

United States Department of State

ADVISORY COMMITTEE ON
INTERNATIONAL POSTAL AND DELIVERY SERVICES

29 September 2014, American Institute of Architects Building,
1735 New York Avenue, NW, Washington, D.C.

Introduction to Draft Proposals for the UPU Istanbul Congress

James I. Campbell Jr.

Final / 29 Sep 2014

Topics

Background

- **Universal Postal Union – A Primer**
- **Emergence of the Competitive, Package-centric International Delivery Services Market**
- **U.S. Laws Relevant to International Postal Agreements**

Proposals

- **Overview of the Draft Proposals**

Abbreviations

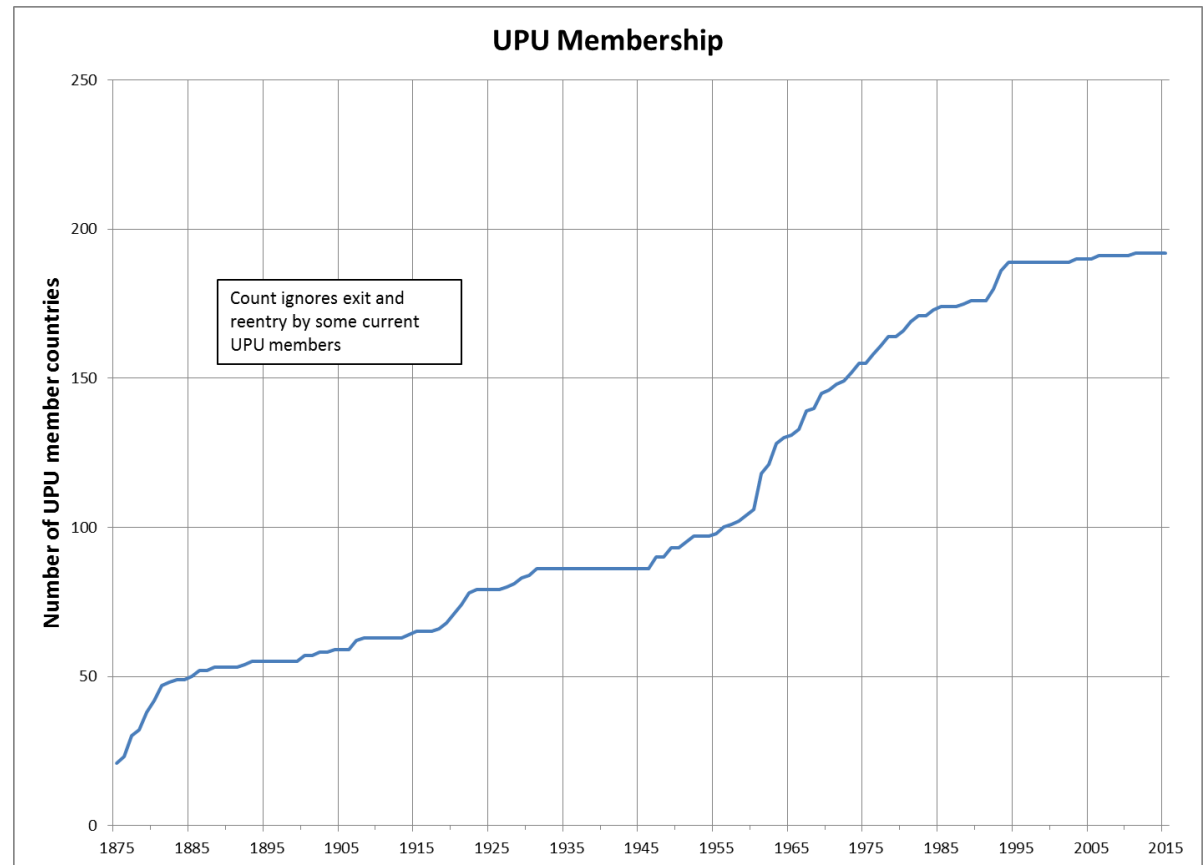
Abbreviations	
BTA	Basic Telecomm Agreement
CA	Council of Administration
DO	Designated operator
ETOE	Extraterritorial office of exchange
GATS	General Agreement on Trade in Services
IGO	Intergovernmental organization
NDO	Non-designated operator
Post Dir.	European Union Postal Directive (original and 2 amendatory)
POC	Postal Operations Council
REIMS	Terminal dues agreement among European posts

Background

Universal Postal Union – A Primer

UPU Members

- **Universal Postal Union is an intergovernmental organization**
 - Founded in 1875.
 - Second oldest IGO in the world (after International Telecommunications Union)
- **In 2012: 192 member countries**
 - UPU "member countries" include some territories governed by other countries.



Basic nature of the UPU has evolved

1875 1895 1915 1935 1955 1975 1995 2015



**Non-political union:
managed by small Swiss staff**

**UN agency: increasingly
political and bureaucratic
with elected Sec. Gen.
and Exec. Council**

**Increasing focus on
competition: UPU
dominated by
commercial Posts**

Congresses

1984 1989 1994 1999 2004 2008 2012 2016



1st monopoly res.
& UPU declaration
of commercial
goals

Limited
rulemaking
authority to
Exec Council;
TDs split
between IC
and DC to
stop remail

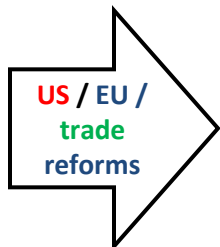
Creation of
POC and CA;
limited
rulemaking
authority to
POC

1st observers;
US/German
reforms
blocked; Conv
extended to
domestic univ.
serv.

