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POSTAL LAW IN CHINA

James I. Campbell Jr. and G. Bailey Leopard, Jr.  
(Independent attorney and Sr. Counsel, FedEx Express)

This article provides a short introduction to the development of postal law in China. The first reason for doing so is that, for English readers at least, the evolution of Chinese postal law is largely unexplored territory. Even the outlines of Chinese postal history are poorly reported when compared with the extensive and readily available accounts of postal development for other countries. The primary English language history of the Chinese Post Office is a less-than-satisfactory “official history” prepared by China Post for the Congress of the Universal Postal Union held in Beijing in 1999. This article draws on Western accounts of postal developments prior to 1912 (the end of the last Chinese dynasty), the 1999 official history (interpreted in light of modern Chinese scholarship), official and unofficial translations of Chinese postal laws and regulations up to most recent law (2009), and statements by Chinese officials to piece together a first cut at a short history of the development of postal law in China.

This article is divided into six sections. The first section provides a short account of the unique evolution of postal services in China up to the formation of the modern Chinese government by the Chinese Communist Party in 1949. The second section describes the zigzagged path taken in establishing a national postal system prior to 1986. Section three summarizes the first Chinese postal law adopted in 1986. Section four describes the modernization of China Post. Section five provides a short account of disputes related to the operations of foreign express companies in China that culminated in the postal law of 2009. Section six offers brief concluding observations.

## 1. Postal services in China prior to 1949

For most of its long history, China relied on private enterprise for public postal services. The official postal services of the Emperor — the Imperial Government Courier Service or “I-chan” — carried only government documents.<sup>1</sup> Private correspondence was conveyed by business associations called “letter honggs.”<sup>2</sup> Letter honggs were established by banks and merchants who corresponded with distant locations and were willing to carry the correspondence of others for a fee. According to historian Hosea Ballou Morse, the letter hong system was well suited to the needs of Chinese society,

meeting in every way the wishes of the public; maintaining fast special services where they are wanted, content with slow channels where economy is the first object, keeping open until after midnight when that hour is more suitable, and, most attractive in China, making the addressee pay a portion of the postage, usually half. The transmission of silver, bank drafts, and parcels is a most lucrative part of their business. . . .<sup>3</sup>

The idea of a government-operated post office was introduced by foreign powers in the first half of the nineteenth century. During a “treaty century” that lasted from the Opium War of the 1840s until the renunciation of extraterritoriality by the United Kingdom and United States in 1942, much of Chinese commercial life fell under the control of European, American, and Japanese commercial interests backed by their military forces. Forced into a series of unequal treaties, the Chinese Emperor conceded to these foreigners the right to live and trade in “treaty ports” under their own laws and institutions. During the treaty century, the number of treaty ports

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<sup>1</sup> State Postal Bureau, *A Brief History of China Post* 38-40.

<sup>2</sup> State Postal Bureau, *A Brief History of China Post* (2000). This history is posted on the internet at <http://www.chinapost.cn/upuux/posthistory/china/contents.htm>. Because this document is formatted in htm, there are no fixed pages. See also Hosea Ballou Morse, *The Trade and Administration of China* (1913) at 392-409; John K. Fairbank, Denis C. Twitchett, *Republican China, 1912-1949, Part One* (1983), vol. 12 of *The Cambridge History of China*, at 187-89.

<sup>3</sup> Hosea Ballou Morse, *The Trade and Administration of China* (1913) at ??.

grew from five to more than eighty. The national post offices of Great Britain, France, Germany, the United States, and Japan all established offices in the treaty ports.

The Chinese government also employed foreigners to help govern the treaty ports. A key appointee was an Englishman, Sir Robert Hart, who served as the Inspector General of the Chinese Maritime Customs Service. In the 1860s, Hart established a postal system for linking customs houses. In 1876, the Chinese government asked Hart to reorganize this limited postal system under the aegis of the Chinese government but left unclear its ultimate mission. In 1896 the Chinese government at last decided to establish the Imperial Post Office to serve the entire national territory. Hart was appointed the Inspector General of the Posts (as well as Customs).<sup>4</sup> Revenues from the Customs Service were used to subsidize the build-up of the Imperial Post Office.

By 1910, the Imperial Post Office had more than 5,000 offices. A staff of over 14,000 employees included 120 foreign managers. The Imperial Post office served every provincial capital and most of the important smaller towns.<sup>5</sup> It did not, however, displace pre-existing postal systems. There was no postal monopoly. The Imperial Government Courier Service remained in operation. Foreign post offices maintained offices in the large international ports. And the traditional letter hongs continued to do business and often competed fiercely with the Imperial Post Office. In 1911, the Ministry of Posts and Communications was established as a separate agency from Customs.

