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## Addressing New Service Sector in WTO/FTAs: Express Delivery and India

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# **Working Paper 251**

## **Addressing New Service Sectors in WTO/FTAs: Express Delivery and India**

**Arpita Mukherjee  
Parthapratim Pal  
Ramneet Goswami**

**August 2010**



**INDIAN COUNCIL FOR RESEARCH ON INTERNATIONAL ECONOMIC RELATIONS**

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## Foreword

The services sector, which has been one of ICRIER's thrust areas of research, has continuously evolved and expanded over the last two decades. Given the interlinkages between different services, it has also become important to try and adopt an integrated approach for analysing the performance or potential of any service sector. This paper takes such an approach to analyse the key features of the newly emerged Express Delivery Services (EDS) with the view to provide inputs for India's negotiating positions in both the multilateral and bilateral trade negotiations. The paper also looks at the nature of domestic regulation pertaining to the EDS sector to ascertain if the extant regulation promotes and encourages the domestic EDS sector to become globally competitive. In addition, the authors also examine the nature of commitments India could make at the WTO or in its FTA negotiations in the light of domestic regulations for the sector. I hope the paper will be of interest to both policymakers and academics.



**(Rajiv Kumar)**

Director and Chief Executive

August 10, 2010

## Abstract

The service sector is evolving. New services and new modes of delivering existing services have increased the complexities of services negotiations in the WTO and in FTAs.

The WTO negotiations focus on market access but FTAs tend to go beyond market access to seeking regulatory commitments from trading partners. India is a proponent of services liberalisation both in the WTO and through bilateral/regional agreements. In this context, this paper examines how new service sectors like express delivery services (EDS) are addressed in WTO/FTAs and its implications for India.

Express delivery services are one of the fastest growing sectors in India. It plays a crucial role in trade facilitation and in enhancing the global competitiveness of Indian industries. At present, there are no FDI restrictions and the country can undertake market access commitments in WTO and in its FTAs. The proponents of liberalisation of express delivery services also seek commitments in complementary services like transport and warehousing. The study found that since the autonomous liberalisation is more than India's offers in the Doha Round of the WTO negotiations, India is in a position to broaden its commitments in the WTO.

One of the core issues for India is that domestic regulation of postal services is evolving. India Post offers courier/EDS services. The Department of Posts is in the process of framing a new regulation that is likely to affect the courier/EDS industry. Based on a primary survey, this study found that the regulation should be transparent and fair; it should clearly define the reserved area and distinguish between Universal Service Obligation (USO) and competitive services. It should also mention how the USO will be funded. The regulation should encompass global best practices like removal of cross-subsidisation and should facilitate competition. The need for a postal regulatory regime will arise if the public postal service provider is privatised. The regulator should be independent. The objective of the new regulation should be to lay down a reform path for India Post and the primary role of the regulator should be to monitor the USO.

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**JEL Classification:** *F13, F14, F53, F55, L87, L88, L92, L93*

**Keywords:** *Services, Express Delivery, Postal and Courier, India, WTO, FTA*

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Officials from the Indian Department of Commerce, Department of Posts and delegates from the European Union have enriched our knowledge of this sector. The Couriers Association of India (CAI) (Mumbai) and Delhi Courier Club (DCC) have provided valuable inputs. The paper is based on a primary survey conducted by ICRIER and IIMC. We are grateful to Prasad Chakraborty of SRG Consultancy Marketing Planning Services and his team for conducting the survey and to all survey participants for their valuable inputs. A part of this paper was presented at a seminar on '*Facilitating Trade and Global Competitiveness: Express Delivery Sector in India*', jointly organised by ICRIER and EICI on August 26, 2009 at New Delhi. It was also presented at '*India Courier Summit 2010*' on April 6, 2010, New Delhi. This paper was presented at the ICRIER WTO Seminar on April 21, 2010. The authors are grateful to the participants in these events for their valuable comments. We would like to thank Tara Nair for copyediting and Anil Kumar for formatting this paper.

## **Abbreviations**

AERA	Airports Economic Regulatory Authority of India
BTIA	Broad-based Trade and Investment Agreement
CAGR	Compound annual growth rate
CECA	Comprehensive Economic Co-operation Agreement
CEPA	Comprehensive Economic Partnership Agreement
CRS	Computer Reservation System
DIPP	Department of Industrial Policy and Promotion
DTDC	Desk to Desk Courier
EDI	Electronic Data Interchange
EDS	Express Delivery Services
EMS	Express Mail Services
EU	European Union
FDI	Foreign Direct Investment
FedEx	Federal Express
FIPB	Foreign Investment Promotion Board
FTAs	Free Trade Agreements
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
IATA	International Air Transport Association
ICRIER	Indian Council for Research on International Economic Relations
IIM	Indian Institute of Management
IPR	Intellectual Property Rights
IPTV	Internet Protocol Television
IT	Information Technology
MFN	Most Favoured Nation
NAMA	Non-agriculture Market Access
PPO	Public Postal Operator
PPP	Public-private Partnership
PTAs	Preferential Trade Agreements
SAARC	South Asian Association for Regional Cooperation
SGHA	Standard Ground Handling Agreement
SMS	Short Message Service
TNT	Thomas Nationwide Transport
TRAI	Telecom Regulatory Authority of India
UK	United Kingdom
UNCPC	United Nations Central Product Classification
UPS	United Parcel Service
UPU	Universal Postal Union
US	United States
USO	Universal Service Obligations
USPS	United States Postal Services
WTO	World Trade Organisation



## Introduction

Globalisation, privatisation, technological development and growth of multinationals have led to an increase in trade in services. This is evident from the fact that global trade in services has increased from \$1.3 trillion in 1998 to \$3.8 trillion in 2008.<sup>1</sup> Removal of trade barriers, technological innovations and changes in business practices have also changed the way in which services can be delivered. With technological development, business process outsourcing is now an integral part of a company's business strategy and, therefore, a growing component of services trade. Technological developments have also made it possible to deliver services through a wide variety of modes. For instance, in the past, retail could only be through brick and mortar stores. However, at present, e-retailing or retail through the Internet is a growing component of retail business. Through the Internet, it is possible to provide telemedicine services and even tele-maintenance services, which, in the past, required direct contact with the clients. Today, the same service can be delivered through different delivery platforms. For instance, a television programme can be seen through cable, digital network, Internet Protocol Television (IPTV) etc. A person can enquire about his bank account details through e-mails, through telephone, through mobile phone short message service (SMS) among others. This has resulted in multiplicity of services and has interlinked the different service sectors. For instance, the delivery of financial information through telephones has interlinked telecommunication, information technology (IT) and financial services and has made them interdependent.

Since the services sector is evolving, in terms of both new services and different modes of delivery of existing services, classification of services has been an important issue in international trade negotiations. When the World Trade Organisation (WTO) was formed, member countries drew up a list of service sectors known as W/120 (MTN.GNS/W/120<sup>2</sup>) based on the United Nations Central Product Classification (UNCPC) for the purpose of negotiations. W/120 formed the basis of the first round of WTO negotiations in services – the Uruguay Round. Although most WTO member countries followed this classification, some used their own classification for certain sectors like road transport. After the Uruguay Round, with developments in services, the UNCPC itself became outdated and different versions of the UNCPC has come up like UNCPC Ver 1.0, UNCPC Ver 1.1 and UNCPC Ver 2.0, which try to take into account the changes in the service sectors and include new and evolving services. In the second round of WTO negotiations, i.e., the on-going Doha Round, countries have raised concerns about the classification of different sectors such as energy, logistics, express delivery and their coverage. These sectors are either not covered or partially covered under the W/120. Countries that are keen to liberalise these sectors have raised the issue that inadequate classification is leading to lower

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<sup>1</sup> WTO (1999 and 2009)

<sup>2</sup> Services Sectoral Classification List, Note by the Secretariat, WTO Document MTN. GNS/W/120 (10 July 1991).

commitments/liberalisation. They have also provided alternative classifications/definitions of the sectors. Finally, countries have started undertaking commitments as per their own classification – either by linking it to UNCPC or its revised versions or by clarifying the definition.

Understanding how the services sector has evolved and its classification is important in the context of undertaking liberalisation commitments in the WTO or Free Trade Agreements (FTAs). A country can follow different approaches, such as a positive list approach<sup>3</sup> or a negative list approach<sup>4</sup> or a hybrid approach,<sup>5</sup> for listing the services sectors for undertaking commitments. In the WTO General Agreement on Trade in Services (GATS) negotiations, a positive list approach is followed for selecting services sectors/sub-sectors (an overview of GATS is given in Appendix A). Many FTAs, especially the United States (US) agreements, follow a negative list approach for scheduling commitments in service sectors. In the negative list approach, a country has to be very careful about clearly defining the sectors/sub-sectors in which it is undertaking commitments and the extent of the commitments. This is because, apart from those covered in the negative list, everything else is then opened up for foreign service providers. Some FTAs such as the Korea-Singapore FTA follows a negative list approach for all services except financial services where a positive list approach is followed. This is because there are wide varieties of financial services and, in future, there can be many more services that are difficult to foresee at the time of negotiations.

As new services are developing, the interlinkages between different types of services, and services and goods, and services and intellectual property rights (IPR), trade facilitation etc., are becoming more prominent. Express delivery services (EDS) are an example of a new services sector within the logistics services sector that is growing at a fast pace and has strong interlinkages with other sectors. For instance, express delivery companies depend on IT and transport for providing just-in-time delivery of goods. Trade facilitation issues (including customs) also affect the ability of an express delivery company to provide services. Customs, on the other hand, depend on IT service providers for their electronic data interchange (EDI) systems. Hence, liberalisation of express delivery services alone will not guarantee greater market access or better quality services unless the companies have access to allied infrastructure. Increasingly, WTO member countries are looking at holistic liberalisation rather than liberalisation of each service sector separately. For instance, the European Union (EU) is proposing liberalisation of logistics services (which includes all modes of transport and allied services like storage and warehousing) rather than liberalisation of a specific service sector like road transport.

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<sup>3</sup> In a positive list approach, countries decide the sector/sub-sectors in which they want to undertake commitments and then mention the barriers/restrictions if any.

<sup>4</sup> In a negative list approach, all sectors/sub-sectors are open except those in the negative list.

<sup>5</sup> A hybrid approach uses both the positive list and negative list approaches.

In the above context, this paper focuses on how new service sectors like express delivery services are addressed in WTO/FTAs and its implications for India. EDS is an important component of the Indian logistics services network. The sector is undergoing reforms and India is under pressure from its important trading partners to undertake commitments in express/courier services in the WTO/FTAs. This paper aims to address some of the core issues in undertaking commitments, including the new postal bill.

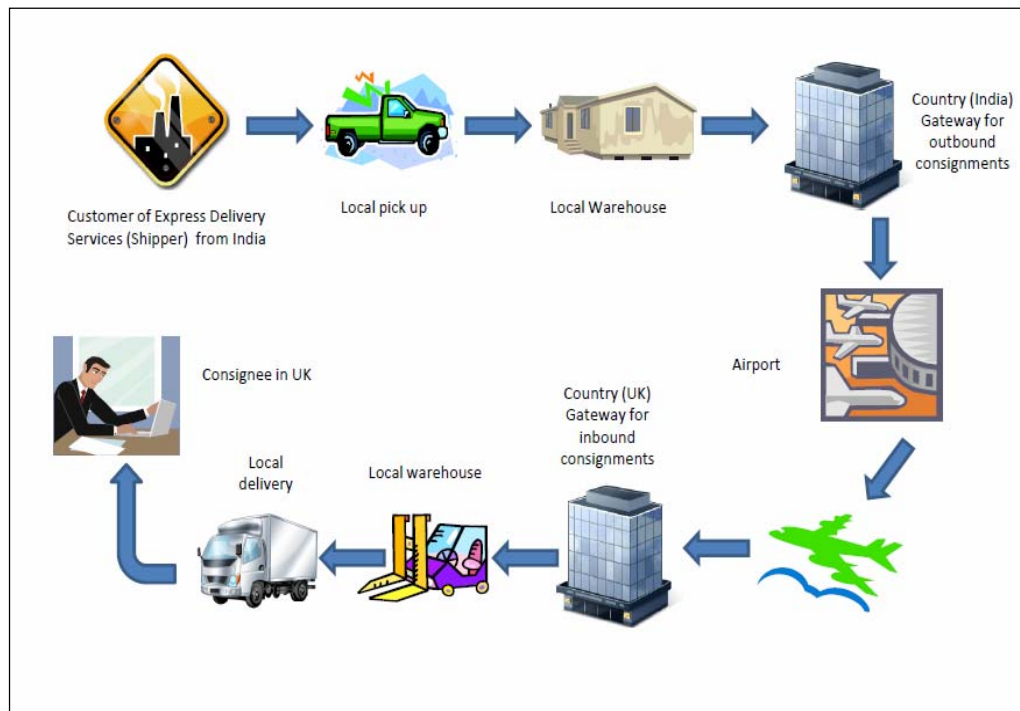
The layout of the paper is as follows:

- Section 1 provides an overview of the recent developments in the express delivery sector globally.
- Section 2 examines the recent trends and developments in the express delivery sector in India. India is in the process of developing a regulatory regime in the postal sector. Based on a primary survey, the implications of the regulation for courier/express companies are also discussed.
- Section 3 discusses the multilateral liberalisation in postal, courier and express delivery sectors. An efficient delivery of express services depends on other services such as road and air transport. Therefore, commitments in some of these sectors have also been analysed.
- Section 4 examines the extent of liberalisation in postal, courier, express delivery and in related sectors like transport in bilateral FTAs.
- Section 5 discusses India's negotiating strategies and options in the WTO and FTAs. It also examines the relationship between domestic regulation and commitments in WTO/FTAs.
- Section 6 provides an analysis of what the new postal regulation should encompass, which will be in accordance with global best practices in regulation.
- Section 7 presents the way forward.

## **1. Express Delivery Sector: Global Developments**

The EDS industry provides services that include integrated door-to-door transport and quick delivery of time-definite shipments of documents, samples, parcels, etc. Although it generally facilitates transportation of documents, samples, gifts and other high-valued time-bound items, the requirement of fast delivery often overrules the weight limits or the size of consignment. Figure 1.1 shows the different stages of the express delivery – from collection of consignment from customer in one country (for example, India) to delivery to customer in a different country (for example, the United Kingdom (UK)). One of the key features of this industry is that it handles custom clearances and reduces the requirements of multiple agents such as freight forwarders and customs house clearance agents.

**Figure 1.1: Various stages involved in Express Delivery Service**



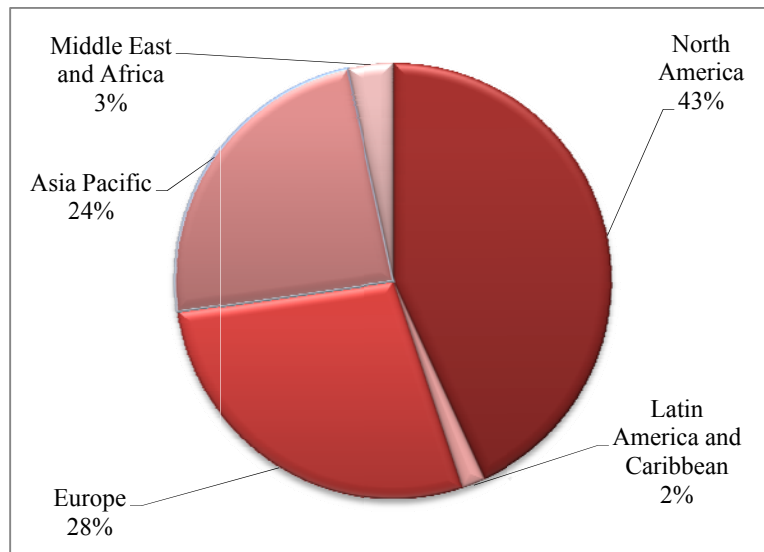
The EDS industry is relatively new – it began in the US in the 1970s and is one of the fastest growing industries in the world.<sup>6</sup> Over the years, it has evolved from being a basic courier service provider delivering documents and parcels to an integrated door-to-door time-bound service provider. Globalisation, liberalisation and increase in cross-border trade and investment flows have contributed to its growth. With the development of the global supply chain, corporations across the world are now optimising costs and maximising efficiency by focusing on their core business activities and outsourcing noncore activities like transportation and delivery to specialised service providers such as EDS companies.

There are hardly any official estimates of the EDS industry. According to one estimate<sup>7</sup>, the turnover of this industry rose to \$175 billion in 2008 from \$130 billion in 2003, an average annual growth rate of 4 per cent. In real terms, the turnover of EDS is estimated to have increased by over 20 per cent. By region, in 2008, North America accounted for 43 per cent of the EDS market followed by Europe (28 per cent). The size of Asia Pacific was 24 per cent. The rest is covered by the Middle East, Africa and Latin America. However, Asia is one of the fast growing markets (Figure 1.2)

<sup>6</sup> For instance, FedEx began its domestic operations in 1973 and international service in 1984.

<sup>7</sup> Oxford Economics (2005 and 2009)

**Figure 1.2: Regional Distribution of Turnover of EDS Industry in 2008**



*Source: Compiled by authors from Table 1-2 page 6, Oxford Economics (2009)*

The EDS industry is labour intensive. Direct employment is expected to increase from 1.3 million in 2008 to 1.8 million in 2018. Indirect employment (in sectors such as cargo airlines, automobile industry and IT support services) is expected to reach 4.5 million by 2018.<sup>8</sup>

Since express delivery companies are a key component in the logistics chain, it is often difficult to distinguish between the services of express companies, logistics companies and the public postal provider. For instance, a company may send its samples or products requiring urgent delivery through EDS while regular consignments are sent through freight forwarders and other logistics agents. The public postal providers of many countries also offer express delivery and parcel delivery services such as the Express Mail Services (EMS) of India Post. Generally, a client decides among the different forms of delivery such as logistics services, courier or mail services, postal services and express services depending on the size of consignments, time taken, modes of delivery, means of transport used, types of services offered, costs, etc.

The global market for EDS is pretty heterogeneous. There are four global integrators, namely, Federal Express (FedEx) (US), United Parcel Service (UPS) (US), Thomas Nationwide Transport (TNT) (Netherlands) and DHL Express (named after the founders Adrian Dalsey, Larry Hillblom and Robert Lynn) (Germany). Apart from these, there are national postal service providers like Royal Mail (UK) and La Poste (France) who also provide express delivery services and other similar value-added services. Though these companies also operate on an international level through the

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<sup>8</sup> Oxford Economics (2009).

Universal Postal Union's (UPU), EMS co-operative or through other consortia, their direct presence is limited to a few countries or regions. The third category includes smaller firms in the EDS industry, which generally operate within a limited geographical space or in niche industry segments. At the bottom end of the market, in most countries, there are a large number of small players, who operate in the low-cost, low-price courier segment, essentially delivering documents and parcels, within a city or region.

Although the "big four" integrators have global presence, their market shares vary considerably across regions. Whereas UPS and Fedex have been private companies since their inception, TNT and DHL Express's present owner, Deutsche Post are examples of national postal operators that have been corporatised and listed on the stock exchange (and hence is no longer owned or controlled by their national government). Both former national postal operators have acquired express delivery companies to broaden their service offering. TNT and Deutsche Post are still the leading postal operators and universal service providers in their respective "home" countries.

Over the last two decades, the EDS industry has seen a large number of mergers, acquisitions and strategic alliances. In certain markets, especially the larger countries in terms of geography, global express companies have local partners, subsidiaries or affiliates to help them to build their networks and expand their scale of operations. Collaborations, strategic alliances and tie-ups have not only led to a major consolidation of the sector but have also made the ownership pattern of the EDS industry quite blurred. In some cases, the four integrators work closely with national postal administrations of various countries including India. Some EDS service providers also have integrated logistics operations.

It is worth mentioning that in many countries, the public postal operator/postal provider (PPO) itself is undergoing reform and liberalisation. In the past, government departments had monopoly over both post and telecommunications, which were under the purview of the same ministry/government department in many countries. In the beginning of the 1980s, the telecommunication sector started liberalising and this led to the separation of governance between telecommunications and post. Thereafter, in the 1990s, the postal sector started reforming and this led to corporatisation and then privatisation of the PPO. At present, in some countries, the PPO has been corporatised; in others, it is a limited liability company<sup>9</sup> and in some cases, it has been completely privatised (for example Germany and Singapore). According to the UPU (2009), out of 156 countries, public postal operators have been corporatised in about 70 per cent of countries. These developments have made it extremely difficult to distinguish the services of postal, logistics, courier and EDS companies and define/classify them.

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<sup>9</sup> This gives the government the option of selling shares to private investors and employees in the future.

In fact, when WTO was formed in 1995, express delivery was not referred to as a separate sector. The W/120 only provides classification of postal and courier services. These were subsectors under communication services, which also included audiovisual and telecommunications. The UNCPC (from which the WTO classification is derived) classified postal and courier as a part of “post and telecommunications” sector reflecting the fact that, in most countries in the past, post and telecommunications were governed by the same ministry. The classification is based on ownership, where the state-owned monopoly provides postal services while courier services are supplied by privately owned companies. As per this classification, the national postal administration can also supply service related to pick-up, transport and delivery of parcels and packages, which is similar to the services offered by courier companies. The global scenario has changed since then and the later version of UNCPC has taken that into account (see Table B1 in Appendix B). In the UNCPC Version 2, the postal service provider refers to any operator providing universal service obligation rather than only to the national postal administration.

