



Policy Statement

The liberalization of trade in insurance services

Prepared by the Commission on Financial Services and Insurance

Liberalization of trade in insurance services

ICC recognizes that the 1997 Financial Services Agreement was an important first step in achieving trade liberalization and market access in financial services. The Doha Development Agenda provides a unique opportunity for further insurance market liberalization among WTO members. The arguments in favour of the elimination of restraints on foreign participation in financial services have been well rehearsed and the economic benefits of market access in both developed and developing economies are recognized. Insurance liberalization, successfully managed, will help to attract foreign insurers' direct investment and drive development in insurance services, in turn spurring sustainable overall economic development and financial security and thus contributing to combat poverty. The Doha Development Agenda negotiations should be seen as an opportunity to build on past achievements.

ICC would like to recommend the following insurance related goals for the services negotiations of the Doha Development Agenda:

Pro-competitive regulatory reform

Local regulatory requirements often prevent foreign investors from competing on a level playing field with domestic firms. Market access does not necessarily guarantee liberalization. Consequently, pro-competitive regulatory regimes are required. This means that regulators should focus on solvency and prudential requirements to ensure a stable market while, in most cases, allowing competition to determine the most competitive products and price. Transparency and impartial enforcement of regulations are also important aspects of a pro-competitive regulatory framework that is conducive to equal competition amongst foreign and local firms. This should encompass exchange control restrictions which inhibit the free flow of funds, or the rights to invest in secure financial instruments whether domestically or abroad. There should also be provisions making all regulations publicly available and open to comment including explanations from the government supporting its acceptance or rejection of outside recommendations.

An independent regulatory body with sufficient resources to adequately enforce regulations is

also essential to a transparent and open insurance market. In that regard, the WTO together with other international organizations should develop capacity-building programmes to assist developing countries in establishing the regulatory systems needed to support market opening commitments to be made in the Doha round. The annexed “Model Schedule” is a proposed detailed list of necessary elements for an open and competitive insurance market for the use of WTO members in scheduling commitments in the framework of the GATS. The “Model Schedule” was drafted and published by the Financial Leaders Working Group – Insurance Evaluation Team in October 2001.

Establishment

The 1997 negotiations resulted in a significant improvement in providing non-resident insurers with the opportunity to establish and expand their commercial presence in foreign markets. We believe foreign insurers of other WTO countries should enjoy the same rights of access to domestic insurance markets as domestic insurers. These rights should be available to these foreign insurers, whether they choose to establish by way of subsidiary or branch, and whatever their legal form, provided that legal form is recognized in the foreign insurer's home state. Similar rights of access should be available to intermediaries.

To ensure equal treatment, discriminatory capital requirements, discriminatory reporting requirements and restrictions on posting of key personnel should be removed.

This right to establish and operate competitively should also entail:

- the removal of obstacles to majority ownership and control of joint ventures and subsidiaries;
- the removal of obstacles to expansion in an insurance market, notably through branching; and
- safeguarding acquired rights.

Cross border provision of services

Unnecessary restrictions on cross border financial services business involving marine, aviation and transport insurance should be removed in view of its international character. If appropriate, such liberalization should also be extended to large commercial and industrial risks as the benefits of trade in these areas should be attainable without requiring actual establishment. “Insureds” in these areas normally enjoy a level of financial sophistication which reduces the need for the level of host country consumer protection. As explained below, similar liberalization should be introduced with respect to reinsurance.

Reinsurance

Considerable freedom presently exists for cross-border provision of reinsurance in many WTO countries. Nevertheless, there are significant barriers in many countries, and this is by no means confined to any particular region or to economies at a particular stage of development. Discriminatory reinsurance practices exist in countries with some of the most developed reinsurance sectors and highest per capita insurance expenditure, as well as in many countries with the least developed reinsurance sectors.

