

# Legislative History of the International Postal Policy Provisions of the Postal Accountability and Enhancement Act

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The Postal Accountability and Enhancement Act of 2006 (PAEA)<sup>1</sup> comprehensively revised the U.S. statutory framework for the negotiation and conclusion of international postal agreements. The primary statutory provision setting out the new policies is section 407 of title 39, United States Code (39 U.S.C. § 407). The final version of § 407 adopted by the PAEA resulted from a long series of drafts and re-drafts developed by the House (primarily) and Senate postal committees during the eleven-year gestation of the PAEA. This note describes the legislative development of the revised § 407 and related statutory provisions.

## **1 International postal issues raised in the initial development of the House postal reform bill, 1995-1998**

On February 22, 1995, early in the first session of the 104th Congress, the House Subcommittee on the Postal Service, began wide-ranging oversight hearings on the Postal Service under the leadership of a new chairman, Congressman John McHugh, a moderate Republican from New York.<sup>2</sup> Although the bulk of the hearings related to domestic postal services, international postal issues were also raised. For example, the Postal Rate Commission (PRC) noted with disapproval that the Postal Service had stopped supplying detailed information on international services beginning with the 1994 rate case, had defied Commission orders to produce data supporting its international costs and revenues, and failed to provide international data needed to complete a study requested by Congress.<sup>3</sup> The Air

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<sup>1</sup> Pub. L. No. 109-435, 120 Stat. 3198 (2006).

<sup>2</sup> *General Oversight of the U.S. Postal Service: Hearings before the Subcommittee on the Postal Service of the House Committee on Government Reform and Oversight*, 104th Cong, 1st Sess. (1997) (seven hearings held February to June 1995). In the election of 1994, Republicans gained a net of 54 seats in the House of Representatives and secured a 230-204 majority over the Democrats.

<sup>3</sup> *Id.* at 75, 85, 98.

Courier Conference of America (ACCA) protested against the fact that the Postal Service represented the United States at the Universal Postal Union (UPU) and the UPU's anti-competitive terminal dues rates.<sup>4</sup> The Postal Service argued against extending Commission rate regulation to international rates or ending the postal monopoly over international services.<sup>5</sup>

On June 25, 1996, Chairman McHugh introduced a first draft plan for postal reform, H.R. 3717, 104th Cong. McHugh proposed to divide postal products into two categories, non-competitive and competitive, and to allow the Postal Service to compete more vigorously in the market for competitive products. At the same time, H.R. 3717 applied federal antitrust and fair trade laws to the Postal Service's competitive products, partially repealing the Postal Service's exemption from these laws. For the first time, H.R. 3717 extended the jurisdiction of the Postal Rate Commission to include regulation of international as well as domestic postage rates. H.R. 3717 did not, however, amend 39 U.S.C. § 407, the statutory provision that authorized the Postal Service to represent the United States in the negotiation and conclusion of international postal agreements and conventions.<sup>6</sup> The Subcommittee did not complete work on H.R. 3717 in the 104th Congress.

In the 105th Congress, which convened in January 1997, Chairman McHugh reintroduced H.R. 3717 without substantive change as H.R. 22. Between June 1996 and April 1997, the House Subcommittee on the Postal Service held further hearings on H.R. 3717/H.R. 22.<sup>7</sup>

In December 1997, Chairman McHugh issued a "white paper" (as it was called informally) that outlined a comprehensive revision of his postal reform bill and requested

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<sup>4</sup> *Id.* at 563-74.

<sup>5</sup> *Id.* at 651.

<sup>6</sup> In 1995, 39 U.S.C. § 407 was unchanged from the provision enacted by the 1970 Postal Reorganization Act. See Appendix 1.

<sup>7</sup> *United States Postal Service Reform: The International Experience: Joint Hearing Before the Subcomm. on Post Office and Civil Service of the Senate Comm. on Governmental Affairs and the House Comm. on Government Reform and Oversight*, 104th Cong., 2d Sess., Ser. No. 104-442 (1996) (hearing held on January 25, 1996); *H.R. 3717, the Postal Reform Act of 1996: Hearings before the Subcommittee on the Postal Service of the House Committee on Government Reform and Oversight*, 104th Cong., 2d Sess. (1997) (four hearings held in July and September 1996); *H.R. 22, The Postal Reform Act of 1997: Hearing Before the Subcommittee on Postal Service of the House Committee on Government Reform and Oversight*, 105th Cong., 1st Sess., Ser. No. 105-40 (1997) (hearing held on April 16, 1997); *General Oversight of the U.S. Postal Service: Hearing before the Subcommittee on the Postal Service of the House Committee on Government Reform and Oversight*, 105th Cong., 1st Sess (1997) (hearing held on April 24, 1997).

comments from interested parties by April 1998.<sup>8</sup> The proposed revisions were described but not set out in legislative language. The white paper included a proposal to transfer authority to negotiate intergovernmental postal agreements from the Postal Service to the U.S. Trade Representative (USTR). The USTR would be barred from concluding an agreement that created a preference for the Postal Service in the provision of competitive products.<sup>9</sup> This was the first indication that McHugh's postal reform bill would include a revision of 39 U.S.C. § 407.

## **2 International postal policy studies, 1995-1998**

Chairman McHugh was sufficiently concerned about the international issues raised in his initial hearings that he asked the General Accounting Office (GAO) to prepare an analysis of issues presented by the international mail market. In March 1996, the GAO reported that there was long history of disagreement between the Postal Service and private carriers in regard to the appropriate public policies in the increasingly competitive international delivery services market. GAO declared:

In 1995, the Postal Service outlined what it views as an "aggressive" strategy to regain market share that includes new service offerings, service improvements, and market-based prices.

Several legal and regulatory issues have surfaced as a result of the growing competition for the international mail market. Postal Service officials believed that, among other things, the statutory requirement to use U.S. flag carriers at rates set by the Department of Transportation limits the Service's ability to effectively compete in the international mail market.

Some Postal Service competitors have said the Service benefits unfairly from (1) its status as a federal entity and (2) its exclusive access to foreign postal administrations as the sole U.S. representative to the UPU. For example, the Air Courier Conference of America (ACCA), a trade association of companies that compete against the Postal Service for business, charged that

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<sup>8</sup> Congressman John M. McHugh, "McHugh Proposes Postal Reform Act Revisions" (press release, Dec. 12, 1997) and accompanying documents: "Overview of Proposed Revisions to the Postal Reform Act of 1997," "Section-By-Section Analysis Postal Reform Act Of 1997: Proposed Revisions," and "Side-By-Side Analysis: Postal Reform Act Of 1997 and Proposed Revisions."

<sup>9</sup> "Section-By-Section Analysis Postal Reform Act Of 1997: Proposed Revisions" at 4 (Dec. 12, 1997).

the Service engages in unfair pricing practices. ACCA has stated that Congress should authorize and require PRC to oversee international postal rates. ACCA has challenged the Postal Service's representation at the UPU Congress because ACCA believes that the Service has represented the United States without necessary consent of the President, and in violation of the due process requirements of the Constitution, and that the Service supported and benefited from certain UPU actions that ACCA considers to be anticompetitive.<sup>10</sup>

The GAO described the evolution of the "contentious legal and regulatory issues regarding international mail delivery."<sup>11</sup>

In June 1998, GAO reported to Chairman McHugh on the customs treatment of Global Package Link, an international postal service that the Postal Service initiated to serve large shipments of goods by U.S. merchants. GAO reported on what differences it could discover in the foreign customs treatment of shipments from the U.S. to Canada, Japan, and the United Kingdom. The GAO investigation was inconclusive, finding different customs treatment in some cases but not others. The report winds up by identifying policy questions that needed to be resolved by Congress:

The carriers have urged Congress to protect fair competition by enacting legislation that would require USPS to compete on the same terms, particularly for customs treatment, as private carriers. This proposal raises several questions, such as (1) whether international parcels delivered by postal services and private carriers should be subject to the same requirements and customs treatment, (2) if so, what requirements would be appropriate to apply to international parcels, and (3) how the requirements should be implemented.<sup>12</sup>

In July 1998, the inconclusive GAO report was supplemented by a more explicit study by the U.S. Customs Service.<sup>13</sup> The Customs report described the specific differences in the U.S. customs treatment of postal and private shipments under fourteen headings. This study was

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<sup>10</sup> GAO, "U.S. Postal Service: Unresolved Issues in the International Mail Market" 3 (Mar. 1996).

<sup>11</sup> *Id.* at 20-26.

<sup>12</sup> GAO, "U.S. Postal Service: Competitive Concerns about Global Package Link," at 8 (June 1998).

<sup>13</sup> U.S. Customs Service, "A Review of U.S. Customs Treatment: International Express Mail & Express Consignment Shipments" (Jul. 13, 1998).

requested by Congressman Jim Kolbe, Chairman of the House Appropriations Subcommittee on Treasury, Postal Service, and General Government.

In October 1998, GAO provided Chairman McHugh with further perspectives on U.S. representation at the UPU, this time contrasting U.S. representation at the UPU with U.S. representation at the International Telecommunication Union (ITU).<sup>14</sup> GAO observed that U.S. delegations to the ITU were led by government officials and included private-sector providers who could participate in ITU meetings. In contrast, U.S. delegations to the UPU were “led by and predominantly made up of USPS officials and staff”<sup>15</sup> with no private-sector stakeholders. In short, U.S. representation at the UPU was neutral with respect to the different, and often conflicting, interests of affected parties while U.S. representation at the UPU reflected the interests of only one U.S. party, the Postal Service.

### **3 Proposed revision of § 407: House subcommittee bill, September 1998**

On August 21, 1998, Chairman McHugh announced a “substitute amendment” for H.R. 22 that took into account responses to his December 1997 proposals as well as the GAO and Customs Service studies.<sup>16</sup> Like original version of H.R. 22, the substitute amendment extended the authority of the Postal Rate Commission — renamed the Postal Regulatory Commission — to include international postage rates. In addition, section 306 of the substitute amendment proposed a comprehensive of revision of § 407. See Appendix 2.

Although subsequently revised in several respects, the McHugh substitute amendment of 1998 foreshadowed almost all of the reforms embodied in the final version of § 407 enacted by the PAEA in 2006.<sup>17</sup> Significant changes from prior law included the following:

- *Declaration of a national policy on international postal and other delivery services.* Paragraph 407(a) established, for the first time, a national policy towards international postal agreements whose major elements were:

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<sup>14</sup> GAO, “U.S. Postal Service: Postal and Telecommunications Sector Representation in International Organizations” (Oct. 1998).

<sup>15</sup> *Id.* at 5.

<sup>16</sup> “Amendment in the Nature of a Substitute to H.R. 22 Offered by Mr. McHugh” (Aug. 21, 1998)(F:\M5\MCHUGH\MCHUGH.25L).

<sup>17</sup> *Id.* at 107-113 (section 306(a) of the bill, amending 39 U.S.C. § 407).

- *A policy for development of the international delivery services sector not only international postal services.* The proposed policy statement consistently referred to “international postal services and other international delivery services” not “postal treaties or conventions” as in existing law.
- *Promotion of efficient communications between peoples, not promotion of postal services per se.* Paragraph 407(a)(1) committed the U.S. “to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes.”
- *Promotion of unrestricted and undistorted competition.* Paragraph 407(a)(2) committed the U.S. “to promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services, except where provision of such services by private companies may be prohibited by law of the United States.”
- *Separation of governmental and operational functions within the U.S. government.* Paragraph 407(a)(3) committed the U.S. “to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services and other international delivery services *by the Government of the United States.*”
- *Separation of governmental and operational functions at the UPU.* Paragraph 407(a)(3) committed the U.S. “to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services and other international delivery services . . . *by intergovernmental organizations of which the United States is a member.*”
- *State Department to represent U.S. at the UPU.* Paragraph 407(b)(1) transferred authority to represent the U.S. at the UPU from the Postal Service to the Secretary of State.
- *Prohibition against undue preference in the provision of competitive products.* Paragraph 407(b)(1) prohibited U.S. participation in an international agreement that would create an “grant an undue or unreasonable preference to the Postal Service, a private provider of international postal or delivery services, or any other person.”
- *Relations between the State Department and other government agencies and interested parties.* The bill drew a clear distinction between the relations of the State Department with other government agencies, on the one hand, and with interested parties, on the other.