Anti-ETOE
rules;
reserva-
tions
limited

POC sole
rulemaking
authority;
anti-ETOE
rules; reser-
vations
limited

Anti-ETOE
rules; study
on non-
discrim TDs
rejected;
POC
observers
limited



US / EU /
trade
reforms

Remail
regs

CEPT
reorg

GATS

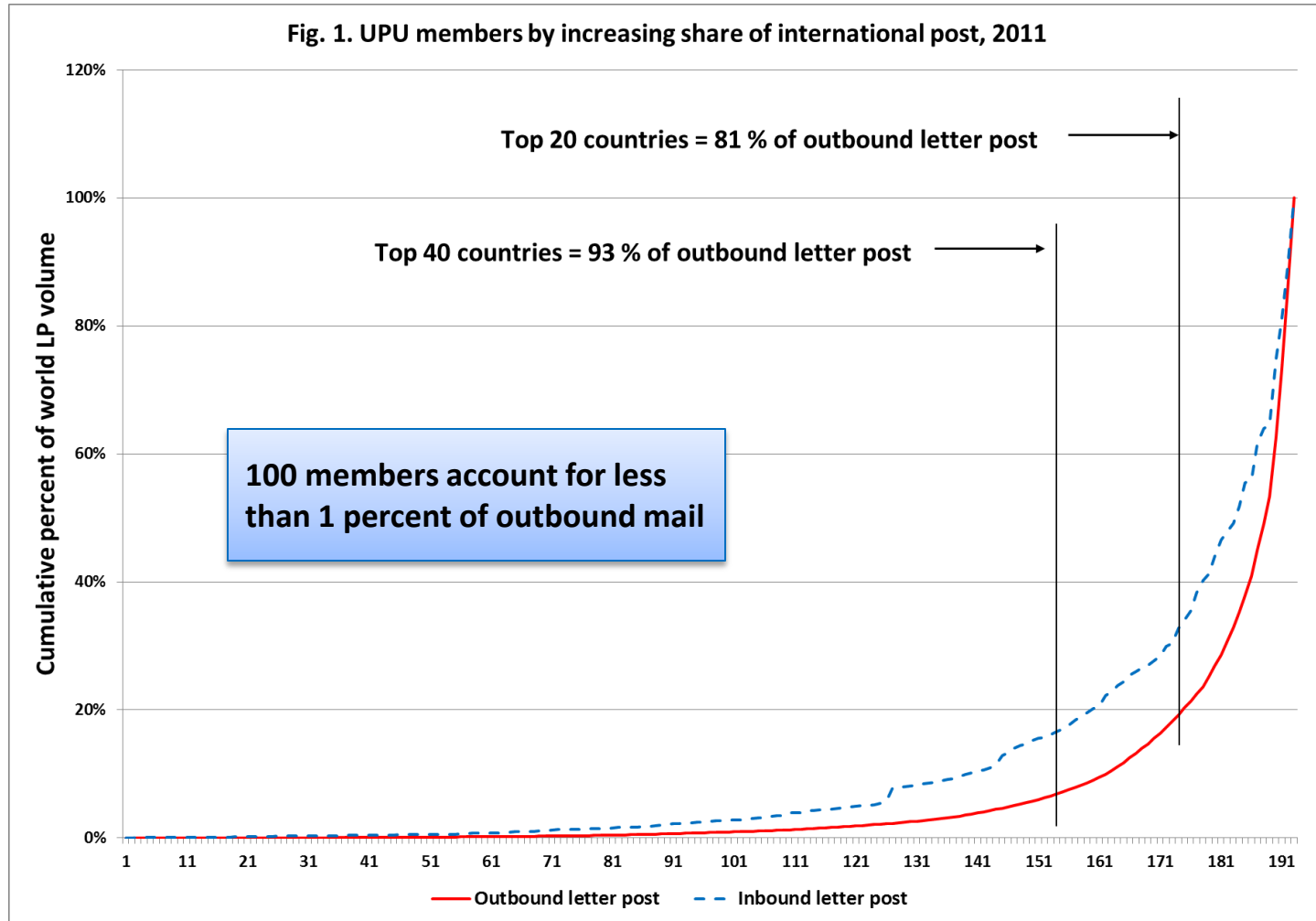
1st
Post Dir

BTA REIMS
II

PAEA
Plurilat.
request

3d
Post Dir

International post is dominated by a few countries



"Acts" of the UPU

Act	Authority	Comment
Constitution	Congress	Permanent act. Very hard to change
General Regs	Congress	Permanent act. Defines powers of UPU bodies
Convention	Congress	40 articles. Reenacted every 4 years.
Letter Post Regs	POC	177 articles; 68 forms. Adopted by POC after Congress. May be amended annually.
Parcel Post Regs	POC	122 articles; 24 forms. Adopted by POC after Congress. May be amended annually.
Postal Payment Servs. Agreement	Congress	28 articles. Reenacted every 4 years. Applies only to signatories.
PPSA Regs	POC	86 articles; 25 forms.
Reservation	Member country	an exemption clause which purports to exclude or to modify the legal effect of a clause of an Act as it applies to that member country.

