
EMERGING COMPETITION IN POSTAL AND DELIVERY SERVICES

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GATS AND PHYSICAL DELIVERY NETWORKS¹

James I. Campbell, Jr.

From kings to parliaments, governments have sought to “bind the Nation together” and promote national wealth by encouraging modern and efficient “infrastructure” services, i.e., basic public services that enable other economic activity. At the same time, governments have a long and inglorious record of impoverishing their people by reinforcing national boundaries through the restriction or obstruction of international commerce. In 1614, Spain unsuccessfully tried to make Seville the tobacco capitol of the world by decreeing that tobacco produced in New Spain must pass through Seville on the way to European markets. In the next century, similar efforts to control trade routes contributed to England’s alienation of the richest colonial prize in history. In the 1930s, England’s lost colony intensified global economic misery by leading the world into a round of protective tariffs.

At the end of the twentieth century, governments are reconsidering this incongruity between domestic and international economic policies. In the early part of the century, governments developed extensive regulatory regimes to control giant commercial enterprises spawned by the Industrial Revolution. These regulatory schemes proved too static. Technological innovation continued, and new forms of commerce developed. By the third quarter of the twentieth century, it became clear that, without fundamental modification, comprehensive regulation would suffocate rather than facilitate the services infrastructure. In the last two decades, national economies have been invigorated by a wave of reforms that have “deregulated” these services, or more accurately, that have enhanced the flexibility and sophistication of governmental controls. Benefits of economic “liberalization” have been so apparent at national level that extension to the international level is now accepted in principle. Modern communications and transportation technologies have contributed to this acceptance. National borders were never especially logical as economic boundaries, but their artificiality becomes even more obvious when you can talk to the other side of the world instantly and travel there

¹ This paper expresses the personal views of the author and should not be interpreted as an expression of the views of his clients.

in 48 hours.

The primary catalyst for liberalization of international services is a new international convention called the General Agreement on Trade In Services or "GATS." This paper discusses the possibility of applying the GATS principles to "physical delivery networks" such as postal and express services.

1. GATS and the "Borderless Global Economy"

Today, the Director General of the World Trade Organization (WTO), Renato Ruggiero, speaks of the prospect of a "borderless global economy" as one might speak of an old friend. The borderless global economy will, says Mr. Ruggiero, be marked by

increasing indifference to geography, distance and time. Transaction costs for consumers and businesses will fall rapidly as many steps that intervene between buyer and seller - distribution, sales, retailing - are compressed. Perhaps the most significant result of the development of electronic commerce will be the falling barriers and costs to market entry. Starting a new business will be much easier - allowing a far greater number of suppliers to enter a market. Small and medium-sized enterprises - as well as large multinational corporations - will now be full participants in the global marketplace. Businesses in developing countries can now overcome many of the obstacles of infrastructure, capital, and transportation which limited their economic potential in the past. And in the end, consumers all over the world will benefit from this growing global competition.²

In truth, however, the prospect of global economy is a new acquaintance for most of the world's governments. As a realistic possibility, it goes back only to the adoption of the General Agreement on Trade in Services in 1994. GATS establishes a set of principles and a negotiating process for mutually liberalizing trade in services. The father of GATS is GATT, the General Agreement on Tariffs and Trade, a 1947 treaty that reduced tariff levels. While GATT was a major achievement in its own right, its most important legacy may be that it prepared the way for GATS, as did Philip for Alexander.³

While GATS provides a framework for facilitating the exchange of all types of services—for example, advertising services, management consulting, repair

² "Services in a Borderless Economy" (Berlin, 23 October 1997).

³ After World War II, economically developed countries recognized the collective folly of the high tariffs that preceded the war. In 1947, twenty three countries agreed to the General Agreement on Tariffs and Trade. GATT provided for a mutual reduction in tariffs and a procedure for negotiating further reductions in the future. In the eighth round of such negotiations (the "Uruguay Round"), concluded in Marrakesh in 1994, governments agreed to a series of treaties, including GATS. At the same time, a permanent inter-governmental organization, the World Trade Organization (WTO), was set up to administer trade agreements and promote international trade.

services—its most important application will be to infrastructure services. In October 1997, Mr. Ruggiero described the services infrastructure needed to realize a borderless global economy as a sort of a three-legged stool (my analogy not his). The three legs are liberalized telecommunications services, financial services, and transport services. In the first two areas, the WTO has already achieved considerable success, while little progress has been made in the third.

