier consignments. The WCO adopted these guidelines in 1994.

2. **How has the Customs Service coordinated with the Department of State in the formulation of U.S. policy dealing with customs issues before the World Customs Organization as well as the UPU? Please explain.**

ANSWER: The U.S. Customs Service coordinates the formulation of U.S. policy dealing with customs issues before the WCO with concerned Departments and agencies through the intermediary of the "Interagency Advisory Committee on Customs Cooperation Council Matters". The Department of State has been represented on the Interagency Committee since its inception. Other IAC members include: Departments of Transportation, Treasury, Agriculture, and Commerce; U.S. International Trade Commission; Office of the U.S. Trade Representative; and Office of Management and Budget (cf. Senate Document 95-50, p. 129).

Customs issues before the UPU are coordinated by the State Department which chairs an Interagency Committee on the UPU. U.S. Customs is represented on this Interagency Committee.

3. **How do UPU provisions relating to customs encourage or mandate the disparity in treatment between postal and private shipments, both in the U.S. and in other countries?**

ANSWER: The UPU customs provisions result in disparate treatment insofar as customs is not permitted to examine postal articles which transit the customs territory. (Customs has authority to examine express courier articles which transit the customs territory.)

4. What proposals will the U.S. make at the March meeting of the Permanent Technical Committee (PTC) of the WCO in Brussels to advance non-discriminatory customs policies? Who will be on the U.S. delegation to the PTC meeting?

ANSWER: The PTC met in April, 2000 and decided to defer examination of Secretariat proposals to equalize customs treatment of postal and express courier articles. Several delegations indicated that more time was needed to consult with concerned agencies in their capitals. The U.S. Delegation to the PTC was composed of representatives from the U.S. Customs Service and the Department of State.

5. How has or will the U.S. respond to the WCO Secretariat's six recommendations that resulted from the Study on Differences in Customs Treatment of Items Carried by Postal Administration and private operators? Please describe the consultation process to arrive at those positions. Did Customs consult with State, Commerce and Treasury officials as well as private sector stakeholders in developing the U.S. positions?

ANSWER: The U.S. will respond to the WCO Secretariat's six recommendations once interagency clearance has been obtained from members of the Interagency Committee on Customs Cooperation Council Matters (IAC). Customs has and will continue to consult with State, Commerce and Treasury (all IAC members). Historically, private stakeholder input in the development of U.S. positions is obtained through the intermediary of the Department of Commerce representative on the IAC, who consults with private sector members of the Industry Functional Advisory Committee on Customs Matters (IFAC 1).

6. Has Customs coordinated directly with the Postal Service and private carriers to work toward simplification of customs procedures? Please explain the results of Customs efforts.

ANSWER: The Customs Service has been coordinating directly with the Postal Service to bring about equitable treatment. In 1999, Customs implemented a policy requiring all carriers of inbound international mail shipments to manifest at the aggregate (i.e. bag, sack, and container) level. This new policy strengthens Customs control of these shipments and holds carriers accountable for delivering all inbound mail shipments to Customs.

In 1998, Customs implemented a "first port of entry policy" that required carriers of inbound international mail to present the mail at one of 14 locations throughout the United States where there is a Customs International Mail Branch.

In Fiscal Year 2000, the Customs Service has had several meetings with representatives from individual express consignment companies. In June 2000, a proposal by the Federal Express Corporation regarding disparate treatment was discussed with their representatives. The Customs Service and the express companies have agreed to work together to lessen disparate treatment.

7. A recent report by the Wirthlin Group for the Air Couriers Conference of America raised concerns that the Customs Service has been lax in enforcing inspections and duty assessments against the Postal Service. Please provide an analysis of the report along with the Customs Service's own assessment of the amount of customs duties not being collected on items imported via the Postal Service.

ANSWER: The Wirthlin Group's conclusions were drawn using the average amount of duties and fees per package collected from test packages prepared for the study. We believe this average was inflated because the test packages were not a statistical sample. The study intentionally selected ball bearings and textiles in the test because, regardless of their value, they require the payment of duties and fees when imported by a commercial business. This inflated average amount was then applied to a questionably estimated volume of over 30 million dutiable packages to derive the quoted lower amount of revenue loss. There was also a misapplication of Customs reported numbers to derive the higher amount of revenue loss.

It is probably true that Customs missed the opportunity to collect an amount of duties and fees. But, as our review of the Wirthlin Group study indicated, the loss of revenue is not likely to be close to the $1.2 billion or $1.5 billion estimate provided in the report. There were too many invalid assumptions and misapplications of statistics in deriving the dutiable volume and revenue loss estimates reported.

The Customs Service has been in the process of developing its own revenue study, and beginning on or about July 1, 2000, Customs intends to run a six-month sampling of international mail. The intent of this study is to determine a statistically accurate number of dutiable shipments and a statistically accurate estimation of revenue loss.

8. The U.S. Customs has taken the position that the Postal Service should be required to provide the same level of information for inbound mail and parcels as is currently required of Express Consignment Operators. Customs has also suggested that it be granted the authority to inspect the Postal Service's outbound and in-transit packages. What would Customs require in order to effect this change? What sort of financial, staffing, and equipment commitments would be required to enable Customs to process the increased volume of information that would result from such changes?

ANSWER: Customs would require specific statutory authority for advance manifest information, at the parcel level, to be made available to Customs prior to arrival. Access to this information would allow Customs to more effectively manage its workload by targeting high-risk parcels and expediting the remainder. Customs feels that it would be prudent to allocate additional staffing and equipment to process this information for enforcement purposes.

9. You noted in your written testimony that the Postal Service is currently developing an electronic data system similar to the electronic manifests already in place for Express Consignment Operators. Once completed, will this system be sufficient to enable equal inspection of parcels from both Express Consignment Couriers and the Postal Service?

ANSWER: The European community is currently working on a project to develop an electronic messaging system to provide detailed information on international mail shipments. The USPS and Customs are serving as technical advisors to this project. Customs believes that this will greatly assist us in providing more equal treatment of parcels. However, since only a portion of mail parcels from certain countries will use this system initially, its benefits will not be fully realized until it gains wide acceptance and use. Once implemented, Customs would encourage expansion to all UPU signature countries.

10. In your written testimony, you state that Express Consignment Couriers fully reimburse Customs for the costs incurred by the examination of their parcels, while the Postal Service does not. Please provide an analysis of the costs avoided by the Postal Service as a result of this discrepancy.

ANSWER: In Fiscal Year 1999, the consignment operators paid approximately $19 million to Customs. Of this, Customs was reimbursed $9.6 million for services provided, and approximately $9.5 million was deposited in the General Fund of the Treasury as informal Merchandise Processing Fee collections. For informal entries, statute provides for the payment of fees in an amount equal to the reimbursement paid to the Customs Service for cost of the service performed.

In Fiscal Year 1999, the full cost for providing service to the Postal Service was approximately $26 million. Approximately $1 million was collected in the mail on formal and informal entries.

Questions from the Honorable Chaka Fattah

1. **Last week, the Air Courier Conference of America (ACCA) released a study critical of how U.S. Customs processes express shipments coming into the U.S. through the postal service. I have a series of questions for you:**

   (a) Does customs engage in disparate treatment between the postal service and the express courier industry? If so, why?

   ANSWER: Yes, because there is no specific statutory authority for Customs to require the U.S. Postal Service to meet the same standards for automation and reimbursement for personnel and equipment as the express consignment operators. In addition, the Postal Service maintains that the Customs Service has no legal authority to inspect outbound and in-transit mail. As such, this mail is not presented to Customs for examination.

   (b) What steps has customs taken to remove disparities between international mail shipments and express shipments?

   ANSWER: In April 1999, Customs implemented a policy requiring all carriers of inbound international mail shipments to manifest at the aggregate (i.e. bag, sack, and container) level. This new policy strengthens Customs control of these shipments and holds carriers accountable for delivering all inbound mail shipments to Customs.

   In 1998, Customs implemented a "first port of entry policy" that required carriers of inbound international mail to present the mail at one of 14 locations throughout the United States where there is a Customs International Mail Branch.

   (c) Why doesn't customs collect duty on all entries at the international mail branches?

   ANSWER: The Customs Service assesses duties on parcels shipped via the mail. The collection of duties written on mail entries by Customs is the responsibility of the USPS, and are required to be remitted to Customs within 90 days.

(d) Why doesn't the postal service have to provide customs with automated data?

ANSWER: There is no specific statutory authority for Customs to require the USPS to provide automated data similar to that of the express consignment industry. In comparison, 19CFR128 requires that express consignment operators provide automated data.

(e) Is customs under any legal obligation to clear mail outside of regular business hours?

ANSWER: No. Customs interpretation of the law is that we are not legally obligated to clear international mail during non-regular business hours.

(f) Can customs hold the postal service to the same requirements for reimbursement of service as they do for the express courier industry?

ANSWER: No. There is no specific statutory authority for Customs to require the USPS to meet the same requirements for reimbursement of service as the express consignment operators.

(g) Why doesn't the postal service have to maintain records for customs review?

ANSWER: There is no specific statutory authority for Customs to require the USPS to maintain records for customs review, since the Postal Service is neither the carrier, broker, importer or any other party of interest to the transaction.

(h) Why does the postal service not reimburse customs for the processing of inbound international mail?

ANSWER: There is no specific statutory authority for Customs to require the USPS to reimburse Customs for the processing of inbound international mail.

(i) Why doesn't the postal service have to have a customs bond?

ANSWER: The USPS contends that it is not a carrier, therefore it is not required to have a carrier bond. Since the USPS is not making entry on behalf of the importer, they are also not required to have an importer's bond.

