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Shinsyu and Courier Service

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Shinsho⁽¹⁾ and Courier Service

Miyuka Ohara

International courier business, whose role it is to carry such small items as business papers, commercial documents, samples and parts, has rapidly grown in number recently thereby attracting the notice of industries concerned.

This courier service, which emerged in anticipation of an increasing need of present day business for greater speed, is also popularly known as air express, and is utilized not only by the foreign trade, construction, manufacturing, banking and insurance industries but even by carriers, transport operators, and freight forwarders, both belonging to the same physical distribution sector as courier agencies. and governmental bodies.

Fierce competition is now beginning to take place in the Japanese market for international courier service, which were started in the 1970s. Companies of foreign origins pioneered and are now very active in this field, but purely Japan origin operators have joined the market over the past few years, and are now quickly catching up with the early starters, DHL Japan.⁽²⁾

Each of these courier firms is trying to find a unique way in which

(1) The Constitution and Laws of Japan used this term in Japanese, and I romanized it here lack of a better expression, Roughly speaking, this term stands for letters that are dispatched in envelopes, the following articles made by the author are the only papers available here that taken up the relation between *Shinsho* and courier service.

- 1) "Courier service and Business document" in Japanese (Kokusai Shōji Hōmu vol. 10
- 2) "Present situation and future trend of Courier service" in Japanese (Nippon Noritsu Kyokai)
- 3) "Courier service and forwarding documents" in Japanese (Kokusai Shōji Hōmu)
- 4) "Problem on Courier service" in Japanese (Kokusai Kinyu)
- 5) Growing Courier service attracting attention of Industries concerned in English (Shipping Trade news)

(2) See p. 51 for details

to survive the intensifying competition. In this article I shall describe how they joined the market, what services they provide and what perspectives they have at the moment for their future business.

It should be noted at the beginning that these courier operators have the following common features: (1) they handle documents and printed matters, but not correspondence or communication in writing (notes or letters dispatched in envelopes); (2) many of them are engaged in both export and import services, and (3) their tariffs are simple ones, usually classified only by weight and destination.

Postal Monopoly under Postal Law of Japan

With respect to the handling of *Shinsho* in Japan, the Postal Law states: "no person, unless he or she is engaged in the postal service operated by the state, should be engaged in the mail business⁽³⁾ or make it his or her trade to deliver other person's *Shinsho*." On the light of this provision, every courier firm in Japan declares that "no *Shinsho* is handled by them as it is prohibited by the Postal Law".

The Postal Law of Japan (Law Number 165, 1947, as amended) (hereafter referred to as the "Law") provides in Article 5 as follows:

1. No one shall establish a postal service or participate in any such service other than that conducted by the Nation, provided,

(3) It is important to ascertain what exactly is meant by the term "mail." From past experience and recent discussions with postal officials courier service believes that this interpretation is based principally on outward appearance. Mail by their reckoning is material of similar appearance to that passing into the region through postal channels. If an item *looks* similar to what is handled through the post office, it *is* mail. Further, items of a personal or non-business nature are also mail. There is absolutely no room for argument about this.

The following should be classed as mail and excluded from all shipments:—

- any item bearing air mail markings;
- any item bearing postage stamps or franking impressions;
- any item bearing the words "air mail", "mail", "post" or similar;
- any personal correspondence however contained or addressed;
- any item in small envelopes largely handwritten—addressed or having the outward character of personal correspondence, regardless of its actual nature or content.

however, that this does not prevent the Minister of Posts and Telecommunications from entrusting a part of its postal service to other persons for the Ministry on a contractual basis in accordance with the Law.

2. No one shall engage in the business of conveyance of *Shinsho* of third persons. Any person who is employed by two or more individuals or juridical persons for the regular conveyance of their *Shinsho* shall be considered as engaged in the business of conveyance of *Shinsho* of third parties.
3. Neither any carrier nor the representatives, agents or employees of such a carrier shall use their facilities, for the conveyance of *Shinsho* of third parties. This does not, however, apply to delivery notes or invoices, in unsealed envelopes, accompanying goods being transported.
4. No one shall entrust the conveyance of *Shinsho* to any person operating a transport service of *Shinsho* in violation of paragraph 2, or to such persons as indicated in the preceding paragraph (excluding the items described in the proviso of the preceding paragraph).