- *Coordination with government agencies.* Paragraph (b)(2)(A) required the State Department to “coordinate with other agencies as appropriate, and in particular, shall give full consideration to the authority vested by law or Executive order in the Postal Regulatory Commission, the Department of Commerce, the Department of Transportation, and the Office of the United States Trade Representative in this area.”
- *Appropriate liaison with the Postal Service.* Paragraph 407(b)(2)(D) required the Department to “maintain appropriate liaison with representatives of the Postal Service to keep informed of its interests and problems.”
- *Appropriate liaison with the users and private carriers.* Paragraph 407(b)(2)(E) required the Department to “maintain appropriate liaison with representatives of users and private providers of international postal services and other international delivery services to keep informed of their interests and problems.”
- *Non-discriminatory application of U.S. customs and import/export laws to competitive products.* Paragraph 407(d)(1)(B)(i) required U.S. Customs and other authorities to apply customs laws and all other laws relating to the importation or exportation of *competitive products* “in the same manner to both shipments by the Postal Service and similar shipments by private companies.”
- *Conditional prohibition against Postal Service use of foreign countries’ preferential customs procedures for postal items.* Paragraph 407(d)(1)(A) provided that, effective in five years, for outbound competitive products, the Postal Service could not use preferential UPU customs procedures established by a foreign country unless the foreign country also provided similar customs procedures to private U.S. carriers.
- *Conditional prohibition of foreign posts’ use of U.S. customs procedures for postal items.* Paragraph 407(d)(1)(B)(ii) provided that, effective in five years, for inbound competitive postal products, the Customs Service and other Federal agencies must deny shipments from a foreign post office access to special customs procedures established in accordance with UPU agreements unless that foreign country made available such customs procedures for U.S. shipments by both the Postal Service and private companies.
- *Obligation for the Secretary of State to exert best efforts to achieve non-discriminatory foreign customs treatment of U.S. international competitive shipments.* Paragraph 407(d)(2)(C) required the Secretary of State to “to the maximum extent practicable, take such measures as are within the control of the Secretary” to renegotiate international agreements and persuade foreign to change their customs laws to ensure non-discriminatory of international shipments conveyed by the Postal Service and U.S.

private carriers.

In addition, the McHugh substitute amendment proposed two related changes affecting international postal agreements.

- *Application of antitrust laws to the Postal Service and federal agencies acting on behalf of the Postal Service for conduct with respect to non-monopoly products.* Application of the antitrust laws to conduct by the Postal Service and any “other Federal agency acting on behalf of or in concert with the Postal Service” with respect to “any service which is not reserved to the United States” by the postal monopoly (not only to competitive products as the original H.R. 22).<sup>18</sup>
- *U.S. trade-in-services program extended to postal and delivery services.* The U.S. trade-in-services program was established by the International Trade and Investment Act of 1984<sup>19</sup> and administered by the Department of Commerce and U.S. Trade Representative. Inter alia, it set goals and procedures for negotiation of U.S. international agreements relating to trade in services including “*to reduce or to eliminate barriers to, or other distortions of, international trade in services (particularly United States service sector trade in foreign markets), including barriers that deny national treatment and restrictions on the establishment and operation in such markets.*”<sup>20</sup> The substitute amendment proposed to amend the definition of “services” to explicitly include “postal and delivery services.”<sup>21</sup>

In September 1998, the House Subcommittee on the Postal Service approved H.R. 22 as amended by the McHugh substitute and reported it to the full Committee on Government Reform and Oversight. The Subcommittee made no changes in the international postal policy provisions proposed by McHugh. However, it was too late in the 105th Congress to take further action on the postal reform bill.

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<sup>18</sup> *Id.* at 114 (section 307(a) of the bill, amending 39 U.S.C. § 409(d)). In H.R. 4970, 107th Cong. (introduced H.R., Jun. 20, 2002) § 409(d) was renumbered as § 409(e).

<sup>19</sup> Codified at 19 U.S.C. §§ 2114a to 2114c. Pursuant to the 1984 act, the U.S. entered into the General Agreement on Trade in Services in 1994.

<sup>20</sup> 19 U.S.C. § 2114a(a)(1)(A).

<sup>21</sup> *Id.* at 113. Section 306(b) of the substitute amendment provided, “(b) Trade-in-Services Program.—The second sentence of paragraph (5) of section 306(a) of the Trade and Tariff Act of 1984 (19 U.S.C. 2114b(5)) is amended by inserting ‘postal and delivery services,’ after ‘transportation,’.”

#### 4 Preliminary revision of § 407: Northup amendment, October 1998

Nonetheless, in view of the imminence of the congress of the Universal Postal Union (UPU) to be convened in Beijing in August 1999, the 105th Congress did address international postal issues in its closing days. Action was prompted in part by concerns about international postal services expressed in the Senate. On May 14, 1998, Senator Thad Cochran of Mississippi, chairman of the Senate Subcommittee on International Security, Proliferation, and Federal Services, introduced S. 2082, a bill that would have granted the Postal Rate Commission authority to regulate international postage rates in the same manner as domestic postage rates. A Senate hearing was held in June 1998.<sup>22</sup> Then, in the House, Congresswoman Anne Northup of Kentucky, working with McHugh, proposed an amendment to the Postal Service appropriations bill that would transfer authority to represent the United States at the Beijing Congress of the UPU from the Postal Service to the Department of State.

In October 1998, Ms. Northup was able to add her proposal and a variation of the Cochran proposal to the Postal Service appropriations bill.<sup>23</sup> The “Northup amendment” revised § 407, although not as extensively as proposed by McHugh. See Appendix 3. It also enacted McHugh’s proposal to explicitly include postal and delivery services to the U.S. trade-in-services program. Furthermore, the Northup amendment included a sense-of-Congress resolution which stated that:

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.

While the Northup amendment did not give the Postal Rate Commission authority to regulate international rates as proposed by Senator Cochran, it did require the Commission to prepare an annual report on the costs and revenues of international postal services.

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<sup>22</sup> *S. 2082—The International Postal Services Act of 1998: Hearing Before the Subcomm. on International Security, Proliferation, and Federal Services of the Senate Comm. on Governmental Affairs, 105th Cong., 2d Sess., Ser. No. 105-690 (1998) (hearing held on June 2, 1998).*

<sup>23</sup> Omnibus Consolidated and Emergency Appropriations Act, 1999, Pub. L. 105-277, § 663 (transferring representation at UPU to Department of State) and § 648 (inserting 39 U.S.C. 3663 requiring the Commission to prepare an annual report on international mail), 112 Stat. 2681, 3204 (Oct. 21, 1998).

## 5 § 407 in the McHugh discussion draft, August 1999

In January 1999, at the start of the 106th Congress, Chairman McHugh reintroduced the the subcommittee-approved version of the postal reform bill, again numbered H.R. 22, and convened what he hoped would be a final round of hearings.<sup>24</sup> A revised “discussion draft” was announced by Chairman McHugh on August 12, 1999.<sup>25</sup> The discussion draft of August 1999 made two significant changes to § 407 as approved by the subcommittee in September 1998. See Appendix 4.

- *Add an advisory committee on international postal policy at the State Department.* The discussion draft required the State Department to establish a federal advisory committee on international postal services and other delivery services.<sup>26</sup>
- *Revised obligation for the Secretary of State to exert best efforts to achieve non-discriminatory customs treatment of U.S. international competitive shipments.* The discussion draft revised the wording of this obligation to seek changes in international and foreign law and added the phrase “with the goal of making available to the Postal Service and private companies a range of non discriminatory customs procedures that will fully meet the needs of all types of American shippers.”

## 6 House hearing on international postal policy, March 2000

On March 3, 2000, the House Postal Service Subcommittee convened a full day hearing on international postal policy.<sup>27</sup> This hearing was virtually a “summit” gathering that included testimony from Ambassador Michael Southwick, head of the U.S. delegation of the 1999 Beijing Congress of the UPU; Postmaster General William Henderson; FedEx chairman Frederick W. Smith; UPS chairman James Kelly; representatives of two leading European post offices (the Netherlands and Germany); and officials from the Postal Rate Commission, General Accounting

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<sup>24</sup> *H.R. 22, The Postal Modernization Act of 1999: Hearing Before the Subcommittee on Postal Service of the House Committee on Government Reform*, 106th Cong, 2d Sess. Ser. No. 106-16 (1999) (hearings held on Feb 11 and Mar 4, 1999).

<sup>25</sup> “Amendment in the Nature of a Substitute offered by Mr. McHugh,” § 306 (Discussion Draft, Aug. 12, 1999).

<sup>26</sup> A new paragraph (b)(3) provided, “(3) The Secretary of State shall establish an advisory committee (within the meaning of the Federal Advisory Committee Act) to perform such functions as the Secretary considers appropriate in connection with carrying out subparagraphs (A) through (E) of paragraph (2).”

<sup>27</sup> *International Postal Policy: Hearing Before the Subcomm. on the Postal Service of the House Comm. on Government Reform*, 106th Cong., 2d Sess., Ser. No. 106-133 (2000) (hearing held on March 9, 2000).

Office, U.S. Customs Service, Department of Justice, Office of the U.S. Trade Representative, the International Trade Administration. The hearing addressed almost all aspects of U.S. international postal policy, including the following:

- *Institutional reform of the UPU.* The State Department reported that the 1999 UPU Beijing Congress did not approve far-reaching U.S. proposals for convening an extraordinary congress to address institutional reform. Nonetheless, the State Department concluded, “Clearly there is a serious reform process underway.”<sup>28</sup>
- *Customs treatment for postal and private shipments.* The Customs Service acknowledged “a certain level of disparate treatment exists between [postal and private operators]” but argued that rather than lowering inspection standards for private shipments “the standards for processing the Postal Service shipments should be raised” and noted “Together with the Postal Service, we are working hard to that end.” When Chairman McHugh asked Postmaster General Henderson, “So would you support the theory that identical mail should be cleared in identical ways?,” the Postmaster General replied, “I would, absolutely.”<sup>29</sup>
- *Terminal dues and competitive distortions.* The State Department observed that it 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” and claimed that it “sent a signal about the terminal dues structure that that needed to be changed over the long term.”<sup>30</sup> The Postal Regulatory Commission agreed with the statement that the UPU terminal dues system creates “an inequitable treatment, a favorable treatment of foreign mailers over domestic mailers.”<sup>31</sup> The Department of Justice commended the State Department on winning a UPU commitment to reform terminal dues to cover costs in five years.<sup>32</sup> The Postal Service conceded that UPU terminal dues are set below

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<sup>28</sup> *Id.* at 155.

<sup>29</sup> *Id.* at 145.

<sup>30</sup> *Id.* at 154.

<sup>31</sup> *Id.* at 212.

<sup>32</sup> Donna Patterson, Deputy Assistant Attorney General, Antitrust Division, declared, “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 a too swift 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.” *Id.* at 204.

comparable domestic postage but objected that higher terminal dues would lead to higher price postage rates and lower volumes.<sup>33</sup>

- *Restrictions on remail competition.* The Department of Justice explained its long standing opposition to UPU restrictions on remail competition.<sup>34</sup>
- *Fair and open procedures for developing U.S. policy.* The State Department testified that it was “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 Congress’ portion of the 1998 legislation.”<sup>35</sup> Nonetheless, the State Department and Postal Service opposed an obligation to create a federal advisory committee as too cumbersome, although the Postal Rate Commission supported the idea.

## 7 § 407 in the McHugh-Waxman bill, H.R. 4970, June 2002

The 106th Congress expired without further action on the bill due to political issues unrelated to the postal bill itself (the House Committee on Government Reform was also investigating allegations of misconduct by President Bill Clinton relating to the Whitewater real estate development).

In early 2001, in the first session of the 107th Congress, there was renewed interest in postal reform. In late 2001, Democratic members of the Postal Service Subcommittee, led by ranking member Congressman Henry Waxman of Los Angeles, began to work actively with Chairman McHugh to develop a bipartisan postal reform bill. The result was a collaborative bill,

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<sup>33</sup> *Id.* at 140 (“If delivery charges for letters and printed matter were aligned with domestic postage rates, the cost of delivery for outbound mail would be substantially increased [and] inbound revenues would increase above breakeven”).

<sup>34</sup> *Id.* at 205 (“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 [sic] artificial device to protect postal administrations at the expense of consumers and innovative approaches to efficient and economical message transfers”). The Postal Service explained the relationship between terminal dues and remail as follows, “The member countries of the [UPU] have been debating whether, how, and to what extent terminal dues could be aligned with domestic postage for decades. . . . Many of the higher cost industrialized countries have favored moving toward alignment. . . . 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 elimination of UPU prohibitions against remail.” *Id.* at 140.

<sup>35</sup> *Id.* at 160.

H.R. 4970, 107th Cong., introduced on June 20, 2002.<sup>36</sup> Among other things, H.R. 4970, introduced the concept that the Postal Rate Commission, renamed the Postal Regulatory Commission, should be empowered to adopt a modern system of rate regulation for market dominant products.

H.R. 4970 made three significant changes to the revision of 39 U.S.C. § 407 as proposed in the discussion draft of August 1999. See Appendix 5.

- *Provide for review by the Postal Regulatory Commission of market dominant rates proposed to be established by international agreement and a qualified obligation for the Secretary of State to implement the Commission's decision.* In new subsection § 407(c), H.R. 4970 provided that the Postal Regulatory Commission should review proposed terminal dues or other rates for market dominant products to be set by international agreement to determine which such proposed rates were consistent with the legal standards and criteria applied to market dominant rates set by the Postal Service. The Department of State was obliged to ensure that each international agreement is "consistent with a decision of the Commission adopted under paragraph (1), except if, or to the extent, the Secretary determines, by written order, that considerations of foreign policy or national security require modification of the Commission's decision."
- *Consolidate the duty of the State Department towards interested parties.* The bill maintained the distinction between the relations of the State Department with other government agencies (coordination), on the one hand, and with interested parties (appropriate liaison), on the other. However, H.R. 4970 consolidated Department's duty to maintain "appropriate liaison" with the Postal Service and its similar duty towards users, and private carriers into a single obligation set out in a paragraph (b)(2)(D).
- *Eliminate proposed prohibitions, effective in five years, against use of UPU customs procedures for Postal Service outbound competitive shipments to foreign countries and foreign post offices' inbound competitive postal shipments to the U.S.* Rather than directly affecting foreign customs administrations and foreign post offices, paragraph 407(e)(3) was revised to rely solely on a requirement for the Secretary of State to exert best efforts to achieve non-discriminatory treatment of U.S. competitive shipments.