(j) Why doesn't the postal service let customs inspect in-transit shipments of international mail?

ANSWER: The USPS claims that the Customs Service is prohibited from examining in-transit international mail based on several international agreements, of which the United States is a signatory. These agreements state that no Customs formalities will be imposed on in-transit international mail.

(k) Why doesn't the postal service let customs inspect outbound international mail?

ANSWER: The USPS does not present the Customs Service outbound international mail based on the argument that the Fourth Amendment of the U.S. Constitution protects it from inspection. The Customs Service believes it has the authority to search outbound mail pursuant to its general border search authority and 31 U.S.C. 5317 (b), which provides authority to search, for Bank Secrecy Act violations, envelopes departing the United States.

2. Congress worked with the express industry in the late 1980's to develop law that required that the customs service provide special expedited service for the industry. In turn, express couriers agreed to reimburse the government for personnel, equipment, and facilities needed for this special customs clearance. Why is the reimbursement for expedited clearance an issue today?

ANSWER: The Postal Service and express consignment operators are in an extremely competitive market. The express consignment operators view the postal service as a government-subsidized competitor, and that Customs is providing the Postal Service with service similar to that which Customs provides to the express operators at no cost.

3. Would you support raising the standards of the postal service to the level enjoyed by the air courier industry? If yes, why? If not, why not?

ANSWER: Yes. By raising the standards of the Postal Service, Customs could perform its responsibilities of duty collection and narcotic interdiction in a much more efficient and effective manner.

4. Please explain and discuss the difference between the type of items contained in international mail and express shipments carried by postal and private couriers and how duty fees differ based upon type or category of item brought into the country. Also, please explain the difference in customs treatment of these items by type of courier. (Public vs. private)

ANSWER: The Customs Service does not keep data on the types of shipments or commodities carried by postal and private couriers. However, assessment of duties and fees are very similar for both public and private operators.

With regards to differences in treatment, Customs provides clearance of express consignment shipments at the express consignment facility, during non-traditional work hours and within specified time frames. Furthermore, Customs require express consignment operators to provide us with electronic advance manifest information at the shipment level. A broker must be involved in the transaction to assure that Customs receives all necessary duties and fees.

In the postal environment, the Postal Service delivers parcels to Customs for manual processing/inspection. Here, Customs must physically inspect each parcel, review a hand-written declaration, and make an assessment whether a duty will be charged or an enforcement exam will take place. Upon completion of Customs processing, the packages are turned over to the Postal Service for delivery. The Postal Service collects duties and fees from the delivered to party, and reimburses Customs within 90 days. The Postal Service is not considered a carrier, nor a broker or an importer. For Customs purposes, they are an anomaly, and their Customs treatment is not clearly defined in the law.

Mr. MCHUGH. Every dollar that is missed is something the Department and the U.S. Treasury doesn't get but it is also $1 that those who are trying to compete would say inures to their detriment competitively so I think it is important.

Ms. Patterson, you have heard a lot about the UPU and this new milieu in which we are operating. What are the antitrust implications of these kinds of agreements and such? I know that is a very broad question and you may not even contemplate it.

Ms. PATTERSON. The antitrust implications of the UPU sorts of agreements?

Mr. MCHUGH. Yes.

Ms. PATTERSON. Those tend to be agreements among sovereign nations which typically don't have antitrust implications.

Mr. MCHUGH. It is because it is, in Ms. Durant's words. That raises another question to me. Obviously when you have this environment that even though it is still negotiated government to government has much broader implications. Deutsch Post, for example, although government in some ways, is clearly an aggressive, and I mean that in a complimentary way, competitor with the private sector. I don't know how we approach that in the future but I think it illustrates a large problem.

Ms. PATTERSON. I think that Ambassador Southwick and the ministers in Germany and the Netherlands who are responsible for negotiating for their countries have a serious challenge in trying to balance the competing interest of their postal services and their private companies and an additional challenge when they get together and have firms that are competing against one another for international services.

We found the process leading up to the Beijing Congress to be quite open and satisfactory. We presented our views, staff members from the Antitrust Division met with State Department employees and went to interagency meetings leading up to the development of the U.S.' positions. I think they have a difficult challenge but I think they are doing a very good job of using the other resources of the Government to provide the kinds of expertise that they can.

Mr. MCHUGH. That actually answered the question I was going to ask next. I was interested in both a description of what you did and an impression of how you felt it went. I can surmise from your comments that at least to this point, given the many unknowns and what are largely unanswerable questions, from an antitrust perspective, we are doing OK?

Ms. PATTERSON. Yes, sir.

[Followup questions and responses follow:]

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 20, 2000

The Honorable John McHugh
Chairman
Subcommittee on the Postal Service
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am forwarding Deputy Assistant Attorney General Patterson's written responses to the follow-up questions enclosed in your April 3, 2000, letter. The Department of Justice appreciates the opportunity to have participated in the subcommittee's March 9, 2000, hearing on International Postal Policy. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

Robert Raben
Assistant Attorney General

Enclosure

United States Department of Justice
Responses to Questions for the Record

Committee on Government Reform
Subcommittee on the Postal Service

March 9, 2000, Hearing on
International Postal Policy

Questions From the Chairman

Question 1. What are the implications of the European Court of Justice's recent decision in the Deutsche Post-Citicorp re-mailing case? The European Court's February 10 judgment held that in the absence of European Union (EU) rules requiring cost-based terminal dues, EU competition law allowed Germany to apply Article 25 of the Universal Postal Convention to charge internal German postage rates to A-B-A remail from another member state, but the rates had to be reduced by an amount corresponding to any terminal dues paid to Germany by that other state's postal authority. The judgment was based on EU law and is limited to postal rates within the EU; the Court did not interpret EU rules on competition and free movement of goods to enforce a cost-based accounting system.

Question 2. Some have suggested that national antitrust laws should be applied to international postal agreements. Does the Department of Justice support this suggestion? If this were to be done, which current agreements and arrangements would be non-compliant? U.S. antitrust laws do not apply to international agreements entered between sovereign states. The Department of Justice does, however, participate in interagency discussions preparing for the negotiation of such agreements, and advocates pro-competitive outcomes to these negotiations.

Question 3. What steps is the Department of Justice now taking to ensure fair business practices in the international postal and delivery arena? As indicated in the answer to Question 2, U.S. antitrust laws do not apply to foreign government constraints on competition in international postal service and delivery. With respect to allegations enforceable under United States law, the Antitrust Division would apply the same review criteria to complaints stemming from conduct in the postal sector as would apply to allegations from any other industry or sector of the economy.

Questions from Mr. Fattah

Question 1. What concerns should the U.S. government have for U.S. interests now that foreign companies have entered the U.S. international remail market and the U.S. domestic mail market? Competition from foreign companies should contribute to lower costs and greater choices for U.S. consumers. We will, of course, continue to enforce U.S. antitrust laws to ensure that unlawful anticompetitive conduct does not interfere with these benefits. We will work with other
U.S. agencies to encourage the opening of foreign postal markets to competition from U.S.-

based service providers.

Question 2. What are your views on accusations that the UPU and other international agreements such as terminal dues and Article 40 are anti-competitive? We regard anti-remail penalties as an artificial device to protect postal administrations at the expense of consumers and therefore support efforts by the State Department to effect repeal of relevant sections of Article 40 permitting the interception of certain remail by postal administrations. We also support the transition to a cost-based terminal dues assessment and regard as pro-competitive the concession obtained by the U.S. delegation at the Beijing Congress.

Mr. MCHUGH. That is good. I am glad to hear that. That is another one you passed, Mr. Ambassador.

The challenge that is out there now is how do we prevail in the UPU. We can fix or at least fiddle with ourselves internally and whether we make you do FACA or require you to issue something else, whether we do any number of things internally, that is our business collectively, all of us and we will do unto ourselves as we are stupid enough to do, I guess.

How do we prevail upon the UPU to finally seriously take up this challenge of reacting to the new reality of reforming? Mr. Ambassador I compliment you and your department for the process and the steps you took. I am not suggesting you failed to do anything; you worked with the tools you had in your bag at the time.

Do you have any thoughts? Some have suggested not adopting the UPU convention as a means of sending that message. Representatives from the foreign posts suggested there are other ways to do it working through Department of State and such. Have you had an opportunity to think about how you can continue upon the progress you have already made so that it doesn't become again, through no fault of yours, yet another promise of reform that as I understand has been made quite frequently in this fine organization's history but has never materialized into anything meaningful?

Ambassador SOUTHWICK. That is a very challenging question. In some ways this is like a big foreign policy initiative that we are undertaking. The United States cannot go into an international organization with over 180 members and say we are the superpower, we are half the world's mail, you have to do it our way. It just doesn't work that way.

What we have to do is our homework, develop our arguments, do good analysis, come forward with ideas that will be convincing and understandable. That is the challenge we have over the next few months, especially with this high level group process that is underway.

I think if we can hone our position into something that we here collectively can agree upon and promote, we have a good chance of being successful because there is a core of reformers already in the Universal Postal Union. If you look at some of the votes taken in Beijing, it is mainly developed countries that supported us. Our challenge is with the developing countries. They feel that in some ways what is happening here is a subset of the whole globalization issue, the big multinational companies from the west, United States, Europe, what have you, kind of taking over something that belongs to them. This poses a big educational challenge to say that opening up the system, making the world more competitive, is in their own interest.

I spent a lot of my career in the developing world, in Africa. Good postal systems are fundamental to development. A good postal sector I should say is fundamental to development. This is one of the things we are trying to work on in our dialog with the World Bank and others to get that well understood.