This provision is commonly noted as monopoly of postal service by the Government. Accordingly, if *Shinsho* referred to in the provision cited above includes business documents such as bills of lading, documentary credits, bills of exchange, promissory notes, checks, the Courier services will constitute violation of the Law.

Definition of *Shinsho*

Then, what is *Shinsho* more specifically? What falls under the category of first class mail matters (Dai Issu yūbinbutu) as defined in Article 21 of the Postal Law of Japan, is *Shinsho* and the legal interpretation of this provision is based on ruling of Supreme Court of Japan dated September 26, 1907 to the effect that: “*Shinsho* generally refers to papers, sealed or not, to serve as a medium to communicate the intent of the addresser to a specific person or persons; and accordingly include not only sealed letters but also unsealed letters and postcards.”

Citing specific examples, the Court further explained: “Business

documents including notices, instructions, orders, circulars and advices, invoices, receipts, bills, estimates and business reports are *Shinsho* because they are addressed to specific persons, but handling instructions, manuals, prescriptions and house organs, unless specifically addressed to specific persons, are not *Shinsho*: nor are letters which have already fulfilled their purposes of communication, designs, drawings and catalogs.”

The meaning of *Shinsho* has changed with the trend of the times, making it difficult to distinguish between what has to be regarded as *Shinsho* and what has not. Thus, papers which anyone would consider *shinsho* seem to be only those whose envelopes are marked “Confidential” on its seal. All others are difficult to discriminate unless their contents are disclosed.

The Law does not specifically define the meaning of *Shinsho*, It is reported, however, that the Supreme Court of Japan on numerous occasions held that: *Shinsho* generally refers to writings whether sealed or not whereby to transmit one person’s intent or certain facts to a specific person or persons includes letters and postcards.⁽⁴⁾ Apart from the provisions in the applicable treaties, this appears to be the prevailing interpretation of the term *Shinsho* under the Japanese law. A letter is generally defined as correspondence in writing, whether handwritten or typed, addressed to a specific person.

Interpretation by Japanese Postal Authorities

The recent rapid development of courier service poses a serious challenge to air mail. In this connection, it is pointed out in the magazine of the Ministry of Posts and Telecommunications of Japan:⁽⁵⁾

“Some say that any item of correspondence between companies or anything that can be sent as ‘printed matter’ or ‘small parcel’ can be forwarded by a private operator of such service Further, though documents for commercial transactions, such as ship’s mani-

(4) *Yūbin Kankei Jimu Teiyō* (Manual for Postal Services) 51—56

(5) “Air Mail” issued in April 1983 by the Ministry of Posts and Telecommunications.

ests and loading plans, are permitted for mailing in small parcels, this interpretation is only for the purpose of classification but has no effect to alter the character of such documents as *Shinsho*, Therefore it has to be noted that legally, any private letter can only be sent by mail.”

The same magazine then define a number of pertinent terms as follows.

—*Shinsho*: A letter bearing correspondence to a specific person or persons.

—Specific person: A certain specified person, instead of any indefinite person or persons in general.

—Person: Not limited to an individual, but may also be a juridical person, such as a selling shop, a business corporation or any other kind of organization.

—Communication: An expression in letters, messages or signs, whether written by pen, printed or produced in any other mode, of the addresser’s intent or any fact to be communicated to another person or persons.

Obviously the Ministry of Posts and Telecommunications is recognizant of the fact that business papers are different from *Shinsho*. In its official publication⁽⁶⁾ originally circulated in November, 1967, it clearly notes that documents not having the nature of correspondence addressed to a specific person or persons are not to be regarded as *Shinsho*.

As examples of documents not falling under *Shinsho*, among others, the following are shown, provided of course that they are not addressed to specific persons.

- a. Books, magazines, newspapers, and other printed matters.
- b. Bills of exchange, promissory notes, checks, waybills, bills of lading, share certificates, debentures and other negotiable instruments.
- c. Manuscripts.
- d. Recorded tapes and films.

