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FAIR COMPETITION IN INTERNATIONAL SHIPPING

HEARING

BEFORE THE

SUBCOMMITTEE ON
GOVERNMENT OPERATIONS

OF THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

JUNE 16, 2015

Serial No. 114–29

Printed for the use of the Committee on Oversight and Government Reform

Available via the World Wide Web: http://www.fdsys.gov
http://www.house.gov/reform

U.S. GOVERNMENT PUBLISHING OFFICE

95–389 PDF WASHINGTON : 2015

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
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FAIR COMPETITION IN INTERNATIONAL SHIPPING

Tuesday, June 16, 2015,

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT OPERATIONS,
SOMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:23 p.m. in room 2154, Rayburn House Office Building, the Honorable Mark Meadows [chairman of the subcommittee], presiding.

Present: Representatives Meadows, Walberg, Massie, Buck, Carter, Grothman, Connolly, Maloney, Norton, Clay and Plaskett.

Mr. MEADOWS. The Subcommittee on Government Operations will come to order.

Without objection, the Chair is authorized to declare a recess at any time.

The Ranking Member, Mr. Connolly, will be coming shortly. When he comes, we will allow him to give his opening statement.

Today, through the United States Postal Service, it is often cheaper to ship a small package from China than to ship that same package within the United States. Intuitively, this does not make a lot of sense as the nearest coast of China is more than 5,000 miles away from the United States across a very large body of water.

A simple search of any one of a dozen or more websites helps to illustrate the issue. In searching this topic, the Committee staff found numerous examples where small, lightweight goods from China could be purchased, delivered, shipped and with shipping included, at unbelievable prices such as 99 cents for a stylus pen or $1.58 for lipstick.

Prices like these cause the Postal Service to lose money on at least some of this international mail. In fact, the Postal Service lost some $75 million on inbound international mail last year alone.

However, this loss is not necessarily the Postal Service's fault. International mail rates are largely governed by a treaty drafted through the Universal Postal Union, a United Nations organization with over 192 member countries.

This treaty covers the establishment of what they call terminal dues or the amount of money that one post gives to another post for the final delivery of that international mail. Every four years, the UPU negotiates a new treaty, the most recent of which will run through 2018. The stated goal of these negotiations is to eventually create a system that accurately reflects the cost of final delivery in each country.

Under the current treaty, countries are generally classified as either target or transition. Target group members are typically the more industrialized countries and transition group members are usually more developing countries.

While the terminal dues rates between target countries are somewhat reflective of delivery costs, rates for mail from transition countries to target countries are not. This problem is exacerbated by the fact that the classification system for countries is far from perfect. Most notably, China is included in the same group as Libya, Kazakhstan and others making it eligible for higher preferential rates.

To help combat terminal dues problems, the Postal Service is authorized to seek out bilateral agreements with countries to secure rates above the terminal dues level. However, in most cases, the Postal Service has little leverage with the transition countries to secure better rates through these added services like parcel tracking. As one example, in 2012, mail sent under a bilateral agreement with China only reduced Postal Service costs by 3 percent compared to the terminal dues rate.

All of this has left thousands of American small businesses at a competitive disadvantage against foreign competition, not because of the price of the goods, the labor or anything else, but because of the size of the hidden shipping subsidies.

With that in mind, the question becomes, how can we improve this situation which brings us to the panel that is before us today. Before us, we have key representatives from a wide array of interested parties, including the State Department, the Postal Service, the Postal Regulatory Commission, international shippers and the domestic retail industry, all of whom have a clear stake in the long term future of the terminal dues system.

I look forward to hearing from all of the witnesses about our current situation, how it came about and what we can do to eliminate what I would say anticompetitive trade distortions as quickly as possible. As a previous small business guy, the last thing I want to do is take my home field advantage and feel I have a disadvantage because someone can ship it at a much cheaper cost from 5,000 miles away.

Specifically, I hope the witnesses will share their ideas about how we can make the Universal Postal Union more transparent, how to reduce the amount of information on international mailing that is considered commercially sensitive and not available to the public, and how to improve the overall fair competition for international package delivery.

Mr. MEADOWS. As I said earlier, we will recognize the Ranking Member when he gets.

I will hold the record open for five legislative days for any member who would like to submit a written statement.

We will now recognize our panel of witnesses.

I am pleased to welcome the Honorable Robert G. Taub, Acting Chairman of the Postal Regulatory Commission. It is good to see you again. Mr. Robert J. Faucher, Acting Deputy Assistant Secretary, Bureau of International Organization Affairs at the U.S. State Department; Mr. Randy S. Miskanic, Acting Chief Information Officer and Executive Vice President, the United States Postal

Service; Ms. Nancy Sparks, Managing Director, Regulatory Affairs at FedEx Express; Mr. Paul Misener, Vice President for Global Public Policy at Amazon.com; and Mr. David C. Williams, Inspector General of the United States Postal Service.

Welcome to all of you.

Pursuant to Committee rules, all witnesses will be sworn before they testify. Please rise and raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

[Witnesses respond in the affirmative.]

Mr. MEADOWS. In order to allow time for discussion, I would ask that you limit your oral testimony to five minutes. Your entire written statement will be made a part of the record.

We will recognize our first witness for five minutes.

WITNESS STATEMENTS

STATEMENT OF ROBERT G. TAUB

Mr. TAUB. Thank you, Chairman Meadows, Ranking Member Connolly, and members of the subcommittee. Good afternoon. I am pleased to testify before you today.

The defining feature of the Postal Regulatory Commission's responsibilities and current law is that they exist within the larger context of U.S. membership in the Universal Postal Union, where terminal dues are negotiated as part of a complex process which the Chairman outlined in detail in his opening statement.

The current negotiated framework established by the Postal Accountability and Enhancement Act of 2006 depends upon landmark 1998 legislation that transferred responsibility for international postal policy from the Postal Service to the Secretary of State.

The 2006 law established clear policy for the U.S. to, among other goals, "promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services." The law also established a new role for the Commission by directing the Secretary of State to request, and the Commission to provide, views on the consistency of terminal dues proposals for domestic rate regulation.

The most recent view stated that "the Commission continues to adhere to the position that the U.S. Government should actively promote terminal dues rates in the UPU that are closely aligned with domestic postage rates and provide sufficient cost coverage to handle, transport and deliver inbound international mail for the Postal Service. Terminal dues rates are available only to designated operators. The Commission encourages the Department of State to move the UPU to adopt a terminal dues system that is more cost-based, country-specific and just and reasonable."

The 2012 UPU Congress enacted terminal dues that are increasing the Postal Service's rates for most industrialized countries by roughly 13 percent annually from 2014 to 2017. The Commission has found that these continued terminal dues increases, if accompanied by cost containment, should have a positive effect on inbound letter post revenue and cost coverage.

In addition, as the Commission's understanding of the UPU terminal dues system grew, it realized that no one had analyzed the wider effects of the terminal dues system through the lens of economic theory. Therefore, last year, the Commission contracted with Copenhagen Economics to address terminal dues from this perspective. The principal findings of the Copenhagen Economics report are detailed in my written testimony.

Overall, the report found that terminal dues as currently structured create a variety of distortions to competition, demand, trade flows and postal operators' costs.

Fifteen years ago in March 2000, this Committee held a very similar hearing on international postal policy in my capacity as subcommittee staff director. The hearing was chaired by former Representative John McHugh, to whom I also served as chief of staff. I attended the hearing

The hearing followed the 1999 UPU Congress which committed to a goal of achieving a cost-based terminal dues system by 2005. There have been three additional UPU Congresses since but the goal of the 1999 UPU Congress to achieve cost-based terminal dues by 2005 has not been realized.

I think the conclusion is that progress on terminal dues has been glacial since the previous subcommittee hearing 15 years ago. Indeed, a decade and a half later, the Commission stated in a report issued less than three months ago "the Commission recognizes that the pricing regime for the inbound letter post product based upon the current UPU formula results in noncompensatory terminal dues rates. As a result, domestic mailers continue to subsidize the entry of inbound letter posts by foreign mailers who use the same postal infrastructure but bear none of the burden of contributing to its institutional cost." At that hearing 15 years ago, the Commission described the exact same situation.

Last September, the private sector submitted three terminal dues proposals to the State Department's Federal Advisory Committee. The Commission suggests that the Advisory Committee's recently approved Subcommittee on Terminal Dues carefully examine these proposals and the Copenhagen economics report.

That report's key solution, similar prices for similar services, regardless of country of origin or status as private or public operator, shows that terminal dues do not have to remain an intractable problem.

On behalf of my fellow commissioners and the entire hard-working agency staff, thank you for the opportunity to testify today. I would be happy to answer any questions.

[Prepared statement of Mr. Taub follows:]

Testimony of

Robert G. Taub

Acting Chairman

On behalf of the

Postal Regulatory Commission

Before the

U.S. House of Representatives

Committee on Government Reform and Oversight

Subcommittee on Government Operations

June 16, 2015

Introduction

Chairman Meadows, Ranking Member Connolly and members of the Subcommittee on Government Operations, good afternoon. My name is Robert G. Taub. I am the Acting Chairman of the Postal Regulatory Commission (Commission). I am pleased to testify before you today.

Scope of Testimony

As requested in your letter of invitation, my testimony focuses on the Commission's current responsibilities in international terminal dues treaty negotiations and the current statutory framework for how the United States negotiates international mail rates. The Commission's responsibilities and the broader negotiating framework are codified in section 407 of the U.S. Code, as revised by the Postal Accountability and Enhancement Act (PAEA) of 2006.

The defining feature of the Commission's responsibilities and the current statutory framework is that they exist within the larger context of U.S. membership in the Universal Postal Union (UPU), where terminal dues are negotiated as part of a complex process. I will briefly describe UPU terminology and procedures.

Terminology

The phrase "terminal dues" refers to the fee a nation's postal operator charges to foreign posts for delivering their letter post items. The UPU generally defines "letter post" as including letters and postcards, printed papers, and small packets weighing up to 2 kilograms (4.4 pounds). Conceptually, letter post can be considered to include three broad products — small letters, large letters (flats), and bulky letters (packets up to 4.4 pounds with a maximum combined dimension of 35.4 inches). Letter post items subject to terminal dues are regulated as Market Dominant products in the United States. For clarity, it is Market Dominant products that are being talked about when we discuss terminal dues, rather than Competitive products and any Competitive NSAs, which are regulated differently, and are required to cover their costs.

For example, when the U.S. Postal Service receives letter post items from China Post for delivery in the United States, the U.S. Postal Service is entitled to a terminal dues payment from China Post as compensation for delivering that mail in the U.S. Likewise, China is entitled to compensation for delivering letter post items within its borders originating in the U.S. From the U.S. Postal Service's perspective, mail subject to terminal dues coming from China is "inbound letter post." Similar mail sent from the U.S. to China is "outbound letter post." The phrase "terminal dues" does not refer to the rate a foreign post charges its customers to send mail to another country. Those rates are determined according to each country's national law.

"Bilateral" and "multilateral" agreements (also referred to as negotiated service agreements) refer to U.S. Postal Service contracts with other countries. Under the PAEA, such Market Dominant agreements must either improve the U.S. Postal Service's net financial position or enhance the performance of operational functions. "Improving the net financial position" of the U.S. Postal Service typically means that UPU terminal dues serve as the benchmark (or "default") rates for applying this test. So while contractual rates under bilateral and multilateral agreements may be higher than the otherwise applicable UPU rates, this does not necessarily mean that costs are fully covered.

A Brief Look Back

Coincidentally, 15 years ago in March 2000, this Committee held a very similar hearing on international postal policy. The topic was the landmark 1998 legislation that changed more than a century of national policy by transferring the primary responsibility for international mail arrangements, including terminal dues, from the U.S. Postal Service to the Department of State. This transfer reflected the growing recognition that fundamental changes were occurring in the traditional model for providing postal delivery services, including privatization of some posts, as well as in the communications sector more broadly. The conclusion was that the State Department would not have inherent conflicts of interest. The 1998 legislation also made related changes intended to emphasize that the nation's international postal policy supported fair competition.

I attended the March 2000 hearing in my capacity as subcommittee staff director, chaired by former Representative John McHugh. I also was the chief of staff for Representative McHugh when the PAEA was enacted in 2006. The PAEA reinforced the 1998 legislation's emphasis on promoting fairness, competition, and collaboration. I have been at the Postal Regulatory Commission since 2011 and have served as Acting Chairman since December 2014. I know the policies embodied in both pieces of legislation and have seen how they are playing out in practice. My testimony will draw the Subcommittee's attention to successful aspects of the current approach, but also address important factors that hinder efforts to achieve U.S. objectives with respect to terminal dues.

Current U.S. Negotiating Framework vis a vis the Commission's Section 407(c)(1) Responsibilities

The current negotiating framework, established by the PAEA, retains the State Department as the lead U.S. negotiator for terminal dues, but reinforces and enhances the 1998 legislation's emphasis on extensive collaboration in several significant ways. Most significantly, PAEA established clear policy for the United States to, among other goals, "promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services... ."

State's consultation with other interested parties is now mandatory, not optional, and State must also work with an advisory committee on Postal and Delivery established under the Federal Advisory Committee Act (FACA). Both changes are intended to ensure that State receives ongoing input from others, including industry, on the development of U.S. terminal dues policies. The PAEA also established a new role for the Commission by directing the Secretary of State to request, and the Commission to provide, views on the consistency of terminal dues proposals with modern rate regulation.

Specifically, according to 39 U.S.C. § 407(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." Section 3622 establishes the objectives and factors for rate setting of Market Dominant mail products.

Section 407(c)(2) provides that the Secretary of State shall ensure that every treaty, convention, or amendment is consistent with the Commission's views. The sole exception is if the Secretary of State does not believe that the views are in the foreign policy or national security interest of the United States. In such case, the Secretary is to provide the Commission with a written determination and explanation.

The Commission's approach to its responsibility for providing the Secretary of State with its views has evolved, due largely to ongoing internal discussions on how to improve transparency and accountability. An important development was the Commission's establishment of a Public Inquiry docket prior to the 2012 UPU Congress to seek public comment on the principles that should guide the development of its views to the Secretary of State. In addition, the Commission has developed an internal analytical framework for evaluating proposals to ensure a consistent, even-handed approach and timely submission to the Secretary of State. The Commission also posts view-related materials on its website.

The next UPU Congress will convene in September 2016. The Commission anticipates continuing its recent practice of establishing a Public Inquiry docket as a forum for public input. The Commission will continue to explore ways of fostering greater transparency.

The Commission actively participates in the formal advisory committee that the State Department has established. I attended the most recent FACA meeting in my new capacity as Acting Chairman of the Commission and to express my interest in and appreciation for the work the Committee does.

The Commission reviews the U.S. Postal Service's international contracts before they take effect. It also conducts post-implementation review, and related analyses of international data, as part of the Commission's ACD.

The Role of the UPU

The State Department carries out terminal dues negotiations under the umbrella of the UPU. The UPU was founded by international treaty in 1874, when postal systems were the dominant domestic and almost exclusive international communications medium. It has been a United Nation's specialized agency since 1947.

The UPU serves as the primary global forum, among other things, for establishing terminal dues among member countries. The U.S. has been a member of the UPU since its inception and, until the 1998 legislation, the Postmaster General or the U.S. Postal Service (institutionally) negotiated on behalf of the U.S. in all UPU meetings.

The UPU operates on a four-year cycle, which begins with a "Congress" open to all 192 member countries. Congress is the main forum for voting on matters related to terminal dues, which are part of the UPU Acts. However, preparations for a Congress begin well before the meeting convenes, and work continues in follow-up meetings. The main vehicle for revisions to the terminal dues provisions is a document referred to as a "proposal."

Assessment of the PAEA primarily as it relates to the Commission's Section 407(1) Responsibilities

Since enactment of the PAEA, the Secretary of State has requested — and the Commission has transmitted — views on terminal dues proposals slated for consideration at the 2008 and 2012 UPU Congresses. The Commission's review led to the conclusion that no terminal dues proposals that were adopted by those UPU Congresses were inconsistent with Section 3622. However, the most recent view stated that, "The Commission continues to adhere to the position that the U.S. Government should actively promote terminal dues rates in the UPU that are closely aligned with domestic postage rates and provide sufficient cost coverage to handle, transport and deliver inbound international mail for the Postal Service. Terminal dues rates are available only to designated operators … . The Commission encourages the Department of State to move the UPU to adopt a terminal dues system that is more cost-based, country-specific, and just and reasonable."

In terms of the U.S. policy of cost-based terminal dues rates, the 2012 terminal dues proposals that were adopted provided for increases in the U.S. Postal Service's terminal dues rates from most industrialized countries by roughly 13 percent annually from 2014 to 2017. Under the PAEA, the Commission is mandated to conduct an annual review, referred to as an Annual Compliance Determination (ACD), to ensure all U.S. Postal Service rates charged during the previous fiscal year were in compliance with the law. As stated in the Commission's most recent ACD (covering FY 2014), continued terminal dues increases, if accompanied by cost containment, should have a positive effect on Inbound Letter Post revenue and costs coverage during the same period.

The 2012 UPU terminal dues proposals also moved the terminal dues rates paid by developing countries and territories, including Hong Kong, Singapore, and the People's Republic of China, closer to the rates paid among industrialized countries. The Commission recognizes that in the UPU environment, this also represents progress toward cost-based rates.

However, a February 25, 2014, Audit Report issued by the U.S. Postal Service's Office of the Inspector General (OIG) sounds a cautionary note on the U.S. Postal Service's costing methodology for inbound small packets from China sent under a bilateral agreement, mainly as it relates to pricing strategies. The OIG notes that although China Post sorts and dispatches small packets separately, the U.S. Postal Service does not calculate the cost data for these small packets separately from other letter post items or report it separately to the Commission.

Other Commission Efforts

In each ACD issued since the first in FY 2007, the Commission has recommended that the U.S. Postal Service actively pursue the negotiation of more bilateral or multilateral terminal dues agreements that improve cost coverage. Bilateral or multilateral agreements typically allow the U.S. Postal Service to negotiate rates that are higher than UPU terminal dues.

As the Commission noted in its most recent ACD, "The Commission recognizes that the pricing regime for the Inbound Letter Post product, based upon the current UPU formula, results in noncompensatory terminal dues rates. As a result, domestic mailers continue to subsidize the entry of Inbound Letter Post by foreign mailers who use the same postal infrastructure but bear none of the burden of contributing to its institutional cost."

The Commission also recommended in the FY 2014 ACD that the U.S. Postal Service make concerted efforts to improve service quality for inbound international letter mail. The reason for this recommendation was that due to its performance measurement results for the last several years, the U.S. Postal Service has lost potential terminal dues revenue because terminal dues are based on performance.

In addition, as the Commission's understanding of the UPU terminal dues system grew, it realized that while some work had been done to estimate the potential magnitude of distortions related to insufficient compensation for inbound letter post, no one had analyzed the wider effects of the terminal dues system through the lens of economic theory. Therefore, last year the Commission contracted with Copenhagen Economics to address terminal issues from this perspective. The Commission published the Report on September 30, 2014. The findings were presented at a public briefing the Commission convened on November 17, 2014.

The principal findings of the Copenhagen Economics Report are:

- The application of different terminal dues to designated operators and non-designated operators distorts competition among first-mile delivery operators (service providers who compete for the business of the original senders (or shippers) of mail.

- Terminal dues set at a level below the cost of last-mile activities distort competition among last-mile operators.

- The current terminal dues system increases demand for delivery services covered by the system relative to services outside the system, leading to excessive use of packet delivery services at the expense of parcel delivery services.

- The current terminal dues structure leads to distortions in mail and trade flows by increasing demand for less efficient cross-border delivery of letter post (which includes small packets), especially from certain countries.

- Terminal dues create financial transfers between delivery operators which, in turn, may cause distortionary spillover effects (such as higher taxes to fund the postal operator's loss).

- Alternative systems, such as Remuneration of International Mails (REIMS) and bilateral agreements, create many of the same distortions as the UPU system.

- An optimal and non-distortionary solution would require that terminal dues (the price for last-mile handling of *cross-border* letter post items) are set equal to the price for *domestic* and cross-border letters. To cope with political concerns, this solution should be complemented with an aid program for developing countries.

- To prevent foreclosure of as-efficient non-designated operators, non-distortionary terminal dues must be at least as high as the long-run average incremental cost of last-mile activities.

The Report's bottom line solution is that a postal administration should charge its customers similar prices for similar services, irrespective a mailer's country of origin or its status as private or public operator.

Broader Perspective

The 1999 UPU Beijing Congress committed to a goal of achieving a cost-based terminal dues system by 2005. I have re-read the transcript of the March 2000 hearing, where U.S. participation at that Congress was discussed, and have considered post-hearing developments.