[Followup questions and responses follow:]

United States Department of State

Washington, D.C. 20520

May 4, 2000

Dear Mr. Chairman:

Following the March 9, 2000 hearing at which Ambassador Michael Southwick testified, additional questions were submitted for the record. Please find enclosed the responses to those questions.

If we can be of further assistance to you, please do not hesitate to contact us.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
As stated.

The Honorable
John McHugh, Chairman,
Subcommittee on Postal Service,
Committee on Government Reform,
House of Representatives.

Question for the Record
Submitted to Ambassador E. Michael Southwick
Subcommittee on the Postal Service
Committee on Government Reform
March 9, 2000

1. Q. Please discuss the steps the Department of State took to identify the key issues for each agency given their respective executive branch policy responsibilities. How did you utilize each agency's expertise and advice in the policy formulation process? Based on your own assessment, in what ways do you feel you can and will improve the process?

A. Through frequent telephone contact and interagency meetings, the Department of State regularly discusses with interested U.S. Government agencies their policy concerns on issues relating to the UPU. Drafts of position papers for the Beijing Congress, for example, were shared with all concerned agencies, and comments and criticisms were taken into account. As new issues arise, we expect that interagency meetings will increase in frequency and become a regular business practice.

Question for the Record
Submitted to Ambassador E. Michael Southwick
Subcommittee on the Postal Service
Committee on Government Reform
March 9, 2000

2. Q. How would you characterize the major goals of U.S. policy for UPU matters that will guide the Department's efforts in this area over the next five years?

A. The Department of State plans to continue and extend its outreach to governmental and private-sector stakeholders in UPU affairs. Our intention is to take into account the interests of all major stakeholders, including the Congress, as we formulate policy toward the UPU. In large part, our goals for the UPU itself depend upon the definition of the concerns of interested parties and a diplomatic analysis of what can be achieved with the maximum support of other countries.

This will be a step-by-step process. The immediate goal is to achieve significant reform proposals from the High Level Group (HLG) on the Future Development of the UPU, and to work to ensure that the Council of Administration, having seen the report of the HLG, will recommend the convening of a UPU plenipotentiary meeting in 2002 so that the reform proposals can be approved in a formal manner. We know there is opposition in some quarters to reform per se and to the

convening of a plenipotentiary meeting, but we will strongly pursue that approach.

In more substantive terms, we want to see a UPU that has been significantly opened up to participation by various components of the private sector, that is transparent in its operations, that fosters and encourages a more open and competitive system, that provides maximum entry opportunities to all stakeholders, ensures fairness to all competitors, and that focuses on giving the postal customer valuable benefits, including lower costs, faster delivery times, and more choice of services. We want to see a new mission statement that reflects those goals, a structure of UPU governing bodies that can implement this approach, and a design of the staff that supports these goals and that recognizes and disseminates information about the highly dynamic postal delivery sector.

Question for the Record
Submitted to Ambassador E. Michael Southwick
Subcommittee on the Postal Service
Committee on Government Reform
March 9, 2000

3. Q. Once the High Level Group presents its findings, what will be the next step for the UPU reform effort? What can be accomplished before the next UPU Congress in 2004?

A. The High Level Group will present an interim report to the Council of Administration in October 2000 and a final report in October 2001. It is our goal that the HLG will recommend steps that can be implemented immediately after endorsement by the Council. For more basic structural change in the UPU approach, we anticipate that it will be necessary to convene a plenipotentiary meeting of UPU members, and we will aim to have that done in 2002, as anticipated in the resolution creating the High Level Group.

Question for the Record
Submitted to Ambassador E. Michael Southwick
Subcommittee on the Postal Service
Committee on Government Reform
March 9, 2000

4. Q. Is there any UPU provision that would allow the U.S. and other reform-minded countries to adopt, before 2004, a new agreement to govern the exchange of documents and parcels among themselves?

A. Our understanding is that it is always possible for pairs or groups of countries to reach bilateral or multilateral agreements for exchanges among themselves, and that this is not barred by the UPU convention. Most European Union members have already done this, in the area of terminal dues, through a system called Remuneration for the Exchange of International Mail (REIMs). Under the Beijing-approved system, terminal dues will be cost-based for industrialized countries. Details of this are being worked out currently by an Action Group of the UPU. Reform of the entire UPU system requires the building of a majority of UPU member countries, not simply the ones that today are reform-minded, and we intend to work to build that consensus through the process initiated by the High Level Group.

Question for the Record
Submitted to Ambassador E. Michael Southwick
Subcommittee on the Postal Service
Committee on Government Reform
March 9, 2000

5. Q. What is the justification for including the Postal Service in inter-agency meetings? Is there something fundamentally different about the Postal Service among operators that would merit special treatment beyond simply being owned by the U.S. government?

A. The U.S. Postal Service is a U.S. Government agency. When meetings of U.S. Government agencies are convened to discuss issues relating to the UPU, it would a mistake to exclude the agency that has the most experience with the UPU. However, the Department of State also goes to considerable lengths to consult regularly and constructively with all interested stakeholders, including those in the private sector. We see this as essential to fulfilling our Congressional mandate not to "grant any undue or unreasonable preference to the postal service, a private provider of postal services, or any other person," as we carry out our duties under Section 407 of Title 39.

Question for the Record
Submitted to Ambassador E. Michael Southwick
Subcommittee on the Postal Service
Committee on Government Reform
March 9, 2000

6. Q. Please describe how the Bureau of International Organization Affairs is currently organized and staffed to meet its UPU-related responsibilities? Has the Department determined the number and type of staff it will need to meet its UPU responsibilities over the long run?

A. The Bureau of International Organization Affairs (IO) is headed by an Assistant Secretary of State. In his office, there are three Deputy Assistant Secretaries. One of these, Ambassador E. Michael Southwick, has primary responsibility for U.S. relations with all of the technical, specialized and development agencies in the United Nations system, as well as for UN social and economic issues. Within his portfolio, the Office of Technical Specialized Agencies (IO/T), headed by an office director, handles U.S. relations with more than 30 agencies of the system, and this includes the UPU. One officer and one secretary are assigned to the UPU account on a full-time basis. Another officer devotes about two-thirds of staff time to the UPU. Another IO office provides advice on budgetary issues relating to UPU. Current experience is that this is sufficient staff to handle the UPU-related issues. During the conduct of the Beijing Congress, more people were required, and the number of staff members involved may be augmented in the future as workload changes. We will keep this issue under review.

Question for the Record
Submitted to Ambassador E. Michael Southwick
Subcommittee on the Postal Service
Committee on Government Reform
March 9, 2000

7. Q. What other Bureaus in State will be providing support in the UPU area and in what capacity? Specifically, does the Department of State plan to provide support from economists or other staff members with background and expertise in international postal issues?

A. The Office of the Legal Adviser provides legal assistance and support on an as-needed basis. One senior lawyer was made available in Beijing for the duration of the UPU Congress. Consultations are held with officers of the Bureau of Economic and Business Affairs, as well as with the Office of the Under Secretary for Economic, Business and Agricultural Affairs. These consultations relate specifically to economic issues arising in the UPU.

Question for the Record
Submitted to Ambassador E. Michael Southwick
Subcommittee on the Postal Service
Committee on Government Reform
March 9, 2000

8. Q. In your written testimony, you mention the addition of a career civil servant to the staff who will be working on UPU issues. What will be the responsibilities of this individual? Can the addition of a single non-rotation staff member provide the institutional continuity, and forge the sort of personal relationship, that GAO found lacking under your current staffing policy?

A. The senior civil servant assigned to the UPU portfolio is handling that task fulltime, supervising arrangements for interagency and public meetings, ensuring that relevant documents are added to the Department of State website, preparing position papers for U.S. delegations to UPU meetings, serving on the U.S. delegation to those meetings and undertaking necessary consultations with other agencies and other interested parties. We believe this arrangement, together with other staff support previously described, is a major solution to the question of institutional continuity, but we will keep this under review.

Question for the Record
Submitted to Ambassador E. Michael Southwick
Subcommittee on the Postal Service
Committee on Government Reform
March 9, 2000

9. Q. How did the Department of State engage other governments to build support for the United States reform proposals at the UPU Congress in Beijing? What countries did you contact regarding the U.S. reform proposals? How were those countries advised and briefed on the U.S. proposals? Which countries supported the U.S. reform proposals at the UPU Congress?

A. In advance of the Beijing Congress, the Department of State sent staff members to visit countries that had expressed special interest in UPU reform and received foreign visitors on the same issue. We invited foreign experts from many of our trading partners to a seminar on UPU issues in Washington. We also made full use of the Department of State's cable network, contacting U.S. embassies around the world to have them advise host governments of U.S. positions and to seek their support on our proposals. Most of the support for our efforts came from Western countries, in particular the United Kingdom, Netherlands, Germany and Australia. A number of Latin American countries agreed to co-sponsor our proposal relating to Article 40.

Question for the Record
Submitted to Ambassador E. Michael Southwick
Subcommittee on the Postal Service
Committee on Government Reform
March 9, 2000

10. Q. At the Beijing Congress, the Netherlands proposed a new rule to allow interested parties to be observers at UPU proceedings. The U.S. proposed an alternative rule to create an Advisory Group, without observer rights. Why did the U.S. not support the Dutch proposal?

A. The United States strongly supported the Dutch proposal. The Dutch had tried to achieve endorsement of that proposal by the Council of Administration (CA) for several years, but the CA consistently refused. In search of an acceptable compromise, the United States then agreed to work with other countries to develop an alternative approach, and this led to the proposal of an Advisory Group. In the CA meeting just prior to the Beijing Congress, the CA agreed to send forward both the Dutch and U.S. proposals. At that point, the United States took the position of first endorsing the Dutch proposal, which was the stronger of the two, and then its own text. A working group in Beijing considered both proposals together, changing them both. The ultimate resolution, which created an Advisory Group, was the strongest that could be achieved.

