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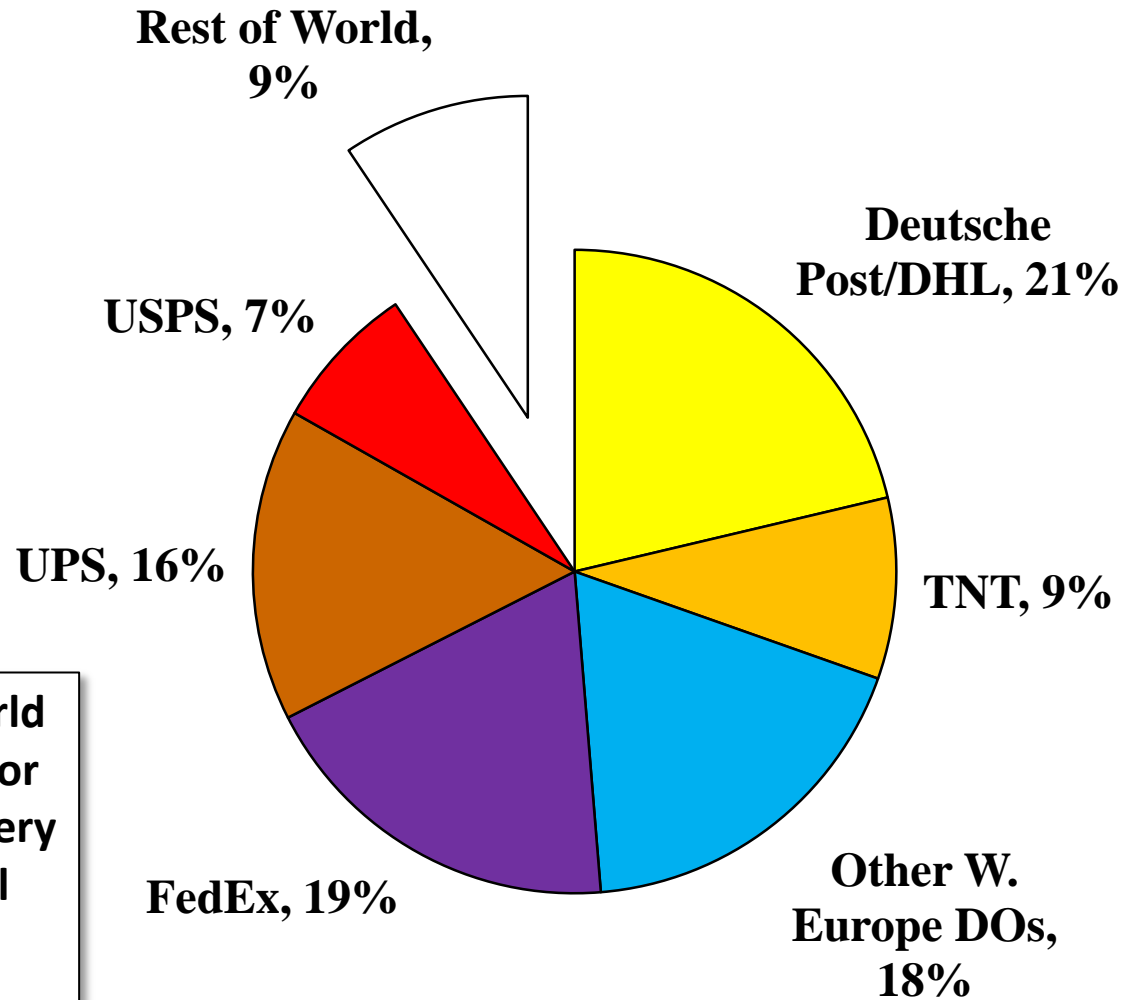
Illustrations of Incremental Reforms of the Universal Postal Convention that the United States and European Union May Be Able to Sponsor Jointly

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The Premise

- Both the EU and the US have implemented major [postal laws](#) since the last UPU Congress with implications for UPU reforms.
 - EU: Third Postal Directive (2008) liberalized EU postal services
 - US: Postal act of 2006 adopted a liberal approach towards international postal and delivery services (and incrementally reformed domestic services).
- In both the EU and the US, the [competition laws](#) prohibit many of the traditional anti-competitive provisions of the UPU.
- The EU and US jointly proposed in 2006, as matter of [international trade law](#), inclusion of liberal market access commitments for express and postal services in the Doha Round of the WTO.
- EU and US operators provide about [91 percent](#) of the world's international postal and delivery services (by revenue).

EU and US Account for 91% of International Delivery



Proportion of world revenue earned for carriage and delivery of international documents and parcels < 2 kg

Source: UPU, Adrenale Report (2010)

So EU/US collaboration at the UPU makes sense . . .