The transcript shows that the Commission's testimony at the March 2000 hearing described in positive terms the initial steps the State Department had taken, in anticipation of the 1999 UPU Beijing Congress, to encourage broad reform at the UPU and to promote a collaborative approach to developing U.S positions on terminal dues for the UPU's 1999 Beijing Congress. The Commission observed that the Beijing Congress had taken an important step forward in terms of U.S. policy because the rates in the new terminal dues agreement would be more cost based than the prevailing terminal dues. It also noted that State believed the new agreement would begin the process of having terminal dues based on costs (with domestic rates as a proxy for costs), as this would make them more compensatory. This points to some initial success, on the part of the State Department, in advancing the objectives of the 1998 legislation.

On the other hand, the transcript also shows that Ambassador Southwick, the State Department official negotiating on behalf of the U.S. at the Beijing Congress, reserved the right not to apply the UPU 1999 terminal dues provisions. In addition, some of the witnesses at the March 2000 hearing emphasized that there were fundamental issues with the terminal dues system in which the U.S. participates, especially as it affects fairness and competition. For example, they noted that under the UPU Acts, discounted terminal dues rates are available only to the U.S. Postal Service and other posts, not private operators. This means that the U.S. Postal Service can have outbound mail delivered at substantial discounts by foreign posts. As discounted rates for foreign postal delivery are reflected in the U.S. Postal Service's international mail rates, the U.S. Postal Service enjoys a commercial advantage.

The witnesses also observed that the U.S. efforts in Beijing had not changed the fact that the terminal dues system allows the Postal Service to deliver inbound letter post at a substantial discount compared to rates charged to American mailers for the same domestic product. For U.S. mailers, the implicit cost of the discount to inbound is paid indirectly by domestic mailers, who are captive customers of the U.S. Postal Service, but private operators can't force domestic customers to cover such costs.

Finally, the witnesses noted that the practice of trading discounts for postal delivery is protected by the UPU, and could otherwise be considered anticompetitive.

The Copenhagen Economics Report shows that the problems those witnesses identified have not been resolved.

In addition, since the March 2000 hearing, the Internet, email, and cell phones have revolutionized patterns of personal and business communication, so conventional personal correspondence and remittance payments have declined as a proportion of the domestic and international mail streams. Moreover, as e-commerce has exploded, small packets are entering the international mail stream because they offer a convenient means of shipping consumer goods, especially relatively low-cost, lightweight items.

The Commission's technical staff has prepared an analysis that shows the impact of these developments in sharp relief. In FY 1999, the average weight per piece was

1.7 ounces for U.S. inbound letter post. In FY 2014, the average weight was 4.7 ounces. This can only mean that the inbound letter post mail stream included very few small packets in FY 1999, but is now dominated by small packets.

There have been three additional UPU Congresses since March 2000, but the goal of the 1999 UPU Congress to achieve cost-based terminal dues has not been realized. In fact, after the State Department reserved the right not to apply the UPU 1999 terminal dues agreement, the UPU revised its rules in 2004 to prevent such action. Instead, member countries dissatisfied with UPU terminal dues rates are prohibited from taking a reservation against the terminal dues provision and instead allowed to attempt to enter into bilateral or multilateral agreements with other countries.

Despite several adjustments, the terminal dues formula still does not generate cost-based rates. Moreover, terminal dues for industrialized countries are subject to a rate cap. This rate cap keeps terminal dues artificially low, thereby preventing them from reaching full cost coverage for most postal operators. It also affects private operators' ability to compete because the terminal dues are lower than domestic rates.

I think the only conclusion that most onlookers unfamiliar with the UPU terminal dues system would come to is that progress on terminal dues has been glacial since the previous subcommittee hearing 15 years ago. Indeed, a decade and a half later, the Commission concluded in its most recent ACD issued less than three months ago, on March 27, 2015: "The Commission recognizes that the pricing regime for the Inbound Letter Post product, based upon the current UPU formula, results in noncompensatory terminal dues rates. As a result, domestic mailers continue to subsidize the entry of Inbound Letter Post by foreign mailers who use the same postal infrastructure but bear none of the burden of contributing to its institutional cost."

Recommendations on Terminal Dues

In September 2014, the private sector submitted three terminal dues proposals to the State Department's FACA. These proposals would require industrialized countries in the UPU to introduce non-discriminatory, country-specific terminal dues rates based on domestic rates in 2018. These rates would also be available to private delivery operators and customers. The private sector proposals also call for a plan for a global system of country-specific, non-discriminatory terminal dues rates for the 2020 Congress. The Commission suggests that the Advisory Committee's recently-approved subcommittee on terminal dues carefully examine these proposals and the Copenhagen Economics Report.

The Copenhagen Economics Report is a groundbreaking effort, as no one had yet analyzed the wider effects of the terminal dues system through the lens of economic theory. The Copenhagen Economics Report should be closely examined by postal policymakers. Its key solution — *similar prices for similar services regardless of country of origin or status as private or public operator* — shows that terminal dues do not have to remain an intractable problem. The Report engendered much discussion of its

findings and recommendations at the Commission's November public briefing.

Conclusion

Thank you for the opportunity to testify today. I am happy to answer any questions.

Mr. MEADOWS. Thank you so much and thank you for your service.

Mr. Faucher.

STATEMENT OF ROBERT J. FAUCHER

Mr. FAUCHER. Thank you, Mr. Chairman. Thank you for this opportunity to discuss the Department of State's role in international postal matters.

For 140 years, the Universal Postal Union has provided the framework for the international exchange of mail. The United States participation in the Universal Postal Union is led by the Department of State, which is responsible for the formulation, coordination and oversight of foreign policy related to international postal services.

In discharging these responsibilities, the Department of State works closely with the Postal Regulatory Commission, the U.S. Postal Service and other concerned government agencies, including the Department of Homeland Security, the Department of Commerce, and the Office of the United States Trade Representative. We also seek advice from the International Postal and Delivery Services Advisory Committee, which brings together key private sector and government stakeholders.

In 2012, the International Postal and Delivery Services Advisory Committee helped to formulate the 2013–2016 United States Strategic Plan for the Universal Postal Union. This plan identified five priorities with regard to the terminal dues system. These priorities included supporting the fundamental principle of market-oriented, cost-based, country-specific terminal dues.

Those priorities also included further refining the methodology of the terminal dues pricing model to produce rates that more closely reflect costs and also included more member states and the target terminal dues system.

Terminal dues rates are established in the Universal Postal Union Convention, which is adopted by the Congress of the Universal Postal Union every four years. It establishes universally applicable rules for the provision of international postal services. The next Congress of the Universal Postal Union will take place in Istanbul in 2016.

The Department of State provides the head of the U.S. delegation to the Congresses and also initiates the Circular 175 process to authorize negotiations. The State Department also coordinates production of position papers that are cleared through an interagency process.

In addition to this interagency coordination, the Department of State also solicits the views of the Postal Regulatory Commission on the consistency of proposals that are before the Congress that could establish a rate or classification for any market dominant product with the regulatory standards and criteria established by the Postal Regulatory Commission.

The State Department also ensures that the formulation of the United States' positions is informed by stakeholder input, principally through the International Postal and Delivery Services Advisory Committee, which the Department of State convenes when there are issues to consider and before all major Universal Postal

Union meetings. Finally, it is important to understand that the U.S. delegation to a Congress of the Universal Postal Union has sometimes included private sector advisors, whose knowledge and perspective has proven to be invaluable.

The United States is a member of the Postal Operations Council and the Council of Administration at the Universal Postal Union. These two bodies have the responsibility of preparing the terminal dues proposals for the next Universal Postal Convention.

The State Department has designated the Postal Regulatory Commission and the Postal Service as co-leads for U.S. participation in formulation of these proposals. The State Department, however, will retain final authority for determining U.S. positions.

The focus of current work in the Postal Operations Council is to finalize two terminal dues pricing model options that would incorporate the differences in delivery costs associated with mail items of different shapes, since, for example, handling costs are higher for a box than for an envelope. We strongly support this effort, which advances our goal of further refining the pricing model to produce terminal dues rates that more closely reflect costs to postal service providers.

In addition, there is a potentially far-reaching initiative to modernize the Universal Postal Union's physical services portfolio, potentially integrating letter post and parcel post, which would have significant implications for terminal dues.

Let me conclude with a further note on stakeholder consultation. At the State Department's request, a Postal Service official briefed the International Postal and Delivery Services Advisory Committee on the state of play in terminal dues work at the Postal Operations Council at the Committee's most recent meeting on February 13.

The Advisory Committee had two lengthy discussions on terminal dues issues in the past year. These discussions focused on the proposals presented by Advisory Committee members representing the commercial express delivery industry with the objective of having the United States propose them at the 2016 Istanbul Congress.

The Advisory Committee took no action on these proposals but recommended that a subcommittee be formed to facilitate a more detailed examination of the terminal dues issues. The State Department accepted this recommendation, and has authorized establishment of a subcommittee for this purpose which should be meeting in the next few weeks.

Mr. Chairman, thank you again for this opportunity to describe the role of the Department of State in international postal matters, including the process of establishing terminal dues and to outline U.S. goals in this process.

I would be happy to answer any questions members of the Committee have on these topics or on other matters related to terminal dues or the Universal Postal Union or international postal and delivery services in general.

Thank you.

[Prepared statement of Mr. Faucher follows:]

Statement of
Department of State, Bureau of International Organization Affairs
Acting Deputy Assistant Secretary Robert J. Faucher
before the Subcommittee on Government Operations of the
House Committee on Oversight and Government Reform

June 16, 2015

Mr. Chairman,

Thank you for this opportunity to discuss the Department of State's role in international postal matters, including the processes at the Universal Postal Union that establish terminal dues, as well as our goals in these activities and our efforts to consult stakeholders.

For one hundred and forty years, the Universal Postal Union has provided the framework for the international exchange of mail. This includes setting the rates of remuneration for the delivery of in-bound international letter mail. United States participation in the Universal Postal Union is led by the Department of State, which is responsible for the formulation, coordination and oversight of foreign policy related to international postal services. In discharging these responsibilities, the Department of State works closely with the Postal Regulatory Commission, the U.S. Postal Service and other concerned government agencies, including the Department of Homeland Security, the Department of Commerce, and the Office of the United States Trade Representative. We also have a unique asset in the International Postal and Delivery Services Advisory Committee, which brings together key private sector and government stakeholders to exchange views and make recommendations on foreign policy relating to international postal and delivery services.

In 2012, the International Postal and Delivery services Advisory Committee helped to formulate the 2013-2016 United States Strategic Plan for the Universal Postal Union, which identified five priorities with regard to the further evolution of the terminal dues system. These priorities are:

a) to support the fundamental principle of market-oriented, cost-based, country-specific terminal dues under which increases in rates are phased in

over time or introduced with ample advance notification to avoid sudden and steep postage rate increases for mailers;
b) to further refine the methodology of the terminal dues pricing model to produce rates that more closely reflect costs;
c) to take account of subsidized postage rates in many countries;
d) to continue progress in achieving inclusion of Universal Postal Union member countries in the target terminal dues system, after analysis of the impact of entering the target system on new target countries;
e) to monitor Universal Postal Union actions to move member countries to the target terminal dues system.

Terminal dues rates are established in the Universal Postal Union Convention, which is adopted by the Congress of the Universal Postal Union every four years and which establishes universally applicable rules for the provision of international postal services. The last Universal Postal Union Congress was held in Doha in 2012. The next Congress will take place in Istanbul in the fall of 2016.

The Department of State provides the head of the U.S. delegation to Congresses of the Universal Postal Union. It also initiates the Circular-175 process to authorize negotiations, and coordinates preparations for Congresses of the Universal Postal Union, including production of position papers that are cleared through an interagency process the State Department also leads. In addition to this interagency coordination, the Department of State also solicits the views of the Postal Regulatory Commission on the consistency of proposals to Congresses of the Universal Postal Union that could establish a rate or classification for a market dominant product with the regulatory standards and criteria established by the Postal Regulatory Commission.

Formulation of United States positions before a Congress of the Universal Postal Union is informed by stakeholder input, principally through the International Postal and Delivery Services Advisory Committee, which the Department of State convenes when there are issues to consider and before major Universal Postal Union meetings. The U.S. delegation to a Congress of the Universal Postal Union has sometimes included private sector advisors, whose knowledge and perspective has proven to be invaluable. I, therefore, anticipate that we will continue this practice for the upcoming Istanbul Congress. I should note that we were privileged to have had Ms. Sparks, who is testifying before you today, serve as a member of the U.S. delegation to the 2012 Doha Congress.

The terminal dues provisions of the Universal Postal Union Convention come forward to the Congress of the Universal Postal Union as proposals from the Postal Operations Council and the Council of Administration, which are the Universal Postal Union's main subsidiary bodies. The United States is currently a member of both councils. Most of the actual work of preparing the terminal dues provisions and related proposals takes place within the Postal Operations Council's Physical Services Committee's Letter Post Remuneration Group and various project teams and working groups established under it. The State Department designated the Postal Regulatory Commission and the Postal Service as co-leads for U.S. participation in this process, although in any particular meeting a Postal Regulatory Commission staff member or a Postal Service staff member may be identified as the lead or sole U.S. participant. The State Department, however, retains final authority for determining U.S. positions.

The focus of current work in the Postal Operations Council is to finalize two terminal dues pricing model options that would incorporate the differences in delivery costs associated with mail items of different shapes, since, for example, handling costs are higher for a box than for an envelope. We strongly support this effort, which advances our goal of further refining the pricing model methodology to produce terminal dues rates that more closely reflect costs to postal service providers. In addition, there is a potentially far-reaching initiative that has been launched by the Canadian and Belgian co-chairs of the Postal Operations Council's Physical Services Committee to modernize the Universal Postal Union's physical services portfolio, potentially integrating letter post and parcel post, which has implications for terminal dues. The United States has been invited to participate in the work of the *ad hoc* group established to develop the remuneration aspects of this initiative.

Let me conclude with a further note on stakeholder consultation. At the State Department's request, a Postal Service official briefed the International Postal and Delivery Services Advisory Committee on the state of play in terminal dues work in the Postal Operations Council at the Committee's most recent meeting on February 13. Greater stakeholder engagement in this stage of the process is constrained, however, by the fact that Letter Post Remuneration Group meetings are closed and Postal Operations Council documents are not publically available. Despite this limitation, which we hope to overcome through rule changes, we have had two lengthy, though inconclusive, discussions of terminal dues issues in the International Postal and Delivery Services Advisory Committee in the past year. These discussions focused on proposals presented by Advisory Committee members representing the commercial express delivery industry with the objective

of having the United States propose them at the 2016 Istanbul Congress. The International Postal and Delivery Services Advisory Committee took no action on these proposals but recommended that a sub-committee be formed to facilitate a more detailed examination of terminal dues issues. The State Department accepted this recommendation, and has authorized establishment of a subcommittee for this purpose.

Mr. Chairman, thank you again for this opportunity to describe the role of the Department of State in international postal matters, including the process of establishing terminal dues and to outline U.S. goals in this process. I would be happy to answer any questions members of the committee have on these topics or on other matters related to terminal dues or the Universal Postal Union or international postal and delivery services in general.

Mr. MEADOWS. Thank you, Mr. Faucher.

Before we go on to you, Mr. Miskanic, I am going to recognize the Ranking Member, the gentleman from the 11th District of Virginia, Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman. Thank you for holding today's hearing to examine the international postal policy, particularly the current terminal dues rate system.

We have an excellent panel of witnesses before us. Indeed, I believe it was PRC Chairman Taub who was the catalyst behind the last hearing held to examine the international postal system back in March 2000. Each witness represents a key entity with expertise and importance as to how we can work together to strengthen the U.S. strategic approach to future negotiations.

I look forward to an in-depth conversation today to explore how our Nation can work to level the playing field for American small businesses and in the process, enhance global competition in ecommerce markets to benefit consumers at home and abroad.

As you noted, Mr. Chairman, the UPU is the global organization through which the international community establishes treaties governing complex global mail issues such as setting appropriate terminal dues rates every four years. Terminal dues are meant to cover the domestic cost of handling, transporting and delivering mail originating abroad, while ensuring that rates are set in a progressive fashion to ensure that all UPU countries participate in the system.

The concept of the terminal dues system is well intended. Indeed, the world needs a mechanism in place to facilitate global mail exchanges. However, there appear to be serious shortcomings in the current system that may be harming American business interests.

For example, recent audits by the U.S. Postal Service's Inspector General found that terminal dues do not cover the Postal Service's actual cost for handling, transporting and delivering letter post items from abroad.

Further, I am concerned that the significant imbalance between our Nation's domestic shipping rates and the incredibly low international shipping rates we charge so-called transitional countries to export goods into our country may be providing an artificial and unfair competitive advantage to foreign retailers. That harms U.S. small businesses.

According to the Postal Regulatory Commission, the current terminal dues rates may distort competition and artificially increase demand for products from foreign vendors who benefit from these low transitional country rates. The shipping of epackage which weigh up to 4.4 pounds and contain tracking and delivering features from China to the United States have increased by 182 percent just from 2011 to 2012 according to the report by Postal Vision 2020.

While this increase is partially a result of technological advancements, it has spurred greater utilization of ecommerce marketplaces, it is highly likely that the unfair competitive advantage provided by the low terminal dues is also a major driver of this dramatic increase.

American small businesses simply want a level playing field on which to compete with foreign retailers, many of whom are formi-

dable business competitors even absent the artificial terminal dues pricing advantage they get.

In addition, private carriers are struggling to compete with carriers who have access to terminal dues. The Postal Service continues to lose money on foreign shipping costs as foreign posts profit.

The bottom line is that we are here this afternoon to ensure there is a fair and equitable global marketplace and that American businesses have a fair opportunity to compete on a level playing field in the digital age. The one country, one vote structure of the UPU does not allow change to happen at a rapid pace. That is why it is essential for government agencies and private entities to do everything in their power to protect American interests.

According to Title 39, Section 407, the State Department's role is to "promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery service." This is crucial to ensuring the success of American business and ultimately the American economy. I look forward to hearing how the State Department in particular has carried out this responsibility.

I would also like to hear the PRC's view on the most pressing issues with the current system and its proposals on how it can be improved to facilitate robust but fair competition.

From our private carriers and the ecommerce marketplace providers I would like to gain an understanding of how businesses have been affected by these dues, particularly our Nation's community of small e-retailers.

I think this is an important hearing. Mr. Chairman, I thank you for holding it and look forward to the testimony. I thank you for allowing me to interject at this point.

Mr. MEADOWS. I thank you for your comments.

Now we will recognize you, Mr. Miskanic, for five minutes.

STATEMENT OF RANDY S. MISKANIC

Mr. MISKANIC. Good afternoon, Chairman Meadows, Ranking Member Connolly and members of the subcommittee.

My name is Randy S. Miskanic. I am Acting Chief Information Officer and Executive Vice President of the United States Postal Service.

I previously served at the Universal Postal Union in Berne, Switzerland, for approximately three years. I was also a member of the U.S. Delegation for the last UPU Congress in Doha in 2012.

I am pleased to be here today to discuss the UPU terminal dues system. The UPU is a specialized agency of the United Nations that sets the terms for how the world's postal operators exchange international mail. The organization establish terminal dues rates and is the primary forum for cooperation among postal operators.

The United States is a member of the UPU and exchanges mail globally, in accordance with its Acts. The U.S. Department of State, the Postal Service, the U.S. Postal Regulatory Commission and representatives of the broader postal industry are all key UPU stakeholders. By law, the State Department is the lead representative of the U.S. Government to the UPU.

The Postal Service is designated by the United States Government to fulfill the obligations of the UPU Acts, which include exchanging international mail with more than 200 countries and territories. International mail accounts for 4 percent of our revenue and 1 percent of our annual total volume.

Industry representatives, including FedEx, UPS and DHL, directly participate in the State Department's Advisory Committee on International Postal and Delivery Services. A subcommittee will be forming to facilitate a more detailed examination of terminal dues which will be an appropriate venue for greater stakeholder engagement.

The UPU Congress, which convenes every four years, provides the forum for member countries to establish policies and regulations for the global postal sector. Each of the 192 member countries is entitled to one vote on proposals introduced to the Congress, including those involving terminal dues.

Terminal dues are paid and received for the delivery of letters, flats and small packages weighing up to 4.4 pounds. The rates, which are set by the UPU, and assessed against the originating post, are intended to cover processing and delivery costs for inbound international mail.

Terminal dues rates are based on whether a country is classified as target or transition as determinate by its stage of development. Target country terminal dues are based on country specific rates which is currently 70 percent of domestic postage rates. Transition countries pay terminal dues rates that are based primarily on lower, worldwide average costs.

The 2012 Doha Congress established a new formula to produce terminal dues that are closer to actual costs which will result in increases for both the target and transition countries. While this is a favorable development, the changes will take four years to be fully implemented from the January 2014 effective date and cost coverage may remain under 100 percent. We have long made the argument that inbound letter post cost coverage for a country like the United States must be improved.