(6) “*Shinsho no Imi to Gutairei no Shiori*” explained in July 1979 by the Ministry of Posts and telecommunications.

- e. Admission tickets and other types of tickets.
- f. Letters and postcards which have fulfilled their original purpose, and materials for conference.
- g. Designs, specifications and the like.
- h. Catalogs, lists of commodities, price lists and the like.
- i. Photographs and paintings.
- j. Passports and identification cards.
- k. Printed advertisements, pamphlets and other sales promotional literatures.
- l. Operation manuals.
- m. Doctors' prescriptions and patients' charts.

Commercial documents vs. Letters in the U.P.U. Treaty

The scope of the U.P.U. Treaty is defined by Article 1 of the Constitution of the Universal Postal Union adopted at the Vienna Convention in 1964 which reads: "The countries which adopt this Constitution form, under the name of 'Universal Postal Union', a single postal territory for the reciprocal exchange of "letter-post items".

The U.P.U. Treaty details regulations governing 'letter-post' items, and will be detailed later, these are to be distinguished from commercial documents as the U.P.U. Treaty have clearly distinguished between 'letters' and commercial documents.

The significance of the U.P.U. Treaty is that Japan, as a member country, is obliged to comply with the regulations pertaining to 'letter-post' items. It follows, then, that, as commercial documents are not letter-post items for the purposes of the U.P.U. Treaty, they cannot be *Shinsho* for the purpose of the Japanese law. This conclusion is reinforced by the fact that the Law divides the mail into two categories, "letter post' items and' parcel post' items, and that all Japanese postal regulations pertain exclusively to these two categories.

It is reported that the U.P.U. Treaty introduced, at the Vienna Convention in 1964 definition of "letter-post items" to include letters, single and reply paid postcards, prints, samples of merchandise,

(7) Article. 22, para. 3 of the Constitution of the Universal Postal Union.

small packets and phonopost items. In so defining "letter-post" items, the Convention sought to simplify the scope of the postal services covered by the U.P.U. Treaty. Prior to this date, the U.P.U. Treaty regulated all forms of post items but maintained a clear distinction between letter post items, and other types of postal items.

The first treaty to regulate postal services was the Treaty for General Postal Union (the Berne Treaty) signed in 1874. This treaty stated that the scope of the treaty should be extended to cover extend to letters, postcards, books, newspapers, and other printed papers, patterns of merchandise, and legal and commercial documents. This treaty also listed a number of examples of what could constitute legal and commercial documents for the purpose of the treaty.

The Paris Convention in 1878, whilst it had not provided a definition of "letter", clarified the concept of "letter" by stating that a letter must have the "character of current and personal correspondence." Using this as a criteria for determining what constitutes a letter, the concept of a letter takes on a somewhat restricted meaning. It should also be noted that in the United States there are a number of court decisions which use this as a criteria for determining what amounts to a letter for the purposes of the Law of the United States.

This restricted concept as to what will amount to a letter under the U.P.U. Treaty, was further reinforced by the U.P.U. Treaty of 1934 (signed in Cairo), which specifically included a provision distinguishing commercial papers from letters.

Article 115 of the subordinate regulations of the 1934 Treaty states as follows :

"The following shall be considered as commercial papers, provided that they not have the character of current and personal correspondence: all papers and all documents, wholly or partly written or drawn, such as correspondence—open letters and postcards—which is out of date and has already fulfilled its original purpose and copies thereof, papers of legal procedure, documents

of all kinds drawn up by public functionaries, waybills, or bills of lading, invoices, certain documents of insurance companies, copies of or extracts from deeds under private seal, written on stamped or unstamped paper, musical scores or sheets of music in manuscript, the manuscripts of works or of newspapers forwarded separately, pupils' exercises in original or with directions, but without any note which does not relate directly to the execution of the work."

This definition was subsequently deleted in the 1964 Vienna Convention in order to simplify the scope of postal services under the U.P.U. Treaty. It follows that despite the deletion of such definition the definition of the letter, commercial documents etc. still remains unchanged under the U.P.U. Treaty.