In 1912, the last Chinese Emperor resigned, and the rule of the Qing dynasty ended after almost three centuries. For the next four decades, intellectual and political movements coalesced,

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<sup>4</sup> Morse 295-98.

<sup>5</sup> Morse 400-02.

competed with one another, combined to expel the foreign treaty occupants, and ultimately, in 1949, led to the formation of a national government by the Chinese Communist Party. During this period, an effective, if not formal, government monopoly over postal services was implemented. Foreign post offices were closed in 1922.<sup>6</sup> The letter hongs were closed in 1934.<sup>7</sup> However, the Chinese Communist Party did not gain control over the Imperial postal system until 1950.<sup>8</sup>

Even from this brief sketch, it is evident that development of the letter post in China was very different from that in other countries. The Emperor did not monopolize postal services to control the circulation of ideas or raise revenues, as did the kings in seventeenth century Europe. In China, the government postal system did not play a significant role in society until the twentieth century, after the advent of telecommunications. It never served as an indispensable medium for social and commercial correspondence, as did the post office in Europe and the United States. Indeed, because mastery of written Chinese was limited to an educated elite, letter writing did not become a conduit for mass communications as in the West. Moreover, until well into the twentieth century, China had relatively few newspapers and magazines. In short, prior to the mid-twentieth century, neither the government post office nor paper communications had the significance in Chinese society as they did in the West. Traditional Chinese society did not need a government post office. The concept of a government post office was introduced into China by foreigners.

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<sup>6</sup> State Postal Bureau, *A Brief History of China Post* 65; New York Times, "To Abandon China's Alien Posts," Nov. 27, 1921. [www.nytimes.com](http://www.nytimes.com) (May 1, 2010).

<sup>7</sup> State Postal Bureau, *A Brief History of China Post* 64.

<sup>8</sup> State Postal Bureau, *A Brief History of China Post* 39-40.

## 2. Early development of the Chinese Postal Administration, 1949 to 1985

The People's Republic of China (PRC) was established on October 1, 1949, in areas of northern China under the control of the Chinese Communist Party. Between 1949 and 1953, the PRC gained control over the whole of China.

One of the first tasks of the new government was the creation of a Ministry of Posts and Telecommunications, established on November 1, 1949.<sup>9</sup> The Ministry convened the first national postal conference which concluded the post office should be organized as a state agency, the Postal Administration of China. At the end of 1949, the postal administration operated about 25,000 post offices, but more than 21,000 were postal agencies operated by persons other than employees of the postal administration.. One fourth of the towns and much of the countryside — home to ?? percent of the population — had little or no postal service.<sup>10</sup> Letter post volume was approximately 600 million items or about 1 item per person.<sup>11</sup>

In the next several years, the government took steps to improve the level of postal services. The postal administration offered four standard services: letters, parcels, newspapers and periodicals, and remittances.<sup>12</sup> By 1957, the number of post outlets roughly doubled, and many postal agencies were transformed into offices of the postal administration. Letter volume reached 2.7 billion items, and 25 million parcels were conveyed.<sup>13</sup> The postal administration took over delivery of newspapers and magazines, previously delivered by the publishers and

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<sup>9</sup> State Postal Bureau, *A Brief History of China Post* 92.

<sup>10</sup> State Postal Bureau, *A Brief History of China Post* 95.

<sup>11</sup> State Postal Bureau, *A Brief History of China Post* 99.

<sup>12</sup> State Postal Bureau, *A Brief History of China Post* 99.

<sup>13</sup> State Postal Bureau, *A Brief History of China Post* 100.

bookstores.<sup>14</sup> Even so, rural postal service lagged substantially.<sup>15</sup>

The period 1957 to 1976 was essentially a lost two decades for the Chinese postal administration as it was for China as a whole. [Add Great Leap Forward and Cultural Revolution] The institutional framework for the postal administration was revised several times. For a period, the national postal administration was virtually disbanded as management of postal services devolved to local governments. For some years, the military ran the postal administration; in other years, it was the department of transportation.

In 1978, the Eleventh Plenary Meeting of the Chinese Communist Party began the process of bringing a new postal order out of chaos. The Ministry of Posts and Telecommunications (MPT) was again authorized to organize and supervise the national postal system. The role of the post office as an important national infrastructure service was recognized. Financial self-sufficiency was proclaimed the new goal of postal policy (“post supporting post”). In the early 1980s, service quality and rural services received particular emphasis. Nonetheless, the Chinese Postal Administration remained a fundamentally pre-industrial postal system.

### **3. Postal Act of 1986**

The first formal postal law of the People’s Republic of China was adopted in 1986.<sup>16</sup> This law resulted from a national postal conference on postal reform which resolved to embark on a program of modernization.<sup>17</sup> Crucially, the 1986 act raised postage rates by 150 percent, the

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<sup>14</sup> State Postal Bureau, *A Brief History of China Post* 101-02.