The political disharmony of prior years had not entirely dissipated, however, and in June

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<sup>36</sup> H.R. 4970, 107th Cong., 2d Sess., § 305 (introduced in House, Jun. 20, 2002). Congressman Waxman did not co-sponsor H.R. 4970, but the bill was the product of extensive and ongoing collaboration between the staffs of McHugh and Waxman that began at the end of 2001.

2002, the full committee rejected H.R. 4970 by a vote of 20 to 6 even though a majority of members likely favored the bill on the merits.

## **8 H.R. 4341, S. 2468, and the Postal Service's position on § 407, 2004**

In the 108th Congress, which convened in January 2003, the House and Senate committees with jurisdiction over postal reform began to prepare legislation in earnest. New momentum was generated by the report of a presidential commission on July 31, 2003, which called for fundamental, even radical, reforms of the postal laws.<sup>37</sup> More importantly, Congress became alarmed by a series of increasingly dire GAO reports predicting the financial collapse of the Postal Service due to an outdated “business model” and underfunded pension and health liabilities.<sup>38</sup> Additional hearings were held although none focused in international policy issues.<sup>39</sup>

On April 19, 2004, the Postal Service presented the House committee with a package of 29 amendments to the postal reform bill, the last version of which was then H.R. 4970 from the 107th Congress.<sup>40</sup> The longest proposed amendment was a complete substitute for the proposed revision of 39 U.S.C. § 407. The Postal Service urged fundamental changes in the scope and purpose of the section. See Appendix 6.

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<sup>37</sup> President's Commission on the United States Postal Service, *Embracing the Future: Making the Tough Choices to Preserve Universal Mail Service* (2003)

<sup>38</sup> See, e.g., General Accounting Office, “U.S. Postal Service: Financial Outlook and Transformation Challenges” (May 15, 2001); “United States Postal Service: Information on Retirement Plans” (Dec. 2001); “Major Management Challenges and Program Risks: U.S. Postal Service” (Jan. 2001); “U.S. Postal Service: “Deteriorating Financial Outlook Increases Need for Transformation (Feb. 2002)””; “Major Management Challenges and Program Risks: U.S. Postal Service” (Jan. 2003); “U.S. Postal Service: Key Postal Transformation Issues” (May 29, 2003); “U.S. Postal Service: Bold Action Needed to Continue Progress on Postal Transformation” (Nov. 5, 2003); “Postal Pension Funding Reform: Issues Related to the Postal Service’s Proposed Use of Pension Savings” (Nov. 2003); “U.S. Postal Service: Key Elements of Comprehensive Postal Reform” (Jan. 28, 2004).

<sup>39</sup> *Answering the Administration's Call for Postal Reform—Parts I, II, and III: Hearings Before the House Special Panel on Postal Reform and Oversight of the Comm. on Government Reform*, 108th Cong., 2d Sess. (2004) (hearings held January 28, 2004 and February 5 and 11, 2004); *Postal Reform: Sustaining the Nine Million Jobs in the \$900 Billion Mailing Industry: Hearings Before the Senate Comm. on Governmental Affairs*, 108th Cong., 2d Sess. (2004) (hearings on May 9 and 11, 2004); *The Postal Service in Crisis: a Joint Senate-House Hearing on Principles for Meaningful Reform*, 108th Cong., 2d Sess. (2004) (hearing on Mar. 23, 2004).

<sup>40</sup> Postal Service, “Proposed Amendments to the Postal Accountability and Enhancement Act, H.R. 4970, 107th Cong.” (Apr. 16, 2004).

- *Promotion of international postal services instead of efficient communication between peoples.* In subsection (a) and throughout the section, the Postal Service proposed to change references to “international postal services and other international delivery services” to “international postal services.” In paragraph (a)(1) the policy of the U.S. would be changed from “to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes” to “to promote and encourage affordable, efficient, and universally available international postal services for cultural, social, and economic purposes.”
- *Promotion of “fair competition” instead of “unrestricted and undistorted competition.”* In paragraph (a)(2), the Postal Service proposed that U.S. policy should support of “fair competition among similarly situated operators” instead of “unrestricted and undistorted competition” among all postal and other delivery services (for shipments outside the scope of the U.S. postal monopoly).
- *Transfer of the Postal Service from the status of interested party to the status of governmental agency.* In subsection (b), the Postal Service proposed to move the Postal Service from the list of interested parties with whom the State Department must maintain “appropriate liaison” into the list of government agencies with whom the State Department was obligated to “coordinate” U.S. policy.
- *Eliminate State Department obligation to create an advisory committee.* In subsection (b)(3), the Postal Service proposed to change the obligation to establish an advisory committee to an option (“shall” changed to “may”).
- *Limit the PRC review of proposed UPU rates for market dominant products and the qualified obligation of State Department to implement PRC’s conclusions.* In subsection 407(c), the Postal Service proposed to limit the Postal Regulatory Commission’s review of rates and classifications established by UPU agreement to products offered to the public (eliminating review of terminal dues rates). Rather than ensuring that a proposed agreement on rates and classifications must be consistent with a “decision” of the Commission, the Postal Service proposed to revise the duty of the State Department to “taking into account the advice” of the Commission. In addition, the State Department could disregard the “advice” of the Commission based on considerations of “affordability, the effect on users, universal service, freedom of transit” as well as foreign policy and national security.
- *Grant the Postal Service authority to negotiate and conclude international agreements.* In a new subsection 407(d), the Postal Service proposed that it should have the authority to negotiate and conclude international agreements provided such

agreements were not inconsistent with State Department policy.

- *Limit the obligation to apply customs and other import/export laws in the same manner to similar postal and private shipments.* In subsection 407(e), renumbered as 407(f), the Postal Service proposed to limit the requirement to apply customs and other import/export laws in the same manner to shipments “carried” (rather than imported or exported) by the Postal Service. The requirement for similar legal treatment would apply only to private shipments which the Postal Service and Customs Service jointly determined were “substantially similar in nature in terms of content, user sophistication, processing, product guarantees, and value added features.”

The House committee did not accept any of the Postal Service’s proposed revisions to 39 U.S.C. § 407. On May 12, 2004, McHugh, Waxman, and twenty-six co-sponsors introduced H.R. 4341, 108th Cong., a bill similar to H.R. 4970, 107th Cong., except for the addition new provisions relating to postal pension funds. The proposed revision of § 407 was unchanged.

In the Senate, on May 20, 2004, Senators Susan Collins of Maine and Thomas Carper of Delaware, chairman and ranking minority member of the Committee of Government Affairs, introduced their own postal reform bill, S. 2468. Like the H.R. 4341, S. 2468 extended the jurisdiction of the Postal Regulatory Commission to cover international postage rates and applied U.S. antitrust laws to all non-monopoly postal products and to conduct by both the Postal Service and other federal agencies acting on behalf of the Postal Service. However, S. 2468 did not propose a revision of 39 U.S.C. § 407.

On August 25, 2004, the Senate committee reported S. 2468. As reported, S. 2468 included a revision to 49 U.S.C. § 407 similar to that set out in H.R. 4341 but with two significant changes. See Appendices 7 and 8.

- *Negotiating authority of the Secretary of State limited to “postal” agreements.* In subsection (b), the negotiating authority of the Secretary of State was limited to “postal” agreements, not agreements “related to international postal services and other international delivery services.”
- *Elimination of obligation of Secretary of State to implement PRC decision on international rates to be set by international agreement.* In subsection (c), the Postal Regulatory Commission’s assessment of whether rates and classifications to be set by international agreement were consistent with U.S. postal law was characterized as “views” rather than a “decision.” The qualified obligation of the Secretary of State to implement the “views” of the Commission was eliminated.

In its report, the Senate committee explained revisions in U.S. international postal policy in the following terms:

The legal advantages the Postal Service enjoys over its private sector competitors are also erased in this legislation. . . .

[The Postal Service] is put on the same legal ground as its private sector competitors in seven key ways. . . . Fifth, U.S. customs law and any other laws related to the import and export of postal services are applied to the Postal Service's international postal products classified as competitive in the same manner that they apply to items shipped by the Postal Service's private sector competitors. . . .

This legislation also makes it clear that the Department of State, not the Postal Service, is the federal agency that will take the lead in formulating U.S. foreign policy related to international postal services. The Secretary of State is given the authority to lead U.S. delegations in intergovernmental meetings devoted to postal matters and is barred from concluding agreements that, with respect to any competitive product, give preference to any entity, including the Postal Service. In carrying out his responsibilities during international postal negotiations, the Secretary is required to maintain appropriate liaison with other federal agencies, with the Postal Service, and with affected members of the public. He or she is also required to establish an advisory committee under the Federal Advisory Committee Act to help perform the necessary coordination and liaison with entities in the public and private sectors as U.S. foreign policy related to international postal services is developed. Before concluding an international agreement establishing a rate or classification for a postal product subject to regulation by the Postal Regulatory Commission, the Secretary will request the Commission to submit views on whether the terms of the agreement are consistent with the rate and classification system they will establish.

This language does nothing to prevent the Postal Service from entering into commercial or operational contracts related to providing international postal services. Any such agreement involving an agency of a foreign government, however, must be solely contractual in nature and must apply only to the Postal Service and those agencies party to the contract. No contracts entered into by the Postal Service will be treated as binding

international law.<sup>41</sup>

On September 23, 2004, the House committee reported H.R. 4341. The reported bill made no change in the proposed revision of 39 U.S.C. § 407. See Appendix 9. The committee's report explained the proposed changes to § 407 as follows:

Section 305 of the bill replaces section 407 of title 39. Section 407 deals with international postal arrangements. New subsection 407(a) establishes a policy framework for future international postal agreements that stresses separation of regulatory and operational functions.

Subsection 407(b) vests the Secretary of State with authority to lead U.S. delegations in intergovernmental meetings devoted to postal matters. The Secretary is barred from concluding agreements with respect to any competitive product that give preference to any entity, either public or private, including the Postal Service. The subsection provides the Secretary in carrying out his responsibilities under this section shall maintain continuing liaison with other federal agencies and the Congress, and appropriate liaison with the Postal Service and affected members of the public. The subsection further declares that the Secretary of State shall establish an advisory committee, under the Federal Advisory Committee Act, to help perform such functions as the Secretary considers appropriate in connection with the necessary coordination and liaison with entities in the public and private sectors as the Secretary develops U.S. foreign policy related to international postal services and other international delivery services.

Subsection 407(c) provides that, before concluding an international agreement that establishes a rate or classification for a market-dominant product, the Secretary shall request a decision from the Postal Regulatory Commission to determine whether the proposed rate or classification is consistent with the Commission standards and criteria for market dominant products. The Secretary must ensure that international agreements are consistent with the Commission's decision except to the extent that modification may be required by considerations of foreign policy or national security.

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<sup>41</sup> *Postal Accountability and Enhancement Act*, S. Rept. No. 108-318, at 28, 30 (Aug. 25, 2004).

Subsection 407(d) authorizes the Postal Service to enter into agreements or contracts as it deems appropriate for international postal services or other international delivery services without the consent of the Secretary as long as any agreements with agencies or subsidiaries of foreign governments are contractual in nature and do not purport to be international law. The Postal Service must notify the Secretary and the Commission of agreements with agencies of foreign governments.

In light of studies conducted by the General Accounting Office and the former U.S. Customs Service, subsection 407(e) requires the Bureau of Customs and Border Protection of the Department of Homeland Security to afford non-discriminatory access to U.S. customs procedures for both the Postal Service's Competitive products and similar products of U.S.-owned private carriers. Since some foreign governments currently limit access to simplified customs procedures to government post offices—thus discriminating between the Postal Service and U.S. private carriers—the subsection requires the Secretary of State “to the maximum extent practicable” to negotiate with other countries to make available customs procedures that do not discriminate between the Postal Service and U.S. private carriers while fully meeting the needs of all types of American shippers.<sup>42</sup>

By the end of September 2004 both chambers of Congress had committee-approved versions of a postal reform bill, but in October the 108th Congress adjourned for the November election without addressing the postal reform bills.

## **9 Revision of U.S. international postal policy by the PAEA, December 2006**

On January 4, 2005, the first day of the 109th Congress, Mr. McHugh, Mr. Waxman, and cosponsors reintroduced the House postal reform bill from the 108th Congress as H.R. 22.

On February 11, 2005, the Postal Service proposed to the House committee a more limited set of changes in the proposed revision of 39 U.S.C. § 407. See Appendix 10. The Postal Service proposed:

- *Promotion of “fair competition” instead of “unrestricted and undistorted competition.”*

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<sup>42</sup> *Postal Accountability and Enhancement Act*, H.R. Rpt. No. 108-672, pt. 1, at 14-15 (Sep. 8, 2004).

