



**Advisory Committee on  
International Postal and Delivery Services**

(9:00am-12:45pm on February 13, 2015, American Institute of Architects Board Room, 1735 New York Avenue, NW, Washington, DC, 20037)

Committee Members in Attendance

- Lea Emerson- United States Postal Service
- Michael Mullen- Express Association of America
- Bruce Harsh- U.S. Department of Commerce
- John Callan- URSA Major Associates
- Ann Fisher- Postal Regulatory Commission
- Robert Reisner- Transformation Strategy
- Rodolfo Wolniewitz- DHL
- Sue Presti- Public Policy Resources
- Nancy Sparks- FedEx
- James Campbell

Designated Federal Officer

- Joseph P. Murphy- Department of State

Introductions and Update on International Postal Events (Agenda Items 1 and 2)

Mr. Murphy opened and chaired this meeting of the Advisory Committee on International Postal and Delivery Services (IPoDS).

Mr. Murphy began the meeting with an update on developments in the UPU, including several items related to operational and management issues that were of high priority for the U.S. delegation to the fall meetings of the Postal Operations Council (POC) and the Council of Administration (CA). He said that the headline item coming out of these meetings was POC action establishing of an optional “e-commerce” product under the Parcel Post Regulations. (Although technical specifications still require further elaboration, we know that the main features will be self-declared rates, no requirement for signature on delivery, and provision of advance electronic information.)

On the issue of electronic information, Mr. Murphy stated that there was a great deal of discussion in the POC Committee 1 Customs Group on a working paper distributed by the Netherlands that called for a common standard for the exchange of advanced electronic information for mail shipments. He noted that the U.S. had concerns about data privacy provisions of the proposal that could interfere with the ability of posts to exchange data with one another. Other delegations had expressed concerns about these and other provisions. Mr. Murphy said that there appeared to be a great reticence to move forward quickly with advance electronic information exchange and noted that the entire discussion was colored by the announcement that the European Union would impose a requirement for this data for most mail items by mid-2016.

Ms. Presti asked for clarification on how the e-commerce product will be developed, specifically whether it will be assigned to a working group or channeled through a sub-group. Ms. Emerson explained that further development of any specifications falls under the Product Strategy Integration Group in POC Committee III.

Mr. Murphy then informed the Committee that the International Bureau had circulated a notice just prior to the POC excluding most observers from the Customs Group and several other POC working groups based on a disused rule. This issue was further discussed under the “Any Other Business” agenda item.

Mr. Murphy concluded by noting the UPU World Strategy Conference, which had been scheduled to take place in October, 2014, in Abidjan, was canceled due to low registration rates likely resulting from Ebola-related health concerns. He reported that the Council of Administration endorsed an International Bureau proposal to hold the event in Switzerland. Accordingly, the Conference will take place in Geneva, at the International Conference Center, April 13-14, and registration is now open.

### Customs Treatment of Mail (agenda item 3)

#### I. Report of the Customs Issues Working Group:

Mr. Murphy reported that the Customs Issues Working Group has met twice since the last meeting of the Committee.

He said that, during the first meeting, held on January 20<sup>th</sup>, 2015, the Working Group discussed USPS’s response to Mr. Schenk’s customs process chart presented at the last IPoDS Committee meeting, which Ms. Emerson detailed with an overlay and additional slides highlighting security measures USPS employs with regard to outbound international mail. [Note: The slides appear in the list of meeting documents and are posted on the Committee website.] The Working Group then considered the first draft proposal on customs (C1) presented to the Committee by Mr. Campbell. Mr. Murphy related that participants in this first Working Group meeting agreed on the desirability of a principle of non-discrimination in the customs treatment of mail but noted that there was less agreement over the specifics of C1 because of what some saw as the overly sharp distinction the proposal made between developing and industrialized countries, its length, concerns over the introduction of numerous definitions, and questions about the necessity for some of its provisions.

Reporting on the second meeting, held on February 6<sup>th</sup>, Mr. Murphy said that the Working Group discussed a revised and streamlined version of the draft proposal that Mr. Campbell had prepared. Mr. Murphy explained that, once it was clear that consensus was not emerging around the revised C1, the Working Group took a step back to try and agree on language for a statement of principle to serve as a U.S. proposed addition to the UPU Convention. The chair provided a draft text that served as a basis for discussion in the Group. Mr. Murphy reported that Ms. Sparks offered proposed amendments to the chair’s text, which had stimulated vigorous discussion during the February 6 meeting. He noted that while the Working Group could not reach a consensus recommendation to the Committee, it was still presenting something concise and actionable.

Mr. Murphy reported that the Working Group also inconclusively discussed a suggestion from Ms. Sparks to address the issue of liability of designated operators for customs declarations. He reported that USPS officials participating in the Working Group meeting expressed the view that express industry concerns about liability provisions of the Convention are based on a misreading of Article 24. [Note: For more on this subject see section II below.]