The first key achievement was conclusion of an agreement to liberalize trade in telecommunications services in February 1997. Sixty-nine countries, accounting for more than 95 percent of world telecommunications revenues, agreed to permit substantially unrestricted trade in the supply of basic and value added telecommunications services. Participants also subscribed to a set of regulatory principles to protect competition from anti-competitive actions by telecommunications monopolists. The WTO telecommunications agreement represented a sea change from the pre-existing legal framework for international telecommunications services. Since the late nineteenth century, international conventions provided that cross-border telecommunications was provided by connection between national services, usually offered on a monopolistic “public service” basis. In stark contrast, the WTO telecommunications agreement is premised on the idea that telecommunications services should be supplied by public and private operators competing on a global basis. For the first time, the international economy will benefit from the seamless end-to-end telecommunications services that have stimulated growth in domestic commerce for more than a century.

The second leg of Mr. Ruggiero's stool was cemented into place in December 1997 when nations representing over 95 percent of world trade in banking, insurance, securities, and financial information agreed to a WTO financial services agreement. This agreement reflects the fact that international trade is no longer the main vehicle for delivering products and services across borders; international corporations now “trade” by establishing a direct presence in foreign markets. In the decade since 1987, cumulative assets of foreign investment have trebled to over US\$ 3 trillion, while annual sales which these assets generate have overtaken the value of world trade.

Despite these successes, the third leg of Mr. Ruggiero's stool—liberalization of transport services—has not even made it to the lathe. As he noted,

One last word on a final element of the global infrastructure I referred to above - transport services. I mention them as a reason for looking forward, not because there are triumphs to report. Negotiations on maritime transport which ended in the Summer of 1995 were unsuccessful; indeed neither the European Union nor the United States have accepted any market access commitments in this sector. The air transport industry is also something of an exception, because most aviation services were excluded from the coverage of the agreement - which may help to account for the fact that it can cost more to fly from Berlin to Geneva than from Berlin to New

York.⁴

A three-year study of international direct marketing by the Organization of Economic Cooperation and Development (OECD), finished in 1997, emphasized the incompleteness of present reforms. While Mr. Ruggiero optimistically forecasts that “Transaction costs for consumers and businesses will fall rapidly,” OECD staff observed, “*Consumers have not yet begun to benefit from the ease, convenience and potential savings of shipping by mail in the global marketplace.*”⁵

2. Why Telecommunications and Not Transport?

How can one explain the contrast between the WTO’s success in liberalizing telecommunications and relative failure to deal with restrictions on international transportation? While awaiting a proper political science study, I would tentatively venture to note three differences between international telecommunications and transport.

First, unlike international telecommunications, international transport has not suffered from balkanized management. Since the only way to provide an international transport service is by means of a ship or aircraft that physically moves between countries, users of international transport services necessarily enjoy the benefit of a service that is managed uniformly from beginning to end. In contrast, international telecommunications has traditionally been provided as a joint service by connecting the wires, or satellite links, of two national monopolists. Only with the advent of more sophisticated telecommunications services has the lack of end-to-end management has become unacceptable.

A second, related distinction between international transport and international telecommunications is the legal framework. International transportation—especially air transportation—is governed by bilateral relations which create economic rights for particular operators. Once created, these rights give rise to a strong political pressure opposing further liberalization. On the other hand, international telecommunications services have historically been governed by multilateral conventions, such as the Convention of the International Telecommunication Union. Liberalizing international telecommunications law

4 “Services in a Borderless Economy” (Berlin, 23 October 1997) (emphasis added).

5 “Parcel Delivery in the Global Marketplace,” DAFTE/CP(95)9 at 11 (November 20, 1995). The OECD study was prompted by a simple but extremely insightful question: If the cost and speed of air transportation are similar for international and domestic shipments, why is it so expensive and time-consuming for a person living in Paris to order a shirt from San Francisco when another person living in New York City can have the same shirt delivered overnight for one-third the cost? The OECD traced the additional costs and delays to three sets of outdated constraints on physical delivery networks: (i) monopolistic postal laws, (ii) burdensome customs and tax laws, and (iii) restrictive air and surface transportation laws.

therefore requires only liberalization of a few multilateral agreements which, roughly, affects all five parties in the same manner. In contrast, liberalization of air transport requires modification of a myriad of individual bilateral agreements, each affecting parties in different ways.⁶

A third, and probably the most important, difference between telecommunications and transport is that new technologies have had a relatively greater impact on telecommunications services than transport services in the last two decades. The spread of the personal computer, advances in satellite technology, emergence of the internet, and introduction of mobile telephony have all tended to render obsolete preexisting regulatory structures, so much so that many telecommunications monopolists have opted to give up their legal privileges in return for commercial freedom. In the transport sector, in contrast, the last major technological advances date from the 1960s and 1970s when jet engines, wide-body aircraft, and containerization were introduced. While transport markets have grown tremendously, their basic operational characteristics have changed little.