Postal services of the UPU

Act	Item type	Wt limit	Delivery charge	UPU Customs
Letter Post				
– Small letters (E)	Document	2 kg	Terminal dues	Yes
– Flats (G)	Document	2 kg	Terminal dues	Yes
– Small packets (E)	Package	2 kg	Terminal dues	Yes
Parcel Post	Package	20 kg	Inward land rate	Yes
EMS	Package	30 kg	Special rates	Yes

"Letter post" includes both documents and small packages



Letter (P)

Small letter-sized envelope.
Average 20 g.



Flat (G)

Large envelope for unfolded documents, reports, etc. Average 124 g.



Small packet (E)

Any parcel, box, or rigid envelope weighing up to 2 kg. Average 354 g.

Primary product for e-commerce



Documents



Packages

Postal Operations Council (POC)

- 40 members; limited to DOs:
 - “Each member of the Postal Operations Council shall appoint its representative, who shall have responsibilities for delivering services mentioned in the Acts of the Union.” Gen Reg. Art. 112(3).
- Rulemaking powers creates inherent conflict of interest.
 - POC adopts Regulations, bulk of UPU rules, binding on member govts, after Congress adjourns.
 - POC develops and implements the commercial strategy of the UPU, the "Doha Postal Strategy" and related activities.

POC is dominated by large commercial DOs who have served continuously (5 terms), 1994 to 2018

1	Belgium
2	Brazil
3	Canada
4	China
5	Cuba
6	Egypt
7	France
8	Germany
9	Great Britain
10	India
11	Italy
12	Japan
13	Netherlands
14	New Zealand
15	Russian Federation
16	Spain
17	Switzerland
18	United States

Council of Administration (CA)

- 41 member countries:
 - Host country of last Congress.
 - 40 members from 5 geographic zones defined so each UPU country has an equal chance.
 - Limited to 2 terms in a row.
 - 50% of members must be newly elected each Congress.
- Key committees are joint committees with POC.
- Key responsibilities:
 - Study general principles and policies of UPU.
 - Guide POC on fundamental principles.
 - Finances of UPU.

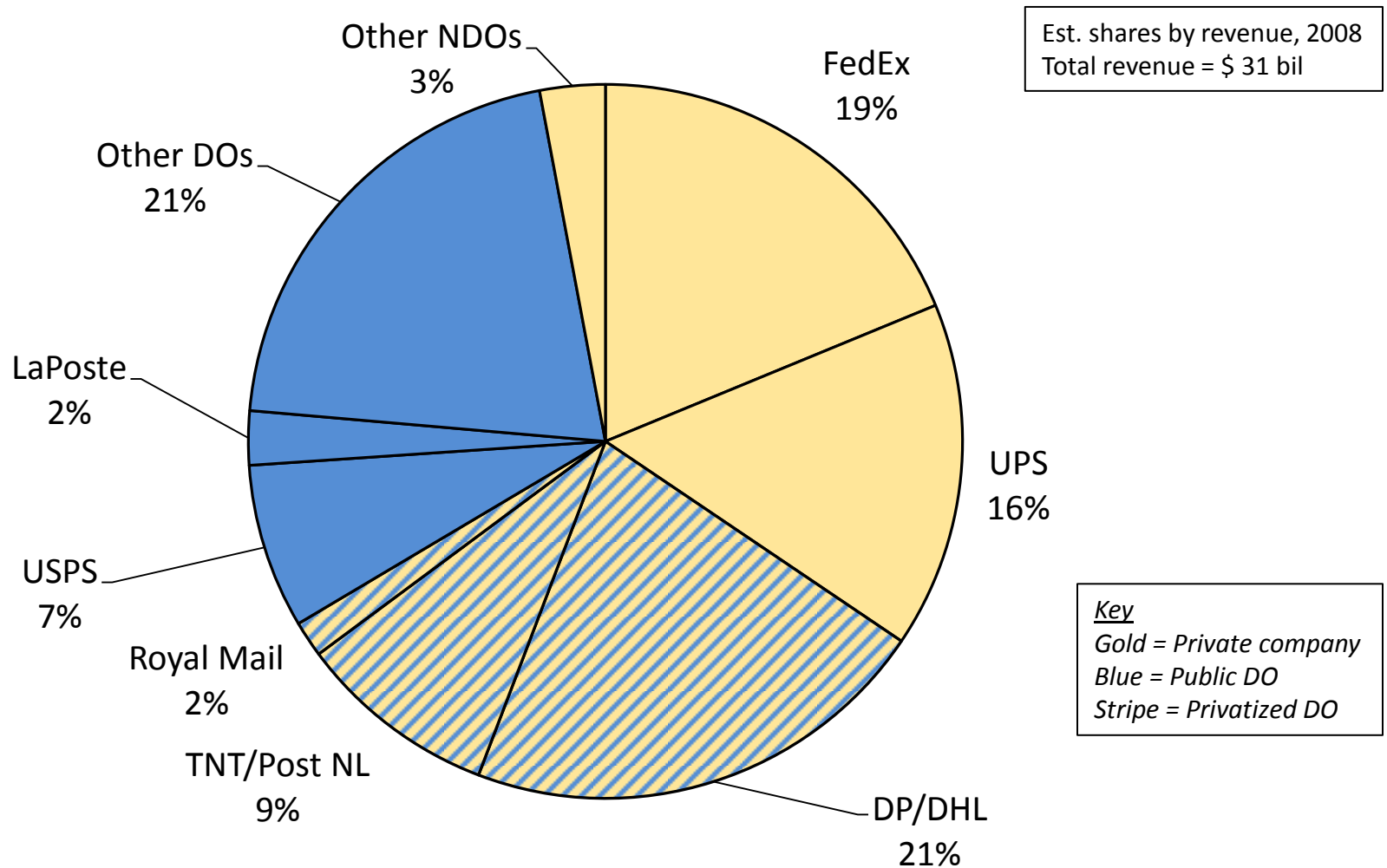
CA members who have served 4 terms (maximum possible), 1994 to 2018