Same as the April 2004 proposal.

- *Prohibit any foreign post office or private carrier from using UPU documentation to compete with the Postal Service in the outbound U.S. mail market.* In subsection (b), the Postal Service proposed to add a new paragraph to this effect and authorize enforcement in court.
- *Transfer of the Postal Service from the status of interested party to the status of governmental agency.* Same as the April 2004 proposal.
- *Authorize the State Department to delegate authority to the Postal Service to negotiate and conclude international postal treaties or conventions.* Similar to the April 2004 proposal except that the State Department would be authorized to delegate such representational authority to the Postal Service whereas the April 2004 proposal would confer representational authority on the Postal Service subject to compliance with State Department policies.

On March 17, 2005, Senator Collins, Senator Carper, and cosponsors introduced the postal reform bill from the previous congress as S. 662, 109th Cong.

In mid-April 2005, the State Department submitted to the Congressional committees another set of requested changes to proposed revision of 39 U.S.C. § 407. See Appendix 11. These State Department proposals were a more carefully drafted version of the February 2005 Postal Service proposals.<sup>43</sup>

- *Promotion of “fair competition” instead of “unrestricted and undistorted competition.”* Same as the February 2005 Postal Service proposal.
- *Weaken the the policy of promoting separation of governmental and operational functions.* The State Department proposed to retain the policy of promoting separation of governmental and operational functions but to eliminate specific commitments to promote separation of functions by the Government of the United States and by intergovernmental organizations of which the United States is a member.
- *Prohibit any foreign post office or private carrier from using UPU documentation to compete with the Postal Service in the outbound U.S. mail market.* Similar to the February 2005 Postal Service proposal.
- *Transfer of the Postal Service from the status of interested party to the status of*

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<sup>43</sup> Although advocated by the State Department, metadata in the Word file indicated that the document was drafted a lawyer at the Postal Service.

*governmental agency*. Same as the February 2005 Postal Service proposal.

- *Authorize the State Department to delegate authority to the Postal Service to negotiate and conclude international postal treaties or conventions*. Same as the February 2005 Postal Service proposal.

Neither the House nor the Senate committee accepted any of the changes in § 407 advocated by the Postal Service and the State Department. On May 27, 2005, the House Committee on Government Reform reported H.R. 22 as amended to the full House. On July 14, 2005, the Senate Committee on Homeland Security and Governmental Affairs reported S. 662 as amended to the full Senate.<sup>44</sup>

On July 26, 2005, the House of Representatives approved H.R. 22 as reported by a vote of 410-20. On February 9, 2006, the Senate approved S. 662, with a handful of amendments, by an unrecorded vote. The Senate then adopted S. 662 as a substitute amendment to H.R. 22 and requested a conference with the House on the differing versions of H.R. 22. The House did not appoint conferees, however. Instead, key members of Congress and the Bush Administration worked out a compromise version informally.

On December 7, 2006, in a “lame duck” session of Congress, a final compromise on the postal reform bill was agreed. The compromise was introduced in the House as a new bill, H.R. 6407 and quickly passed by both chambers.

With respect to the revision of 39 U.S.C. § 407, H.R. 6407 adopted virtually all of the language of the House bill. See Appendix 12. The only significant change in the House version of § 407 was a revision of subsection (c). The House accepted the Senate’s use of the word “views” rather than “decision” to characterize the Postal Regulatory Commission’s assessment of whether market dominant rates and classifications to be established by international agreement were consistent with the standards and criteria of U.S. postal law. Nonetheless, the subsection (c) retained the requirement — in the House bill but not the Senate bill — that the Secretary of State must implement the Commission’s assessment, i.e., “*ensure consistency with the Commission’s views . . . except if, or to the extent, the Secretary determines, in writing, that it is not in the foreign policy or national security interest of the United States to ensure consistency with the Commission’s views.*” The final bill also added a new sentence to at the end

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<sup>44</sup> The House committee adopted a report whose discussion of § 407 was the same as in the report in the 108th Congress. *Postal Accountability and Enhancement Act*, H.R. Rept. No. 109-66 at 55-56 (Apr. 28, 2005). The Senate committee did not adopt a new report.

of paragraph 407(c)(2) to emphasize the need for transparent decision-making by the Secretary of State: *“Such written determination shall be provided to the Commission together with a full explanation of the reasons thereof, provided that the Secretary may designate which portions of the determination or explanation shall be kept confidential for reasons of foreign policy or national security.”*

H.R. 6407 also included the requirement, found in identical terms in both the House and the Senate bills, that the activities of the Postal Service and any “other Federal agency acting on behalf of or in concert with the Postal Service” must comply with U.S. antitrust and fair trade laws insofar as such activities related to postal products outside the scope of the postal monopoly.

On December 20, 2006, President George W. Bush signed the Postal Accountability and Enhancement Act into law. See Appendix 13. The Administration issued a “signing statement” that declared, rather opaquely, that with respect § 407:

The executive branch shall construe section 407 of title 39, as enacted by section 405 of the Act, in a manner consistent with the President's constitutional authority to conduct the Nation's foreign affairs, including the authority to determine which officers shall negotiate for the United States and toward what objectives, to make treaties by and with the advice and consent of the Senate, and to supervise the unitary executive branch.<sup>45</sup>

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<sup>45</sup> “President's Statement on H.R. 6407, the ‘Postal Accountability and Enhancement Act’” (Dec. 20, 2006).

Appendix 1: 39 U.S.C. § 407 (1994 & Supp. V 1997). Enacted by the Postal Reorganization Act, Pub. L. 91-375, 94 Stat. 724 (1970)

**§ 407. International postal arrangements**

(a) The Postal Service, with the consent of the President, may negotiate and conclude postal treaties or conventions, and may establish the rates of postage or other charges on mail matter conveyed between the United States and other countries. The decisions of the Postal Service construing or interpreting the provisions of any treaty or convention which has been or may be negotiated and concluded shall, if approved by the President, be conclusive upon all officers of the Government of the United States.

(b) The Postal Service shall transmit a copy of each postal convention concluded with other governments to the Secretary of State, who shall furnish a copy of the same to the Public Printer for publication.

Appendix 2: 39 U.S.C. § 407: H.R. 22, 105th Cong, sec. 306  
(approved H.R. Subcomm. on the Postal Service, Sep.  
24, 1998)<sup>1</sup>

**§ 407. International postal arrangements**

(a) It is the policy of the United States—

(1) to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes;

(2) to promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services, except where provision of such services by private companies may be prohibited by law of the United States;

(3) to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services and other international delivery services by the Government of the United States and by intergovernmental organizations of which the United States is a member; and

(4) to participate in multilateral and bilateral agreements with other countries to accomplish these objectives.

(b)(1) The Secretary of State shall be responsible for formulation, coordination, and oversight of foreign policy related to international postal services and other international delivery services, except that the Secretary may not negotiate or conclude any treaty, convention, or other international agreement (including those regulating international postal services) if such treaty, convention, or agreement would, with respect to any competitive product (as that term is defined in chapter 37), grant an undue or unreasonable preference to the Postal Service, a private provider of international postal or delivery services, or any other person.

(2) In carrying out the responsibilities specified in paragraph (1), the Secretary of State shall—

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<sup>1</sup> Same as proposed in “Amendment in the Nature of a Substitute to H.R. 22 Offered by Mr. McHugh,” sec. 306 (Aug. 21, 1998)(F:\M5\MCHUGH\MCHUGH.25L).

(A) exercise primary authority for the conduct of foreign policy with respect to international postal services and international delivery services, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies; in exercising this responsibility, the Secretary shall coordinate with other agencies as appropriate, and in particular, shall give full consideration to the authority vested by law or Executive order in the Postal Regulatory Commission, the Department of Commerce, the Department of Transportation, and the Office of the United States Trade Representative in this area;

(B) maintain continuing liaison with other executive branch agencies concerned with postal and delivery services;

(C) maintain continuing liaison with the Committee on Government Reform and Oversight of the House of Representatives and the Committee on Governmental Affairs of the Senate;

(D) maintain appropriate liaison with representatives of the Postal Service to keep informed of its interests and problems, and to provide such assistance as may be needed to ensure that matters of concern to the Postal Service are promptly considered by the Department of State or (if applicable, and to the extent practicable) other executive branch agencies;

(E) maintain appropriate liaison with representatives of users and private providers of international postal services and other international delivery services to keep informed of their interests and problems, and to provide such assistance as may be needed to ensure that matters of concern are promptly considered by the Department of State or (if applicable, and to the extent practicable) other executive branch agencies; and

(F) assist in arranging meetings of such public sector advisory groups as may be established to advise the Department of State and other executive branch agencies in connection with international postal services and international delivery services.

(c) Nothing in this section shall be considered to prevent the Postal Service from entering into such commercial or operational contracts related to providing international postal services and other international delivery services as it deems appropriate, except that—

(1) any such contract made with an agency of a foreign government (whether under authority of this subsection or otherwise) must be solely contractual in nature and may not purport to be international law; and

(2) a copy of each such contract between the Postal Service and an agency of a foreign government shall be transmitted to the Secretary of State and the Postal Regulatory Commission not later than the effective date of such contract.

(d)(1) With respect to shipments of international mail within the meaning of section 3741 [competitive products] that are exported or imported by the Postal Service—

(A) the Postal Service shall not tender exported shipments to governmental authorities of any other country for clearance and importation except in accordance with procedures and laws which are equally applicable to similar shipments transmitted by private companies; and

(B)(i) subject to clause (ii), the Customs Service and other appropriate Federal agencies shall apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies; and

(ii) the Customs Service and other Federal agencies shall deny shipments imported by the Postal Service from a foreign country access to special customs procedures established in accordance with international postal or customs agreements for shipments by postal authorities of other countries unless that foreign country makes available such special customs procedures both to shipments to such country from the United States by the Postal Service and similar shipments to such country from the United States by private companies.

(2)(A) The provisions of paragraph (1)(B)(i) shall take effect beginning on the date of enactment of this subsection.

(B) The provisions of subparagraphs (A) and (B)(ii) of paragraph (1) shall take effect beginning 5 years after the date of enactment of this subsection.

(C) The Secretary of State shall, to the maximum extent practicable, take such measures as are within the control of the Secretary—

(i) to complete the renegotiation of any treaties, conventions, or other international agreements (including those regulating international postal services), and

(ii) to encourage the governments of other countries to make any changes in their laws (consistent with the policies carried out by the provisions referred to in subparagraph (B)), which may be necessary in order to facilitate the timely implementation of the provisions that are subject to subparagraph (B). The Secretary of State shall consult with the United States Trade Representative and the Commissioner of Customs in carrying out this subparagraph.

(3) For purposes of this subsection, the term 'private company' means a private company substantially owned or controlled by persons who are citizens of the United States.

Appendix 3: 39 U.S.C. § 407 (1994 & Supp. VI 1998): Enacted by Pub. L. 105-277, § 663, 112 Stat. 2681, 3204 (Oct. 21, 1998) (Northup amendment)<sup>2</sup>

**§ 407. International Postal Arrangements**

(a)(1) The Secretary of State shall have primary responsibility for formulation, coordination and oversight of policy with respect to United States participation in the Universal Postal Union, including the Universal Postal Convention and other Acts of the Universal Postal Union, amendments thereto, and all postal treaties and conventions concluded within the framework of the Convention and such Acts.

(2) Subject to subsection (d), the Secretary may, with the consent of the President, negotiate and conclude treaties, conventions and amendments referred to in paragraph (1).

(b)(1) Subject to subsections (a), (c), and (d), the Postal Service may, with the consent of the President, negotiate and conclude postal treaties and conventions.

(2) The Postal Service may, with the consent of the President, establish rates of postage or other charges on mail matter conveyed between the United States and other countries.

(3) The Postal Service shall transmit a copy of each postal treaty or convention concluded with other governments under the authority of this subsection to the Secretary of State, who shall furnish a copy to the Public Printer for publication.

(c) The Postal Service shall not conclude any treaty or convention under the authority of this section or any other arrangement related to the delivery of international postal services that is inconsistent with any policy developed pursuant to subsection (a).

(d) In carrying out their responsibilities under this section, the Secretary and the Postal Service shall consult with such federal agencies as the Secretary or the Postal Service considers appropriate, private providers of international postal services, users of international postal services, the general public, and such other.

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<sup>2</sup> Omnibus Consolidated and Emergency Appropriations Act, 1999, Pub. L. 105-277, § 663, 112 Stat. 2681, 3204, (1998).

Appendix 4: 39 U.S.C. § 407: H.R. 22, 106th Cong., sec. 305 (McHugh discussion draft, Aug. 12, 1999), changes from H.R. 22, 105th Cong. (approved H.R. Subcomm. on the Postal Service, Sep. 24, 1998)

**§ 407. International postal arrangements**

(a) It is the policy of the United States—

(1) to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes;

(2) to promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services, except where provision of such services by private companies may be prohibited by law of the United States;

(3) to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services and other international delivery services by the Government of the United States and by intergovernmental organizations of which the United States is a member; and

(4) to participate in multilateral and bilateral agreements with other countries to accomplish these objectives.

