



**PROPOSALS FROM THE EXPRESS DELIVERY INDUSTRY FOR THE  
'JOINT STATEMENT INITIATIVE' (JSI) NEGOTIATIONS  
ON TRADE-RELATED ASPECTS OF E-COMMERCE**

**A position paper by the Global Express Association<sup>1</sup>**

**MARKET ACCESS AND DISCIPLINES FOR LOGISTICS SERVICES**

**Introduction**

The three members of the Global Express Association welcome the launch of negotiations by an important and diverse group of countries regarding trade-related aspects of e-commerce. E-commerce is generating new forms of traditional trade and enabling more companies to participate in global trade, so the JSI Negotiations stand to benefit producers and consumers in all countries that participate in the initiative.

Express delivery carriers support micro, small and medium-sized enterprises (MSMEs) every day, and e-commerce provides them a tremendous opportunity to reach new global markets. MSMEs now can participate in global commerce that previously was only accessible to larger traders who have the resources and networks needed to gain an international commercial foothold. Defining stable and clear global rules governing e-commerce will further unleash its full potential and spur inclusive economic development.

Our business is to provide sophisticated world-wide logistics services to traders of all sizes. Restrictive trade policies increase the cost of our services, and negatively impact our efficiency and our ability to support traders. Ultimately, these restrictions harm a country's competitiveness and growth prospects by reducing its connectivity to foreign markets.

We encourage negotiators to look, among other things, into two areas:

- Trade Facilitation (not limited to e-commerce shipments, which cannot be distinguished from other shipments); and
- Trade in Services.

This is the second of two papers on the issue. The first one, published in June 2019, focused on Trade Facilitation. This one focuses on the second issue, trade in services. Specifically, it deals with market access for logistics services and related disciplines. This paper follows the structure of the so-called 'Snapshot' adopted by the JSI signatories in December 2018.

We also note that the negotiators' intention is to build on existing WTO agreements and frameworks. The negotiations should make clear which areas are already covered by existing WTO rules, which require the development of new rules, and whether any existing rules need to be clarified or improved.

Geneva, August 2019

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<sup>1</sup> The Global Express Association represents the three leading express delivery carriers DHL Express, FedEx Express and UPS.





### **Do not forget the physical links: Market access for logistics and delivery services**

The JSI negotiations have to this point understandably focused on digital economy issues. Digital economy issues are of great importance to the new kind of trade in goods that the internet enables. Good telecoms services (e.g., reliable internet connection) enable small traders to sell their wares world-wide by accessing customers through digital technology. The importance of the free and easy flow of data to the e-commerce ecosystem cannot be overstated. Advance cargo information cannot be sent to border agencies if digital communications are poor. E-payments of duties and taxes help expedite border clearance. Yet, at the end of the day, goods sold this way need to be shipped. Do not forget about physical connectivity. Creating the conditions for a competitive and efficient market in logistics services will give a country -and its traders of all sizes - better, cheaper, faster access to world markets.

Consequently, we suggest that JSI negotiators address market access for logistics services, as they are critical for e-commerce retailers to connect with their customers across borders.

In doing so, the signatories should not consider a piecemeal approach but instead ‘cluster’ all major services involved in the logistics sector, including physical transportation, handling and delivery services, freight forwarding, logistics and supply chain management, and wholesale and retail distribution.<sup>2</sup>

The combination of all these services is necessary for modern logistics supply **chains** to operate efficiently. To the contrary, a piecemeal approach of opening up some services but not others creates major inefficiencies – the global supply **chain** cannot function without all necessary links in the chain.

In terms of architecture, we would advocate adopting a clear list of sectors on which commitments would be scheduled (market access, national treatment, additional commitments). We would also recommend including a standstill clause on market openness at time of agreement. At a minimum, we would expect participants to lock in existing degrees of market access. A ratchet clause would also be of great value in locking in procompetitive regulatory reforms. However, it should only apply to national treatment and not to market access commitments, so as to avoid any ‘chilling effects’ on further autonomous opening of market access.

We believe that negotiating such commitments does not require new mandates and can be done by the group under Article XIX.4 of the GATS.