The terminal dues system is designed to serve multiple competing objectives, including support for developing countries. As such, it is not a system suitable for participation by both public and private operators, the latter of which differ in several ways from universal service providers.

Private operators are not encumbered by universal service obligations and are free to target only the most lucrative markets. Additionally, they are able to offer service to or from a country without having to carry reverse traffic at a loss.

Going forward, the Postal Service is advocating for shape-based pricing to better achieve cost. It is anticipated that the 2016 Istanbul Congress will adopt a terminal dues structure that is more closely related to the cost of processing and delivering different shapes of mail.

As an alternative to UPU terminal dues, the Postal Service can enter bilateral agreements with foreign postal operators that include negotiated rates for some or all inbound letter post items. Negotiated rates are designed to improve the overall cost coverage

and improve efficiencies. Proposed inbound bilateral agreements must be filed at the PRC for review and approval.

While the Postal Service may be better served by negotiating terms independently with certain countries, it would be impractical to negotiate, sign and file at the PRC, a separate bilateral agreement with each UPU designated operator.

In many cases, foreign postal operators are not willing to negotiate bilateral agreements as doing so would require paying a rate higher than UPU terminal dues. When the Postal Service negotiates with foreign postal operators, there is little bargaining room to increase cost coverage because the current UPU terminal dues structure provides the base of the negotiating position.

The Postal Service continues to encourage the UPU and State Department to support the principle of cost-based country-specific terminal dues and advocates for positions that move toward better cost coverage for all inbound UPU mail flows.

Thank you, Mr. Chairman. I welcome any questions that you and the Committee members may have.

[Prepared statement of Mr. Miskanic follows:]

UNITED STATES
POSTAL SERVICE

Statement of Randy S. Miskanic
Acting Chief Information Officer and Executive Vice President
United States Postal Service
Before the Subcommittee on Government Operations
United States House of Representatives
June 16, 2015

Good Afternoon Chairman Meadows, Ranking Member Connolly, and members of the Subcommittee. My name is Randy S. Miskanic, I am Acting Chief Information Officer and Executive Vice President of the United States Postal Service. In this role, I am responsible for the advancement of new mail intelligence, engineering systems, information technology systems, payment technology and corporate information security. I previously represented the Postal Service at the Universal Postal Union (UPU) in Berne, Switzerland, for approximately three years. I was responsible for developing supply chain strategies for the global postal sector. Additionally, I was a member of the U.S. Delegation for the last UPU Congress in Doha in 2012. I also served on other U.S. Delegations for UPU council meetings for approximately five years. I am pleased to be here today to discuss the UPU terminal dues system.

UPU Background

The UPU is a specialized agency of the United Nations that sets the terms for how the world's postal operators exchange international mail under a universal service obligation. Established in 1874 and headquartered in Berne, Switzerland, the UPU helps to facilitate international mail exchanges and makes recommendations to stimulate growth in volume and improve services for customers. With 192 member countries, the organization establishes terminal dues rates and is the primary forum for cooperation among postal sector players, fulfilling an advisory, mediating and liaison role, and providing technical assistance where needed.

The United States is a member of the UPU and exchanges mail, in accordance with its Acts, with other foreign postal operators designated by their governments to provide universal service throughout their territories. The U.S. Department of State, the Postal Service, the U.S. Postal Regulatory Commission (PRC) and representatives of the broader postal industry are all key UPU stakeholders.

Stakeholder Roles

In addressing international postal arrangements, the 2006 *Postal Accountability and Enhancement Act* (PAEA) noted "it is the policy of the United States 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." That law established that the Secretary of State would be responsible for formulation, coordination and oversight of foreign policy related to international postal services and have the power to conclude postal treaties, conventions and amendments.

As such, the Department of State is the lead representative of the United States Government to the UPU. In accordance with the *Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999,* the Postal Service makes an annual payment to the Department of State for its fulfillment of UPU responsibilities. The fiscal year 2015 Interagency Agreement between the Postal Service and the Department of State allocates a total of $150,000 for this purpose.

The Postal Service is the operator designated by the United States Government to fulfill the obligations of the UPU Acts, which include dispatching international mail— a segment that accounts for 4 percent of the Postal Service's revenue and 1 percent of its annual total mail volume—to more than 200 countries and territories and receiving and delivering foreign origin mail. The Postal Service also furnishes quality basic postal services throughout the United States, thereby fulfilling the Acts' universal service obligation. It should be noted that private companies that ship international letters and parcels from the United States are not encumbered by this universal service obligation, and can freely develop and select their markets.

Industry representatives can, and do share their views and make recommendations on UPU policy matters by way of two vehicles. They participate in the UPU's Consultative Committee, a body which plays a key role in developing a more global vision of the issues affecting the sector, and the Advisory Committee on International Postal and Delivery Services (IPoDS).

Established by requirement of the PAEA, within the meaning of the Federal Advisory Committee Act (FACA), IPoDS provides the Department of State advice with respect to U.S. foreign policy related to international postal services and U.S. policy toward the UPU and other international postal and delivery services. Private industry actively provides input into committee deliberations, and its members include representatives of FedEx, United Parcel Service and DHL Global Mail, as well as other government agencies, business interests and associations. When proposals are made by committee members, an interagency meeting is convened to review such proposals and the Department of State makes a final determination on U.S. positions and policy formation.

Notably, as it is a subject of such importance, the IPoDS Advisory Committee will be forming a sub-committee to facilitate a more detailed examination of terminal dues. This subcommittee will be an appropriate and effective venue for greater stakeholder engagement in our goals to improve cost coverage for terminal dues.

Both the PRC and Postal Service are active contributors to UPU working groups, such as the Postal Operations Council's (POC's) Letter Post Remuneration Group. Before each Congress, the PRC submits a formal "view" to the State Department on international treaties or conventions that establish rates for market dominant products. The PRC's view is binding on the State Department, unless it determines to take a different approach in furtherance of U.S. national security or foreign policy interests.

UPU Organization

The UPU Congress, which convenes every four years, provides the forum for member countries and other major stakeholders to establish policies and regulations for the global postal sector for a four-year cycle. Each member country, including the United States, is entitled to one vote on proposals introduced to the Congress, which must be approved by a majority or super-majority of the member countries. The last Congress in Doha in 2012 set policy and established terminal dues rates for letter post mail for the 2014 – 2017 cycle. The next Congress will be held in 2016, and will establish terminal dues rates that go into effect in 2018.

The United States government is currently a member of two key UPU bodies: the Council of Administration (CA) and the POC. The CA ensures the continuity of work between Congresses, supervises activities and studies regulatory, administrative, legislative and legal issues. The POC sets rules and standards for the interoperability of postal services worldwide. Both the POC and the CA are involved in the development of a terminal dues system for the 2018-2021 cycle.

UPU Terminal Dues

Terminal dues are paid and received for the delivery of letters, flats and small packages (weighing up to 4.4 pounds, or 2 kilograms) among more than 200 postal operators. The rates,

which are set by the UPU and assessed against the originating post, are intended to cover processing and delivery costs for inbound international mail.

Not all countries are at the same stage of development and there are significant variations in their mail volumes, postal rates and costs. Since the 1999 Beijing Congress, terminal dues rates have been based on whether a country is a target (previously called industrialized) or transition (previously called developing) country. UPU countries and territories are classified into five major groups. Currently, there are 41 Group 1.1 target countries and territories that joined the system prior to 2010, and these are the most developed countries. There were 36 target countries that joined the system in 2010 (Group 1.2) and 2012 (Group 2), and 40 countries in Group 3 will join the target system next year in 2016. There are 104 transition countries and territories (Groups 4 and 5). The UPU has established detailed and complex criteria, including factors such as Gross National Income per capita, to determine a country's classification as target or transition. Its aim is to progressively incorporate all countries into the target system.

For mail flows from transitioning economies, terminal dues rates are based primarily on world-wide average costs and are typically lower than target countries. For mail flows from target countries, terminal dues are based on country-specific postage rates (currently 70 percent of domestic postage rates.)

The UPU has also established floor and cap rates for terminal dues for mail exchanged between target countries. Floor rates were applied to countries with low domestic postage rates, such as the United States, and cap rates to countries with high domestic postage rates, such as Denmark.

Prior to the 2012 Congress, the UPU based its formula for setting international terminal dues on the domestic postage rate for a 20 gram letter, a product for which the U.S. had one of the lowest postage rates among all target countries, currently $0.49. Comparatively, the 20-gram domestic rate in Denmark equates to $1.51. As a result, the U.S. is one of the least expensive countries for foreign target countries to mail to, and the financial performance of inbound international mail for the Postal Service suffers.

At the 2012 Doha Congress, UPU member countries established a new formula to produce terminal dues that are closer to actual costs. The revised formula, which went into effect January 1, 2014, is based on domestic postage rates for both 20 gram and 175 gram letters, the latter of which has a relatively high domestic postage rate in the U.S. Rates for both target and transition countries will increase through 2017 as a result of the new Convention adopted at the Doha Congress. Inbound terminal dues rates paid to the Postal Service by target countries are increasing by an average of 13 percent each year from 2014 through 2017. Inbound terminal dues rates for new target and transition countries are also increasing by an average of 6 percent and 2.8 percent respectively. The United States' terminal dues rates will move from a floor to a cap system over the 4-year period. While this is a favorable development, the changes will take 4 years to be fully implemented and cost coverage may remain under 100 percent for this market dominant mail stream.

Postal Service representatives on U.S. delegations have long made the argument that inbound letter post coverage for a low cost country like the United States must be improved. However, these concerns also need to be balanced against the need to ensure that through the dynamics of reciprocity, U.S. domestic mailers are not subject to excessively high postage rate increases in order to cover the cost of increased terminal dues for U.S. origin letters delivered abroad. This requires a need for balancing so that competing concerns can be adequately addressed within the framework of the UPU system.

It is also important to emphasize that the terminal dues system is not created solely to further economic goals, but is designed to serve multiple competing objectives, including support for economies in development. As such, it is not a system suitable for participation by both public

and private operators. In this regard, it's important to keep in mind that private operators differ in several ways from universal service providers like the Postal Service.

First, unlike postal operators who have a universal service obligation, private operators are unencumbered by such obligations or other domestic legislative mandates, and are free to target only the most lucrative markets.

Second, designated operators must offer reciprocity to their counterparts in the UPU in order to fulfill the Convention's aim of creating a single postal territory. Private operators do not routinely offer reciprocity to other postal administrations, but can offer unidirectional service to or from a country without having to carry reverse traffic at a loss.

Third, designated operators must maintain very different network structures to support universal service. For example, they must maintain large post office networks throughout their territories and usually offer universal delivery service to all delivery points according to a fixed schedule. Private operators, however, are not structured to serve individual (single-piece) customers or offer network delivery services. Therefore, they operate with much different infrastructure costs. In sum, the obligations, burdens, purposes, and economic opportunities for postal operators versus private operators differ substantially.

Going forward, as a co-lead of the POC's Letter Post Remuneration Group, the Postal Service is advocating proposals for format separated pricing to better achieve cost coverage. Currently, there is one rate for all shapes—letters, flats and small packages weighing up to 4.4 pounds—and parties are in agreement that the status quo is unsustainable. At the time of the Doha Congress, most countries did not separate their international mail dispatches by shape. It was decided that the regulations should first be changed to make operational format separation mandatory before different rates could be applied to different formats. The regulations adopted for this cycle now require mandatory format separation, and it is anticipated that the 2016 Istanbul Congress will adopt a terminal dues structure that is more closely related to the costs of processing and delivering different shapes of mail pieces, with a different rate for small packages.

Bilateral Agreements

As an alternative to UPU terminal dues, the Postal Service can enter into bilateral agreements with foreign postal operators that include negotiated rates for some or all inbound letter post items. Negotiated rates are designed to improve the overall cost coverage for inbound letter post items compared with cost coverage at default UPU terminal dues. These agreements can increase revenue and foster collaboration between postal operators to provide additional products and services to meet customers' needs. Bilateral agreements also allow the Postal Service to introduce work-share requirements, improved billing and invoicing terms and performance based incentives.

Proposed inbound bilateral agreements must be filed at the PRC for review and approval. When negotiating such agreements, the Postal Service intends that it will improve cost coverage over the default UPU terminal dues, so as to satisfy the statutory condition that a market dominant negotiated service agreement either improve the net financial position of the Postal Service or enhance the performance of certain operations. The PRC has 45 days to perform an advance review of the financials of each inbound international bilateral agreement, and the Postal Service cannot move forward to enact any such agreement without the PRC's approval.

While the Postal Service may be better served by negotiating terms independently with certain countries, it would be impractical to negotiate, sign, and file at the PRC a separate bilateral agreement with each UPU designated operator. Considerations that go into entering these agreements include the willingness of the foreign postal operator to negotiate and sign a bilateral agreement, the mail streams and mail flows between the countries, and the rates currently in effect.

Some countries are willing to enter a bilateral negotiation, because, like the United States, they want to improve cost coverage and receive enhanced services, such as product tracking. In many cases, however, foreign postal operators are not willing to negotiate bilateral agreements, as doing so would require paying the Postal Service at a rate higher than UPU terminal dues. For these postal operators, there is no inherent value to abandon the default UPU terminal dues structure. It is also important to note that even when the Postal Service negotiates with willing foreign postal operators, in some cases, there is little bargaining room available to significantly increase cost coverage given that the current UPU terminal dues structure provides the base of the negotiating position.

Conclusion

The Postal Service supports the United States' objective to improve remuneration systems between postal operators as we continue to meet the universal service obligation mandated by UPU Acts. While we are able to help improve efficient processes and standardized international mail exchanges as part of the U.S. delegation to the UPU, there remains a critical need to improve cost coverage for inbound international mail. The Postal Service will continue to encourage the UPU and State Department to support the principle of cost-based, country-specific terminal dues, and advocate for positions that move towards better cost coverage for all inbound UPU mail flows.

Thank you, Mr. Chairman, for the opportunity to submit this testimony. I welcome any questions that you and Committee Members may have.

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Mr. MEADOWS. Thank you for your testimony.

Ms. Sparks, we will recognize you for five minutes.

STATEMENT OF NANCY SPARKS

Ms. SPARKS. Thank you very much.

I am here today on behalf of FedEx Express and our 300,000 team members in the United States and around the world.

With your permission, I would like to submit my full statement for the record and just provide a brief overview now.

Mr. MEADOWS. Without objection.

Ms. SPARKS. First, I would like to thank you, Chairman Meadows, Ranking Member Connolly, and members of the Subcommittee on Government Operations for convening this hearing on international postal and delivery services. It is extremely timely given the upcoming Universal Postal Union Congress in 2016.

The topic of international postal policy often feels obscure and impenetrable, but it is important for the U.S. economy. Today, three of the top five players in the global parcel delivery market are U.S. entities, FedEx, UPS and the United States Postal Service. Collectively, we employ more than 1 million Americans. We connect sellers and buyers and ordinary individuals across the globe. We are the conduit for the booming international ecommerce trade.

The next UPU Congress will establish the rules until 2022. The time for promoting long needed reforms at the UPU is getting very short. The legal framework of the UPU is outdated and ill-equipped to handle today's radically changing market. It produces significant regulatory challenges which adversely affect FedEx and the United States.

The world's post offices, including the Postal Service, are experiencing massive changes due to the steep decline in letters and documents. They are attempting to change their focus to package delivery services, especially ecommerce services.

Large, international postal companies like Royal Mail, China Post and La Poste of France, are now major logistics companies. For private carriers like FedEx and UPS, ecommerce services are a natural extension of long established global express networks. International package delivery has become a big and highly competitive business.

As you quoted, Congress defined the policy of the United States toward this dynamic market in the 2006 PAEA, that is, to promote and encourage unrestricted and undistorted competition in the provision of international postal and other international delivery services.

This declaration rests on two insights. First, international postal and delivery services now comprise a single market. Second, competition should be the norm. In the package segment, in particular, there is no room for monopoly and no entitlement to a special position for any actor.

Congress had it right in 2006. Promoting competition on the international stage may be hard work but it is necessary to foster better and more innovative services which will support international commerce in the 21st Century. The PAEA prescribed the right goals and standards for U.S. participation in the UPU.

Viewed through the lens of the PAEA, however, there are three fundamental problems with the way the UPU interacts with the global parcels market. It looks like I am only going to have time to talk about one of them, the terminal dues system.

The UPU has established a system of economically distorted and anticompetitive delivery rates for international postal packages. These delivery rates are exclusively available to post offices. They are not cost-based, as you have heard. They are fixed by agreement among posts.

The gist of the system is that posts give each other large discounts off the domestic passed postage rates they charge their own citizens. Discounts are extra deep, as we have heard, for developing countries, even though some, like China, Singapore and Hong Kong, are powerhouses in international ecommerce.

When the Postal Service delivers goods from Asia at deeply discounted prices, the losers are U.S. businesses who are placed at a competitive disadvantage. Private carriers, like FedEx, are affected as well.

We have identified two other issues in our written testimony, one dealing with customs parity and the other dealing with the need for institutional reform at the UPU. I appreciate the time you have given us today and hope you will find our written statement useful.

[Prepared statement of Ms. Sparks follows:]

House Committee on Oversight and Government Reform
Subcommittee on Government Operations
Hearing on International Postal Policy, June 16, 2015

PREPARED STATEMENT OF NANCY S. SPARKS

Managing Director, Regulatory Affairs
Federal Express Corporation

On behalf of the 300,000 team members in the FedEx family, I would like to thank the Subcommittee for this opportunity to present our views on U.S. international postal policy.

The Subcommittee's hearing today is exceptionally timely. Over the next several months, governments around the world will develop their positions with respect to the possible revision of the Universal Postal Convention ("UPU Convention") and related agreements. These are the intergovernmental agreements that govern international postal services and thus affect the competing services of private delivery services like FedEx. The final agreements will be adopted in a general Congress of the Universal Postal Union (UPU) to be convened in Istanbul in September 2016 (the "Istanbul Congress"). Acts approved by the Istanbul Congress will go into effect on January 1, 2018, and continue for four years, until December 31, 2021. Thus, we are rapidly approaching the last opportunity until 2022 to secure reforms that serve the best interests of the people of the United States.

FedEx believes that fundamental reforms of the UPU are urgently needed to render the international system of delivery services more efficient, cost-based, competitive, and consistent with U.S. policy and the requirements of U.S. law. The current UPU framework is riddled with anomalies that are neither just nor reasonable nor adapted to the needs of the 21st century. For example,

- Pursuant to the UPU rate agreement, the U.S. Postal Service ("USPS") charges foreign post offices far less for delivery of their mail in the U.S. than it charges American mailers for similar delivery services performed for similar items even though the actual services provided for foreign mail (sorting, transportation, and delivery in the U.S.) are exactly as same as provided domestic mail. E-commerce merchants in Asia pay so little for postal delivery of lightweight (less than 4.4 lbs) goods sent to the U.S. that they can undercut American merchants selling similar products here at home because of their low shipping costs.
- As explained later, the system of international payments among post offices is so skewed that mailers in Copenhagen, Dublin and Milan are effectively subsidizing mailers in New York and London. At the same time, USPS is selling outbound commercial services to many countries at rates that are below its true costs of production.
- International postal services for e-commerce goods and other packages compete directly with private companies like FedEx and yet UPU-based "postal customs" provisions relieve post offices of the duty to provide advance electronic information

for risk assessment, the obligation to submit detailed manifests and complete entry information, and liability for errors in customs-related information.

- The U.S. and other countries have delegated to the Postal Operations Council, a UPU committee of 40 postal officials (most from highly commercialized post offices), authority to adopt regulations binding on the U.S. government and governments of other UPU member states.

In the case of the UPU, the U.S. is supporting an intergovernmental organization whose real mission has become the promotion of the commercial success of the world's post offices in their competition with private delivery services. This is true even though U.S. companies like FedEx and UPS are world leaders in the international delivery services market and have at least five times as much revenue at stake in this market as USPS, whose interest is limited to services from and to the U.S. In addition, for FedEx and other express delivery companies, the revenue derived from international delivery services is a much more substantial piece of their total revenue than for USPS. For example, FedEx's international revenues comprised approximately 44 percent of total revenues in fiscal year 2014, while for USPS, the percentage was 4.5 percent. So, the major private U.S. companies have more "skin in the game" when it comes to reforming the rules of the international delivery services market than does USPS overall.