Progress towards greater liberalization, going beyond the stand-still commitments made in previous

GATS negotiations, is particularly important in this sector. Unlike direct insurance, where local or host country considerations of consumer protection may warrant some deference, reinsurance is conducted exclusively between or among professional managers, and the number of participants and transactions, even after greater liberalization is achieved, should not be so large as to overburden the resources of prudent solvency supervision, when it is administered on a non-discriminatory basis. Reinsurance, moreover, is or should be one of the principal mechanisms for expansion of domestic underwriting capacity and of pooling risk or buffering national economies against the shock of economic losses resulting from catastrophic natural events. Given these factors, reinsurance is a sector where early progress toward mutual recognition of supervision standards is most justified and should be achievable.

Among the barriers, direct and indirect, which should be addressed in the current services negotiations are the following:

- removal of mandatory cessions to or preferences for domestic reinsurers, either private or state owned;
- removal of requirements that foreign reinsurers establish or provide direct insurance services as a condition to providing reinsurance in the host country;
- reduction of deposit or funding requirements which exceed the prudential security standards effectively required of equivalent reinsurance from domestic sources; and
- elimination of credit-for-reinsurance or other accounting standards for cedents which effectively discriminate against provision of reinsurance by foreign insurers.

In addition to the liberalization of cross-border reinsurance, it should be a goal of the services negotiations in the Doha Round to confirm the right of foreign investors to establish a reinsurance business through a wholly owned presence or other form of business ownership and to operate competitively through established vehicles available to national companies in all WTO countries.

Intermediaries

The crucial role played by professional insurance intermediaries should not be underestimated. Not only do these parties often assist “assureds” in pursuit of the most cost-effective means of managing the transfer of risk, their role in risk management techniques and in providing services designed to minimize companies’ exposure to risk is an essential contribution to economic growth. Consequently, unnecessary restrictions on the right of establishment of foreign insurance intermediaries should be removed and these parties should have the right to establish, either through a wholly owned operation or some other business ownership vehicle.

It is important that foreign insurance intermediaries should be allowed to compete on a level playing field with local intermediaries. Unnecessary restrictions on cross border and multinational insurance placements should also be removed and insurance intermediaries should be permitted to place business in the most suitable market for risk with the prudential supervision limited to objective criteria of quality, not the nationality of the security.

In this respect ICC refers to the World Federation of Insurance Intermediaries (WFII) guidelines for GATS negotiations on insurance intermediaries and respectfully invites governments to take into consideration the issues mentioned in this paper.

■ Phasing in liberalization

Insurance markets are at different stages of development among the WTO member countries, and ICC acknowledges that the liberalization objectives it has outlined may need to be phased in over appropriate transition periods in certain countries, especially developing economies. These phase-in

periods, which are recognized in the Model Schedule, will vary by country depending on its local market, legal, regulatory and administrative frameworks. It may be appropriate for certain liberalization steps to be phased in before others. The developed countries should support capacity building programmes within the WTO and other organizations that will assist countries to create the conditions necessary for full implementation of liberalization commitments. In the services negotiations, governments should include timelines for meeting liberalization commitments and these should be as short as is reasonable in light of the specific circumstances of each member country.

■ Concluding remarks

ICC invites all WTO member countries to use the "Understanding on Commitments in Financial Services" annexed to the GATS, which contains a set of minimum commitments, as a basis for further commitments taken from the "Model Schedule" annexed to this statement.

ICC welcomes this opportunity of identifying objectives which should be pursued in the Doha round service negotiations. Significant progress has already been made with the 1997 Financial Services Agreement and this has established a framework within which our goal of further liberalization should be achieved with the aim of contributing to sustainable economic development of all WTO members.

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ANNEX

Proposed Model Schedule for future Insurance Commitments by WTO Members¹

Introduction

This Proposed Model Schedule is a proposed text for the use of WTO Members in scheduling commitments under the framework of the GATS.

It does not require a new framework of GATS, nor does it require a new annex or a new method of scheduling commitments under the GATS.

It is suggested as a desirable text to be used not only when Members schedule new commitments, but also for Members who have already made commitments as described in each item of the text.