(b)(1) The Secretary of State shall be responsible for formulation, coordination, and oversight of foreign policy related to international postal services and other international delivery services, and shall have the power to conclude treaties, conventions and amendments related to international postal services and other international delivery services, except that the Secretary may not ~~negotiate or~~ conclude any treaty, convention, or other international agreement (including those regulating international postal services) if such treaty, convention, or agreement would, with respect to any competitive product (as that term is defined in chapter 37), grant an undue or unreasonable preference to the Postal Service, a private provider of international postal or delivery services, or any other person.

(2) In carrying out the responsibilities specified in paragraph (1), the Secretary of State shall—

~~\_\_\_\_\_ (A)~~ exercise primary authority for the conduct of foreign policy with respect to international postal services and international delivery services, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies; ~~in. In~~ exercising this ~~responsibility authority~~, the Secretary ~~\_\_\_\_\_~~

\_\_\_\_\_ (A) shall coordinate with other agencies as appropriate, and in particular, shall give full consideration to the authority vested by law or Executive order in the Postal Regulatory Commission, the Department of Commerce, the Department of Transportation, and the Office of the United States Trade Representative in this area;

(B) shall maintain continuing liaison with other executive branch agencies concerned with postal and delivery services;

(C) shall maintain continuing liaison with the Committee on Government Reform ~~and Oversight~~ of the House of Representatives and the Committee on Governmental Affairs of the Senate;

(D) shall maintain appropriate liaison with representatives of the Postal Service to keep informed of its interests and problems, and to provide such assistance as may be needed to ensure that matters of concern to the Postal Service are promptly considered by the Department of State or (if applicable, and to the extent practicable) other executive branch agencies;

(E) shall maintain appropriate liaison with representatives of users and private providers of international postal services and other international delivery services to keep informed of their interests and problems, and to provide such assistance as may be needed to ensure that matters of concern are promptly considered by the Department of State or (if applicable, and to the extent practicable) other executive branch agencies; and

(F) shall assist in arranging meetings of such public sector advisory groups as may be established to advise the Department of State and other executive branch agencies in connection with international postal services and international delivery services.

(3) The Secretary of State shall establish an advisory committee (within the meaning of the Federal Advisory Committee Act) to perform such functions as the Secretary considers appropriate in connection with carrying out subparagraphs (A) through (E) of paragraph (2).

(c) Nothing in this section shall be considered to prevent the Postal Service from entering into such commercial or operational contracts related to providing international postal services and other international delivery services as it deems appropriate, except that—

(1) any such contract made with an agency of a foreign government (whether under authority of this subsection or otherwise) ~~must~~shall be solely contractual in nature and may not purport to be international law; and

(2) a copy of each such contract between the Postal Service and an agency of a foreign government shall be transmitted to the Secretary of State and the Postal Regulatory Commission not later than the effective date of such contract.

(d)(1) With respect to shipments of international mail within the meaning of section 3741 ~~[competitive products]~~ that are exported or imported by the Postal Service—

(A) the Postal Service shall not tender exported shipments to governmental authorities of any other country for clearance and importation except in accordance with procedures and laws which are equally applicable to similar shipments transmitted by private companies; and

(B)(~~i~~) subject to clause (ii), the Customs Service and other appropriate Federal agencies shall apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies; and

(ii) the Customs Service and other appropriate Federal agencies shall deny shipments imported by the Postal Service from a foreign country access to special customs procedures established in accordance with international postal or customs agreements for shipments by postal authorities of other countries, unless that foreign country makes available such special customs procedures both to shipments to such country from the United States by the Postal Service and similar shipments to such country from the United States by private companies.

(2)(A) The provisions of paragraph (1)(B)(~~i~~) shall take effect ~~beginning on~~ 6 months after the date of enactment of this subsection or such earlier date as the Customs Service may determine in writing.

(B) The provisions of subparagraphs (A) and (B)(ii) of paragraph (1) shall take effect ~~beginning~~ 5 years after the date of enactment of this subsection.

~~—(C) The (C) In exercising the authority pursuant to subsection (b) to conclude new treaties, conventions and amendments related to international postal services and to~~

renegotiate such treaties, conventions and amendments, the Secretary of State shall, to the maximum extent practicable, take such measures as are within the Secretary's control ~~of the Secretary—~~

~~——(i) to complete the renegotiation of any treaties, conventions, or other international agreements (including those regulating international postal services), and~~

~~——(ii) to encourage the governments of other countries to make any changes in their laws (consistent with the policies carried out by the provisions referred to in subparagraph sub paragraph (B)), and take such other actions, which may be necessary in order to facilitatesatisfy the timely implementationconditions specified in subparagraphs (A) and (B)(ii) of paragraph (1) in a manner consistent with the provisionsgoal of making available to the Postal Service and private companies a range of non discriminatory customs procedures that ~~are subject to subparagraph (B)~~ will fully meet the needs of all types of American shippers. The Secretary of State shall consult with the United States Trade Representative and the Commissioner of Customs in carrying out this subparagraph.~~

(3) For purposes of this subsection, the term 'private company' means a private company substantially owned or controlled by persons who are citizens of the United States.

Appendix 5: 39 U.S.C. § 407: H.R. 4970, 107th Cong., sec. 305 (introduced H.R., Jun. 20, 2002), changes from H.R. 22, 106th Cong., sec. 305 (McHugh discussion draft, Aug. 12, 1999)

**§ 407. International postal arrangements**

(a) It is the policy of the United States—

(1) to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes;

(2) to promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services, except where provision of such services by private companies may be prohibited by law of the United States;

(3) to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services and other international delivery services by the Government of the United States and by intergovernmental organizations of which the United States is a member; and

(4) to participate in multilateral and bilateral agreements with other countries to accomplish these objectives.

(b)(1) The Secretary of State shall be responsible for formulation, coordination, and oversight of foreign policy related to international postal services and other international delivery services, and shall have the power to conclude treaties, conventions and amendments related to international postal services and other international delivery services, except that the Secretary may not conclude any treaty, convention, or other international agreement (including those regulating international postal services) if such treaty, convention, or agreement would, with respect to any competitive product ~~(as that term is defined in chapter 37)~~, grant an undue or unreasonable preference to the Postal Service, a private provider of international postal or delivery services, or any other person.

(2) In carrying out the responsibilities specified in paragraph (1), the Secretary of State shall exercise primary authority for the conduct of foreign policy with respect to international postal services and international delivery services, including the determination of United States

positions and the conduct of United States participation in negotiations with foreign governments and international bodies. In exercising this authority, the Secretary—

(A) shall coordinate with other agencies as appropriate, and in particular, shall give full consideration to the authority vested by law or Executive order in the Postal Regulatory Commission, the Department of Commerce, the Department of Transportation, and the Office of the United States Trade Representative in this area;

(B) shall maintain continuing liaison with other executive branch agencies concerned with postal and delivery services;

(C) shall maintain continuing liaison with the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate;

(D) shall maintain appropriate liaison with ~~representatives of the Postal Service to keep informed of its interests and problems, and to provide such assistance as may be needed to ensure that matters of concern to the Postal Service are promptly considered by the Department of State or (if applicable, and to the extent practicable) other executive branch agencies;~~

~~(E) shall maintain appropriate liaison with both representatives of the Postal Service and~~ representatives of users and private providers of international postal services and other international delivery services to keep informed of their interests and problems, and to provide such assistance as may be needed to ensure that matters of concern are promptly considered by the Department of State or (if applicable, and to the extent practicable) other executive branch agencies; and

~~(F)~~ shall assist in arranging meetings of such public sector advisory groups as may be established to advise the Department of State and other executive branch agencies in connection with international postal services and international delivery services.

(3) The Secretary of State shall establish an advisory committee (within the meaning of the Federal Advisory Committee Act) to perform such functions as the Secretary considers appropriate in connection with carrying out subparagraphs (A) through ~~(F)~~ of paragraph (2).

~~(e) (c)(1) Before concluding any treaty, convention, or amendment that establishes a rate or classification for a product subject to subchapter I of chapter 36, the Secretary of State shall request the Postal Regulatory Commission to submit a decision on whether such rate or~~

classification is consistent with the standards and criteria established by the Commission under section 3622.

(2) The Secretary shall ensure that each treaty, convention, or amendment concluded under subsection (b) is consistent with a decision of the Commission adopted under paragraph (1), except if, or to the extent, the Secretary determines, by written order, that considerations of foreign policy or national security require modification of the Commission's decision.

(d) Nothing in this section shall be considered to prevent the Postal Service from entering into such commercial or operational contracts related to providing international postal services and other international delivery services as it deems appropriate, except that—

(1) any such contract made with an agency of a foreign government (whether under authority of this subsection or otherwise) shall be solely contractual in nature and may not purport to be international law; and

(2) a copy of each such contract between the Postal Service and an agency of a foreign government shall be transmitted to the Secretary of State and the Postal Regulatory Commission not later than the effective date of such contract.

~~(e)~~(1) With respect to shipments of international mail that are competitive products within the meaning of section ~~3741~~3631 that are exported or imported by the Postal Service—

~~—(A) the Postal Service shall not tender exported shipments to governmental authorities of any other country for clearance and importation except in accordance with procedures and laws which are equally applicable to similar shipments transmitted by private companies; and~~

~~—(B)(i) subject to clause (ii),~~ the Customs Service and other appropriate Federal agencies shall apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies; ~~and.~~

~~—(ii) the Customs Service and other appropriate Federal agencies shall deny shipments imported by the Postal Service from a foreign country access to special customs procedures established in accordance with international postal or customs agreements for shipments by postal authorities of other countries, unless that foreign country makes available such special customs procedures both to shipments to such country from the United States by the Postal Service and similar shipments to such country from the United States by private companies.~~

~~(2)(A) The provisions of paragraph (1)(B)(i) shall take effect 6 months after the date of enactment of this subsection or such earlier date as the Customs Service may determine in writing.~~

~~(B) The provisions of subparagraphs (A) and (B)(ii) of paragraph (1) shall take effect 5 years after the date of enactment of this subsection.~~

~~(C) (2) For purposes of this subsection, the term 'private company' means a private company substantially owned or controlled by persons who are citizens of the United States.~~

(3) In exercising the authority pursuant to subsection (b) to conclude new treaties, conventions and amendments related to international postal services and to renegotiate such treaties, conventions and amendments, the Secretary of State shall, to the maximum extent practicable, take such measures as are within the Secretary's control to encourage the governments of other countries to make ~~any changes in their laws (consistent with the policies carried out by the provisions referred to in sub-paragraph (B)), and take such other actions, which may be necessary in order to satisfy the conditions specified in subparagraphs (A) and (B)(ii) of paragraph (1) in a manner consistent with the goal of making~~ available to the Postal Service and private companies a range of ~~non-discriminatory~~non-discriminatory customs procedures that will fully meet the needs of all types of American shippers. The Secretary of State shall consult with the United States Trade Representative and the Commissioner of Customs in carrying out this ~~subparagraph~~paragraph.

~~(3) For purposes~~(4) The provisions of this subsection, ~~shall take effect 6 months after~~ the term 'private company' means a private company substantially owned or controlled by persons ~~who are citizens~~date of the ~~United States~~enactment of this subsection or such earlier date as the Customs Service may determine in writing.

Appendix 6: 39 U.S.C. § 407: Postal Service proposed changes  
(Apr. 20, 2004) to H.R. 4970, 107th Cong. (introduced  
H.R., Jun. 20, 2002)

**§ 407. International postal arrangements**

(a) It is the policy of the United States—

(1) to promote and encourage ~~communications between peoples by~~ affordable, efficient ~~operation of, and universally available~~ international postal services ~~and other international delivery services~~ for cultural, social, and economic purposes;

(2) to promote and encourage unrestricted ~~and undistorted~~ fair competition among similarly situated operators in ~~the provision of international postal services and other international delivery services, except where provision of such services by private companies may be prohibited by law of the United States~~ non-reserved cross border markets;

(3) to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services ~~and other international delivery services by the Government of the United States and by intergovernmental organizations of which the United States is a member~~; and

(4) to participate in multilateral and bilateral agreements with other countries to accomplish these objectives.

(b)(1) The Secretary of State shall be responsible for formulation, coordination, and oversight of foreign policy related to international postal services ~~and other international delivery services~~, and shall have the power to conclude treaties, conventions and amendments related to international postal services ~~and other international delivery services~~, except that the Secretary may not conclude any treaty, convention, or other international agreement (including those regulating international postal services) if such treaty, convention, or agreement would, with respect to any competitive product, grant an undue or unreasonable preference to the Postal Service, any similarly situated private provider of international postal ~~or delivery~~ services lawfully operating in the United States, or any other person.