These differences—and perhaps others,—seem to explain why international transport services have, so far, been more resistant to liberalization than other international infrastructure services.

3. Physical Delivery Networks

Postal services and express services, which provide for regular exchange of physical items over a network of locations, do not fit comfortably into this communications/transport dichotomy. They are in some ways similar to both communications and transport services and yet distinct from both.

Public postal services originated as private long-distance communications services in the fifteenth and sixteenth centuries when the transportation of freight was necessarily slower than postal relay systems set up for letters.⁷ After the Industrial Revolution, transmission of the mail by specialized “postal” systems gave way to transport via railroads and steamships. Letters could move no faster than freight over long distances. The defining characteristic of postal service became door-to-door collection and delivery, service elements absent from the original concept of postal service. With the introduction of the telegraph, and later the telephone and radio, it became possible to communicate without conveyance of physical objects. Communications services and postal services became distinctly different services. Differences became more apparent still when motorized vehicles

6 The problem of uneven vested rights in the transport sector is further exacerbated by the fact that many key facilities, such as airports and seaports, represent substantial public investments that governments are reluctant to expose to competition.

7 A “postal” system was originally a series of posts, or way stations. Riders on horseback or walking messengers would carry a “mail” (or pouch) of letters from one post to the next where a rider could get a fresh horse or a foot messenger could turn over the mail to a new messenger.

increased carrying capacity, and postal services began to offer “parcel post” service. In this manner, postal services diverged from communications services in the evolutionary tree of commerce.

Although postal services may now be viewed as different from “pure” communications services, they remain qualitatively distinct from transport services as well. While postal services and transport services both involve movement of tangible objects across distance, postal services, like telecommunications services, remain a medium of frequent interaction across a network joining virtually all members of society in given geographic areas. The central activities of a postal system are collection, sorting, and delivery. Long-distance air, rail, and vehicular transport services constitute relatively minor inputs in the production of postal service. Indeed, telecommunications services are likewise important inputs in a modern postal service, because they permit coordination of collection and delivery functions. A postal service may be viewed as a “value added physical delivery network” built upon available transport and telecommunications systems.⁸

Introduction of the airplane substantially affected the evolution of physical delivery networks. For several decades, the air transport system (like the old postal relay system) offered an extra fast long-distance transport technology that was available to mail but unsuited to the vast majority of general cargo. Introduction of wide body jet aircraft and improved long-distance communications led to expansion of air transport for general cargo, but also to evolution of something different, express services. Whether operated by private companies or public post offices, express services are operationally distinct from traditional postal systems because they are tuned to a different level of speed and reliability. At the same time, they, like traditional postal services, are “physical delivery networks.” The essence of express service lies in the coordination of collection, transport, and delivery services and not in the operation of specific types of transport vehicles. The user of an express service, like the user of a postal service, is concerned about the ability to exchange physical items across a network with reliability, not particular modes of transport.

Development of express services has helped to make clear the distinct nature of physical delivery networks. So long as the only significant supplier of such services was a national post office, the nature of “postal service” was little examined and regarded as virtually *sui generis*. In the “Provisional Central Product Classification” used by the United Nations, postal service and land-based courier service are classified as communications services along with telecommunications services, even though it is obvious that postal service is no longer a communications service in the same sense as telecommunications services. In the same classification scheme, “air courier” service is classified as a form of air

⁸ The analogy with some value added telecommunications services, like packet switched communications services, seems obvious and, if pursued, may offer additional insights.

transportation even though the fundamental similarity between “air courier” service and “postal service” is plain. Inexplicably, “mail transportation by air” is classified as an “air transportation” service distinct from the air transportation of other types of cargo.⁹

The proposition that “physical delivery networks” may be distinguished from basic transport services, while novel, appears necessary to permit a clear discussion of the possible application of GATS to services like postal services and express services. Confusion in traditional industrial categorization in this area is undeniable. Similarities between postal and express services are apparent, as is the gulf that separates them from bulk freight transport by railroad or ocean liner. For the purposes of GATS, at least, it seems helpful to view physical delivery networks as a separate sector or, perhaps, as a subsector of transport services.¹⁰

4. Liberalization of Physical Delivery Network Services

Recognition of the distinct nature of physical delivery networks clarifies the issues involved in applying the principles of GATS to postal and express services. In particular, liberalization of physical delivery network services does not appear to present the same formidable difficulties that have thwarted liberalization of transport services generally. In the effort to apply GATS, physical delivery networks may turn out to be more like telecommunications services than transport services.