Current Status of Courier Service

Though the development of facsimile is suspected to undermine the basis of courier service, copies are as yet no more than copies, and it will be some time before copies are used for the purpose of confirming final agreements or settling accounts if they are ever used for such purposes at all. The 1983 Revised Text of the Uniform Customs and Practice for Documentary Credits, drafted to update⁽⁸⁾ the current rules provides that banks may accept transport documents, insurance documents, invoices and shipping documents including various certificates produced by reprographic, automated or computerized systems if only they are marked as "Original" and authenticated by appropriate means.

Concerning likely problems involved in the use of courier service in international transactions, let me quote my own answer to a question about the propriety of using such service. The question came

(8) Article 22 of the 1983 Uniform Customs and practice for documentary Credits. Unless otherwise stipulated in the credit, banks will accept as originals documents produced or appearing to have been produced:

- (i) by reprographic systems;
- (ii) by, or as the result of, automated or computerized systems;
- (iii) as carbon copies,

if marked as originals, always provided that, where necessary, such documents appear to have been authenticated.

from a certain number of major banks, always a symbol of prudence is up to each reader to judge whether or not my answer was convincing enough.⁽⁹⁾ Article 10 of the current 1974 Uniform Customs and Practice for Documentary Credits provides, "Banks assume no liability or responsibility for consequence arising out of delay and/or loss in transit of any messages, letters, or documents." Then there is the question of whether or not the term "transit" covers transit by courier service as well. Since of old, it has been generally understood that documents or the like should in principle be forwarded through the post office or a like governmental agency.

In practice, however, banks are allegedly able to use courier service to save the payments of banking interest or for some other purpose if specifically so required by the client or permitted by the documentary credit (in such an expression as "letters, drafts and documents must be forwarded by DHL").

Our Posts and Telecommunications Ministry's warning is quite understandable, but in reality business corporations and international bodies everywhere in the world seem to show little hesitation to treat documents as "things" irrespective of the presence or absence of a cover letter when they have to be urgently sent, and to use courier service for their forwarding with cargo receipt.

Courier service can play an important role in, for instance, the quick and punctual desk-to-desk delivery of commercial documents, which integrally link the international flow of goods and that of commercial transactions. In providing desk-to-desk competition, courier operators have to compete with one another in ingenuity to constantly try to find out and satisfy their clients, specific needs, and to avoid by all means a price cutting race in disregard of costs. If, unfortunately, a situation which is condemned as excessive competition arises, not only will the courier service industry, which has just begun to win respectability, run into turmoil, but also will

(9) Article 10 of the 1974 Uniform Customs and Practice for Documentary Credits. Banks assume no liability or responsibility for the consequences arising out of delay and/or loss in transit of any messages, letters or documents any telecommunication. Banks assume no liability or responsibility for errors in translation, or interpretation of technical terms, and reserve the right to transmit credit terms without translating them.

the interests of its clients be adversely affected. Courier operators should well keep this point in mind.

For further sound development of their industry, the courier operators should not forget—perhaps this may sound too much of a stereotyped Japanese concept—that they have before anything else, to prevent excessive competition and instead to compete with moderation in price and quality of service within reasonable limits.

U.S. Postal Service Act of 1978

On April 6, 1978, by a vote of 384—11, the U.S. House of Representatives passed a general postal reform bill, H. R. 7700. Section ⁽¹⁰⁾ 19 of H. R. 7700 would enact a long needed clarification of the united

(10) H. R. 700
95TH CONGRESS
2 D SESSION

H. R. 7700

IN THE SENATE OF THE UNITED STATES

APRIL 11 (legislative day, FEDRUARY 6), 1978 .

Read twice and referred to the Committee on Governmental Affairs

AN ACT

To amend title 39, United States Code, to ensure the Continuation of public services performed by the United States Postal Service, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Postal Service Act of 1978".

* * * * *

ITEMS NOT LETTERS; LETTERS CARRIED OUT OF THE MAIL.