1	Bangladesh
2	China
3	Congo
4	Egypt
5	France
6	India
7	South Korea
8	Russia
9	Saudi Arabia
10	Thailand
11	Ukraine
12	United States

Background

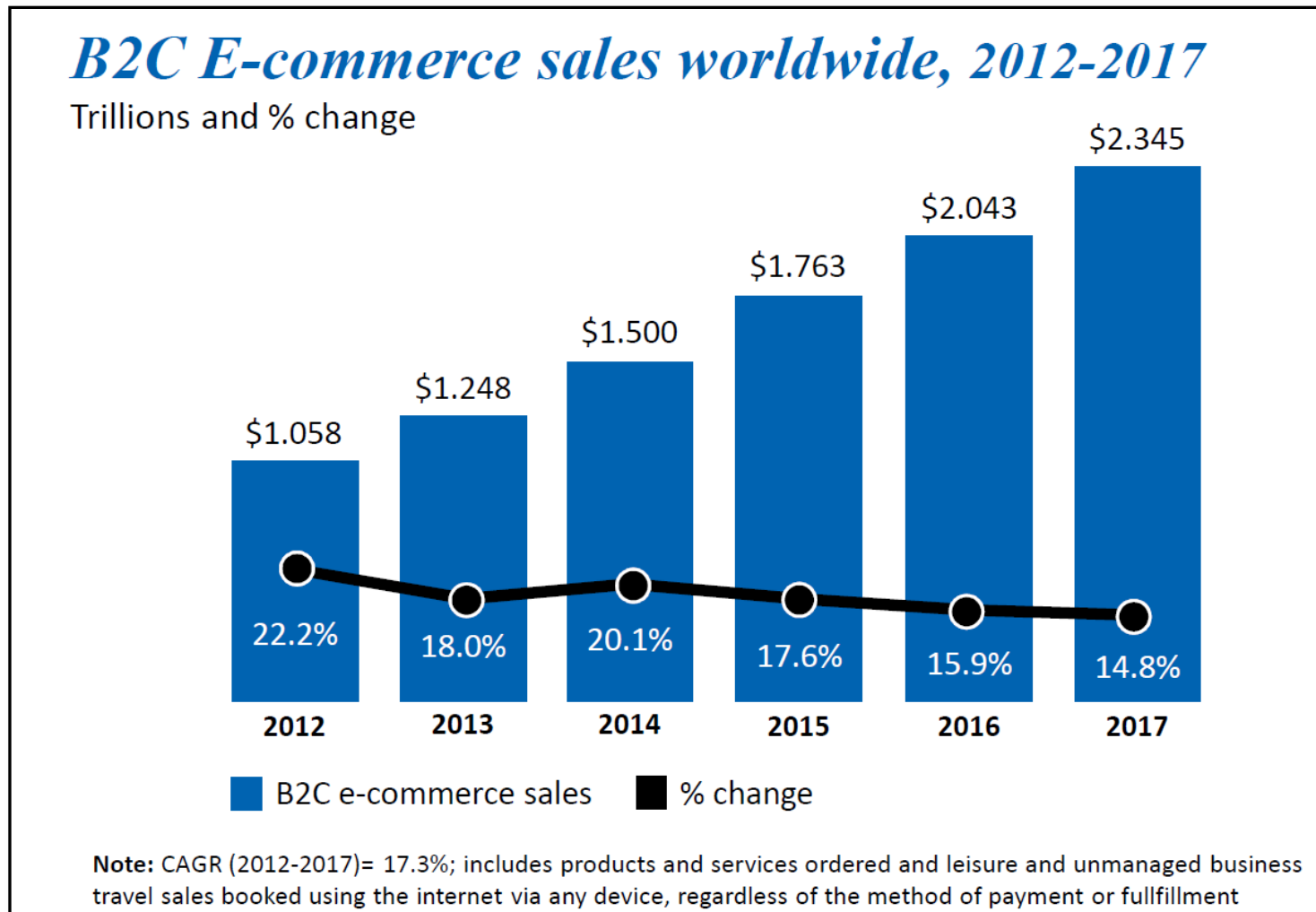
Emergence of the Competitive, Package-centric International Delivery Services Market

International delivery services are increasingly competitive



Source: UPU, Adrenale Report (2010)
Market includes services for documents and packages < 2 kg only.

