



Trade in Services Agreement (TiSA) Japan UPU Clarification on USO

WikiLeaks release: June 3, 2015

Keywords: TiSA, Trade in Services Agreement, WTO, GATS, G20, BCBS, IAIS, IOSCO, FATF, OECD, United States, European Union, Australia, Canada, Chile, Chinese Taipei (Taiwan), Colombia, Costa Rica, Hong Kong, Iceland, Israel, Japan, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Paraguay, Peru, South Korea, Switzerland, Turkey, Uruguay

Restraint: LIMITED

Title: Trade in Services Agreement (TiSA) Japan UPU Clarification On USO

Date: November 28, 2014

Group: Trade in Services Agreement

Author: Ricardo Guillermo Filho, Director of Legal Affairs, International Bureau of the Universal Postal Union

Link: <https://wikileaks.org/tisa/japan-clarification/>

Pages: 3

Description

This is a confidential letter from the Legal Affairs Director of the International Bureau of the Universal Postal Union (UPU) in response to a request from the Japanese Ministry of Internal Affairs and Communication for a clarification on a matter of law relating to the Universal Postal Convention (USO). The request was made in connection with the ongoing negotiation of the Trade in Services Agreement (TiSA), to which Japan is a party. TiSA is an international treaty currently under negotiation between the United States, the European Union and 23 other countries. The Agreement creates an international legal regime which aims to deregulate and privatize the supply of services - which account for the majority of the economy across TiSA countries. The text dates from shortly before the 11th round of TiSA negotiations held 9-13 February 2015 in Geneva, Switzerland.

WikiLeaks

**UPU**UNIVERSAL
POSTAL
UNION

LIMITED

International Bureau

Case postale
3000 BERNE 15
SWITZERLANDT +41 31350 3111
F +41 31 350 31 10
www.upu.intContact; Mr Jochen KRUECK
T+41 31 350 31 19
jochen.krueck@upu.intMr Masatoshi KAWANO
Director
Postal Services Policy Department
Ministry of Internal Affairs and
Communication (MIC)
1-2, Kasumigaseki 2 chôme, Chiyoda-ku
TOKYO
100-8926 JAPAN

Berne, 28 November 2014

Reference: 0305(DAJ)

Subject: Request for legal clarification on the concept of universal postal service

Dear Mr Kawano,

We acknowledge with thanks your request of 26 September 2014 for a legal analysis, by the Legal Affairs Directorate of the International Bureau of the Universal Postal Union, on the concept of universal postal service as contained in the Universal Postal Convention (hereinafter the "Convention"). In this regard, we would kindly draw your attention to the relevant considerations presented herein.

A. Background Information

1. On 26 September 2014, the Postal Services Policy Department of the Ministry of Internal Affairs and Communication of Japan requested from the Legal Affairs Directorate at the international Bureau of the Universal Postal Union (hereinafter "IB" and "UPU" respectively) a legal assessment concerning the scope of universal postal services (hereinafter "UPS") as outlined in the Convention.
2. In more specific terms, Japan requested further clarification concerning the relationship between the universal postal service (with its reference to "quality basic postal services") as defined in articles 1.1.14 and 3 of the Convention, and the concept of "basic services" pursuant to article 13 of the Convention. Moreover, the question arises whether the reference to UPS as enshrined in article 1.1.14 of the Convention is limited to the basic services enlisted in article 13 of the Convention, or whether a member country may define a different scope for the UPS offered on its territory.

B. Current legal framework, definitions and related considerations

i) Applicable legal framework and definitions

3. Following on the fundamental precept contained in the Preamble of the UPU Constitution, which states that "the mission of the Union is to stimulate the lasting development of efficient and accessible universal postal services of quality in order to facilitate communication between the inhabitants of the world", the Convention defines UPS in article 1.1.14 as "the permanent provision of quality basic postal services at all points in a member country's territory, for all customers, at affordable prices".

