

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

SEAN HEATHER  
SENIOR VICE PRESIDENT  
CENTER FOR GLOBAL REGULATORY  
COOPERATION

1615 H STREET, N.W.  
WASHINGTON, D.C. 20062-2000  
202/463-5368

September 29, 2021

Ambassador Victoria Nuland  
Under Secretary for Political Affairs  
U.S. Department of State

José W. Fernández  
Under Secretary of State for Economic  
Growth, Energy, and the Environment  
U.S. Department of State

Dear Ambassador Nuland and Under Secretary Fernández:

On behalf of the U.S. Chamber of Commerce, I am writing to share our views on the recently concluded 27<sup>th</sup> Congress of the Universal Postal Union (UPU) held in Abidjan, Côte d'Ivoire. The Chamber commends the Department of State for its representation of U.S. interests during a Congress faced with many challenges caused by the pandemic. We welcome the Department's efforts in Abidjan to bring legal certainty to the Acts of the UPU.

As the Department underscored, it is a fundamental principle of international law that an intergovernmental agreement cannot enter into force with respect to a specific country until that country has formally expressed its consent to be bound by the agreement through the appropriate legal process. Nonetheless, some UPU stakeholders have taken a contrary position with respect to the Acts of the UPU over the years. Our hope is that the successful U.S. intervention in Abidjan will clarify the application of this vital principle of international law at the UPU once and for all.

The legal status of the UPU Acts is especially relevant to our members because of longstanding concerns with many of their provisions. The Chamber has consistently voiced concerns with postal services around the world seeking to exercise their government-conferred advantages to the detriment of U.S. businesses. These concerns often materialize with respect to market-distorting postal rates that discriminate against U.S. businesses, unequal customs treatment afforded to cross-border postal shipments, and the UPU governance structures that perpetuate these problems.

More specifically, UPU provisions often conflict with important policies enshrined in U.S. law such as the:

- (i) Promotion of unrestricted and undistorted competition in a mixed system of postal and private international delivery services;<sup>1</sup>

---

<sup>1</sup> See 39 U.S.C. § 407(a)(2).

- (ii) Promotion of a strict separation of governmental and commercial functions at the UPU;<sup>2</sup>
- (iii) Prohibition against unreasonable preferences in postage rates;<sup>3</sup> and
- (iv) U.S. customs and security requirements found in laws such as the Synthetics Trafficking and Overdose Prevention Act of 2018 (STOP Act).<sup>4</sup>

The Chamber stands ready to assist your Department in its ongoing efforts to raise these issues at the UPU. Where UPU Acts are inconsistent with U.S. law, we believe the United States must withhold its consent to be bound by the UPU Acts. Instead, the United States should follow them as appropriate only as a matter of policy choice.

Thank you for your attention to our concerns. Please let me know if you would like to discuss further.

Sincerely,



Sean Heather  
Senior Vice President  
International Regulatory Affairs

---

<sup>2</sup> See 39 U.S.C. § 407(a)(3). Last year the Chamber submitted its views to the UPU's International Bureau after the UPU announced an effort to open up to the wider private sector. Among other things, the Chamber urged the UPU to fully accept the principle of separation of governmental and commercial functions.

<sup>3</sup> See 39 U.S.C. § 407(b)(1) & (c)(1); *see also, e.g.*, U.S. Chamber of Commerce, Comments on Section 407 Proceeding, Docket No. IM-2020 (May 15, 2021) (raising such concerns to the Postal Regulatory Commission with respect to a UPU proposal in advance of the recently concluded UPU Congress).

<sup>4</sup> Pub. L. No. 115-271; *see also* 39 U.S.C. § 407(e)(2) (requiring U.S. agencies to "apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies."). The Chamber has consistently highlighted the importance of these U.S. laws, pointing out ways in which the UPU's legal framework could frustrate their implementation. *See, e.g.*, U.S. Chamber of Commerce, Comments on Fees for Inbound Express Mail Items; Docket No. USCBP-2020-0034 (September 22, 2020); U.S. Chamber of Commerce, Comments on Mandatory Advance Electronic Information for International Mail Shipments Interim Final Rule; Docket No. USCBP-2021-0009 (May 14, 2021).