E-commerce packages will be the focus of future competition



SLIDE TAKEN FROM UPU STAFF PRESENTATION, E-COMMERCE SEMINAR, MARCH 2014 (data from eMarketer, Jan 2014)

UPU is focusing increasingly on e-commerce packages

In view of

the rapidly changing postal markets and business environment influenced by globalization, market liberalization, regulation, and more sophisticated customer demands. [C9/2012]

Noting

a general decline in letter volumes [C44/2012] and, at the same time, the growth potential of UPU lightweight package services and the importance of security, transport and customs to the performance and competitiveness of those services. [C32/2012]

Considering

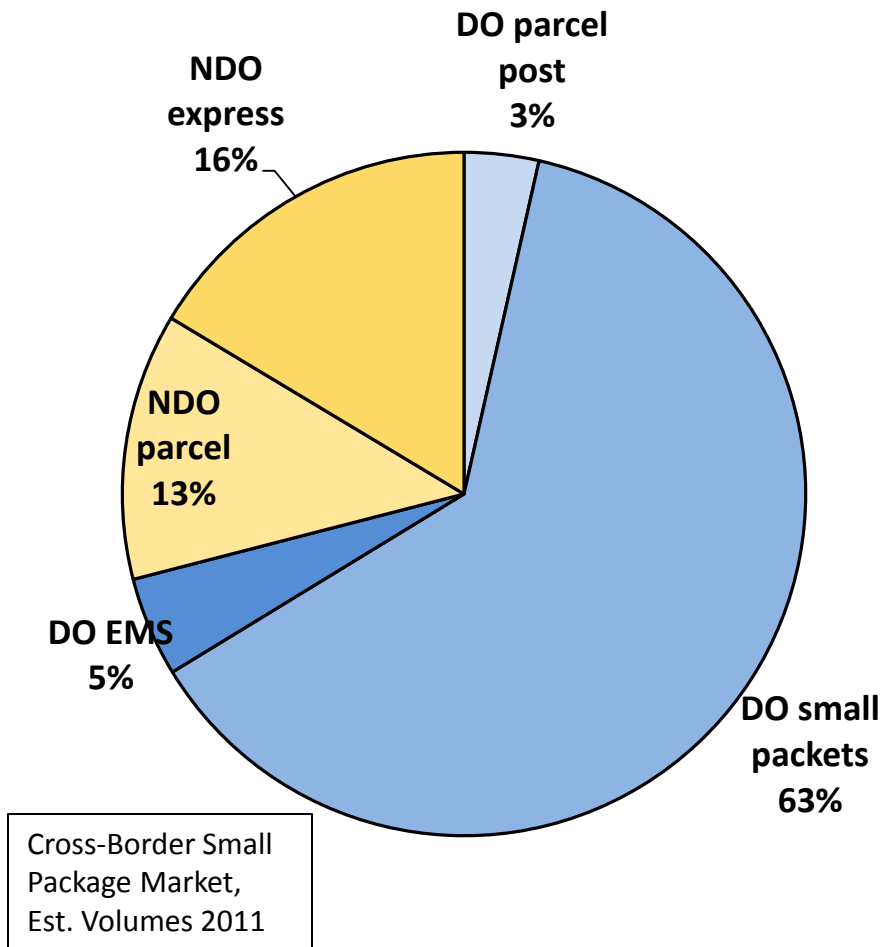
that the 21st century is the information society era, in which various forms of Internet-based economic activities are developing at unprecedented speed, and that the explosive development of e-commerce is changing people's way of life. [C33/2012]

Considering also

that demand for cross-border e-commerce transactions is increasing significantly as a result of the rapid development of e-commerce, and that there is huge potential for developing markets and increasing profit margins and that Posts are actively exploring ways of becoming main providers of cross-border e-commerce solutions. [C33/2012]

— Excerpts from Resolutions of 2012 Doha Congress

State of package competition, 2011



- Designated operators
 - Carry the majority of light weight packages.
 - Earn as much or more revenue from “business mail” as they do from “social mail”:
 - 50 to 55% by revenue,
 - 72 to 77% by weight.
- Non-designated operators:
 - Earn more revenue than DOs from carriage of light weight packages due to preeminence in high value express services.

Sources: UPU, Adrenale Report (2010); UPU, POC C 1 PDMG 2011.1–Doc 4 Annex 1 (Letter Post Action Plan (Ver 1-2)) (Apr 4, 2011); FedEx, Annual Statistics (2013); UPU, CEP C 1 GFT 2011.1–Doc 4a. Annexe 2 (13 Apr 2011) (percent of business mail).

Notes: (1) NDO includes non-DO operations of DPAG and TNT. (2) FedEx growth from 2008 to 2011 used to project Adrenale 2008 estimates to 2011.

Background

U.S. Laws Relevant to International Postal Agreements

National policy towards international postal & delivery services

- **Statutory provisions – 39 USC 407(a)**

- "To promote and encourage communications between peoples by efficient operation of **international postal services and other international delivery services** for cultural, social, and economic purposes."
- "To promote and encourage unrestricted and undistorted competition in the provision of **international postal services and other international delivery services**, except where provision of such services by private companies may be prohibited by law of the United States."
- "To promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of **international postal services and other international delivery services** [1] by the Government of the United States and [2] by intergovernmental organizations of which the United States is a member."

- **Notes**

- Applies to all international services, not only postal services.
- Separation of functions applies within USG and in policy towards UPU.

Application of U.S. customs and import/export laws

- **Statutory provisions – 39 USC 407(e)**

- "With respect to shipments of international mail that are competitive products ... that are exported or imported by the Postal Service, the Customs Service and other appropriate Federal agencies shall 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." §407(e)(2).
- "The Secretary of State shall, to the maximum extent practicable, take such measures as are within the Secretary's control to encourage the governments of other countries to make available to the Postal Service and private companies a range of nondiscriminatory customs procedures that will fully meet the needs of all types of American shippers." §407(e)(3).