(2) In carrying out the responsibilities specified in paragraph (1), the Secretary of State shall exercise primary authority for the conduct of foreign policy with respect to international postal services ~~and international delivery services~~, including the determination of United States

positions and the conduct of United States participation in negotiations with foreign governments and international bodies. In exercising this authority, the Secretary ~~---~~

(A) shall coordinate with other agencies as appropriate, and in particular, shall give full consideration to the authority vested by law or Executive order in the Postal Service, the Postal Regulatory Commission, the Department of Commerce, the Department of Transportation, and the Office of the United States Trade Representative in this area;

(B) shall maintain continuing liaison with other executive branch agencies concerned with postal and delivery services;

(C) shall maintain continuing liaison with the Committee on Government Reform of the House of Representatives and the Committee ~~on~~ Governmental Affairs of the Senate;

(D) shall maintain appropriate liaison with ~~both representatives of the Postal Service and~~ representatives of users ~~and~~ private providers of international postal services and other international delivery services, and other interested stakeholders to keep informed ~~of~~ their interests and problems, and to provide such assistance as may be needed to ensure that matters of concern are promptly considered by the Department of State or (if applicable, and to the extent practicable) other executive branch agencies; and

(E) shall assist in arranging meetings of such public sector advisory groups as may be established to advise the Department of State and other executive branch agencies in connection with international postal services ~~and international delivery services.~~

(3) The Secretary of State ~~shall~~ may establish an advisory committee (within the meaning of the Federal Advisory Committee Act) to perform such functions as the Secretary considers appropriate in connection with carrying out subparagraphs (A) through (D) of paragraph (2).

(4) For purposes of this subsection, the terms 'users,' 'private provider of international postal service,' 'other international delivery service,' 'person' or 'other interested stakeholder' refers to US citizens or private companies substantially owned or controlled by persons who are citizens of the United States.

(c)(1) Before concluding any treaty, convention, or amendment that establishes a rate charged, or classification offered, to the public for a product subject to subchapter I of chapter 36, the Secretary of State shall ~~request~~ consult with the Postal Regulatory Commission ~~to submit a decision~~ on whether such rate or classification is consistent with the standards and criteria established by the Commission under section 3622.

(2) The Secretary shall ensure that each ~~!~~treaty, convention, or amendment concluded under subsection (b) ~~is consistent with a decision~~takes into account the advice of the Commission adopted under paragraph (1), except ~~if, or~~ to the extent, the Secretary of State determines, ~~by written order,~~ that considerations of foreign policy ~~or, affordability, the effect on users, universal service, freedom of transit, or~~ national security require ~~modification of the Commission's decision~~otherwise.

~~\_\_\_\_\_ (d)~~ (d) The Postal Service shall have the power to conclude treaties, conventions and amendments related to international postal services in subsection (b). In carrying out any delegated powers, the Postal Service shall keep the Secretary of State informed of negotiations prior to concluding a final text. The Postal Service shall transmit a copy of each such postal treaty, convention, or amendment related to international postal service concluded with foreign governments under the authority of this subsection to the Secretary of State The Postal Service shall not conclude any treaty, convention, or amendment related to international postal services that is inconsistent with any policy of the Secretary of State.

~~\_\_\_\_\_ (e)~~ (e) Nothing in this section shall be considered to prevent the Postal Service from entering into such commercial or operational contracts related to providing international postal services and other international delivery services as it deems appropriate, except that ~~—~~

(1) any such contract made pursuant to this subsection with an agency of a foreign government (whether under authority of this subsection or otherwise) shall be solely contractual in nature and may not purport to be international law; and

(2) a copy of each such contract between the Postal Service and an agency of a foreign government made pursuant to this subsection shall be transmitted to the Secretary of State and the Postal Regulatory Commission not later than the effective date of such contract.

~~(ef)~~(1) With respect to shipments of international mail that are competitive products within the meaning of section ~~3634~~3621 that are ~~exported or imported~~carried by the Postal Service, the Customs Service and other appropriate Federal agencies shall, to the extent practicable and to the extent consistent with any international treaty, convention, or agreement, apply the customs laws of the United States and all other laws relating to the ~~importation or exportation~~cross-border transfer of such shipments in the same manner to both shipments by the Postal Service and ~~similar~~ shipments by private companies, when the Customs Service and the Postal Service jointly determine that the services are substantially similar in nature. in terms of content, user sophistication, processing, product guarantees, and value added features.

(2) For purposes of this subsection, the term 'private company' means a private company substantially owned or controlled by persons who are citizens of the United States.

(3) In exercising the authority pursuant to subsection (b) to conclude new treaties, conventions and amendments related to international postal services and to renegotiate such treaties, conventions and amendments, or in establishing policy under subsection (d) the Secretary of State shall, to the maximum extent practicable, take such measures as are within the Secretary's control to encourage the governments of other countries to make available to the Postal Service and private companies a range of nondiscriminatory customs procedures that will fully meet the needs of all types of American shippers. The Secretary of State shall consult with the United States Trade Representative and the Commissioner of Customs in carrying out this paragraph.

(4) The provisions of this subsection shall take effect 6 months after the date of the enactment of this subsection or such earlier date as the Customs Service may determine in writing.

Appendix 7: 39 U.S.C. § 407: S. 2468, 108th Cong., sec. 405  
(reported Senate, Aug. 25, 2004)

**§ 407. International postal arrangements**

(a) It is the policy of the United States—

(1) to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes;

(2) to promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services, except where provision of such services by private companies may be prohibited by law of the United States;

(3) to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services; and

(4) to participate in multilateral and bilateral agreements with other countries to accomplish these objectives.

(b)(1) The Secretary of State shall be responsible for formulation, coordination, and oversight of foreign policy related to international postal services and shall have the power to conclude postal treaties and conventions, except that the Secretary may not conclude any postal treaty or convention if such treaty or convention would, with respect to any competitive product, grant an undue or unreasonable preference to the Postal Service, a private provider of international postal services, or any other person.

(2) In carrying out the responsibilities specified in paragraph (1), the Secretary of State shall exercise primary authority for the conduct of foreign policy with respect to international postal services, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies. In exercising this authority, the Secretary—

(A) shall coordinate with other agencies as appropriate, and in particular, should consider the authority vested by law or Executive order in the Postal Regulatory Commission, the Department of Commerce, the Department of Transportation, and the Office of the United States Trade Representative in this area;

(B) shall maintain continuing liaison with other executive branch agencies concerned with postal and delivery services;

(C) shall maintain continuing liaison with the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives;

(D) shall maintain appropriate liaison with both representatives of the Postal Service and representatives of users and private providers of international postal services and other international delivery services to keep informed of their interests and problems, and to provide such assistance as may be needed to ensure that matters of concern are promptly considered by the Department of State or (if applicable, and to the extent practicable) other executive branch agencies; and

(E) shall assist in arranging meetings of such public sector advisory groups as may be established to advise the Department of State and other executive branch agencies in connection with international postal services and international delivery services.

(3) The Secretary of State shall establish an advisory committee (within the meaning of the Federal Advisory Committee Act) to perform such functions as the Secretary considers appropriate in connection with carrying out subparagraphs (A) through (D) of paragraph (2).

(c) Before concluding any postal treaty or convention that establishes a rate or classification for a product subject to subchapter I of chapter 36, the Secretary of State shall request the Postal Regulatory Commission to submit its views on whether such rate or classification is consistent with the standards and criteria established by the Commission under section 3622.

(d) Nothing in this section shall be considered to prevent the Postal Service from entering into such commercial or operational contracts related to providing international postal services as it deems appropriate, except that—

(1) any such contract made with an agency of a foreign government (whether under authority of this subsection or otherwise) shall be solely contractual in nature and may not purport to be binding under international law; and

(2) a copy of each such contract between the Postal Service and an agency of a foreign government shall be transmitted to the Secretary of State and the Postal Regulatory Commission not later than the effective date of such contract.

(e)(1) With respect to shipments of international mail that are competitive products within the meaning of section 3631 that are exported or imported by the Postal Service, the Customs Service and other appropriate Federal agencies shall apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies.

(2) In exercising the authority under subsection (b) to conclude new postal treaties and conventions related to international postal services and to renegotiate such treaties and conventions, the Secretary of State shall, to the maximum extent practicable, take such measures as are within the Secretary's control to encourage the governments of other countries to make available to the Postal Service and private companies a range of nondiscriminatory customs procedures that will fully meet the needs of all types of American shippers. The Secretary of State shall consult with the United States Trade Representative and the Commissioner of Customs in carrying out this paragraph.

(3) The provisions of this subsection shall take effect 6 months after the date of the enactment of this subsection or such earlier date as the Customs Service may determine in writing.

Appendix 8: 39 U.S.C. § 407: S. 2468, 108th Cong., sec. 405  
(reported Senate, Aug. 25, 2004), changes from H.R.  
4341, 108th Cong. (introduced H.R. May 12, 2004)

**§ 407. International postal arrangements**

(a) It is the policy of the United States—

(1) to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes;

(2) to promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services, except where provision of such services by private companies may be prohibited by law of the United States;

(3) to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services ~~and other international delivery services by the Government of the United States and by intergovernmental organizations of which the United States is a member~~; and

(4) to participate in multilateral and bilateral agreements with other countries to accomplish these objectives.

(b)(1) The Secretary of State shall be responsible for formulation, coordination, and oversight of foreign policy related to international postal services and ~~other international delivery services, and~~ shall have the power to conclude postal treaties, and conventions ~~and amendments related to international postal services and other international delivery services~~, except that the Secretary may not conclude any postal treaty, or convention, ~~or other international agreement (including those regulating international postal services)~~ if such treaty, or convention, ~~or agreement~~ would, with respect to any competitive product, grant an undue or unreasonable preference to the Postal Service, a private provider of international postal ~~or delivery~~ services, or any other person.

(2) In carrying out the responsibilities specified in paragraph (1), the Secretary of State shall exercise primary authority for the conduct of foreign policy with respect to international postal services ~~and international delivery services~~, including the determination of United States

positions and the conduct of United States participation in negotiations with foreign governments and international bodies. In exercising this authority, the Secretary—

(A) shall coordinate with other agencies as appropriate, and in particular, ~~shall give full consideration to~~ should consider the authority vested by law or Executive order in the Postal Regulatory Commission, the Department of Commerce, the Department of Transportation, and the Office of the United States Trade Representative in this area;

(B) shall maintain continuing liaison with other executive branch agencies concerned with postal and delivery services;

(C) shall maintain continuing liaison with the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives ~~and the Committee on Governmental Affairs of the Senate~~;

(D) shall maintain appropriate liaison with both representatives of the Postal Service and representatives of users and private providers of international postal services and other international delivery services to keep informed of their interests and problems, and to provide such assistance as may be needed to ensure that matters of concern are promptly considered by the Department of State or (if applicable, and to the extent practicable) other executive branch agencies; and

(E) shall assist in arranging meetings of such public sector advisory groups as may be established to advise the Department of State and other executive branch agencies in connection with international postal services and international delivery services.

(3) The Secretary of State shall establish an advisory committee (within the meaning of the Federal Advisory Committee Act) to perform such functions as the Secretary considers appropriate in connection with carrying out subparagraphs (A) through (D) of paragraph (2).

~~(c)(1)~~ Before concluding any postal treaty, or convention, ~~or amendment~~ that establishes a rate or classification for a product subject to subchapter I of chapter 36, the Secretary of State shall request the Postal Regulatory Commission to submit a decision its views on whether such rate or classification is consistent with the standards and criteria established by the Commission under section 3622.

~~(2) The Secretary shall ensure that each treaty, convention, or amendment concluded under subsection (b) is consistent with a decision of the Commission adopted under paragraph~~

~~(1), except if, or to the extent, the Secretary determines, by written order, that considerations of foreign policy or national security require modification of the Commission's decision.~~

(d) Nothing in this section shall be considered to prevent the Postal Service from entering into such commercial or operational contracts related to providing international postal services ~~and other international delivery services~~ as it deems appropriate, except that—

(1) any such contract made with an agency of a foreign government (whether under authority of this subsection or otherwise) shall be solely contractual in nature and may not purport to be binding under international law; and

(2) a copy of each such contract between the Postal Service and an agency of a foreign government shall be transmitted to the Secretary of State and the Postal Regulatory Commission not later than the effective date of such contract.

(e)(1) With respect to shipments of international mail that are competitive products within the meaning of section 3631 that are exported or imported by the Postal Service, the ~~Bureau of Customs and Border Protection of the Department of Homeland Security~~ Customs Service and other appropriate Federal agencies shall apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies.

(2) ~~For purposes of this subsection, the term 'private company' means a private company substantially owned or controlled by persons who are citizens of the United States.~~

~~(3)~~ In exercising the authority ~~pursuant to~~ under subsection (b) to conclude new postal treaties, and conventions ~~and amendments~~ related to international postal services and to renegotiate such treaties, and conventions ~~and amendments~~, the Secretary of State shall, to the maximum extent practicable, take such measures as are within the Secretary's control to encourage the governments of other countries to make available to the Postal Service and private companies a range of nondiscriminatory customs procedures that will fully meet the needs of all types of American shippers. The Secretary of State shall consult with the United States Trade Representative and the Commissioner of Customs, ~~Department of Homeland Security~~ Service in carrying out this paragraph.

(4) The provisions of this subsection shall take effect 6 months after the date of the enactment of this subsection or such earlier date as the ~~Bureau of Customs and Border Protection of the Department of Homeland Security~~ Service may determine in writing.