- EU and US have common policy, legal, and commercial interests at stake in the UPU Doha Congress. These include interest in:
 - [Fair, lawful, undistorted trade](#) in international postal and delivery among industrialized countries.
 - Fair and reasonable [support for the advancement of developing countries](#).
 - Developing a future legal framework that [extends a “level playing field” to new industrialized powers](#) in a workable and reasonable manner.
 - A system of global delivery services that meets the evolving [needs of society in the 21st century](#).
- The UPU Doha Congress will determine the legal framework for international postal and delivery service [until the end of 2017](#).

. . . but there are all sorts of reasons to do nothing.

- “EU and US ministries do not have enough staff.”
- “UPU issues are too complicated.”
- “Developing countries will not accept so there is no use in trying.”
- “Postal officials do not want a level playing field.”
- “Express companies have not done enough work on postal issues.”
- “Our postal people and trade people do not cooperate well.”
- “We are seeking election to X and cannot upset any delegates.”

Incremental reforms might win EU/US support if . . .

- Reforms are clearly required by law and/or general policy; and
- Reforms are fair and reasonable towards all affected parties (even if not actually supported by them); and
- Reforms are needed to advance the broader long term commercial interests of the ICs;
- Reforms are easy for busy policy makers to understand and explain to others; and
- Reforms will not significantly affect the 9 percent (or so) of international postal and delivery services provided by developing countries.

Sources of potential reforms

- EU Postal Directive, especially Article 13.
- EU study, *External Dimension of the EU Postal Acquis* (2010).
- UPU, Reform of the Union Project Group and earlier studies.
- World Trade Organization,
 - General Agreement on Trade in Services (1996)
 - Agreement on Basic Telecommunications (1997)
 - WTO, US/EU/Japan/New Zealand, Plurilateral Request on Postal Services (2006).
- US-EU Open Skies Aviation Agreement (2007).

Four *illustrative* reform proposals

1. Provide non-discriminatory delivery charges for documents and parcels sent between industrialized countries (ICs).
2. Exclude commercial items from special UPU customs rules and otherwise clarify the scope of UPU customs regulations.
3. Include all of the governmental principles agreed by governments in the Convention and define the authority the Postal Operations Council to adopt implementing regulations.
4. Reserve the right of the EU, US, and other countries to give priority to their obligations and rights under the General Agreement on Trade in Services (GATS).

#1. Non-discriminatory delivery charges among ICs (1)

- *Basic idea.* No European or American policy maker would accept that a clerk in the national post office could or should charge a person from another industrialized country (IC) more or less for the delivery of a letter or package than charged to a local mailer for exactly the same service. For the precisely the same reasons, there is no justification for discriminatory treatment of inbound postal items received from ICs.
- *Proposal:* Amend UPU Convention to establish reasonable, non-discriminatory pricing principles, instead of specific prices, for delivery of postal items exchanged between ICs .

#1. Non-discriminatory delivery charges among ICs (2)

- Eliminate discrimination between--
 - Foreign mailers *versus* domestic mailers
 - National post offices *versus* other operators (including other posts).
- Rates will be more cost-based than under UPU price-fixing.
- No post office will be unfairly forced to deliver inbound mail at loss-making rates.
- Eliminate the need for ant-competitive mechanisms to control bypass competition (anti-remail, anti-ETOE provisions).
 - Bypass controls still needed to prevent abuse of preferential rates granted DCs.
- Enforced by national postal regulator.

#1. Non-discriminatory delivery charges among ICs (3)

Convention Article X1

Charges for delivery of letter post items and parcels conveyed between industrialized countries

1. This article shall apply to charges for the [inward delivery of letter post items and parcels](#) that are conveyed [from an industrialized member country to another industrialized member country](#) and shall include, but not be limited to, letter post items and parcels [conveyed by or on behalf of a designated operator, a non-designated operator, a mail consolidator, or an individual sender](#).
2. [If a member country ensures](#) that postal services for letter post items and parcels are provided to the general public and such services are provided [under conditions of a legal monopoly or market dominance](#), then the member country shall ensure that the following principles are respected by any designated operator(s) appointed by it:
 - 2.1 Access to the ensured services shall be provided [at the same rates and under the same terms and conditions](#) as available to national users of similar services for similar items, provided that such terms and conditions shall be [relaxed if and to the extent they constitute an unreasonable barrier to access by foreign parties](#).