The attached document represents two separate contributions which WTO Members would add to their commitments in insurance. The first represents commitments to market access and national treatment. It builds on existing commitments already in the schedules of many countries, but incorporates certain specific obligations so as to remove any ambiguity as to whether they are built into the more general obligations assumed in the schedule. For instance, some countries already have inserted “none” in their insurance commitments for certain modes of supply, such as that of commercial presence. The purpose of the attached text is to give greater specificity and predictability to those commitments that are important to the industry. In addition, it sets forth obligations clearly not addressed in current schedules, such as the obligation to fully stage a commitment within a specified timeframe, as well as a standstill to protect acquired rights.

The second part of the contribution could be entitled “Best Practices in Insurance”, which take the form of “additional commitments” under GATS Article XVIII. It addresses those aspects of domestic regulation that are not addressed by the market access or national treatment provisions. They reflect regulatory obligations that exist for both foreign² and indigenous suppliers of services. Unlike the first part of the text, however, the best practices would be uniformly adopted by a critical mass of countries. Conceptually, the two parts serve the same objective, in that they are addressing effective market access for insurance providers. However, they are separated because of the way in which the GATS is structured.

In order to make clear the intended effect of this text, the following comments are felt necessary to ensure completeness in the obligations to be assumed in the area of insurance.

I. Proposed Model Schedule for Insurance Services

The following would be an integral part of the specific commitments in the insurance sector pursuant to Article XVI and XVII of the GATS, entered into in accordance with the wider obligations in Parts I and II

¹ The Model Schedule was published on 19 October 2001 by the Financial Leaders Working Group – Insurance Evaluation Team.

² “Foreign” means “from another WTO member” throughout the Model Schedule and the “Best Practices” annex

of the GATS relating to Sub-Federal entities. The obligations to be assumed by a Member must be read with commitments expressed in the columns of market access and national treatment in its schedule, in order to reflect the full extent of the Member's undertakings. In some instances, the obligations assumed in the market access and national treatment columns in a Member's schedule may capture some of the undertakings listed in this text. It nonetheless is suggested that those obligations should be described or supplemented by the wordings used in this proposed model schedule with the objective of providing greater clarity and specificity to certain aspects of the Member's insurance obligations.

It is recognized that some obligations cannot be assumed at the conclusion of the current negotiation. However, some appropriate time frame for the staging of obligations is to be established, in general leading to full obligations in a maximum two years time from entry into force of the results of this negotiation.

The proposed text does not suggest a different method of scheduling commitments. It recognizes the right of Members to schedule commitments according to the Financial Services Understanding, which is annexed to the GATS; or according to standard scheduling techniques as provided in Article XX of GATS.

Unless otherwise indicated, the terms "insurance services" and "insurance supplier" incorporate all forms of insurance and reinsurance underwriting; insurance intermediation (brokerage and agency services, including reinsurance brokerage); surety; consultancy, actuarial, risk management, risk assessment, and claims settlement services.

Market Access and National Treatment

A. Acquired Rights

With respect to all insurance services, future measures and schedules of commitments adopted by Members will, at a minimum, not reduce or impair the current level of market access and national treatment available to foreign insurance services and services suppliers.

B. Market Access - Cross Border delivery in respect of Reinsurance, Marine, Aviation and Transport (MAT) Insurance

1. Reinsurance, MAT insurance and insurance services related to these types of insurance are to be bound under the cross border mode of supply without restrictions to market access. Members will assume identical undertakings with respect to access to MAT and insurance intermediation (brokerage and agency) services related to these types of insurance by clients located abroad, without regard to whether the foreign insurance supplier is registered in the consumer country.
2. For life and non-life reinsurance³ the following additional specific commitments are to be included in the schedule:
 - (a) Elimination of mandatory cessions imposed on insurance suppliers to cede all or a portion of their risks to specified insurance or reinsurance suppliers;
 - (b) Elimination of any requirements that impose greater restrictions on the percentage of cessions to foreign reinsurance suppliers than to domestic reinsurance suppliers;

³ The commitment should allow for differentiation on a least trade restrictive basis for life and non-life reinsurance market segments, consistent with the nature of risks assumed.