After concluding his report, Mr. Murphy asked the Committee to comment on the language of a draft proposal for a new article in the UPU Convention introducing the principle of non-discrimination in customs treatment that had been under discussion in the Working Group. The text of the draft article appears below with Ms. Sparks' proposed deletions from the chair's text in strikethrough and additions in bold.

“Member countries shall ensure [~~in compliance with national laws,~~] that customs and other laws and procedures related to import and export, including those related to customs clearance, [~~are applied in a~~] **[provide]** non-discriminatory ~~[manner]~~**[treatment]** to similar items, whether conveyed by designated operators or non-designated operators, so as not to create an undue or unreasonable preference or competitive advantage for any operator or class of operators. In implementing this provision, member countries may take into account similarities and differences in customer characters, shipment characteristics, capabilities of operators and customs authorities, and operational differences~~],~~ **in compliance with national laws].”**

[Note: The full Working Group report is posted on the Committee website under meeting documents.]

Ms. Sparks and Mr. Campbell explained the rationale behind the proposed changes to the chair's text. These changes, they said, were designed to address a loophole that would allow discriminatory laws to be applied in a nondiscriminatory fashion. A representative of the USPS, speaking at the request of Ms. Emerson, then explained USPS' reluctance to accept these changes emphasizing that the current language mirrors existing language found in 39 USC Section 407. USPS expressed concern that the proposed amendments to the chair's text could potentially expose the United States to liability. Mr. Murphy noted that the State Department also had a concern that the amendment offered by Ms. Sparks substituting “treatment” for “manner” would be difficult to advocate for, since it poses separation of powers issues.

Ms. Presti offered a compromise to the proposal, according to which, in the first line, the phrase “in compliance with national laws” moved to the end of the second sentence, as suggested by Ms. Sparks. Other language reverted to the text proposed by the chair.

Mr. Murphy asked members of the Committee to express support or opposition to language proposed by Ms. Sparks as amended by Ms. Presti. Overall, there was strong support from the Committee to recommend this formulation to the State Department as the basis for a U.S. proposal to add a new Article to the UPU Convention (eight in favor two opposed). Both of those opposed said that they supported the original text presented by the chair. Taking note of the Committee's decision, Mr. Murphy said he will take this recommendation to the State Department for consideration.

## II. Issue of Liability

The Committee next turned to the proposal by Ms. Sparks on liability. Her proposal was to remove the phrase “and designated operators” from Article 24.3 of the Convention. Ms. Sparks explained that the Working Group initially discussed whether Article 24.3 should be struck in its entirety but ultimately decided to only seek its amendment so that it applies to member countries, not to designated operators. The decision to retain the paragraph was designed to assuage U.S. government concerns that striking the text in its entirety would expose countries to new liabilities. USPS reiterated the opposition to this proposed amendment that it had expressed in the Working Group, and Ms. Emerson reminded the Committee that the CA’s Reform of the Union Project Group had undertaken a lengthy study of the Acts to identify instances where references to “designated operators” should be dropped as part of the effort to separate governmental and non-governmental elements. This occurrence of “designated operators” survived that review, the results of which were subsequently adopted by Congress, and other UPU members might not welcome a proposal to revisit that decision, she said. Discussion revealed some uncertainty about the meaning and potential implications of Ms. Sparks’ proposal, and the Committee agreed that the Customs Issues Working Group should further consider the matter.

### Terminal Dues Issue (agenda item 4)

After a short break, the Committee returned to resume consideration of three proposals from express delivery industry representatives that had been first discussed in last September’s meeting. Mr. Murphy shared his impression from the September meeting that some members of the Committee had been unfamiliar with the issue but noted that since then the PRC-commissioned study by Copenhagen Economics on the “Economics of Terminal Dues” had been published, and USPS had provided written reaction to the proposals, which had been posted as a meeting document on the Committee’s website along with Mr. Campbell’s response to those comments. Although he acknowledged strong interest on the part of some Committee members in further considering the issue, Mr. Murphy noted that it is very late in the game for proposals to radically alter the terminal dues system during this Congress cycle.

Mr. Murphy invited Ms. Emerson to give an overview of the state of play of terminal dues discussions in the POC. Her presentation laid out work accomplished and underway in the POC to develop the methodology of the terminal dues proposal that will be presented to the Istanbul Congress. The detailed presentation from Ms. Emerson elicited several clarifying questions including on the effect of rate caps. Mr. Campbell highlighted the gap between the cost-tariff ratio currently employed by the UPU (70 percent of domestic postage) and the lower effective rate paid by Group 1.1 countries because of the operation of terminal dues price caps, which have been rising more slowly than domestic postage rates.