With postal reforms, the W/120 classification has received significant criticism. For instance, Plummer (2005) points out, a fundamental feature of including postal and courier in the GATS classification is that it is based on ownership rather than the type of the product. A substantial part of the negotiations in the first few years of the Doha Round focused on classification issues, which are discussed in details in Section 3. However, subsequently, the discussions have shifted from classification issues to actually getting commitments. What needs to be highlighted is that countries are at different stages of development and their position in WTO or other international agreements largely depicts the developments in their domestic market. For instance, in the WTO, the EU proposed that classification should be on the basis of who handles the services rather than who owns it. This is because in EU member states, the postal sector has undergone significant liberalisation, including complete privatisation of public providers in some countries. The EU has agreed to gradually reduce postal monopolies and open the postal market for full competition by January 1, 2011. This means that there no longer will be a legal monopoly for the collection, sorting, transportation and delivery of letter mail and other items in the EU member states. It is important to note that delivery of items above a certain weight and price threshold have been open to competition since the mid-1990s and that postal monopoly was limited to letter mail items (items of correspondence). This market approach is significantly different from the US. In the US, the postal service still retains clearly defined and limited exclusive monopoly while express and other carriers compete outside the scope of the monopoly. The US proposed to include express as a third sub-sector under “Communication Services” (along with postal and courier) in the WTO. It is also taking substantial commitments from its trading partners in the EDS in its bilateral FTAs. The different approaches to the postal market in the US and EU can help to understand why the US WTO approach is focused on market opening for express delivery services while the EU is including postal and courier activities in its proposed classification.

There are certain advantages of treating the EDS sector separately. First, the EDS is a premium service and not a direct competitor of ordinary postal services, which comes under the universal service obligation (USO). The EU Directive (2008/6/EC dated February 20, 2008) makes a differentiation between basic postal services (whether public or privately provided) and express, with the latter being subject only to registration, not other regulation (express is outside the USO). The US regulation, on the other hand, does not refer to express delivery services, but all private delivery services are outside of the ‘regulatory regime’, since the regulator only regulates the public postal provider. Second, the bulk of the EDS is provided by the private sector and hence, is more vulnerable to competition than basic postal services. For a developing country, which is trying to improve its logistics chain or improve its trade facilitation process, a more liberalised EDS sector will expand trade and attract investment. On the other hand, segregation between courier and express may not be justified since both are mostly private-owned – with express being larger companies with national/international operations and offering more value-added integrated services. Logically, the distinction should be between a basic public postal service, the provision of which can be ensured through a USO, and other delivery services that are provided through the market.

These are some of the issues that are debated across the world as many countries, including India and China, are initiating postal reforms. To date, there is no common country position and each country is designing the regulatory framework to serve its own interests (Table 1.1). However, this has created complexities as different countries with different regulatory regimes, different definitions etc. are negotiating bilateral/multilateral agreements. There are some global best practices in drawing up regulations, which include issues such as the setting up of an independent regulator, the nature of USO, not allowing anti-competitive practices etc. These are the essential pillars of designing a regulatory framework for any service sector. In the case of telecommunications, the WTO Reference Paper on Basic Telecommunications (dated April 24, 1996),<sup>10</sup> has helped the WTO member countries have a basic minimum regulatory framework for the telecommunication sector which incorporates global best practices. A similar approach has been proposed by the EU in its draft Reference Paper<sup>11</sup> for Postal and Courier Services. The paper proposes a range of additional commitments including an independent regulator, elimination of anti-competitive practices, definition of scope of universal service and guidance on licensing provisions. In the case of postal and courier and EDS, there is another debate on whether EDS should be covered under the postal regulatory framework. As shown in Table 1.1 below, in many countries, especially those that have undergone reforms, EDS is outside the purview of the postal regulator.

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<sup>10</sup> For details see [http://www.wto.org/english/tratop\\_e/serv\\_e/telecom\\_e/tel23\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/telecom_e/tel23_e.htm)

<sup>11</sup> WTO Document TN/S/W/26 dated 17 January 2005.



**Table 1.1: Postal Reforms in Different Countries**

<b>Country</b>	<b>Monopoly Definition</b>	<b>Remarks</b>	<b>Independent Regulator</b>
Australia*	Postal Monopoly is limited to letters less than 250 grams and express companies excluded if they charge four times the basic price of a standard letter at the lowest weight slab. Express is outside monopoly		Independent statutory authority
China	Monopoly remains subjective; includes a subset of “letter-articles”. Express companies are “entrusted” to do international letter delivery	Foreign operators are not allowed to engage in domestic letter-article market; domestic companies are outside of monopoly	State Postal Bureau. It also regulates express delivery
Czech Republic*	Monopoly restricted for items less than 50 grams and 2.5 times the price of first class mail at the lowest weight slab.	As long as charges are more than 2.5 times the price of lowest weight level, (20 grams) there is no infringement of monopoly	Government controlled
Estonia*	No Monopoly. Full Liberalisation		Government controlled
France*	Monopoly restricted for items less than 50 grams and 2.5 times the price of first class mail at the lowest weight slab. Express is outside monopoly	As long as charges are more than 2.5 times the price of lowest weight level (20 grams), there is no infringement of monopoly	Semi/partially independent regulator
Germany*	Fully liberalised from 2008. Express is outside monopoly		Government controlled
Hungary*	Monopoly restricted for items less than 50 grams and 2.5 times the price of first class mail at the lowest weight slab. Express is outside monopoly	As long as charges are more than 2.5 times the price of lowest weight level (20 grams), there is no infringement of monopoly	Semi/partially independent regulator
Italy*	Monopoly restricted for items less than 50 grams and 2.5 times the price of first class mail at the lowest weight slab. Express is outside monopoly	As long as charges are more than 2.5 times the price of lowest weight level (20 grams), there is no infringement of monopoly	Government controlled
Malaysia	No monopoly for express	Exemptions for courier/express	Independent statutory authority

Country	Monopoly Definition	Remarks	Independent Regulator
		operators by way of separate class license with no limitations to weight or price	
Netherlands*	Full liberalisation 2008. Express is outside monopoly		Semi/partially independent regulator
New Zealand*	No monopoly		Government controlled
Norway*	Monopoly restricted for items less than 50 grams and 2.5 times the price of first class mail at the lowest weight slab. Express is outside monopoly	As long as charges are more than 2.5 times the price of lowest weight level (20 grams), there is no infringement of monopoly	Government department.
Singapore*	Minimum charge of a local express letter must not be lower than \$1 per item or three times the prevailing postage charged by SingPost for an ordinary letter in the first weight-step of 20 grams, whichever is higher. No monopoly		Independent statutory authority
Sweden*	No Monopoly. Full Liberalisation		Semi/partially independent regulator
UK*	No Monopoly. Full Liberalisation	An independent postal regulator to regulate postal services	Independent regulator
USA*	Postal monopoly is limited to deliveries to mail boxes and to letters less than 12 ounces or priced less than six times the minimum first class mail rate (stamp, now 44 cents). There is no prohibition on delivery of non-business documents, government or official documents Express de facto is outside monopoly (by price)	No approvals/licenses from national postal services are required for express companies to carry documents provided outside the weight or price rules.	Independent regulator which regulates only United States Postal Service (USPS)

Source: Compiled by the authors from country regulations and survey

Note: \* indicates no regulation for express operators. In case of China, the monopoly position is not clear

## 2. Express Delivery Sector in India

The postal and courier industry is one of the oldest industries in India. According to Deogawanka (2008), the first mention of a systematic postal service using foot messengers is found during the reign of Chandragupta Maurya (322-298 B.C.) when messengers, *doots* (emissaries) and pigeons were used for these duties. The first organised form of courier services is the *Angadia* services. These are the people who carry documents and valuables as a part of their *Ang* or body.

The advent of organised courier and EDS in India can be traced back to the late 1970s and early 1980s. As trade and industry grew, the need for an organised courier service was felt. In fact, foreign companies also started entering the Indian market during that time, mainly through tie-ups with Indian companies. The liberalisation of the Indian economy in the 1990s resulted in an increase in India's trade – both in goods and services. India's international trade has increased more than nine-fold since the 1990s. This generated the need for supporting infrastructure, which in turn facilitated the fast growth of the EDS/courier industry.

The EDS/courier industry in India has undergone significant changes. Family-owned courier businesses have grown and developed into EDS companies providing integrated services. There have been a number of mergers, acquisitions and tie-ups, which has resulted in some consolidation. Nevertheless, the express/courier industry in India is still highly fragmented with a wide variety of companies offering different kinds of services. There are four main categories of express/courier companies in India, apart from India Post, which also offers express mail services. These include the global integrators, the large Indian companies, regional players and small courier companies.

All the four global integrators (UPS, FedEx, TNT and DHL), are present in India. They mostly focus on large corporate clients. They carry high-value consignments and documents, mostly to and from international markets and they offer regular and value-added services based on international standards. They do have tie-ups, partnership, etc., with local Indian companies. Global integrators have also acquired Indian companies who cater to the domestic market. For example, Blue Dart was acquired by DHL in 2004 and Prakash Air Freight Private Limited is owned by FedEx. These companies have well-developed logistics networks and infrastructure, including own aircraft, dedicated gateways for custom clearance (for example, DHL and FedEx in Delhi airport), sophisticated globally owned networked IT and scanning systems, etc.

The large Indian companies such as Desk to Desk Courier (DTDC), First Flight and Overnight Express focus on the domestic market and most of them have a good, countrywide network. Some of these companies also service selected international markets. In terms of their market segment, it can be said that these companies target

the entire spectrum of the domestic market (including intra-city delivery and mass mailing) along with the value segment of the international market. These companies also provide some of the value-added services offered by the multinational EDS providers.

The third category consists of regional Indian players. They may have a countrywide network but generally, they are more focused on certain regions of the country. Some of these companies are located in manufacturing hubs like Tirupur (knitted textile hub) in the south or Jalandhar (sports goods hub) in the north. These are medium-sized companies (for example, Shree Maruti Courier Service Private Limited in the western part of India) but they compete directly with the bigger Indian companies in the regions where they have a strong presence.

The fourth category consists of large numbers of small companies, which essentially provide local courier services. They have a much lower level of capital and investment and are mostly in the unorganised sector. These companies provide door-to-door courier service without any other value-added services. They mostly carry low-value items like documents, gifts and some mass mailing items, and their charges are also lower than that of the organised operators.

The India Post has express mail services, which is similar to that offered by large pan-India courier/express companies. It is the largest postal network in the world with 1,55,204 post offices (followed by China).<sup>12</sup> However, all post offices do not offer EMS services. India Post also has collaborations and tie-ups with large express companies and global postal operators. In 2008, it launched an international express delivery services (WorldNet Express) in partnership with Deutsche Post Worldnet.

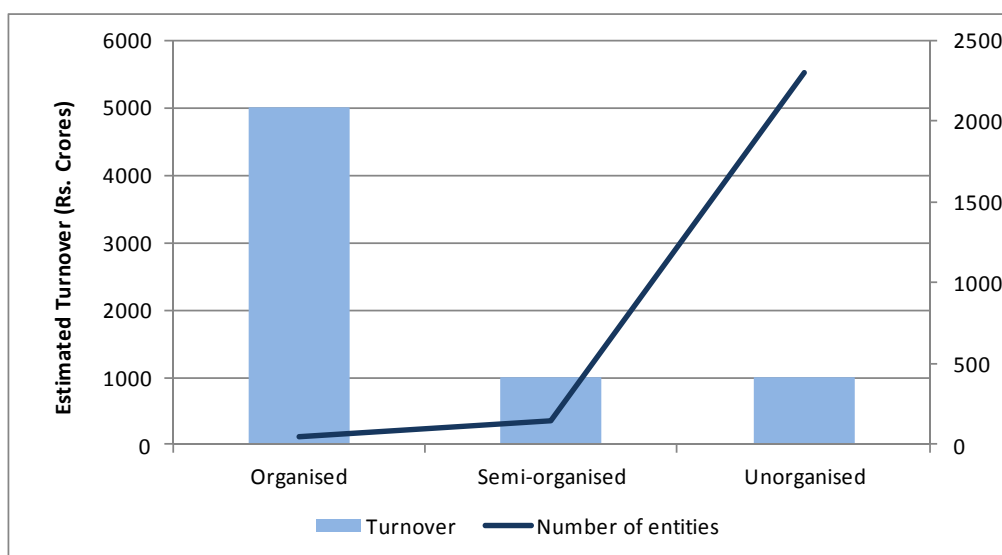
Since the courier/express industry in India is fragmented and there are a large number of small players, it is also difficult to estimate the total number of players in this industry. According to one estimate<sup>13</sup>, there are more than 2500 companies, employing close to 1 million people directly and indirectly. Out of them, only a handful (between 20 and 30) belongs to the organised/corporate sector but they account for 70 per cent of the total revenue. There are about 2400 companies in the unorganised/non-corporate segment, which earn less than 15 per cent of the total revenue. Figure 2.1 shows that the market structure is skewed, with a small number of companies earning a bulk of total revenue.

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<sup>12</sup> [http://www.indiapost.gov.in/National\\_Postal\\_Policy.htm](http://www.indiapost.gov.in/National_Postal_Policy.htm)

<sup>13</sup> CARE (2006)

**Figure 2.1: Structure of EDS/Courier Industry in India**



*Source: Compiled by authors from Figure 4.1 page 16, CARE (2006)*

*Notes: Organised segments includes India Posts' EMS*

There are a few estimates of the size of the Indian express and courier industry. According to one estimate<sup>14</sup>, the size of the Indian express and courier market was Rs.71 billion in 2005-06 (Figure 2.1). According to another estimate<sup>15</sup>, the current size of the industry is around Rs.90 billion. Although the sector was growing at a compound annual growth rate (CAGR) of 33 per cent in the last decade, the growth rate has since stabilised at 20-25 per cent per annum. There was a fall in the growth rate during mid 2008-2009 due to the global financial crisis; however, growth rates started to increase after September 2009. Industry estimates indicate that the express industry grows at two and a half times the Gross Domestic Product (GDP) growth rate. Hence, if India is expected to grow at between 8.25 and 8.75 per cent in 2010-2011 as projected in the Economic Survey (2010), then the growth of the express industry will continue to be 20-25 per cent.

In India, the postal sector is regulated by the Department of Posts under the Ministry of Communication and Information Technology. The courier/EDS industry is regulated by a large number of ministries/department at the centre, state and local level (the list is given in Box C1 in Appendix C). This has resulted in multiplicity of regulations and multilayered administration.

The Act regulating the postal sector in India is outdated. During British rule, the Indian Post Office Act was introduced in 1898 and to date, the postal sector continues to be governed by this Act. This Act states that 'letter' is a monopoly of the Postal

<sup>14</sup> CARE (2006)

<sup>15</sup> EICI, <http://www.eiciindia.org/FrontSite/aboutus.aspx>

Department (which can also be referred to as its reserved area). However, the term ‘letter’ was not defined in this Act. This has resulted in ambiguities regarding what constitutes a letter and what makes it different from a ‘document’. With liberalisation, as private service providers entered the Indian market, the lack of clarity in the definition of ‘letter’ allowed private companies to operate freely in both the documents and letters segment. The India Post is of the opinion that it is losing revenue due to the entry of private enterprises into its reserved area. However, it is difficult to prove this under the present Act. Further, the sector has undergone significant changes and an over 100-year-old Act cannot properly regulate this sector. To regulate the postal sector, the ‘Indian Post Office (Amendment) Bill’ was introduced in 2006. This bill received significant criticism from the private EDS/courier companies and their clients/users, which included the fast growing Indian manufacturing and service industries. The bill was subsequently withdrawn. The postal department is in the process of drafting a new Act that will replace the 1898 Act. The purpose of the new Act is (a) to provide a regulatory framework in line with recent changes and developments and (b) design a reform path for India Post.

Since there is limited information on the courier/express industry, the Indian Council for Research on International Economic Relations (ICRIER), along with Indian Institute of Management-Kolkata (IIMC), conducted a survey to understand the express delivery and courier industry in India, its key drivers, barriers that the industry is facing, its future growth prospects and, more importantly, the likely impact of the new regulation on this industry. The likely impact of the regulation on clients/customers of the EDS and courier<sup>16</sup> industry has also been surveyed. The survey covered express and courier companies, their associations, some key industries using express services, India Post, employees of express/courier companies and India Post, freight forwarders, customs house clearance agents, industry associations, logistics experts and academicians and different departments of the government. The sampling frame is given in Table 2.1 below. The survey was based on a semi-structured questionnaire. Some questions were kept open-ended to capture as much information as possible, while closed-ended questions helped to maintain the commonality and formed the basis of comparison between various respondents. In all 415 respondents across eight cities – namely Delhi, Gurgaon, Mumbai, Pune, Chennai, Bangalore, Hyderabad, Kolkata – were covered.<sup>17</sup>

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<sup>16</sup> Courier is defined as a professional delivery service in which goods (usually documents, small samples, patterns or important spare parts up to 5kg in weight) are accompanied personally during all stages of transportation from sender to addressee without rerouting. The most important feature of courier services is the personal accompaniment of the transported goods. However, there is no watertight distinction between courier and EDS. Hence, this paper refers to EDS/courier.

<sup>17</sup> The field survey was conducted by SRG Consultancy Marketing Planning Services, Kolkata over a four-month period. Information was collected through face-to-face interviews and each interview lasted around one and a half hours. Three sets of questionnaires were designed – one for the courier/express companies, one for their clients and the third for employees of India Post and courier/express companies. In addition to the field survey, stakeholder consultations were held in Delhi and Mumbai and the authors conducted around 50 in-depth interviews with government officials, company executives, sector experts, industry associations, freight forwarders, etc., across

**Table 2.1: Sampling Frame**

<b>Type of Respondents</b>	<b>Number of Respondents</b>
Express/courier companies or service providers	133
Users industry/clients	90
Employees of courier companies	92
Employees of India Post	33
Human resource managers of express companies	5
Custom clearing agents and freight forwarders	19
Associations (including small courier associations, express associations, foreign forwarders associations)	8
Government officials from different departments at the centre, state and municipal level	28
Logistics and legal experts	7
<b>Total Respondents</b>	<b>415</b>

This paper does not aim to provide the survey analysis, which is discussed elsewhere (for the survey of service providers, see Mitra et. al, (2009))<sup>18</sup>. It only refers to some key results of the survey that enables one to understand recent trends and developments in this sector, draw up India’s negotiating strategies and helps to suggest a reform path for this sector.

The future growth of this sector will depend on the forthcoming postal bill. In this context, this survey tried to highlight some important issues relating to the bill, including whether it should cover EDS and courier services or not, if it covers EDS, should private service providers be regulated by India Post, which also has a stake in this sector? Who should be the regulator and what should the regulator regulate? With liberalisation, countries across the world are reducing the reserved area. This has raised the question of whether there should be a reserved area and if it is deemed necessary, how to define and monitor it. Since express/courier companies are labour intensive and their growth leads to employment generation, there are issues relating to the implication of the Act on employment.

Since the new Act is yet to be framed, the ICRIER survey tried to understand some of the implications of the 2006 Amendment bill. The bill proposed the following:

- A price and a weight multiple will be used to define a letter. Initially, the proposal was to use the weight of above 300 grams for documents/letters to be outside the reserved area. Later, due to opposition from courier companies, it was reduced to 150 grams. The bill stated that if private players want to operate in the ‘letter’ segment below 150 grams, they will have to charge 5

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the cities mentioned. Interviews were also conducted with CAPEC (Conference of Asia Pacific Express Carriers) and UPS and DHL Asia Pacific headquarters in Singapore.

<sup>18</sup> “A Survey of Indian Express Delivery Service Providers”, Subrata Mitra, Arpita Mukherjee, Parthapratim Pal, Working Paper Series, WPS No. 638/ May 2009, IIM (Calcutta).

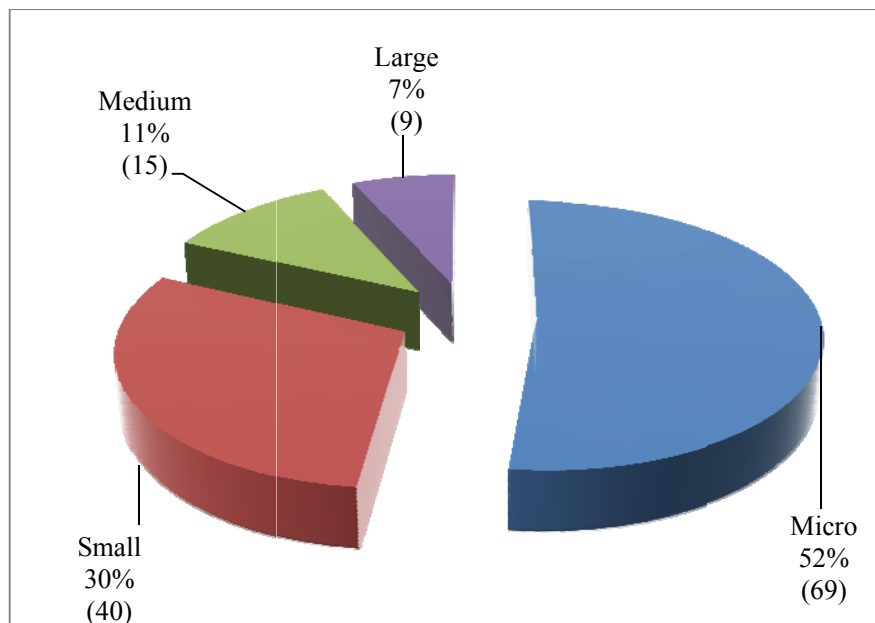
times the minimum postal tariff for normal delivery of documents and 2.5 times the speed post/express delivery (EMS) rate for express delivery.

- A universal service obligation (USO) fund will be set up to which private service providers with a minimum turnover of Rs.2.5 million annual would contribute 10 per cent of their turnover.
- A foreign direct investment (FDI) cap up to 49 per cent will be imposed.
- A regulatory authority will be set up, although its role was not clearly defined.

Detailed questions were asked on each of the issues during the survey. The survey also tried to take account of the fragmented nature of the express/courier sector in India, characterised by a few large companies and a large number of small companies. Figure 2.2 shows that 109 out of 133 respondents, i.e. 82 per cent, belong to the micro and small categories, and the rest 18 per cent belong to the medium and large categories.

The key findings are discussed below.