SEC. 19. (a) Section 601 of title 39, United States Code, is amended to read as follows: §601. Items not letters; letters carried out of the mail

"(a) As used in this chapter and in sections 1693 through 1699 of title 18, the term 'letter' shall not include the following:

"(1) telegrams;

"(2) newspapers, periodicals, books, catalogs, dictionaries, microfilms and other micro-forms, magnetic tapes and other similar materials;

"(3) checks, drafts, promissory notes, stock certificates, bonds, securities, other negotiable and nonnegotiable financial instruments, insurance policies, and title policies when shipped to, from, or between financial institutions;

"(4) abstracts of title, mortgages, deeds, leases, articles of incorporation, papers filed in lawsuits for formal quasi-judicial proceedings, and orders of court;

"(5) letters being sent in bulk to or from storage or to destruction;

"(6) letters being sent in bulk from a printer or other supplier to his customer ;↗

states postal monopoly.

Section 19 of H. R. 7700 strikes a middle ground between the Interstates Commerce Commission (ICC) and the Postal Service positions. It does not say that all nonpersonal correspondence is outside the monopoly, but it does say that certain items are not "letters." Business communications are declared to be outside the monopoly, but only between affiliated companies and only if delivered within 12 hours or by noon of the addressee's next business day (the courier operators of the United States believe that transmission time outside the United States, such as over international waters should not be counted in these limits to prevent discrimination against Alaskans, Hawaiians, and Americans doing business in other countries.) Data processing materials, all documents enclosed with cargo, and all "electronic mail" would also be declared non-letters.

Comments

Besides, I see no reason why other shipping or banking document such as documentary credit, transports documents, insurance documents, certificates of origin, cargo manifests and the like cannot be classified as commercial documents. It should be noted that this article in no way contradicts the interpretation of letters as is required by the U.P.U. Treaty, and indeed is in conformity with such an interpretation.

The definition of *Shinsho* under the Law is vague, with the result

↳“(7) written or printed matter enclosed with cargo or merchandise, including invoices, circulars, advertising, labels, instructions, and messages printed on the merchandise or container;

“(8) data processing materials, including electromechanical or electronic processing materials and all other types of materials that are ready for data processing or for conversion into a form ready for data processing, and the output of data processing when sent back from the processing center to the location originating the data processing materials;

“(9) any business communications between business organizations which are members of an affiliated group if transmission is completed within 12 hours or by noon of the addressee's next business day; and

“(10) any means of communication which, as of January 1, 1977, was not in existence or was not generally considered to be a letter.

“(b) A letter may be carried out of the mails when-

“(1) it is enclosed in an envelope;

↗

that, on the face of it, it is uncertain whether or not commercial documents would come within its scope. However, on this point, the Japanese domestic law is superceded by the provisions of the U.P.U. Treaty, to which Japan is a signatory nation. Under the U.P.U. Treaty's provisions, a distinction stands between commercial documents and letters, with the result that commercial documents are not subject to the postal monopoly. The position has been clarified in part by the Ministry, by its listing of certain items that are not *Shinsho*, provided that they are not addressed to a specific person.

From the foregoing, it is now apparent that under the Law, which is subordinate to the U.P.U. Treaty, *Shinsho* must also have the character of current and personal correspondence, and does not include commercial documents. In essence, commercial documents are not subject to the postal monopoly in Japan under the Law.

Japan is a party to the Universal Postal Convention (the current treaty became applicable to Japan as of September 20, 1975, Treaty No. 13) and its predecessors and accompanying treaties, as well as their respective subordinate regulations.

An international treaty is considered to be an agreement between

\ “(2) the amount of postage which would have been charged on the letter if it had been sent by mail is paid by stamps, or postage meter stamps, on the envelope;

“(3) the envelope is properly addressed;

“(4) the envelope is so sealed that the letter cannot be taken from it without defacing the envelope;

“(5) any stamps on the envelope are canceled in ink by the sender; and

“(6) the data of the letter, of its transmission or receipt by the carrier is endorsed on the envelope in ink.