Appendix 9: 39 U.S.C. § 407: H.R. 22, 109th Cong., sec. 305  
(reported H.R., May 27, 2005)

**§ 407. International postal arrangements**

(a) It is the policy of the United States—

(1) to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes;

(2) to promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services, except where provision of such services by private companies may be prohibited by law of the United States;

(3) to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services and other international delivery services by the Government of the United States and by intergovernmental organizations of which the United States is a member; and

(4) to participate in multilateral and bilateral agreements with other countries to accomplish these objectives.

(b)(1) The Secretary of State shall be responsible for formulation, coordination, and oversight of foreign policy related to international postal services and other international delivery services, and shall have the power to conclude treaties, conventions and amendments related to international postal services and other international delivery services, except that the Secretary may not conclude any treaty, convention, or other international agreement (including those regulating international postal services) if such treaty, convention, or agreement would, with respect to any competitive product, grant an undue or unreasonable preference to the Postal Service, a private provider of international postal or delivery services, or any other person.

(2) In carrying out the responsibilities specified in paragraph (1), the Secretary of State shall exercise primary authority for the conduct of foreign policy with respect to international postal services and international delivery services, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies. In exercising this authority, the Secretary—

(A) shall coordinate with other agencies as appropriate, and in particular, shall give full consideration to the authority vested by law or Executive order in the Postal Regulatory Commission, the Department of Commerce, the Department of Transportation, and the Office of the United States Trade Representative in this area;

(B) shall maintain continuing liaison with other executive branch agencies concerned with postal and delivery services;

(C) shall maintain continuing liaison with the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate;

(D) shall maintain appropriate liaison with both representatives of the Postal Service and representatives of users and private providers of international postal services and other international delivery services to keep informed of their interests and problems, and to provide such assistance as may be needed to ensure that matters of concern are promptly considered by the Department of State or (if applicable, and to the extent practicable) other executive branch agencies; and

(E) shall assist in arranging meetings of such public sector advisory groups as may be established to advise the Department of State and other executive branch agencies in connection with international postal services and international delivery services.

(3) The Secretary of State shall establish an advisory committee (within the meaning of the Federal Advisory Committee Act) to perform such functions as the Secretary considers appropriate in connection with carrying out subparagraphs (A) through (D) of paragraph (2).

(c)(1) Before concluding any treaty, convention, or amendment that establishes a rate or classification for a product subject to subchapter I of chapter 36, the Secretary of State shall request the Postal Regulatory Commission to submit a decision on whether such rate or classification is consistent with the standards and criteria established by the Commission under section 3622.

(2) The Secretary shall ensure that each treaty, convention, or amendment concluded under subsection (b) is consistent with a decision of the Commission adopted under paragraph (1), except if, or to the extent, the Secretary determines, by written order, that considerations of foreign policy or national security require modification of the Commission's decision.

(d) Nothing in this section shall be considered to prevent the Postal Service from entering into such commercial or operational contracts related to providing international postal services and other international delivery services as it deems appropriate, except that—

(1) any such contract made with an agency of a foreign government (whether under authority of this subsection or otherwise) shall be solely contractual in nature and may not purport to be international law; and

(2) a copy of each such contract between the Postal Service and an agency of a foreign government shall be transmitted to the Secretary of State and the Postal Regulatory Commission not later than the effective date of such contract.

(e)(1) With respect to shipments of international mail that are competitive products within the meaning of section 3631 that are exported or imported by the Postal Service, the Bureau of Customs and Border Protection of the Department of Homeland Security and other appropriate Federal agencies shall apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies.

(2) For purposes of this subsection, the term ‘private company’ means a private company substantially owned or controlled by persons who are citizens of the United States.

(3) In exercising the authority pursuant to subsection (b) to conclude new treaties, conventions and amendments related to international postal services and to renegotiate such treaties, conventions and amendments, the Secretary of State shall, to the maximum extent practicable, take such measures as are within the Secretary’s control to encourage the governments of other countries to make available to the Postal Service and private companies a range of nondiscriminatory customs procedures that will fully meet the needs of all types of American shippers. The Secretary of State shall consult with the United States Trade Representative and the Commissioner of Customs, Department of Homeland Security in carrying out this paragraph.

(4) The provisions of this subsection shall take effect 6 months after the date of the enactment of this subsection or such earlier date as the Bureau of Customs and Border Protection of the Department of Homeland Security may determine in writing.

Appendix 10: 39 U.S.C. § 407: Postal Service proposed changes (Feb. 11, 2005) to H.R. 22, 109th Cong. (introduced H.R., Jan. 4, 2005)

**Sec. 407. International postal arrangements**

(a) It is the policy of the United States--

(1) to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes;

(2) to promote and encourage ~~unrestricted and undistorted fair~~ competition among similarly situated suppliers in the provision of international postal services and other international delivery services, except where provision of such services by private companies may be prohibited by law of the United States;

(3) to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services and other international delivery services by the Government of the United States and by intergovernmental organizations of which the United States is a member; and

(4) to participate in multilateral and bilateral agreements with other countries to accomplish these objectives.

(b)(1) The Secretary of State shall be responsible for formulation, coordination, and oversight of foreign policy related to international postal services and other international delivery services, and shall have the power to conclude treaties, conventions and amendments related to international postal services and other international delivery services, except that the Secretary may not conclude any treaty, convention, or other international agreement (including those regulating international postal services) if such treaty, convention, or agreement would, with respect to any competitive product, grant an undue or unreasonable preference to the Postal Service, a private provider of international postal or delivery services, or any other person.

(2) An entity other than the Postal Service may carry letters outside of the United States in accordance with section 601(b) of this Title, except that any such entity may not export mail matter from the United States using Universal Postal Union documentation or U.S. Postal

Service equipment. The Attorney General is authorized to make application to a district court of the United States for an order directing compliance with this subsection.

(~~32~~) In carrying out the responsibilities specified in paragraph (1), the Secretary of State shall exercise primary authority for the conduct of foreign policy with respect to international postal services and international delivery services, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies. In exercising this authority, the Secretary--

(A) shall coordinate with other agencies as appropriate, and in particular, shall give full consideration to the authority vested by law or Executive order in the Postal Service, the Postal Regulatory Commission, the Department of Commerce, the Department of Transportation, and the Office of the United States Trade Representative in this area;

(B) shall maintain continuing liaison with other executive branch agencies concerned with postal and delivery services;

(C) shall maintain continuing liaison with the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate;

(D) shall maintain appropriate liaison with ~~both representatives of the Postal Service and~~ representatives of users and private providers of international postal services and other international delivery services to keep informed of their interests and problems, and to provide such assistance as may be needed to ensure that matters of concern are promptly considered by the Department of State or (if applicable, and to the extent practicable) other executive branch agencies; and

(E) shall assist in arranging meetings of such public sector advisory groups as may be established to advise the Department of State and other executive branch agencies in connection with international postal services and international delivery services.

(~~43~~) The Secretary of State shall establish an advisory committee (within the meaning of the Federal Advisory Committee Act) to perform such functions as the Secretary considers appropriate in connection with carrying out subparagraphs (~~DA~~) through (~~DE~~) of paragraph (~~32~~).

(5) For the purposes of this subsection, the terms "users" and "private providers" refer to US citizens or private companies substantially owned or controlled by persons who are citizens of the United States.

(c)(1) Before concluding any treaty, convention, or amendment that establishes a rate or classification for a product subject to subchapter I of chapter 36, the Secretary of State shall request the Postal Regulatory Commission to submit a decision on whether such rate or classification is consistent with the standards and criteria established by the Commission under section 3622.

(2) The Secretary shall ensure that each treaty, convention, or amendment concluded under subsection (b) is consistent with a decision of the Commission adopted under paragraph (1), except if, or to the extent, the Secretary determines, by written order, that considerations of foreign policy or national security require modification of the Commission's decision.

(d) The Secretary of State may delegate to the Postal Service the authority to negotiate and conclude postal treaties or conventions, provided that such authority is exercised subject to subsection (b). The Postal Service shall keep the Secretary of State informed of negotiations prior to concluding any postal treaty or convention pursuant to this subsection and shall not conclude any postal treaty or convention that is inconsistent with any policy of the Secretary of State. The Postal Service shall transmit a copy of each such postal treaty or convention to the Secretary of State.

~~(e)~~ Nothing in this section shall be considered to prevent the Postal Service from entering into such commercial or operational contracts related to providing international postal services and other international delivery services as it deems appropriate, except that--

(1) any such contract made pursuant to this subsection with an agency of a foreign government (whether under authority of this subsection or otherwise) shall be solely contractual in nature and may not purport to be international law; and

(2) a copy of each such contract between the Postal Service and an agency of a foreign government shall be transmitted to the Secretary of State and the Postal Regulatory Commission not later than the effective date of such contract.

~~(f)~~(1) With respect to shipments of international mail that are competitive products within the meaning of section 3631 that are exported or imported by the Postal Service, the Bureau of Customs and Border Protection of the Department of Homeland Security and other appropriate Federal agencies shall apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies.

(2) For purposes of this subsection, the term `private company' means a private company substantially owned or controlled by persons who are citizens of the United States.

(3) In exercising the authority pursuant to subsection (b) to conclude new treaties, conventions and amendments related to international postal services and to renegotiate such treaties, conventions and amendments, the Secretary of State shall, to the maximum extent practicable, take such measures as are within the Secretary's control to encourage the governments of other countries to make available to the Postal Service and private companies a range of nondiscriminatory customs procedures that will fully meet the needs of all types of American shippers. The Secretary of State shall consult with the United States Trade Representative and the Commissioner of Customs, Department of Homeland Security in carrying out this paragraph.

(4) The provisions of this subsection shall take effect 6 months after the date of the enactment of this subsection or such earlier date as the Bureau of Customs and Border Protection of the Department of Homeland Security may determine in writing.

Appendix 11: 39 U.S.C. § 407: 39 U.S.C. § 407: Department of State proposed changes (Apr. 18, 2005) to H.R. 22, 109th Cong. (introduced H.R., Jan. 4, 2005)

**Sec. 407. International postal arrangements**

(a) It is the policy of the United States--

(1) to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes;

(2) to promote and encourage fair unrestricted and undistorted competition among similarly situated suppliers in the provision of international postal services and other international delivery services, except where provision of such services by private companies may be prohibited by law of the United States;

(3) to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services; ~~and other international delivery services by the Government of the United States and by intergovernmental organizations of which the United States is a member; and~~

(4) to participate in multilateral and bilateral agreements with other countries to accomplish these objectives.

(b)(1) The Secretary of State shall be responsible for formulation, coordination, and oversight of foreign policy related to international postal services ~~and other international delivery services~~, and shall have the power to conclude postal treaties, and conventions ~~and amendments related to international postal services and other international delivery services~~, except that the Secretary may not conclude any postal treaty, or convention, ~~or other international agreement (including those regulating international postal services)~~ if such treaty ~~or~~ convention, ~~or agreement~~ would, with respect to any competitive product, grant an undue or unreasonable preference to the Postal Service, a private provider of international postal or delivery services, or any other person.

(2) An entity other than the Postal Service may not export mail matter from the United States to other countries using Universal Postal Union documentation or U.S. Postal Service

equipment. The Attorney General is authorized to make application to a district court of the United States for an order directing compliance with this subsection.

(32) In carrying out the responsibilities specified in paragraph (1), the Secretary of State shall exercise primary authority for the conduct of foreign policy with respect to international postal services ~~and international delivery services~~, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies. In exercising this authority, the Secretary--

(A) shall coordinate with other agencies as appropriate, and in particular, should consider ~~shall give full consideration to~~ the authority vested by law or Executive order in the Postal Service, the Postal Regulatory Commission, the Department of Commerce, the Department of Transportation, and the Office of the United States Trade Representative in this area;

(B) shall maintain continuing liaison with other executive branch agencies concerned with postal and delivery services;

(C) shall maintain continuing liaison with the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate; {←the order of committees is reversed in the Senate version, but this is non-substantive}

(D) shall maintain appropriate liaison with both representatives of the Postal Service and representatives of users and private providers of international postal services and other international delivery services to keep informed of their interests and problems, and to provide such assistance as may be needed to ensure that matters of concern are promptly considered by the Department of State or (if applicable, and to the extent practicable) other executive branch agencies; and

( E) shall assist in arranging meetings of such public sector advisory groups as may be established to advise the Department of State and other executive branch agencies in connection with international postal services and international delivery services.

(34) The Secretary of State shall establish an advisory committee (within the meaning of the Federal Advisory Committee Act) to perform such functions as the Secretary considers appropriate in connection with carrying out subparagraphs (AD) through (DE) of paragraph (23).

(5) For purposes of this subsection, the terms 'users' and 'private providers' refer to US citizens or private companies substantially owned or controlled by persons who are citizens of the United States.

(c)~~(1)~~ Before concluding any postal treaty, or convention, ~~or amendment~~ that establishes a rate or classification for a product subject to subchapter I of chapter 36, the Secretary of State shall request the Postal Regulatory Commission to submit ~~a decision~~ its views on whether such rate or classification is consistent with the standards and criteria established by the Commission under section 3622.