<sup>15</sup> State Postal Bureau, *A Brief History of China Post* 98 reports 21,000 rural postmen.

<sup>16</sup> State Postal Bureau, *A Brief History of China Post* 145.

<sup>17</sup> State Postal Bureau, *A Brief History of China Post* 133.

first rate increase since the 1950s.<sup>18</sup>

A primary objective of the 1986 act was to ensure the privacy of correspondence. The first article of the act declares:

Article 1. This Law is formulated in accordance with the Constitution of the People's Republic of China, *with a view to protecting freedom and privacy of correspondence*, ensuring normal progress of postal work, and promoting development of postal services, so as to suit the needs of socialist construction and livelihood of the people.

The official history states, “The issue and implementation of the Post Law and its Enforcement Regulations was of profound significance for the protection of public communication rights and maintenance of normal operation of post communication.”<sup>19</sup>

The 1986 act further protected users by specifying penalties for those who interfered with the mail and compensation for mailers who failed to receive assured services. Penalties were prescribed for persons “who infringe upon the citizens' right to freedom of correspondence by concealing, destroying, discarding or illegally opening mail of another person”<sup>20</sup> (section 36) and postal officials who opened or interfered with the mail<sup>21</sup> or neglected to provide proper service.<sup>22</sup>

The 1986 act further declared that the postal administration must compensate users in case of losses of registered or insured mail or remittances (sections 32 and 33).

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<sup>18</sup> State Postal Bureau, *A Brief History of China Post* 135.

<sup>19</sup> State Postal Bureau, *A Brief History of China Post* 145. Reading between the lines, it seems likely that, prior to 1986, a basic flaw in the Chinese Post Office was that it had little volume because no one trusted the mail for transmission of money or important documents. This is a common problem in developing countries.

<sup>20</sup> China Postal Law of 1986, Article 36.

<sup>21</sup> Article 37 states, “Postal personnel who without permission open or conceal, destroy or discard postal materials shall be investigated for criminal liability . . . . Those who commit the crime specified in the preceding provision and also steal property therein shall be given a heavier punishment for the crime of embezzlement . . . .”

<sup>22</sup> Article 39 states, “Postal personnel who refuse to handle the postal businesses which should be handled according to law or who intentionally delay the delivery of postal materials shall be given administrative disciplinary sanction. Postal personnel who are derelict in their duties and bring about great loss to public property and the interests of the state and the people shall be investigated for criminal liability . . . .”

The 1986 act was virtually a first “bill of rights” for mailers. It appears noteworthy that the first postal law focused on relations between the national post office and the user. No law was needed to define the governmental structure of the postal administration in 1949 nor the numerous reorganizations of the postal administration that followed. Institutional organization of the postal administration was apparently a matter of orders from superior authority. The role of law was to give assurances to users and define relations between the postal administration and non-governmental entities.

Under Article 12 of the 1986 act, the postal administration was authorized to engage in four businesses.

Article 12. Postal enterprises operate the following businesses:

- (1) posting and delivering of domestic and international postal materials;
- (2) distributing domestic newspapers and periodicals;
- (3) postal savings and postal remittances; and
- (4) other suitable businesses stipulated by the competent department of postal services under the State Council.

In Article 12 the first three categories apparently corresponded to the four separate postal services established by China Post in the 1950s: letter, parcel, remittance, and newspapers.<sup>23</sup> The first category — posting and delivering of postal materials — included two businesses, i.e., the letter service and the parcel post service. The second and third businesses appear to refer to the third and fourth of the traditional services: the newspaper delivery service that was operated separately from the letter post service and the remittance service. The fourth business — “other suitable businesses” — is a catchall for new services.

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<sup>23</sup> See State Postal Bureau, *A Brief History of China Post* III.1.3

The 1986 law included a postal monopoly. Article 8 described the postal monopoly as follows: “Posting and delivering services of mail and other articles with characteristics of mail shall be exclusively operated by postal enterprises, except as otherwise provided by the State Council.”<sup>24</sup> Article 41(2) defines “mail” as “referring to letters and postcards.” The phrase “posting and delivery” seemingly refers to Article 12(1), i.e., “posting and delivering of domestic and international postal materials.” That is, the postal monopoly was seemingly limited to the first of the four “businesses” provided by China Post, the business of posting and delivering services, and the scope of the monopoly was “letters and postcards.”

According to a later statement by the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), the definition of the postal monopoly in Article 8 reflected a deliberate decision to exclude EMS and courier services from the businesses subject to the postal monopoly and to end an internal policy debate that had gone on for five or six years.