Question for the Record
Submitted to Ambassador E. Michael Southwick
Subcommittee on the Postal Service
Committee on Government Reform
March 9, 2000

11. Q. Please discuss your ongoing efforts to enlist the support and direct involvement of U.S. private sector stakeholders including operators, mailers and consumers in the work of the newly created UPU Council of Administrations' Advisory Group. What measures have you taken to assure that U.S. participants in the Advisory Group are representative of all U.S. interests?

A. The Department of State has consulted regularly with UPU staff, stressing the importance that we attach to the new Advisory Group and the need for all parties to ensure that it is representative of all private sector interests. We believe that UPU in fact has invited a representative group of international associations of private-sector stakeholders for the first meeting of the Advisory Group, on May 9. At the same time, we have strongly urged the private-sector stakeholders to take advantage of this opportunity for direct contact and contribution to the dialogue with the UPU staff and member states. Initially, some of these stakeholders seemed reluctant to engage in this process, apparently believing that it was inadequate for their interests. However, it is our view that if they do not utilize this opportunity well, it will be very difficult to gain agreement within UPU meetings to advance the interests of transparency and openness.

Question for the Record
Submitted to Ambassador E. Michael Southwick
Subcommittee on the Postal Service
Committee on Government Reform
March 9, 2000

12. Q. If terminal dues were aligned with domestic postage on mail exchanged with industrialized nations, what would be the effect on the costs, revenues and rates associated with international mail? Would there be any need for an anti-remail provision in the UPU Convention if post offices aligned terminal dues with domestic postage.

A. This is an excellent question that deserves thorough analysis. The interagency group considering UPU issues has just agreed on a Statement of Work for a study of these issues by a qualified consultant. The proposal is being put out for bids, and we are hoping for a thorough response by early in 2001.

Question for the Record
Submitted to Ambassador E. Michael Southwick
Subcommittee on the Postal Service
Committee on Government Reform
March 9, 2000

13. Q. What would be the result if industrialized nations and other willing countries were permitted to negotiate terminal dues subject to two principles: not to discriminate between domestic and foreign mailers; and, not to discriminate among international operators (public or private) for access to non-competitive delivery services? Would this approach present a workable, market-oriented solution?

A. This is question has a certain attractiveness, but it does not reflect the current legislative situation for postal and delivery service in the United States. Frankly, it is difficult to advance major reforms within the UPU -- which is the extent of the Department of State mandate in this area -- in the absence of comparable reforms within this country. Certainly, these ideas would be controversial within the UPU, and extensive international negotiation would be required. Moving forward along these lines would require a serious joint effort between the Congress and all concerned agencies of the U.S. Government.

Question for the Record
Submitted to Ambassador E. Michael Southwick
Subcommittee on the Postal Service
Committee on Government Reform
March 9, 2000

14. Q. How do UPU provisions relating to customs encourage or mandate the disparity in treatment between postal and private shipments, both in the U.S. and in other countries?

A. National governments and the World Customs Organization (WCO) have primary responsibility for customs policy, not the UPU. The UPU and WCO, together with the International Express Carriers Conference, have undertaken a joint study on disparities in customs treatment. This is still underway. Any resulting action would have to lie with the WCO and/or national governments.

Question for the Record
Submitted to Ambassador E. Michael Southwick
Subcommittee on the Postal Service
Committee on Government Reform
March 9, 2000

15. Q. In Beijing, did the U.S. propose elimination of UPU customs provisions that encourage or mandate the disparity in treatment between postal and private shipments? If not, why not?

A. The United States did not make customs-related proposals in Beijing because this issue is the primary responsibility of the World Customs Organization.

Question for the Record
Submitted to Ambassador E. Michael Southwick
Subcommittee on the Postal Service
Committee on Government Reform
March 9, 2000

16. Q. Do U.S. Customs regulations provide for a greater disparity of customs treatment between postal and private shipments than that which is required by the UPU convention?

A. This issue is under study by the World Customs Organization and the UPU. The U.S. contribution to this study is a joint endeavor, heading by the U.S. Customs Service, and including the U.S. Postal Service and United Parcel Service (UPS). We anticipate recommendations from this study in the course of the year 2000.

Question for the Record
Submitted to Ambassador E. Michael Southwick
Subcommittee on the Postal Service
Committee on Government Reform
March 9, 2000

17. Q. Compared to other international organizations that have had to reinvent themselves in the face of market and regulatory change such as the International Telecommunications Union (ITU) and the International Air Transport Association (IATA), how well positioned is the UPU to make the necessary changes to remain relevant?

A. The answer to this question rests on the ultimate effectiveness of the High Level Group on the Future Development of the UPU. The HLG thus far has given serious consideration to efforts at reform in other international organizations, including ITU and IATA. We recall that there was extensive opposition to reform at the Beijing Congress in 1999, but we believe that attitude is changing. The HLG will present an interim report on its work to the Council of Administration in October 2000, and that should be a good indication of how willing its member states are to move forward on reform.

Question for the Record
Submitted to Ambassador E. Michael Southwick
Subcommittee on the Postal Service
Committee on Government Reform
March 9, 2000

18. Q. In Beijing, the industrialized nations agreed to increase their terminal dues by 7.5% to finance a Quality of Service Fund. How does providing foreign aid for developing postal services fit in with the Administration's overall foreign aid program agenda with respect to international communications?

A. It has been regular practice at the Congresses of the UPU, held every five years, to increase terminal dues rates. In 1994, at Seoul, these rates were increased 17 per cent. There was an apparent intention by a majority of member states to have another increase proposed in Beijing. However, it was widely recognized that there have been no controls on what recipient countries do with terminal dues payments, and we understand that in many countries, payments go into the general treasury and are not applied to improvements in the postal system. It was to address this problem that the proposal was made to develop a Quality of Service Fund. We do not view this as a foreign aid program. While a new increase in terminal dues was considered inevitable, supporters of the Quality of Service Fund believed that with proper controls, a 7.5 per cent increase could be applied directly to improvements in the postal systems of recipient countries. We believe this is an acceptable, and even useful, outcome in the short term.

However, ultimate movement to a global cost-based terminal dues system should make this procedure unnecessary, and we believe the Quality of Service Fund could be terminated at the next UPU Congress.

Question for the Record
Submitted to Ambassador E. Michael Southwick
Subcommittee on the Postal Service
Committee on Government Reform
March 9, 2000

19. Q. What concerns, if any do you have regarding the administration and use of the Fund? Do you know how much the United States expects to pay into this Fund in each of the five years 2001 through 2004? On what basis will the funds be dispersed to the developing nations? Will the funds be dispersed to the public postal administration or will they be dispersed to the national treasury? Will the fund issue loans?

A. Rules of procedure for the Quality of Service Fund are being developed by a UPU working group, and we know that there is a serious concern that these funds must be utilized directly for justifiable improvements in each recipient country's postal system. The United States is a major player in development of these rules. Nothing has been decided thus far, although it is clear from early discussions that no loans will be made and that funds will be disbursed only for approved projects with demonstrable prospects for measurable improvement of the quality of service. No hard figures are available, but it has been estimated that the Fund's resources could run in excess of $20 million per year. Given the amount of outbound mail from the United States to developing countries, it is likely that a sizeable percentage of these funds will result from U.S. terminal dues payments. This heightens the incentive for U.S. delegations to ensure that the money is used properly.

Question for the Record
Submitted to Ambassador E. Michael Southwick
Subcommittee on the Postal Service
Committee on Government Reform
March 9, 2000

20. Q. What controls will the UPU and the U.S. government have over the expenditure of funds dispersed to each country? Specifically, will the receiving country be contractually obligated to expend the funds for a specific project or program directed to improve a stronger and more effective postal administration? How will we know if the additional spending product results? Do you know if this fund will be audited and by whom?

A. All of these issues are under serious consideration by the UPU working group that is establishing the Quality of Service Fund regime. We fully share the concerns raised here, and will make every effort to ensure that they are raised and resolved appropriately by the time the Fund goes into operation in 2001.

Question for the Record
Submitted to Ambassador E. Michael Southwick
Subcommittee on the Postal Service
Committee on Government Reform
March 9, 2000

21. Q. Many developing countries have been able to take advantage of new communications technologies. Some are using land-based cellular and satellite cellular phones to leapfrog into the 21st century bypassing the tradition stages of communications infrastructure development such as stringing telephone wires. Electronic forms of communication such as the Internet are replacing letter and print postal services. Why provide foreign aid to develop the postal sector when other forms of communication might be more efficient and should be encouraged in developing countries? Please explain.

A. Development requires simultaneous improvements in many sectors. We have no doubt that improvements in the postal sector are essential in almost all developing countries, and in some industrialized nations as well. Effective postal systems are not only important for national development but they benefit U.S. mailers as well. Thus, we see the target of this new Fund as fully legitimate, provided the Fund is implemented with strict controls. We would also note that we do not see this as a foreign aid program. The Quality of Service Fund is a redirection of the receipts of terminal dues so that they are used, in a tightly controlled manner, to benefit the postal sector rather than the general treasury of developing nations where there is no control or monitoring. We also see this as a temporary device that should not be needed after the next UPU Congress.

Question for the Record
Submitted to Ambassador E. Michael Southwick
Subcommittee on the Postal Service
Committee on Government Reform
March 9, 2000

22. Q. What should the U.S. policy be towards post offices in developing countries? Is the maintenance of a non-cost based terminal dues system really the best way to aid these post offices?