As with the international telecommunications system, it is generally recognized that the international postal system has been handicapped by the inability of postal managers to control cross-border systems on an end-to-end basis. In the 1989 Congress of the Universal Postal Union, the Inspector General of the French post office admitted, “International operational strategies are hindered by the poor interconnection of national systems: mail can be moved faster from Brest to Nice (1500 km) than from Paris to Brussels, in Belgium (300 km).”¹¹ Commercial success of international private express companies in the late 1980s and early 1990s has driven home this point. Major post offices have responded by initiating true international services. In 1996, the Dutch Post Office purchased the entire stock of a major international private express company, TNT. In 1998, Deutsche Post bought a substantial stake in DHL, the leading international private express company. As a British Post Office official has boldly announced, “*The forces of*

9 Although a revised CPC (“CPC Revision 1.0”) is about to be published, it does not appear that the revised definitions represent much improvement in the classification of physical delivery networks.

10 As with any classification scheme, there may be difficulties in classifying services at the boundary of a category. Some air cargo or less-than-truckload trucking services might be considered either physical delivery networks or general transport services. These issues do not seem so severe, however, as to negate the benefits of the proposed classification.

11 UPU, 1989 Washington Congress, Congress - PV6, page 29 (emphasis added).

globalization are rendering obsolete the idea of a national postal market."¹²

As in the international telecommunications sector, international physical delivery networks have developed more or less free of the inhibitions of bilateral legal frameworks. Public and private operators have opened collection and delivery offices in different countries and made use of available air transport services. As the traffic carried over international physical delivery networks has grown, however, operation of all-cargo aircraft has become economically feasible and some private express services have invested substantial funds in the acquisition of traffic rights. This investment in the current regulatory regime may hinder liberalization as it has in the air transport sector.

Finally, it may be noted that physical delivery network services, like telecommunications services, have been substantially reshaped by new technologies in the last two decades. Electronic services like the internet offer complete substitutes for much paper mail. Postal and express managers are facing a shift from documents to parcels in their traffic base. Even in the handling of documents, computers have introduced major operational changes. There are now significant distinctions between "industrial mail" and "retail mail." Production of industrial mail is no longer tied to the offices of the mailer; bulk mail production can easily be moved to foreign locations, reducing the value of domestic postal monopolies. Optical character readers have altered the economics of mail processing. To cope with such changes, many developed countries have decided to modernize their post offices by reducing legal privileges and increasing commercial flexibility. The postal monopoly has been abolished entirely in Sweden, Finland, New Zealand, and Germany (effective 2003) and substantially limited in Australia and European Union countries.

In short, physical delivery networks may be ripe for liberalization in the GATS round beginning in 2000 for many of the same reasons that motivated liberalization of telecommunications. Early political portents are favorable. In June 1997, Sir Leon Brittan, vice president of the European Commission, outlined priorities of the European Union in the next round of GATS negotiations. He argued that "liberalisation of trade in goods and of services is inextricably linked" and announced, "in setting priorities, I expect Europe to focus on sectors where there is world-wide growth, and where Europe has a comparative advantage. . . . I suspect that the big gains from liberalisation in future negotiations will come in sectors that will surprise us all. Maybe . . . in postal and courier services."¹³ Speaking at the fiftieth anniversary celebration of GATT/WTO, in May 1998, President Clinton echoed Sir Leon in declaring, "I think it is essential to engage in

12 Tim Walsh, Director, International Affairs and Business Strategy, Royal Mail, "The Governance of International Postal Networks in a Changing Market Place" (London, September 16, 1997) (seminar at Royal Institute of International Affairs).

13 "WTO and Services: the Current and Future Agenda" (Geneva, 24 June 1997) (emphasis added).

wide-ranging discussions to ensure openness for dynamic service sectors, such as express delivery. . . .”¹⁴ In June 1998, WTO Director General Ruggiero recalled these remarks and implied negotiations addressing the express industry might be the bridge needed to extend GATS to air transport services.¹⁵

5. Elements of Liberalization

How would liberalization of physical delivery networks proceed under GATS? Under the process set out in GATS, countries make preliminary offers to liberalize services in a given sector in hopes of eliciting corresponding offers from other WTO countries. If enough countries judge the costs of liberalizations which they propose to be outweighed by the economic benefits of liberalization offers by others, an agreement will be struck and a “round” of negotiations successfully concluded. If countries are dissatisfied with the liberalization offers of others, they will adjust their offers or encourage others to do so until agreement can be found. In all cases, liberalization offers and commitments are voluntary, so the sovereignty of each country is respected.