*In 1980s there were debates about whether the express services operated by freight forwarders should be exclusively operated by postal units. The issue was report to the Legislative Committee of NPC. The Legislative Committee of NPC made extensive surveys and listened to views of different parties and finally clearly defined the issue in the Postal Law of People’s Republic of China. On February 25, 1985, the General Administration of Customs promulgated the "Measures of the People’s Republic of China for the Customs’ Supervision over Inward and Outward Express Consignments". The (86) GongShangBanZi No. 76 Document of the State Administration for Industry and Commerce issued on December 24, 1986, provides that "Issues on drawing a clear line between postal services and air freight express services shall be settled in accordance with Article 8 of Postal Law of People’s Republic of China”. These laws and regulations brought the*

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<sup>24</sup> Article 8 (emphasis added). The penalty provision for the postal monopoly, Article 40, is likewise expressed in terms of a specific business activity. Article 40 provides: "Persons who, in violation of provisions of Article 8 of this Law, handle *the business of posting and delivering mail or articles with characteristics of mail* shall be ordered by industrial and commercial administrative authorities to return the mail and other articles and the postal fees they have obtained from the senders, and a fine shall be imposed on them [emphasis added]."

*debates that lasted for five or six years to an end.*<sup>25</sup>

As this statement indicates, by 1986 express services — or “courier services” as they were known then – were already well known in China. The first international courier service in China was begun by DHL in about 1979.<sup>26</sup> In 1980, the Chinese postal administration introduced international express mail service (EMS); it introduced domestic EMS in 1984.<sup>27</sup>

The 1986 act did not include a procedure for licensing courier services. It did, however, provide that China Post may “entrust” portions of the postal business to private parties. The entrustment provision states:

Postal enterprises [i.e., China Post] may, according to needs, entrust other units or individuals as agents to run businesses exclusively operated by postal enterprises. The provisions on postal personnel specified in this Law shall apply to agents when they handle postal businesses.

The entrustment provision was limited to monopoly services, i.e., to “businesses exclusively operated by postal enterprises.” Where services were entrusted to private parties, the penalties for misconduct applicable to postal personnel were also made applicable to “agents” of China Post on a mandatory basis.

In the wake of the 1986 postal act, MOFTEC moved to regularize the operation of the foreign couriers. On June 25, 1986, MOFTEC issued a license to DHL to provide “international

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<sup>25</sup> “Notice of the Ministry of Foreign Trade and Economic Cooperation on Further Clarifying Air Express Service Is an Integral Part of International Freight Forwarding Service” (Aug. 28, 1995) (WaiJingMaoYunHanZi No. 175), paragraph 3 (emphasis added). The full rationale for limiting the postal monopoly to “posting and delivering services” was apparently set out in a “report to the Legislative Committee of NPC”. “NPC” probably refers to the 1986 National Post Conference. State Postal Bureau, *A Brief History of China Post* 133.

<sup>26</sup> In 1978, author Jim Campbell participated in the first negotiations with China’s Sinotrans ministry to provide international courier services in China. To the best of his recollection, there were no courier services operating in China at that time.

<sup>27</sup> State Postal Bureau, *A Brief History of China Post* 143 (“China Post first opened up international EMS business on July 15, 1980. On Nov. 1, 1984, China Post opened up domestic EMS business. To effectively develop this business, MPT set up Express Mail Company of China Post in 1985. . . . By 1990, it had accomplished 34.328 billion EMS”).

air express services regarding business documentary, materials, and printed matters (excluding mails, postcards, and mail like items), and small pieces goods.”<sup>28</sup>

#### 4. Modernization of the China Post

By the early 1990s, China had a new leader, Deng Xiaoping, and a new direction. To stimulate economic development in China, Deng introduced Western technologies and a more market-oriented economy.<sup>29</sup> Winds of changes blew through the postal administration as well. In October 1992, MPT convened a national postal conference that resolved to begin genuine modernization. Modernization was apparently motivated at least in part by a determination to overcome the competition posed by private parcel and express companies, local as well as foreign. The official history describes the new outlook as follows:

[The Ministry of Posts and Telecommunications] confirmed developing goal of post industry in 1990s. The situation of post market had changed a lot. It mainly manifested in the transition from seller's market in the post to buyer's market and the transition of some business from monopoly to competition. Competition in some business market was very intense with great pressure. MPT decided to greatly enforce communication ability, change the backward situation of post, promote post modernization, improve post transportation ability, enforce integrated communication ability of the whole network and try hard to realize the requirements of "3 transitions" put forward in 1990. By the end of this century, MPT would established independent express post delivery main line network, all levels of central offices with high mechanical and automatic processing abilities and computer processing network widely used in operation, production, and

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<sup>28</sup> The official history strongly implies that EMS was viewed as a new business provided by China Post and not as a traditional "posting and delivery" business. The History describes the development of the post business in the 1980s by first describing the "traditional business" and then describing the new businesses of China Post. State Postal Bureau, *A Brief History of China Post* [?? 141-42]. The exposition clearly follows the order of postal businesses set out in Article 12. It first describes the development of "traditional postal business", i.e., "mail business," "parcel business," "business of newspapers and periodicals service," and "remittance business." Then it describes the development of "new business." The first "new business" is the development of "postal savings" which is listed in Article 12(3). Thereafter, the History describes the development of EMS, electronic mail, and philately, which are not specifically mentioned in Article 12 and therefore apparently fall under the catchall "other suitable business." State Postal Bureau, *A Brief History of China Post* [?? 142-43].