**Figure 2.2: Distribution of Respondents According to Their Sizes**



*Note: (a) Micro: <Rs. 1 million, small: Rs. 1-20 million, medium: Rs 20-50 million and Large: >50 million (in terms of investments in equipment for the service sector). (Source: Micro, Small, Medium Enterprises (MSME) Development Act 2006, [http://msme.gov.in/MSME\\_Development\\_Gazette.htm](http://msme.gov.in/MSME_Development_Gazette.htm)).*

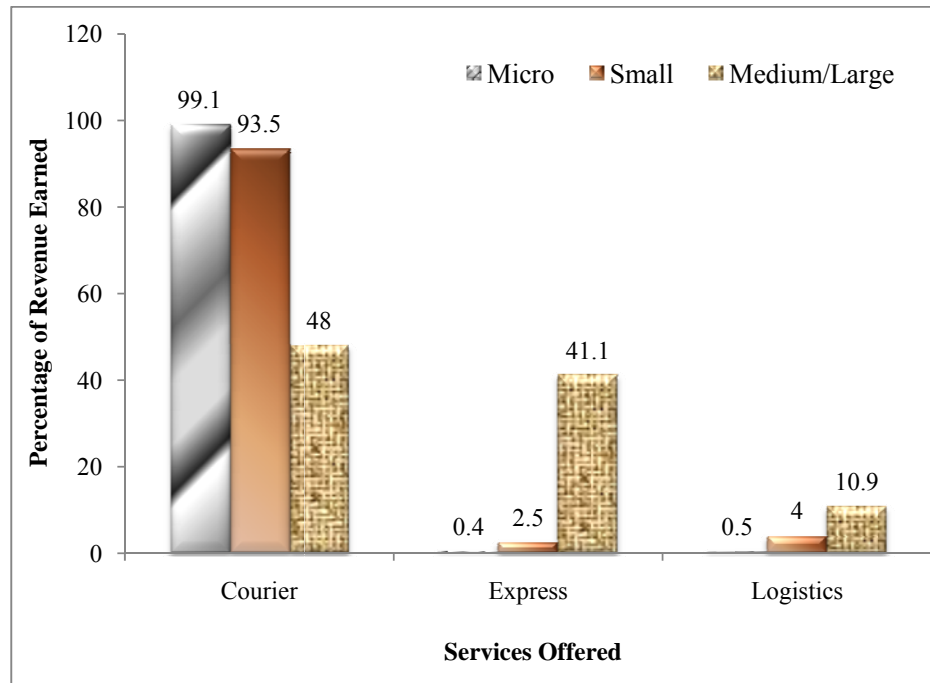
*(b) Numbers are given in brackets.*

The survey found that many companies, irrespective of their size, do not distinguish between courier and express services. Smaller companies are most likely to refer to themselves as courier service providers. As the companies grow in size, they are more



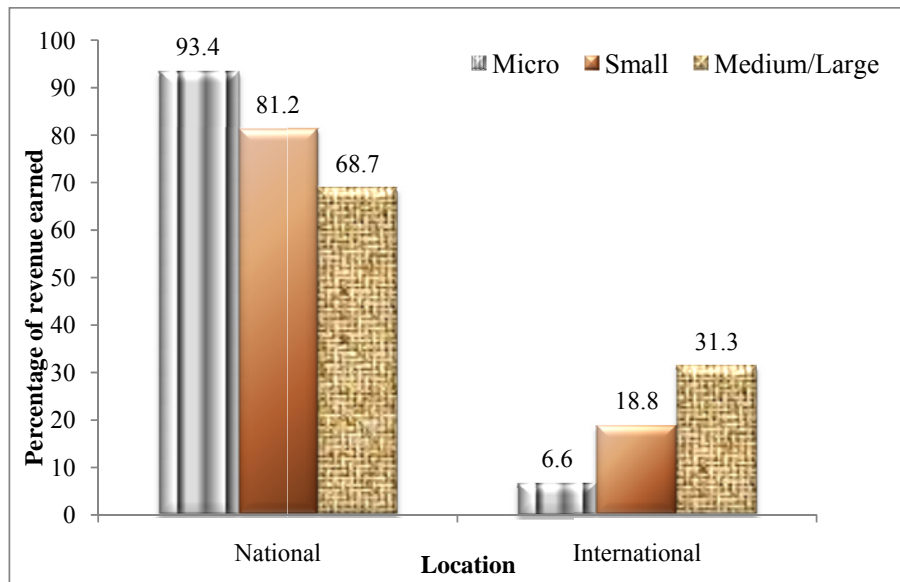
likely to offer value-added services and logistics services. As a company grows in size, the percentage of revenues earned from express, logistics and other value-added services increases. For example, medium/large companies earn more than 50 per cent of their revenues from express and logistics while micro and small companies earn more than 90 per cent of their revenues from courier services (Figure 2.3).

**Figure 2.3: Percentage of Revenue Earned from Different Services for Micro, Small and Medium/Large Companies**



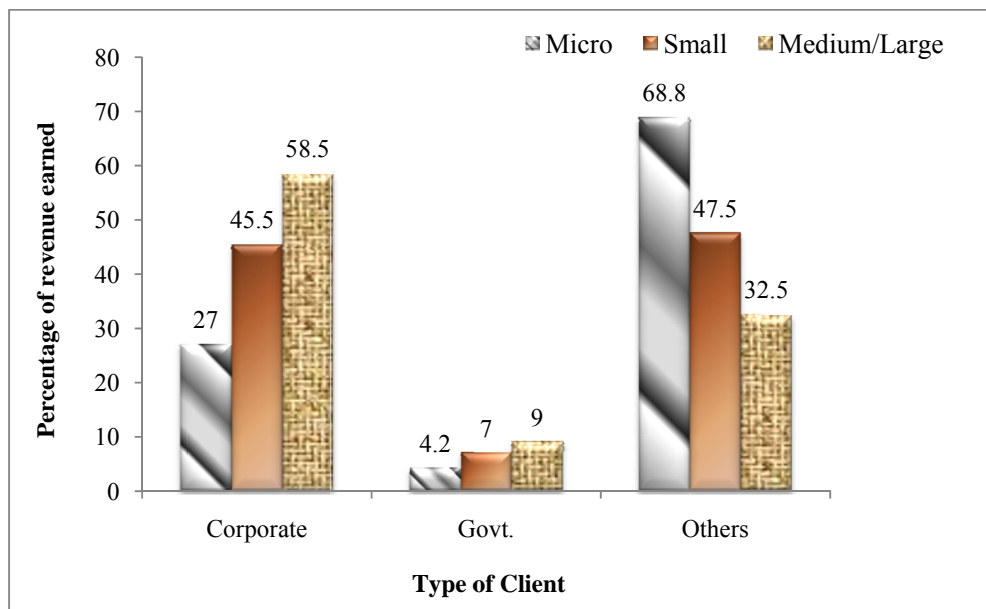
Networks, tie-ups and strategic alliances are common in this business and both large and small companies operate through strategic partnership. In terms of geographical spread, smaller companies are more dependent on the Indian market than the larger companies. As a company grows in size, the percentage of revenues earned from international business increases (Figure 2.4). Hence, any regulations that adversely affect the operations of private companies within India are more likely to affect adversely smaller companies than larger ones.

**Figure 2.4: Percentage of Revenue Earned from Different Locations for Micro, Small and Medium/Large Companies**



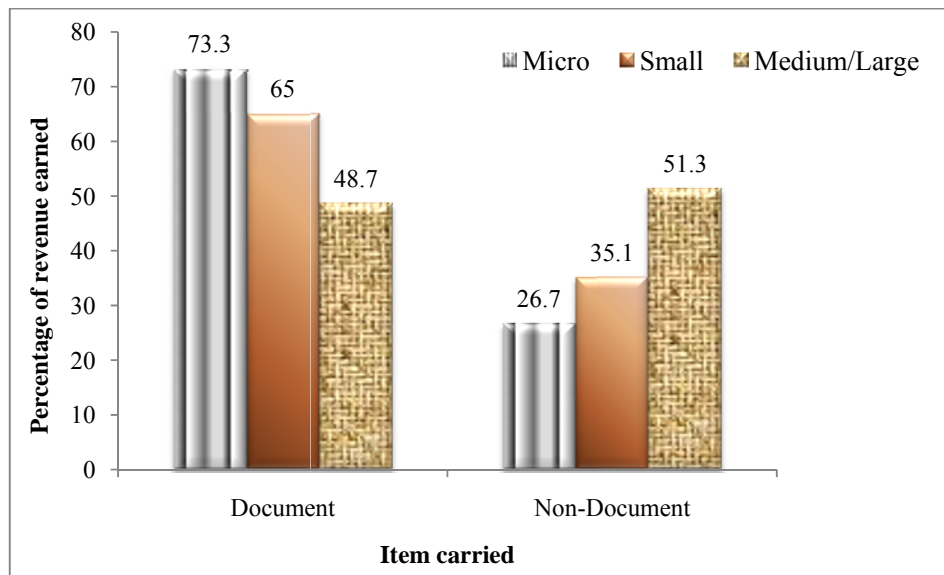
The survey also found that as a company grows in size, its business with the corporate sector increases (Figure 2.5). Interestingly, different government departments also use express/courier services. Large companies are more likely to have large corporates and government as clients than small companies, whose primary consumers are individuals and households. Individuals and households are likely to be more price sensitive than corporate clients are. However, an increase in price can affect the global competitiveness of corporate clients.

**Figure 2.5: Percentage of Revenue Earned from Different Clients for Micro, Small and Medium/Large Companies**



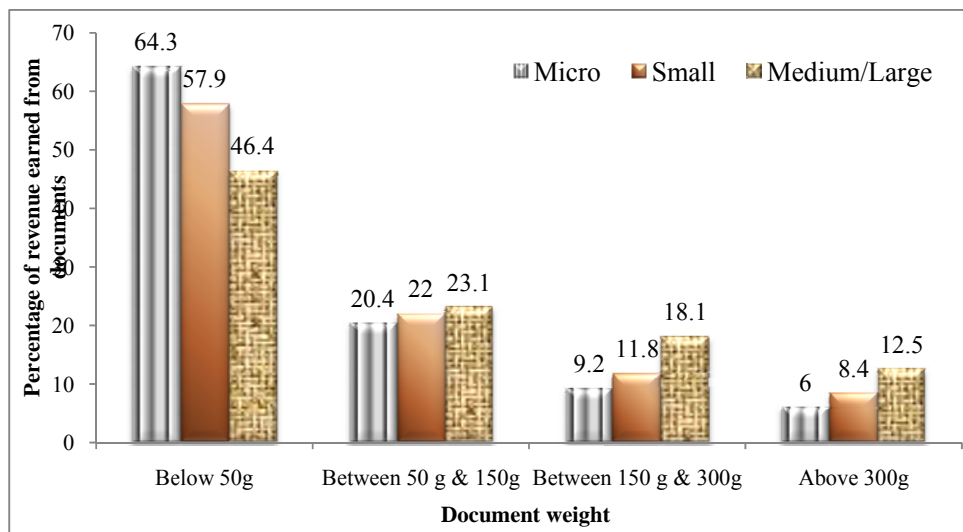
All companies, irrespective of their size earn a substantial part of their revenue from the documents business (Figure 2.6). However, smaller companies are more dependent on the document business. Medium/large companies earn more than 50 per cent of their revenues from non-documents. In this context, it is worth mentioning that globally, with the development of technology such as e-mail and SMS providing alternative modes of communications, the size of the document business is diminishing. In the case of countries like India, this reduction is partly compensated by outsourcing of financial, legal and other services for which there is a requirement for cross-country document movements. The users/clients of the EDS and courier industry pointed out that the global competitiveness of Indian service sectors like business process outsourcing and financial services, where there is need for document transportation, are highly dependent on the EDS and courier industry.

**Figure 2.6: Percentage of Revenue Earned from Different Items Carried by Micro, Small and Medium/Large Companies**



The survey found that if the government imposes a reserved area by a weight restriction, it can have different implications based on the weights used. As shown in Figure 2.7, the bulk of documents are in the lower weight, i.e., less than 50 grams. At least 70 per cent of the document revenues for all companies come from documents below 150 grams weight. However, as a company grows in size, the percentage of revenues earned from documents of higher weights increases.

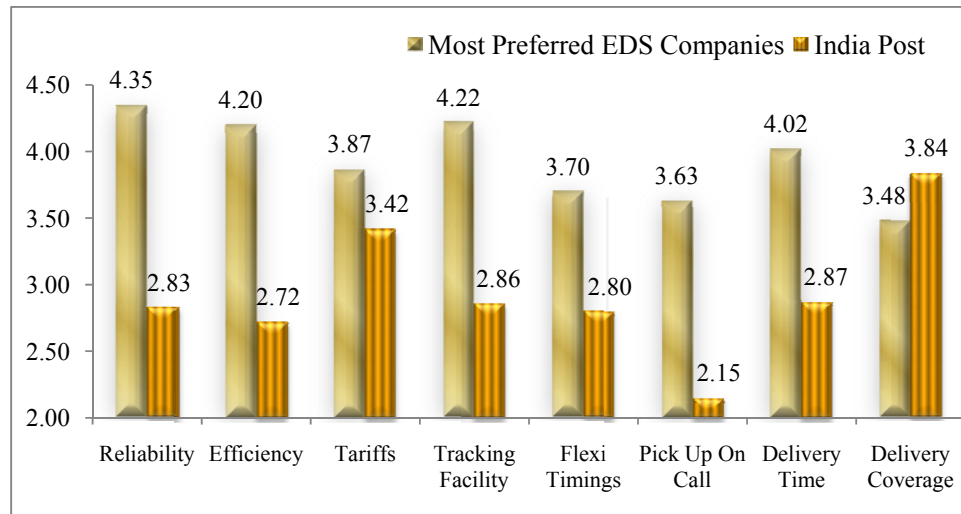
**Figure 2.7: Percentage of Revenue Earned from Documents of Different Weights for Micro, Small and Medium/Large Companies**



The findings highlight that smaller companies are more dependent on the document business than larger companies are. If the proposed postal bill stipulates that carrying documents below 150 gm weight is the exclusive privilege of India Post, all companies, irrespective of size, will be hit to varying extents with micro and small companies, who will lose more than 50 per cent of their overall revenues, being hit the hardest.

EDS/courier companies opined that clients/customers are price sensitive and the use of a price and weight multiple as proposed by the 2006 Amendment bill will lead to an increase in cost and, therefore, a reduction in business. However, the survey of clients/users showed a different picture. Clients were asked to rate their most used courier/express companies and India Post in terms of certain key performance indicators. Figure 2.8 shows that in key performance indicators like door-to-door service, on-time delivery, pricing and relationship, EDS/courier companies seem to have a better ranking than India Post. India Post got a better ranking in coverage and many clients mentioned that they had to use India Post because private courier/EDS companies lacked adequate coverage.

**Figure 2.8: Perception Ranking of India Post and the Most Preferred EDS provider of sample companies (Scale of 1 to 5, higher is better)**



When asked about the reserved areas proposed in the 2006 Amendment bill, 41.1 per cent of clients said that increase in courier/EDS charges because of the imposition of price multiples will not affect their business. This is because their courier/EDS companies are already charging them a price over the proposed reserved area. Four respondents said that it would affect their business only marginally. However, 49 (54.4 per cent) companies said that they would face increasing operating costs that would affect their global competitiveness and profits. Some respondents suggested that they would reduce physical transfer of documents and letters and rely more on the electronic mode to transfer such papers. About 80 per cent of the respondents felt that the reserved area was not desirable. Interestingly, both courier/EDS companies and clients argued that it was difficult to monitor a reserved area in a sector that is largely unorganised. Some courier/EDS companies suggested that they would increase the package weight by clubbing documents for a specific area in a single packet. This raises the issue of how to monitor the reserved area if it is implemented through a new regulation.

When asked about USO funding, survey participants pointed out that the Department of Posts gets a budgetary grant to cover its USOs; currently it has a reserved area for letters; besides, payments under certain government schemes such as National Rural Employment Guarantee Scheme<sup>19</sup> is given through India Post. Therefore, there are various ways in which the department is already getting USO funding. Hence, any additional requirement of USO funding has to be justified. The USOs have to be clearly defined and the shortage of funds for meeting it has to be clearly spelt out. EDS/courier companies argued that instead of asking some of them to contribute to

<sup>19</sup> Under this scheme, the government gives a statutory guarantee for 100 days of wage employment in a financial year for able-bodied persons in rural districts.

USO funding, they should be given the option to provide USO services. The 2006 Amendment Bill proposed that only large companies should contribute to USO – this would prevent economies of scale, which is vital for the efficient performance of this sector. Over 64 per cent of clients/users pointed out that there should not be any USO on courier/EDS companies.

Foreign companies and large Indian companies have been more vocal about the FDI cap of 49 per cent. At present, 100 per cent FDI is allowed in this sector and the 2006 Amendment Bill has created an uncertain operating environment for foreign investors (who have invested or are willing to invest in this sector). This proposal has been widely criticised by Indian trading partners. Requiring the existing foreign companies to divest equity will not only undermine the development of this industry but will also have an adverse impact on FDI inflows and the future growth and development of the country.

The survey found that as India is in the process of implementing a regulatory framework, the need for the regulator, its role and responsibility is being widely debated. There is also an on-going debate on who will be covered under the regulation. Will it cover post, courier and express or only postal services? Will the regulation be consistent with international best practices and, more importantly, what is the international best practice in this sector? As mentioned earlier, globally there is no uniformity across countries as to who should be the regulator and what it should regulate. The regulator can be government controlled or an independent regulator (Table 1.1). However, except in some countries like China, EDS is outside the purview of the USO regulator. China is in a situation similar to India's, where regulation is still evolving.

In India, there is no common view across different segments of the courier/express industry and their clients on regulatory issues. Large express/courier companies felt that EDS should be outside the scope of the regulator. Around 59 per cent of clients suggested that the government should impose some form of registration/licensing to put a check on fly-by-night service providers. Smaller courier companies also felt that some form of registration from an independent organisation would provide security and credibility to them. However, they differ as to who should be the registering organisation – should it be a central courier association, regional associations, or should they register with an independent regulator? The survey found that there is a complete lack of understanding about the registration process. Some argued that there is no need for a separate registration body. All courier companies have registered with several organisations. For instance, they require sales tax registration. Those in international business are registered with the customs. Why should they now need another registration authority? Others argued that since there is no single organisation that registers and monitors the courier business, it is necessary to establish one. Overall, smaller companies are more in favour of registration while larger companies oppose it.

Most of those who want registration argued that it should be a one-time registration based on the payment of a nominal fee and should have life-long validity. If it is life-long registration, then it is difficult to monitor service quality. Experts argued that registration cannot be life-long but it can be for periods as long as ten years. For ensuring service quality, there should be some basic standards that all companies have to follow and a periodic monitoring mechanism should be in place to ensure that companies comply with that standard. Such periodic monitoring entails costs.

In this context, it is worth mentioning that the courier industry, unlike sectors like telecommunications or electricity where there are only a few corporate players, is highly fragmented with a large number of unorganised players. Hence, it would be difficult for a nominal registration fee to cover the cost of regular monitoring of a large number of small, family-based, unorganised companies spread across India. Moreover, in the case of sectors like telecommunications, the licensing fees are high, which covers the cost of monitoring.

Overall, the survey found that the cost of registration and monitoring is likely to be higher for smaller companies than larger companies since smaller companies are more localised, they do not have large administrative departments, and/or a mechanised system of regular collection of data/information.

The survey found that policy makers, legal experts and industry associations seem to be confused about whether courier/express companies fall under the ambit of a postal regulator. Larger companies have voiced apprehensions about the regulator regulating express delivery and they cited examples of countries where the regulator regulates only the postal operator, which has been privatised/corporatised. Some experts believe that the regulator should regulate everything i.e., the post, courier and express. On the other hand, the express delivery companies felt that they should be able to conduct their business under general commercial rules that apply to normal competitive services. They argued that they are not granted exclusive rights, are not eligible to receive state funding and are not subject to any public service obligation that would justify regulatory control. Those who believe that the regulator should regulate courier/EDS and post pointed out that the Telecom Regulatory Authority of India (TRAI) regulates both basic and mobile services. However, one needs to note that TRAI primarily regulates basic services. Moreover, interconnection, access to scarce network, spectrum, etc., are more important in the case of telecommunication sector than courier services. Courier/EDS companies maintain separate, independent networks. While courier services also require networks, these are largely human networks. There are no entry or exit barriers in EDS/courier business, unlike in the telecommunications sector.

Access to basic postal products at affordable prices is a USO function. Generally, only a few players can offer such universal services. Therefore, once the public postal provider is corporatised or privatised, there may be a need for a regulator to monitor

the postal operator. In this context, it is important to mention that the Planning Commission has come up with a draft Regulatory Reform Bill<sup>20</sup>. The Bill proposed a model regulatory framework for sectors like post, airports and railways which are/or will be privatised from public monopolies. It does not talk about courier/express services. Box 2.1 lists the functions of a regulator as proposed in the bill.

**Box 2.1: Functions of a Regulator**

- As proposed by the Planning Commission the functions of a regulator is as follows:
- a. to protect the interests of all consumers, by ensuring quality of service and lowering costs;
  - b. to promote competition, efficiency and economy and prevent market domination, cartelisation and anti-competitive behaviour and for orderly growth of the relevant public utility industry;
  - c. to encourage market development and participation of private sector in the respective public utility industry for ensuring a fair deal to customers;
  - d. to promote efficiency in a public utility industry;
  - e. to promote efficient allocation of resources in a public utility industry;
  - f. to promote service quality in a public utility industry;
  - g. to benchmark, where feasible, a public utility industry and licensees against international standards and specify and enforce standards with respect to the quality, continuity and reliability of service provided by the public utility industry and licensees;
  - h. to associate with environmental regulatory agencies in evolving policies and procedures for appropriate environmental regulation of the public utility;
  - i. to provide non-discriminatory open access to the carriage, owned or operated by a licensee, for use by any other licensee or consumer as the case may be, on payment of fee to be determined by the regulatory commission; and
  - j. to promote equity of access and equitable geographical dispersion of services.