Under GATS, “liberalization” may be considered as implying four types of reforms:

- *market access*: allowing foreign suppliers to sell services;
- *national treatment*: giving foreign services the same treatment under law as domestic services;
- *most favored nation (MFN) principle*: giving services from all foreign countries the same rights granted the most favored trading partner; and
- *domestic regulation*: the impartial and objective administration of all legal measures affecting trade in services.

Each of these reforms can be qualified in the “schedule of commitments” embodying a country’s offer to liberalize. For example, “market access” can refer to offering services from offices located abroad or offering services from offices located in the country in question. Similarly, countries may limit their commitments to most favored nation treatment by insisting on the right to limit access by companies of countries which have not themselves liberalized.

Keeping in mind the specific characteristics of physical delivery networks and the general principles of GATS, one might imagine an agreement liberalizing

14 “Remarks by the President at the Commemoration of the 50th Anniversary of the World Trade Organization” (Geneva, May 18, 1998) (emphasis added).

15 “Towards GATS 2000 - a European Strategy” (Brussels, June 2, 1998) (address to a conference on trade-in-services organized by the European Commission) (“President Clinton spoke of ensuring openness for dynamic sectors, such as express delivery [which has implications for the air transport sector] . . .”).

physical delivery network services could include the following elements:

5.1. Definition of the Sector

As noted above, there is no generally accepted definition that satisfactorily describes the concept of physical delivery networks. Regardless of whether one considers physical delivery networks to be a “sector” or a “subsector” of a larger sector such as “transport,” a definition of physical delivery networks should take into account such characteristics as:

- Physical delivery networks provide the general public with regular (usually every business day) and reliable collection, transport, and delivery of physical objects across a network of geographic points;
- Physical delivery networks have management systems that monitor and ensure end-to-end quality of service.
- Physical delivery networks include the operation of such offices, buildings, telecommunications facilities, computers, sorting equipment, automobiles, trucks, aircraft, and other vehicles, as may be necessary to accomplish their basic function.
- Physical delivery networks generally rely on hub-and-spoke transport systems rather than end-to-end transport systems

Further subdivisions, if needed, could reflect the development of operationally distinct physical delivery networks. They might include: ordinary service for letters and “flats” (larger-than-letter-size envelopes), ordinary service for parcels, ordinary service for larger items, and express service for all items, where “ordinary service” refers to a lower level of speed and reliability than “express service.” In addition, as in the telecommunications sector, distinctions could be drawn based on the local, long-distance, or international nature of operations. A fourth geographical distinction might be drawn for “transit services,” i.e., the provision of services in country B in connection with the operation of services between country A to country C.

5.2. Market Access

Article XVI of GATS states that a member may not maintain or adopt (unless otherwise specified in its schedule of commitments) various limitations on market access including “limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test.” Schedules of commitments regarding market access distinguish between four modes of access: the ability of non-resident persons to supply services in a country, the ability of residents to consume services supplied in foreign countries, the ability of a foreign supplier to establish a commercial presence in a country, and the ability of a foreign supplier to provide a commercial presence with foreign personnel. In the case of physical delivery

networks, a foreign supplier must necessarily have a “commercial presence” of some sort, i.e., a collection, delivery, and transport operation. The main question is whether a foreign supplier can establish its own operation or must work with local companies as agents. Moreover, while physical delivery networks necessarily employ large numbers of residents who are familiar with local geography, the ability to relocate managerial personnel from country to country is highly desirable.

The most obvious implication of the principle of market access for physical delivery networks is the need to adjust national postal monopoly laws. GATS is not limited to cross-border services, so market access commitments could include commitments to open all domestic and international postal services to foreign post offices and private express services. Given the long history of national postal monopolies, however, some countries may decide to reserve access to local and long-distance domestic markets.

Full access to international service markets appears to be the minimum commitment worthy of negotiation. An economic benefit, and potential political problem, of international liberalization will be that it will place a floor on the inefficiencies and economic distortions which a domestic postal monopolist can sustain. Production of many types of shipments—especially printed and computer generated documents—can be shifted out of a country. For example, if international market access is liberalized, a bank in Country A could send the data for statements of account to a foreign printing site, produce the statements abroad, and have them delivered to addressees in Country A by means of a physical delivery network. While it would be difficult for an international physical delivery network to compete in this manner with an efficient domestic post office, it would be possible to compete with an inefficient one. For this reason, those who benefit from inefficiencies and distortions in the domestic postal market may oppose liberalization of international physical delivery network services.¹⁶

Logically, the sector definition suggested above also implies a need for countries to modify legal restrictions on the transport of cargo ancillary to the operation of physical delivery networks.¹⁷ For large physical delivery networks, operation of all-