<sup>29</sup> Cite.

management, forming the post network with reasonable distribution, advanced technologies, full functions, rapid and convenience, which basically fitted for the development of socialistic market economy and requirements for post of people in well-to-do living level.<sup>30</sup>

Accordingly, the postal transportation network was redesigned. Several thousands of mail processing units in the post were replaced by something over 200 central offices. New sorting facilities were built, and foreign-made sorting equipment was installed in the largest cities. Radio control of delivery vehicles was introduced. A computer system was planned to control the flow of mail. A separate transportation for EMS (express mail) was developed. By 1998, EMS tracing inquiry systems were interlinked in 201 large and middle cities and 22 countries and areas.”<sup>31</sup>

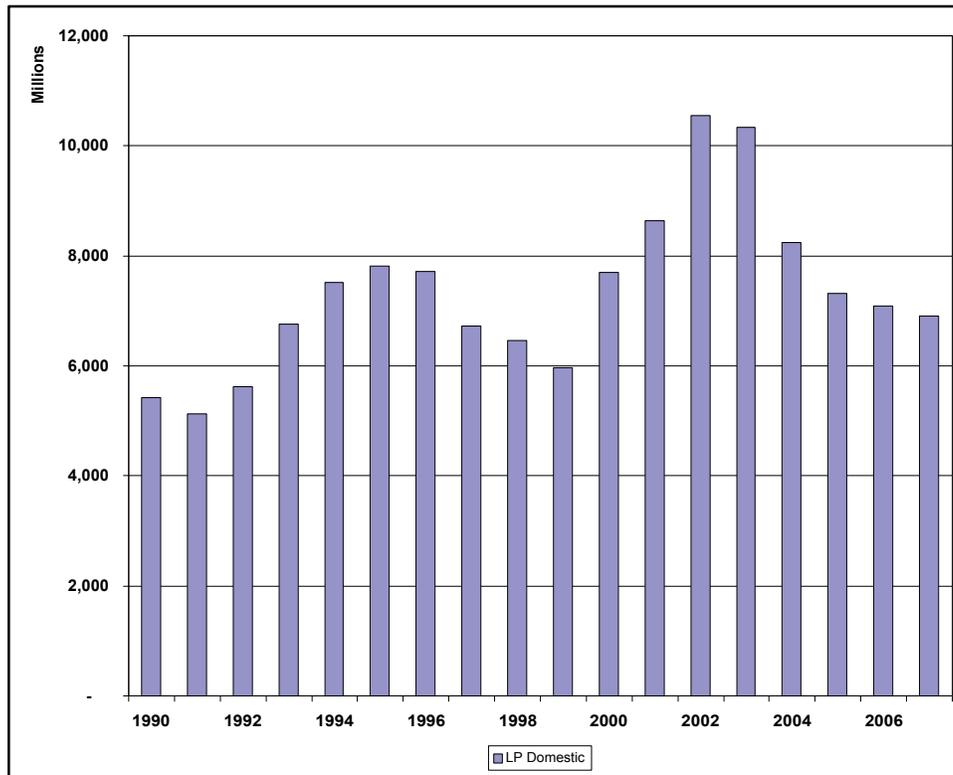
The postal system responded well to these improvements. In the 1993, letter post and parcel business increased over the previous year by 20 and 28 percent respectively.<sup>32</sup>

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<sup>30</sup> State Postal Bureau, *A Brief History of China Post* 152.

<sup>31</sup> State Postal Bureau, *A Brief History of China Post* 157.