~~(2) The Secretary shall ensure that each treaty, convention, or amendment concluded under subsection (b) is consistent with a decision of the Commission adopted under paragraph (1), except if, or to the extent, the Secretary determines, by written order, that considerations of foreign policy or national security require modification of the Commission's decision.~~

(d) The Secretary of State may delegate to the Postal Service the authority to negotiate and conclude postal treaties or conventions, provided that such authority is exercised subject to subsection (b). The Postal Service shall keep the Secretary of State informed of negotiations prior to concluding any postal treaty or convention pursuant to this subsection and shall not conclude any postal treaty or convention that is inconsistent with any policy of the Secretary of State. The Postal Service shall transmit a copy of each such postal treaty or convention to the Secretary of State.

(e) Nothing in this section shall be considered to prevent the Postal Service from entering into such commercial or operational contracts related to providing international postal services ~~and other international delivery services~~ as it deems appropriate, except that--

(1) any such contract made pursuant to this subsection with an agency of a foreign government (whether under authority of this subsection or otherwise) shall be solely contractual in nature and may not purport to be binding under international law; and

(2) a copy of each such contract between the Postal Service and an agency of a foreign government shall be transmitted to the Secretary of State and the Postal Regulatory Commission not later than the effective date of such contract.

(ef)(1) With respect to shipments of international mail that are competitive products within the meaning of section 3631 that are exported or imported by the Postal Service, the Bureau of Customs and Border Protection of the Department of Homeland Security and other appropriate Federal agencies shall apply the customs laws of the United States and all other

laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies.

(2) For purposes of this subsection, the term `private company' means a private company substantially owned or controlled by persons who are citizens of the United States.

{←Note: this subsection is not in the Senate version, but is fine}

(3) In exercising the authority ~~under pursuant to~~ subsection (b) to conclude new postal treaties, and conventions ~~and amendments~~ related to international postal services and to renegotiate such treaties, and conventions ~~and amendments~~, the Secretary of State shall, to the maximum extent practicable, take such measures as are within the Secretary's control to encourage the governments of other countries to make available to the Postal Service and private companies a range of nondiscriminatory customs procedures that will fully meet the needs of all types of American shippers. The Secretary of State shall consult with the United States Trade Representative and the Commissioner of Customs, Department of Homeland Security in carrying out this paragraph.

(4) The provisions of this subsection shall take effect 6 months after the date of the enactment of this subsection or such earlier date as the Bureau of Customs and Border Protection of the Department of Homeland Security may determine in writing.

Appendix 12: 39 U.S.C. § 407: H.R. 6407, 109th Cong. (enrolled, Dec. 18, 2006), changes from H.R. 22, 109th Cong. (reported H.R., May 27, 2005)

**§ 407. International postal arrangements**

(a) It is the policy of the United States—

(1) to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes;

(2) to promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services, except where provision of such services by private companies may be prohibited by law of the United States;

(3) to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services and other international delivery services by the Government of the United States and by intergovernmental organizations of which the United States is a member; and

(4) to participate in multilateral and bilateral agreements with other countries to accomplish these objectives.

(b)(1) The Secretary of State shall be responsible for formulation, coordination, and oversight of foreign policy related to international postal services and other international delivery services, and shall have the power to conclude postal treaties, conventions, and amendments related to international postal services and other international delivery services, except that the Secretary may not conclude any treaty, convention, or other international agreement (including those regulating international postal services) if such treaty, convention, or agreement would, with respect to any competitive product, grant an undue or unreasonable preference to the Postal Service, a private provider of international postal or delivery services, or any other person.

(2) In carrying out the responsibilities specified in paragraph (1), the Secretary of State shall exercise primary authority for the conduct of foreign policy with respect to international postal services and international delivery services, including the determination of United States

positions and the conduct of United States participation in negotiations with foreign governments and international bodies. In exercising this authority, the Secretary—

(A) shall coordinate with other agencies as appropriate, and in particular, shall give full consideration to the authority vested by law or Executive order in the Postal Regulatory Commission, the Department of Commerce, the Department of Transportation, and the Office of the United States Trade Representative in this area;

(B) shall maintain continuing liaison with other executive branch agencies concerned with postal and delivery services;

(C) shall maintain continuing liaison with the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives ~~and the Committee on Governmental Affairs of the Senate~~;

(D) shall maintain appropriate liaison with both representatives of the Postal Service and representatives of users and private providers of international postal services and other international delivery services to keep informed of their interests and problems, and to provide such assistance as may be needed to ensure that matters of concern are promptly considered by the Department of State or (if applicable, and to the extent practicable) other executive branch agencies; and

(E) shall assist in arranging meetings of such public sector advisory groups as may be established to advise the Department of State and other executive branch agencies in connection with international postal services and international delivery services.

(3) The Secretary of State shall establish an advisory committee (within the meaning of the Federal Advisory Committee Act) to perform such functions as the Secretary considers appropriate in connection with carrying out subparagraphs (A) through (D) of paragraph (2).

(c)(1) Before concluding any treaty, convention, or amendment that establishes a rate or classification for a product subject to subchapter I of chapter 36, the Secretary of State shall request the Postal Regulatory Commission to submit a decision its views on whether such rate or classification is consistent with the standards and criteria established by the Commission under section 3622.

(2) The Secretary shall ensure that each treaty, convention, or amendment concluded under subsection (b) is consistent with a decision of the views submitted by the Commission ~~adopted under~~ pursuant to paragraph (1), except if, or to the extent, the Secretary determines,

~~by written order~~ in writing, that ~~considerations of it is not in the~~ foreign policy or national security ~~require modification of the~~ interest of the United States to ensure consistency with the Commission's ~~decision~~ views. Such written determination shall be provided to the Commission together with a full explanation of the reasons thereof, provided that the Secretary may designate which portions of the determination or explanation shall be kept confidential for reasons of foreign policy or national security.

(d) Nothing in this section shall be considered to prevent the Postal Service from entering into such commercial or operational contracts related to providing international postal services and other international delivery services as it deems appropriate, except that—

(1) any such contract made with an agency of a foreign government (whether under authority of this subsection or otherwise) shall be solely contractual in nature and may not purport to be international law; and

(2) a copy of each such contract between the Postal Service and an agency of a foreign government shall be transmitted to the Secretary of State and the Postal Regulatory Commission not later than the effective date of such contract.

~~————(e)(1)~~ (e)(1) In this subsection, the term 'private company' means a private company substantially owned or controlled by persons who are citizens of the United States.

~~————(2)~~ (2) With respect to shipments of international mail that are competitive products within the meaning of section 3631 that are exported or imported by the Postal Service, the ~~Bureau of Customs and Border Protection of the Department of Homeland Security~~ Customs Service and other appropriate Federal agencies shall apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies.

~~————(2)~~ For purposes of this subsection, the term 'private company' means a private company substantially owned or controlled by persons who are citizens of the United States.

(3) In exercising the authority ~~pursuant to~~ under subsection (b) to conclude new postal treaties, and conventions ~~and amendments~~ related to international postal services and to renegotiate such treaties, and conventions ~~and amendments~~, the Secretary of State shall, to the maximum extent practicable, take such measures as are within the Secretary's control to encourage the governments of other countries to make available to the Postal Service and private companies a range of nondiscriminatory customs procedures that will fully meet the needs of all types of American shippers. The Secretary of State shall consult with the United

States Trade Representative and the Commissioner of Customs, ~~Department of Homeland Security~~ in carrying out this paragraph.

(4) The provisions of this subsection shall take effect 6 months after the date of ~~the~~ enactment of this subsection or such earlier date as the Bureau of Customs and Border Protection of the Department of Homeland Security may determine in writing.

Appendix 13: 39 U.S.C. §§ 407, 409(e) (2006). Enacted by the Postal Accountability and Enhancement Act, Pub. L. 109–435, § 405(a), 120 Stat. 3229 (2006)

**§ 407. International postal arrangements**

(a) It is the policy of the United States —

(1) to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes;

(2) to promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services, except where provision of such services by private companies may be prohibited by law of the United States;

(3) to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services and other international delivery services by the Government of the United States and by intergovernmental organizations of which the United States is a member; and

(4) to participate in multilateral and bilateral agreements with other countries to accomplish these objectives.

(b)(1) The Secretary of State shall be responsible for formulation, coordination, and oversight of foreign policy related to international postal services and other international delivery services and shall have the power to conclude postal treaties, conventions, and amendments related to international postal services and other international delivery services, except that the Secretary may not conclude any treaty, convention, or other international agreement (including those regulating international postal services) if such treaty, convention, or agreement would, with respect to any competitive product, grant an undue or unreasonable preference to the Postal Service, a private provider of international postal or delivery services, or any other person.

(2) In carrying out the responsibilities specified in paragraph (1), the Secretary of State shall exercise primary authority for the conduct of foreign policy with respect to international postal services and international delivery services, including the determination of United States

positions and the conduct of United States participation in negotiations with foreign governments and international bodies. In exercising this authority, the Secretary -

(A) shall coordinate with other agencies as appropriate, and in particular, shall give full consideration to the authority vested by law or Executive order in the Postal Regulatory Commission, the Department of Commerce, the Department of Transportation, and the Office of the United States Trade Representative in this area;

(B) shall maintain continuing liaison with other executive branch agencies concerned with postal and delivery services;

(C) shall maintain continuing liaison with the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives;

(D) shall maintain appropriate liaison with both representatives of the Postal Service and representatives of users and private providers of international postal services and other international delivery services to keep informed of their interests and problems, and to provide such assistance as may be needed to ensure that matters of concern are promptly considered by the Department of State or (if applicable, and to the extent practicable) other executive branch agencies; and

(E) shall assist in arranging meetings of such public sector advisory groups as may be established to advise the Department of State and other executive branch agencies in connection with international postal services and international delivery services.

(3) The Secretary of State shall establish an advisory committee (within the meaning of the Federal Advisory Committee Act) to perform such functions as the Secretary considers appropriate in connection with carrying out subparagraphs (A) through (D) of paragraph (2).

(c)(1) Before concluding any treaty, convention, or amendment that establishes a rate or classification for a product subject to subchapter I of chapter 36, the Secretary of State shall request the Postal Regulatory Commission to submit its views on whether such rate or classification is consistent with the standards and criteria established by the Commission under section 3622.

(2) The Secretary shall ensure that each treaty, convention, or amendment concluded under subsection (b) is consistent with the views submitted by the Commission pursuant to paragraph (1), except if, or to the extent, the Secretary determines, in writing, that it is not in

the foreign policy or national security interest of the United States to ensure consistency with the Commission's views. Such written determination shall be provided to the Commission together with a full explanation of the reasons thereof, provided that the Secretary may designate which portions of the determination or explanation shall be kept confidential for reasons of foreign policy or national security.

(d) Nothing in this section shall be considered to prevent the Postal Service from entering into such commercial or operational contracts related to providing international postal services and other international delivery services as it deems appropriate, except that —

(1) any such contract made with an agency of a foreign government (whether under authority of this subsection or otherwise) shall be solely contractual in nature and may not purport to be international law; and

(2) a copy of each such contract between the Postal Service and an agency of a foreign government shall be transmitted to the Secretary of State and the Postal Regulatory Commission not later than the effective date of such contract.

(e)(1) In this subsection, the term "private company" means a private company substantially owned or controlled by persons who are citizens of the United States.

(2) With respect to shipments of international mail that are competitive products within the meaning of section 3631 that are exported or imported by the Postal Service, the Customs Service and other appropriate Federal agencies shall apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies.

(3) In exercising the authority under subsection (b) to conclude new postal treaties and conventions related to international postal services and to renegotiate such treaties and conventions, the Secretary of State shall, to the maximum extent practicable, take such measures as are within the Secretary's control to encourage the governments of other countries to make available to the Postal Service and private companies a range of nondiscriminatory customs procedures that will fully meet the needs of all types of American shippers. The Secretary of State shall consult with the United States Trade Representative and the Commissioner of Customs in carrying out this paragraph.

(4) The provisions of this subsection shall take effect 6 months after the date of enactment of this subsection or such earlier date as the Bureau of Customs and Border Protection of the Department of Homeland Security may determine in writing.

#### **§ 409. Suits by and against the Postal Service**

....

(e)(1) To the extent that the Postal Service, or other Federal agency acting on behalf of or in concert with the Postal Service, engages in conduct with respect to any product which is not reserved to the United States under section 1696 of title 18, the Postal Service or other Federal agency (as the case may be)—

(A) shall not be immune under any doctrine of sovereign immunity from suit in Federal court by any person for any violation of Federal law by such agency or any officer or employee thereof; and

(B) shall be considered to be a person (as defined in subsection (a) of the first section of the Clayton Act) for purposes of—

(i) the antitrust laws (as defined in such subsection); and

(ii) section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

For purposes of the preceding sentence, any private carriage of mail allowable by virtue of section 601 shall not be considered a service reserved to the United States under section 1696 of title 18.

(2) No damages, interest on damages, costs or attorney's fees may be recovered, and no criminal liability may be imposed, under the antitrust laws (as so defined) from any officer or employee of the Postal Service, or other Federal agency acting on behalf of or in concert with the Postal Service, acting in an official capacity.

(3) This subsection shall not apply with respect to conduct occurring before the date of enactment of this subsection.

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