- **Notes**

- Ban on undue or unreasonable preference applies to foreign posts as well as USPS.

Application of U.S. laws regulating postage rates

- **Statutory provisions – 39 USC 403(c), 407(c)**
 - "[T]he Postal Service shall not, except as specifically authorized in this title, make any undue or unreasonable discrimination among users of the mails, nor shall it grant any undue or unreasonable preferences to any such user." § 403(c).
 - "Before concluding any treaty [etc.] that establishes a rate or classification for a [market dominant] product, the Secretary of State shall request the Postal Regulatory Commission to submit its views on whether such rate or classification is consistent with the standards and criteria established by the Commission [for market dominant domestic products].
 - "The Secretary shall ensure that each treaty [etc.] is consistent with the views submitted by the Commission ..., except if, or to the extent, the Secretary determines, in writing, that it is not in the foreign policy or national security interest of the United States to ensure consistency with the Commission's views."
 - "The Postal Regulatory Commission shall ... promulgate ... regulations to —
 - "(1) prohibit the subsidization of competitive products by market-dominant products;
 - "(2) ensure that each competitive product covers its costs attributable; ..." § 403(e).

Application of U.S. trade laws

- **Statutory provisions – 19 USC 2114a, 2114b**
 - Principal United States negotiating objectives ... shall be —
 - (A) to reduce or to eliminate barriers to, or other distortions of, international trade in services (particularly United States service sector trade in foreign markets), including barriers that deny national treatment and restrictions on the establishment and operation in such markets; and
 - (B) to develop internationally agreed rules, including dispute settlement procedures, which —
 - (i) are consistent with the commercial policies of the United States, and
 - (ii) will reduce or eliminate such barriers or distortions and help ensure open international trade in services.
 - [T]he term “services” ... includes, but is not limited to ... postal and delivery services.”

Application of U.S. antitrust and competition laws

- **Statutory provisions – 39 USC 409(e)**

- "To the extent that the Postal Service, or other Federal agency acting on behalf of or in concert with the Postal Service, engages in conduct with respect to any product which is not reserved [under the postal monopoly law], the Postal Service or other Federal agency (as the case may be) —
 - "(A) shall not be immune under any doctrine of sovereign immunity from suit in Federal court by any person for any violation of Federal law by such agency or any officer or employee thereof; and
 - "(B) shall be considered to be a person (as defined in subsection (a) of the first section of the Clayton Act) for purposes of —
 - "(i) the antitrust laws (as defined in such subsection); and
 - "(ii) section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition."

- **Notes**

- See generally, U.S. Department of Justice and Federal Trade Commission, "Antitrust Enforcement Guidelines for International Operations" (1995); "Antitrust Guidelines for Collaborations Among Competitors" (2000).

Limits on U.S. authority to participate in the UPU Convention

- **Statutory provisions – 39 USC 407 (b), (e)**
 - "[T]he Secretary may not conclude any treaty, convention, or other international agreement ... if such treaty, [etc.] would, with respect to any competitive product, grant an undue or unreasonable preference to the Postal Service, a private provider of international postal or delivery services, or any other person." §407(b)(1).
- **Notes**
 - U.S. authority to participate in the UPU Convention may also be limited by the reference to U.S. antitrust laws in 39 USC 409(e) and by U.S. commitments under the General Agreement on Trade in Services (GATS) or other measures.
 - Legally, the UPU Convention is not a "treaty" requiring approval by 2/3 of the Senate. The UPU Convention is an "Executive Agreement" entered into under authority granted by Congress , usually termed an "Congressional-Executive Agreement".
 - A Congressional-Executive Ag. does not require subsequent approval by Congress.
 - The extent to which a Congressional-Executive Ag. may supersede prior inconsistent U.S. statutes is unclear (to me).

Overview of the Draft Proposals

Summary of the Draft Proposals

- **Focus proposals on 3 key topics:**
 - Customs procedures;
 - Access to domestic postal system (terminal dues, inward land rates); and
 - Institutional reform of the Union.
- **Basic approach: staged reform:**
 - Build on UPU tradition of staged reform starting with Industrialized Countries.
 - Between Industrialized Countries only: provide for a non-discriminatory exchange of documents and packages in 2018.
 - To, from, or Between Developing Countries: continue UPU privileges with reasonable limits on large shipments of commercial packages, remail, and ETOEs.
 - Initiate studies to develop plans for fundamental UPU-wide reform in time for 2020 Congress, for ultimate implementation in 2022.