*Source: Draft Regulatory Reform Bill 20\*\* (page number 12-13)*

Most of the functions of a regulator mentioned in Box 2.1 are related to improving efficiency in a public utility industry (in this case, the India Post), and allowing private operators to operate in a competitive environment as the public postal service provider gets privatised.

The EDS/courier sector is competitive – there are no limitations on the number of players and there are no entry or exit barriers. India Post also has express mail services and competes directly with private players. Therefore, private companies felt that if India Post becomes the regulator or the monitoring agency, it is likely to lead to a conflict of interest. Others argued that since the present study/survey showed that express/courier companies are more efficient than India Post, if the regulator only sets and maintains standards, it may work against India Post. Survey respondents further

<sup>20</sup> <http://infrastructure.gov.in/pdf/Regulatory%20Bill%202020.pdf>



argued that if at all there is a regulator, there should be a clear distinction between services that can be subject to a general authorisation (basic registration for non-universal service providers) and those which can be made subject to an individual license (providers of services within the scope of the universal service). The cost of any authorisation should be strictly related to the cost of administering the system. There should not be any cross subsidisation of express services with monopoly revenues or other abuse of dominant position.

Some of the smaller companies felt that the regulator could address anti-competitive issues, consumer grievance, etc. Others argued that the Competition Act could take into account anti-competitive practices. Some legal experts felt that although India does not need a regulator similar to the telecommunication sector, there is need for a regulator to set up core standards in the interest of consumers. In India, consumer forums take a long time to adjudicate consumer complaints and if a neutral body sets up the standards, it may help speed up the adjudication process. Further, service standards can be monitored. Regulatory experts from the Indian government pointed out that the requirement that a regulator protect the interest of consumers arises in the case of monopoly services such as a single airport in a metro city. In the case of courier/EDS industry, there are multiple service providers and, if the consumer is not happy with his/her current service provider, he/she can easily shift to a new service provider. Regulatory experts from the EU pointed out that a sector regulator can take measures faster than the Competition Commission. However, there may not be a requirement for a separate postal regulator. In 24 EU member states, telecommunications and postal services are regulated by the same regulator. In countries like the UK, there is a separate regulator for post (Postcomm or the Postal Services Commission). In January 2006, the UK's mail market was completely privatised. The ICRIER-IIMC survey found that users/customers have not raised much concerns about the quality of service of private service providers.

Overall, the survey found that designing an appropriate postal law in India is a big challenge. For a long time, private players have been operating in a competitive environment with almost no restriction. However, post is one of the few sectors in India that is still a government monopoly, suffers from monopoly-induced inefficiencies (high operational cost, revenue losses etc.) and is one of the least reformed sectors. There are only a few large EDS/courier companies and a large number of small regional local players, and their interests vary. The EDS/courier industry is an important component in India's logistics chain and technology in this sector is changing at a fast pace. Technology is making certain services, such as letters and post cards, less relevant since they are being replaced gradually by other modes of communication such as SMS and e-mails. In future, mobile phones can also be used for money transfer, which is an important area of operation for India Post. The courier industry is labour intensive and contributes substantially to low-skilled employment. The wage bill accounts for a significant part of the cost of India Post (more than 70 per cent) and, of late, there have been few fresh recruitments. Hence, a

policy that adversely affects the private courier industry can also adversely impact employment in that sector. All these factors have to be taken into account while designing the new regulation. Some of these are discussed in Section 6.

In the context of India's international negotiations, the country is negotiating liberalisation of services including postal, courier and express delivery services both in the WTO and in its FTAs. In the WTO, services negotiations are covered under the GATS framework. The next two sections discuss the extent of multilateral and bilateral liberalisation in postal, courier and express delivery services and in allied sectors and the following section discuss India's negotiating strategies and options.

### **3. Multilateral Liberalisation in Postal, Courier, Express Delivery and Allied Services**

#### ***3.1 Postal, Courier, Express Delivery Services and WTO***

The coverage and classification of postal, courier and express delivery services have been core issues in WTO negotiations. In principle, the GATS covered all services except those supplied in the exercise of government authority. However, the GATS Article I.3c defines such exclusions narrowly as "any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers". In the case of postal services, it is often argued that while basic mail services, reserved area etc., can be under USO and, therefore, outside the scope of GATS, services where national postal administration competes with private sector should, in principle, be covered under the GATS. In fact, the WTO background note by the Secretariat on Postal and Courier Services (S/C/W/39 dated 12 June 1998) clearly stated that "Postal service of a member, whatever the status of the postal supplier, would be services covered by the GATS so long as, and which is usually the case, they are supplied on a commercial basis".

During the Uruguay Round, the postal sector was largely a public monopoly. The definition of monopoly, reserved area, and the extent of exclusions varied from government to government and different WTO member countries interpreted the regulations and GATS text in their own way. It is, therefore, not surprising that the postal sector witnessed limited liberalisation during the Uruguay Round of negotiations. At the end of that Round, only five members, namely Djibouti, Gambia, Israel, Senegal and Turkey, scheduled commitments in this sector, of which only Gambia committed to full liberalisation. A relatively larger number of countries, about 33 members (including the five who had scheduled commitments in postal services),<sup>21</sup> had scheduled commitments only on courier services. In courier services, 42 per cent undertook full market access commitments in Mode 1 and 39 per cent in Mode 3. Around 42 per cent of the members gave full commitments for national

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<sup>21</sup> Argentina, Austria, Barbados, Botswana, Brazil, Canada, Cuba, Czech Republic, Dominica, Estonia, Grenada, Hong Kong, Latvia, Lesotho, Mexico, Norway, Papua New Guinea, Philippines, Poland, Qatar, Sierra Leone, Singapore, Slovak Republic, Slovenia, South Africa, UAE, Uruguay, the US and Venezuela.

treatment. Many important WTO member countries such as Australia, the EU and Malaysia did not undertake any commitments in either postal or courier services (Table 3.1.1). Overall, the multilateral liberalisation in this sector was very modest.

**Table 3.1.1: Commitments of some WTO members in the Uruguay Round: Postal, Courier/Express Delivery and Allied Services**

	Postal	Courier	Air Transport	Rail Transport	Road Transport	Services auxiliary to all modes of transport
Australia			√		√	√
EU			√	√	√	√
USA		√	√	√	√	√
Japan			√	√	√	√
New Zealand				√	√	
Singapore		√				
Thailand			√	√	√	√
Korea			√		√	√
Turkey	√	√	√	√	√	
Brazil		√		√	√	√
Mexico		√	√		√	√
Argentina		√				
Israel	√	√				

Source: Compiled by Authors from WTO Services Database, <http://tsdb.wto.org/default.aspx>

Note: √ indicates sectors in which a country has undertaken commitments

Reforms and liberalisation of the postal sector, which began in the 1990s, resulted in corporatisation and privatisation of public postal operators in many countries. Privatisation has increased the need for regulations to cater to the new regime and in some cases, corporatisation/privatisation has been accompanied by implementation of new laws and the establishment of a regulator. The role of the regulator and its level of independence vary from country to country. As shown in Table 2.2, in Germany<sup>22</sup>, Italy and China, the regulator is government controlled while in the US and UK, it is independent. In the past, universal postal service was considered an essential service for the country's economic and social development. Therefore, governments were obliged to provide high quality basic postal services to all at affordable prices. This is also known as the USO or the universal service obligations. For this, they had monopoly or exclusive rights over delivery of certain products like ordinary letters, bulk mails etc. With privatisation, there is growing realisation that monopoly and reservation for USO service providers are not the only ways to fund USO. USO can be met through other avenues such as budgetary grants, subsidies and cost sharing

<sup>22</sup> In Germany, there is a common regulator for network industries, Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railways (Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen).

with other entities, auctioning of certain services etc.<sup>23</sup> This has led to a reduction in the area reserved for the USO service provider. For instance, successive EU Postal Directives<sup>24</sup> have reduced the reserved area and as of date, there is no reserved area in countries like Germany, the UK and Sweden. As per the EU Directive 2002/39/EC<sup>25</sup>, the reserved area is limited to only mail weighing less than 50 grams and costing less than 2.5 times the price of first class mail at the lowest weight slab. The EU Directive 2008/06/EC<sup>26</sup> stated that the reserved area should end by December 31, 2010, except for certain states, where it has been extended to December 31, 2012.

The reform process is still ongoing. In most countries, the parcel segment has been open to competition. Some countries impose limitations on foreign service providers in the domestic market. Overall, country experiences show that while it is still easier to define postal services, ‘courier’ and ‘express services’ are often used in an interchangeable way.

The Uruguay Round ended in 1995. Article XIX of the GATS envisages progressive liberalisation of trade and investment in services through periodic rounds of negotiations. The first of such round was to begin no later than five years after the entry into force of the WTO Agreement. Accordingly, services negotiations were launched in January 2000 and was called the GATS 2000 negotiations. It then became an integral part of the wider round of negotiations under the Doha Ministerial Declaration of November 2001.

Since the beginning of the Doha Round, a number of developed and developing countries have submitted proposals that show their interest in securing greater commitments in this sector. Many of them focused on classification as the proponents of liberalisation felt that the inadequacy of the GATS classification and its lack of consistency with existing regimes have led to uncertainty and lower commitments in the Uruguay Round. They argued that a proper classification could increase commitments. While some like the EC<sup>27</sup> focused on how services are classified based on who handles them – public or private operator – the US<sup>28</sup> proposed a new sub-sector, ‘express delivery services’. Even though the scope of the US and EU proposals are different, the description of express delivery services is quite similar. Moreover, the differences between the EU and US have gradually reduced. This is reflected in the joint communication of EU, Hong Kong, Japan, New Zealand, Switzerland and the US in 2005.<sup>29</sup> In this communication, the proponents pointed out that the uncertainty created by the classification could be reduced substantially if the WTO member countries adopt a common approach to scheduling commitments. It suggested that members fully describe the committed activities (it can be based on the

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<sup>23</sup> For details see Zhang, R (2008)

<sup>24</sup> Directive 97/67/EC, Directive 2002/39/EC and Directive 2008/06/EC

<sup>25</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:176:0021:0025:EN:PDF>

<sup>26</sup> [http://ec.europa.eu/internal\\_market/post/doc/legislation/2008-06\\_en.pdf](http://ec.europa.eu/internal_market/post/doc/legislation/2008-06_en.pdf)

<sup>27</sup> WTO Document S/CSS/W/61 dated 23 March 2001.

<sup>28</sup> WTO Document S/CSS/W/26 dated 18 December 2000.

<sup>29</sup> See WTO Document TN/S/W/30 dated 17 February 2005.

type of items or type of services delivered), distinguish between competitive activities and reserved areas and use a neutral classification to ensure that commitments on competitive areas apply to all suppliers, including holders of postal monopoly rights if they compete to provide services beyond the scope of their monopoly. It also explicitly states that members may clarify the relationship between activities covered under postal, courier and express services and other interlinked sectors like transport services.

The negotiating proposals also tried to list some barriers to market access and national treatment and raise regulatory issues. For instance, the US proposal (WTO Document Number S/CSS/W/26 dated December 18, 2000) lists a large number of barriers faced by express delivery companies including foreign equity limitations, mandatory requirement for local partnership, discriminatory treatment to foreign service providers with respect to taxes, scope of business and licenses, restrictions/limitations in the use of facilities such as transport, radio frequencies etc. and cross-subsidisation of express delivery services. The proposals on postal and courier services stress the need to address issues relating to market access limitation arising from the existence of monopolies, reservation and licensing requirements. Many proposals referred to burdensome customs procedures. The EU (WTO Document TN/S/W/26 dated 17 January 2005) had a detailed proposal for a reference paper similar to the Reference Paper on Basic Telecommunications.

Countries that have acceded to the WTO after the Uruguay Round have offered liberal commitments in courier services. Out of 25 acceding countries<sup>30</sup>, commitments of 21 countries covered courier services. Countries such as Albania, Moldova and Mongolia offered commitments in both postal and courier services. Many of them offered full commitments in Modes 1, 2 and 3 in courier services. Countries like Vietnam and Ukraine explicitly referred to liberalisation of express delivery services in their accession commitments. In fact, Vietnam and China offered forward looking commitments, which ensured future liberalisation of courier services. The commitments of acceding countries show the interest of important WTO member countries such as the US and EU in securing market access in courier services.

The Doha Round negotiations were initially based on a request-offer approach.<sup>31</sup> Members agreed to submit the initial offers by March 31, 2003 and the revised offers by May 31, 2005. Accordingly, WTO members made bilateral requests to their trading partners in areas of export interest. Since requests were confidential and only

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<sup>30</sup> Albania (8 September 2000), Armenia (5 February 2003), Bulgaria (1 December 1996), Cambodia (13 October 2004), Cape Verde (23 July 2008), China (11 December 2001), Chinese Taipei (1 January 2002), Croatia (30 November 2000), Ecuador (21 January 1996), Estonia (13 November 1999), Former Yugoslav Republic of Macedonia (4 April 2003), Georgia (13 November 1999), Jordan (11 April 2000), Kyrgyz Republic (20 December 1998), Latvia (10 February 1999), Lithuania (31 May 2001), Moldova (26 July 2001), Mongolia (29 January 1997), Nepal (23 April 2004), Oman (9 November 2000), Panama (6 September 1997), Saudi Arabia (11 December 2005), Tonga (27 July 2007), Ukraine (13 November 1999), Vietnam (11 January 2007).

<sup>31</sup> Plurilateral negotiations began only after the Hong Kong Ministerial in 2005.

addressed to the member concerned, it is difficult to make an assessment of the requests. However, the initial offers and revised offers in services did not reflect substantial improvements in commitments in the services.

The Hong Kong Ministerial Conference (December 2005) tried to speed up the services negotiations through a plurilateral process. In all, 30-35 WTO member countries with interest in services liberalisation participated in the plurilateral negotiations. In 2006, the US along with EC, Japan and New Zealand submitted a plurilateral request on Postal and Courier Services, including express delivery services to 20 members<sup>32</sup> including India, China, Singapore, Brazil and Mexico. The request recognised the need for government intervention to ensure the universal supply of basic postal services but called for commitments in activities that are carried out under competitive conditions. It called for clarity of definition and stated that the sector description should specifically include express delivery and clearly distinguish this sector and other high-value services from universal postal services. It asked for additional commitments, wherever possible, to address issues such as licensing requirements, independence of the regulator and unreasonable practices by dominant suppliers. The plurilateral negotiations received a set back with the breakdown of talks on agriculture and non-agriculture market access (NAMA) in July 2006. It resumed in 2007 and, in the signalling conference of July 2008, WTO member countries indicated the extent to which they were willing to undertake commitments.

Since negotiations are ongoing, it is difficult to predict the outcomes. As of March 2010, 55 WTO member countries have offered commitments in courier services and 12 countries in postal services.<sup>33</sup> Some countries have specifically mentioned commitments in express delivery services such as the US, Vietnam and Ukraine. Among them, the EU and New Zealand have offered substantial liberalisation. The new commitments and improvement in existing commitments of some key WTO member countries is listed in Table 3.1.2 below. This table shows that, despite the liberalisation in the postal sector, commitment in this sector is limited and a number of countries have not bound their unilateral regime. Out of these 55 offers, only 11 members offered new or improved commitments on courier services (on the basis of CPC 7512). China's revised offer (WTO Document TN/S/O/CHN/Rev.1 dated July 2005) shows improvements over its accession commitments. In fact, in its revised offer, China offered full commitments in Modes 1 and 2 for market access and allowed foreign service suppliers to establish wholly foreign-owned subsidiaries under Mode 3. China also offered full commitments in Modes 1, 2 and 3 for national treatment, which allowed foreign companies to have same the treatment in China as domestic service providers. In spite of the improvement in commitments, many countries, including India, did not offer to bind autonomous liberalisation. This is a

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<sup>32</sup> Australia, Switzerland, Korea, Hong Kong, Canada, Philippines, Chinese Taipei, Argentina, Indonesia, Malaysia, Thailand, Turkey, South Africa, Egypt and Israel.

<sup>33</sup> [http://www.wto.org/english/tratop\\_e/serv\\_e/postal\\_courier\\_e/postal\\_courier\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/postal_courier_e/postal_courier_e.htm)

cause for concern for the proponent of liberalisation and some countries, such as the US, have now focused on getting commitments through bilateral agreements.

**Table 3.1.2: Offers/Commitments of WTO Member Countries: Postal, Courier, Express Delivery and Allied Sectors**

	Postal	Courier	Air Transport	Rail Transport	Road Transport	Services Auxiliary to All Modes of Transport
Australia	×	×	◻	◻	◻	◇
EU	■	■	◻	◻	◻	◻
USA	◻	◻	◇	◇	◻	◻
India	×	×	■	×	×	×
Japan	■	■	◇	◇	◻	◇
New Zealand	■	■	◻	◇	◇	×
Singapore	×	◇	×	×	×	×
Thailand	×	×	◻	◻	◻	◻
Korea	×	■	◻	■	◇	◇
Turkey	◇	◇	◇	◇	◇	×
Brazil	×	◇	×	◇	◇	◇
Mexico	×	◇	◻	■	◇	◇
Argentina*	×	◇	×	×	×	×
Israel*	×	◇	×	×	×	×
China**	×	◻	◻	◻	◻	◻

Source: Compiled by the authors from Commitments of Countries in the Uruguay Round and Initial Offers and Revised Offers in the Doha Round, [www.wto.org](http://www.wto.org)

Note: × - No commitment; ◻ - Improvement in initial/revised offer; ◇ - No improvement in initial/revised offer; ■ - No commitment in UR but in initial/revised offer; \* - Given only Initial offer;

\*\* For China the improvements are over its accession commitments. China acceded to the WTO in December 2001 after the Uruguay Round.

There are some key issues that have come up during the multilateral negotiations in postal and courier services including EDS. These are given below:

- In these services, especially that of the postal sector, the UPU plays an important role. The UPU was established in 1874 for international regulation of postal services. At present, 191 countries are member of UPU.<sup>34</sup> In the past decade, the UPU has focused on postal reforms in order to deliver quality postal services and respond to customer's needs. This, in turn, is leading to the opening up of postal markets. Since this objective of WTO and UPU are not very different, there is a need for consistency between commitments taken in the WTO and UPU. The UPU has a lower rate of terminal dues<sup>35</sup> for

<sup>34</sup> <http://www.upu.int/members/en/members.html>

<sup>35</sup> Since 1969, the designated operator that sends a letter-post item to another country remunerates the destination Post for processing and delivering that item. This system of remuneration is known as terminal dues. Terminal dues are an important source of revenue for UPU member countries. Since all countries are not at the same stage of development and there are significant variations in their mail volumes, postal tariffs and cost absorption, some preferences are given to developing countries in terminal dues.

developing countries that traditionally have low outbound mail volume. It has been debated in the WTO whether such preferences for developing countries are Most Favoured Nation (MFN<sup>36</sup>) exemptions.

- Many countries are in the process of developing or reforming their domestic regulatory regime for postal services. It is important that the domestic regime is consistent with objectives of UPU and commitments in the WTO. Countries need to be aware that reform of the postal sector is a complex process involving regulatory, structural and technological changes. The reforms should ideally focus on establishing a business model for the public postal operator that enhances productivity and efficiency and at the same time meets public service obligations. A majority of the UPU member countries have restructured their postal service by separating the operational functions of the government from regulatory functions. The domestic regulatory regime needs to be transparent and licensing procedures should be streamlined so that there is less scope for dispute in case a country undertakes commitments.
- The different classifications proposed in the Doha Round of negotiations have their own advantages and disadvantages. It may be difficult for all WTO member countries to have a single classification that meets all their requirements and depict their state of liberalisation. Members, therefore, need to be precise in what they are opening up, clearly define the scope of universal service obligations, and mention the restrictions, reserved area, etc., clearly in their commitments. When a country makes a multilateral commitment in sectors/sub-sectors such as express delivery (where, in many countries like India, the national postal administration competes with foreign service provider), the country may need to reform its domestic regime prior to undertaking such commitments. In other words, it is difficult to give a forward looking commitment in this sector.
- Even if a country undertakes full commitments in postal and courier services including express delivery, the benefits will be limited if there are other barriers to operations such as customs clearances, ability to conduct self-handling, etc. These are not adequately addressed in the current GATS framework. Postal and courier services are also interlinked with other services such as advertising, distribution, transportation, and logistics<sup>37</sup> and commitments in these sectors have implications on the overall liberalisation of postal and courier services.

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<sup>36</sup> MFN means treating one's trading partners equally on the principle of non-discrimination. Under GATS, if a country allows foreign competition in a sector, equal opportunities in that sector should be given to service providers from all other WTO members. (This applies even if the country has made no specific commitment to provide foreign companies access to its markets under the WTO). In order to protect the general MFN principle, the exemptions could only be made once; nothing can be added to the lists. They are currently being reviewed as mandated, and will normally last no more than ten years.

<sup>37</sup> WTO S/C/W/39, 12 June 1998



### ***3.2 Multilateral Liberalisation in Related Services: Transport and Auxiliary Sector***

The ability of courier/EDS providers to efficiently operate and provide an integrated service depends on the access and availability of various other services such as IT and telecommunications, transport facilities, storage and warehousing facilities. To provide an integrated service, express companies often own facilities like trucks, aircraft, and warehouses. Even if they do not own the facilities, they need non-discriminatory access to these services at affordable rates. Thus, it may not be possible for a foreign service provider to provide courier/express services unless these related/complementary sectors are liberalised. The telecommunications sector has witnessed significant liberalisation across the world and in India. Similarly, the Indian IT industry is completely liberalised. The transport sector, on the other hand, was largely a public monopoly prior to the liberalisation of the 1990s and has been progressively liberalised since then. The Indian government is concentrating on the development of transport infrastructure through private partnership. This section, therefore, looks at liberalisation of selected transport and allied sector services, which are crucial for the courier/express industry.