4. The provisions above are then further reinforced by article 3.1 of the Convention, which provides that "[...] member countries shall ensure that all users/customers enjoy the right to a universal postal service involving the permanent provision of quality basic postal services at all points in their territory, at affordable prices."
5. Further, article 3.2 of the Convention stipulates that "[...] member countries **shall set forth, within the framework of their national postal legislation [...] the scope of the postal services offered** and the requirement for quality and affordable prices, taking into account both the needs of the population and their national conditions." (emphasis is ours)
6. Notwithstanding the aforementioned provisions concerning the UPS, the fundamental rules pertaining to letter post and postal parcels are contained in articles 13 and 15 of the Convention, which differentiate between basic services on the one hand and supplementary services on the other hand.
7. In that regard, it may also be noted that, while article 13 (basic services) refers to the range of mandatory international postal services which shall be provided by every member country, article 15 ("supplementary services") outlines a number of services which are either of a **mandatory** character (whose provision shall be ensured by every member country), such as articles 15.1 for "registration services", 15.3.1 for the "IBRS 'return' service", 15.3.2 for the "exchange of the international reply coupons" and 15.3.3 for the "advice of delivery for incoming registered letter-post items, parcels and insured items", or of an **optional** character (articles 15.2 and 15.3 in their remaining parts).

ii) Related legal considerations

8. With the above-described framework in mind, it becomes evident that the concept of UPS as enshrined in the Convention necessarily includes a number of mandatory postal services (as mentioned above) which shall be provided to all customers within a member country's territory. As a matter of fact, these services are not limited to the basic services contained in article 13 of the Convention, but would also comprise (in the absence of country-specific reservations) the mandatory supplementary services listed in article 15 of the Convention. The inclusion of these services not only ensures the accessibility of certain postal services for all citizens of any given member country, but also supports the principle of a single postal territory as mentioned in article 1.1 of the UPU Constitution (particularly for letter-post items). As such, every member country is required to ensure, at the very least, the provision of the above-mentioned basic and (mandatory) supplementary services to its customers.
- C
9. However, while the above represents the minimum a member country needs to offer to its customers on its territory in order to fulfil its obligations towards the Convention, a question might still remain as to whether a member country may include further services within the scope of its own UPS.
 10. Accordingly, while the term "universal" suggests a common standard applicable to all member countries, article 3.2 of the Convention (subject to the basic requirements of articles 13 and 15 of the Convention) makes it clear that the scope of UPS shall be set forth by member countries "within the framework of their national legislation or by other customary means", taking into account both the needs of the population and their national conditions. In other words, **nowhere** in the Convention is it forbidden for a member country to expand the scope of UPS beyond the range of services which every member country is obligated to provide pursuant to the Convention.
 11. In the light of the foregoing, this means for instance that, while some member countries may choose to include only the mandatory services referred to above as part of their UPS, other member countries may also decide to include a number of additional postal services (including without limitation EMS as defined in article 16 of the Convention, or even postal payment services as defined in the Postal Payment Services Agreement) within the scope of their respective UPS.
 12. So despite the fact that certain international postal services defined in the Acts of the Union are optional, the definition of UPS as referenced in article 1.1.14 of the Convention does not prohibit the inclusion, by any member country, of those services as "quality basic postal services" to be offered at

¹ The inclusion of EMS, postal payment services and/or insured items as part of the UPS has already taken place, for instance, in several member countries located in the Africa, Asia, Europe and the Western Hemisphere.

all points in their territory and at affordable prices, in addition to the mandatory services already contained in articles 13 and 15 of the Convention.

13. Nevertheless, it is essential to clarify that, whereas any member country may unilaterally enlarge the scope of its UPS to comprise other postal services (such as EMS, postal payment services or insured items), this does not mean that the same member country is in a position to **impose** the same commitments on another member country as far as the latter's respective scope of UPS is concerned.

C. Conclusions

14. In summary, the following conclusions may be drawn from the brief considerations above:

- The Convention sets forth, in articles 13 and 15 (the latter article in part), certain mandatory international postal services which shall be provided to all customers within a member country's territory. Such services represent, under the Acts of the Union and in the absence of country-specific reservations, the minimum requirements every member country must offer to its customers as part of the UPS concept.
- Nevertheless, every member country is also free to determine a **wider** range of international postal services as part of its UPS. So the services that fall under the concept of "quality basic postal services" as mentioned in articles 1.1.14 and 3.1 of the Convention are **not necessarily limited** to the "basic services" stipulated in article 13 of the Convention;
- Accordingly, article 3.2 of the Convention requires member countries to set forth their respective scope of UPS by taking into account both the needs of the population and customary means. Therefore, it is up to each member country to respectively decide on the mandatory services referred to above: ^

In the light of the above, there is no specific prohibition under the Convention for a member country to include EMS as part of the scope of UPS in its own territory;

- Finally, as for the view that a member country may not include EMS in its range of UPS because EMS is not a basic service defined in article 13 of the Convention, it is worth noting that this understanding would be legally inconsistent with the intent, language and purpose of article 3 of the Convention.

Sincerely yours,



Ricardo Guilherme Filho
Director of Legal Affairs