#1. Non-discriminatory delivery charges among ICs (4)

Convention Article X1

Charges for delivery of letter post items and parcels conveyed between industrialized countries

- 2.2 For the [principal ensured services](#), the [designated operator\(s\) shall establish linear tariffs](#) that are reasonably equivalent to the rates available to national users for similar services and similar items, provided that such linear tariffs that also be available national users and designed so they [do not cause unreasonable diversion from domestic rates](#).
- 2.3 Charges established under paragraphs 2.1 and 2.2 may [include surcharges or discounts that are justified by differences in the costs](#) of processing and delivering international items compared the costs of processing and delivering similar domestic items.
- 2.4 Designated operators may, by [bilateral or multilateral agreement](#), apply other payment systems for the delivery of inward postal items provided that differences in rates or terms and conditions from equivalent national services shall be [justified by differences in costs incurred](#).
- 2.5 The rates, discounts, and surcharges for inward postal delivery services listed above shall be [transparent and shall not be unjustly or unreasonably discriminatory](#).
- 2.6 No letter post item or parcel may be denied delivery, surcharged, otherwise [given less favorable treatment on the basis of the country of origin](#).

#1. Non-discriminatory delivery charges among ICs (5)

Convention Article X1

Charges for delivery of letter post items and parcels conveyed between industrialized countries

- 3 [Each member country shall designate an impartial national regulatory body](#) to ensure compliance with this article, and such regulatory body shall be separate from, and not accountable to, any designated operator or non-designated operator.
- 4 [Any member country not included in paragraph 1 may participate](#) in the application of this article by submitting a written declaration to Postal Operations Council and providing reasonable assurances that it will ensure appropriate implementation of this article.
- 5 [Member countries included in paragraph 1 are set out in Annex A](#) to the Convention. The International Bureau shall maintain a current list of member countries who subscribe to this article pursuant to paragraph 4.

#2. Limit UPU Customs to Non-Commercial Items (1)

- *Basic idea.* If a large direct marketer such as Amazon or a large manufacturer such as Apple ships goods to foreign customers, the customs clearance procedure should be the same whether the goods are collected and dispatched by a public or private operator. Any other rule distorts competition in much the same way as would, for example, an intergovernmental agreement that give special landing fees or priority baggage handling for government-owned airlines.
- *Proposal:* Amend UPU Convention to clarify the scope of the customs privileges by excluding commercial items and defining the scope for POC regulations.

#2. Limit UPU Customs to Non-Commercial Items (2)

- Level playing field will facilitate undistorted competition in commercial markets.
 - 55% of international mail is "business mail" (UPU, 2011).
- Proposal should use UPU definition of “commercial item”: "any good exported/imported in the course of a business transaction, whether or not they are sold for money or exchanged.”
- Proposal should be accompanied by an initiative at the WCO to develop a simplified approach to customs control of low-valued parcels based on UPU precedents.
- Proposal should also clarify authority of the POC to issue regulations defining customs procedures.
- Proposal should not limit discretion of national authorities.

#2. Limit UPU Customs to Non-Commercial Items (3)

Convention Article X2

Customs control

1. Designated operators of the countries of origin and destination shall be authorized to submit items to customs control according to the legislation of those countries.
2. [The Postal Operations Council is authorized](#) to prescribe standard forms, electronic message formats, or other [documentation requirements for senders](#) to use in providing information relating to the customs control of a postal item in the country of origin or the country of destination.
 - 2.1 Designated operators shall take all reasonable efforts to ensure that information provided by senders is accurate and complete.
 - 2.2 [The Postal Operations Council may adopt such rules](#) it deems appropriate to ensure the [privacy and confidentiality](#) of information provided by senders.
 - 2.3 Member countries shall not hold designated operators liable for information provided by senders relating to customs control or for decisions taken by customs authorities on examination of items submitted to customs control, provided that [designated operators may voluntarily accept such liability](#).

#2. Limit UPU Customs to Non-Commercial Items (4)

Convention Article X2

Customs control

- 2.4 Regulations adopted by the Postal Operations Council relating to this article shall be binding on member countries if approved by the Council of Administration.

- 3 Similar postal items which are accepted for conveyance by a designated operator in an origin country shall be entitled to customs control by authorities in the destination country in the same manner.

- 4 This article shall not apply to the customs control of commercial items unless the conveyance of such commercial items is reserved by national law for a provider of universal postal services in the country of origin.
 - 4.1 A “commercial item” means any good exported/imported in the course of a business transaction, whether or not they are sold for money or exchanged.

#3. Define the Scope of Regulations (1)

- *Basic Idea.* The intergovernmental elements of the acts of the UPU need to be shortened and simplified so that responsible ministries in the ICs can address the issues of government policy responsibly. At the same time, it is absurd that a committee postal operators exercises unchecked legislative authority over the governments of the ICs (or DCs).
- *Proposal.* Provide that the Convention provides a complete statement of the governmental principles agreed by governments relating to govern the exchange of documents and parcels and clarify the delegation of authority to the Postal Operations Council to adopt implementing Regulations.