The express industry is time-sensitive and, therefore, unlike logistics/freight forwarders etc. rarely use maritime transport services that carry the bulk of international cargo. Within transport, road transport is an important means for delivery of parcels and other items within the country and between countries in geographical proximity to each other. Access to road transport facilities within a country and ability to operate trucks, vans etc. affect the ability of a foreign service provider to provide courier/express services. Road transport is also crucial for the development of regional trade. Air transport is the fastest means of movement of cargo between geographically dispersed countries. As shown in Table B1 in Appendix B, the W/120, based on the UNCPC, excludes transport of mail by air from its definition of courier services. There are further ambiguities in the definition. First, it does not define the scope of 'mail' and second, it does not make clear whether the exclusion applies only to 'mail' services based exclusively on air transport or to any air transport component of any courier service supplier's operations.<sup>38</sup> Furthermore, the UNCPC does not make any exclusion for transportation of mail by road. For international express operators, who tend to integrate the services of road and air transport, this results in ambiguity. Railways are an environment-friendly mode of transport of cargo and courier/express companies often use fast trains for transportation. Commitments in this mode of transport and other allied services such as cargo handling, storage, warehousing etc. is crucial for the smooth operation of the express sector.

The classification of the transport and auxiliary services sector as given in the W/120 is given in Table D1 in Appendix D. In the GATS, liberalisation of air transport

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<sup>38</sup> For details see WTO Document WTO S/C/W/39, 12 June 1998

services is governed by an *Annex on Air Transport Services*.<sup>39</sup> Since globally, air services agreements are bilateral, air transport services is largely excluded from the multilateral/WTO negotiations, which only covers aircraft repair and maintenance services, the selling and marketing of air transport services and computer reservation system (CRS) services. The GATS classification does not adequately address issues such as the ability to do self-handling, high airport charges, etc., in the case of air transport.

The W/120 classifies road transportation into five broad categories. However, the UNCPC provides a more detailed classification. During the Uruguay Round, some members followed the W/120 classification while others used either the original CPC or a mix of CPC and W/120 for scheduling commitments in road transport.

Table 3.2.1 lists the number of countries that undertook commitments in transport and related services in the Uruguay Round and have offered to undertake commitments in the Doha Round. This table shows that a larger number of countries have undertaken more commitments in some transport sectors like road transport as compared to others like rail transport. This is because, in many countries, railways were a public monopoly during the Uruguay Round. Some major countries such as the EU, the US and Japan made commitments in all transport services (as shown in Table 3.1.1), although the extent of liberalisation varied. Overall, many important WTO member countries who had not undertaken commitments in courier services (as shown in Table 3.1.1) have undertaken commitments (although the extent varies) in transport and auxiliary services. Across all sectors, there were no sector specific commitments in Mode 4.<sup>40</sup> Mode 2 received the maximum number of commitments.

**Table 3.2.1: Total number of Countries that undertook Commitments in Uruguay Round and Offered to undertake Commitments in the Doha Round**

Service Sector	UR Commitments	Doha Round Commitments
Air Transport Services	35	59
Rail Transport Services	18	34
Road Transport Services	32	52
Services auxiliary to all modes of transport	22	50

Source: Compiled by authors' from WTO Services Database, <http://tsdb.wto.org/default.aspx>

Tables 3.1.1 and 3.2.1 highlights that, in the Uruguay Round, the extent of liberalisation in the transport and auxiliary services has been limited in terms of the number of countries undertaking commitments, the coverage of sub-sectors and actual opening up in each of the sub-sectors committed. Countries such as Singapore, which are major logistics hubs, have not undertaken commitments in transport and auxiliary

<sup>39</sup> [http://www.wto.org/english/docs\\_e/legal\\_e/26-gats\\_02\\_e.htm#annats](http://www.wto.org/english/docs_e/legal_e/26-gats_02_e.htm#annats)

<sup>40</sup> Commitments in Mode 4 were given in the horizontal schedule and restricted to high-skilled workers only.

services. For smooth operation, a foreign courier company may require access to trucking and warehousing facilities, freight forwarding facilities, brokerage etc., in an integrated manner and, in some countries, licenses for these activities (or some of these activities) may be restricted to locals or extended only to monopoly concessionaires.

The use of MFN exemptions to allow specialised treatment to some trading partners further limits the scope of multilateral liberalisation in transport. For instance, in road transport, many members such as the Czech Republic, Finland, Hungary, Norway, South Africa and Switzerland undertook MFN exemption for both passenger and freight transportation services, while others like the US did it for freight transportation only for Mexico and Canada. Most of these exemptions involve granting various partners preferential treatment on rights concerning passengers/cargoes to, from, across and into their territory and on operating conditions, either on the basis of bilateral agreements, existing or future, or on the basis of reciprocity. In some cases, MFN exemptions are accompanied by a detailed list of beneficiaries (for instance, the EC).

In the beginning of the Doha Round, many WTO member countries including the EU, China, Japan, Australia, Switzerland, the US, India and Canada, either individually or as a group, issued communications on liberalising transport services. While some of these proposals (for instance, the EC proposal<sup>41</sup>) covered all modes of transport, some were specific for certain transport services (for instance, the proposals of New Zealand<sup>42</sup> and Columbia<sup>43</sup> focused only on air transport while that of Switzerland focused on auxiliary services<sup>44</sup>). There have been a few proposals on logistics services.<sup>45</sup> This not only includes transport and auxiliary services but also business services such as inventory management and order processing. The Hong Kong, China's proposal<sup>46</sup> referred to inclusion of customs clearance services. A group of eight WTO members<sup>47</sup> submitted a joint communication on logistics services in 2004. This proposal is meant to develop further the ideas outlined in the proposals by Hong Kong, China and Switzerland. It provided a checklist<sup>48</sup> of logistics services in which members can undertake commitments. These include core freight logistics services, such as cargo handling services, transport services, and other related logistics services including courier services, technical testing and analysis services and distribution services. The proposal also outlined several areas such as acceptance of electronic

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<sup>41</sup> WTO Document S/CSS/W/41 dated 22 December 2000

<sup>42</sup> WTO Document S/CSS/W/92 dated 26 June 2001

<sup>43</sup> WTO Document S/CSS/W/124 dated 27 November 2001

<sup>44</sup> WTO Document S/CSS/W/78 dated 4 May 2001

<sup>45</sup> For instance, see the proposal of Hong Kong China WTO Document S/CSS/W/68 dated 28 March 2001

<sup>46</sup> WTO Document S/CSS/W/68 dated 28 March 2001

<sup>47</sup> Australia, Hong Kong, Liechtenstein, Mauritius, New Zealand, Nicaragua, Switzerland and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (WTO Document dated 25 June 2004, TN/S/W/20)

<sup>48</sup> TN/S/W/20 dated 25 June 2004

versions of trade documents, non-burdensome customs procedures and prevention of anti-competitive behaviour where additional commitments (under Article XVIII) will facilitate trade. A group of 20 countries<sup>49</sup> has submitted a joint statement in 2005 mainly focussing on the importance of taking commitments in logistics services. The sponsoring countries emphasised the importance of the availability of efficient freight logistics infrastructure and urged all WTO members to participate actively in the negotiations with a view to achieving substantial liberalisation commitments in logistics services.

The EU's proposal highlighted the need to reduce unnecessary trade distorting barriers while preserving public safety and the quality of service and ensuring adherence to regulations. The EU also proposed that commitments should facilitate multimodal transportation through broad based commitments in auxiliary services and transport. The EU proposed that although hard rights, like traffic rights, are excluded from the GATS, commitments can be sought in services such as ground handling services, freight and mail handling and ramp handling services subject to safety, security and employment conditions. Where self-handling by airlines is permitted, this possibility should be available to all individual airlines on a neutral, transparent and non-discriminatory basis. This led to a debate on whether ground handling should be covered under multilateral liberalisation. Canada, Japan and the US<sup>50</sup> are of the view that ground handling is directly related to traffic rights and, therefore, should not be under GATS. In this context, it is important to note that airlines and airports have traditionally provided ground handling services. With liberalisation, there are specialised companies such as Swissport International Limited (owned by Ferrovial, Spain), Singapore Airport Terminal Services Limited (SATS in which Singapore Airlines has a major shareholding), DNATA (part of the Emirates Group, Dubai) and Menzies Aviation plc. (part of John Menzies plc, UK) which offer ground handling services. Express companies like DHL want to integrate their service offerings by having end-to-end services, including ground handling operations or self-handling options for aircraft owned, operated or dedicated for express consignments.

Ground handling can be described as the services provided to aircraft, passengers and cargo at an airport. The International Air Transport Association (IATA) has a Standard Ground Handling Agreement (SGHA), which refers to a series of services. These are given in Table 3.2.2. Some of these services such as ramp services are provided by the private ground handling companies while others such as fuelling, catering, loading and security may not be provided by these companies. Countries, which are privatising their airports and ground handling facilities, face a dilemma regarding what the optimum number of private agents should be in each airport. A

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<sup>49</sup> Australia, Canada, Chile, Djibouti, the EC, Hong Kong, China, Iceland, Japan, Korea, Liechtenstein, Mauritius, New Zealand, Nicaragua, Norway, Panama, Peru, Singapore, Switzerland, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu and the US (TN/S/W/34 dated 18 February 2005).

<sup>50</sup> See WTO Document TN/S/W/33 dated 18 February 2005

single agent may result in a monopolistic situation while multiple agents can lead to security concerns and capacity constraints. The core issue for the users of the facilities (i.e., airlines) is to have non-discriminatory access to good quality facilities at competitive rates. Since express delivery services are time-sensitive, EDS companies also focus on timeliness of delivery along with competitive charges. For this, they prefer to have an integrated operation with the “right” to do self-handling for cargo and mail services. Whether they actually do self-handling is a company’s decision and depends on factors that include the volume of traffic, cost of setting up of own infrastructure and company policy. For instance, while UPS prefers to have competitive ground-handling, DHL’s business units prefer the self-handling option. Many express companies do self-handling in their dedicated hubs.

**Table 3.2.2: IATA (SGHA) Classification of Ground Handling Activities – 2003**

S. No.	Activities/Section
1	Representation, Administration and Supervision
2	Passenger Services
3	Ramp Services
4	Load Control, Communication and Flight Operations
5	Cargo and Mail Services
6	Support Services
7	Security
8	Aircraft Maintenance

Source: IATA

In plurilateral negotiations, which began after the Hong Kong Ministerial Conference (December 2005), countries such as Australia, Chile, the EC, New Zealand, Norway and Switzerland made a request to over 22 member countries (including India) in air transport services. Another collective request on logistics services was made by seven member countries (namely Australia, Chile, Hong Kong, Japan, New Zealand, Switzerland and Chinese Taipei) to 34 countries consisting of 26 developing countries including India.<sup>51</sup> The plurilateral request in air transport services covered not only the three areas on which the Uruguay Round negotiations concentrated (i.e., aircraft repair and maintenance services, selling and marketing of air transport services and computer reservation systems services) but also on ground handling and airport operation services. Within ground handling, the request is limited to container handling services for air transport (part of CPC 7411), other cargo handling services for air transport (part of CPC 7419) and other supporting services for air transport (CPC 7469). The request called for opening up of Modes 1 and 2. In Mode 3, the demanders have particularly asked for the removal of economic needs tests, restrictions on foreign equity participations, local partnership requirements, etc. The plurilateral request also called for removal or reduction of MFN exemptions. The collective request in logistics provided a logistics checklist, which included core

<sup>51</sup> <http://sc.info.gov.hk/gb/www.info.gov.hk/gia/general/200603/08/P200603080100.htm>

freight logistics services, transport services and other related logistics services. Postal and courier, including express delivery, services are on this list. The purpose of this request is to ensure that service suppliers are allowed to supply freight logistics services in combination, they can access and use core and related freight services on reasonable and non-discriminatory terms, the customs clearance procedure is not burdensome and electronic versions of trade administration documents are accepted. All of these are trade facilitation issues, which are essential for the smooth performance of courier/express delivery sector.

The Doha Round offers of WTO member countries as of March 2010 are shown in Table 3.2.1.<sup>52</sup> The EU (except for a few countries like Cyprus, the Czech Republic, Hungary, Malta, Poland, Slovak Republic and Slovenia) has offered to undertake commitments in ground handling services. This is subject to the conditions that categories of activities will depend on the size of the airport, the number of providers in each airport can be limited due to space constraints but cannot be less than two suppliers for other reasons and a non-discriminatory, pre-approval process may apply. Overall, the EU has made significant improvements in its revised offers. The revised offers of other countries such as Thailand, the US, Australia and Japan also show improvements over the Uruguay Round commitments (Table 3.1.2).

A close look at the revised offers shows that although there are improvements in the offers in transport and logistics sector as compared to the Uruguay Round commitments, many offers are subject to conditions that make it difficult to understand the extent of opening up. For instance, the EU offer on airport management (for airport operators) is subject to the right to take any measure deemed necessary relating to security and safety in any service sector. It is worth noting that post 9/11, airport security has received significant attention and countries are trying to reserve the right to impose restrictions on grounds of security.

Overall, an analysis of the autonomous liberalisation and multilateral commitments of WTO member countries in postal and courier services and transport and logistics services shows that the extent of commitments in the WTO fall short of the autonomous liberalisation and countries have shown an unwillingness to bind their autonomous opening up in the WTO.

#### **4. Liberalisation through Bilateral Agreements**

The slow progress of the WTO negotiations has led to a proliferation of bilateral/regional agreements (also known as free trade agreements, preferential trade agreements, comprehensive agreements, etc.), which gained momentum in the past 15 years. Many of these agreements are in the form of comprehensive FTAs encompassing goods, services, investment, trade facilitation, intellectual property rights, co-operation, government procurement and competition. The gap between the

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<sup>52</sup> Compiled from WTO Services Database, <http://tsdb.wto.org/matrixlist.aspx>

autonomous liberalisation in postal, courier, transport and logistics sectors and the WTO commitments indicate that there is scope for liberalising these sectors through bilateral/regional agreements. In fact, Table 4.1 shows that the commitments of a number of countries in postal and courier services in Preferential Trade Agreements (PTAs) go beyond their WTO commitments and Doha Round offers. The higher level of commitments in PTAs is not only attributable to the postal regulatory reforms and market liberalisation but to the pressure that developed countries such as the US and EU exert on their bilateral trading partners to liberalise this sector.

**Table 4.1: Commitments in GATS and PTAs: Postal, Courier including Express Delivery (Modes 1 and 3)**

Members	No Commitment in Uruguay Round of GATS but Commitment in PTAs	Improvement in PTAs Compared to GATS	Similar Commitments in PTAs and GATS	No Commitment in GATS and PTAs
Argentina			√	
Australia	√			
Brazil			√	
Canada			√	
Chile	√			
China			√	
Colombia	√			
EU-15		√		
India				√
Indonesia				√
Japan	√			
Jordan			√	
Korea	√			
Malaysia				√
Mexico	√			
New Zealand	√			
Norway			√	
Oman		√		
Panama	√			
Peru	√			
Philippines		√		
Singapore		√		
Switzerland	√			
Thailand				√
US		√		
Uruguay		√		

Source: Compiled from Table 10.1, page number 395, Zhang, R (2008)

The US FTAs, in particular, looks at securing commitments in express delivery services. An analysis of four US FTAs is given in Table E1 in Appendix E. The US FTAs generally follow a negative list approach unlike the GATS. Therefore, countries have to clearly specify the restrictions, reserved area etc. in such FTAs. The US FTAs

also try to define express delivery services in a manner similar to the US proposal to the WTO (dated December 18, 2000).<sup>53</sup> If the postal monopoly also has express delivery, cross-subsidisation is prohibited under these FTAs. In the one with Korea, which is still pending, the US tried to secure commitments for future postal reforms. In chapters on customs administration, there are specific provisions to ensure separate, expeditious customs procedures for express shipments.

The US has restrictions in the postal sector in the form of reserved area, weight and price multiple, etc. Therefore, the US PTAs have not focused much on postal sector liberalisation. By contrast, the EU PTAs focus on both postal and courier liberalisation. In the EU-Chile FTA, Chile adopted the classification proposed by the EC in the Doha Round of negotiations. Chile's commitments in the sector in other PTAs are quite consistent, regardless of the scheduling modalities used.

Singapore, New Zealand and Japan are some examples of countries whose bilateral commitments exceed their commitments in the WTO (Table 4.1). Studies have shown that the negative listing of sectors in PTAs with clear mention of restrictions have somewhat helped countries to overcome the inadequacy of GATS classifications.<sup>54</sup> In some PTAs, where a positive list approach (such as the EU-Chile) is followed, countries do not stick to the CPC classification (i.e., the commitments cover services supplied both by public and private operators).

Developing countries are more likely to undertake commitments in postal and courier services in bilateral agreements than in the WTO. Since the bilateral agreements are more likely to address regulatory issues compared to the WTO, it is important for a developing country to have a sound regulatory regime or reform effort underway in postal and courier services (including express delivery) before entering into FTAs/PTAs. Proper regulations are also needed for autonomous liberalisation. Without a sound regulatory framework, there is likely to be an uncertain operating environment, which will not only reduce the benefits of liberalisation but also weaken the country's bargaining position in WTO/bilateral agreements. It can also create scope for disputes.

A study of the US and EU PTAs<sup>55</sup> found that the US and EU PTAs have WTO plus provisions, and these two countries often use the PTAs to transfer their own regulatory regimes to their trading partners. Therefore, it is important for trading partners to have a sound regulatory framework in place before negotiating such agreements. Studies have shown that the regulatory framework should clearly define the scope of the postal monopoly and USO and, if possible, state how the latter is funded. While designing the funding, care should be taken so that it is non-discriminatory, transparent and it prohibits cross-subsidisation. If the postal monopoly

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<sup>53</sup> S/CSS/W/26

<sup>54</sup> See Zhang, R (2008)

<sup>55</sup> Horn H, P C. Mavroidis and A Sapir (2009)



also offers courier or express services, it is important to understand which component of this service should be under USO and what should be left open to competition.

In the case of the reserved area, it should be clearly specified and should be limited to non-competitive activities. Anti-competitive practices and cross-subsidisation weaken a country's bargaining power in bilateral agreements. The licensing process should be streamlined and the requirements should be transparent. The independence of the regulator is another core issue. In the WTO, regulatory issues can be addressed by undertaking additional commitments but, in bilateral agreements, developing countries often find themselves at the receiving end. While there is general acknowledgement among developing countries that there is need for a regulator, countries have taken different approaches as to who the regulator should be and what the regulator should regulate. Competitive delivery of services may be affected if the regulator has a vested interest in the sector.

In the case of the air transport sector, the FTAs, like the WTO, have not been able to obtain significant liberalisation since air transport agreements are based on reciprocal bilateral arrangements according to the 1944 Chicago Convention adopted by the International Civil Aviation Conference. Due to the liberalisation of international air transport regulations, the number of bilateral 'open skies' air services agreements have increased. These provide for full market access without restrictions on Third, Fourth and Fifth Freedoms (the air freedom rights are given in Box F1 in Appendix F). As of March 2009, 157 bilateral "open skies" agreements had been signed between 96 states/territories, with the US being one of the partners in 82 cases.<sup>56</sup> Over 60 per cent of the agreements also grant "Seventh Freedom" traffic rights for all-cargo services and 10 agreements granted "Eighth Freedom" traffic rights or consecutive cabotage rights for all services. About 35 per cent of bilateral "open skies" agreements signed by the US have a transition annex that places limits on or provides for the phase-in of, inter alia, frequencies, Fifth Freedom traffic rights, Seventh Freedom traffic rights for all-cargo services, code-sharing, non-scheduled services, and ground handling, some of which were applied only to US airlines.<sup>57</sup> Hence, bilaterally, the air transport sector has witnessed significant liberalisation and this has benefitted the express/courier industry. The US has some of the most liberal bilateral agreements with developing countries like India and China. The agreement with India signed in April 2005 allows any number of designated airlines from the US and India to operate between the countries.

Another type of air transport liberalisation is the 'single market' as is between EU member countries and between Australia and New Zealand in which airlines from member states are allowed to fly without any market access restrictions to any destination of the market. In such cases, the role of the state is limited to the provision of safety and security.

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<sup>56</sup> [www.icao.int/icao/en/atb/epm/Ecp/OverviewTrends.pdf](http://www.icao.int/icao/en/atb/epm/Ecp/OverviewTrends.pdf)

<sup>57</sup> [www.icao.int/icao/en/atb/epm/Ecp/OverviewTrends.pdf](http://www.icao.int/icao/en/atb/epm/Ecp/OverviewTrends.pdf)

The air transport sector has undergone significant changes in the recent years. Post 9/11, security concerns and, therefore, security-related barriers have increased in the US. It also brought to light the significant amount of subsidisation given by developed countries to their airline industry. Subsidies and its impact on the competitive provision of air transport services are now debated in the WTO and FTAs.

With airport privatisation, outsourcing of maintenance, development of specialised ground handling agents, services such as airport management and ground handling have become a part of WTO and FTA negotiations (although countries differ as to whether these are part of “hard” rights and, therefore, outside the scope of trade agreements or whether these should be included in trade agreements). Competition in this segment arises from the fact that not only have services such as ground handling been privatised, airlines also prefer to work with different ground handling agents on an airport-to-airport or country-to-country basis rather than opting for one global partner. A majority of airlines today have outsourced their ground handling operations. Countries that are keen to get commitments in this sector have not seen much liberalisation through PTAs since it largely follows the GATS sectoral coverage. However, commitments under PTAs are better than those under GATS.

Some PTAs have a negative list approach where countries have to state the restrictions for trade in both services and investment. The negative listing enables trading partners to understand clearly the existing level of restrictions and secures them from any future restrictions even in services that are evolving. The analysis of FTAs/PTAs shows that most countries have imposed restrictions on the ownership of airlines. For instance, acquisition of voting interest in the US air carriers is limited to 25 per cent.