FedEx believes that significant reforms can be accomplished in the 2016 Istanbul Congress if, and probably only if, the United States pro-actively supports meaningful reform. While reform will not be easy, other industrialized countries, many of whom have adopted procompetitive domestic postal reform laws in recent years, appear willing to support UPU reform, but only if the United States commits its resources and political capital within the UPU to the effort. In sum, we believe the Istanbul Congress — whose acts do not take effect until 2018 — needs to take four fundamental, yet still incremental, steps:

- First, the rules for exchange of postal items between major industrialized countries need to be made non-discriminatory and competitively neutral. National laws relating to security, customs, terminal dues, and antitrust should apply to postal shipments in the same way as they do to similar shipments conveyed by private companies (except monopoly letter services).
- Second, countries (such as the U.S.) which are on the receiving end of a growing flood of e-commerce shipments from Asia and elsewhere should have the option of applying normal security, customs, and postage rates to such commercial shipments, rather than the lower rates and standards presently allowed to "developing countries."
- Third, the authority of the UPU's Postal Operations Council (a committee of post offices)should be limited so that it cannot, on its own authority, adopt regulations that override national laws, and the right of UPU member countries to opt out of provisions of the UPU Convention or regulations that are inconsistent with national law or policy should be more flexible.
- Fourth, in the four years between the Istanbul Congress and the 2020 UPU Congress, the UPU should be required draw up plans to extend these fundamental reforms to the UPU as a whole, while ensuring appropriate, better targeted assistance to truly needy developing countries.

In this statement I will summarize why FedEx believes that fundamental reform at the UPU is needed, what U.S. postal law and trade policy currently requires, and what reform proposals FedEx and others have advanced so far. I conclude with suggestions on what steps should be taken to protect and promote the interests of the United States at the Istanbul Congress.

TRADITIONAL UPU PRIVILEGES AND POWERS ARE INAPPROPRIATE IN THE COMMERCIAL WORLD OF INTERNATIONAL E-COMMERCE

The UPU was established as an intergovernmental organization in 1874, an age when postal services were provided by government monopolies whose primary mission was to ensure a safe and secure medium for distribution and exchange of letters and documents. At that time, an intergovernmental organization was the only way to link national posts into what the UPU still calls a "single postal territory." When it was founded, the UPU was a great step forward in the development of a more enlightened and connected global society.

In the last two decades, the economic and commercial facts of life in the international postal system have changed radically. The Subcommittee is familiar with the steep decline in the volume of letters in the United States since 2000, and USPS's strenuous efforts to refocus its operations on package services. What is less appreciated is that this trend is much further advanced at the international level. According to the UPU, the volume of domestic letter post services (documents and parcels up to 4.4 lbs) declined by 22 percent from 2000 through 2013; in the same period, the volume of international postal service declined 53 percent.[1] These figures reflect the obvious truism that the relative advantages of electronic communications over paper communications are even greater at the international level than at the national level.

As a result, the UPU has promoted the need for national post offices to develop international package services, especially services suited to e-commerce needs. At its 2012 Congress in Doha, the UPU recognized that international e-commerce offers a "huge potential for developing markets and increasing profit margins" and that "Posts are actively exploring ways of becoming main providers of cross-border e-commerce solutions."[2] The Doha Congress adopted several resolutions instructing the standing committees of the UPU to prepare and promote postal services for e-commerce. Accordingly, in October 2014, the UPU held an extensive two-day conference on the need for developing and improving international postal services for e-commerce. Similar themes were sounded in the UPU's quadrennial Strategy Conference held in Geneva in April 2015. The UPU is now preparing a new "e-commerce product" specifically designed for e-commerce parcels weighing up to 30 kg. This product is scheduled to begin as a pilot program in July 2015.

FedEx has no objection to the UPU's efforts to raise the efficiency and competitiveness of the post offices' international e-commerce services. On the contrary, FedEx would like to work with the posts cooperatively to provide efficient and economical international e-commerce solutions in the same manner as we now do at a national level with USPS. However, it must be

[1] UPU, "Development of postal services in 2013" (Oct. 2014), p. 5. http://www.upu.int/en/ resources/postal-statistics/2013-results.html.

[2] UPU, 2012 Doha Congress, Resolution C 33/2012 ("Promoting cross-border e-commerce").

kept in mind that international e-commerce is very much a *commercial* and *competitive* marketplace, not a governmental mission or social safety net. We become concerned when the UPU seeks to extend traditional legal privileges and protections afforded to post offices for societal reasons into the emerging world of competitive e-commerce services.

For FedEx and other private carriers, there are three areas of particular concern: discriminatory customs and security controls; a system of delivery charges for international mail that is anti-competitive and economically distortive; and the conflict of interest created by the delegation of international legislative authority to the Postal Operations Council.

The first area of concern is special treatment for post offices under customs and security laws. Historically, the world's post offices have benefitted from very simple customs declarations requirements and immunity from liability under customs law. This appears to have been based on the assumption that postal parcels would be primarily "social" or personal mail, like birthday gifts, rather than business or commercial shipments. Even today, the UPU-authorized customs declaration forms for postal shipments are much simpler than the paperwork required from private delivery companies. UPU customs declarations (the "CN 22" and "CN 23" forms) require the mailer to provide minimal information about his or her shipment in a label attached the postal package.[3]

The end result of this simplification is less scrutiny of postal shipments by border agencies. When a foreign postal package arrives at a destination gateway such as USPS's New York facility at JFK airport, U.S. Customs and Border Protection ("CBP") has not received advance electronic data for security and customs screening, which information is mandatory for private company shipments. Nor does USPS complete customs entries for the incoming packages and compute the duty required. USPS stands aside, awaiting inspection by CBP. If, by chance, a dutiable postal package is discovered by CBP, it is the responsibility of the customs inspector, rather than USPS, to complete a customs entry, using a form called a "mail entry." If there is a mistake in the information provided by the foreign mailer, there are no legal consequences for USPS and, in almost all cases, no legal consequences for the mailer either. This same process for handling postal shipments is mirrored in most other countries; it is not unique to USPS or CBP. This system is so cumbersome and labor intensive for the customs authorities that it is well known that in many cases they do not complete entries or collect duties on postal shipments, even if they are dutiable. This awareness obviously creates a powerful incentive for cross-border

[3] In March 2015, China officially complained to the UPU that foreign post offices were establishing offices in China — called "extraterritorial offices of exchange" or ETOEs — and, contrary to Chinese law, competing against China Post for "the surge of cross-border e-commerce [which] has turned many countries, including China, into emerging markets with great business potential." UPU, CA C1 RIPG 2015.1 Doc 8 (2015). This gist of the Chinese complaint was that ETOEs were taking advantage of the preferential "postal customs" procedures permitted by the CN 22 and CN 23 forms, a benefit reserved for China Post's outbound shipments. China called on other countries to "respect the conditions laid out in" UPU resolutions that directed countries to deny "postal customs" processing to shipments from countries that did not accept the establishment of ETOEs in its national territory. The delegate from France properly objected that while China was free to restrict competition in its national territory, the UPU was composed of countries with different views and should not be enforcing China's anti-competitive approach to international postal services. The U.S. delegate objected only to China's additional request for a UPU study on protecting "market order."

mailers to use postal services, rather than those of private operators, and a significant competitive advantage for postal operators.[4]

Security procedures have become a critical – and for private carriers, expensive — addition to customs procedures. Security measures require airlines to transmit to security authorities in the destination country electronic data giving specific information on each shipment to be boarded on a plane *before* the plane takes off from the origin airport. International airlines must have the ability to locate and unload any shipment that is subject to a "do not load" order from the destination country. For private carriers like FedEx, developing the data systems and operational procedures necessary to comply with security requirements has been a challenging and costly task. Post offices, however, provide virtually no advance electronic information to security authorities. Although the International Civil Aviation Organization (ICAO), the International Air Transport Association (IATA), and national governments have been pressing the UPU to develop the necessary systems, the UPU is holding out for special "postal security" procedures that would parallel the simplicity of existing "postal customs" privileges.

The second area of concern is the right of post offices to have international postal shipments delivered by the post office in the destination country at exclusive rates that the post offices set jointly at the UPU. These rates are below equivalent domestic postage and, in many cases, apparently below the destination post office's actual costs. When USPS sends an e-commerce package to an industrialized country for delivery, it does not pay an amount equal to costs of the downstream portion of normal domestic postage rates. Instead, it pays rates that are fixed by the postal operators in the UPU called "terminal dues" (for documents and parcels up to 2 kg or 4.4 lbs) or "inward land rates" (for parcels up to 20 kg or 44 lbs). Terminal dues, in particular, are substantially less than what a domestic mailer in an industrialized country would pay for similar delivery services. If, for example, USPS were to contract with the Danish post office in the same way as a large domestic mailer, the Danish post office would charge USPS a delivery rate that reflects a "worksharing" (or "downstream access") discount from domestic retail rates due to the fact that USPS done part of the work. The UPU estimates that the local delivery services covered by terminal dues should be aligned to 70 percent of first class domestic postage rates for similar items (i.e., an implicit "worksharing" discount of 30 percent).[5] At the same time, the UPU has adopted an upper limit or "cap" on terminal dues charged by post offices in industrialized countries. It is the cap, not the domestic postage benchmark, that determines almost all terminal dues payments. The bottom line is that the terminal dues rates fixed for services between industrialized countries are, on average, only about half of what the UPU itself

[4] On March 26, 2015, the USPS Office of Inspector General held a forum on the "Challenges and Opportunities in Global e-Commerce." One presentation was by a mailing services company whose customers accounted for 20 percent of USPS outbound parcels. His presentation emphasized that one reason for using USPS to export packages was the "low tax assessment rate." In answer to a question, he clarified that this phrase referred to the general failure of customs authorities to collect duty on international postal shipments.

[5] In the U.S., worksharing discounts also allow for long distance transportation costs which USPS saves on shipments that a mailer tenders at the destination sorting facility. In the UPU, terminal dues cover only local delivery costs. Long distance transportation in the destination country is compensated by other charges. So, properly speaking, the difference between domestic postage and terminal dues may be equated to a worksharing discount that excludes the costs of long distance transportation.

estimates is the proper reimbursement based on equivalent domestic postage. There is only one qualification to get this heavily discounted rate: you must be a national postal operator.[6]

Since the domestic postage rates of post offices in industrialized countries are normally required by law to be cost-based, the UPU terminal dues system is creating a situation in which post offices in industrialized countries are charging each other delivery rates that are well below full cost (i.e., marginal costs plus a reasonable share of overhead and profit). In essence, they are all giving each other large nominal discounts and then are using the resulting accounting entries, that fail to accurately reflect true costs, to justify artificially low rates to customers.[7]

Why does this practice continue? In the case of Denmark, USPS has defended this practice by saying that "tying the rates to domestic mail rates, would result in a considerable increase in the cost of delivery of letter post mail abroad." USPS noted that if it had to pay the same as Danish mailers for delivery services in Denmark it would have to raise rates for its bulk international commercial mail services (International Surface Air Lift and International Priority Airmail) to Denmark by "nearly 150 percent increase."[8] USPS is thus admitting that it is using the artificially low terminal dues rates as the basis for extraordinarily low rates for these offerings, which are classified as "competitive" under U.S. law. But what does this mean in competitive terms? FedEx would have to pay the Danish post office the same higher rate as a similar Danish mailer if it conveyed U.S. e-commerce products to Denmark for local delivery by the post office, a rate which USPS and other post offices do not pay because of the UPU system.

The financial sleight of hand promoted by terminal dues is not without cost to American consumers. Even though the Danish post office undercharges USPS for the delivery of inbound international mail, the actual costs of producing the end-to-end international postal service are unaffected. The Danish post office pays its letter carriers the same for delivering American mail as it does for delivering Danish mail. The costs of delivery vehicles, gasoline, sorting facilities, etc., are all the same regardless of the origin of the mail. So who makes up for the revenue lost due to "terminal dues discounts"? USPS and the Danish post office are trading discounted services. The Danish post office undercharges USPS for the delivery of mail from the U.S., but the USPS also undercharges the Danish post office for delivering inbound international mail received from Denmark. The money that USPS loses on inbound mail is "buying" discounted

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[6] It should be noted that post offices may agree between themselves on alternative terminal dues arrangements. USPS apparently has bilateral terminal dues agreements with eight post offices: Australia, Canada, China, Hong Kong, Netherlands, Singapore, South Korea, and Vietnam. USPS, Annual Report 2014 at 66. Since the content of these agreements is confidential, it is impossible to know whether they ameliorate or exacerbate the distortions and anticompetitive effects of the UPU terminal dues system. In any case, these alternative arrangements are negotiated against the backdrop of the UPU system as the default rates; so the influence of the UPU terminal dues system may be muted, but it is not eliminated. Moreover, the possibility of "side deals" does not affect the main point in my statement. The UPU terminal dues agreement needs to be evaluated on its own merits since that is the agreement that will be on the table in Istanbul.

[7] See James I. Campbell Jr, "A Revised Estimate of the Distortive Effects of UPU Terminal Dues, 2014–2017," presented at the Center for Research in Regulated Industries, 23rd Conference on Postal and Delivery Economics, June 3–6, 2015, Vouliagameni Athens, Greece. Figures are preliminary and should be taken as approximate estimates only, but they serve to indicate the magnitude of the undercharges and subsidies implied by the UPU terminal dues system.

[8] US Postal Service, PRC Docket PI2012-1, Comments (Aug 27, 2012).

delivery for the outbound mail. What USPS loses in delivering the inbound Danish mail is the difference between what it earns in terminal dues and what it would have earned by charging the Danes the equivalent of domestic postage. USPS must make up for this lost revenue by charging higher rates to other customers. Since most inbound international mail is market dominant first class mail — and since USPS is virtually compelled by current circumstances to raise rates for market dominant products to the maximum extent allowed by the price cap — revenue that is lost due to undercharging inbound market dominant mail translates into higher rates for other customers of market dominant products, either domestic or international or both. Since most outbound products of USPS are competitive products, USPS is, in effect, charging higher rates to market dominant mailers in order to subsidize lower rates for international competitive products.[9]

In short, the UPU terminal dues and inward land rate systems are price-fixing agreements which limit price competition from private operators by a practice of systematic undercharging that leads to artificially low international postage rates, at least for commercial products. In a highly competitive market, the UPU Convention gives one American operator, USPS, far cheaper access to the postal infrastructure in a foreign country than other American operators while allowing all postal operators to act in concert on pricing. The outcome is similar that which would result from the U.S. negotiating aviation agreements that give highly discounted landing fees at every major airport in the world to one U.S. airline to the competitive disadvantage of the other U.S. airlines. Moreover, these price-setting provisions are backed up by other measures that restrict bypass of the system by taking mail from one country and giving to a post office from another country.[10] These measures effectively allocate to each national post office the postal shipments originating in its national territory. As the "show-cause" orders of the Department of Transportation against the International Air Transportation Association in recent years make crystal clear, such price-fixing and market allocation techniques are flatly contrary to requirements and objectives of U.S. antitrust laws.[11]

The injurious effect of terminal dues is even worse for American carriers and retailers trying to compete with "e-tailers" from Asia. Many Asian post offices are vigorously promoting the dispatch of e-commerce shipments by post, especially the post offices of China, Hong Kong,

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[9] In the case of the exchange of mail between the U.S. and Denmark, the undercharging of inbound mail from Denmark by USPS is insufficient to compensate the Danish post for all of the revenue it loses in delivering mail received from the U.S. at terminal dues rates. USPS sends more mail to the Danish post office than the Danish post office sends to the USPS. Moreover, due to low mail volumes, the unit costs of the Danish post office are higher than for USPS, so the relative uniformity of UPU terminal dues rates means that the Danish post office loses more than USPS by delivering inbound international mail at terminal dues rates fixed by the terminal dues cap. For both reasons, the Danish post office is a net loser in its exchange of mail with USPS, and its mailers must make up this net loss by paying higher postage rates, either domestic or international. The bottom line: Danish mailers are unwittingly subsidizing American mailers.

[10] Various measures of the UPU are directed against competition *between post offices* by means of remail and extra-territorial offices of exchange. "Remail" is international mail which is conveyed, either physically or electronically, from the country where the sender resides to a second country where it is posted, usually for ultimate delivery in a third country. An "extra-territorial offices of exchange" (or ETOE) is an office which a post office establishes outside of its national territory. Under the acts of the UPU, post offices may treat remail and mail received from ETOEs in a less favorable manner than ordinary international mail, thus undercutting potential international competition among post offices.

[11] See, e.g., U.S. Department of Transportation, Order 2007-3-27 (Mar. 30, 2007).

and Singapore. Under the UPU system that establishes special lower rates for "developing countries," USPS gives these post offices a discount of as much as 70 percent compared to what a comparable American mailer would pay. In 2012, USPS delivered 29 million "e-packets" from China for a terminal dues compensation of $25 million. This was $29 million less than USPS's attributable costs and perhaps $50 million less than what USPS would charge a similar American mailer.[12] Overall, a recent analysis has estimated that, under the terms of the current UPU terminal dues agreement, the major industrialized countries in the UPU are charging the three main e-commerce countries (China, Hong Kong, and Singapore) almost 80 percent less for the delivery of small packets (parcels up to 4.4 lbs) than they would charge their own citizens. This same analysis estimates that, over the four year course of the current terminal dues system, these three leading e-commerce countries will benefit from undercharges of as much as $2 billion, a figure that could reach as much as $3 billion or more if Asian e-commerce continue to grow in line with current trends.[13]

Terminal dues rates for postal delivery in U.S. and other industrialized countries are so low that Chinese merchants routinely provide "free shipping" for e-commerce goods ordered by Americans.[14] U.S. carriers in China cannot compete for China-U.S. shipments if China Post can get almost-free delivery services from USPS. Moreover, American on-line retailers selling to U.S. customers find it difficult to compete with Chinese merchants because their delivery costs in the United States are being subsidized under the UPU system.[15] As the *Washington Post* has put it, "The Postal Service is losing millions a year to help you buy cheap stuff from China."[16]

For Chinese e-commerce retailers the benefits of subsidized international postal delivery are obvious. E-commerce shipments from China to the United States increased by 182 percent from 2011 to 2012.[17] Several European post offices have indicated privately that they, too, are experiencing increases in e-commerce shipments from China of 100 percent or more per year. Last year Alibaba bought 10 percent of Singapore Post, a regional operator that is gathering and dispatching e-commerce shipments from all over Asia, not only Singapore. In effect, due to the UPU Convention, USPS is subsidizing Alibaba to help it compete with Amazon.

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[12] USPS, Office of Inspector General, "Inbound China ePacket Costing Methodology: Audit Report" (Feb 25, 2014).

[13] See the paper by James I. Campbell Jr., cited in footnote 6. Again, it should be noted that these figures are preliminary. Nonetheless, they appear to indicate the magnitude of the subsidies involved. As noted in the final section of this statement, I suggest that the Postal Regulatory Commission should develop its own estimates of the economic effect of terminal dues on the global delivery services market.

[14] In a study for the Postal Regulatory Commission on the distortions flowing from UPU terminal dues, Copenhagen Economics demonstrated the effect of terminal dues rates on the prices of ordering e-commerce goods from China. Shipments weighing just over 2 kg qualified for free shipping from China to the U.S., while shipments weighing more than 2 kg were assessed shipping charges of $41 to $78. See *The Economics of Terminal Dues: Final Report* (Sep 2014) at 46.

[15] See, Washington Post, "The Postal Service is losing millions a year to help you buy cheap stuff from China," September 12, 2014 (online edition); Fortune, "The United Nations is helping subsidize Chinese shipping. Here's How," March 11, 2015 (online edition).

[16] Postal losses incurred in delivering e-commerce imports from China have become a major concern in Europe as well as the U.S. On February 9, 2015, the front page headline in Norway's leading business newspaper was "It's Cheaper to Get a Packet from China than from Norway."

[17] USPS, Office of Inspector General, "Inbound China ePacket Costing Methodology: Audit Report" (Feb 25, 2014).

FedEx's third area of concern involves the inherent unfairness and potential for abuse that flow from vesting legislative authority in a committee of postal officials, the Postal Operations Council. The Postal Operations Council is a standing committee of the UPU composed of officials from 40 post offices. It is dominated by large, highly commercialized post offices, most of whom are corporatized and some of which are privatized.

The acts of the UPU authorize the Postal Operations Council to adopt regulations that are legally binding on the governments of member countries, in essence authorizing post offices to regulate themselves. These regulations are mostly operational in nature; they define, for example, common transportation documentation. While there can be no objection to such operational rules, there is no reason why they should be legally binding on the U.S. government, especially if it means that there is not adequate information for normal U.S. regulatory actions. More significantly, some Postal Operations Council regulations are governmental in nature and directly affect competition between post offices and private companies. For example, most of the customs privileges described above of the post offices derive from regulations, not from the UPU Convention itself.