Main "industrialized countries" of the UPU

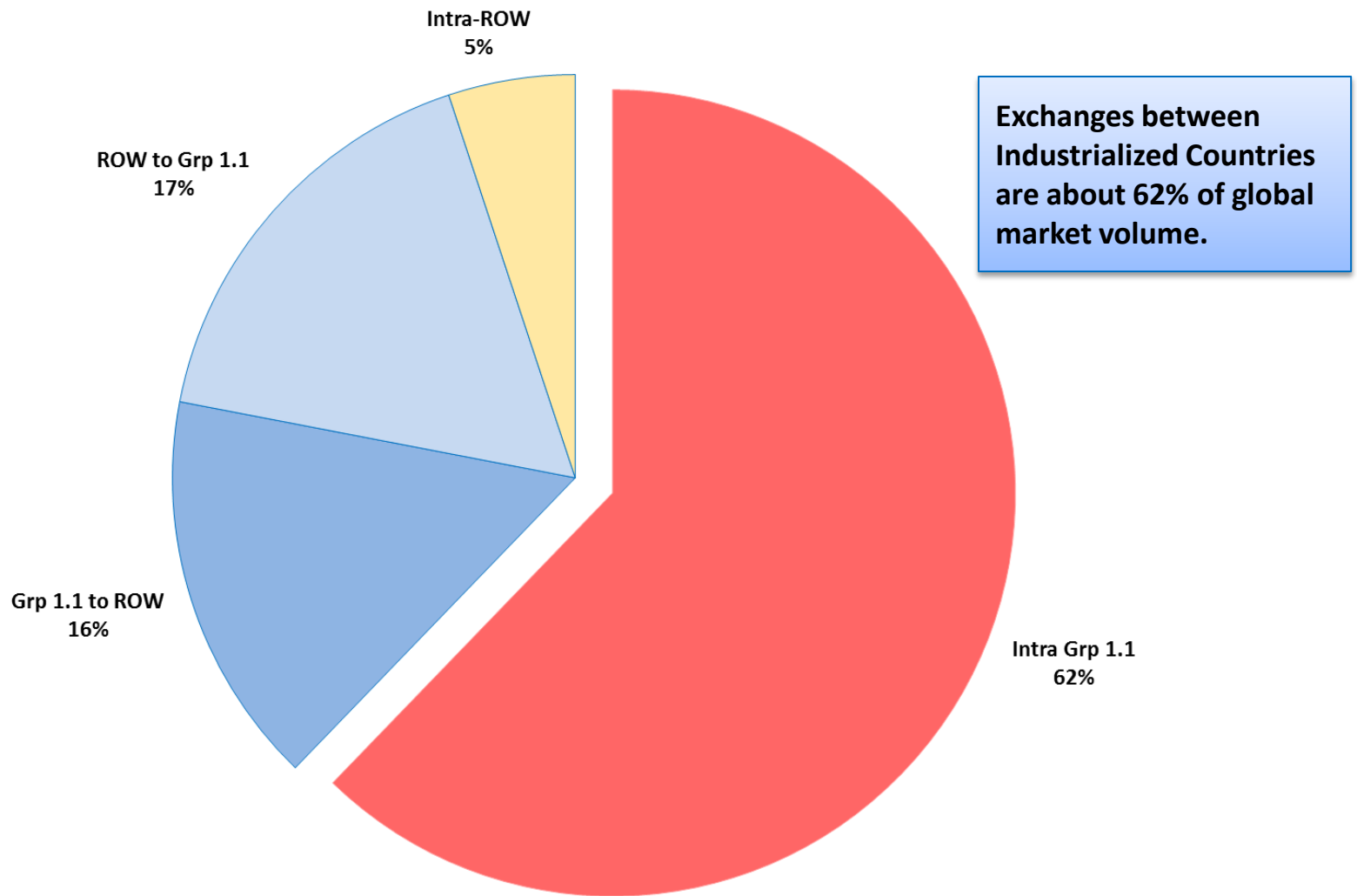
1. Austria (EU)
2. Australia
3. Belgium (EU)
4. Canada
5. Switzerland
6. Germany (EU)
7. Denmark (EU)
8. Spain (EU)
9. Finland (EU)
10. France (EU)
11. Great Britain (EU)
12. Greece (EU)
13. Ireland (EU)
14. Israel
15. Iceland (EEA)
16. Italy (EU)
17. Japan
18. Luxembourg (EU)
19. Netherlands (EU)
20. Norway (EEA)
21. New Zealand
22. Portugal (EU)
23. Sweden (EU)
24. United States

**17 of 24
Industrialized
Countries are
EU/EEA members.**

UPU list of "industrialized countries" also includes: Falkland Islands (Malvinas), Liechtenstein, Monaco, San Marino, and Overseas Territories (of U.K.).

