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CHAPTER 9

SERVICES AND INVESTMENT

SECTION E

REGULATORY FRAMEWORK

SUB-SECTION 3

DELIVERY SERVICES

ARTICLE 9.44

Scope

In addition to Chapter II and Chapter III of this Title, this Section shall apply to measures adopted or maintained by a Party affecting the supply of delivery services.

ARTICLE 9.45

Definitions

For the purposes of this Section:

- (a) “delivery services” means postal and courier 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 increased speed and reliability and may also include other value added elements in whatever form they take;

- (c) “express mail services” means international express delivery services supplied through the EMS Cooperative, 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 and courier services;
- (e) “postal item” means an item such as a letter, document, printed matter, or parcel 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;
- (f) “postal monopoly” means the exclusive right to supply specified delivery services within a Party’s territory or a subdivision thereof pursuant to a legislative measure of a 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, for all customers, at affordable prices pursuant to a measure of a Party.

ARTICLE 9.46

Universal Service

1. Each Party has the right to define the kind of universal service obligation it wishes to adopt or maintain and to decide on their 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 accord to other international express delivery services treatment no less favourable than that it accords, to inbound express mail services supplied on a universal service basis.

ARTICLE 9.47

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 the monopoly to cross-subsidise the supply of any delivery service which is not subject to a universal service obligation, or
- (b) unjustifiably differentiating among customers in like situations with respect to tariffs or other terms and conditions for the supply of a service subject to a universal service obligation or a postal monopoly.

ARTICLE 9.48

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 license 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. This body may be a court.

ARTICLE 9.49

Independence of the Regulatory Body

1. Each Party shall ensure that its authority or authorities responsible for regulating delivery services shall be legally distinct and functionally independent from any supplier of delivery services.
2. If a Party owns or controls a supplier of delivery services, it shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.
3. Each party shall ensure that the decisions and procedures that its authority or authorities adopt are timely, impartial, non-discriminatory and transparent with respect to all delivery service suppliers in its territory.