A. A non-cost-based terminal dues system is not the best way to improve the quality of service in developing countries. We anticipate that this new concept, authorized in Beijing, will expire at the next Congress. In the meantime, in discussion with private-sector stakeholders about the costs of their inclusion in UPU affairs, we have suggested that a portion of such a contribution might be directed to improving quality of service in developing countries. UPU would also use other resources outside the regular budget to try to assist developing countries to improve their postal operations.

Question for the Record
Submitted to Ambassador E. Michael Southwick
Subcommittee on the Postal Service
Committee on Government Reform
March 9, 2000

23. Q. Sixty-five nations have filed a reservation to a U.S. reservation declaring that we will implement terminal dues provisions of the UPU in accordance with the General Agreement on Trade in Services. What are the legal implications of these provisions?

A. The United States filed three "reservations" to the Beijing Acts. The most important one stated that, in the event that there was a conflict between the UPU's two-level terminal dues structure and our obligations to give most favored nation (MFN) treatment to all countries under the yet-to-be-negotiated postal provisions of the General Agreement on Trade in Services (GATS), the United States would deem itself bound by the MFN principles of the GATS rather than by the UPU's terminal dues provision.

The United States filed this reservation as a precautionary measure. It is not expected to have any practical effect. The current UPU terminal dues provision is a transitional measure that is expected to move in a direction consistent with the MFN principles that may be reached under the GATS. The reservation, therefore, has no immediate effect.

It is correct that some other countries objected to the U.S. reservation. The legal effect of those objections depends on the specific language of each objection. Under customary international law, an objection by another contracting state to a reservation does not preclude the entry into force of the treaty (in this case the UPU Acts) as between the reserving and objecting states unless a contrary intention is expressed in the objection. When the objecting state has not so indicated, then the provisions to which the reservation relates generally do not apply as between the two states to the extend of the reservation.

The "extent" of the U.S. reservation here is contingent on the GATS reaching agreement on postal arrangements. Therefore, neither the U.S. reservation, nor the various objections, have any immediate effect. Moreover, if the GATS does reach agreement on postal arrangements, then, by operation of international law, the GATS (as a later international agreement) would take precedence over any UPU obligations for those states that are party to the GATS postal agreement, even if they had objected to the U.S. reservation.

For those states that objected to the U.S. reservations at the UPU Congress and that do not become bound by the GATS process, the effect of their objection would, again, depend on the specific wording of each objection. Generally speaking, the effect of the objection would be bilateral -- between the United States and the objecting state. In that case, the United States would need to negotiate bilateral agreements with each of these countries to fill any gap created by the operation of the reservation and objection. Such bilateral agreements concluded would, also by operation of international law, displace any pre-existing inconsistent obligations between the United States and the objecting country on terminal dues under the UPU's acts.

Question for the Record
Submitted to Ambassador E. Michael Southwick
Subcommittee on the Postal Service
Committee on Government Reform
March 9, 2000

24. Q. Some have suggested that the U.S. should not ratify the UPU Convention until the organization has made significant efforts to reform. What is State's position on this issue?

A. The Department of State believes there is no justification for the United States not to ratify the new convention. With new authority from the Congress in 1998, the Department of State undertook primary responsibility for relations with UPU and, with government-wide authority, led the U.S. delegation to negotiate the new convention in good faith. We did not get all that we wanted, we were disappointed in some of the decisions that were taken, and we filed reservations on several points. But the United States never threatened to the Congress that it would not ratify the convention, nor was such a position ever put forward to the delegation by anyone either in the public or private sector. Indeed, non-ratification would undermine all of the work the United States has done and continues to do to advance reform in the UPU. Further, we believe that a deliberate decision not to ratify the convention could have the effect of suspending U.S. participation in the UPU and seriously disrupting international mail flow out of and into the United States.

Mr. MCHUGH. That provides a good opportunity to invoke determinant sentencing here and say for good behavior, we are going to parole everybody after 5 hours. I think that is sufficient punishment for all of your efforts to join us.

It is rare I can say after 32 years in a variety of positions in public life that we can look at something and say confidently we did the right thing but I do believe that very strongly in terms of what has been achieved here. Even though this is election year, I am not going to sit here and take credit for that. That is due to people like yourselves, your departments, those folks who were here earlier from the Federal Expresses of the world, including the Postal Service, that have I think to this point done a more than credible job and a very honest and effective job.

I hope the future goes as well, and we are looking forward to working with all of you to try to do what we can to ensure that will happen. As I said to the other panels and as you know it is our custom to submit a number of written questions for the record, that we would very much appreciate a response to so we can fill out understanding of this.

With that and my personal thanks, we will adjourn this as we go off to a meeting. The hearing is adjourned.

[Whereupon, at 3 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

[Additional information submitted for the hearing record follows:]

Danny K. Davis

STATEMENT OF REPRESENTATIVE DANNY K. DAVIS
Subcommittee on the Postal Service
"International Postal Policy"
March 9, 2000

Mr. Chairman, I want to commend you for convening this hearing to examine international postal policy. Specifically, how the Department of State has implemented its responsibility for U.S. policy regarding U.S. participation in the Universal Postal Union (UPU). In addition, we will examine the extent to which federal agencies and other

international organizations treat public and private postal operations differently.

As markets continue to open and our technology continues to improve the international postal market tends to influence the domestic market. Thus, it is important that we ensure that the United States Postal Service is positioned well to compete domestically and globally. I am pleased that we will here

from Mr. William Henderson, the Postmaster General, who has been committed to ensuring the long term viability of the Postal Service. In addition, his commitment to ensuring diversity at every level of the Postal Service should be commended.

However, I am a bit troubled by the need for a postal rate increase. The Postal Service has posted large profits over

the past years and rewarded its employees with big significant bonuses. It is hard to justify another rate increase under such circumstances. Nonetheless, I look forward to hearing testimony that will examine whether the UPU's mission and role, should be changed to better reflect the competitive nature of the international delivery market. In addition, I am interested in hearing the degree to which the UPU will allow interested

parties to observe its deliberations and participate in its discussions.

Again, I want to welcome all of our distinguished witnesses and thank you for being a part of this important hearing to examine international postal policy. I look forward to hearing your testimony.

Thank you.

THE COMMISSIONER OF CUSTOMS

July 13, 1998

WASHINGTON, D.C.

MAN-1-FO:TC:C:E:O MMG

The Honorable Jim Kolbe
Chairman
Subcommittee on Treasury, Postal Service
and General Government
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20510

Dear Mr. Chairman:

In response to Conference Report 105-284, we are submitting our report on Customs disparities in processing international mail and express consignment shipments. If you require additional information, please do not hesitate to contact me.

Sincerely,

Samuel H. Banks
Acting Commissioner

Enclosure

A Review of
U.S. Customs Treatment:

International Express Mail

&

Express Consignment

Shipments

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Preface

The Treasury-Postal Appropriation Conference Report for Fiscal Year 1998 directed the U.S. Customs Service (Customs) to prepare a comparative review of Customs processing requirements and practices relating to shipments conveyed by the U.S. Postal Service (USPS) and the Express Consignment (EC) industry. The central focus of the Conference's assignment is to identify differences and disparities in Customs treatment of international mail and express consignment shipments. A separate report was prepared for the committee on whether disparate treatment exists toward small and large businesses and individuals.

The Customs Regulations provide for mail importations/ exportations under 19 CFR Part 145, and for EC shipments under 19 CFR Part 128. In addition to these two parts of the Customs Regulations, shipments entered into the U.S. via the USPS or ECs are also subjected to additional sections within the Customs regulations and statutes, particularly Titles 18 and 19 of the U.S. Code.

A brief description of the USPS and the EC industry is provided to give the Conference a clear picture as to the underlying differences between these two entities. In addition, we have provided a breakout of the areas in which an express shipment is treated identically when imported into the U.S. via the USPS or an EC operation.

USPS

The USPS was established by Congress as an independent establishment of the executive branch of the U.S. Government. Its mission, is to provide universal mail service at uniform rates.

In addition to its statutory responsibilities under Title 39 of the United States Code, the USPS is subject to obligations of the U.S. under international law and protocols. The U.S. is a member of the Universal Postal Union (UPU), an agency of the United nations charged with governing the exchange of mail among all countries in the world. The Acts of the UPU are postal treaties authorized by 39 U.S.C. 407, and are approved by the President of the United States. As such, the USPS is subject to the dictates of international law governing how international mail is to be handled.

In an effort to provide expedited services demanded by their customers and offered by their competitors, the USPS developed two new programs - Express Mail (EM) and Global Package Link (GPL). The USPS guarantees next day delivery for all shipments mailed via EM; inbound mail shipments are guaranteed delivery the day after arrival into the U.S. GPL is a service that is primarily used by mail order companies for exports to one of 11 countries that have agreed to participate in this service.

The USPS has developed in their Customs Preadvisory System (CPAS) software programs that were designed to provide the following crucial export data:

- ◊ exporter's name and address
- ◊ recipient's name and address
- ◊ country of origin
- ◊ value of the shipment
- ◊ harmonized tariff schedule number(s)
- ◊ duties and taxes

This information can be transmitted to the foreign postal and customs administrations upon departure from the U.S. As a result, the foreign customs administrations may be able to perform advance reviews of GPL shipments.

EC

The Express Consignment (EC) industry began importing shipments into the U.S. in the late 1960's and early 1970's as a small industry responding to the geographic disbursement of industries and organizations. Initially, the industry provided timely door-to-door reliable service for transporting documents. Cargo shipments were not part of express consignment shipments during the early years because regulatory barriers prevented rapid effective movement of packages.

During the early 1970's, courier-type movements primarily consisted of documents or emergency equipment parts transported in an accompanied fashion by use of "on board couriers." The success of the air couriers for transporting documents was an indication to the industry that a demand for a system to deliver time-sensitive cargo existed.

