

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT PRICES
INBOUND EXPRESS MAIL INTERNATIONAL (EMS)
ORIGINATING FROM FOREIGN POSTS

Docket No. MC2009-10

Docket No. CP2009-12

REPLY TO COMMENTS OF WILLIAM GENSBURG OF INTERNATIONAL TRANSIT SOLUTIONS
(December 15, 2008)

Early last week, Mr. William Gensburg of International Transit Solutions filed Comments in this proceeding.¹ Mr. Gensburg's focus is on section 407(e)(2) of title 39, which provides that the customs laws shall apply "in the same manner to both shipments by the Postal Service and similar shipments by private companies."

Perhaps in recognition that the Postal Regulatory Commission (PRC) is unlikely to have an opportunity to "apply the customs laws," as specified by section 407, Mr. Gensburg observes that action by the PRC on the Postal Service Request will not change customs laws or their application.² Mr. Gensburg also makes no attempt to show that his firm, International Transport Solutions, Inc., is a "private company" within the meaning of section 407(e)(1); nor does he argue that his firm makes "similar shipments" to those imported or exported by the Postal Service.³ So it appears that Mr. Gensburg's purpose is to draw attention to 407(e)(2), without actually asking that the Commission do anything about it in this proceeding.⁴

In fact, it is not clear why Mr. Gensburg's comments are the proper subject for consideration in this proceeding at all. They do not question whether the operational

¹ *Comments of William Gensburg of International Transport Solutions, Inc. Pursuant to the PRC Order 141* (December 9, 2008).

² *Id.* at 2.

³ Mr. Gensburg does claim, in his opening paragraph, to be a consolidator of bulk international mail from businesses.

⁴ Since the very existence of this Reply demonstrates the success of his strategy, nothing further need be done.

agreements or UPU managed price setting procedures meet the requirements of 39 U.S.C. § 3633(a), nor do they offer insight into the availability of private sector alternatives, consumers' views about the appropriateness of placement on the Competitive Products List, or the likely impact of such placement on small business concerns.⁵ Mr. Gensburg does not assert that his business is a small business concern within the meaning of 39 U.S.C. § 3641(h) or that he somehow represents the interests of such concerns. Nor does he assert that his business is "engaged in the delivery of the product involved;" even if the latter were true, section 3642 (39 U.S.C. § 3642) provides only that the Commission give "due regard" to the likely impact upon such a business, not the proprietor's opinions about extraneous legal provisions. In short, these comments are out of place here, and need not play a role in the Commission's consideration.

While the Postal Service would agree that section 407(e)(2) has no role to play in this proceeding, it does not agree that PRC action on the instant Request would constitute, as Mr. Gensburg also claims, "a direct contradiction to the requirements of the PAEA."⁶ In fact, this proceeding merely paves the way for past practice to continue into the future, with inbound Express Mail International from foreign posts continuing to flow into the domestic service area.

The Commission has previously been briefed on the role of section 407(e)(2) in its proceedings,⁷ and found no reason to address the issue substantively.⁸ Commission action on the instant Request will not change the factual or legal impact of section 407 in any way.

The Postal Service has previously explained that mail differs on various vectors from other material shipped internationally.⁹ Differences inhere in the characteristics of shippers and

⁵ 39 U.S.C. § 3642(b)(3).

⁶ Gensburg Comments at 1.

⁷ See *Comments of Federal Express Corporation in Response to Order No. 26 Proposing to Establish a System of Ratemaking*, at 14-29, PRC Docket No. RM2007-1 (September 25, 2007); *Reply Comments Of The United States Postal Service In Response To Order No. 26*, at 64-72, PRC Docket No. RM2007-1 (October 9, 2007).

⁸ PRC Order No. 43 n.39 (October 29, 2007).

⁹ See *Reply Comments Of The United States Postal Service In Response To Order No. 26*, at 66-69, PRC Docket No. RM2007-1 (October 9, 2007).

mailers, value, volume, weight, and frequency. Moreover, the impact of UPU restrictions and oversight can be critical distinctions between international mail and non-mail shipments.

Section 407(e)(2) is not being ignored. As required by that provision and other statutes applicable to exportation of postal items, the Postal Service, Customs and Border Protection, and the Department of State are collaborating with each other and other UPU members on the practical implementation of section 407(e)(2). Therefore, the Commission need not address customs clearance in this proceeding.

Finally, in response to concerns about the purported advantages the Postal Service has over private sector companies, the Postal Service submits that these issues were briefed and considered at length by the Federal Trade Commission in its report to Congress.¹⁰ The Commission findings that various federal laws produce a net competitive financial disadvantage for the Postal Service compared to its competitors, in the range of \$330-\$782 million annually, demonstrate that the Postal Service carries a burden in executing its statutory responsibilities, that far outweighs any perceived advantages to which competitors might point.

Respectfully submitted,

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¹⁰ Federal Trade Commission, *Accounting for Laws That Apply Differently to the United States Postal Service and Its Private Competitors* (December 2007).