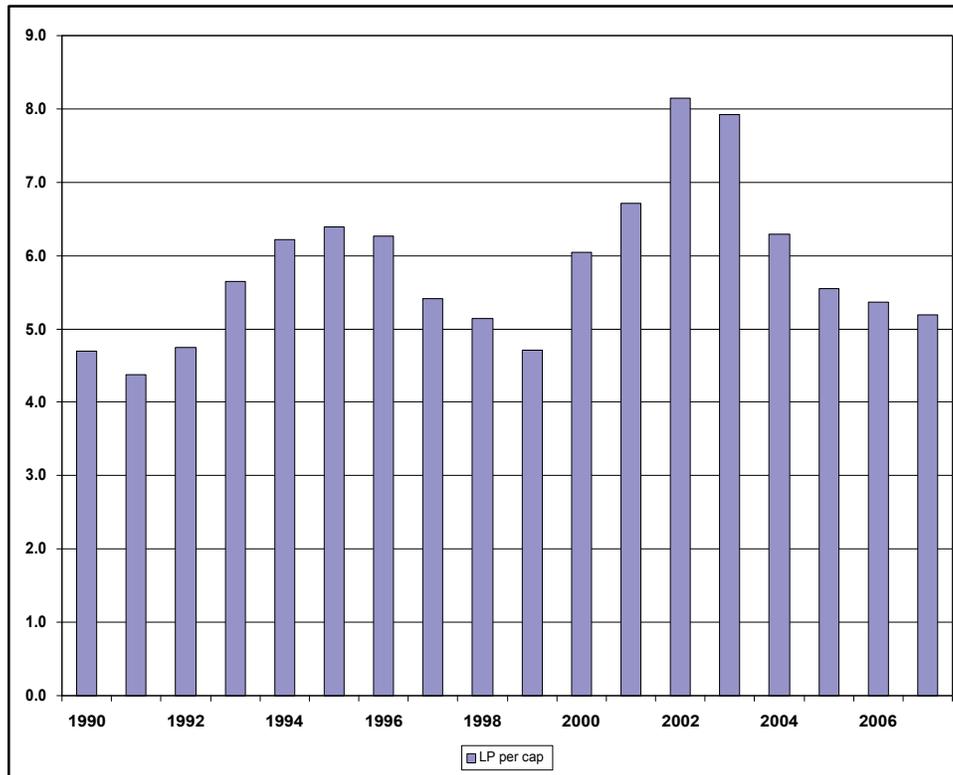
<sup>32</sup> State Postal Bureau, *A Brief History of China Post* 153.

**Figure 1. Domestic letter post in China, 1990-2007**

Despite this initial burst, however, the overall volume of basic letter post developed only relatively modestly before peaking in 2002. The letter post conveyed 5.4 billion items in 1990 and reached a maximum of 10.5 billion in 2002. Thereafter, the letter post declined 35 percent, to 6.9 billion in 2007. Letter post per capita is very low: 4.7 items per person in 1990 and 5.2 items per person in 2007. It is likely that the letter post is unevenly distributed throughout the population so that, in major urban areas, the average volume per capita is much higher than the national average. Even so, it seems that the letter post will never become a universal national medium for the exchange of letter communications in the same way that it was in Western

Europe and the United States in the late nineteenth and early twentieth centuries.<sup>33</sup>

**Figure 2. Letter post per capita in China, 1990 - 2007**



Although the letter post has fared relatively poorly, China Post had more success with express services. Between 1998 and 2005, the volume of domestic express items grew 147 percent, from 73 million items to 181 million items. In the same period, outbound international express grew 108 percent to 7 million items. Since 2005, this growth appears to have been accelerated.<sup>34</sup> China Post's revenue from express services now substantially exceeds revenue

<sup>33</sup> Newspapers outnumbered letter post items: 17.5 newspapers per person in 1992, declining to 12.1 newspapers per person in 2007. The relevance of the newspapers for the viability of the letter post is unclear, however, but it appears that most newspapers are delivered separately from the letter post.

<sup>34</sup> In statistics reported to the UPU, China Post declared for 2007: 315 million domestic EMS items, 11.1 million outbound EMS items, and 7.7 million inbound EMS items. For the 1998 to 2005 period, however, figures reported

from letter post services.<sup>35</sup>

## **5. Conflict with private express services and the postal law of 2009**

The growing demand for express services has sparked a long running dispute between the State Post Bureau, on the one hand, and MOFTEC and foreign express companies, on the other. In 1995, MOFTEC adopted regulations for international freight forwarding agencies that seemingly clarified the right of foreign private express to provide express services without violating the postal monopoly.<sup>36</sup> The regulations, issued in June 1995, provided that international freight forwarders may engage in seven categories of business activity, including “international express delivery except for private letters.”<sup>37</sup> In August 1995, MOFTEC issued a notice clarifying the relationship between its international freight forwarder regulations and the 1986 postal monopoly. The notice responded to the actions of some provincial and municipal officials who had issued orders prohibiting licensed courier services units from providing express services for printed material and documents. MOFTEC’s notice declared:

Article 8 of Postal Law of People’s Republic of China promulgated on December 2, 1986 provides that "Posting and delivery services of mail and other articles with characteristics of mail shall be exclusively operated by postal enterprises, except as otherwise provided by the State Council ". The express services operated by freight forwarders do not include mails but include business documents, trade documents, samples and small packages of goods. Postal Law of People’s Republic of China provides that postal enterprises exclusively operate posting and delivery services of mail and other articles with characteristics of mail. The notices of local postal bureaus and other departments violate the Postal Law of People’s Republic of China by changing “the exclusive operation of

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to the UPU do not appear to be as reliable as, or consistent with, the figures reported in China Post’s annual report. Figures in the text are based on China Post’s annual reports.