¹⁶ Theoretically, the domestic operations of even an efficient post office could be threatened by competition from international services if (i) there exist discrete geographic markets where actual costs are substantially below domestic postage rates because (ii) public service costs comprise a substantial fraction of domestic postage rates and (iii) the national post office is legally prohibited from adjusting domestic postage rates to actual costs because of, say, a uniform tariff requirement. Even so, international services could not serve as a viable alternative to domestic services unless (iv) the difference between actual costs and domestic postage exceed the value of the economies of scale enjoyed by the domestic post office (presumably large relative compared to the economies of scale of an international service). Since there is little or no evidence that conditions (i), (ii), or (iv) can be satisfied in fact, it appears that, as practical matter, international services pose little commercial threat to an efficient domestic post office. See Campbell (1993) and Dodgson and Trotter (1994).

¹⁷ Air traffic rights are not currently subject to GATS although this exemption is subject to review by the WTO every five years. See the discussion of the MFN principle, below.

cargo aircraft is as necessary as operation of motor vehicles. It makes as little sense to assure market access for foreign physical delivery networks without the right to operate aircraft as it does to assure market access for foreign telephone companies stripped of the right to lay wires and emit electromagnetic signals. Liberalization of physical delivery network services should thus include the right to operate all-cargo aircraft in support of such networks. Likewise, physical delivery networks make use of cargo services of common carriers, and ideally the use of such cargo services should be permitted without regard to restrictions found in current aviation bilateral agreements.¹⁸

If air traffic rights are to be included in the application of GATS to physical delivery networks, such a provision must be carefully drawn to avoid disturbing other vested economic rights. Most air cargo is today transported by means of traditional air freight services, either as cargo in the holds of commercial airliners or in all-cargo aircraft operated by air freight forwarders. Realistically, a proposal for a GATS commitment to liberalize all types of air cargo services may be overcome by opposition from interests that benefit from the current system of air traffic rights. Therefore, a GATS initiative to liberalize global physical delivery networks should likely not go beyond those air traffic rights actually needed to operate physical delivery networks.

The solution to this drafting problem is not readily apparent, but provisions in a recent bilateral aviation agreement between France and the United States may offer clues. With some exceptions, that agreement limits all-cargo services from the United States to France and beyond to cargo that passes through certain intermediate hubs. The effect of this restriction was to distinguish between physical delivery networks and regular air cargo services. Because physical delivery networks rarely have enough point-to-point traffic to justify direct transport operations, physical delivery networks convey the majority of their cargo via hub and spoke systems. This tendency to make use of hub and spoke systems characterizes both dedicated transport systems (all-cargo aircraft or truck fleets) and transport services purchased from common carriers. Moreover, at either end of long-distance transport routes, physical delivery networks are further characterized by a high degree of sorting and handling and perhaps additional hub and spoke arrangements. Thus, it might be possible to use the “degree of hubbing”—or, in other words, the relative level of collection, sorting, and delivery compared to actual transport—to distinguish physical delivery networks from transport services generally.

In addition to traffic rights, market access for physical delivery networks may imply a need for commitments to refrain from economically-based restrictions on

18 For example, a U.S. air carrier flying from New York to London to Paris might be permitted to carry the cargo of a physical delivery network from London to Paris even though it does not have “fifth freedom” rights for general cargo.

the operation of motor vehicles and discriminatory access to key facilities such as airports and customs facilities. Commercially discriminatory limitations on the ability to load or unload aircraft, to operate aircraft at selected hours of the day or night, to operate vehicles of specific size on public roads, or to tender items to customs services at certain hours or in accordance with specific procedures all effectively regulate market access of physical delivery networks.

5.3. National Treatment

According to Article XVII of GATS “each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.”

National treatment may be the least controversial of the GATS principles as far as postal and express services are concerned. Application to physical delivery networks would, however, still require significant changes in the practices of countries which seek to reserve certain services to national post offices or local freight forwarders.