The EU’s bilateral agreements with Mexico and Chile only includes aircraft repair and maintenance services, selling and marketing services and computer reservation services as in the GATS. However, the bilateral agreements provide scope for co-operation in areas such as multimodal transport network and training. It also has co-operation projects for the transfer of European technology in the global navigation satellite system etc. Overall EU’s commitments in FTAs are not much different from its revised offer, except for the fact that it brings in some scope for technical assistance to developing countries like India.

In the road, railways and auxiliary services, some FTAs seem to have better commitments than the WTO. For instance, Chile did not offer to make any commitments on road and auxiliary services in the revised offer in WTO but in the EU-Chile FTA, which was signed in 2002, Chile made commitments in road transport and auxiliary services. The EU, however, has given similar commitments in both its revised offer and FTA with Chile.

## 5. India's Negotiating Strategies and Options

India has not made any commitments in postal and courier services in the WTO (Uruguay Round and on-going Doha Round) and in its FTAs covering the services sector (with Singapore and Korea). In the WTO, India is a major proponent of services liberalisation in the Doha Round. India's negotiating position reflects its core interest in getting market access and non-discriminatory treatment from its trading partners, especially developed country trading partners, in sectors like computers and in modes of trade like Mode 4 (temporary movement of people) and Mode 1 (cross-border trade like on-line deliveries) where the country has an export interest. In fact, to prove its offensive interest<sup>58</sup> in services liberalisation, India on its own offered to undertake commitments in many new sectors in its revised offer submitted to the WTO in 2005, which was one of the best revised offers submitted to the WTO. However, postal and courier services are not covered in the revised offer. India has been portrayed to have a defensive interest in this sector and has been pressured by its trading partners – both bilaterally and through the plurilateral request-offer<sup>59</sup> process – to undertake commitments in postal and courier services. It is important to note that India's major trading partners, such as the US and EU, have an offensive interest in liberalising postal, courier and express delivery services. Hence, if India wants greater market access in those countries/markets in sectors/modes of its trade interests, India may be pressurised to undertake commitments in postal, courier and express services in exchange.

The Indian Post Office (Amendment) Bill, 2006, not only proposed a reserved area but also a roll back on the autonomous FDI regime from 100 per cent to 49 per cent. India's key trading partners have expressed great concern about this proposal to roll back autonomous liberalisation and have intensified pressure on India to undertake liberalisation commitments, at least in courier and express delivery services. In the Signalling Conference of July 2008 in the WTO, India hinted that it could offer commitments in courier services, subject to its trading partners liberalising sectors and modes of trade interest to India. The services negotiations have not progressed much since then.

The postal sector in India is still government-owned. Therefore, India may not take commitments in postal services. However, India can undertake commitments in courier services. Policymakers from the Department of Commerce pointed out that India would like to continue with the W/120 classification for undertaking

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<sup>58</sup> Offensive interest means that the country is a proponent of services liberalisation while defensive interest refers to the sectors in which the country is not willing to undertake commitments because the sector is politically sensitive or is not yet liberalised and that regulations are at an evolutionary stage..

<sup>59</sup> GATS negotiations are based on request-offer process where a country makes a bilateral request to its trading partners, who after taking into account the requests from all countries, make an offer. The offers are multilateral, that is, all WTO members, whether the country has made a request or not, benefits from it. In the plurilateral request-offer process, a group of countries – the demanders – make request to another group – the "target" countries.

commitments, which classifies postal services and courier services on the basis of ownership. The benefit of this classification is that each sector/sub-sector has a corresponding CPC classification that is internationally recognised. If one follows individual country classifications, there is scope for ambiguity and, at present, Indian regulation is still evolving. Some industry experts also pointed out that since in India, postal and courier sectors are owned by different entities (government and private) despite offering similar products/services, India may like to continue with the W/120 classification while making commitments. For clarity, the country needs to align domestic definitions with W/120 classifications.

Policy makers and sector experts argued that under the present regime, it is not difficult for India to undertake market access commitments in courier services. Even if the regulations change, the changes should be such that India can undertake market access commitments. India Post offers a wide range of services including EMS, which is similar to the services offered by express/courier companies. Discussions with India's trading partners show that they would like India to undertake commitments in services delivered by India Post that are beyond the scope of USO (i.e., it offers services provided in a competitive market). However, at this stage, India may not be ready to undertake such commitments.

In the revised offers, India has given national treatment or non-discriminatory treatment to foreign service providers in sectors where the country has given market access. If a commitment is undertaken in courier/express delivery services, India needs to be careful in undertaking a national treatment commitment. At present, the postal sector enjoys certain benefits. For instance, postal vehicles do not pay toll taxes at highways check posts. This also benefits EMS services of India Post. On the other hand, courier and express companies have to pay toll taxes. This not only increases costs but also leads to delays in delivery due to waiting time at the check posts. Given such discriminatory treatment, India is not in a position to undertake national treatment commitments.

India is also negotiating a large number of bilateral/regional agreements and many of them encompass the service sector. India's first comprehensive agreement involving the service sector is the India-Singapore Comprehensive Economic Co-operation Agreement (CECA) that became operational in August 2005. In August 2009, India signed the Comprehensive Economic Partnership Agreement (CEPA) with Korea that came into force in January 2010. India is currently negotiating comprehensive agreements, whose coverage include the services sector, with other countries such as Japan, Sri Lanka, Thailand and Malaysia and regional blocs such as the EU, European Free Trade Association (EFTA<sup>60</sup>) and the South Asian Association for Regional Co-operation (SAARC Framework Agreement on Trade in Services (SAFAS). India will soon negotiate bilateral agreements with countries like Canada and Turkey. In the near future, India may negotiate an agreement with the US. The core feature of these

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<sup>60</sup> Members are Iceland, Norway, Switzerland and Liechtenstein.

bilateral agreements is that they are WTO plus, i.e., they go beyond the WTO commitments. In fact, as mentioned earlier, some of these bilateral agreements not only tend to seek liberalisation commitments in express delivery but also addresses customs-related barriers, regulatory reforms, subsidies, government procurement etc.

Some of the countries/regions with whom India is negotiating have a strong interest in liberalising postal and courier services including EDS. For instance, the EU seeks not only commitments in postal and courier services but also in logistics services, which go beyond the transport sector covered in the GATS. The EU also addresses other issues such as government procurement and subsidies through its agreements. India will be under pressure in the on-going India-EU Broad-based Trade and Investment Agreement (BTIA) to undertake new commitments and broaden the scope of existing commitments in the logistics sector, including postal and express delivery. Facilitating trade, building the logistics network and streamlining the process are likely to be some of the important issues in intra-SAARC services trade. Countries such as Australia and New Zealand, with whom India is likely to enter into FTA agreements, have offered better commitments in FTAs than in the WTO (Table 4.1).

In existing PTAs, i.e., the India-Singapore CECA and India-Korea CEPA, a positive list approach, similar to the GATS, has been followed in scheduling commitments. Under this approach, countries decide the sectors/subsectors in which they will undertake commitments and then list the restrictions. While the India-Singapore CECA followed a positive list approach in the investment chapter, in India-Korea CEPA, a negative list approach was followed. In the negative list approach, countries need to mention if there are any FDI or other entry and/or operating restrictions. In the India-Korea agreement, India offered to undertake commitments in the investment chapter if the sector/sub-sector had been covered in the services chapter. Since India did not undertake commitments in postal and courier services, the two sectors are not covered in the investment chapter in the India-Korea CEPA.

India's commitments in transport and auxiliary services in the WTO and PTAs are similar and are limited in terms of coverage (only confined to a sub-section of air transport services). In its revised offer and in the India-Singapore CECA and India-Korea CEPA, India offered full commitments in maintenance and repair of aircraft in Modes 1, 2 and 3. The commitments in Mode 3 in the revised offer are subject to the condition that if the foreign investor has a prior collaboration in the specific service sector, Foreign Investment Promotion Board (FIPB) approval will be required. For Korea, this condition is mentioned in the horizontal commitments.

Overall, India's offers in the Doha Round and in its bilateral agreements are much lower than the autonomous regime. The existing FDI policy in different sectors is given in Table 5.1. This table shows that India's autonomous regime is pretty liberal. In fact, in sectors like airlines, India's FDI restrictions are lower than that of developed countries like the US. India is, therefore, in a position to broaden its commitments, both in the WTO and in its bilateral agreements. Discussions with

policy makers and industry show that India can offer better market access commitments in express delivery/courier services and use it as a bargaining strategy to get better commitments in sectors/modes of export interest to it (for example, Mode 4).

**Table 5.1: FDI Policy in India Across Different Sectors**

<b>Sector</b>	<b>FDI Policy</b>
Courier and express services (only for carrying packages, parcels and other items which do not come within the ambit of the Indian Post Office Act, 1898)	100 per cent FDI is allowed through the FIPB route, subject to existing laws and exclusion of activity relating to distribution of letters, which is exclusively reserved for the state.
Road Transport	100 per cent FDI is allowed through the automatic route.
Air Transport (Airlines)	<ul style="list-style-type: none"> <li>• 49 per cent FDI is allowed in domestic airlines through automatic route, subject to no direct or indirect equity participation by foreign airlines</li> <li>• Foreign airlines are not allowed to participate directly/indirectly in the equity of an Air Service Undertaking engaged in operating scheduled, non-scheduled and chartered airlines</li> <li>• FDI up to 74 per cent and investment by NRIs up to 100 per cent is allowed in non-scheduled airlines, chartered and cargo airlines through automatic route. Foreign airlines are allowed to participate in the equity of companies operating cargo airlines</li> <li>• FDI up to 74 per cent and investment by NRIs up to 100 per cent is allowed through automatic route in ground handling services.</li> <li>• 100 per cent FDI allowed for maintenance and repair organisations</li> </ul>
Railways	Public monopoly, FDI is not allowed in passenger and freight transportation and pushing and towing services. It is allowed in maintenance and repair of rail transport equipment and supporting services and railway related component, warehousing, freight corridors.
Services Auxiliary to all Modes of Transport	100 per cent FDI is allowed through automatic route in cargo handling services, storage and warehousing services and freight forwarding services

*Source: Compiled by authors from DIPP (2010).*

Some FTAs follow a negative list approach. So far, India has not signed an FTA that follows a negative list approach for scheduling commitments in services. However, in future, India may have to do so. For this, India needs to clearly define the postal, courier and EDS sector and, more importantly, the services that are covered under USO and those that can be delivered through competition. Sometimes even in a positive list approach, there can be room for controversies. For instance, the EU's definition of postal and courier is different from the W/120 definition and this should be taken into account in the India-EU BTIA before making commitments.

In the WTO, there is on-going work on developing disciplines on domestic regulations and regulatory issues now constitute an important area of discussion within the services negotiations. Countries like the US and regional blocs such as the EU have strong focus on regulatory issues, especially some kind of compliance with global best practices. In fact, many FTAs require commitments that go far beyond market access liberalisation and, increasingly, regulatory barriers are being discussed in FTAs. The existing postal regulation in India is outdated and the country needs to have a sound regulatory framework in place for undertaking commitments. At present, the Department of Posts is in the process of drafting a new legislation.

Countries do not have a common regulatory approach and, therefore, regulations vary. However, there are some key issues in regulation that are discussed in WTO/FTAs. These are given below:

- USO and non-USO services should be clearly defined
- Reserved areas, if any, should be clearly defined
- How the USO is funded should be specified; there should be no cross-subsidisation between competitive and USO services
- Regulation should be transparent and the regulator should be independent.

These are global best practices and, if the new regulation takes these into account, India will not have any problems in undertaking commitments.

The Indian Post Office (Amendment) Bill, 2006, was criticised by Indian trading partners on several counts. The proposal to roll back on FDI received significant criticism from its trading partners. In fact, in the WTO, India has always pointed out that the country will not roll back from its autonomous liberalisation. Moreover, globally there is a shift from market access restrictions to regulatory restrictions. Imposing a market access restriction will lower India's bargaining power in international agreements.

Many WTO member countries, including the US, have reserved areas for postal services. Some of these may include letters (where a price and weight multiple is used as in the case of the US and the EU). Others have products like bulk mail as reserved area. Hence, although the 2006 Amendment received significant criticism in India for having a reserved area for letters, major trading partners have not raised objections against reserved area for basic letter services. The 2006 bill also proposed a weight and price multiple for EMS – which received significant criticism from India's trading partners since EMS is a competitive, high-end service in which India Post directly competes with private service providers. It is difficult for a country to justify a monopoly for a premium service. It also affects the users of such services.

The new law needs to clearly spell out what India Post's USOs are and how much of these services are covered through existing sources of funding. Experts argued that if

India wants to undertake further commitments in WTO/FTAs, courier companies should not be asked to pay USO charges selectively and the country should be careful about cross-subsidisation while framing the new law.

The role of the regulator and the regulatory framework is being debated in the WTO/FTAs. Since India is an active member of the WTO services negotiations and is going in for FTAs with a large number of countries who have an interest in developing a sound regulatory framework for the postal, courier and EDS sector, India needs to be specific about the role of the regulator. If the regulator is not independent, it will adversely affect India's negotiating position. International legal experts pointed out that if the Department of Posts or any division under this department becomes the regulator, it cannot be an 'independent' regulator, as the department provides services similar to that of couriers/express providers. They further argued that even if India comes up with a progressive law, which does not have weight and price multiple, USO fees etc., there will still be room for controversy and confusion until the regulatory framework is clearly defined and the regulator is separated out from the service provider.

Liberalisation of transport services seems to be easier as compared to the liberalisation of postal and courier services. The transport sector in India is undergoing massive changes. In the past, airport infrastructure was not able to cope with traffic flows. The government has now come up with the airport privatisation plan. The privatisation process is different for different types of airports. For instance, the Delhi and Mumbai airports are being developed as leased airports of the Airports Authority of India under public-private partnership (PPP) model, with majority private participation while the airports of Bangalore and Hyderabad are private greenfield airports. Since there is only one airport in large cities, the airport operator has a monopolistic position. This has raised the question of airport user charges and the need for regulating the same. In this regard, the government established a statutory authority, namely the Airports Economic Regulatory Authority of India (AERA), in 2009 under the Airports Economic Regulatory Authority of India Act, 2008 to regulate tariffs and airport charges and set performance standards in major airports. The Airports Authority of India had come up with a White Paper on regulatory objectives in December 2009 to initiate discussions on how to regulate tariffs and airport charges. During the survey, express delivery companies have raised concerns about the high and rising airport charges. These are likely to be addressed by the AERA.

At present, India has bilateral air services agreements with over 103 countries including the US. Some of these bilateral agreements are fairly liberal and India also has an open sky policy. In 2008, India and EU signed/entered into a horizontal air services agreement. In the WTO and in its FTAs, India would not like to undertake commitments beyond three sectors specified in the GATS *Annex on Air Transport Services*. The survey found that foreign companies have not raised reservations



against the FDI restrictions for air carriers in India. They, however, have raised concerns about the ground handling policy. When India started liberalising the air transport sector, the ground handling services were also liberalised and, at present, there are many players (both Indian and foreign companies) in this segment. The multiplicity of service providers has raised capacity and security concerns. In September 2007, the government came up with a Ground Handling Policy, which stipulated that a maximum of three operators would be allowed for ground handling at metropolitan airports in India. These are:

- (a) the respective airport operator (Airport Authority of India or other operators as the case may be) itself or its joint venture (JV)
- (b) subsidiary companies of national carriers i.e. Air India/Indian Airlines or their joint ventures specialised in ground handling services and
- (c) any other ground handling service provider selected through competitive bidding on a revenue-sharing basis by the airport operator, subject to security clearance by the government and observance of performance standards as may be laid down by the airport operator.

The policy then suggests that the airlines or entities presently involved in ground handling, which are not covered under the policy given above, will not be permitted to undertake self-handling or third-party handling once the new ground handling policy is implemented.

The primary reason for introducing this policy is that there are too many ground handling agencies in Indian airports. Many airlines outsource their ground handling to multiple players, who may further sub-contract it. This may result in security threats.<sup>61</sup> Second, a multitude of operators with their own machines and personnel also implies higher congestion in airports and leads to sub-optimal use of equipment. This makes airport management difficult for the authorities. In the ICRIER-IIM (C) survey, it was pointed out that the existing policy of multiple ground handling agencies is not in line with global practices as most countries allow only a limited number of ground handling agents in their airports.

Although the September 2007 policy has evoked significant criticism from express companies, airlines and other users, it is not inconsistent with global practices and India's commitments in bilateral air transport agreements. For instance, the Indo-US Bilateral Air Transport Agreement signed on April 2005 states, "Each designated airline shall have the right to perform its own ground-handling in the territory of the other party ("Self-handling") or, at its option, select among competing agents for such services in the whole or in part. The rights shall be subject only to physical constraints

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<sup>61</sup> It is estimated that, currently, at the Indira Gandhi International Airport, New Delhi, there are at least 20 outsourced contractors and sub-contractors. Together, these agencies employ about 4,500 casual labourers in addition to about 1,200 of their own staff. To make matters more complicated, most of these outsourced personnel, such as drivers and loaders, are contractual with a fairly high turnover rate.

resulting from considerations of airport safety. Where such considerations preclude self handling, ground handling shall be available on an equal basis to all airlines; charges shall be based on the costs of services provided; and such services shall be comparable to the kind and quality of services as if self-handling were possible.” As long as India can provide competitive ground handling facilities and justify the reasons for the limited number of ground handling operators, the country will not have any problems in undertaking international commitments. However, there is significant domestic opposition to this policy, which is delaying its implementation.

In India, the road transport sector, especially freight transport, is fairly liberal and many foreign logistics service providers have already established their presence. The government is encouraging FDI in auxiliary services. In railways, the government is developing dedicated freight corridors through PPP model but private participation in railways is limited since the sector is still under government control. The use of the railway network for courier/express services is not only a cleaner mode of transportation (since it uses less fossil fuel than road transport) but also a faster one since in India there are delays at different toll points and interstate borders for road transport, which the railways do not face. However, Indian trains do not usually have dedicated courier vans, which lead to the loss of parcels, documents, etc. Both foreign and private courier/express companies would like to use the railway network for providing services and many of them, like Gati Limited (which is an Indian company), are working with foreign railways (for example, Chinese railways) in this regard. Hence, India may be under pressure to undertake liberalised commitments in road and rail transport services. It is not difficult for India to undertake commitments in road transport services but government control over the railways could make it difficult to undertake commitment with respect to rail transport.

## **6. What Should the New Postal Regulation Include?**

The discussions in the previous sections highlight that there is an urgent need to have a new law in the postal sector. The new law should allow the sector to grow, encourage competition, allow technological development and at the same time ensure the provision of basic postal services to all at affordable prices. Many countries have undertaken such restructuring exercises to modernise their postal sector. While countries have adopted different regulations to suit their domestic requirements, there are some global best practices, which are followed almost universally. India needs to ensure that these best practices are incorporated in the new postal act.

The new postal act should be fair and transparent. It should clearly define and distinguish between services, which are treated as USO/reserved and those that can be offered on a competitive basis. The ICRIER-IIMC survey found that, at present, there is no clear definition of postal, courier and express delivery services in India. This is because they often offer similar products. For example, the public postal operator has EMS services while courier companies may carry letters (which is currently reserved

for India Post) except that they call them documents. Express companies have registered with the Indian Customs (i.e., Central Board of Excise and Customs) as courier companies and sometimes courier companies register with state government as transporters. Although it may be difficult to have a definition that clearly distinguishes between what can be carried by the postal department and private courier companies, there can be a distinction between core postal products covered under the USO and other services in which both the postal department and courier/express services providers can operate.

The Postal Act, 1898, reserved 'letters' for the Department of Posts but did not define the term. The 2006 Amendment tried to define 'letter' by price and weight. The survey found that the weight and price multiple may increase the price of letters/documents and courier/EDS companies, especially small courier companies, felt that they would lose a substantial part of their business. On the other hand, clients/customers felt that express companies perform more efficiently than India Post and they were likely to continue with their current service providers' despite an increase in costs. The survey also found that it was likely to be difficult to monitor the reserved area. The survey concluded that the implementation of reserved area, therefore, might not lead to a higher market share for the postal department or increase its revenue earnings. Instead, it might, result in additional monitoring costs. It might also adversely affect employment. Many of India's trading partners have weight and price restrictions and they have not raised any objections to such restrictions in the WTO and FTAs, provided India clearly specified the restrictions. Globally, countries are reducing the size of the reserved area. All these have to be taken into consideration before a reserved area is implemented. If certain services are covered by the USO (such as letters below certain weight limits), the need for a reserved area has to be clearly justified.

During the survey, it was pointed out that the definition of 'letter' should be separate from the definition of the reserved area (which can be defined by the weight and price multiple). Combining the weight and price restrictions with the definition of 'letter' restricts the ability of the Department of Posts to further liberalise the reserved area, i.e., reduce the price and weight multiples, as is happening in many countries globally.

In India, there has also been a debate on whether there should be a reserved area for EMS. In fact, EMS is not a basic postal service but a premium product and is not offered by all post offices. Hence, reservation for EMS is not justified. Similarly, there is a debate on whether there should be a reserved area for parcels. As in the case of 'letter', this is difficult to monitor and may not increase the revenue of the Department of Posts. During the survey, some respondents pointed out that the government may like to have a reserved area for non-documents since a reserved area for non-documents impacts larger service providers more than the smaller ones and, therefore, may be subject to lower domestic protest. Others argued that in future, the document business is likely to grow at a slower pace than non-document business and

any reserved area for parcels will adversely affect all service providers, irrespective of their size or clients. This will also affect India's global competitiveness and exports since it will increase the cost of transportation of samples, consignments requiring time-bound delivery, etc.