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<sup>2</sup> The specific Central Product Classification Codes are 748, 7511, 7512, 621, 622, 631, 632, 6111, 6113, 6121, 8929, 865 and 866.

## Additional commitments

Market access commitments alone will not be sufficient to unleash the benefits that logistics services can provide to the e-commerce ecosystem. Like in the telecoms sector, it is important that market access commitments be accompanied by additional rules on issues such as the independence of the regulator, universal service, anti-competitive practices, and licensing, among others. The 2005 Communication from the European Communities, Hong Kong China, Japan, New Zealand, Switzerland and the United States of 2005 regarding Guidelines for Scheduling Commitments concerning Postal and Courier Services, including Express Delivery<sup>3</sup> suggested that these could be scheduled under column 4 of the GATS Schedule (Additional Commitments), if possible using a standard set of commitments to be developed in a template, similar to the Reference Paper on Telecommunications. We would very much encourage negotiators to reopen this discussion, whereby countries would commit to introduce or maintain a regulatory framework on the following issues:

- Licensing
  - The provision of universal service should not be a prerequisite to get a license, nor
  - Should licensing fees be used to fund the supply of another delivery service
- Independent regulator
- Freedom to contract to supply a segment of the service
- Customs Parity Provision: Same customs treatment for express services provided by Post Offices and by private companies.
- Prevention of anti-competitive practices that could result from cross-subsidization from monopoly or market-dominant segments.
- Clauses to ensure operators do not abuse their dominant position in a market to alter competitive conditions.

Text-based examples are provided in the *Appendix*.

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<sup>3</sup> WTO Document TN/S/W/30 of 17 February 2005



## APPENDIX

### LICENSING

**Communication from the European Communities and their Member States regarding “Post/Courier: Proposal for a reference paper (TN/S/W/26)”**

#### **Point II.3 Individual licences**

*An individual licence may only be required for services which are within the scope of the universal service.*

*Where an individual licence is required, the following will be made publicly available:*

- (a) all the licensing criteria and the period of time normally required to reach a decision on an application for a licence; and*
- (b) the terms and conditions of individual licences.*

*The reasons for the denial of an individual licence will be made known to the applicant upon request and an appeal procedure through an independent body will be established at the Member's level. Such a procedure will be transparent, non-discriminatory, and based on objective criteria.*

#### **USMCA – Delivery Annex – Article 6**

*6. No Party shall:*

- (a) require the supply of a delivery service on a universal basis as a condition for an authorization or license to supply a delivery service not covered by a postal monopoly; or*
- (b) assess fees or other charges exclusively on the supply of any delivery service that is not a universal service for the purpose of funding the supply of a universal service.*

### INDEPENDENT REGULATOR

Article 5 – EU / Japan EPA

*A regulatory body of each Party for services covered by this Section shall be legally separate from, and not accountable to, any supplier of such services. Subject to the laws and regulations of each Party, decisions of, and procedures used by such regulatory body shall be impartial.*

## **CUSTOMS PARITY PROVISION**

GATS Commitments – Kingdom of Saudi Arabia

2B Courier Services (CPC 7512)

Additional commitments

*Foreign express delivery operators will have a treatment no less favourable than that accorded to the Postal Office for its activities in express delivery.*

## **FREEDOM TO CONTRACT TO SUPPLY A SEGMENT OF THE SERVICE**

USMCA

Delivery Annex – Article 8. *No Party may require a supplier of a delivery service not covered by a postal monopoly to contract, or prevent such a supplier from contracting, with another service supplier to supply a segment of the delivery service.*

## **PREVENTION OF ANTI-COMPETITIVE PRACTICES IN THE POSTAL AND COURIER SECTOR**

Communication from the European Communities and their Member States regarding “Post/Courier: Proposal for a reference paper (TN/S/W/26) – Point II.1

Prevention of anti-competitive practices in the postal and courier sector

*Appropriate measures will be maintained or introduced for the purpose of preventing suppliers who, alone or together, have the ability to affect materially the terms of participation (having regard to price and supply) in the relevant market for postal and courier services as a result of use of **their position in the market, from engaging in or continuing anti-competitive practices.***