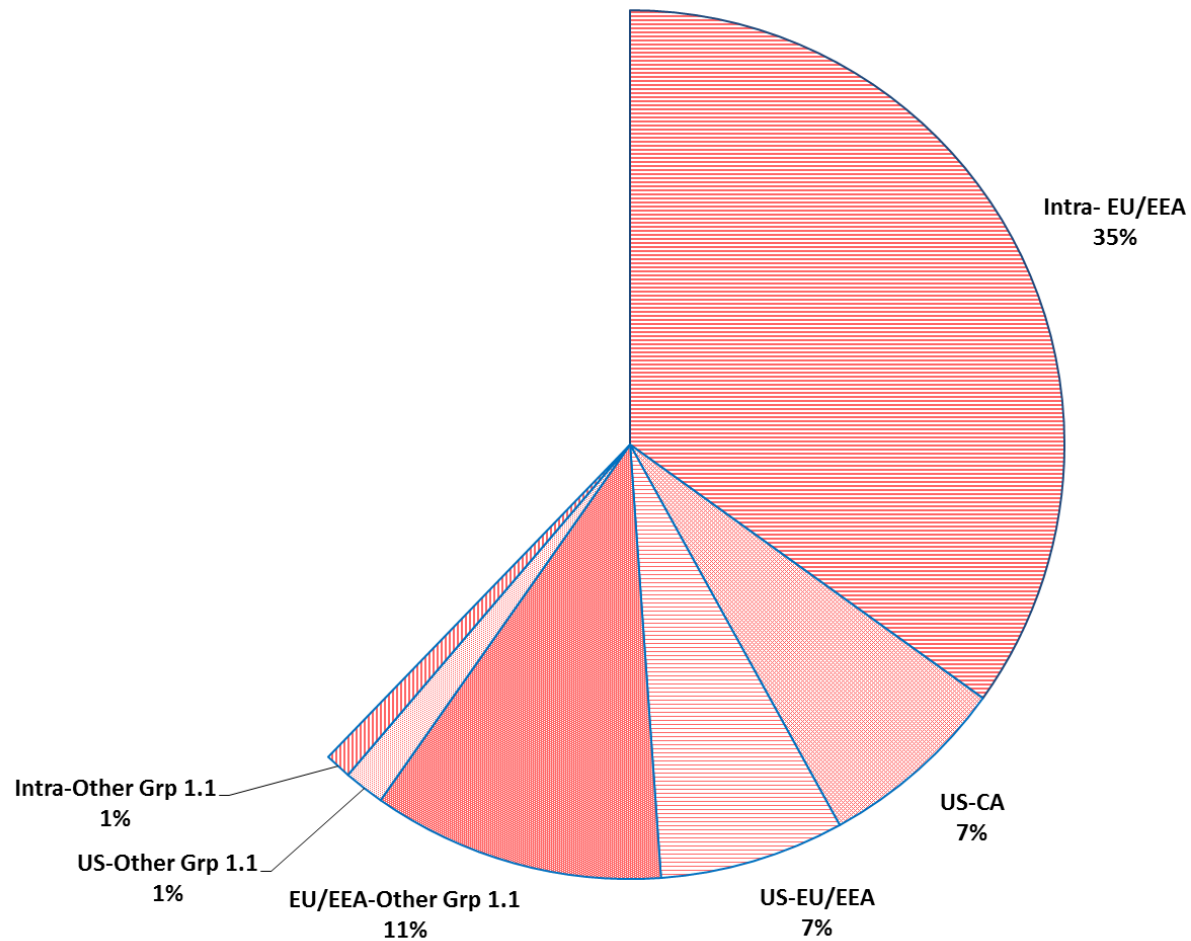
UPU terminal dues Group 1.1 also includes: Falkland Islands (Malvinas), French Polynesia, Gibraltar, Guernsey, Isle of Man, Jersey, Liechtenstein, Martinique, Monaco, New Caledonia, Norfolk Island, Pitcairn Island, Reunion, San Marino, Tristan da Cunha, Vatican, and Wallis and Futuna Islands.

Approximate allocation of mail: IC and Rest of World, 2011



Source: James I. Campbell Jr., "Estimating the Effects of UPU Terminal Dues, 2014 – 2017" (2014) and related calculations.

Approximate components of intra-IC mail flows, 2011



Source: James I. Campbell Jr., "Estimating the Effects of UPU Terminal Dues, 2014 – 2017" (2014) and related calculations.

(1) Customs Proposals

- **Mail sent between Industrialized Countries**
 - Beginning in 2018, apply customs rules in the same manner to similar shipments by Posts and private companies.
 - UPU to work with World Customs Organization to retain uniform and simple customs procedures for all low value packages.
- **Mail to, from, between Developing Countries**
 - No change from current procedures for most mail.
 - UPU can continue to prescribe special customs forms, exempt Posts from liability under customs law, etc.
 - Reasonable limits on customs privileges for certain mail (1) large shipments of commercial packages, (2) remail, and (3) ETOE mail.
- **Require CA to develop a reform plan for 2020 Congress**
 - Develop plan with WCO.
 - Extend customs reforms to all countries after 2022.
 - Preserve “single postal territory.”
 - May include simplified customs procedures for documents, low value packages, and all social mail.

(2) Proposals to Reform Access Rates to Domestic Posts

- **Mail sent between Industrialized Countries**
 - Beginning in 2018, require Posts to provide access for inbound postal items on same terms as available to domestic mailers.
 - A Post would generally provide non-discriminatory access for market dominant universal services.
 - A Post could continue special deals with large mailers and foreign Posts where permissible under national postal and antitrust laws.
- **Mail to, from, between Developing Countries**
 - No change from current procedures for most mail.
 - UPU could continue to set terminal dues and inward land rates and limit access to other designated operators.
 - Reasonable limits on rate privileges for (1) large shipments of commercial packages, (2) remail, and (3) ETOE mail.
- **Require CA to develop a reform plan for 2020 Congress**
 - Extend “country specific” rates to all countries after 2022.
 - Preserve “single postal territory.”
 - Preserve current financial support for needy Developing Countries.

(3) Proposals to Reform the Union

- **Add reasonable limits to the POC's rulemaking authority in 2018**
 - POC Regulations implementing the Convention must be authorized by the Convention.
 - POC Regulations applicable to Posts are effective immediately.
 - Require Council of Administration approval for Regulations which —
 - Limit the authority of governments; or
 - Involve matters of fundamental policy or principle.
 - Prohibit Regulations which derogate from the legislation of any member country in respect of anything which is not expressly provided for by this Convention.
- **Adopt ITU procedures for reservations to Convention**
- **Establish High Level Group of Government Officials to prepare plan for UPU institutional reform for 2020 Congress**
 - Government officials or experts from 20 major countries and 5 other countries.
 - Plan for complete separation of governmental and operational functions by July 2, 2018, for consideration by 2020 Congress.
 - Maintain current goals of fostering “international collaboration in the cultural, social and economic fields” and maintaining a “single postal territory.”