Mr. Murphy remarked that his purpose in asking Ms. Emerson to make her presentation was to give the Committee an understanding of the work that is now underway in Bern so that members could better appreciate the challenge of attempting to integrate Committee consideration of the express delivery industry proposals into the process that is actually underway. Currently, he said, the United States’ is guided by its policy of pursuing cost-coverage, which would mitigate the distortionary effects of the present system. The adjustments made to the terminal dues

methodology at the last Congress in Doha represented substantial movement towards this goal. This policy, however, only reduces and does not eliminate distortions, which is the goal of the express industry proposals, at least for exchanges between developed countries.

Mr. Campbell was then invited to initiate discussion of the proposals. He began by stressing their limited nature, noting that the first proposal only concerns the charges between Group 1.1 countries (“24 of the most industrialized countries”), and that it is not an effort to upset the work being done to improve the methodology as it applies to other countries. Mr. Campbell emphasized the importance of country-specific, non-discriminatory terminal dues that align with domestic postage costs for Group 1.1 countries, which still account for the bulk of mail volume. He expressed the view that terminal dues have moved progressively further away from the goal of a country-specific, cost-based system since 1999, despite refinements in the pricing methodology, because of the impact of caps.

Ms. Sparks remarked on the complexity of the discussion and recalled an earlier, simpler, express industry proposal to abolish caps and floors. She also asked if it was proper, or legal (from an anti-trust perspective), for the U.S. to involve itself in a system of negotiated prices.

Ms. Emerson said she disagreed with Mr. Campbell’s assertions as reflected in the written comments from USPS. She agreed that the Copenhagen Economics report identified distortions, but also noted that the report itself acknowledged that the solution the authors identified was not politically feasible. She also expressed the view that the conclusions in the report were not enough to inform the Committee or the U.S. Government. “Neither the UPU designated operators nor terminal dues are anti-competitive,” she said. Noting that the UPU Acts place universal service obligations and other requirements on designated operators, she argued that terminal dues do not create antitrust concerns under U.S. law, as there is a regulator, and, under title 39, treatment can be different if due and reasonable. She also stated that U.S. law imposes caps on price increases domestically to protect consumers. (Ms. Sparks subsequently commented that her understanding of the purpose of these caps is to prevent cross-subsidization of competitive products by market dominant products.)

Mr. Murphy requested elaboration on the application of domestic price caps and how they relate to changes in terminal dues. A PRC official speaking at Ms. Fisher’s request stated that domestic price caps apply to a whole class of mail and not just a singular product. She explained that the caps imposed on terminal dues affect only two products that comprise just a tiny portion of first class mail. Consequently, the impact of terminal dues increases on overall postal rates would be negligible given the small volume of international mail compared to domestic mail. Mr. Campbell noted that the linkage between terminal dues and the price paid by the customer in the United States is looser than the Postal Service implied. In response to a question from Mr. Murphy, Mr. Campbell said that, although the caps applied to terminal dues were responsible for a significant share of the distortions caused by the operation of the system, the pricing methodology was also flawed, in part because it does not take account of small packets. Consequently, Mr. Campbell did not feel that a proposal targeting cap adjustments was the best approach now and favored a move to a rule of non-discrimination for Group 1.1 countries as represented in the express industry proposals.

Mr. Murphy stated that he would be guided by Committee members how to proceed. He asked the Committee members for their thoughts on establishing a subcommittee on terminal dues. In the ensuing discussion, Mr. Campbell highlighted concerns that are emerging over the low terminal dues rates being paid by some countries in Asia on small packets and reminded the Committee of the express industry proposal to limit coverage of those shipments by terminal dues. Mr. Callan noted media reporting about the discrepancy between U.S. domestic postage and postage for shipments from China, he asked about the truth of those reports. Ms. Emerson commented that postal rates are affected by factors other than terminal dues and expressed the view that media coverage had overstated the issue. Most Committee members expressed a desire to establish a subcommittee to further explore terminal dues issues both in terms of immediate policy concerns and longer term issues. Some Committee members and members of the public in attendance expressed a desire to have more information about mail flows to assess impacts, including inbound and outbound volumes and said a subcommittee could be a good venue for reviewing this information. PRC representatives said that they thought it might be possible to provide high level information on impacts that did not compromise USPS business-sensitive data while the USPS noted that UPU flow-study data was not yet available.

#### Any Other Business

Mr. Murphy returned the discussion to the issue of observers being excluded from attending POC working group meetings. He explained the rationale for this decision was a POC rule of procedure that requires any observer to receive advance permission to attend these meetings. Mr. Murphy envisioned two possible solutions to this problem: 1) removal of the rule when the next POC established its rules of Procedure after Istanbul, or 2) restoration of the previous state of affairs where the rule stayed on the books but was ignored. He reported that there was not a favorable environment in the current POC to abandon the rule at this time, which he found to be regrettable. He noted that the establishment of a Consultative Committee was an important step toward greater openness at the UPU but that the recent restrictions on observers appeared to signal a lack of commitment to that objective. Ms. Presti echoed that this is a sorry state of affairs, especially considering she was as at the UPU for the beginning of the Consultative Committee.

The meeting adjourned at 12:45 pm.