



THE NATIONAL BUREAU OF ASIAN RESEARCH

*Informing and Strengthening Policy in the Asia-Pacific*

# NBR SPECIAL REPORT

## **China and WTO Compliance: Postal and Express Delivery Services**

*by William B. Abnett and Neil J. Beck*

---

---

No. 6, April 2004

---

---

## THE NATIONAL BUREAU OF ASIAN RESEARCH

Published in the United States of America by  
The National Bureau of Asian Research  
4518 University Way NE, Suite 300  
Seattle, Washington 98105  
206-632-7370 Phone  
206-632-7487 Fax  
nbr@nbr.org Email  
<http://www.nbr.org>

© 2004 by The National Bureau of Asian Research

This report may be reproduced for personal use. Otherwise, its articles may not be reproduced in full without the written permission of NBR. When information from this report is cited or quoted, please cite the author and The National Bureau of Asian Research.

This is the sixth *NBR Special Report*.

The views expressed in this publication are those of the authors, and do not necessarily reflect the views of The National Bureau of Asian Research or the institutions that support NBR.

NBR is a nonprofit, nonpartisan research institution that focuses on major policy issues in the Asia-Pacific and their impact on the United States. Major themes in NBR's research agenda include strategic and diplomatic relations, regional economic integration and development, trade, globalization, terrorism, energy, and health. Drawing upon an extensive network of the world's leading specialists and leveraging the latest technology, NBR conducts advanced, policy-oriented analysis on these issues, and disseminates the results through briefings, studies, conferences, television, and email fora.

NBR is a tax-exempt, nonprofit corporation under I.R.C. Sec. 501(c)(3), qualified to receive tax-exempt contributions.

Printed in the United States of America

## EXECUTIVE SUMMARY

World Trade Organization (WTO) rules governing foreign market access for courier and distribution services pose serious compliance problems for China (the People's Republic of China—PRC). These services, defined and regulated by international rules, fall under the purview of the General Agreement on Trade in Services (GATS), which allows members significant flexibility in defining the scope of their commitments.

China's uneven compliance performance to date continues to cause concern among foreign industry and governments. Soon after its accession, China issued two regulations for express delivery services that contradicted its WTO horizontal commitments. The United States led a sustained, ultimately successful effort to convince Beijing to revise these measures, but draft amendments circulated in late 2003 by the State Council of the PRC raise new and significant compliance concerns. For its part, the international express delivery industry believes that China's postal monopoly, China Post, is attempting to expand its control over express commerce and create an internal regulatory body.

This paper does not advocate either the Chinese or the U.S. position, but seeks to explore existing international rules and commitments, with the expectation that the confusing relationship between the international express delivery industry, the government of the People's Republic of China, and the international trade system will become more "transparent" in the future.

Complicating matters further is the lack of clarity in the attitudes toward WTO compliance among China's new leadership. To convince world leaders of its continued sincerity, the central government should identify a highly visible, politically powerful spokesperson for China's WTO membership. While doing so will not directly impact the postal and express delivery services issue, it would certainly be helpful in a different way. U.S. Trade Representative Robert B. Zoellick and U.S. Commerce Secretary Donald L. Evans would

have one person in the PRC government to whom they could direct *all* WTO-related complaints (much like the role played by former PRC Premier Zhu Rongji during the Clinton administration's WTO negotiations with China).

Much recent attention has been given to the United States' first trade complaint in the WTO against China. This complaint—alleging that China provides preferential tax treatment to integrated circuits produced in China, thereby disadvantaging U.S. and other imports—is the first trade case in the WTO against China. However, only one third of all such WTO dispute settlement (DS) cases proceed to the next level, i.e., the creation of a DS panel to examine the evidence. Negotiation, in other words, is often the most effective course of action in solving trade disputes. This is especially true now. Given China's membership in the multilateral WTO, the United States need not rely solely on unilateral trade remedies. This in fact was one of the main reasons China's membership in the world trading system has been deemed so vitally important.

Increasing and improving market access in China will be slow and challenging, and will require a three-pronged approach that involves: (1) the office of the United States Trade Representative (USTR) and U.S.-PRC trade negotiations; (2) the long-term, “win-win” strategy of the Conference of Asia-Pacific Express Carriers (CAPEC), in which a “rising tide floats all boats”; and (3) multilateral action within the WTO, particularly the improved functioning of the Transitional Review Mechanism (TRM).

# CHINA AND WTO COMPLIANCE: POSTAL AND EXPRESS DELIVERY SERVICES

*William B. Abnett and Neil J. Beck*

## **“Foreign” Courier and Distribution Services in China (Overview)**

Trade-related regulations governing foreign market access for courier and distribution services pose serious WTO compliance problems for Beijing. In China, state-owned companies have monopolized services for more than fifty years, and the sector is one of the most heavily protected in the Chinese economy. The GATS is among the WTO’s most important agreements. The accord, which came into force in January 1995, is the first and only set of multilateral rules covering international trade in services. WTO members themselves negotiated the agreement, and it sets the structure within which firms and individuals can operate. The GATS has two parts: (1) the framework agreement containing the general rules and disciplines, and (2) the national schedules, which list each country’s specific commitments on access

---

William B. Abnett is Senior Advisor at The National Bureau of Asian Research (NBR) and moderator of NBR’s China-WTO Forum. Prior to working at NBR, Mr. Abnett served as Director of the Washington State China Relations Council and as Director for Chinese Affairs in the Office of the United States Trade Representative (USTR). Neil J. Beck is currently completing his Master of Public Administration degree at Harvard University’s John F. Kennedy School of Government, and was a Research Associate at NBR from 2002 to 2003. During his tenure at NBR, Mr. Beck contributed to many programs, including Strategic Asia, and is author of the *NBR Briefing*, “What Does SARS Mean for China?”