<sup>35</sup> China Post, Annual Report 2005. Revenue from letter post services was RMB 5.03 billion compared to revenue from EMS services of RMB 6.58 billion.

<sup>36</sup> 1995 MOFTEC Decree No. 5.

<sup>37</sup> Id. Article 17(4).

mails” to “documents”. Article 4 of Rules for the implementation of the Postal Law of the People’s Republic of China provides that “The letters refer to those carriers which transit information by using sealed envelopes”. The business documents for which express services are provided can be opened and inspected by the Customs. Therefore the services for letters and documents are two kinds of services completely different in nature.<sup>38</sup>

MOFTEC thus rejected the proposition that courier services providing “international express delivery except for private letters” were contravening the postal monopoly of 1986. MOFTEC set out two grounds for this conclusion. First, the courier services were conveying “business documents, trade documents, samples and small packages of goods” not “letters”, i.e. personal correspondence. Second, the courier services were conveying items which could be opened by them and not items which were sealed and thus assured privacy. According to MOFTEC’s interpretation, to be subject to the 1986 postal monopoly, an item had to be both (1) private and (2) mail (personal correspondence). Items transmitted by courier services were neither.<sup>39</sup>

What followed was a tug of war between MOFTEC and the State Postal Bureau (SPB). In January 1996, SPB responded to MOFTEC’s international freight forwarder regulations by issuing an announcement that declared “letters” and items with the characteristics of “letters” included all types of documents, including written instruments and identification certificates, notices, negotiable securities, books, magazines, audiovisual materials, computer media, and other items as SPB may specify. The SPB definition of “letter” is obviously inconsistent with the

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<sup>38</sup> “Notice of the Ministry of Foreign Trade and Economic Cooperation on Further Clarifying Air Express Service Is an Integral Part of International Freight Forwarding Service” (Aug.28, 1995) (WaiJingMaoYunHanZi No.175), paragraph 2 (emphasis added).

<sup>39</sup> MOFTEC’s clarification also appears notable for what it did not say. Article 8 of the 1986 authorized the State Council to create exceptions to the postal monopoly (“except as otherwise provided by the State Council”). MOFTEC, however, does not base its conclusions on this authority. It nowhere suggests that the international freight forwarder regulations were an exercise of exemption authority. On the contrary, MOFTEC takes pains to show that the regulations are consistent with the 1986 postal monopoly because courier services are barred from transporting

MOFTEC definition. In September 1996, MOFTEC confirmed that international freight forwarding agencies may engage in "international express delivery excluding private letters."<sup>40</sup> SPB was unsatisfied, the dispute lingered for years without resolution.<sup>41</sup>

In July 2002, the State Council, on petition of SPB, rejected the position that 1986 postal monopoly barred private conveyance of all addressed information in physical form. The entire response of the State Council was as follows:

“Private letters” in Article 17 of the *Administrative Regulations on International Freight Forwarding Enterprises of the People’s Republic of China* refer to letters other than all kinds of documents, notices; and bills/vouchers, identification certificates, negotiable securities, manuscripts, printed materials, etc of non-private nature.

The ruling of State Council confirmed that the 1986 postal monopoly did not prohibit courier services from conveying “all kinds of documents, notices; and bills/vouchers, identification certificates, negotiable securities, manuscripts, printed materials, etc of non-private nature.” The ruling of the State Council (if the English translation is faithful to the original Chinese) sidesteps the dispute over the correct definition of “letter.” The ruling says that the term *private letters* does not include “letters *other than* all kinds of documents, etc.” In English translation, the implication is that “all kinds of documents, etc.” may be “letters” but they are not “*private letters*.” In effect, the State Council seemed to be saying that certain types of documents

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"private mails."

<sup>40</sup> In January 1998, the General Administration of Customs ("GAC") issued regulations that, inter alia, prohibited freight forwarders from conveying "private letters" except as permitted by the postal authorities. Article 10(1), however, specifically confirmed that certain items may be delivered by courier services, including "documents, materials, trade bills and written instruments without commercial value, which are exempt from customs duty under current Customs laws and regulations." The GAC definition of "letter" is substantially consistent with the MOFTEC definition.

<sup>41</sup> See, e.g., *New York Times*, "A Roiling Battle in China over Express Mail Service," May 10, 2001 and "World Business Brief: Asia: China: A Dispute Over Delivers," July 3, 2001, [www.nytimes.com](http://www.nytimes.com) (May 3, 2010); *The Economist*, "Dubious Courier Moves," June 14, 2001. [www.economist.com](http://www.economist.com) (May 3, 2010).

do not carry an expectation of privacy when conveyed by courier services and therefore cannot be considered “private letters” even if some might be considered “letters.” The State Council’s ruling was thus apparently grounded in the original purpose of the 1986 act, to establish a national post office that ensures privacy of correspondence.