At present, post is one of the few sectors in which the government has monopoly and it suffers from monopoly-induced inefficiencies. The new regulation should focus on designing a reform path for India Post – towards corporatisation and then privatisation. Unless India Post becomes a corporate entity and is a profitable organisation, it will continue to perceive private players as a threat to its business. As shown in Table 6.1, India Post is making losses not only in the basic mail segment, such as post cards, but also in premium products like Speed Post. India Post needs to examine the reasons for losses in the premium segment. More importantly, as shown in Table 6.1, India Post makes a profit in the 'letter' segment, which is reserved for India Post under the 1898 Act. If 'letter' is covered under its USO, then India Post is not making any losses in delivery of this USO and hence there is no need for private players delivering letters/documents to contribute to USO funding.

**Table 6.1: The Average Cost and Average Revenue of India Post (in Paise)**

S. No.	Name of Service	2004-05		2005-06		2006-07	
		Cost	Revenue	Cost	Revenue	Cost	Revenue
		<i>(Actual)</i>		<i>(Actual)</i>		<i>(Actual)</i>	
1	Postcard	659	50	710	50	697	50
2	Printed Postcard	661	600	709	600	699	600
3	Competition Postcard	443	1000	460	1000	409	1000
4	Letter Card (Inland Letter)	649	250	696	250	658	250
5	Letter	718	909	785	1020	765	1001
6	Regd. Newspaper-Single	842	39	858	43	806	99
7	Regd. Newspaper-Bundle	1492	99	1097	74	1030	99
8	Book, Post-Book, Pattern & S. Pkts.	858	834	858	684	798	661
9	Book Post-Printed Books	1565	388	1467	372	1338	355
10	Book Post-Other Periodicals	1448	1273	1342	1383	1530	1722
11	Acknowledgement	600	300	648	300	597	300
12	Parcel	7077	5730	7682	7271	6058	6805
13	Registration	3355	1700	3360	1700	3441	1700
14	Speed Post	4204	3690	4059	3761	4437	3493
15	Value Payable Post	2301	438	1988	434	2063	423
16	Insurance	4437	5031	4127	5009	4518	8460
17	Money Order	5616	2614	5759	2670	6363	3517
18	Tele-Money Order	7154	2814	7152	2870	-	-
19	Indian Postal Order	2405	300	2246	315	2272	323
20	Foreign Mail	2501	4123	2821	4526	3318	3494

Source: Extracted from Table 23, *Book of Information (2007-08), India Post, Government of India.*

Hence, India Post needs to clearly define its USO. The revenue and expenditure of India Post show that it has a high manpower cost. However, high manpower cost

cannot be treated as a USO cost unless it can be proved that such manpower is used to provide USO. It should also discuss how the USO fund will be created and who will contribute to it. The India Post receives various benefits from the government including budgetary grants. It, therefore, needs to show the additional requirements for funds and justify it before asking the private operators to contribute to USO.

It can be argued that if the postal operator is privatised, there is need for a regulator since postal services are treated as a public good. In fact, in most countries, regulators have come up along with the privatisation of the postal sector. Unless India Post is privatised, the regulator will have a limited role. The regulator has to be independent of the Department of Posts.

In most countries, EDS is outside the regulatory regime. The Department of Posts wants the new act to encompass the postal and courier and EDS industries, thus bringing all these sectors within the regulatory ambit. Various arguments have been given in favour of regulating both post and courier/EDS. These include the fact that regulators like the TRAI regulate both basic and mobile services, that the regulator will monitor service quality to the benefit of consumers and that the regulator can be a registration authority.

The ICRIER-IIMC survey found that since all couriers are registered with multiple organisations, there is hardly any need for another registering organisation. As far the argument that the regulator would ensure the quality of service is concerned, the survey found that the courier service industry in India is quite competitive and consumers have a wide range of choice. If their service providers are not good, they can change them easily. The survey also found that a majority of consumers/clients are happy with their service providers. In fact, they are more satisfied with private courier companies than with India Post (see Figure 2.8). Besides, there are consumers' forums where consumers can raise their grievances. In such circumstances, the need for an additional monitoring body, whose establishment and operation will entail costs, has to be justified.

In this context, it is also important to note that the experience of regulators in India has been mixed and not all of them have been successful. All sectors do not need regulators and multiple sector regulators can increase complexities since sectors are often inter-related. Moreover, regulators such as the Competition Commission of India and the Airports Economic Regulatory Authority of India (AERA) already regulate the EDS companies. Monitoring of service quality of courier/EDS companies can be done by existing agencies. For instance, the Competition Authority can monitor anti-competitive practices; TRAI is overseeing other communication services like audiovisual services and can draw up a set of performance standards for courier companies.

Besides, EDS/courier/postal sector is different from the telecommunications sector because interconnection and third-party access is a necessity in the case of

telecommunication services where there are essential facilities like network infrastructure belonging to the incumbent and very strong network effects. In the case of courier services, these may be desirable but not necessary. Many EDS and courier operators use completely independent networks, and end-to-end control is an important aspect of their business models. Interconnection is an issue when private players have to access a network set up or operated by a monopoly service provider (India Post). None of the private players have raised issues relating to interconnection either with each other or India Post. The new regulation should take this into account.

At present, India is regulated by an outdated act while the postal sector is developing at a fast pace. The new regulation has to be futuristic and it should focus on postal reforms rather than monitoring the competitive, high-growth courier industry. Since competition and technological development have been the key contributors to the growth of this industry and the user industries, the new Act should support competition, technological development and growth of postal, courier and EDS sector while ensuring universal access of basic service to consumers and monitor service quality. The modernisation of India Post and collaboration with private players has been discussed in the 10<sup>th</sup> and 11<sup>th</sup> Five Year Plans. The new Act should facilitate this. Innovative models of collaboration such as private players using the wide network of India Post or post offices on payment of a fee will improve the performance of both sectors and the earnings of India Post.

The new act should be designed by independent legal experts/organisations in a transparent manner. The experts/organisation should co-ordinate with India Post and other government departments like the Department of Industrial Policy and Promotion (DIPP) so that the flaws of previous proposed 2006 Amendment can be avoided. Intensive consultations with industry, logistics experts and academicians are needed before designing the new act. The government is aware of the need for a thorough consultation with all stakeholders and this was clear during the survey. Experts who took part in the survey claimed that the Indian regulation would be drawn up only after carefully studying regulations in other countries. However, India needs to be careful about replicating regulations in other countries, particularly countries like China, where the regulatory regime is in an evolutionary stage. There is still little clarity in the Chinese regulation, for instance, on issues such as the definition of a letter or the role of the regulator.

What India needs to learn from China is the manner in which the country has succeeded in attracting global integrators to invest and set up their hubs. China has undertaken liberalisation commitments in the WTO, which has lent credibility to the autonomous liberalisation of FDI. It offers certain advantages to logistics/express companies such as single window clearance in hubs and emergency status to express vehicles in selected cities. This has prompted many global integrators to shift their

hubs from other regions to China. For instance, UPS and FedEx have shifted their hubs from Philippines to China.

India should also be careful about following the European regulations too. In Europe, many postal operators are undergoing rapid privatisation. The EU has come up with a series of directives, which has laid down a path for privatisation. The EU member states are much ahead in terms of liberalisation than India.

Lastly, a sound regulatory regime is crucial for enhancing India's bargaining position in WTO/FTA negotiations. To benefit from these negotiations, India needs to have regulatory certainty, global best practices and should try not to discriminate between domestic and foreign players.

## **7. Some Thoughts and Way Forward**

With globalisation, development of technology and innovative business practices, the services sector has undergone significant changes. New types of services have developed and there are now multiple modes of delivery of the same service. Service providers are also interlinking their service offerings. This has raised the issue of how such services can be addressed in WTO/FTAs. In this context, this paper discusses how express delivery sector can be addressed in WTO/FTAs and its implications for India.

Express delivery is a relatively new sector but is growing at a fast pace due to development of technology and the client need for integrated, just-in-time deliveries. It plays a crucial role in trade facilitation and in ensuring the global competitiveness of the goods and service industries. With postal reforms and development of new products and modes of delivery, the distinction between logistics, postal, courier and express companies is becoming blurred - and they all seem to operate as trade facilitating agents with clients deciding who to use based on their requirements.

India is one of the earliest countries to use courier services. With liberalisation, high economic growth, globalisation and privatisation, EDS/courier sector has witnessed a significant growth in India - growing at an annual rate of 20-25 per cent. The sector is highly fragmented with a few large players accounting for the largest share of revenue of this sector and a large number of small non-corporate businesses. Unlike the rest of the world and other sectors in India, India Post has not undergone liberalisation and the existing postal act is outdated. The country is in the process of designing a new postal law.

This paper found that as of date, there are no FDI restrictions in the courier/express sector in India and foreign companies have established presence subject to the existing regulation, which reserved 'letter' for the Department of Posts. In allied sectors too, the country is undergoing reforms and there is private participation. In fact, India's FDI regime is fairly liberal. As of now, India has not undertaken commitments in postal and courier services in the WTO and in its FTAs. The

commitments in transport and other related sectors also fall short of the autonomous regime. Since the autonomous regime is fairly liberal, the paper suggests that the country can broaden its commitments not only in the postal and courier sectors but also in the transport and logistics sectors in the WTO and FTAs. For instance, India can undertake commitments in courier/express services. However, India seems to have taken a defensive position in these sectors in international negotiations, which weakens its negotiating position. The study found that some of the proponents of liberalisation of postal and courier (including express delivery) services and transport and logistics (such as the US and some EU countries) have more barriers than India. Therefore, India needs to change its negotiating position. The country can give market access commitments subject to existing regulation and security and capacity concerns in sectors like air transport.

Since the domestic regulatory regime is evolving, the country needs to be cautious about undertaking commitments, especially in cases where a negative list approach is followed. India needs to clearly define sectors like postal, courier and express before undertaking commitments – this is difficult since the services offered by them are sometimes similar and the country is yet to have a proper definition in place. It is important for India to match the domestic definition with international classifications like the UNCPC (from which the W/120 has been derived). The UNCPC itself is undergoing changes due to changes in the ownership/delivery of services. Express delivery is an evolving sector and both India Post and express/courier companies offer a wide range of services. Therefore, it is not easy to demarcate their areas of operation. One way forward is to classify services in terms of whether they are under USO or competitive services.

While commitments in express delivery services can be used to get reciprocal concessions in sectors/modes of export interest to India, it should be careful about undertaking forward looking commitments in postal, courier and allied sectors since the domestic regime is evolving. The process of policy implementation is slow - the country has been trying to frame an appropriate ground handling policy or a postal bill for several years. The regulatory process needs to be faster since proper regulations will provide operational certainty and improve India's bargaining position, especially in FTAs where regulatory issues are discussed in detail. Any autonomous liberalisation of transport, logistics and postal, courier and express sectors should be accompanied by an appropriate regulatory framework. In the absence of regulation, liberalisation may result in the shift of monopoly powers from the public to the private sector. In fact, the present survey shows that while both Indian and foreign companies appreciate the reform process in India, they are concerned about regulatory uncertainties. For instance, at present there are a number of ground handling companies, which have invested in equipment and have employed people. The future of these companies will be uncertain until the government comes up with a clear policy. Similarly, courier/express companies are facing uncertainty since India is yet to design the postal bill. Some of their core areas of concern are (a) the role and level



of independence of the regulator, if any (b) definition of reserved area (c) definition of USO and USO funding (d) cross subsidisation and (e) how to isolate the areas of operation of India Post and courier/express. Regulatory uncertainty is also one of the key reasons why India's trading partners are pushing for multilateral and bilateral commitments.

The study suggests that India's new postal regulation needs to take into account the developments in this sector and focus on postal reforms. The sector is growing at a fast pace and is undergoing technological developments. The new regulation should further support the growth of this sector in a competitive environment. At the same time, the provision of basic postal services at affordable prices is a USO of the postal service provider. The USO should be clearly defined. It should also be segregated from other competitive services (such as the EMS services of India Post, which directly compete with private service providers). The source of USO funding should be mentioned. There should not be any cross-subsidisation between competitive and USO services.

Ideally, there should not be a reserved area. However, if there is one, the act should lay down the timeframe for phasing it out. Unlike the current act, the definition of letter should be separate from the definition of reserved area.

This study found that while the need for a postal regulator is justified once this sector is privatised, whether the regulator should also regulate express and courier services is debatable. This is because in India, courier/express sector is highly competitive, with no entry or exit barriers; the operation of courier/EDS providers does not depend on access to incumbents' networks and if the courier/EDS companies do not meet quality standards, clients can easily change their service providers. Nevertheless, if there is a regulator, it should be independent of the Department of Posts, which has a vested interest in this sector. If the postal sector undergoes reforms and liberalisation, the primary role of the regulator will be to monitor the USO services, improve the efficiency of the USO service provider and to ensure that the private postal operators do not abuse/misuse their monopolistic position, if they have one, to the detriment of non-monopoly competitors.

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WTO (22 June 2005), Brazil – Revised Offer, TN/S/O/BRA/Rev.1.  
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### **Important Websites**

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<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:176:0021:0025:EN:PDF>  
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[www.icao.int/icao/en/atb/epm/Ecp/OverviewTrends.pdf](http://www.icao.int/icao/en/atb/epm/Ecp/OverviewTrends.pdf)  
<http://people.hofstra.edu/geotrans/eng/ch3en/conc3en/airfreedom.html>  
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[www.wto.org](http://www.wto.org)

## An Overview of GATS

GATS, established in the Uruguay Round of WTO negotiations (1986-1994), is the first ever set of multilateral, legally enforceable rules governing trade in services. The main aim of GATS is progressively to liberalise trade and investment in services through periodic rounds of negotiations.

Under GATS, services are traded in four different modes:

- **Mode 1:** “Cross-border supply of services” refers to the delivery of services across countries such as the cross-country movement of passengers and freight, electronic delivery of information and data.
- **Mode 2:** “Consumption abroad” refers to the physical movement of the consumer of the service to the location where the service is provided and consumed.
- **Mode 3:** “Commercial presence” refers to the establishment of foreign affiliates and subsidiaries of foreign service companies, joint ventures, partnerships, representative offices and branches. It is analogous to FDI in services.
- **Mode 4:** “Presence of natural persons” refers to natural persons who are themselves service suppliers, as well as natural persons who are employees of service suppliers, temporarily present in the other member’s market to provide services.

In Modes 1 and 2, the service supplier is not present within the territory of the member, while in Modes 3 and 4, the service supplier is present within the territory of the member.

The GATS contains two sorts of provisions. The first are general obligations, some of which apply to all service sectors (for example, Most Favoured Nation (MFN) and Transparency) and some only to scheduled specific commitments (for example, Article XI: Payments and Transfers). The second are specific commitments, which are negotiated undertakings particular to each GATS signatory.

Under the MFN Treatment (Article II), a member is obliged to provide to another WTO member treatment which is no less favourable than that which it provides to any other country, whether a WTO member or not. However, GATS allowed member countries to undertake exemptions to this clause, in their initial commitments in the Uruguay Round, subject to review.

The clause on Transparency (Article III) requires each member country to publish all measures of general applications, which pertain to or affect the operation of the Agreement. Countries are also required to publish international agreements pertaining to or affecting trade in services. In other words, the Council of Trade in Services will have to be informed – at least annually – of the introduction of any new laws or any changes to existing laws, regulations and administrative guidelines. WTO member countries can

make requests regarding specific information, which the concerned country will have to provide promptly.

The GATS aims to liberalise progressively services trade under the four modes of service supply. For each mode, a country can impose two types of restrictions (limitations): market access and/or national treatment. A country is said to have imposed a market access restriction if it does not allow (or partially allows with some restrictions) foreign service providers to enter and operate in the domestic market. A national treatment restriction exists when foreign services or service providers are allowed to enter the market but are treated less favourably than domestic service providers. During successive rounds of negotiations, member countries negotiate and undertake commitments to liberalise market access and/or national treatment in specific sectors in what is known as the Sectoral Schedule of Commitments and across all or several sectors in the Horizontal Schedule of Commitments. Both the sectoral and horizontal schedules have to be read together to understand the extent and nature of commitments undertaken in a particular sector. Thus, market access and national treatment are negotiated obligations. It is possible for countries not to grant full market access and deny national treatment by putting limitations and conditions on market access and conditions and qualifications on national treatment in particular sectors/sub-sectors. This is done by recording such limitations and qualifications in the commitment schedules under market access and national treatment columns. In its schedule, a country is said to have made a “full” commitment in a particular mode/sector if there are no restrictions on market access or national treatment. A country is said to have made “partial” commitment if the commitment is subject to some restrictions on market access or national treatment. If a country does not make any commitment to liberalise a particular sector or mode of supply and retains the right to impose restrictions in the future, then it is said to have kept the sector/mode “unbound”. It is expected that successive rounds of negotiations will secure further liberalisation by adding more sectors to a country’s schedule and removing limitations and qualifications, if any, in sectors/sub-sectors already in the schedule. This is done mode-wise for each sector/sub-sector. It is also possible for countries to make commitments that are outside the scope of market access and national treatment as defined in the GATS. These are called “additional commitments” (Article XVIII). This provides scope for making commitments in such regulatory areas as licensing, qualifications and standards applicable to services.

The GATS covers all services except those supplied in the exercise of government authority. It follows a positive list approach, which indicates that there is no a priori exclusion of any service sector and that countries are free to choose the service sectors/sub-sectors and modes within those sectors/sub-sectors for scheduling commitments.

**Table B1: Definition of Postal and Courier Services under UNCPC (Different versions)**

<p><b>UNCPC Prov/W 120</b> <i><u>2A Postal Services</u></i> <i><u>CPC 7511</u></i></p>	<p>Subclass: <i>75111</i> <b>Postal Services related to letters</b></p>	<p>Services consisting of pick-up, transport and delivery services of letters, newspapers, journals, periodicals, brochures, leaflets and similar printed matters, whether for domestic or foreign destinations, as rendered by the <b>national postal administration</b>.</p>
	<p>Subclass: 75112 <b>Postal services related to parcels</b></p>	<p>Services consisting of pick-up, transport and delivery services of parcels and packages, whether for domestic or foreign destinations, as rendered by the <b>national postal administration</b></p>
	<p>Subclass: 75113 <b>Post Office counter Services</b></p>	<p>Services rendered at post office counters, e.g. sales of postage stamps, handling of certified or registered letters and packets, and other post office counter services.</p>
	<p>Subclass: 75119 <b>Other Postal Services</b></p>	<p>Mailbox rental services, “poste restante” services, and public postal services not elsewhere classified. Exclusion: Services related to postal giro and postal savings accounts are classified in class 8111 (Services of monetary intermediaries).</p>
<p><i><u>2B Courier Services</u></i> <i><u>CPC 7512</u></i></p>	<p>Subclass: 75121 <b>Multi-modal Courier Services</b></p>	<p>Services consisting of pick-up, transport and delivery services, whether for domestic or foreign destinations of letters, parcels and packages, rendered by courier and using one or more modes of transport, other than by the national postal administration. These services can be provided by using either self-owned or public transport media. Exclusions: Courier services for mail by air are classified in subclass 73210 (Mail transportation by air)</p>
	<p>Subclass:75129 <b>Other Courier Services</b></p>	<p>Other courier services for goods, not elsewhere classified, e.g./trucking or transfer services without storage, for freight.</p>
<p><b>UNCPC Ver1.1</b> <i><u>Postal Services</u></i> <i><u>CPC 6811</u></i></p>	<p>Subclass: 68111 <b>Postal Services related to letters</b></p>	<p>This subclass includes: - collection, transport and delivery services for newspapers, journals and periodicals, whether</p>



		for domestic or foreign destinations, as rendered by the national postal administration - collection, transport and delivery services for letters, brochures, leaflets and similar printed matter, whether for domestic or foreign destinations, as rendered by the national postal administration.
	Subclass: 68112 <b>Postal Services Related to parcels</b>	This subclass includes: - collection, transport and delivery services for parcels and packages, whether for domestic or foreign destinations, as rendered by the national postal administration
	Subclass: 68113 <b>Post Office Counter Services</b>	This subclass includes: - services rendered at post office counters, e.g. sales of postage stamps, handling of certified or registered letters and packets, and other post office counter services
	Subclass:68119 <b>Other Postal Services</b>	This subclass includes: - mailbox rental services, “poste restante” services, and public postal services not elsewhere classified This subclass does not include: - services related to postal giro and postal savings' accounts, cf. 71 - telecommunications services, cf. 84
<u>Courier Services</u> <u>CPC 6812</u>	Subclass:68120 <b>Courier Services</b>	This subclass includes: - collection, transport and delivery services, whether for domestic or foreign destinations, for letters, parcels and packages, as rendered by courier and using one or more modes of transport, other than those provided by the national postal administration. These services can be provided using either self-owned or public transport media This subclass does not include:- messenger delivery services, cf. 64240
<b>UNCPC Ver 2.0</b> <u>Postal Services</u> <u>CPC 6811</u>	Subclass:68111 <b>Postal Services related to letters</b>	This subclass includes: - collection, transport and delivery services for newspapers, journals and periodicals, whether for domestic or foreign destinations, rendered under a <b>universal service obligation</b>
	Subclass:68112 <b>Postal Services</b>	This subclass includes: - collection, transport and delivery services for

	<b>Related to parcels</b>	parcels and packages, whether for domestic or foreign destinations, rendered under a <b>universal service obligation</b>
	Subclass:68113 <b>Post Office Counter Services</b>	This subclass includes: - services rendered at post office counters, e.g., sales of postage stamps, handling of certified or registered letters and packets, and other post office counter services.
	Subclass:68119 <b>Other Postal Services</b>	This subclass includes: - mailbox rental services, "poste restante" services, and public postal services not elsewhere classified This subclass does not include: - services related to postal giro and postal savings accounts, cf. 71 - telecommunications services, cf. 84
<u>Courier Services</u> <u>CPC 6812</u>	Subclass:68120 <b>Courier Services</b>	This subclass includes: - collection, transport and delivery services, whether for domestic or foreign destinations, for letters, parcels and packages, as rendered by courier and using one or more modes of transport, other than those rendered under a universal service obligation - messenger services of bicycle couriers This subclass does not include: - local freight delivery services, cf. 68130
<u>Local Delivery Services</u> <u>CPC 6813</u>	Subclass:68130 <b>Local Delivery Services</b>	This subclass includes: - local delivery services of such items as food and other purchases This subclass does not include: - courier services including messenger services of bicycle couriers, cf. 68120