A committee of the Postal Operations Council is currently developing new regulations relating to security measures for postal shipments. The committee has proposed regulations to define what security controls governments may place on postal shipments. The committee explained its proposals for UPU regulations that will shape national legislation as follows:

> These proposals present the regulatory framework that (customs law) legislators . . . should use as a reference whenever a decision has been made by national or supra-national authorities to introduce mandatory EAD [Electronic Advance Data] for imports or exports, and UPU mail items are made subject to this obligation. . . . [T]he proposals actually are addressed to legislators, not to [post offices] themselves. The purpose is introduce an harmonized, global approach (to avoid different solutions in different countries or regions), in accordance with the UPU 'single postal territory' principle.[18]

In particular, the proposed regulation would state that "Export parcel-post items weighing 500 grammes or more, and for which a UPU customs declaration is required, may be subject to specific import security-based requirements for providing electronic advance data." This regulation thus exempts from normal security controls all shipments which weigh less than 500 grams (1.1 lb) solely because the mailer uses the post office rather than a private company.

The legislative power of the Postal Operations Council is not limited to adopting regulations. Between Congresses, the Postal Operations Council develops most of the key proposed revisions to the UPU Convention that are ultimately adopted by the next UPU Congress. Members of the Postal Operations Council also participate in working parties of the Council of Administration, the other major standing committee of the UPU. The Council of

[18] UPU, POC C1 Customs Group, "Advance Electronic Information Regulatory Framework" (Apr. 24, 2015), an explanatory slide presentation. The text of the proposal is set out in POC C 1 CG 2015.1-Doc 7a, Annex 1 (mar. 19, 2015).

Administration is supposed to be composed of governmental representatives from 41 countries. In practice, governments are often represented by postal officials who are in Bern for the more extensive meetings of the Postal Operations Council.

Within the Postal Operations Council, the development of regulations and amendments to the UPU Convention is undertaken in "project groups" and "ad hoc committees." It is in these meetings that the critical negotiations take place. In the last year, the Postal Operations Council has implemented procedural rules that close these meetings to observers from the express industry and other interested parties. Without access to such meetings, it is difficult to ascertain which countries are advocating distortive or anti-competitive measures in areas such as customs, security, or terminal dues and impossible to present contrary views.[19]

The idea that a committee of commercially interested foreign postal officials should wield rulemaking authority over the U.S. government (and governments of other UPU countries) in respect to rules affecting competitive international delivery services seems antithetical to U.S. legal sensibilities. In the United States, it would probably violate the Due Process Clause for Congress to grant a group of private companies the authority to adopt regulations that create special legal privileges for themselves.[20] U.S. acquiescence in the legislative authority of the POC is inconsistent with the same principles of administrative fair play.

U.S. LAW AND TRADE POLICIES PROHIBIT U.S. PARTICIPATION IN A UPU CONVENTION THAT IS COMPETITIVELY UNJUST OR UNREASONABLE

In the 2006 Postal Accountability and Enhancement Act (PAEA) Congress adopted, for the first time, a national policy with respect to international delivery services. That policy is set out in section 407(a) of Title 39, United States Code. It is important to note that section 407(a) is not addressed to international postal services alone. It is a national policy with respect to "international postal services and other international delivery services." This market-based, not postal-based, orientation is followed consistently throughout section 407. The PAEA treats international postal and delivery services as a single sector. A 2010 study by the UPU underscores the soundness of this decision to promote all U.S. delivery services, since the U.S. has many of the market leaders in the sector.[21]

The policy statement of section 407(a) encompasses three mutually supportive objectives. Paragraph (1) requires the U.S. government "to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery

[19] The United States has objected to closure of project group and ad hoc group meetings of the Postal Operations Council to observers.

[20] See, e.g., Gibson v. Berryhill, 411 U.S. 564 (1973); Ward v. Village of Monroeville, 409 U.S. 57 (1972).

[21] The UPU study found that about 72 percent of the international cross-border market for documents and small parcels is provided by five operators (Deutsche Post/DHL, FedEx, TNT, UPS, and USPS). Three of these are American and a fourth, DHL, is American in origin. Note that only one is a traditional government-owned postal operator USPS, and it has the smallest market share (7 percent). Adrenale Corporation, *Market Research on International Letters and Lightweight Parcels and Express Mail Service Items* (2010).

services for cultural, social, and economic purposes." In other words, the government is responsible for promoting a system of global delivery services that is *efficient*, not primarily political, and dedicated to the goal of facilitating *communications between peoples*, not to protecting a specific class of service providers.

In consistent fashion, paragraph (2) of section 407(a) requires the U.S. government "to promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services." "Unrestricted and undistorted competition" is, in general, the efficient solution to the provision of commercial services. Paragraph (2) requires the government to promote and encourage competition among post operators as well as competition between the set of postal operators and the set of other delivery service providers.

Paragraph (3) of section 407(a) requires the U.S. government "to promote and encourage a clear distinction between governmental and operational responsibilities." This policy refers to both intergovernmental organizations and to the U.S. government itself. To this end, the State Department's consultation duties under section 407(b)(2) are spelled out carefully and clearly. The State Department is required to "*coordinate with other agencies*" such as the Postal Regulatory Commission (PRC), the Department of Commerce, the Department of Transportation, and the Office of the United States Trade Representative and to "*maintain continuing liaison with other executive branch agencies.*" These are the agencies responsible for establishing and implementing U.S. public policy. In contrast, the State Department is separately required to "*maintain appropriate liaison with both representatives of USPS and representatives of users and private providers of international postal services and other international delivery services* to keep informed of their interests and problems." These are to be the beneficiaries of public policy and the subject of governmental regulation.

Paragraph (4) makes explicit the application of these pro-competitive policies to U.S. participation in the UPU.

To carry out the national policy defined by subsection (a), section 407 (b) delegates to the Secretary of State primary responsibility for negotiating and concluding intergovernmental postal agreements. This delegation of authority is not unlimited, however. Subsection (b)(1) states that the Secretary of State "*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 USPS, a private provider of international postal or delivery services, or any other person.*" So if, despite the best efforts of the State Department, a UPU agreement grants an undue or unreasonable preference to USPS, to other post offices, or to private carriers, the U.S. must take a reservation to that provision in order to participate in the agreement.

The limitation on the negotiating authority of the State Department is elaborated in two other provisions of section 407. The first is paragraph 407(e)(2), which relates to regulatory parity. It requires that U.S. laws should be applied "*in the same manner*" to all competitive products, whether postal and nonpostal: "the Customs Service [now CBP] 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 [competitive products of USPS] in the same manner to both shipments by USPS and similar shipments by private companies." Note that this injunction

applies to *all* federal agencies and *all* laws relating to import and export. Moreover, the statute also requires the State Department to work with other governments, in and out of the UPU, to obtain "nondiscriminatory customs procedures that will fully meet the needs of all types of American shippers."

A second important limitation on the negotiating authority of the State Department is established by the requirement in paragraph 407(c) that the U.S. may not conclude a UPU Convention which establishes rates and classifications for market dominant products until the Department has obtained the "views" of the PRC with respect to whether such rates and classifications are consistent with the regulatory standards for rates and classifications of market dominant products generally. Once the State Department receives the views of the PRC, it must "*ensure*" that the new Convention is "consistent with the views submitted by the Commission" or, alternatively, overrule the views of the PRC but only if "the [State Department]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."

Two other pertinent provisions in U.S. law should be noted. First, the international postal policies enacted by PAEA should be read in the larger context of national policies towards international trade in services. The International Trade and Investment Act of 1984 directs the government to pursue trade negotiations "to reduce or to eliminate barriers to, or other distortions of, international trade in services." In 1998, following an investigation by the General Accounting Office, Congress amended the act by adding "postal and delivery services" to the list of services explicitly included in the trade in services program.[22]

Second, the PAEA applied the antitrust laws to activities of USPS outside the scope of the postal monopoly law (but omitted penalties against individual officers and employees). 39 USC §409(e)(2). Under the PAEA, the antitrust laws apply not only to international competitive products but also to all international market dominant products not within the U.S. postal monopoly. Moreover, the antitrust laws apply not only to USPS itself but also, unusually, to any "other Federal agency acting on behalf of or in concert with USPS." Thus, the State Department, USPS, and the PRC are all obliged to consider the aims and requirements of U.S. antitrust law in reviewing proposed rate agreements that would, if agreed by private parties, raise concerns under antitrust law.

All in the all, U.S. law provides a clear and specific mandate for the State Department — in cooperation with the Departments of Homeland Security, Commerce, and Justice, the Office of the United States Trade Representative, and the PRC — to secure at the UPU a progressive, procompetitive, commercially impartial legal framework for "international postal services and other international delivery services." In developing the U.S. position, the Department of State should maintain "appropriate liaison" with all interested parties, including USPS, private carriers, and users of international postal services and other international delivery services while maintaining a clear distinction between governmental and operational responsibilities.

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[22] See 19 USC §§ 2114a - 2114c. The GAO study was "U.S. Postal Service: Postal and Telecommunications Sector Representation in International Organizations" (Oct. 1998).

PROPOSALS FOR THE U.S. POSITION AT THE 2016 ISTANBUL CONGRESS

The PAEA further required the State Department to establish an advisory committee on international postal policy. This committee is called the Advisory Committee on International Postal and Delivery Services ("IPODS Committee"). FedEx and UPS have participated in the IPODS Committee from its inception, but little was accomplished in its early days. The first meeting of this committee was not convened until March 2008, too late to have any practical input for the UPU Congress held in Geneva in September 2008. Nor was any significant input sought from the IPODS Committee in preparation of the U.S. position at the 2012 Doha Congress.

FedEx was encouraged, therefore, when the State Department invited the IPODS Committee members to provide specific proposals for the U.S. position more than two years before the start of the 2016 Istanbul Congress. In September 2014, FedEx and UPS jointly presented eight proposals to the IPODS Committee and urged the IPODS Committee to recommend them to the State Department for inclusion in the U.S. position at the UPU. The eight proposals addressed the three areas of concern outlined above.

With respect to the discriminatory customs and security controls sanctioned by the current Universal Postal Convention, we offered two proposals. The first proposal was for the adoption of non-discriminatory custom clearance and other import/export controls for similar shipments conveyed between the 24 most industrialized countries,[23] where similarity is based on objective criteria relevant to enforcement of such laws. Non-discriminatory application of customs laws would include elimination the post offices' immunity from liability under customs laws. This provision would affect only 17 countries of the countries subject to the laws of the European Union (which is moving toward non-discriminatory application of customs law in any case), Switzerland, Israel, Canada, Japan, Australia, and New Zealand (as well as the United States). A second prong of this proposal would address the unjustified customs preferences given massive shipments of e-commerce packages from certain "developing countries." Member countries would be authorized to apply non-discriminatory customs treatment to countries generating very large shipments of commercial packages. This provision would likely apply immediately only to China, Hong Kong, and Singapore, and later, perhaps, to a handful of other countries. For the shipments of post offices based in the other 150 or so UPU member countries — including for shipments to or from the industrialized countries — the Postal Operations

[23] The original proposal of FedEx and UPS uses the term "industrialized countries" and authorizes that the UPU's Council of Administration to define the term. Currently, the UPU defines the term "industrialized country" to refer to 38 countries or territories. See 1999 Beijing Congress, Res. C 32/1999. This group is, in term, essentially identical to the 40 countries and territories classified by the UPU as "Group 1.1" for terminal dues purposes. Group 1.1 includes 24 major countries. Seventeen are members or the European Union or European Economic Area (and subject to EU law): Austria, Belgium, Denmark, Finland, France, Germany, Great Britain (United Kingdom), Greece , Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, and Sweden. The other seven are Australia, Canada, Israel, Japan, New Zealand, Switzerland, and United States. The remaining 16 countries and territories are very small: Falkland Islands, Faroe Islands, Guernsey, Gibraltar, Greenland, Isle of Man, Jersey, Liechtenstein, Monaco, New Caledonia, Norfolk Island, French Polynesia, Pitcairn Islands, San Marino, Vatican, and Wallis and Futuna Islands. For simplicity, the term "industrialized countries" in this statement can be equated to the 24 major countries in the UPU's Group 1.1.

Council could continue to prescribe the customs procedures for postal shipments, subject to approval of the Council of Administration. Our second customs-related proposal aimed at closing this gap over time, with a requirement for the relevant UPU committees to work with the World Customs Organization to develop non-discriminatory customs procedures for all postal packages after an appropriate transition period.

Our second set of proposals dealt with discriminatory terminal dues and other delivery charges for inbound international mail that are available only to post offices. We offered three proposals. The first proposal would amend the UPU Convention to require the 24 most industrialized countries (Group 1.1 countries unless otherwise defined by the Council of Administration) to ensure that their post offices provide all parties, postal or private, access to their domestic postal networks on the same terms as provided to national mailers. This requirement would apply only to postal shipments exchanged between industrialized countries. For example, USPS and FedEx would have the same access to postal delivery rates in France and the terms of access would be defined by French law and enforced by the French postal regulator. The French post office could negotiate individual commercial deals with USPS and FedEx to the extent permitted by French postal and competition laws. In general, our proposal would make no change in preferential terminal dues rates provided to the 150+ post offices of developing countries between 2018 and 2022. However, a second terminal dues proposal would limit abuses of this system of preferential terminal dues for developing countries. The second proposal would allow an industrialized country to decline to provide preferential rates to developing countries shipping (1) large quantities of commercial packages and (2) volumes of letter post items that are excessive by historic standards (to prevent mailers in industrialized countries from sending international mail via a developing country post office). Our third terminal dues proposal was a resolution which would require UPU committees to develop a plan to implement a non-discriminatory access rate regime worldwide after 2022 while, at the same time, establishing a more efficient assistance program to ensure that citizens in truly needing developing countries could continue to send individual letter post items to industrialized countries at affordable rates.

The third set of proposals addressed institutional issues of UPU. We offered three proposals. The first proposal would amend the UPU Convention to provide that the Postal Operations Council acting alone could not adopt regulations overriding national laws unless such authority was explicitly granted by the UPU Convention. This proposal would also require that a regulation properly implementing the Convention and binding on governments must be approved by the Council of Administration. The second proposal would allow member countries to opt out of specific provisions of the UPU Convention. The UPU has strictly limited the right of member countries to file "reservations" to provisions of the Convention. Essentially a country cannot take a reservation unless the UPU Congress approves. Our second proposal would amend the UPU Convention to adopt the more flexible rules of the International Telecommunication Union. Such flexibility in the matter of reservations appears necessary to reconcile some provisions of the UPU Convention with U.S. law. Our third proposal was a resolution which, if adopted by the UPU Istanbul Congress, would create a special high-level governmental committee to develop a plan for separation of the governmental and operational functions of the UPU. This plan would be presented to the 2020 UPU Congress for implementation after 2022.

The limited nature of these proposals should be emphasized. None of these proposals would take effect until January 1, 2018. The proposals would primarily affect two groups of

countries: (1) the 24 most industrialized countries (i.e., Group 1.1 countries unless otherwise defined by the Council of Administration) and their highly commercialized (and in some cases privatized) post offices and (2) three developing countries (China, Hong Kong, Singapore) whose post offices are distributing very large quantities of e-commerce packages by means of an international postal system that was designed to give preferential treatment to postal shipments to promote "the noble aims of international collaboration in the cultural, social and economic fields,"[24] not to distort competition and enrich foreign merchants at the expense of domestic merchants. The developing countries which constitute more than three-quarters of UPU member countries would be unaffected before 2022 (the effective date of the Convention adopted in the 2020 UPU Congress). For the period after 2018, our proposals only call for studies of obviously needed reforms. Since it is too much to expect UPU post offices to endorse reforms that would limit their legal privileges, we urged the Administration to deal directly with the ministries of governments of industrialized countries that deal with UPU and trade in services issues.

In our view, all of these proposals implement principles which are mandated by the U.S. postal, trade, and antitrust laws outlined above. We have urged the U.S. government to develop formal legal analyses of these principles in order to clarify the current legal framework for the U.S. position at the next UPU Congress. In particular, we believe that price-fixing and market allocation measures of the UPU should be examined by the Department of Justice in light of the principles and requirements of U.S. antitrust laws.

So far the State Department has taken up one of our proposals, the proposal dealing with non-discriminatory customs treatment. The State Department revised this proposal so that it applies to all countries in the world not just to the industrialized and major e-commerce countries. While such equal treatment might seem most fair, we believe it could become a poison pill dooming its passage at the Istanbul Congress. Covering the industrialized countries and major e-commerce countries initially would constitute a significant leap forward, since the vast majority of mail is generated by these commercialized post offices. Additionally, in the State Department's review of our proposal, language was added which we believe gives countries substantial discretion to continue discriminatory customs and security procedures for postal shipments. We are concerned that these broadly drawn exceptions may render the proposal unenforceable in the unlikely event that it is adopted by the Istanbul Congress.

PROPOSED NEXT STEPS

In our view, the broad objectives of the U.S. government for the Istanbul Congress should be apparent. As Congress found in section 407 of the PAEA, it is in the best interests of the United States to seek a global legal framework that promotes "unrestricted and undistorted competition in the provision of international postal services and other international delivery services." As the history of the U.S. domestic delivery services sector shows clearly, competition will lead to an efficient and innovative logistics infrastructure that will, in turn, lift the efficiency of the global economy as a whole. Today, it is impossible to imagine the modern American economy without the services of a whole range of private express and specialized delivery services working in collaboration with, as well as in competition against, USPS. At the

[24] UPU, 2012 Constitution, Preamble.

international level, the network of global American companies, particularly those in services and high-technology manufacturing, are highly dependent on efficient global supply chains that are provided in large part by the international delivery services sector. The United States is also the innovator and leading producer of e-commerce services, a vast future market for international trade that has only begun to take off in the last five years. And last, but certainly not least, the United States is the leading producer of international delivery services. The U.S. thus has the most to gain by fostering a liberal environment for the future development of international delivery services

The realities of the rapidly evolving global delivery services market have already been incorporated into U.S. trade policy. Not only has the United States been a leading advocate for free trade in services at the World Trade Organization, but it has also included annexes for "express delivery services" in several bilateral free trade agreements. In 2006, the U.S. joined with the European Union in urging other nations to commit themselves to "full market access and national treatment for delivery services in the area of Postal and Courier Services, including Express Delivery."[25] The Office of the U.S. Trade Representative is today actively engaged in trade negotiations aimed at liberalizing trade in competitive delivery services generally.

How can U.S. participation in the Istanbul Congress advance this national agenda? Unfortunately, in the eight and half months since FedEx and UPS presented their proposals to the IPODS Committee in September 2014, action has been taken on only one of our proposals for reform at the UPU. There are now only fourteen months left before the Istanbul Congress convenes. Several problems in the U.S. policy making process are apparent. First, the State Department has not been able to devote sufficient resources to UPU issues. Current law requires the State Department to rely on funding by the USPS for its work at the UPU. This not only limits resources available to the State Department but also creates at least an appearance of conflict of interest.[26] Second, deliberations within the U.S. government have been complicated by treating USPS as a policymaker, rather than an interested party. This is clearly unfair to other interested parties and contrary to the intent of Congress. Third, the State Department has so far approached the UPU as a series of diplomatic concerns, rather than one involving economic and trade issues. There is, for example, no involvement from State Department's Bureau of Economic and Business Affairs, the office chiefly responsible for international economic policy issues. The State Department has relied solely on the Bureau of International Organization Affairs, whose mission is to serve as the primary interlocutor with the United Nations and other international agencies and organizations. As a result of these interrelated short-comings, the U.S. lacks solid economic or legal analyses on which to base its policies at the Istanbul Congress and insufficient intergovernmental (as opposed to UPU-based) contacts to rally for support for a U.S. position.

To prepare for the Istanbul Congress, the U.S. government needs to significantly raise the level of its game. We believe that there should be a special temporary task force formed in advance of the Istanbul Congress. The task force should be led by the State Department and

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[25] Office of the U.S. Trade Representative, "Collective Request for Postal and Courier Services, including Express Delivery" (March 2006).

[26] See section 633(d) of the Treasury and General Government Appropriations Act, 1999, enacted by section 101(h) of Public Law 105-277, 112 Stat 2681, 2681-534. This appropriations rider should be repealed.

should include expertise from all appropriate bureaus within the State Department. The task force should also include full-fledged participation by the Office of the U.S. Trade Representative and the Office of Service Industries in the Department of Commerce, both of whom have deep knowledge of the role of postal services and other delivery services in international trade. The task force should have the authority and resources to require the assistance of other federal agencies, including, in particular, the Department of Homeland Security (for input from CBP) and the Department of Justice. The goals of the task force are already adequately defined by existing legislation, but the work of the task force should be conducted as transparently as possible to allow input from all interested parties. USPS, in particular, should be given every opportunity to make its case as an interested party, but it should not also participate as a member of the inter-governmental task force itself for these policy issues. While operational issues arising in the Istanbul Congress should be left to USPS, policy representations of the United States at the Istanbul Congress should be committed to a U.S. delegation that includes representatives from all interested parties (or categories of interested parties) or from none of them.