During the latter 1970's, EC operators began the practice of entering courier parcels into the U.S. via commercial airliners. Initially, Customs did not recognize this industry as a separate entity and treated courier shipments as passenger baggage or normal air cargo, depending on baggage tags or bills of lading. To meet the time-sensitive nature of their business, the couriers would route their traffic to Customs locations with extended service hours. As the industry continued to grow, the EC operators repeatedly requested Customs to provide dedicated service for processing express shipments.

In 1987, after repeated requests by the EC operators to be treated as a separate and special industry, Customs recognized the need to address the growing EC industry and established a task force to make a comprehensive study of the express industry and its impact on Customs resources and operations. One product produced by this group was a proposed new chapter of the Customs Regulations governing the EC industry. On May 9, 1989, Part 128 of the Customs Regulations was published in the Federal Register recognizing the special needs of the industry. Part 128 provided definitions and guidelines addressing express procedures. These procedures included:

- ✓ application procedures

- ✓ full reimbursement for services provided by Customs for expedited clearances
- ✓ requirements by EC operators to provide advance manifest information
- ✓ requirements for the EC operators to be highly automated

The EC industry continues to experience rapid growth in the volume of shipments entering and exiting the United States. The projected growth rate in import activity has been reported to be at least 23 percent annually for the next 10 years for the EC industry. Customs is currently providing dedicated positions to 32 express locations throughout the U.S.

The EC industry has voiced their concerns to Customs regarding its perceived inequities with regard to the standards with which Customs affords all international mail shipments entered via the USPS.

I. MANIFEST REQUIREMENTS

USPS

Manifest information is not required on international mail shipments, per mutual agreement by the Universal Postal Union (UPU) and World Customs Organization (WCO). The sender is required to prepare a Customs declaration on the mail shipment entering the U.S. It is the responsibility of the sender to ensure that the information on the declaration includes an accurate description and value of the shipment. Customs must rely on the accuracy of the information provided on the Customs declaration completed by the sender.

The USPS provides some detailed information via the USPS Military International and Dispatch and Accountability System (MIDAS) for approximately 5 percent of the volume of international mail. MIDAS is currently available in 5 of the 14 International Mail Branches (IMBs) within the U.S.

EC's

Documentation requirements for EC operators and carriers, provided for in 19 CFR 128.21, states that they "shall provide manifest information in advance of the arrival of all cargo." The Customs Modernization Act (Mod Act) provides for the filing of summary manifests. Customs has notified EC operators that should they elect to file summary manifests, an increase in the number of examinations may occur as a result of our inability to perform advanced reviews on these shipments.

Specifically, EC operators are required to provide the following information to Customs relating to the shipment, which includes letter class mail and flats:

- Country of origin
- Shipper name, address, and country
- Ultimate consignee name and address

- Detailed description of the shipment, including the Harmonized Tariff Schedule of the United States (HTSUS) number as provided for in 19 CFR 128.21(a)(4)
- Quantity
- Shipping weight
- Value

Customs has the ability to perform advance targeting of EC shipments using the Customs Automated Commercial Systems (ACS) or the EC operators' proprietary systems.

The ACS Air Automated Manifest System (AMS) was designed to read/receive syntax message transmissions from airlines on the bills of ladings for shipments brought into the U.S.

The EC operators have invested in software systems to provide detailed manifest information giving Customs the ability to perform advanced reviews of individual EC shipments. These shipments are presented in the system in the following order:

Value over $1,250, requiring a formal Customs entry[1]
Value under $1,250, requiring an informal Customs entry[2]
Intangibles or Administrative Exemptions[3]

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[1] 19 CFR 145.12

[2] 19 CFR 143.21 allows for "shipments of merchandise not exceeding $1,250 in value" to be entered under informal entry procedures.

[3] 19 U.S.C. 1321(a)(2)(A), (B) and © - administrative exemptions which authorizes the waiver of duties "that would otherwise be collected" if "an amount...less than $20, between the...total duties, fees, and taxes tentatively assessed, with respect to any entry of merchandise and the total amount of duties, fees, and taxes actually accruing thereon"; value under $200, and bona-fide gifts under $100 ($200 for Virgin Islands, Guam and American Samoa) and $200 for accompanying household articles. Inconsistencies in these provisions often confuse importers and travelers. One provision provides for duty free treatment if valued less than $100 and is a bona fide gift, the other if valued at less than $200 if accompanying a traveler.

During Customs review, we have the ability to "flag" specific shipments for examination. Upon arrival of the imported shipments to the EC operator's facility, scanning of unique identifier labels is performed. At this time, all shipments that have been "flagged" are identified by the EC operator's receiving system, segregated, and presented to Customs for review. Shipments not "flagged" are deemed released by Customs.

EC operators who do not have their own stand-alone systems must use the Customs ACS Air Automated Manifest System (AMS), which provides manifest information to Customs prior to arrival of EC shipments. Customs receives this information directly from the airlines and has the ability to perform advance targeting, selecting specific shipments for review. Shipments not selected are conditionally released.

The difference between the two systems Customs uses to perform advance reviews of EC shipments are: EC operators who opt to use the Customs Air AMS receive an electronic message from Customs that release of their shipments are granted; EC operators who prefer to use their own stand-alone systems operate under the assumption that if Customs has not "flagged" a specific shipment for review, then the shipment is released.

II. ADMINISTRATIVE CONTROLS

USPS

The USPS notifies foreign postal administrations of cities in the U.S. which can accept mail. Foreign postal administrations select the carriers used to dispatch mail to the U.S. and control what is sent from their countries. Until the mail bags are present in their facility, the USPS is not liable or accountable for the shipment. The foreign postal administration is responsible for ensuring that the exporter of the mail shipment complete the Customs declaration, and that the air carriers it contracts with to transport mail shipments into the U.S. deliver the mail shipments to a designated USPS facility.

EC's

All EC operators are required to maintain "closely integrated administrative control" for their shipments. To comply with this section of the Customs Regulations, EC operators provide "door-to-door" service and are designated by the shipper as the nominal consignee. The exporter of an express shipment goes into a facility that offers EC services, fills out necessary documents, and appoints the EC operator to act as the nominal consignee. In the role of nominal consignee, the EC operator is granted the authority to designate a Customs broker to make entry.

In this capacity, the broker designated by the EC operator ensures that Customs procedures are adhered to, which include presentation of entry documents and timely payment of duties, taxes, and fees. In exercising reasonable care, EC operators provide training to their employees on Customs laws, regulations, policies, and procedures. In addition, many EC operators establish a subsidiary of licensed Customs brokers to prepare the entry documentation required for release of their clients' shipments.

III. BONDS

USPS

The USPS, or recipients of mail importations are not required to obtain a Customs bond, as provided for in section 113 of the Customs Regulations, for mail shipments valued under $1,250. As a result, Customs has no remedial authority to assess liquidated damages on mail importations.

EC's

EC operators must file bonds to ensure compliance with Customs requirements relating to the importations and entry of merchandise as well as the carriage and custody of

merchandise under Customs control. The following bonds must be on file with Customs:

- Basic importation and entry bond[4] - The principal agrees to pay all duties, taxes, and fees associated with imported merchandise released for consumption into the domestic stream.

- Basic custodial bond[5] - The principal agrees to "comply with all regulations regarding the receipt, carriage, safekeeping, and disposition of such merchandise."

- International carrier bond[6] - The principal agrees to pay penalties, duties, taxes, or other charge incurred by a "vessel, vehicle, or aircraft; or any master, owner, person in charge of a vessel, vehicle or aircraft . . . upon demand by Customs."

These bonds provide the necessary guarantees to Customs that EC operators will comply with Customs regulations and requirements, which include the payment of duties, taxes, fees, and/or liquidated damages and penalties associated with specific entered shipments.

IV. PRESENTATION

USPS

The USPS is required to present all inbound mail shipments to Customs for enforcement review and duty and admissibility determination. Since Customs is unable to do advance reviews/targeting, and due to lack of detailed information pertaining to individual mail shipments, it must require a 100% review.

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[4] 19 CFR 113.62

[5] 19 CFR 113.63

[6] 19 CFR 113.64

Customs is unable to determine the amount of mail entering the country due to the lack of documentation on mail shipments entering the U.S.

EC's

Customs has the ability to select specific EC shipments for enforcement reviews as a result of the manifesting requirements all EC operators are required to meet. This eliminates Customs requirements to perform a 100 percent review of shipments. Upon notification from Customs of our desire to examine a shipment, EC operators present the shipment, provide EC staff to assist in expediting examination of the shipment, and seal all items opened for verification upon Customs completion.

V. OUTBOUND/EXPORT SHIPMENTS

USPS

Currently, Customs must obtain warrants to search sealed outbound mail shipments. However, the Administration's International Crime Control Act, which was transmitted to the Congress this spring, would give Customs the authority to search outbound mail without a warrant.

EC's

Export shipments are made available to Customs for inspection without restrictions. As a result, Customs has been very successful in intercepting large amounts of undeclared currency/cash, other monetary instruments and licensable commodities being sent to prohibited countries.

VI. IN-TRANSIT

USPS

A provision in the UPU Constitution and Convention requires "all member countries" to provide freedom of transit to international mail, and forward such mail by the fastest routes they use for domestic origin mail. International transit mail is classified as mail which passes through the U.S. but is not to be delivered within the U.S. Part 145.2 of the Customs Regulations was changed to conform to the

Convention. This section of the Customs Regulations states that mail must be destined for delivery in the Customs territory of the U.S. or in the U.S. Virgin Islands to be subject to Customs examination. As a result of this provision, Customs is unable to open, search, or seize any in-transit shipments, regardless of its contents.