The State Council’s decision, however, was effectively reversed by China’s controversial second postal law, the postal law of 2009. China Post originally proposed a new postal law in March 1999. The inspiration for the new may well have been China Post’s hosting of the general congress of the Universal Postal Union in August 1999. Certainly, the Beijing Congress forcefully brought Western postal concepts to the attention of Chinese officials. In the Beijing Congress, the Universal Postal Union adopted a proposal by France that, for the first time, obliged members of the Union to ensure universal postal service within their national territories. Prior to this amendment, the UPU was concerned exclusively with international postal services. China’s new postal law went through numerous drafts over ten years before final enactment on May 26, 2009. It law came into effect on October 1, 2009.<sup>42</sup>

The 2009 postal law begins by embracing policy concepts developed primarily in the course of postal reform in the European Union: universal postal service, independent regulation, protect of users. Article 1 states:

This law is formulated to ensure the provision of universal postal services, enhance the supervision and regulation of postal market, protect the freedom and privacy of correspondence, maintain the postal correspondence and information security, protect the legal rights and interests of users, and promote the healthy development of the postal service so as to meet the demand for economic and social development and the needs of the people.

The definition of universal postal service is spelled in Article 2: “postal services

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<sup>42</sup> See generally, *The Economist*, “Return to Sender,” Apr. 30, 2009. [www.economist.com](http://www.economist.com) (May 4, 2010).

continuously provided for all customers within the territory of the People's Republic of China according to the scope of business, service standards and fee charge standards prescribed by the state.” The new law requires delivery of universal services at least five days per week in urban area and provincial capitals and in other areas as required by regulation.<sup>43</sup> Universal service shall include delivery of letter articles, printed materials weighing less than 5 kilograms, parcels weighing less than 10 kilograms, postal remittances.<sup>44</sup> The provision of universal service is regulated by a Postal Regulatory Authority (PRA). All in all, this definition of universal service appears heavily influenced by the Postal Directive of the European Union.<sup>45</sup>

The relevance of this Western concept of universal postal service for the future of China seems open to question, however. In Western nations, the high volume of letters has provided the economic basis for universal postal service. Today, European and American postal officials are beginning to call for reductions in the universal service obligation even though they deliver, on average, more than 300 letter post items per capita per year. In China, the average number of letter post items per capita per year is about five and declining. This is approximately equivalent to letter post volume in the United States in 1845.

The new postal law draws a distinction between universal services and “competitive postal services.”<sup>46</sup> The only competitive postal services specifically addressed in the act are express delivery services. Providers of express services must obtain licenses from the Postal Regulatory Authority.<sup>47</sup> The Postal Regulatory Authority is also authorized to regulate some

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<sup>43</sup> Article 19.

<sup>44</sup> Article 15.

<sup>45</sup> See European Union, Postal Directive, Article 3.

<sup>46</sup> Articles 2, 18.

<sup>47</sup> Article 51.

aspects of express services relating to their manner of doing business.<sup>48</sup> These mainly involve issues of transparency, safety, and user protection, but some provisions are more open-ended.<sup>49</sup>

The 2009 postal law establishes an unusual two-layered approach to the postal monopoly. First, the law reserves for China Post the carriage of letters within the scope of an administrative regulation, including express services for such letters.<sup>50</sup> The administrative regulation, in turn, declares that the scope of the postal monopoly includes ?? [TO BE REVISED WITH FURTHER RESEARCH]. Second, the law reserves for Chinese companies all domestic express services for letters that are outside the scope of China Post's letter monopoly. Specifically, the law states, "Foreign businesses are forbidden to invest in or operate domestic express delivery of letter articles."<sup>51</sup> Since express services, like letter post services, depend on economies of scale to reduce unit costs, it appears that, in the express services market, the new law significantly favors China Post over other Chinese delivery services, and Chinese providers generally are favored over foreign providers of express services. As a result, China is one of the very few countries in the world to extend the postal monopoly to express services for letters.

## 6. Concluding observations

[To be added. In very rough terms, the basic observation will be that Chinese postal law has developed under a unique set of circumstances, for the most part after the heyday of paper communications. Development of a traditional, dense, universal postal service therefore appears unlikely even though this goal is prominently cited as the objective of the new law. Instead, the

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<sup>48</sup> Article 59.

<sup>49</sup> For example, Article 6, which is applicable to express services by virtue of Article 59, requires express services to "enhance the management of service quality, improve safety measures, and provide fast, accurate, safe and convenient postal services to users."

<sup>50</sup> Articles 5, 55.

<sup>51</sup> Article 51.

reality appears to be that the center of gravity of the Chinese postal service and postal law are shifting more towards express services.]