To succeed, it is crucial that the proposed task force concentrate its efforts on the relatively few governmental issues at stake in Istanbul that affect the general welfare of the United States. What matters most from a U.S. perspective? In our view, it is providing for "unrestricted and undistorted" trade in e-commerce and other commercial package services. The U.S. is the world's leading producer of international package delivery services and e-commerce retailing. Internationally, as well as domestically, American companies depend on an efficient and innovative infrastructure for the exchange of all sorts of samples, parts, just-in-time inventory, and other commercial shipments. Posts have every right to compete in this market on an equal basis with private carriers, but the UPU should not be permitted to restrict or distort this traditionally free market by extending legal privileges intended to facilitate exclusively the exchange of traditional mail services. Distortions generated by the UPU's thrust into e-commerce are growing, not least because of the explosion of e-commerce trade emanating from innovative and industrious Asian factories. The first goal of the United States should be end such distortions beginning in 2018.

What about those traditional mail services? That is, the global exchange of letters, documents, and individual packages? This remains an important (if declining) function of the world's post offices, and the U.S. has a national interest in preserving this system for the foreseeable future. There is no reason, however, to accept restrictions on the provision of traditional international mail services any more than demonstrably necessary to preserve "the single postal territory." About half of the world's international mail service is now provided by corporatized or privatized post offices who operate in liberalized markets. They are ready to compete with each other in the supply of international postal services and, in many cases, to team up with private carriers where appropriate. The United States should support such competition to the maximum extent, consistent with preserving and promoting "communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes."

The PRC also has a crucial role to play. The PRC is the only agency that has the expertise to adequately evaluate the economic effects of terminal dues and inward land rates on (1) USPS and (2) the global marketplace. Both evaluations are necessary in order to weigh the effects of

proposals for the Istanbul Congress. Last fall, the PRC made a good start in the necessary analysis by retaining an independent consultant to prepare a report on economic distortions created by the UPU terminal dues system. So far this analysis has identified only the qualitative effects of terminal dues. It should be extended to include a quantitative evaluation as soon as possible.

In addition, pursuant to section 407(c) of Title 39, next year the PRC will be required to determine whether the terminal dues rates proposed for international market dominant products for the period 2018 through 2021 are "consistent with the standards and criteria established by the Commission" for domestic market dominant products. The final proposals of the Postal Operations Council on terminal dues will likely be known by early March 2016. In the past, the PRC has failed to evaluate proposed terminal dues with the rigor and transparency that would normally be accorded any assessment of proposed changes in postage rates. Yet the PRC's analysis is a crucial element in the international postal policy of the United States. U.S. insistence on terminal dues rates fully aligned with U.S. domestic postage rates could be sufficient, standing alone, to precipitate similar reforms for at least the exchange of mail among the major industrialized countries, if not ultimately for the UPU as a whole. Hence, the PRC should begin as soon as possible to develop an appropriate procedure for a considered and transparent review of proposed terminal dues rate in spring 2016 which allows for full stakeholder participation.

Thank you for your consideration of the views of FedEx and thank you again for initiating this inquiry in U.S. international postal policies. FedEx will be glad to answer questions and provide the Subcommittee with additional information on the important issues raised by this hearing as requested.

Mr. MEADOWS. Thank you, Ms. Sparks.

I must admit that you are one of the few in Washington, D.C. that actually pays attention to the clock and I appreciate that.

Mr. Misener, I will come to you. The pressure is on.

STATEMENT OF PAUL MISENER

Mr. MISENER. Thank you, Mr. Chairman.

My name is Paul Misener, and I am Amazon.com's Vice President for Global Public Policy. Thank you for having me.

Under international postal agreements, the U.S. Postal Service charges much lower rates for delivering foreign shipments from transfer points in the United States to recipients in the United States, than the USPS charges for handling comparable wholly domestic shipments between the same U.S. points.

This disparity discriminates against American businesses shipping domestically. To allow fair competition in shipping to U.S. consumers and equitable treatment of American businesses, the international agreements must be reformed.

Thank you for your attention to this important topic, for holding this hearing, and for inviting me.

Amazon operates a global ecommerce business and we strive to be Earth's most customer-centric company. In the context of shipping, our key customer sets are consumers, buyers, as well as seller.

For our consumer customers, we offer low prices, vast selection, and convenience, and for our seller customers, our Marketplace ecommerce platform allows millions of sellers, mostly small businesses and individuals, to sell through Amazons websites. Today, more than 40 percent of Amazon's total unit sales are by these third party sellers.

Delivery is a very important part of the customer experience at Amazon. Accordingly, we maintain strong ties to postal operators around the world, including the USPS and China Post.

We believe that two problematic compensation arrangements between them need to be reformed to promote fair competition in shipping to American consumers. There is considerable discussion about whether these agreements adversely affect the financial health of the USPS as its Office of Inspector General concluded in a 2014 white paper.

It is not difficult to see that as a result of the compensation imbalance, businesses in China end up paying less for delivery in the United States than American businesses end up paying for delivery in China.

Another serious problem caused by these agreements is less well known and may be less obvious. As an indirect result of the arrangements between China Post and the USPS under which China Post under pays the USPS for lightweight deliveries within the United States, American businesses of all sizes end up paying more than Chinese companies for deliveries to American consumers.

In other words, because U.S. domestic delivery rates exceed international terminal rates here, Chinese companies end up getting a better deal from the USPS than American businesses. Amazingly, when combined with extremely low bulk shipping rates from China to U.S. transfer points, shipments from China to points

throughout the United States are often cheaper than shipments entirely within the United States.

The resulting competitive disadvantage to American businesses of all sizes is as unfair as it is illogical. For example, at today's rates, the shipping of a 100 gram parcel to Fairfax, Virginia would cost a small business in Marion, North Carolina at least $1.94 at a distance of 340 miles but would cost a company in Shanghai only $1.12 at a distance of 7,000 miles.

Similarly, shipping a 1 pound parcel to New York City would cost nearly $6.00 from Greenville, South Carolina but only $3.66 from Beijing. At high volumes, especially for low-priced items, such dramatic shipping cost differences can make or break a small ecommerce business.

The current international agreements that ultimately discriminate against American domestic shippers of all sizes should be reformed. Ideally, international terminal compensation rates would rise, approaching the domestic rates of postage and, at least in theory, then both rates could meet at a point of parity less than the current domestic rate.

That is, increases in terminal rates could potentially allow a revenue-neutral reduction in domestic delivery rates, which would benefit even more Americans. This reformation would not give an advantage to American sellers over foreign-based sellers; rather, it merely would level the playing field on which they compete.

In particular, the United States has a special relationship with China. Truly with all the strong and growing ties between our nations we can resolve the anachronistic imbalance which, if it ever made sense for China-based dollars to have a shipping price advantage within the United States over U.S.-based sellers, it makes no sense now given the strong trading position that China already enjoys.

In conclusion, existing international agreements offer foreign-based companies much cheaper mail service in the United States than the USPS offers to American seller businesses for domestic shipments. For the sake of both effective competition in shipping and fairness to American seller businesses, the UPU terminal delivery compensation system and current bilateral agreements between the USPS and key foreign postal operators such as China Post must be reformed.

Thank you again for inviting me to testify. I look forward to your questions.

[Prepared statement of Mr. Misener follows:]

Hearing on

Fair Competition in International Shipping

Before the

Subcommittee on Government Operations
Committee on Oversight and Government Reform
United States House of Representatives

June 16, 2015

Testimony of

Paul Misener
Vice President for Global Public Policy
Amazon.com

Thank you, Chairman Meadows and Ranking Member Connolly. My name is Paul Misener, and I am Amazon's Vice President for Global Public Policy. Under international postal agreements, the U.S. Postal Service charges much lower rates for delivering foreign shipments from transfer points in the United States to recipients in the United States, than the USPS charges for handling comparable wholly domestic shipments between the same U.S. points. This disparity discriminates against American businesses shipping domestically. To allow fair competition in shipping to U.S. consumers and equitable treatment of American businesses, the international agreements must be reformed. Thank you for your attention to this important topic; for calling this hearing; and for inviting me to testify.

I. Amazon.com and Shipping

Amazon operates a global ecommerce business and we strive to be Earth's most customer-centric company. We have four primary customer sets. For our developer/enterprise customers, Amazon Web Services provides a rapidly growing suite of cloud computing functionalities. For our content creator

customers, we provide publishing tools through Kindle Direct Publishing, CreateSpace, and Amazon Studios.

In the context of shipping, our key customer sets are consumers (*i.e.*, buyers) and sellers. For our consumer customers, we offer low prices, vast selection, and convenience. And for our seller customers, our Marketplace ecommerce platform allows millions of sellers (mostly small businesses and individuals) to sell through Amazon's websites. Today, more than 40% of Amazon's total unit sales are by these third party sellers.

One of the conveniences we offer our consumer customers is a choice of shipping method. We recognize that for some customers at some times, speed of delivery is essential. We offer extensive next-day delivery; growing availability of same-day delivery; and soon, we hope to receive permission from aviation authorities to make deliveries in 30 minutes or less via Amazon Prime Air drones. Yet, for other customers and at other times, shipping speed is relatively unimportant. If a delivery is made within a week or two, the customer is happy. With this in mind, we recently began offering the "FREE No-Rush Shipping" option, which provides collateral customer benefits, such as discounted digital downloads, in exchange for longer delivery windows.

In any case, delivery is a very important part of the customer experience at Amazon, and accordingly we maintain strong ties to postal operators around the world, including the U.S. Postal Service and China Post. We have concerns about international postal agreements and their indirect effects on American businesses of all sizes, but we are not criticizing either the American or Chinese postal operator. Rather, we believe that two problematic compensation arrangements between them need to be reformed to promote fair competition in shipping to American consumers. One of these arrangements was established by the Universal Postal Union ("UPU"); the other in a bilateral agreement.

Many sellers who sell through Amazon's U.S.-based website platform are located in other countries. We are grateful for all of our seller customers, whether these sellers are located in the United

States, China, or elsewhere around the world, for they help provide the vast selection that is so important to our consumer customers.

We also believe that all sellers, whether on the Amazon platform or not, should be treated fairly by shipping rules and, in particular, that international shipping agreements should not create or maintain artificial distinctions among sellers. Unfortunately, this parity does not exist among sellers who sell to American consumers.

II. Terminal Dues

As the Committee is aware, "terminal dues" are fees that an originating postal operator, say, China Post, pays a terminating postal operator, say, the USPS, for delivery within the latter's home country – in this example, the United States. When the terminal dues system was adopted in the UPU decades ago, a policy choice was made: Developing countries with less efficient postal operations could charge higher terminating fees than developed countries with more efficient posts. In UPU parlance, these are referred to as "Transition Countries" and "Target Countries," respectively. The result of this policy choice is that two countries often will have inequivalent terminal dues rates with each other. That is, the postal operator in a Transition Country pays less for delivery within a Target Country than the Target Country's postal operator pays for delivery in the Transition Country. This is the current situation for China and the United States: Under the UPU terminal dues system, China Post pays much less for delivery in the United States than the USPS pays China Post for delivery in China. China Post and the USPS have a bilateral agreement that slightly bridges the divide between rates. But even under that agreement, China Post pays USPS far less than the other way around.

There has been considerable discussion about whether these arrangements adversely affect the financial health of the USPS, as its Office of Inspector General concluded in a 2014 white paper. And it is

not difficult to see that, as a result of the compensation imbalance, businesses in China end up paying less for delivery in the United States than American businesses end up paying for delivery in China.

But another serious problem caused by these arrangements is less well known and may be less obvious: As an indirect result of the arrangements between China Post and the USPS, under which China Post underpays the USPS for lightweight deliveries within the United States, American businesses of all sizes end up paying more than Chinese companies for deliveries to American consumers. In other words, because U.S. domestic delivery rates exceed international termination rates here, Chinese companies end up getting a better deal from the USPS than American businesses.

Amazingly, when combined with extremely low bulk shipping rates from China to U.S. transfer points, shipments *from China* to points throughout the United States are often cheaper than shipments *entirely within the United States*. The resulting competitive disadvantage to American businesses of all sizes is as unfair as it is illogical. For example, at today's rates, shipping a 100g parcel to Fairfax, VA would cost a small business in Marion, NC at least $1.94, at a distance of 340 miles, but would cost a company in Shanghai only $1.12, at a distance of over 7000 miles. Similarly, shipping a one pound parcel to New York City would cost nearly six dollars from Greenville, SC, but only $3.66 from Beijing. At high volumes, especially for low-priced items, such dramatic shipping cost differences can make or break a small ecommerce business.

III. Reforming the International Agreements

The current international agreements that ultimately discriminate against American domestic shippers of all sizes should be reformed. Ideally, international terminal compensation rates would rise, approaching the domestic rates of postage for comparable pieces with comparable mailing characteristics (*e.g.*, presorting) mailed from the same points where foreign postal operators hand off their pieces to the USPS and, at least in theory, then both rates could meet at a point of parity lower than the current

domestic rate. That is, increases in terminal rates could potentially allow a revenue-neutral reduction in domestic delivery rates, which would benefit even more Americans. This reformation would not give an *advantage* to American sellers over foreign-based sellers; rather, it merely would level the playing field on which they compete.

The reforms adopted by the UPU in recent years unfortunately have not begun to remedy the anticompetitive and discriminatory nature of the current terminal dues regime. In 2016, for example, China and some other UPU Transition Countries are scheduled to be reclassified as lower-tier Target Countries. This reclassification at least will acknowledge that global economic changes – particularly in formerly underdeveloped countries – have been dramatic since the UPU first assigned countries to groups. However, the change is largely symbolic; the actual terminating delivery rates in the United States will not change as a result of the reclassification. Even if China were reclassified as a top-tier Target Country (in Group 1.1, the UPU group for the wealthiest and most advanced large economies, including the United States) the problem would not be eliminated. UPU terminal dues are well below the comparable domestic USPS rates for similar service, even between countries in the top-tier Target Country group.

With or without reclassification of China and other countries, rates for U.S. deliveries of international parcels should – as a matter of fair competition in shipping to U.S. consumers and equitable treatment of American businesses – be set no lower than domestic shipping rates which, again, potentially could decrease as a result of reforming the international agreements. And if the terminal dues rates in these still-developing countries need to increase to match delivery costs there, such adjustments could be considered as part of the reform.

There are, however, two serious problems with a UPU-based solution designed to raise the baseline terminal dues rates. First, it would take a long time. The Union only considers significant actions every three or four years, and the UPU is unlikely to move at speeds relevant to the growth and

development of global ecommerce. Second, and relatedly, the Union makes decisions based on one-vote-per-country majorities, and because the majority of countries' postal operators benefit from the current terminal dues system, the UPU is unlikely to be in any hurry to meaningfully reform the current problems, especially since some (albeit minor) changes were adopted only a few years ago. Nonetheless, the United States should reinvigorate its UPU reform efforts and demand that the gap between USPS rates for international termination and domestic delivery be closed. Negotiations should stress the fundamental unfairness of the current system, and emphasize that the terminal fees being paid to these countries' postal operators need not be as aggressively reformed, if changed at all. That is, foreign postal operators could remain handsomely compensated for deliveries within their countries, so long as sellers in those countries do not receive an unfair advantage when delivering through the USPS in the United States.

Rather than merely await and rely upon global, majority-vote solutions from the UPU, the United States also should immediately begin pursuing bilateral agreements with key foreign postal operators. The prices established by the bilateral agreements should not merely be somewhat higher than the default UPU terminal dues, however: Parity with domestic rates must be the objective.

In particular, the United States has a special relationship with China. Surely, with all the strong and growing ties between our nations, we can resolve the anachronistic imbalance which, if it ever made sense for China-based sellers to have a shipping price advantage within the United States over U.S.-based sellers, it makes no sense now, given the strong trading position that China already enjoys. There is precedent for negotiation. In 2010, the USPS negotiated an agreement establishing rates for the "ePacket" service that are marginally higher than the UPU terminal dues rates, but still far below domestic delivery rates for small parcels, especially considering the additional tracking and tracing services provided under the agreement. Much more progress could be made with further negotiations.

In conclusion, existing international agreements offer foreign-based companies much cheaper mail service in the United States than the USPS offers to American seller businesses for domestic

shipments. For the sake of both effective competition in shipping and fairness to American seller businesses, the UPU terminal delivery compensation system and current bilateral agreements between the USPS and key foreign postal operators such as China Post must be reformed.

Thank you again for inviting me to testify, I look forward to your questions.

* * * * * * *

Mr. MEADOWS. You rose to the occasion, Mr. Misener.

I will say it is not without recognition by me or the Ranking Member that your example was from my district to his district.

Mr. MISENER. Purely coincidental.

Mr. MEADOWS. Purely coincidental, I appreciate it.

Mr. Williams, we will recognize you for five minutes.

STATEMENT OF DAVID C. WILLIAMS

Mr. WILLIAMS. Thank you, Mr. Chairman and members of the subcommittee for the opportunity to discuss this issue.

When someone mails a letter or parcel to another country, the sending post receives the postage, but then compensates the destination post for its processing and delivery.

Compensation rates, called terminal dues, are negotiated among 192 countries at the Universal Postal Union every four years. Each nation gets one vote. Countries are also free to enter their own customized bilateral agreements for particular mail flows. The U.S. Postal Service has bilateral agreements with Canada Post, China Post and others.

Historically, inbound terminal dues rates have not covered delivery cost for the U.S. Postal Service and many other posts. Last year, the Postal Service lost $75 million delivering inbound international mail. Other nations also lose money processing mail for inadequate terminal dues rates.

The explosion in ecommerce is creating new areas of concern. The number of small parcels sent to the United States from China has greatly increased. The Postal Service loses money delivering each of these parcels, and China Post can send them at lower rates than even businesses located here in the United States.

In 2012, for example, a typical small parcel, the First-Class rate for U.S. businesses was more than $1 higher than the rate China Post paid under terminal dues. It is unclear how much China Post charges its own large customers.

To respond to parcel growth and to better cover costs, the Postal Service created the ePacket product in a bilateral agreement with China Post. The ePackets are small parcels that receive delivery tracking. In return, China Post pays higher rates than terminal dues.

In a recent audit, we found the Postal Service received 27 million ePackets from China Post in fiscal year 2012. Each packet lost $1.10 on average, a negligible improvement of 5 cents compared to the loss under terminal dues rates.

In response, the Postal Service explained that it was negotiating a better deal, but it also made clear that substantial rate increases could cause China Post to revert to low UPU terminal dues rates, which treat China as a developing nation in need of price support.

The UPU is gradually making changes to terminal dues, although progress has been slow. A 2012 decision will move China and several other significant economies to the lowest target category for industrialized countries in 2016. However, this will not result in any significant increase in terminal dues rates until 2018. Any damage to U.S businesses will likely have occurred by then.

More beneficially for the Postal Service, the terminal dues rates it receives from industrialized countries are increasing 13 percent

a year between 2014 and 2017. This will bring the Postal Service significant additional revenue, but make it harder than ever for British or German goods to compete with Chinese products sold here.

The UPU's mission is as relevant as when the institution was created, but, like many enterprises, the UPU system has been greatly disrupted by globalization and the digital age. The process is not agile or responsive even to great changes in commerce and economics. It can take years for rates to catch up to changing economic realities.

Many nations have made significant economic progress, but the process of bringing their rates in line with the terminal dues paid by other developed countries has been slow. Nations still vote on the size and timeframe of terminal dues increases. The existence of low terminal dues rates as a default hampers nations' ability to negotiate fair agreements.

The UPU system involves nation-states providing universal service, but excludes private sector carriers whose importance has grown with the rise of ecommerce. Gaps in real mail processing costs and terminal dues are encouraging exploitative new industries that take advantage of low terminal dues rates and undermine national posts.

An unintended consequence of terminal dues is that the system picks winners and losers, and undermines efficient market forces. In the United States, China has an unfair edge over U.S. businesses. These distortions are even greater in other industrialized countries.

Removing market distortions and ensuring agility take on new importance with the growth in ecommerce and globalization. My office wants to do additional work in this area and would like to work with your staffs to include issues brought out today in that body of work.

Thank you.

[Prepared statement of Mr. Williams follows:]

Hearing before the Subcommittee on Government Operations
Committee on Oversight and Government Reform
House of Representatives

Oral Statement

Fair Competition in International Shipping

June 16, 2015

David C. Williams
Inspector General
United States Postal Service

Mr. Chairman, thank you for the opportunity to discuss this issue. When someone mails a letter or parcel to another country, the sending post receives the postage, but then compensates the destination post for its processing and delivery. Compensation rates, called terminal dues, are negotiated among 192 countries at the Universal Postal Union (UPU) every four years. Each nation gets one vote.

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The explosion in e-commerce is creating new areas of concern. The number of small parcels sent to the United States from China has greatly increased. The Postal Service loses money delivering each of these parcels, and China Post can send them at lower rates than even businesses located here in the United States. For a typical small parcel, the First-Class rate for U.S. businesses is more than $1 higher than the rate China Post pays under terminal dues. It is unclear how much China Post charges its customers.