#3. Define the Scope of Regulations (2)

- Regulations implementing the Convention are adopted by the UPU Postal Operations Council -- 40 DOs -- after the UPU Congress adjourns and are binding on governments.
 - Since the Regulations are adopted and revised after Congress, delegates have no knowledge of what the Regulations will include.
 - In the current acts of the UPU nothing limits the scope of the Regulations to the principles agreed in the Convention.
 - Although, in principle, DOs in the POC can be instructed by their governments, in practice, ministries in the ICs no longer have the staff to monitor the activities of the POC.
- Proposed article would ensure that Regulations are limited to the scope of the Convention and cannot override national law or the GATS or WCO conventions. Regulations of a governmental would be subject to review and approval by the Council of Administration. Legislation by vague resolutions of Congress was be ended.

#3. Define the Scope of Regulations (3)

Convention Article X3

Regulations implementing the Convention

1. The [Postal Operations Council is authorized to adopt such Regulations as may be necessary](#) to implement the provisions of this Convention.
 - 1.1 Except as provided in paragraph 1.2, Regulations which [establish mandatory or voluntary operational standards for designated operators](#) shall become effective upon approval of the Postal Operations Council.
 - 1.2 [Regulations which are binding on member countries](#) or which are determined by the Council of Administration to involve matters of fundamental policy or principle shall become effective upon [approval of the Council of Administration](#).
- 2 Provisions of the Regulations shall not —
 - 2.1 [derogate from the legislation of any member country](#) in respect of anything which is not expressly provided for by this Convention;
 - 2.2 [derogate from the commitments](#) of any member country pursuant to the agreements of the [World Trade Organization](#) or the [World Customs Organization](#).

#3. Define the Scope of Regulations (4)

Convention Article X3

Regulations implementing the Convention

- 3 Except for the provisions of Restricted Unions and Special Agreements established under Article 8 of the Constitution, [this Convention and the Regulations adopted pursuant to this article shall constitute the entire agreement](#) between member countries with respect to the subject matter of this agreement and shall supersede all prior agreements, conventions, regulations, declarations, or other measures.

#4. Reserve Right to Enforce GATS Principles (1)

- *Basic idea.* For the ICs, the General Agreement on Trade in Services (GATS) provides the overarching legal framework for international trade in services (with certain specific exceptions). Sectoral intergovernmental agreements are intended to supplement, not to override, the principles of GATS.
- *Proposal.* With EU, US, and other like-minded countries, should file a joint reservation to the UPU Convention that reserve their rights to respect the obligations and market access commitments established within the GATS framework (including free trade agreements).

#4. Reserve Right to Enforce GATS Principles (2)

- Since the 1994 Congress, EU Member States have recorded a common declaration to each UPU Convention:
 - “The delegations of the member countries of the European Union declare that their countries will apply the Acts adopted by this Congress in accordance with their obligations pursuant to the Treaty establishing the European Community and the General Agreement on Trade in Services (GATS) of the World Trade Organization.”
- EEA (Iceland, Liechtenstein, Norway), Canada, and New Zealand file a similar declaration.
- But a declaration does not legally limit a country’s obligations under international law; a reservation is necessary to limit legal obligations.
- Caution: a reservation must be approved by a majority of member countries so ICs may need to consider alternative strategies if the majority reject the reservation.

#4. Reserve Right to Enforce GATS Principles (3)

Final Protocol to the Convention Article X1

Relationship to the General Agreement on Trade in Services

The [list of countries] shall apply provisions of this Convention in accordance with their obligations pursuant to the General Agreement on Trade in Services (GATS) and other agreements of the World Trade Organization and reserve the right to grant, either unilaterally or in the context of specific commitments made under such agreements, market access to the full extent contemplated by the GATS for all services (whether governmental and non-governmental) for the conveyance of all types of items and goods weighing up to 20 kg except where such services are reserved by national law. In case of conflict between provisions of this Convention and agreements of the World Trade Organization, the latter shall have precedence.

Summary and Conclusions

- The EU and the US have a strong common interest in a liberal regime for the provision of international postal and delivery from policy, legal, and commercial perspectives.
- Virtually all commercial and competitive international postal and delivery services are provided by operators based in the ICs.
- Institutional obstacles to UPU reform, while not insubstantial, should not be permitted to forestall proposals for reasonable incremental reforms that do not affect the interests of DCs.
- This presentations offers illustrations of possible reform measures that the EU and US might be able to jointly sponsor the Doha Congress in 2012. Actual proposals will likely differ and could address additional topics.