“(c) Notwithstanding the provisions of subsection (b), the sending or carrying of letters outside the mails is permissible if they are sent by or addressed to the individual carrying them or if they are sent by or addressed to an officer or employee of a carrier, including an officer or employee of an affiliate or subsidiary of a carrier, on the current business of such carrier.

“(d) The Postal Service may permit the carriage of letters other than letter falling within the exceptions provided in subsections (b) and (c) above, outside the mails upon a determination that such carriage is consistent with the public interest.”.

(b) The analysis for chapter 6 of title 39, United States Code, is amended by striking out “601. Letters carried out of the mail.”

and inserting in lieu thereof: “Items not letters; letters carried out of the mail.”.

EFFECTIVE DATE

SEC. 20. The provisions of this Act, and the amendments made by this Act, shall take effect 90 days after the date of enactment of this Act.

or among nations. As Japan desires to occupy an honored place in international society,⁽¹¹⁾ the treaties concluded by Japan and established laws of nations must be faithfully observed.⁽¹²⁾

Accordingly, it is universally held that the treaties Japan has entered into generally supersede any contrary domestic laws and ordinances. Hence, the Law provides specifically in Article 13 that, "when a treaty includes special provisions relating to the postal service, those provisions shall be applicable". Accordingly, if a definition of *Shinsho*, letter or others is found in a treaty Japan has entered into, that definition shall prevail notwithstanding the provisions in the Law or its subordinate regulations to the contrary.

(11) Preamble to the Constitution of Japan.

(12) Article 98, para. 2 of the Constitution of Japan.

DHL Japan, Inc.

DHL Japan was the first to provide courier service for business documents in this country. The Hong Kong-based DHL International, Ltd., an affiliate of the DHL Group in the U.S., set up its Japanese branch in 1972 and launched door-to-door document courier service to and from Japan with all-in tariffs covering the pick-up charge, air freighting and customs clearance fee. This tariff structure served as a model for other firms which later joined the courier market.

This Japanese branch of DHL International was reorganized in 1979 into an independent Japanese corporation by the name of DHL Japan, Inc. as it is known today. DHL currently is engaged in courier service through its worldwide network comprising some 500 stations in 100 countries.

Oversea Courier Service Co., Ltd. (OCS)

OCS was established in 1957 for the purpose of delivering newspapers published in this country to Japanese people living abroad.

Later on, it expanded the scope of its overseas express service to include periodicals in general and companies' printed matter for business purposes besides newspapers, and now it is ranked top in the courier service of publications and printed matter here. Accordingly, as OCS points out, its activities "subtly differ from what is now known as document courier" or the common type of courier service.

Japan Courier Service Co., Ltd. (JCS)

JCS is a fully owned subsidiary of Tokyo Airfreight Clearance Co., Ltd. (TACC), a sister organization of TAC. It was established in March 1983 to take over the courier and small parcel service previously undertaken by TAC's consolidating division.

Therefore, though only a few months old as yet, JCS' service is claimed to already cover virtually all the major regions of the world except the Communist bloc through its network of overseas agents positioned in some 30 cities. Its small parcel handling accounted for 15 percent on the company's overall business, with courier service constituting the remaining 85 percent.

Nippon Courier Service Co., Ltd. (NCS)

Stimulated by the activities of foreign-based courier operators, some Japanese transport interests not unexpectedly began moves to launch purely Japanese document courier ventures, one of which was the establishment of NCS in 1982. It was jointly set up by OCS, Nippon Express Co., Ltd., respectively holding 40-percent and 30-percent shares in it, ABC Air Baggage Service Co., Ltd., JAC and JFC, both groups of consolidators. Thus was started NCS' BIZIPAC Service.

World Courier K.K.

This is the Japanese subsidiary of World Courier Inc. headquartered in New York City, U.S. It was established in 1981 to succeed the service of its parent company in Japan, previously operating through an agent here.

TNT World Wide Courier (Japan) Inc.

Though operating in the name of TNT Skypack, the trade name of the courier service of Thomas Nationwide Transport, an integrated group of Australian transport operators, this company was established more in an attempt to launch a Japanese courier service in competition with foreign based operations.