Unfortunately, this provision directly contradicts the fundamental mission of the Customs Service interdiction of narcotics and contraband. U.S. Customs personnel have consulted with foreign customs administrations regarding the direction from the UPU. Each customs administration contacted has verified that they exercise their border search authority and seize narcotics and contraband in international transit mail as a normal course of business.

EC's

Upon Customs request, EC operators present in-transit shipments for examination. Customs exercises our border search authority, as provided for in the law, to search, open, or seize violative shipments. There is never a question as to the authority, or the need, for Customs to perform examinations on shipments exiting the U.S. Typically, EC operators are cooperative in providing the necessary staffing to facilitate this process.

VII. RECORDKEEPING REQUIREMENTS

USPS

The USPS is not subjected to Customs recordkeeping requirements, as provided for in the Customs regulations. In addition, it is not required to provide documentation to Customs to correlate arrivals, presentation to Customs, and subsequent releases by Customs for international mail shipments.

EC's

As required by law, all EC operators are required to maintain documentation in accordance with the Recordkeeping provision in Title VI of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act. This statutory requirement directs EC

operators to maintain and make available upon request by Customs documents relating to specific shipments. By law, EC operators are required to maintain all import information for a period of 5 years from date of entry.

VIII. DUTY PAYMENT

USPS

Customs IMB personnel attach duty bills on parcels which are determined by Customs to be dutiable, based on the shippers' declaration and/or physical inspections. Copies of all duty bills issued are maintained by Customs for recordkeeping and accounting purposes. Customs releases dutiable mail shipments to the USPS for delivery and collection of Customs duties and fees from the recipient (importer) of the parcel. Upon collection of the duties and fees, postal carriers and local receiving post offices are required to forward the funds through the USPS financial management system to Customs. The USPS is required to remit payment of the duties and fees received for these dutiable parcels to Customs within 90 days of collection.

When payments for these bills are not received by Customs within the required 90 days, a remedial duty bill is sent to the importer. Upon receiving proof of payment to the USPS, Customs cancels the importer's duty bill and advises the local originating post office of the non-remittance.

Currently, the USPS has failed to remit duties and fees collected on dutiable parcels to Customs for fiscal years 1992 through March 1997, amounting to an estimated $1.0 million. This amount does not include interest, as Government agencies are exempt from paying interest.

EC's

EC operators ensure that required entry documents are filed and applicable duties, taxes, and fees are being paid to Customs for EC shipments as provided for in the Customs Regulations. In the event an importer refuses to remit duty payments in a timely manner, Customs will assess liquidated

damages and charge interest on the shipment. If the importer fails to comply with Customs demands, Customs then demands payment from the principal on the Customs entry bond.

Importers who repeatedly fail to file timely entry documentation and are habitually delinquent in the payment of Customs duties may be required to file entry documentation and duties, taxes, and fees prior to the release of their shipments, as provided for in section 142.13 in the Customs Regulations.

IX. REIMBURSABLE COSTS

USPS

The USPS is not required to reimburse Customs for services provided in processing of international mail shipments. Customs remits monthly rental payments to the General Services Administration for office space at the 14 IMB locations; upgrades to equipment, furnishings, supplies and secured cages are funded by Customs.

Customs assess a $5 processing fee on all dutiable mail shipments to offset costs associated with processing these shipments. This fee is refundable to importers upon Customs approval of their protest against duties assessed. These importers are also required to pay the USPS a non-refundable $3.75 handling fee on their mail shipments.

EC's

Upon being approved as an EC operator, the company must adhere to section 128.11, which states that the company must:

✦ provide to the Government, without cost, "adequate office space, equipment, furnishings, supplies and security" as required by Customs standards (in one instance, EC operators were required to provide x-ray equipment to assist Customs in the examination of high risk shipments).

✦ "timely pay all reimbursable costs, as directed by the port director".

✦ agree to fund all relocation, training and "other exceptional costs and expenses incurred by Customs" as a direct result of Customs staff relocating to the company's hub location.

X. AUTOMATION

USPS

The USPS is not required to participate in any Customs automated programs. Generally, development of automation will depend upon the technological abilities of the countries involved. At Customs' request, the USPS developed a program within the MIDAS system to monitor express shipments while in Customs control and to provide information useful to Customs. The USPS currently supplies five Customs IMB locations with their automated MIDAS tracking system. The MIDAS system allows Customs field personnel at the 5 IMBs to select mail shipments for enforcement or revenue review. The MIDAS tracking system is currently the only one that provides Customs with information similar to a manifest.

EC's

As part of the requirements for approval to participate as an EC operator, the company must ensure that all shipments are processed in the various automated Customs systems, Automated Commercial System, to include the "Automated Broker Interface (ABI), Automated Manifest System (AMS), Cargo Selectivity and Statement processing." As a result of having access to automated advance information, Customs is able to perform enforcement queries to identify specific shipments for inspectional review. Because Customs has the ability to perform this task in advance, this has proven to be a valuable tool for targeting shipments.

XI. SECURITY

USPS

International mail volumes arrive at airports and are unladen by the carriers' contract ground services staff. Off-ladened mail remains on the ramp until picked up by the contract ground crew for delivery to the USPS local facility. Title 18 U.S.C. 1698, states that presentation of mail to the local USPS facility must be made within 3 hours of arrival at the final destination.

The burden is on Customs IMB personnel to ensure that international mail shipments are presented to the IMB within the prescribed time frame, and to issue appropriate penalties to the carriers for failure to adhere to 18 U.S.C. 1698.

Although the USPS does not have the authority or means to correct problems related to delays, delivery difficulties are reported to the airlines for corrective action. The air carriers are contracted by the foreign postal administration, and therefore, are not under the control of the USPS.

EC's

Shipments imported by EC operators are picked up upon unlading on the ramp, generally by EC staff, shortly after conveyance arrival and are presented to the local HUB or EC facility. The speed and uniformity of delivery reflect the time-sensitive nature of the EC industry and industry operational practices to meet those needs.

EC shipments are accounted for because of information sources available to Customs via automated systems. As a result, Customs is able to select a particular shipment for inspection, and is assured that the shipment is what was selected for review because the data provided corresponds to the shipment.

XII. TRAINED WORKFORCE

USPS

The USPS and Customs prepared a training video for distribution to all postal facilities, providing information on dutiable inbound mail shipments, and the proper method in which to collect these duties from the recipients of the mail.

EC's

Most EC companies provide some degree of training to their staff on Customs laws, regulations, and policies. There are EC operators who establish a subsidiary of licensed Customs brokers, highly-trained import professionals. Customs brokers are empowered by importers or consignees to assist in clearing shipments through Customs. As a result, the Customs brokers must possess a thorough knowledge of the Customs Regulations, the Harmonized Tariff Schedule of the United States, and applicable rulings that affect the shipment of merchandise into the U.S.

XIII. RISKS

The seizures affected by Customs for USPS shipments consist of inbound mail. Customs does not examine in-transit shipments or outbound shipments, which accounts for the differences in the seizure quantities in comparison to the EC shipments.

In the event that a Customs narcotics dog alerts on an in-transit shipment, the foreign Customs Service is notified immediately and detailed intelligence is provided. Unfortunately, we have not been successful in gaining the support of several large foreign Customs Services. As a result, because the UPU specifically states that Customs does not have the right to seize in-transit mail shipments, narcotics and contraband are entering the domestic stream in foreign countries. The possibility exists that these shipments are then repackaged and mailed to the U.S.

The following is a breakout of seizures effected by Customs:

FY 1994

	Narcotics+	Other Drugs+	Currency*	IPR	Other
USPS	6,448	1,252	$ 841,490	$631,845	$973,275
EC	1,597	17	$10,939,881	$333,916	$2,407,847

FY 1995

	Narcotics+	Other Drugs+	Currency*	IPR	Other
USPS	5,758	1,789	$1,020,926	$559,151	$ 430,380
EC	8,849	31	$2,729,881	$975,616	$3,745,555

FY 1996

	Narcotics+	Other Drugs+	Currency*	IPR	Other
USPS	11,268	1,367	$1,142,313	$ 684,971	$ 650,546
EC	13,674	49	$3,718,559	$1,421,049	$1,033,208

FY 1997

	Narcotics+	Other Drugs+	Currency*	IPR	Other
USPS	6,031	2,214	$1,489,800	$5,007,593	$ 784,793
EC	7,313	62	$8,959,527	$1,220,428	$1,845,699

+Quantity in pounds.
*Counterfeit currency included, which has no "true value."
~"Other Drugs" include steroids, prescription drugs, etc.

XIV. PENALTIES

USPS

Consistent with other Government agencies, the USPS is exempt from fines, liquidated damages, and penalties for violations committed pertaining to international mail shipments.

ECs

EC operators are subject to fines, liquidated damages, and/or penalties for noncompliance with federal and state regulations and statutes, as enforced by Customs.

TESTIMONY OF THE AIR COURIER CONFERENCE OF AMERICA BEFORE THE HOUSE SUBCOMMITTEE ON THE POSTAL SERVICE OF THE HOUSE COMMITTEE ON GOVERNMENT REFORM

MARCH 9, 2000

The Air Courier Conference of America (ACCA) is the trade association of the air express industry. Our members include the major global express companies DHL, Federal Express, TNT U.S.A., and United Parcel Service as well as more than 100 other companies.

Our international services have always competed with postal service products to an extent. Today, however, that competition has intensified dramatically as postal services seek to expand their product lines into areas that compete head-to-head with us.

The international air express business is already a fiercely competitive one. Our members do not fear additional competition from postal services, but we do insist that any such competition in areas other than those reserved to postal monopolies be fair, that it take place on a level playing field, and that the postal services follow the same rules, regulations, and other requirements imposed on private express companies when engaging in activities that compete with private operators.