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The UPU is gradually making changes to terminal dues, although progress has been slow:

- A 2012 decision will move China and several other significant economies to the lowest target category for industrialized countries in 2016; however, this will not result in any significant increase in terminal dues rates until 2018. Any damage to U.S businesses will likely have occurred by then.
- More beneficially for the Postal Service, the terminal dues rates it receives from industrialized countries are increasing 13 percent a year from 2014 to 2017. This will bring the Postal Service significant additional

revenue, but make it harder than ever for British or German goods to compete with Chinese products sold here.

The UPU's mission is as relevant as when the institution was created. But, like many enterprises, the UPU system has been greatly disrupted by globalization and the digital age.

- The process is not agile or responsive even to great changes in commerce and economics. It can take years for rates to catch up to changing economic realities.
- Many nations have made significant economic progress, but the process of bringing their rates in line with the terminal dues paid by other developed countries has been slow. Nations still vote on the size and timeframe of terminal dues increases.
- The existence of low terminal dues rates as a default hampers nations' ability to negotiate fair agreements.
- The UPU system involves nation-states providing universal service, but excludes private sector carriers whose importance has grown with the rise of e-commerce.
- Gaps between real mail processing costs and terminal dues are encouraging exploitative new industries that take advantage of low terminal dues rates and undermine national posts.
- An unintended consequence of terminal dues is that the system picks winners and losers, undermining efficient market forces. In the United

States, China has an unfair edge over U.S. businesses. These distortions are even greater in other industrialized countries.

Removing market distortions and ensuring agility take on new importance with the growth in e-commerce and globalization. We want to do additional work in this area. My office will work with your staffs to include the new points raised today.

Mr. MEADOWS. Thank you, Mr. Williams. Thank all of you for your testimony.

I must confess that when I first heard about this particular issue, it was not on the top of my bucket list in terms of issues to address but I will say, thank you for your illuminating testimony.

We are going to have a series of questions. I am going to recognize the gentleman from Kentucky, Mr. Massie, for five minutes, for a round of questioning.

Mr. MASSIE. Thank you, Mr. Chairman.

Mr. Faucher, are terminal dues rates made public?

Mr. FAUCHER. I can be corrected here, but I believe they are made public as part of the UPU's records.

Mr. MASSIE. Do small businesses have access to this?

Mr. FAUCHER. Again, if those records are made public, they would have access to those, yes, they would. I could ask my colleagues to correct me if I have this wrong.

Mr. MASSIE. Is that correct?

Mr. MISKANIC. That is correct.

Mr. MASSIE. Ms. Sparks, how is your company specifically impacted by terminal dues rates?

Ms. SPARKS. I would say there are probably two different ways we are affected. First of all, we look at the global competition when we talk about delivery services. We not only compete with UPS and the United States Postal Service, but we compete offshore with Royal Mail and China Post.

What has happened with the terminal dues system is they have set up what I refer to as an exclusive club where they offer each other deep discounts but they do not offer them to us. It is very difficult for us to get into those markets with a similarly priced ecommerce product, so it is difficult to compete.

Mr. MASSIE. It is not just a problem in the United States where we have disparity and people paying higher or lower rates disconnected from the actual cost, it is a problem in other countries?

Ms. SPARKS. Absolutely. In fact, if you talk to regulators in other countries, regulating in Europe, for example, they will tell you that their countries are similarly being flooded with these low postal charge packages.

Mr. MASSIE. Do you have access to those rates overseas?

Ms. SPARKS. No, we would not have access to any rates. We would have access to the same rates as a domestic shipper, for instance, as a German shipper would get in Germany.

Mr. MASSIE. So we make it public here in the U.S. and transparent but not overseas?

Ms. SPARKS. No, no, I am sorry. I thought you meant access like we could use them or get the benefit of them.

The rates are published, the UPU rates, what they charge each other, are published after the Congress once they have been decided upon unless there is a bilateral agreement in place like the one the United States has with China. That is not made public. We do not know what the United States and China are charging each other right now.

Mr. MASSIE. My next question is for Mr. Misener. Who are the winners and losers in the current terminal dues system?

Mr. MISENER. The clear losers are American businesses selling to American consumers. These are many of the sellers through our website. The clear winners are foreign sellers selling to American consumers. They get a terrific benefit.

Overall, it is mostly the distortion among our seller customers that has been so frustrating to us. It is a completely unnecessary and illogical distortion that one set of sellers would get a benefit from the USPS and another set of sellers does not.

Mr. MASSIE. It seems like there is clearly a problem here. Mr. Chairman, I had no idea that this disparity existed either until you called this hearing.

Mr. Miskanic, is it correct that the next chance to fix this is in 2016 at the next UPU Congress where they are going to discuss and set these rates or is there a chance before then?

Mr. MISKANIC. That is correct. The next chance to fix this is in 2016 at the Istanbul Congress.

Mr. MASSIE. I think you mentioned in your testimony, or maybe it was someone else that there will be another Committee established to represent stakeholders in the United States or having more input?

Mr. MISKANIC. That is correct, Mr. Massie. There is a subcommittee formed by the State Department specifically to address this issue and work on proposals moving forward in anticipation of the 2016 Istanbul Congress.

Mr. MASSIE. Is the State Department optimistic that we can address this in 2016 because these rates are going to be set until 2021. We do not want to miss the next chance.

Mr. FAUCHER. I would say the State Department is very optimistic that we will be able to address this problem in 2016, just as it was addressed in 2012. We are going to make progress on this problem. We might not solve it completely, however, but we are going to continue to try to move to terminal dues rates as close to the cost base as possible. That is our goal for 2016.

Mr. MASSIE. Thank you very much.

I yield back my remaining two seconds.

Mr. MEADOWS. I thank the gentleman from Kentucky.

The Chair recognizes the gentleman from Missouri, Mr. Clay, for five minutes.

Mr. CLAY. Thank you, Mr. Chairman, for conducting this hearing.

I want to talk to Mr. Faucher and Mr. Taub. I would like to discuss the role of the State Department and the Postal Regulatory Commission in shaping international mail policy.

The State Department has the responsibility to coordinate with other agencies as appropriate and in particular should give full consideration to the authority vested by law or Executive Order in the PRC. Is that right, Mr. Faucher?

Mr. FAUCHER. That is absolutely correct.

Mr. CLAY. Section 407 states "Before concluding any treaty, convention or amendment that establishes a rate or classification, the Secretary of State shall request the PRC to submit its views on whether such rate or classification is consistent with the standards and criteria established by the Commission." Is it fair to say the

State Department uses the PRC as a tool to evaluate the proposals?

Mr. FAUCHER. We definitely see the Postal Regulatory Commission as a very important colleague and collaborator in all these things. We seek their advice and views on these questions to the greatest extent possible because they have the expertise in this area.

Mr. CLAY. Once the State Department receives a recommendation, is it required to follow it?

Mr. FAUCHER. I do not know I would say required. In almost every case I can think of, we have tried to follow what the PRC has recommended. We still have our foreign policy prerogatives that we must follow also, but I cannot think of a single case that I am aware of where we have not followed a PRC recommendation.

Mr. CLAY. It is my understanding that the U.S. Postal Service is not supposed to have involvement in the shaping of international postal policy. Is that correct?

Mr. FAUCHER. Is not supposed to have what?

Mr. CLAY. Not supposed to have involvement in the shaping of international postal policy?

Mr. FAUCHER. I am not aware of that. I would say it is very important for us to understand the U.S. Postal Service and its constraints and the way it is doing business for us to be able to shape international postal policy.

They are the designated postal operator under the Universal Postal Union, so it is very important for us to hear their voice and also get their advice on the issues before us.

Mr. CLAY. Fair enough.

Mr. Miskanic, would you care to comment on the role of the Postal Service with respect to international postal policy?

Mr. MISKANIC. The Postal Service serves as a member on the U.S. delegation to the UPU. As such, we participate in meetings and forums as the formulation of policy is conducted.

As Mr. Faucher stated, the State Department has the ultimate role in shaping foreign policy, however, as the designated postal operator and the entity that bears the universal service obligation for the acts of the UPU, we do have the opportunity to participate and provide input to that policy.

Mr. CLAY. Thank you for that response.

Mr. Taub, it is clear that the State Department relies heavily on the PRC's opinion as to whether these proposals are consistent with the law concerning postal policy, is that correct?

Mr. TAUB. That is correct. We have a clear statutory role in this process.

Mr. CLAY. Is it true that the PRC reviews every proposal that could potentially have an effect on postal policy that the State Department receives?

Mr. TAUB. Indeed, we have a very small staff and a very limited budget, but we have dedicated staff to this issue. They go through every proposal to ensure whether it has a rate or classification implication and if so, then we go through and assess whether we should be providing a view to the Department of State.

Mr. CLAY. In that process, in addition to making sure they are consistent with the law, are they making a determination as to how good or bad the proposal is overall?

Mr. TAUB. The specific determination we are making is, is the specific proposal consistent or inconsistent with the legislative criteria to set market dominant rates in the U.S. which is mainly letters and periodicals. It is not the competitive products; it is a different regulatory regime. We are looking at is the specific proposal consistent with the statutory criteria?

Mr. CLAY. Thank you for your response.

Mr. Chairman, I finished on time.

Mr. MEADOWS. Kudos to the gentleman from Missouri for finishing on time.

I am going to recognize the Vice Chair of this Committee, the gentleman from Michigan, Mr. Wahlberg.

Mr. WALBERG. Thank you, Mr. Chairman. I am starting on time.

Mr. Misener, to your knowledge, how, if at all, does the State Department take into account the views of American retailers, particularly small businesses, in determining UPU bargaining positions?

Mr. MISENER. I think it will increase after this hearing. I thank the Committee for holding this hearing because it does focus attention on the need to take into account the effects on American businesses within the United States.

There was an answer earlier to a question about when the next opportunity is to adjust these disparities. Mr. Massie asked this question. The answer given was with respect to the UPU only.

As I pointed out in my written testimony, I think there are opportunities for bilateral negotiations where the most significant problems arise. A negotiation directly with China on this issue I think is in order, without waiting for the UPU Congress or the results of that multinational body.

Mr. WALBERG. Consultation throughout the process over time, checking out with the private sector, would be helpful?

Mr. MISENER. It is also my responsibility at Amazon to ensure that our ideas are transmitted to the State Department, the Postal Service and others. I am offering them here today and I will follow up.

Mr. WALBERG. Mr. Faucher, similarly, how much of a voice do American businesses have in the process of developing States' objectives going into the UPU Congress?

Mr. FAUCHER. I have been in this position for almost two years and throughout all the deliberations we have had on this issue, we have always taken into account the concerns of U.S. businesses and the concerns of U.S. consumers.

We welcome U.S. businesses to attend our advisory Committee meetings, we look for their representatives in various things, we invite them onto our delegations and they have been totally welcomed at all times to make their concerns known to us so that we can take those into account.

Mr. WALBERG. Have they followed up with that openness?

Mr. FAUCHER. Yes. We have regularly representatives of members at this table who have been members of our delegations representing their interests. That is correct.

Mr. WALBERG. Ms. Sparks, what can be done to give more of a voice to American business in this process? We have had a request from one side, we would like more opportunity. Mr. Faucher says, yes, they have the opportunity, we are always open to that. Bring us together here.

Ms. SPARKS. That is a tall order. I think certainly the IPDS, the International Postal and Delivery Services Committee, is an excellent vehicle.

We have found it, at times, to be difficult because there are very many opinions in the room. We presented a proposal on terminal dues last September. We were told last week that the subcommittee is now being convened.

These things do not always move as quickly as we would like. This is why we found the timing of this hearing to be very important because, in UPU time, September 2016 is a heartbeat away.

We welcome continued involvement. I did go to Doha as a private sector advisor to the delegation in the last Congress and appreciated that opportunity. I would have appreciated it more if I had seen the U.S. proposals before I went.

Mr. WALBERG. You had not seen the proposals?

Ms. SPARKS. I did not see the U.S. position papers before we went. In all deference to Mr. Faucher, he was not in this position at that time. This was a previous group we were dealing with.

Mr. WALBERG. Saved by the appointment time.

Ms. SPARKS. Getting U.S. commercial input is a learning process. I think we are learning and I think this hearing today provides us with another opportunity for all of us to learn how to participate.

Mr. WALBERG. Definitely, as with any business, we are talking milliseconds of need and making decisions. If you are waiting too long, it is hard to make those key decisions.

Mr. Taub, would you respond as well to the preceding question of how the businesses could be worked with in a better way in coming up with solutions and agendas?

Mr. TAUB. To give a little context, in my written and oral statement, I had described 15 years ago this Committee holding a very similar hearing on this issue. That was before the law changed in 2006 but it was shortly after the law had changed for the first time to have the Secretary of State in the lead role, not the Postal Service.

The Government Accountability Office testified at that hearing and said, the State Department really needs to undertake a federal advisory Committee process and probably needs to be mandated. The 2006 law did that.

Frankly, without that change, I am not sure we would have seen the structure in place. That structure is in place now. We are members of that FACA, as it is called. I think as Nancy outlined, it has been a learning process.

I would observe that the law did have very specific requirements of the Secretary of State's consultation and involvement with other federal agencies and yet, had the Postal Service in that same law together with all of our postal and delivery sector, both public and private.

I do have an observation. Having attended the recent FACA meeting in my new role as Acting Chair, that the Postal Service

is at the table in some ways as another Executive Branch agency. They certainly are, but when it comes to Title 39 of the U.S. Code, Section 407, there was an intent there to have a better distinction.

Mr. WALBERG. I appreciate that.

Mr. Chairman, thank you for giving me additional time.

Mr. MEADOWS. I thank the gentleman.

The Chair recognizes the gentlelady, Ms. Plaskett, from the Virgin Islands, for five minutes.

Ms. PLASKETT. Thank you very much, Mr. Chairman.

Thank you, lady and gentleman for being here this afternoon.

I wanted to ask some specific questions that may be a little off from what we are specifically talking about.

I live in a district, the United States Virgin Islands, which for all intents and purposes by the Postal Service, as well as some of the testifiers, is treated as an international postal zone. I wanted to ask questions specific to that.

Mr. Taub, I wanted to ask you with regard to the Postal Regulatory Commission, if, in fact, the Virgin Islands is considered international?

Mr. TAUB. The Virgin Islands is part of the United States and in terms of the service standards we are looking at, the Postal Service sets those. They are supposed to be covering all of the United States.

Ms. PLASKETT. Can you tell me why in the last five years residents of the Virgin Islands have been required to fill out customs forms when they send packages from the U.S. Virgin Islands to the United States, to the mainland?

Mr. TAUB. I cannot answer that. We are the regulator, not the operator. Those are operational details. I would suggest the Postal Service itself.

Ms. PLASKETT. Is anyone from the Postal Service testifying today able to tell me why that has been imposed on the people who are U.S. citizens to fill out these forms every time they try to send a package to a relative on the mainland?

Mr. MISKANIC. Representative Plaskett, the completion of customs forms is directed by Customs and Border Protection. Obviously, the Postal Service would not create an undue burden for your constituents.

Ms. PLASKETT. So we would need to speak with Customs as to why they are making us at the U.S. Postal Service fill out customs forms?

Mr. MISKANIC. Yes, ma'am.

Ms. PLASKETT. You do not have any control over what happens within post office?

Mr. MISKANIC. The Postal Service has no authority over Customs and Border Protection, the processing and the requirement of customs forms.

Ms. PLASKETT. I will direct my questions to them.

The other thing I found interesting in reading the testimony of Ms. Sparks particularly, as well as Mr. Misener from the private sector, is the discussion about the disparities in competition that is given to businesses outside of the United States and competing with U.S. businesses from the rates that are offered.

Ms. Sparks, can you tell me why a package coming from the Virgin Islands is treated as international in terms of the rates they have to pay whereas individuals sending the same sized package with FedEx from the mainland pay domestic prices?

Ms. SPARKS. I am afraid I cannot. I think what you are asking is why does the Postal Service charge that?

Ms. PLASKETT. No, this is from FedEx.

Ms. SPARKS. I am going to have to get back to you on that.

Ms. PLASKETT. Would you? That is very important to us.

Ms. SPARKS. I would be glad to address that.

Ms. PLASKETT. If I am sending the same package from the States, I get to pay domestic rates but when I pay it from the Virgin Islands, the same sized package, I am charged international rates.

Ms. SPARKS. I would be glad to check it and get back to you.

Ms. PLASKETT. Mr. Misener, we know that letters are decreasing. You talked about that. At the same time, there has been an explosion in terms of ecommerce and the amount of ecommerce activity.

We have many small businesses in the territory that are trying to utilize ecommerce to be able to not just have their goods on Amazon or things of that nature but also to ship in other things. Our consumers, as well, love using Amazon.

Is there a reason why in the U.S. Virgin Islands we are not allowed to have certain packages, certain things from Amazon, why certain electronics or other things are not treated the same and why the rates we have for our shipping are very different than anywhere else, even from our neighbor, Puerto Rico?

Mr. MISENER. The question about varying rates is what we discussed today. We as a company are sellers that I am here talking about, are facing this disparate system that does not make any sense. We are sort of victims of it as well.

The reason why certain goods cannot be shipped to certain places, those are restrictions placed upon us as a business usually by the manufacturers of certain products. You just cannot sell some things into some places. Geographical restrictions exist separate and apart from us. We want to provide as much convenience and selection as we can to our customers worldwide, including the U.S. Virgin Islands.

Ms. PLASKETT. Are the shipping rates also restricted by those manufacturers or are those your rates?

Mr. MISENER. Neither, they are the rates of the shippers.

Ms. PLASKETT. Of the shippers?

Mr. MISENER. Correct.

Ms. PLASKETT. That you have partnered with, correct?

Mr. MISENER. That is correct. We pay a variety of shippers, including two at the table, and others to ship things for us worldwide.

Ms. PLASKETT. Which of the two at the table, Federal Express and the Postal Service?

Mr. MISENER. Yes, not the Inspector General.

Ms. PLASKETT. I would hope not. I do not know if he has the capacity for that at this time but you never know.

Thank you very much.

Thank you for the indulgence. I will take a little of Mr. Clay's time.

Mr. MEADOWS. Kind of like carryover minutes.

I am going to recognize myself for a series of questions. Then we will go to the gentlewoman from the District of Columbia.

I am fascinated, Mr. Misener. This is a big deal to Amazon, this what I would call non-competitive rates internationally, correct?

Mr. MISENER. It is a big deal for our seller customers. We are looking out for them. We are going to be fine either way. There is kind of an imbalance among our seller customers. It is illogical and ends up hurting, as I mentioned, American businesses.

Mr. MEADOWS. You are an international company, so you could potentially benefit greatly from importing products via lower postal rates from China directly to Marion, North Carolina.

Mr. MISENER. I look forward to visiting, sir. Amazon has sellers in 100 different countries around the world, so you are absolutely right that there are these disparities that operate even within our Amazon system.

We see no need for this as a matter of policy. The very fact is it is hurting a segment of our seller customers, American sellers selling to American consumers. It is an imbalance that makes no sense to us. We are looking out for the entire ecosystem.

Mr. MEADOWS. It adds real credibility to your testimony because the potential for you to be harmed, your company, is at the expense of fairness, so I applaud you being here not only as a witness but with being willing to speak on behalf of what I see as an unfair system with regards to all U.S. citizens.

Mr. Faucher, you made a comment earlier that was extremely troubling because you said, we will listen to all the input of everybody else with one caveat, except if it has a foreign policy implication. Are you suggesting or is it your testimony that the American people ought to be paying higher package delivery rates to further the foreign policy as it relates to China?

Mr. FAUCHER. No, that was not the intention of my testimony.

Mr. MEADOWS. Please clarify for me because that is what it sounded like. I want you to clarify it for me because people in North Carolina, California or wherever, when they start to hear this, they are going to have a real hard time and saying why are we giving China better rates than Virginia or California? How can you justify that as fair?

Mr. FAUCHER. The system is not fair and that is what we are trying to improve upon and correct. That is what we have been doing for years starting, as far as I know, with the 2012 Congress going to the 2016 and 2020 Congresses.

We will work to make this system more fair for the American consumer overall. That means bringing down the cost or matching the cost of the terminal dues to the cost of providing the service for the international mail that comes into the United States.

Earlier, I was trying to explain this process we use to develop our policies. I was trying to explain that we are not bound 100 percent by rules and regulations that we have to take into account the President's prerogatives to form foreign policy.

I did not mean to indicate in any way that we want to give favor in any way the Chinese consumer over an American consumer or

China's business over American business. At the State Department, we are in the business of promoting American interests, including American consumers and American businessmen. That is what we are going to do.

Mr. MEADOWS. Ms. Sparks helped you out because she gave you an olly olly oxen free as I would call it, that you were not there during the last time it was negotiated but now you will be. Now the pressure will be focused on you. I can assure you this will not be the last hearing as we look at this because we are going to look for real results.

