

SECTION 3

DELIVERY SERVICES

ARTICLE 159

Scope and definitions

1. This Section applies to measures of a Party affecting the supply of delivery services in addition to Chapters 1, 2, 3 and 4 of this Title, and to Sections 1 and 2 of this Chapter.
2. For the purposes of this Section, the following definitions apply:
 - (a) "delivery services" means postal services, courier services, express delivery services or express mail services, which include the following activities: the collection, sorting, transport, and delivery of postal items;
 - (b) "express delivery services" means the collection, sorting, transport and delivery of postal items at accelerated speed and reliability and may include value added elements such as collection from point of origin, personal delivery to the addressee, tracing, possibility of changing the destination and addressee in transit or confirmation of receipt;

- (c) "express mail services" means international express delivery services supplied through the EMS Cooperative, which is the voluntary association of designated postal operators under Universal Postal Union (UPU);
- (d) "licence" means an authorisation that a regulatory authority of a Party may require of an individual supplier in order for that supplier to offer postal or courier services;
- (e) "postal item" means an item up to 31.5 kg addressed in the final form in which it is to be carried by any type of supplier of delivery services, whether public or private and may include items such as a letter, parcel, newspaper or catalogue;
- (f) "postal monopoly" means the exclusive right to supply specified delivery services within a Party's territory or a subdivision thereof pursuant to the law of that Party; and
- (g) "universal service" means the permanent supply of a delivery service of specified quality at all points in the territory of a Party or a subdivision thereof at affordable prices for all users.

ARTICLE 160

Universal service

1. Each Party has the right to define the kind of universal service obligation it wishes to maintain and to decide on its scope and implementation. Any universal service obligation shall be administered in a transparent, non-discriminatory and neutral manner with regard to all suppliers subject to the obligation.
2. If a Party requires inbound express mail services to be supplied on a universal service basis, it shall not accord preferential treatment to those services over other international express delivery services.

ARTICLE 161

Universal service funding

A party shall not impose fees or other charges on the supply of a delivery service that is not a universal service for the purposes of funding the supply of a universal service. This Article does not apply to generally applicable taxation measures or administrative fees.

ARTICLE 162

Prevention of market distortive practices

Each party shall ensure that suppliers of delivery services subject to a universal service obligation or postal monopolies do not engage in market distortive practices such as:

- (a) using revenues derived from the supply of the service subject to a universal service obligation or from a postal monopoly to cross-subsidise the supply of an express delivery service or any delivery service which is not subject to a universal service obligation; or
- (b) unjustifiably differentiating between consumers with respect to tariffs or other terms and conditions for the supply of a service subject to a universal service or a postal monopoly.

ARTICLE 163

Licences

1. If a Party requires a licence for the provision of delivery services, it shall make publicly available:

- (a) all the licensing requirements and the period of time normally required to reach a decision concerning an application for a licence; and

(b) the terms and conditions of licences.

2. The procedures, obligations and requirements of a licence shall be transparent, non-discriminatory and based on objective criteria.

3. If a licence application is rejected by the competent authority, it shall inform the applicant of the reasons for the rejection in writing. Each Party shall establish an appeal procedure through an independent body available to applicants whose licence has been rejected. That body may be a court.

ARTICLE 164

Independence of the regulatory body

1. Each Party shall establish or maintain a regulatory body which shall be legally distinct from and functionally independent from any supplier of delivery services. If a Party owns or controls a supplier of delivery services, it shall ensure the effective structural separation of the regulatory function from activities associated with ownership or control.

2. The regulatory bodies shall perform their tasks in a transparent and timely manner and have adequate financial and human resources to carry out the task assigned to them. Their decisions shall be impartial with respect to all market participants.