Moreover, it should be noted that the principle of national treatment implies a basic change in the economic arrangements which now govern the exchange of mail between countries. Under the “terminal dues” provisions of Universal Postal Union and regional postal agreements, national post offices apply substantially different charges for the delivery of domestic mail and cross-border mail. Economic distortions produced by this system are now generally recognized. Nonetheless, some of the largest and most efficient post offices have continued to support the terminal dues mechanism because its intricacies hide the fact that they are being subsidized by foreign mailers. Other major post offices support terminal dues arrangements because the resulting distortions serve as an excuse to restrict “remail” competition from other post offices and private carriers. Within the Universal Postal Union, officials are beginning to recognize the inconsistency between these terminal dues provisions and GATS.¹⁹

5.4. Most Favored Nations Principle

Article II of GATS states that “each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country.” The “most favored nation” (MFN) principle is intended to benefit even those WTO members who do not offer liberalization of their own markets in

¹⁹ Proposals to abolish the terminal dues system have been tabled in advance of the UPU’s general congress in 1999, but adoption appears unlikely. As a halfway measure, Germany has proposed that the UPU accept the principle that post offices levy the same charges for the delivery of all *bulk* mail whether tended by a foreign post office, a foreign private express company, or a domestic mailer. Even the limited German proposal, however, is opposed by many.

a given sector. That is, once a country pledges to liberalize access for foreign physical delivery networks, it cannot prohibit entry by operators from a country that itself refuses to allow access for other physical delivery networks.

In many of the laws regulating physical delivery networks, application of the MFN principle seems unlikely to cause difficulties. National postal and customs laws generally apply to other nations equally, so it should not be objectionable to apply liberalizations equally. The MFN principle does, however, imply modification of the "terminal dues" of international postal arrangements noted above. Not only do current terminal dues agreements discriminate between domestic and foreign mail, they also discriminate between the mail of different countries. Post offices levy different charges for the delivery of identical mail depending on its origin. The rationale for this practice is, in part, to allow discounts for the delivery of mail from developing countries. In light of the MFN principle, it would seem that aid to the post offices of developing countries would have to be provided through a separate mechanism, reform already being advocated by some postal officials.

The most troublesome implication of the MFN principle to physical delivery networks arises in the case of air traffic rights for all-cargo aircraft and cargo carried on other aircraft. As noted above, international air transportation is governed by a series of bilateral aviation agreements which are per se inconsistent with the MFN principle. Most nations have, so far at least, strongly resisted proposals to apply the MFN principle to international air transport.²⁰ For this reason, GATS currently excludes air traffic rights from its purview. This exemption is subject to review by the WTO every five years "with a view to considering the possible further application of [GATS] to this sector."²¹

One possible approach to reconciling the MFN principle and the existing bilateral legal framework is shown in the WTO telecommunications agreement. In that case, some members took exceptions to application of the MFN principle because the MFN principle precludes the use of market access as a bargaining chip to encourage future liberalization in restrictive countries. The United States, for example, reserved the right to deny MFN treatment in respect to satellite services if another country failed to allow United States companies to provide such services to its territory. In the case of air traffic rights as well, many countries argue that bargaining in the context of reciprocal rights is the only practical way to bring about liberalization. Based on the telecommunications experience, it seems possible that member countries may require the WTO to make a similar accommodation in the MFN principle for air traffic rights associated with physical delivery networks as the price of bringing all key aspects of the industry within the GATS

20 For an extensive discussion of the difficulties of extending the MFN principle to air transport services generally, see Abeyratne (1996).

21 GATS, Annex on Air Transport Services, paragraph 5.

framework.²²

5.5. Domestic Regulation

In sectors in which specific commitments of liberalization have been made, Article VI of GATS enjoins members to “ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.” This article goes on to require impartial tribunals and prohibit licensing criteria that are not based on “objective and transparent criteria.”

In the WTO telecommunications agreement, fifty-five countries agreed to an extension of Article VI by pledging adherence to a specific set of regulatory principles embodied in a “Reference Paper.” The Reference Paper prohibits dominant suppliers from using monopoly revenues to cross-subsidize competitive services and requires suppliers to permit non-discriminatory interconnection with other service providers. Regulators are required to be “separate from, and not accountable to, any supplier of basic telecommunications services” and “the decisions of and the procedures used by regulators shall be impartial with respect to all market participants.”

In regard to provision of physical delivery networks, it seems apparent that a reference paper on regulatory principles will be needed. Public post offices have a record of using legal privileges for competitive gain. Legal monopolies granted to promote universal letter delivery have become a revenue source for underwriting the cost of the establishing, or purchasing, competitive services. Special customs procedures for postal shipments have become a selling point for postal express services that compete with private international express services. Exemptions from taxes and licenses are claimed for competitive as well as monopoly services.