Mr. FAUCHER. First of all, it is not just me. There is a whole team at the State Department and among all these different agencies that will be working on this issue. We have our strategic goals that have been agreed upon and we are trying to achieve those. Those goals really are to bring down the cost of this system for the American consumer and the American taxpayer.

Mr. MEADOWS. Mr. Taub said he was part of the hearing when he was Chief of Staff here on Capitol Hill. I guess to quote him, "it has moved at a glacial pace" which I would assume is not very fast.

Are we going to see progress in glacial terms or are we going to see progress in real terms? When is it going to be more expensive for a Chinese company to ship something from Shanghai to Marion than it is for a U.S. company? When can we expect that, 2018?

Mr. FAUCHER. I really cannot answer that question. I do not know. I would hope that we will have the system corrected by then so that the costs reflect the actual costs for shipping those products.

Mr. MEADOWS. I have asked the Committee to go back and get some of the testimony from the last hearing because I do not want us to be repeating that we would hope it will be fixed and there is someone with more gray hair chairing this Committee 15 years from now and we have not fixed the problem because it has real impact.

I am going to recognize the gentlelady from the District of Columbia, my good friend, Ms. Norton.

Ms. NORTON. Thank you very much, Mr. Chairman. I appreciate your holding this hearing. It presents new information to me and I am getting to understand the complexities.

As I understand, if there is primary authority, it would be with the State Department, although that agency can coordinate with other agencies like the Postal Service. I am particularly interested in the Postal Service in light of this Committee's jurisdiction over the Postal Service.

I do not know whether this question is for Mr. Miskanic or Mr. Williams. Let us look at the post office. It can make agreements with other countries as well, is that correct, the United States Postal Service, Mr. Miskanic?

Mr. MISKANIC. That is correct, Ms. Norton.

Ms. NORTON. Does the current terminal system we have discussed make it more difficult for the Postal Service to enter such agreements?

Mr. WILLIAMS. It does. With terminal dues at the back of the person with whom we are negotiating, all they have to do is stand up

from the table and the matter is settled by reverting all the way back to terminal dues. It puts the person trying to move toward a fairer agreement at a severe disadvantage knowing all the other party has to do is stand up and it is settled very much in their favor.

Ms. NORTON. That gets us back to the State Department?

Mr. WILLIAMS. The Universal Postal Union proceedings are all representative of the State Department but it can only be solved there. As some of the witnesses have said, it has been a chronic problem. There has been very little progress against this longstanding problem.

Ms. NORTON. Let us look at where there has been some progress with the Postal Service. Apparently there is a Postal Service agreement with China of all places. Is that correct?

Mr. MISKANIC. That is correct. There has been progress on several fronts, both at the UPU and negotiating the bilateral agreements.

I would caution that progress is not getting us to the point of cost coverage. Specifically to answer a question that was posed earlier as to when China would be paying more under the terminal dues structure, that will occur in 2016 when they move from a transition country to a target country and therefore, are required to pay a higher rate from a terminal dues perspective.

When they are required to do so, the Postal Service could renegotiate the bilateral discussion with them and ask for higher rates as a result. As we look toward the Istanbul Congress in 2016, it is our objective to have shape-based costing, country-specific that I think my colleagues here would generally agree.

The Postal Service is really looking for cost coverage for these inbound items. I think that is universal across this table.

There has been progress. Sometimes the pace of the UPU is unfortunate, but we made progress in Doha and are looking to make even more in Istanbul.

Ms. NORTON. Does the bilateral agreement with China relate only to so-called epackets? Those are packets that weigh up to 4.4 pounds.

Mr. MISKANIC. That is the primary foundation.

Ms. NORTON. How come?

Mr. MISKANIC. That is obviously the volume increase that respective foreign postal operator is looking to provide.

Ms. NORTON. What China is willing to provide?

Mr. MISKANIC. Correct.

Ms. NORTON. Do you consider this bilateral agreement with respect to epackets a success?

Mr. MISKANIC. It is a step in the right direction. But until we reach cost coverage, I would be remiss in claiming anything a success.

Ms. NORTON. Mr. Taub, you report that the bilateral agreements cause the same distortions as the terminal dues system. If that is so, why is that so?

Mr. TAUB. One, in context, we have long said and continue to maintain that bilateral-multilateral agreements relative to the UPU terminal dues rates are better but it is relative.

Ms. NORTON. Again, why are they better?

Mr. TAUB. They are better because the Postal Service itself can have the control to negotiate a more compensatory rate than the default UPU rate that is available.

Our report that we had done last year which you referenced did observe that similar distortions in effect with terminal dues are there with bilaterals. We have to keep in mind that bilaterals are, similar to terminal dues, not open to private operators.

Again, these are agreements that the goal should be similar prices for similar services regardless of country of origin and regardless of whether a public or private operator. These agreements distort that proverbial first mile, who will I select to ship because, for example, FedEx on this table would not be able to be a participant in that type of agreement.

Ms. NORTON. I thought FedEx and UPS were receiving small packages from China.

Mr. TAUB. I am just referring to the bilateral agreements themselves, in concept, but certainly FedEx can speak to their business.

Ms. NORTON. FedEx, how is this occurring then, apparently in large volumes?

Ms. SPARKS. We definitely carry packets from China to the United States, but we do not receive any pricing benefits similar to what foreign post offices give each other. We are in a different pricing regime.

Ms. NORTON. Do you lose money in carrying these small epackets from China to the United States?

Ms. SPARKS. I am afraid I cannot answer that question but I will be glad to check into it.

Ms. NORTON. I would be pleased if you would check into that. Do you cover your costs? You have decided to do this on your own, I take it.

Ms. SPARKS. We certainly do not, at this point, offer a service similar in terms of the very low prices that China Post charges its own shippers.

Ms. NORTON. So we are not competitive with China Post?

Ms. SPARKS. I would say that is correct, yes.

Ms. NORTON. Thank you, Mr. Chairman.

Mr. MEADOWS. I thank the gentlelady.

Since I made reference to the hearing in March 2000, at that particular point, as Mr. Taub can recollect, the State Department said they wanted the cost covered fully by 2005. We missed it by at least ten years.

Are we going to make better progress, Mr. Faucher, in the coming couple of years? You are the only one at the table who can probably speak to that.

Mr. FAUCHER. I would absolutely hope so. I would agree that the pace has been very slow, it could be better, but we are negotiating with 192 other countries in a global framework for all these sorts of things. It is not something we can just wish, snap our fingers and have it done.

We have to work it very carefully, work it very diligently and put all our efforts and resources toward achieving this. It would have been great to achieve it by 2005. I wish we had achieved it by today but we are not there yet. We will continue working toward

that goal and hopefully by 2016, 2018, we will be closer if not there.

Mr. MEADOWS. I am going to recognize, and let you off the hook, the Ranking Member, Mr. Connolly, for as much time as he desires.

Mr. CONNOLLY. Thank you so much, Mr. Chairman.

Mr. Faucher, you heard Mr. Misener use the example of a package going from my home county of Fairfax to the Chairman's home county of Marion, North Carolina. That distance is 340 miles and would cost $1.94. A comparable package being shipped from Shanghai, China to Marion, North Carolina, a distance of 7,000 miles, would actually cost 82 cents less.

Is there any rhyme or reason for providing that kind of effective subsidy for parcels going back and forth with China in today's day and age?

Mr. FAUCHER. First of all, I have to say I am not a businessman, so I do not know how these business deals are done between the shippers and sellers and how they arrive at the rates the shippers are going to pay. I am sure there are negotiations among the sellers in China with China Post to figure out what kind of costs they are going to have.

We deal with the terminal dues, which is the cost the United States agrees to take on for the international postal mail that comes in. You are absolutely correct. It does not make any sense. We need to increase the terminal dues so that they cover our costs.

Mr. CONNOLLY. Aside from the solution, and I agree with you, from a foreign policy point of view, from an economic foreign policy point of view, even if you are not a businessman, it just kind of flies in the face of intuitive sense, given China's increasing economic development.

It is a competitor now. It does not need a subsidy, it seems to me, to be engaged in commerce with the United States. It certainly should not cost less to deliver a package from Shanghai to here than it does for me to send a package to my good friend, Mr. Meadows, in North Carolina.

Mr. FAUCHER. I would agree.

Mr. CONNOLLY. Does anyone disagree? Does anyone want to take the stance of China needs more subsidies from the United States? I did not think so.

Mr. Williams, terminal dues are meant to cover the cost of inbound international mail, correct?

Mr. WILLIAMS. Correct.

Mr. CONNOLLY. Would you say these fees cover the actual cost of transporting that mail?

Mr. WILLIAMS. No, sir. We lose revenue on every single package that we deliver.

Mr. CONNOLLY. Why is that?

Mr. WILLIAMS. The terminal dues are set below the delivery costs the Postal Service incurs.

Mr. CONNOLLY. Reading your last report, we have lost over $200 million in the 2010 to 2013 period alone on inbound international single piece letter post, is that correct?

Mr. WILLIAMS. That is correct, $233 million. If you include the latest figures for 2014, it rises to a cumulative loss of $308 million.

Mr. CONNOLLY. Outbound though, we are making money, is that correct? You state in the report that the Postal Service has made just under $900 million in outbound international mail, is that correct?

Mr. WILLIAMS. That is correct, sir.

Mr. CONNOLLY. The PRC report states "The fact that terminal dues do not reflect the domestic price for last mile activities," which you already testified, "implies that designated postal operators may lose money on inbound deliveries and earn money on outbound deliveries," which in fact your report documents.

Mr. WILLIAMS. That is correct. The concern I think all of us have is not that this is a postal issue, but that we are inflicting harm on American commerce. Because of all of these anomalies and distortions, we can make or lose money in any given year, but the constant loser is the American businessman and American commerce.

Mr. CONNOLLY. In essence, Americans mailing to foreign countries are subsidizing foreign mailers who send mail to the United States, would that be a fair statement?

Mr. WILLIAMS. Correct. The American businessmen are paying to be devoured by the Chinese businessmen.

Mr. CONNOLLY. The PRC report also states, "distortion of competition for first mile and last mile activities is an issue caused by the current terminal dues system." Would you agree with that, Ms. Sparks?

Ms. SPARKS. Yes, I would.

Mr. CONNOLLY. Has the current system left your company, FedEx, unable to compete for those first and last mile activities?

Ms. SPARKS. Certainly at those prices at that price point, yes.

Mr. CONNOLLY. While I have you here, Ms. Sparks, does FedEx or do you support the TPA and the underlying TPP? Would that be good for America?

Ms. SPARKS. Wow, okay. I was not expecting that question.

Mr. CONNOLLY. I just let it hang out there.

Mr. MEADOWS. I will give you a clue. You probably ought to answer yes.

Ms. SPARKS. I think I will follow the Chairman's lead.

Mr. CONNOLLY. We are dying to hear from business on that subject.

Ms. SPARKS. It is an important issue to us and the answer is yes, sir.

Mr. CONNOLLY. I know it was a cheap question but I need allies everywhere I can find them. I am very lonely these days on my side of the aisle.

The PRC report also identified the distortion of competition between retailers in the domestic market and markets abroad as an issue. Mr. Misener, you would agree?

Mr. MISENER. Yes, sir. I very much agree with that. We see it on our platform. We are seeing different sellers advantaged, different sellers disadvantaged. It turns out that those advantaged are overseas and those disadvantaged are domestic.

Mr. CONNOLLY. What do you think the problem is, Mr. Misener? Is it just that we have not gotten around to rationalizing this thing?

Mr. MISENER. I think that is part of it. We heard today that it is difficult for the postal operators like the USPS to negotiate with say China Post and form a bilateral agreement if the floor set by the UPU is so low.

That is viewing this completely in a vacuum. It seems like we have this much broader relationship with China and this ought to be on the table as part of it. If the State Department is limiting itself only to negotiating in the UPU, we are missing an opportunity to view this more holistically as part of our bilateral relationship with China.

Mr. CONNOLLY. I wonder what you think, Mr. Faucher, from the State Department point of view, if you have one, but sometimes with the best of intentions, we do things to help lift a country so that it can improve its economic status, income and the quality of the lives of the folks there.

It is one thing to help a Burkina Faso, not to pick on somebody, but it is quite another to decide China still needs the same kind of help. What strikes me about this is we have not reevaluated the change. When I was growing up, we saw the famines in China. We have come a long way from that.

Does our policy, in this case, the fees we set, reflect that reality, that change? Some part of me thinks that it is almost inertia that we have not gotten around to it. Obviously we do not have some dark, conspiratorial plan to help China beat America in competition but here is something it seems to me to be counterproductive and there is no reason China cannot pay the same going freight as anyone else.

Is that fair enough, Mr. Faucher, from the State Department point of view?

Mr. FAUCHER. I would say obviously there is a major difference between Burkina Faso and China as it exists today. There has been change and I want to point that out.

China is moving from the transitional phase to the target phase, so its rates will be going up reflecting its greater economic power. There was also an agreement negotiated by USPS with China also reflecting China's commercial power.

Mr. CONNOLLY. Mr. Misener is shaking his head. Mr. Misener?

Mr. MISENER. That is correct. There is going to be this transition of group to another group but it will not affect the terminal dues rates here in the United States. That alone is not sufficient to change the rates.

Mr. MEADOWS. I think that is the key. If you want to disagree with that, I will give you equal time. I would caution you because I think the facts would speak otherwise. I think they would agree with Mr. Misener.

Mr. CONNOLLY. Ms. Sparks was also shaking her head.

Mr. MEADOWS. They are transitional right now and my question is transitional to what, to number one in the world? We have to look at this from a standpoint of real rates based on real costs and based on the fact China is an economic power, without a doubt. I think anyone who studies it would see that.

Transitioning them in terms of where they are categorized in the rates must reflect that transition. We are led to believe at this

point it would be very minor in terms of the rate difference, even by coming out of that. Would you disagree with that?

Mr. FAUCHER. No, I really would not disagree with anything you said other than to point out that there will be an increase as I understand it, I could be corrected here, in the terminal dues rate that will be charged to China once they transition to the target group.

Basically we are seeing a trend line here where we are getting closer but not quite there, not by a long shot, to covering the cost with China. It is moving downward; it is not widening, it is narrowing.

Mr. CONNOLLY. Mr. Chairman, I just want to give Mr. Taub a chance to clarify because he actually had a lot of experience with this fee setting and so forth. Did you have a comment? Then I am done.

Thank you, Mr. Chairman.

Mr. TAUB. I think everything everyone has addressed is a-okay. I have nothing to add on that unless there is something specific.

Mr. MEADOWS. The Chair recognizes the gentleman from Wisconsin, Mr. Grothman.

Mr. GROTHMAN. Thank you.

Ms. Sparks, do you think we are effectively advocating for our position or are we effectively advocating our interests at the UPU?

Ms. SPARKS. As a Midwesterner, Wisconsin, right?

Mr. GROTHMAN. Correct.

Ms. SPARKS. My son just moved there, nice State.

Mr. GROTHMAN. Good for him.

Ms. SPARKS. I think the proof is in the pudding. We have not gotten there yet. It is a very difficult atmosphere to operate in because it is a one country, one vote but the United States needs to continue to push very hard for cost-based rates.

I think historically we have thrown up our hands in the past. I think there are European countries experiencing some of the same problems. I think there are coalitions that could be made but this takes time and resources which is why in our written testimony, we advocated a special task force be formed among government agencies to talk about how this could better be approached.

Get the U.S. Trade Representative in there. They are good at negotiating. Get the Department of Commerce in there to represent the interests of small businesses. I think there are some things that can be done to help the State Department and bolster their fact bases and positions.

Mr. GROTHMAN. Mr. Faucher, in 2016 when the next Universal Postal Union Congress meets, how do you plan to do a better job of negotiating?

Mr. FAUCHER. Of negotiating?

Mr. GROTHMAN. Pushing for a better deal, what are your plans next time around?

Mr. FAUCHER. There are at least two initiatives on terminal dues that we are supporting which we hope will improve the system, refine it and make it better. It will not completely solve it, but we will continue to push that way.

We will push for a work program for the Postal Operations Council so that in the following cycle, after the next Congress, it will be

forced to look at these issues much more closely and make progress on them along the lines we have been discussing today.

Mr. GROTHMAN. Ms. Sparks, we are 40 percent of the world's mail volume. Are other countries, do you think, looking for us to take a leadership role and change some of this stuff?

Ms. SPARKS. There is no question in my mind that other countries are looking for us to be a leader here. At the last UPU Congress, there was a resolution introduced to do a study similar to what Mr. Faucher talked about.

That was championed by the Nordic countries and was finally withdrawn for lack of support. If I remember correctly, the United States was not out there strongly advocating for that particular amendment. I am glad to hear that we would be doing something like that in this Congress.

Mr. GROTHMAN. Do you think in the past we really have not been aggressive enough, have not taken the leadership role some people are expecting from us? Is that accurate, do you think?

Ms. SPARKS. I hate to say we lack aggression.

Mr. GROTHMAN. I am sure you do not, but go ahead.

Ms. SPARKS. I think we could be stronger advocates for cost-based pricing for transparent treatment of mailers and, as Mr. Taub said, for similar prices for similar services.

That is not the tradition of the UPU. The tradition of the UPU is that the haves pay the have-nots. What has brought this problem to a head is the have-nots suddenly have a lot.

Mr. GROTHMAN. I have one more question for you. About a year ago, Alibaba bought 10 percent of the Singapore Post. I think as a result of that, and due to the convention, USPS is really subsidizing Alibaba to compete with American companies. Do you think this might be the beginning of a trend?

Mr. MISENER. I hope not. We do see that companies with strong ties to transition countries or countries that have much lower terminal dues rates for shipments to the United States are better advantaged, they are better positioned to take advantage of these disparities.

I do not know what the stake in the Singapore Post will do for them but it does not make sense that as a postal operator, partly owned now by a private company, these subsidies would end up in the hands of a foreign private company. That makes as little sense as the underlying structure.

Mr. GROTHMAN. It is not possible this would happen again?

Mr. MISENER. I do not see why it would not be possible.

Mr. GROTHMAN. It could be possible, right?

Mr. MISENER. Certainly.

Mr. GROTHMAN. Thank you for indulging me for an extra half minute.

Mr. MEADOWS. I thank the gentleman.

I thank each of you for your responses. I want to close with this.

Mr. Miskanic, do you reimburse the State Department for representation costs as it relates to negotiating this? Does the Postal Service do that?

Mr. MISKANIC. Yes, the Postal Service, under an interagency agreement, reimburses the State Department a nominal amount.

Mr. MEADOWS. What is that amount?

Mr. MISKANIC. Approximately $150,000 a year for administrative costs.

Mr. MEADOWS. You actually pay him to represent you in negotiating, in a generic sense? Obviously, it is not him personally.

Mr. MISKANIC. Yes, by the 1999 Omnibus Appropriations, we are required to reimburse the State Department. It varies based upon the level of engagement.

Mr. MEADOWS. Ms. Sparks, does that create a competitive disadvantage for you?

Ms. SPARKS. I think it certainly creates the appearance of a conflict. We think it actually stems from a historical anomaly when representation was first assigned to the State Department. We think that could easily be gotten rid of in a future appropriations bill by just lining out that item.

Mr. MEADOWS. Mr. Faucher, I am going to put you on the spot but I will do it in a nice way hopefully. You would never want to have the appearance of a conflict of interest, would you?

Mr. FAUCHER. That is a softball question. No.

Mr. MEADOWS. In that, you would certainly support getting rid of this reimbursement that would come from the Postal Service to you for representation? You would support legislation to that effect if it came in a bipartisan manner from Mr. Connolly and I?

Mr. FAUCHER. I think we would support continuing to receiving the amount we receive so that we can carry out our function under the law.

Mr. MEADOWS. You would not support legislation to do away with that?

Mr. FAUCHER. The source of it is up to Congress basically.

Mr. MEADOWS. I am saying, if we put it forward, you would not be pushing back from the State Department and say no, we really want that money to come in from the Postal Service?

Mr. FAUCHER. I cannot imagine why we would do that.

Mr. MEADOWS. I would hope that would be the answer.

I am going to thank each of you for your willingness to participate. I have tried to keep part of this jovial and yet at the same time, it is a very serious, serious matter that the American people would not understand.

I do not understand. Mr. Connolly and I were just talking and we do not understand it. The message needs to be clear at the State Department that if there is a foreign policy reason for it, we want to know what the compelling foreign policy reason would be, not just generically but why is it so compelling that the American people should be subsidizing foreign package and postal rates from someone who, as Ms. Sparks so eloquently put it, were the have-nots and now they are the haves.

With that, I would like to thank you all.

If there is no further business before the Committee, without objection, the subcommittee stands adjourned.

[Whereupon, at 4:01 p.m., the subcommittee was adjourned.]

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