Source: Compiled by authors from UNCPC various versions

Notes:

1. *Mail Transportation by air, cf. 73210:*  
*Transportation of mail by air, scheduled or non-scheduled.*
2. *Messenger delivery services, cf. 64240:*  
*This subclass includes:*
  - *Messenger services of bicycle couriers (explanatory note not available)*
  - *Local delivery services of such items as food and other purchases*
  - *Local delivery services by freight taxis*

**Box C1: Some Key Government Departments Affecting the operation of Express Companies**

**Relevant Central Ministries**

- Ministry of Civil Aviation
- Ministry of Commerce and Industry
- Ministry of Communications & Information Technology (Department of Posts)
- Ministry of Finance (Department of Revenue)
- Ministry of Road Transport & Highways
- Ministry of Railways
- Ministry of External Affairs
- Planning Commission
- Ministry of Environment & Forests
- Ministry of Health & Family Welfare (Drug Controller)
- Ministry of Chemical and Fertilisers (Department of Pharmaceuticals)
- Ministry of Science and Technology

**Relevant State Departments**

- Commercial Tax Departments
- State Planning Commission
- State Police Commissioners
- State Road Transport Corporations
- State Financial Corporations & Commissions
- Road Transport Office
- Public Work Departments
- Inspector General of Registration

**Local Bodies**

- Municipal Corporation (Taxation Department)

**Others**

- Narcotics Control Bureau
- Airports Authority of India
- Bureau of Civil Aviation Security
- Competition Commission of India

**Table D1: Classification of Transport and Auxiliary Services**

<b>W/120</b>	<b>CPC (Prov.)</b>	<b>Description</b>
<b>11</b>	<b>Transportation Services</b>	
<b>C. Air Transport Services</b>		Passenger transportation (CPC 731)
		Freight transportation (CPC 732)
		Rental of aircraft with crew (CPC 734)
		Maintenance and repair of aircraft (CPC 8868**)
		Supporting services for air transport (CPC 746)
<b>E. Rail Transport Services</b>		Passenger transportation (CPC 7111)
		Freight transportation (CPC 7112)
		Pushing and towing services (CPC 7113)
		Maintenance and repair of rail transport equipment (CPC 8868**)
		Supporting services for rail transport services (CPC 743)
<b>F. Road Transport Services</b>		Passenger transportation (CPC 7121 and 7122)
		Freight transportation (CPC 7123)
		Rental of commercial vehicles with operator (CPC 7124)
		Maintenance and repair of road transport equipments (CPC 6112 and 8867)
		Supporting services for road transport services (CPC 744)
<b>H. Services auxiliary to all modes of transport</b>		Cargo-handling services (CPC 741)
		Storage and warehouse services (CPC 742)
		Freight transport agency services (CPC 748)
		Other (CPC 749)

Source: Compiled by authors' from W/120 [www.wto.org/english/tratop\\_e/serv\\_e/mtn\\_gns\\_w\\_120\\_e.doc](http://www.wto.org/english/tratop_e/serv_e/mtn_gns_w_120_e.doc)

**Table E1: Comparison of Commitments in Express Delivery Services in US FTAs**

	<b>US-SINGAPORE FTA</b>	<b>US-CHILE FTA</b>	<b>US AUSTRALIA FTA</b>	<b>US-KOREA FTA</b>
Signature Entry in Force	: May 6, 2003 : January 1, 2004	Signature : June 6, 2003 Entry in Force : January 1, 2004	Signature : May 18, 2004 Entry in Force : January 21, 2005	Signature June 30, 2007 Pending
<b>Definition</b>	<p><b>Annex 8A: Singapore Services Market Access Reservations</b></p> <p><b>Post and Telecommunications Services (p. 32)</b> (d) Express delivery services means – (i) the expedited collection, transport and delivery of documents, printed matter, parcels and/or other goods, while tracking the location of, and maintaining control over, such items throughout the supply of the services. Express delivery services involving letters must meet the standards of express letter services stated in paragraph (b) and (c); and (ii) services provided in</p>	<p><b>Chapter on Cross-Border Trade in Services</b></p> <p><b>Annex 11.6 - Express Delivery</b> 1. The Parties affirm that measures affecting express delivery services are subject to the provisions of this Agreement. 2. For purposes of this Agreement, express delivery services shall be defined as the expedited collection, transport, delivery, tracking, and maintaining control of documents, printed matter, parcels, and/or other goods throughout the supply of the service.</p>	<p><b>Chapter on Cross-Border Trade in Services</b></p> <p><b>Article 10.12 Specific Commitments (Express Delivery)</b> 1. For the purposes of this Chapter, express delivery services means the collection, transport, and delivery, of documents, printed matter, parcels, or other items on an expedited basis, while tracking and maintaining control of these items throughout the supply of the service. Express delivery services do not include (i) air transport services, (ii) services supplied in the exercise</p>	<p><b>Chapter on Cross-Border Trade in Services</b></p> <p><b>Annex 12-B Express Delivery Services</b> 1. For purposes of this Agreement, express delivery services means the collection, transport, and delivery, of documents, printed matter, parcels, goods, or other items on an expedited basis while tracking and maintaining control of these items throughout the supply of the service. (Footnote: For greater certainty,</p>

	<b>US-SINGAPORE FTA</b>	<b>US-CHILE FTA</b>	<b>US AUSTRALIA FTA</b>	<b>US-KOREA FTA</b>
	<p>connection therewith, including, but not limited to, customs-related services and logistics services for the purposes of providing express delivery services.</p> <p>Express delivery services may also include collection from an address designated by the sender; release upon signature; guarantee of delivery within a specified time; use of electronic and/or other advanced technologies; and ability of the sender to confirm delivery. Express delivery services do not include (1) air transport services (2) services supplied in the exercise of government authority; and (3) maritime transport services.</p>		<p>of governmental authority, as defined in Article 1.2.22, or (iii) maritime transport services. (Footnote : )</p>	<p>“express delivery services” does not include: (a) for the United States, delivery of letters subject to the <i>Private Express Statutes</i> (18 U.S.C. 1693 <i>et seq.</i>, 39 U.S.C. 601 <i>et seq.</i>), but does include delivery of letters subject to the exceptions to, or suspensions promulgated under, those statutes, which permit private delivery of extremely urgent letters; and (b) for Korea, collecting, processing, and delivering letters for which exclusive rights are reserved for the Korean Postal Authority (KPA) under the <i>Postal Service Act</i>, but does include collecting,</p>

	<b>US-SINGAPORE FTA</b>	<b>US-CHILE FTA</b>	<b>US AUSTRALIA FTA</b>	<b>US-KOREA FTA</b>
				processing, and delivering commercial documents subject to Article 3 of the <i>Enforcement Decree of the Postal Services Act.</i> )
<b>Market Access</b>	<p><b>Annex 8 A: Singapore Services Market Access Reservations</b></p> <p><b>Post and Telecommunications Services (p. 31)</b></p> <p>(a) Only Singapore Post Pte. Ltd. is allowed to convey letters and postcards and perform all incidental services of receiving, collecting, sending, dispatching, and delivering of letters and postcards.</p> <p>(b) Paragraph (a) of this reservation does not apply to express letter services, which is defined as a local or an international express letter service or both.</p>	<p><b>Chapter on Cross-Border Trade in Services</b></p> <p><b>Annex 11.6 - Express Delivery</b></p> <p>3. The Parties express their desire to maintain the level of open market access existing on the date this Agreement is signed.</p> <p>4. Chile agrees that it will not impose any restrictions on express delivery services which are not in existence on the date this Agreement is signed</p>	<p><b>Chapter on Cross-Border Trade in Services</b></p> <p><b>Article 10.12: Specific Commitments (Express Delivery)</b></p> <p>2. The Parties confirm their desire to maintain at least the level of market openness for express delivery services that is in existence on the date this Agreement is signed. If a Party considers that the other Party is not maintaining such level of access, it may request consultations. The other Party shall afford adequate opportunity for consultations and, to the</p>	<p><b>Chapter on Cross-Border Trade in Services</b></p> <p><b>Annex 12-B Express Delivery Services</b></p> <p>2. The Parties confirm their desire to maintain at least the level of market openness for express delivery services that is in existence on the date this Agreement is signed. If a Party considers that the other Party is not maintaining such level of access, it may request consultations.</p>

	<b>US-SINGAPORE FTA</b>	<b>US-CHILE FTA</b>	<b>US AUSTRALIA FTA</b>	<b>US-KOREA FTA</b>
			extent possible, shall provide information in response to inquiries regarding the level of access and any related matter.	The other Party shall afford adequate opportunity for consultations and, to the extent possible, shall provide information in response to inquiries regarding the level of access and any related matter.
<b>Cross-Subsidization</b>	<p><b>Annex 8A: Singapore Services Market Access Reservations</b></p> <p><b>Post and Telecommunications Services (p. 32)</b></p> <p>(e) Singapore Post Pte Ltd is prohibited from using revenues from the provision of services described in paragraph (a) to cross-subsidise in an anti-competitive manner the price of services described in paragraph</p>	<p><b>Chapter on Cross-Border Trade in Services</b></p> <p><b>Annex 11.6 - Express Delivery</b></p> <p>4. Chile confirms that it has no intention to direct revenues from its postal monopoly to benefit express delivery services as defined in paragraph 2.</p>	<p><b>Chapter on Cross-Border Trade in Services</b></p> <p><b>Article 10.12: Specific Commitments</b></p> <p>3. Each Party confirms its intention to prevent the direction of revenues derived from monopoly postal services to confer an advantage to its own or any other competitive supplier's express delivery services in a manner inconsistent with that Party's laws and practices applicable to</p>	<p><b>Chapter on Cross-Border Trade in Services</b></p> <p><b>Annex 12-B Express Delivery Services</b></p> <p>4. Each Party confirms its intention to prevent revenues derived from monopoly postal services from being directed to confer an advantage to its own or any other competitive supplier's express delivery</p>



	<b>US-SINGAPORE FTA</b>	<b>US-CHILE FTA</b>	<b>US AUSTRALIA FTA</b>	<b>US-KOREA FTA</b>
			<p>the monopoly supply of postal services.</p> <p>4. For greater certainty, this Agreement, including Articles 14.3 (Designated Monopolies) and 14.5 (State Enterprises and Related Matters), applied to express delivery services.</p>	<p>services. (Footnote: For greater certainty, paragraph 4 shall not be construed to require a Party to amend relevant existing laws and regulations or to prevent KPA or the U.S. Postal Service from supplying any services.)</p>
<b>Designated Monopolies</b>	<p><b>Chapter on Competition</b></p> <p><b>Article 12.3: Designated Monopolies and Government Enterprises</b></p> <p>1. Designated Monopolies</p> <p>(a) Nothing in this Chapter shall be construed to prevent a Party from designating a monopoly.</p> <p>(b) Where a Party designates a monopoly and the designation may affect the interests of persons of the other Party, the Party shall:</p> <p>(i) at the time of the</p>	<p><b>Chapter on Competition</b></p> <p><b>Article 16.3 Designated Monopolies</b></p> <p>1. Nothing in this Chapter shall be construed to prevent a Party from designating a monopoly.</p> <p>2. Where a Party designates a monopoly and the designation may affect the interests of persons of the other Party, the Party shall:</p> <p>(a) at the time of the designation endeavour to introduce such conditions on the operation of</p>	<p><b>Chapter on Competition</b></p> <p><b>Article 14.3: Designated Monopolies</b></p> <p>1. Recognizing that designated monopolies should not operate in a manner that creates obstacles to trade and investment, each Party shall ensure that any privately-owned monopoly that it designates after the date of entry into force of this Agreement and any</p>	<p><b>Chapter on Competition</b></p> <p><b>Article 16.2: Designated Monopolies</b></p> <p>1. Each Party shall ensure that any privately-owned monopoly that it designates after the date this Agreement enters into force and any government monopoly that it designates or has designated:</p>

	<b>US-SINGAPORE FTA</b>	<b>US-CHILE FTA</b>	<b>US AUSTRALIA FTA</b>	<b>US-KOREA FTA</b>
	<p>designation endeavour to introduce such conditions on the operation of the monopoly as will minimize or eliminate any nullification or impairment of benefits in the sense of Article 20.4.1(c) (Additional Dispute Settlement Procedures); and</p> <p>(ii) provide written notification, in advance wherever possible, to the other Party of the designation and any such conditions.</p> <p>(c) Each Party shall ensure that any privately-owned monopoly that it designates after the date of entry into force of this Agreement and any government monopoly that it designates or has designated:</p> <p>(i) acts in a manner that is not inconsistent with the Party's obligations under</p>	<p>the monopoly as will minimize or eliminate any nullification or impairment of benefits in the sense of Annex 22.2 (Nullification or Impairment); and</p> <p>(b) provide written notification, in advance wherever possible, to the other Party of the designation and any such conditions.</p> <p>3. Each Party shall ensure that any privately-owned monopoly that it designates after the date of entry into force of this Agreement and any government monopoly that it designates or has designated:</p> <p>(a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it in connection with the</p>	<p>government monopoly that it designates or has designated:</p> <p>(a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it in connection with the monopoly good or service, such as the power to grant import or export licenses, approve commercial transactions, or impose quotas, fees, or other charges;</p> <p>(b) acts solely in accordance with commercial considerations in its purchase or sale of the</p>	<p>(a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it in connection with the monopoly good or service, such as the power to grant import or export licenses, approve commercial transactions, or impose quotas, fees, or other charges;</p> <p>(b) acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good</p>

	<b>US-SINGAPORE FTA</b>	<b>US-CHILE FTA</b>	<b>US AUSTRALIA FTA</b>	<b>US-KOREA FTA</b>
	<p>this Agreement wherever such a monopoly exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it in connection with the monopoly good or service, such as the power to grant import or export licenses, approve commercial transactions, or impose quotas, fees or other charges;</p> <p>(ii) acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, including with regard to price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, except to comply with any terms of its designation that are not</p>	<p>monopoly good or service, such as the power to grant import or export licenses, approve commercial transactions, or impose quotas, fees, or other charges;</p> <p>(b) acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, including with regard to price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, except to comply with any terms of its designation that are not inconsistent with subparagraph (c) or (d);</p> <p>(c) provides non-discriminatory treatment to covered investments, to goods of the other Party, and to service suppliers of the other Party in its purchase or sale of the monopoly good or service in the relevant market; and</p>	<p>monopoly good or service in the relevant market, including with regard to price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, except to comply with any terms of its designation that are not inconsistent with subparagraph (c) or (d).</p> <p>(c) provides non-discriminatory treatment to covered investments, to goods of the other Party, and to service suppliers of the other Party in its purchase or sale of the monopoly good or service in the relevant market; and</p> <p>(d) does not use its monopoly position to</p>	<p>or service in the relevant market<sup>1</sup> including with regard to price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, except to comply with any terms of its designation 2 that are not inconsistent with subparagraph (c) or (d); (Footnote: Subparagraph (b) shall not be construed to prevent a designated monopoly from supplying the monopoly good or service in accordance with specific rates approved, or other terms or conditions established, by a</p>

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	<p>inconsistent with subparagraph (iii) or (iv);</p> <p>(iii) provides non-discriminatory treatment to covered investments, to goods of the other Party, and to service suppliers of the other Party in its purchase or sale of the monopoly good or service in the relevant market; and</p> <p>(iv) does not use its monopoly position to engage, either directly or indirectly including through its dealings with its parent, subsidiaries, or other enterprises with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affect covered investments.</p> <p>(v) <b>Article 12.8 Definitions</b>  <b>“in accordance with commercial</b></p>	<p>(d) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, subsidiaries, or other enterprises with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affect covered investments.</p> <p><b>Article 16.9 Definitions</b>  <b>“in accordance with commercial considerations</b> means consistent with normal business practices of privately-held enterprises in the relevant business or industry”</p>	<p>engage either directly or indirectly, through its dealings with its parent, subsidiaries, or other enterprises with common ownership, in anticompetitive practices in a non-monopolized market in its territory, where such practices adversely affect covered investments.</p> <p>2. Nothing in this Chapter shall be construed as preventing a Party from designating a monopoly.</p> <p>3. This Article does not apply to government procurement.</p>	<p>regulatory authority of a Party, provided that those rates or other terms or conditions are not inconsistent with subparagraph (c) or (d.)</p> <p>(c) provides non-discriminatory treatment to covered investments, to goods of the other Party, and to service suppliers of the other Party in its purchase or sale of the monopoly good or service in the relevant market; and</p> <p>(d) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, subsidiaries, or other enterprises</p>

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	<p><b>considerations</b> means consistent with normal business practices of privately-held enterprises in the relevant business or industry”</p>			<p>with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affect covered investments.</p> <p>2. Nothing in this Chapter shall be construed to prevent a Party from designating a monopoly or maintaining a designated monopoly.</p> <p>3. This Article does not apply to government procurement</p>
<b>State Enterprises</b>	<p><b>Chapter on Competition</b></p> <p><b>Article 12.3 Designated Monopolies and Government Enterprises</b></p> <p>2. Government Enterprises</p> <p>(a) Nothing in this Agreement shall be construed to prevent</p>	<p><b>Chapter on Competition</b></p> <p><b>Article 16.4: State Enterprises</b></p> <p>1. Nothing in this Agreement shall be construed to prevent a Party from establishing or maintaining a state enterprise.</p> <p>2. Each Party shall ensure that any</p>	<p><b>Chapter on Competition</b></p> <p><b>Article 14.4: State Enterprises and Related Materials</b></p> <p>1. The Parties recognize that state enterprises should not operate in a</p>	<p><b>Chapter on Competition</b></p> <p><b>Article 16.3: State Enterprises</b></p> <p>1. Each Party shall ensure that any state enterprise that it</p>

	<b>US-SINGAPORE FTA</b>	<b>US-CHILE FTA</b>	<b>US AUSTRALIA FTA</b>	<b>US-KOREA FTA</b>
	<p>a Party from establishing or maintaining a government enterprise</p> <p>(b) Each Party shall ensure that any government enterprise that it establishes or maintains acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such enterprise exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges.</p> <p>(d) Singapore shall ensure that any government enterprise:</p> <p>(i) acts solely in accordance with commercial considerations in its purchase or sale of goods or services, such as with regard to price, quality,</p>	<p>state enterprise that it establishes or maintains acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such enterprise exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges.</p> <p>3. Each Party shall ensure that any state enterprise that it establishes or maintains accords non-discriminatory treatment in the sale of its goods or services to covered investments.</p>	<p>manner that creates obstacles to trade and investment. In that light, each Party shall ensure that any state enterprise that it establishes or maintains:</p> <p>(a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such enterprise exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges; and</p> <p>(b) accords non-discriminatory treatment in the sale of</p>	<p>establishes or maintains:</p> <p>(a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such enterprise exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges; and</p> <p>(b) accords non-discriminatory treatment in the sale of its goods or services to covered investments.</p>

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	<p>availability, marketability, transportation, and other terms and conditions of purchase or sale, and provides non-discriminatory treatment to covered investments, to goods of the United States, and to service suppliers of the United States, including with respect to its purchases or sales;<sup>12 2</sup> and</p> <p>(ii) does not, either directly or indirectly, including through its dealings with its parent, subsidiaries, or other enterprises with common ownership:</p> <p>(A) enter into agreements among competitors that restrain competition on price or output or allocate customers for which there is no plausible efficiency justification, or</p> <p>(B) engage in exclusionary practices that substantially</p>		<p>its goods or services.</p> <p>2. The United States shall ensure that anticompetitive activities by sub-federal state enterprises are not excluded from the reach of its national antitrust laws solely by reason of their status as sub-federal state enterprises, to the extent that their activities are not protected by the State Action Doctrine.</p> <p>3. Australia shall take reasonable measures, including through its policy of competitive neutrality, to ensure that its governments at all levels do not provide any competitive advantage to any government businesses simply because they are government-owned. This</p>	<p>2. Nothing in this Chapter shall be construed to prevent a Party from establishing or maintaining a state enterprise.</p>

	<b>US-SINGAPORE FTA</b>	<b>US-CHILE FTA</b>	<b>US AUSTRALIA FTA</b>	<b>US-KOREA FTA</b>
	lessen competition in a market in Singapore to the detriment of consumers.		paragraph applies to the business activities of government businesses and not to their non-business, non-commercial activities. Australia shall ensure that its competitive neutrality complaints offices treat complaints lodged by the United States, or persons of the United States, no less favourably than complaints lodged by persons or government bodies of Australia.	



**Box F1: Air Freedom Rights**

- **First Freedom:** To overfly one country en-route to another.
- **Second Freedom:** To make a technical stop in another country.
- **Third Freedom:** To carry traffic (freight and passengers) from the home country to another country.
- **Fourth Freedom:** To carry traffic to the home country from another country.
- **Fifth Freedom:** To carry traffic between two countries by an airline of a third country on route with origin/destination in its home country.
- **Sixth Freedom:** To carry traffic between two countries by an airline of a third country on two routes connection with its home country.
- **Seventh Freedom:** To carry traffic between two countries by an airline of a third country on a route with no connection with its home country.
- **Eight Freedom or Cabotage:** To carry traffic within a country by an airline of another country on a route with origin/destination in its home country.
- **Ninth Freedom or Full Cabotage/Open-skies:** To carry traffic between two domestic points in a foreign country. It involves the right of a home country to move passengers with another country.

Source: <http://people.hofstra.edu/geotrans/eng/ch3en/conc3en/airfreedom.html>

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