Indeed, the idea of a reference paper might be extended to cover national positions at international fora. For example, through the Universal Postal Union, post offices have conferred upon themselves authority to enforce a market allocation agreement that reserves to each national post the right to provide forwarding services for international mail produced by companies “resident” in its territory, regardless of where the mail is physically produced. Although condemned as anti-competitive in the European Commission's Postal Green Paper of 1992, this provision survives to this day. Similarly, a provision of the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention) provides special customs procedures for postal shipments as

²² Technically, under Article II of GATS, MFN exemptions must be listed at the time to joining the WTO or granted by special decision of the Ministerial Council. MFN exemptions were possible in the telecommunications agreement because it was negotiated as part of the original negotiations establishing the WTO. Extension of this right of exemption would therefore have been included as part of the process of extending GATS to cover air traffic rights associated with physical delivery networks.

distinct from identical private shipments.²³ In light of such provisions, subscribers to a reference paper on physical delivery networks might pledge to support its principles in the shaping of international as well as national measures.

5.6. Customs Simplification

Under Article XVIII of GATS, "Members may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles XVI or XVII." Customs simplification offers a good candidate for such additional commitments. Customs laws probably comprise the single most significant impediment to the exchange of low value items via international physical delivery networks.

The destructive effects of customs duties fall especially heavily on international physical delivery networks because the nature of such services makes them particularly suitable for the transportation of individual items of relatively low value. Customs duties are generally antagonistic to the trade promotion philosophy of GATS. They reinforce national borders by taxing imports of goods to make them less competitive with domestic goods. An additional inhibition posed by customs formalities is the cost of compliance. For a shipload of goods, the administrative cost per item implied by customs regulations may be small. For an international physical delivery network transporting thousands of different items, each from a different shipper to a different addressee, the cost per item of classifying and clearing goods on a shipment-by-shipment basis, added to the duty itself, is often a significant fraction of the total cost of the service. As a result, physical delivery networks are relatively discouraged compared to bulk freight transport services.

A wholly new approach to customs treatment is needed for the customs treatment of shipments transported by physical delivery networks.²⁴ For the clearance of letters, documents, printed papers, and low value items, customs duties and formalities should be eliminated entirely. The cost of transportation per se is a significant amount compared to the value of such items and should be deemed

23 Customs treatment of public operators is derived from practices developed for the clearance of letters and printed papers. When applied to parcels, customs procedures for public operators are slow, burdensome for customs authorities, and enforced unevenly. Customs treatment of private operators is derived from the laws relating to customs clearance of freight. Although customs authorities have introduced simplifications based mainly upon electronic processing of data, customs procedures for private operators remain far too expensive and complicated, especially when applied to documents and low value parcels.

24 Compare President Clinton's call for elimination of duties of items transmitted via telecommunications services: "Today, there are no customs duties on telephone calls, fax messages, e-mail or computer data links when they cross borders. We have spent 50 years tearing down barriers to trade in goods and services. Let us agree that when it comes to electronic commerce, we will not erect these barriers in the first place." "Remarks by the President at the Commemoration of the 50th Anniversary of the World Trade Organization" (Geneva, May 18, 1998). In May 1998, the WTO did agree not to introduce import duties on software and information delivered across the internet.

adequate protection for domestic markets. For clearance of shipments of somewhat higher value, the administrative costs of customs compliance should be reduced. Customs duties could be stated in terms of one or more average rates, eliminating the need for classification. Except for special categories of goods, customs entry can probably be abolished in favor of minimal record keeping obligations on the part of physical delivery networks. Payment of duty (and sales taxes like VAT) can be made the responsibility of the shipper, an approach equivalent to the red door/green door system for baggage. Periodic checks of records would prevent substantial abuse.²⁵

6. Summary and Conclusions

In the last few decades, improvements in technology have lessened the significance of distance and catalyzed liberalization of domestic economies. The 1994 General Agreement on Trade in Services indicates a recognition by governments that economic benefits may be reaped by extending liberalization to services on a global basis. As the Director General of the WTO has observed, the salutary effects of liberalization will be greatest if liberalization can be focused on the infrastructure services that facilitate the production of other goods and services. To this end, he has identified three sectors where liberalization is most important: telecommunications, finance, and transport. While claiming success in the first two, he has regretted the lack of progress in the third.

In this paper, I suggest that telecommunications/transport dichotomy overlooks the fact that there is a fourth infrastructure sector (or subsector)—physical delivery network services—that is distinct from either telecommunications services or normal transport services while kin to both. I also suggest that impediments to liberalization of the transport sector may not restrain application of GATS to the physical delivery networks. The political signs seem to indicate the possibility of movement towards application of GATS to the physical delivery networks in the WTO services round to begin in 2000, but so far, this is only a possibility. Little attention has been given to the clear definition of the sector or the potential elements of a GATS agreement. In this paper, I have tried to suggest tentative approaches to both topics.

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²⁵ As provided in Articles XIV and XIV bis of GATS, simplification of customs cannot affect regulatory controls designed to protect public morals, public health, privacy, safety, or national security.

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