to its domestic market by foreign suppliers.<sup>1</sup> The GATS also applies to the postal services of a WTO member—whether publicly or privately owned—as long as they are supplied on a commercial basis or in competition with one or more service suppliers, which is usually the case. According to GATS rules, *any* service other than one supplied in the exercise of government authority is considered a covered service. If specific commitments are not made with respect to a particular service sector, however, only the general obligations contained in Part II of the GATS, e.g., most-favored nation (MFN) and transparency requirements, will apply to that sector. Even then, WTO members could limit the scope of the MFN requirement somewhat.

The courier services issue has many dimensions, of course, but it represents a classic example of what happens when a highly competitive foreign industry faces off with a competitor that enjoys the benefits of a heavily protected domestic monopoly. In the words of one extremely knowledgeable source, “Quite simply, the [Chinese] Post Office needs money, has seen the share of the market held by its express arm, EMS [China Post’s Express Mail Service], steadily eroded by the multinationals and other domestic competitors, and sees this [i.e., the China Post restriction on private firms from delivering letters and similar materials under 500 grams in weight—and setting new price controls on non-China Post deliveries below that weight limit] as a way to regain market share and money.”<sup>2</sup> The history of EMS and other express mail services is summarized in a report by the U.S.-China Business Council.<sup>3</sup>

The U.S. government has raised this issue with the Chinese in Geneva and Beijing, and China Postal Service (CPS) has now responded by seeking to further regulate foreign express carriers, much to the consternation of the U.S. Chamber of Commerce and others. CPS recently began requiring foreign express carriers to register with local branches of China Post in order to acquire “entrustment” licenses. This controversial issue has drawn international media attention and represents the first of many potential impediments to implementation of WTO commitments.

---

<sup>1</sup> World Trade Organization (WTO), <[http://www.wto.org/english/tratop\\_e/serv\\_e/gats\\_factfiction1\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/gats_factfiction1_e.htm)>.

<sup>2</sup> Author’s correspondence with a Western businessperson from a major multinational corporation, April 9, 2002.

<sup>3</sup> U.S.-China Business Council, *The Integrated Express Industry in China: A Catalyst for Investment and Growth*, Washington, D.C.: The U.S.-China Business Council, 2003, <[www.uschina.org/public/documents/2003/09/integratedexpress-full.pdf](http://www.uschina.org/public/documents/2003/09/integratedexpress-full.pdf)>, pp. 24–26. See also *China State Post Bureau Annual Report 2000*, “Express State Mail Service (EMS),” <<http://www.chinapost.gov.cn/fzgz/2000-nb/eng/07.htm>>.

## The WTO's Rules on Postal Monopolies and Express Courier Services<sup>4</sup>

Neither postal nor courier services were addressed as such in the course of the Uruguay Round of multilateral trade negotiations (1986–1994).<sup>5</sup> The GATS Services Sectoral Classification List (MTN.GNS/W/120) classifies postal and courier services as “subsectors of communication services,” a larger sector that also includes telecommunications and audiovisual services.

Measures that can hamper trade in courier services are “customs regulations, the sometimes regulatory role of the postal monopolies or the scope of their privileges, licensing requirements, postal taxes, and concession fees. The benefits of GATS commitments can also be limited insofar as they may not adequately address operational issues such as customs clearance, self handling, or, at times, the ability of the foreign supplier to conduct its own pickup and delivery. Such measures can delay service, add to the cost of service, or limit business opportunities. For example, some countries require foreign couriers to use locally contracted service suppliers for pickup, delivery, and customs clearance procedures.”<sup>6</sup>

## The U.S. Government and the Express Delivery Industry in China

The most authoritative U.S. government source on the status of China's WTO compliance with that country's commitments in the area of express delivery services is the USTR,<sup>7</sup> which reported in December 2003 that China, in its services schedule, committed to substantial opening in a broad range of services sectors by eliminating many existing constraints on market access, at all levels of government, particularly in sectors important to the

---

<sup>4</sup> Most of this section relies on official WTO documents that have not been updated in over five years. See World Trade Organization, *Postal and Courier Services*, document number S/C/W/39, June 12, 1998, <[www.wto.org](http://www.wto.org)> (hereafter cited as *WTO Postal Study*).

<sup>5</sup> *WTO Postal Study*, p. 1.

<sup>6</sup> *WTO Postal Study*, p. 10.

<sup>7</sup> United States Trade Representative, *2003 Report to Congress on China's WTO Compliance*, December 11, 2003, <[www.ustr.gov/regions/china-hk-mongolia-taiwan/2003-12-18-china.pdf](http://www.ustr.gov/regions/china-hk-mongolia-taiwan/2003-12-18-china.pdf)>, (hereafter referred to as *USTR 2003 China WTO Compliance Report*). Public Law 106-286 (U.S. Permanent Normal Trade Relations (PNTR) legislation, formerly known as H.R. 4444), Section 421, requires the USTR annually to “submit a report to Congress on compliance by the People's Republic of China with commitments made in connection with its accession to the World Trade Organization, including both multilateral commitments and any bilateral commitments made to the United States,” <[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106\\_cong\\_public\\_laws&docid=f:publ286.106.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_cong_public_laws&docid=f:publ286.106.pdf)>.