- (c) Elimination of right-of-first refusal privileges for domestic reinsurance suppliers;
- (d) Elimination of discriminatory requirements imposed on foreign reinsurance suppliers as they relate to collateralisation and localization of assets;
- (e) The abolition of reinsurance monopolies; and
- (f) The guarantee of freedom of form of reinsurance and freedom of reinsurance contract terms.

C. Market Access - Commercial Presence

1. Form of establishment
 - (a) A foreign insurance supplier may establish a commercial presence by setting up a subsidiary (either wholly or partly (majority) owned), or by forming a new company, or through acquisition of an insurance supplier already established in the host country or as a branch;
 - (b) In their regulatory approach to a foreign insurance supplier, Members shall have full regard for the relationship between such a supplier and its parent company when the supplier enters into the market;
 - (c) Consistent with international intellectual property, business name registration and trademark law, a licensed foreign insurance supplier may provide its services using its home company name in the host country market, provided it does not infringe an already established trademark in that country;
 - (d) Foreign insurance suppliers should not be denied a commercial presence in the form of a branch or a subsidiary on the basis of their form of legal organization in the home market.
2. Equity shares
 - (a) Where commercial presence is in the form of a joint venture with a partner located in the host country, the decision to operate through a joint venture, and the percentage of equity shares assumed by the foreign partner, should be determined solely by the joint venture partners themselves;
 - (b) Foreign equity share restrictions will be eliminated. Where necessary, this will be achieved over a transition period terminating by a fixed date, not to exceed two years from the entry into force of this schedule of commitments;
 - (c) During the above transition period, any such limitations should permit the foreign partner to hold at least 51% of the equity in the company, with staged increases.
3. Compulsory Lines
Members will assume full commitments to market access and national treatment that cover compulsory risks, to ensure that foreign insurance suppliers can compete for insurance lines and insurance services that are required of persons and businesses that reside in Member countries.

4. Monopolies
Members should endeavour to eliminate the provision of insurance services by designated monopolies or exclusive services suppliers.
5. Private participation in Pensions and Funds Management⁴
Upon the adoption of measures that allow for private participation in the pension systems of WTO Members whose current regime prohibits this, or for Members whose current system authorized private participation in such pension systems, such Members will commit in their schedules to give other WTO Members the benefits of market access and national treatment. Foreign suppliers providing pensions and funds management services⁵ will have access, on a non-discriminatory basis, to offer their services to private and/or public pension systems provided by host country Members. Where pension fund services are provided through the commercial presence mode, foreign suppliers will be afforded the choice of opportunities as provided in C.1 (a) and C.2 above. Foreign suppliers providing public and private pension funds and services may offer the range of product and investment options they find necessary to meet benefit needs consistent with national treatment requirements.

D. Market Access - Temporary Entry of Natural Persons

1. In general, nationality and residency requirements on personnel should be avoided.
2. Where a foreign insurance supplier operates through a commercial presence, it may select, as its representative in the host country, any person who physically resides in the host country, irrespective of nationality; provided that the representative meets regulatory standards that identify competency to perform services in such a role, and any other provisions relating to the fitness of that individual to perform the obligations of a company representative.
3. In addition to the commitments undertaken in the general headnote to the GATS schedule pertaining to the temporary entry of natural persons, the following additional obligation is assumed with respect to insurance: host country Members shall provide temporary visa and associated work permits, where required, to professional level personnel employed by the foreign insurance services supplier's home and third country offices in a timely manner for the purpose of entering the country and providing short and mid-term assistance to its host country insurance services operations.⁶

⁴ Reservation by the Italian market.

⁵ Pension fund services would include the design of public and private pensions systems; the marketing of such pensions to individuals, employers, and governmental entities; the investment of pension funds on behalf of pension plan participants and retirees; and the administration of public and private pension plans including, but not limited to, administrative services and record keeping, compliance and enrollment services.

