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COMMUNICATION FROM THE EUROPEAN COMMUNITIES, HONG KONG CHINA, JAPAN, NEW ZEALAND, SWITZERLAND AND THE UNITED STATES

Guidelines for scheduling commitments concerning postal and courier services, including express delivery

The following communication, dated 16 February 2005, from the delegations of the European Communities, Hong Kong China, Japan, New Zealand, Switzerland and the United States, is being circulated to the Members of the Council for Trade in Services.

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This paper contains suggestions from various Members and so does not represent the position of any single Member. The paper is for discussion purposes only and does not prejudice the negotiating position of any Member.

A. SECTOR DESCRIPTION

1. As observed in various negotiating proposals, the existing classification guidance provided by the Services Sectoral Classification List (MTN.GNS/W/120) and the United Nations' Provisional Central Product Classification (CPC) leaves considerable uncertainty concerning the services classified under the "Courier services" category and, in particular, how these services may be distinguished from identical services supplied by postal authorities on a competitive basis. This fact may explain why only a minority of Members have scheduled or offered to schedule commitments in postal and courier services, whereas the commercial reality is that some of these services are largely liberalized throughout the world.

2. Another element contributing to uncertainty is that the CPC description for Courier Services does not explicitly reference express delivery services, a rapidly growing sector that today employs nearly 1 million people in over 200 countries. A more precise sector description would thus enhance the clarity of scheduled commitments.

3. The uncertainty created by the classification can be reduced substantially if Members adopt a common approach to scheduling commitments and provide clarifying statements in a footnote. The following guidelines could be useful in improving the quantity, clarity, and quality of commitments undertaken. They are intended to provide a framework for such a common approach (see Attachment A for an illustrative schedule), without departing substantially from the existing classification under GNS/W/120. While the two options considered in the attachment would allow Members to use formally different classifications for the time being, Members should continue to seek a more detailed understanding on a common classification.

- (a) In Column 1 of the Schedule, each Member should describe the activities to which its market access and national treatment commitments will apply. This description

should accurately reflect the commercial reality in each Member's market at this time or at such time as a Members' commitments enter into effect. For example, Members may wish to schedule commitments with respect to a list of selected sub-sectors that correspond to those areas that are open to competition. These sub-sectors could be identified on the basis of the type of items for which commitments are taken (e.g., letters, postcards, books, catalogues, hybrid mail, newspapers, parcels and packages, larger items), or on the basis of the type of service delivered (e.g., express delivery or handling of registered and insured items).

- (b) To enhance transparency and legal certainty, the sector description should contain all information necessary to delineate the boundary between competitive activities and those reserved to a postal monopoly (e.g., using criteria like size, weight, price, speed of delivery, or a combination of these). In addition, the sector description should be clear and comprehensible without needing to consult domestic legislation or regulation.
- (c) To further improve clarity, Members may provide additional information in a footnote, such as to define terms like "Document Exchange", to include more details concerning the boundaries between competitive activities and those reserved to a postal monopoly; or to clarify whether commitments are made for international services, domestic services, or both.
- (d) It also should be clear that a Member's commitments for the defined activity, subject to any scheduled limitations, shall apply to all competitive service suppliers, including holders of postal monopoly rights if they should compete to supply the scheduled service beyond the scope of their monopoly. This could be clarified by using a classification which is neutral as to the nature of the service provider, through a footnote to the sector description, or via an additional commitment. In any case, if the Provisional CPC is used to define the sector, such a clarification is imperative in order to provide greater certainty regarding the scope of the scheduled commitments.
- (e) Finally, as appropriate, Members may clarify whether there is a relationship between activities scheduled under Postal and Courier Services, including Express Delivery, and those that may be listed under other categories, such as Transport Services.

B. ADDITIONAL COMMITMENTS

- (f) A number of Members have identified a need for additional commitments, such as those required to address anti-competitive practices, universal service, cross-subsidization issues, licensing, the independence of the regulator, etc. Any such commitments should be inscribed in Column 4 of the Schedule (See Attachment A, Column 4), if possible by using a standard set of commitments for negotiating purposes following the example of the reference paper on telecommunications.

Attachment A:

Illustrative example of scheduling methodology to address the sector description and additional commitments

| Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons | | | |
|---|--|--|--|
| Sector or Sub-sector | Limitations on Market Access | Limitations on National Treatment | Additional Commitments |
| 2. COMMUNICATION SERVICES | | | |
| Heading Option 1: A/B Postal/Courier services {with sectors subject to commitments inserted by each Member} ¹ Heading Option 2: A. Postal Services B. Courier Services {This is the classification structure found in MTN.GNS/W/120 with correspondence to CPC 7511 and CPC 7512. Each Member would determine whether to list A., B., or both A. and B. If this structure is used, a clarification is necessary in order to provide greater certainty that the scope of the scheduled commitments encompasses all competitive suppliers of the defined service.} | 1) [] 2) [] 3) [] 4) [] | 1) [] 2) [] 3) [] 4) [] | E.g., commitments pertaining to anti-competitive practices, cross-subsidization, universal service, licensing, independence of the regulator, etc... |

¹ Clarifying Footnote:

To further improve clarity of the sector description, Members may provide additional information here, such as to define terms like "Document Exchange" or include additional details concerning the boundaries between competitive activities and those reserved to a postal monopoly.

For those who refer to "Express Delivery Services," Members should provide a conceptual definition, such as [US: "Express delivery services are defined as the collection, transport, and delivery of documents, printed matter, parcels, and/or other goods on an expedited basis, while tracking and maintaining control of these items throughout the supply of the service. Express delivery services do not include maritime transport services or services to which the Annex on Air Transport Services applies;"] or [EC: "Express delivery services may include, in addition to greater speed and reliability, value added elements such as collection from point of origin, personal delivery to addressee, tracing and tracking, possibility of changing the destination and addressee in transit, and confirmation of receipt."]

As appropriate, Members may clarify whether there is a relationship between activities scheduled under Postal and Courier Services, including Express Delivery, and those that may be listed under other categories, such as Transport Services.

If a classification that is not neutral as to the nature of the operator is used, Members should provide a clear statement, either here or in the additional commitments column, that specific commitments for the defined activity, subject to any scheduled limitations, shall apply to all competitive services and service suppliers, including holders of postal monopoly rights if they should compete to supply the scheduled service.