Unfortunately, that is not the case today. For example, government postal services typically do not pay taxes on their buildings, facilities, or income; they frequently receive expedited and simplified customs clearance at no cost (while express operators receive expedited customs clearance, we pay dearly for the privilege through reimbursables and self-funded facilities); and customs duties often are not assessed (or are assessed but not collected) on packages sent by mail. Just as troublesome, they are able to cross-subsidize those services that compete directly with our private carriers with monopoly profits they earn from first class mail.

As an illustration of the differences in the way governments treat postal authorities and private couriers, permit me to cite a recent study completed for

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ACCA by Wirthlin Worldwide. This study shows conclusively that Customs fails to fulfill its statutory obligation to appraise, classify and collect duties on international mail shipments. Out of 63 international express mail shipments, Customs required the filing of proper entries and assessed duties and fees on only four -- or 6.3 percent. In contrast, Customs required entries, duties and fees on almost 90 percent of shipments that were sent via private express companies. This failure to collect duties and fees on international postal shipments may lead to a loss in revenue to the U.S. government in the range of $1.2 billion to more than $1.5 billion. Furthermore, this study suggests that USPS shipments are much less likely to comply with other Customs laws and regulations. For instance, because Customs routinely elects not to inspect dutiable shipments made through the USPS, it cannot enforce other important laws, including narcotics trafficking and money laundering laws. No less important is the fact that this study shows that the USPS has a clear competitive advantage over express carriers in the international express business because the USPS shipments do not have to comply with Customs laws. Simply stated, when Customs claims in its mission statement that "[w]e enforce the laws of the United States" and "safeguard the revenue," it neglects to mention that it does not do this for Postal Service shipments.

Adding to our concerns is the fact that some foreign postal authorities are blurring the line between their public and private sector standing by using the proceeds from their postal monopolies to purchase private operators. This raises additional questions about cross subsidies and fair and impartial government treatment of both public and private operators.

Many of the advantages these postal authorities have are the result of national policies and practices, which we are seeking to address in the United States through postal reform legislation in the Congress. However, these national policies are shaped and reinforced by policies and practices promulgated in international postal forums such as the Universal Postal Union.

Until late 1998, the USPS was the sole U.S. representative to the UPU, a situation with which the air express industry had grown increasingly uncomfortable in view of the expanding competitive overlap between postal services and private air express services. On October 21, 1998, however, Public Law 105-277 transferred the primary responsibility for development of U.S. policy towards the UPU to the Department of State, where the function was lodged with the Office of International Organization Affairs. That law also added the development of policies affecting international postal and delivery services to the responsibilities of the Department of Commerce and the Office of the U.S. Trade Representative.

We were happy to see these legislative changes, hoping that they would lead to more even-handed and pro-competitive positions on international postal and

delivery services issues. The results of the past year, however, have been mixed.

Initially, let me point out what ACCA believes to be the positive accomplishments.

First, the Office of International Organization Affairs (IO), which was assigned the responsibility for overseeing the development of U.S. policy toward the UPU, has devoted considerable time and effort to developing its competency on international postal issues. From a limited knowledge level regarding the details of UPU-related issues, IO has built up a considerable degree of understanding and expertise in the field.

Second, as its name would suggest, IO's forte is dealing with the intricacies and diplomatic nuances of international organizations. And the UPU surely must be one of the more intricate and opaque international organizations to the uninitiated. IO has done a good job of deciphering the workings of the UPU and helping our industry understand UPU procedures and processes. In that regard, we commend the State Department's performance at the UPU World Congress held last August.

Third, IO has attempted to open the UPU policy development process – which in the past had been managed exclusively by the U.S. Postal Service with virtually no input from other agencies or from the private sector -- to a broader range of interested parties.

And fourth, IO has attempted to improve the flow of information to interested parties by making selected UPU-related materials available on a website.

ACCA appreciates IO's efforts in each of these areas. However, ACCA continues to have concerns about the UPU policy development process and whether the objectives of Public Law 105-277 are being met.

First, we are concerned about IO's ability to staff this important function adequately. Currently, we are aware of only three IO officials who deal with UPU and other international postal issues – all on a part-time basis. Additionally, we are concerned about the continuity of IO's representation, especially as it relates to the once-every-five-years UPU World Congress. With foreign service officer rotations typically taking place at three-year intervals, when the next World Congress rolls around in 2004, it is almost a certainty that none of the current IO officials will be present. Taking these factors together, in ACCA's view this means that the U.S. Postal Service will continue to be able to wield extraordinary influence over the development of U.S. policy toward the UPU. This, in turn, would permit the USPS to shape those policies to its own advantage in areas where the USPS and private operators compete.

And sometimes, despite our efforts to educate State Department staff about the express industry and its needs, goals, and objectives, there are times when they just don't seem to "get it." For example, ACCA expressed a strong interest in being able to participate directly in what is called the UPU High Level Group, which is taking up matters relating to the future structure and directions of the organization. Initially, the State Department was reluctant to include us or any other private sector representative because of concerns about the reaction of other countries to the size and composition of the U.S. delegation. When our industry continued to press for participation, the State Department offered a less-than-Solomon-like solution: the air express operators and the direct mailers could jointly select a single individual to represent both groups' interests.

What was wrong with that? For one thing, the offer was made less than a week before the High Level Group was to meet in Switzerland. And more perplexing was the State Department's apparent belief that the interests of service providers (air express operators) and service purchasers (direct mailers) could be represented by a single person or be articulated through a common policy position. Under these circumstances, ACCA was effectively barred from participating. To the State Department's credit, however, our message now seems to have gotten across, and we have been informed that both the air express industry and direct mailers will be invited to the next High Level Group meeting in May.

Second, despite IO's good intentions, the process by which U.S. policy toward the UPU is developed remains far from open or -- in ACCA's view -- fair. In fact, on November 18, 1998, ACCA filed a petition requesting that the State Department initiate a formal rulemaking process for determining how it would assess and establish U.S. policy regarding the UPU Congress in Beijing. ACCA was especially concerned that State establish transparent procedures, to ensure that all parties -- particularly private entities that had heretofore been shut out of the UPU policymaking process -- would have a fair opportunity to evaluate the arguments of all interested parties. Notwithstanding several meetings with State Department officials to discuss the petition and several indications from State Department officials that they would soon formally respond to the ACCA petition, ACCA never received a reply from State and U.S. policy for the UPU Congress was developed through opaque procedures.

Now, months after the Beijing UPU Congress, private operators continue to be shut out of the policymaking process in significant ways. Consider, for example, the treatment of an issue – it might be re-mail, or terminal dues, or equal customs treatment – raised by the private operators. Initially, we must articulate the issue and present our case to each agency involved in the inter-agency process; we do not have an opportunity to present our case to and interact with the various agencies at a single meeting unless one of the sporadically scheduled public meetings happens to be held at just the right time. Next, we have to wait patiently while IO reviews the issue and decides whether and how to address it.

There is no set timetable for considering our issue, and indeed no requirement for the State Department or other agencies to address it at all. Finally, our issue might be taken up in an interagency meeting – a meeting the USPS attends wearing its "government agency" hat, but from which we private operators are excluded. The result: the entity with which we must compete – the USPS – is permitted to opine to its "sister agencies" on the merits of the issues we raise, behind closed doors. Our industry does not get the opportunity to hear or to participate in the discussion, yet our competitor does.

Given these concerns and the clear intent of Public Law 105-277, what does ACCA recommend?

First, we want the option to be present, either as members of the U.S. delegation or as observers, at all UPU policy-related meetings. There is simply no substitute for hearing such deliberations first hand. Our competitors – the USPS and foreign postal authorities alike – are there in force, shaping postal and related policies that affect our competitive environment. And as more postal authorities branch out into areas where we and they will compete head to head, our being able to participate directly in the UPU policy making forums will become increasingly important.

Second, we need to improve our manner of participating in the development of U.S. policy toward the UPU. For the air express industry's views to be given "due and reasonable" consideration (to paraphrase the Sense of Congress contained the in Public Law 105-277), we must have better access to the policy formulation process, access equivalent in effect to that of the USPS. There are at least three approaches to attaining this objective. We could be invited to participate on an equal footing with the USPS in interagency meetings whenever issues of interest to us are to be discussed. Or, the State Department could institute formal rulemaking proceedings to obtain our and other interested parties' views. Or, the State Department could constitute a formal UPU Advisory Committee. ACCA is prepared to discuss each of these alternatives with the State Department.

In sum, ACCA believes that the State Department has made a good faith and well-intentioned effort to implement Public Law 105-277. That effort, however, has fallen short of the objectives of the statute, which among other things was to remove any undue or unreasonable preference to the USPS, private operators, or any other interest in the development and implementation of international postal policies.

Taub, Robert

From: WP[redacted]
Sent: Tuesday, April 11, 2000 10:22 AM
To: Sciurba, Loren
Cc: Taub, Robert
Subject: Wolfgang Pordzik / amendment Doerken-testimony

Dear Loren,
I just returned from Germany. The corrected testimony should have been faxed to you last Friday. This is the amendment we discussed over the phone.

Amendment to testimony (page 77/78, line 1722-1727) on March 9, 2000 of Mr. Uwe Doerken, Board of Management, Deutsche Post:
"Upon further research and inquiry I would like to amend my response to the question put to me as follows: As I stated a representative of DHL joined the UPU congress in Peking, however not as an official member of the German delegation. For the record I request this amendment being added to my testimony".

Please let me know if you need any additional clarification/information.
Thank you.

Best,
Wolfgang

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