⁶ These obligations under the fourth mode of supply must be read with undertakings in the headnotes to services schedules addressing this category. For Members who have scheduled according to the Understanding on Financial Services, any specific obligations assumed under the Understanding must be read with these obligations.

E. National Treatment

1. In addition to the right to compete for all lines of insurance in a host country, foreign insurance suppliers, who are licensed or established in the host country, shall have the same opportunities to compete for domestic insurance business as indigenous insurance services suppliers with respect to insurance for state-owned or state affiliated enterprises, or any enterprise where the state holds an equity share.
2. Foreign insurance suppliers will be treated no less favourably than domestic services suppliers with respect to capital, solvency, reserve, tax and other financial requirements, subject to the provisions of Paragraph 2 (a) of the Annex on Financial Services. Where less favourable treatment is imposed on the basis of Paragraph 2 (a) of the Annex, Members will explain the basis for the different treatment accorded and, in particular, why such treatment is necessary for the protection of policyholders.
3. In the case of insurance intermediation, Members will limit any conditions or limitations with respect to monetary transfers by insurance intermediaries to what is necessary to assume their legal responsibilities in the country where the service is delivered.

II. Best Practices in Insurance

The following obligations are assumed under Article XVIII of the General Agreement on Trade in Services, which allows for additional commitments to be entered into schedules other than those covered by market access and national treatment, as defined in Articles XVI and XVII, respectively.

A. Transparency

1. New and existing regulations, as well as revisions to existing regulations, will be made publicly available at all times, preferably in a public journal or register, in order to ensure their availability to all interested parties.⁷
2. New or revised regulations will be submitted for public comment prior to their enactment. A reasonable period of time, ordinarily no less than one month, will be provided to interested parties to submit comments on all proposed regulations.
3. New or revised regulations will not be made effective until market participants have had a reasonable period of time to become familiar with their contents and take necessary steps to implement them. Except for regulations which must be implemented immediately, due to emergency or other exigency, they will, at a minimum, enter into legal force two weeks following their publication.
4. As part of the procedures for implementing new or revised regulations, Members will provide, in writing, their explanation as to the reasons for rejecting or accepting proposals made by interested parties.
5. An insurance supplier applying for a license will be provided with a written statement, setting out fully and precisely the documents and other information

⁷ This obligation forms part of a general obligation assumed by all Members under GATS Article III.

necessary for obtaining authorization. This statement should aim to simplify and accelerate, as appropriate, the specific procedures to be followed.

6. Members will ensure that there are established procedures that enable consumers to assess the creditworthiness of insurance companies. In addition, they will ensure that insurance suppliers are free to provide information on their creditworthiness to the public, including information from independent rating organizations that provide such assessments.⁸
7. Subject to the exception under Article XIV(c)(ii), Members will ensure that there will be no restrictions on the availability of financial services information from domestic or foreign sources to registered insurance suppliers.
8. Members will ensure that there are publicly available, non-discriminatory rules and procedures established that govern the identification and handling (including disclosure) of financially troubled institutions.
9. Measures adopted with respect to taxation (national and sub-national) that affect all insurance products will not enter into force until they have been notified to the WTO through a semi-annual notification process established under the Services Council.

B. Solvency and Prudential Focus

1. Members will provide for insurance market stability and consumer protection through solvency and prudential regulations, allowing the market to determine which products and services are offered and rates applied.
2. Members will adopt and implement procedures that encourage and expedite the offering of insurance products and services.
 - (a) With the exception of products sold and rates applied to individual persons and compulsory lines, insurance regulation will not require new products, rates, and services to be filed or approved;
 - (b) Where filing and approval of an insurance product or service is required, the Member regulatory authority will make publicly available the policy reasons for such requirements and explain how the requirements are the least burdensome means of accomplishing those objectives;
 - (c) Where filing and approval is required, insurance suppliers will be permitted to introduce a new product, which will be deemed to be approved after sixty days time if the insurance supervisor has not taken action to disapprove it;
 - (d) No limits will be placed on the number and frequency of new product and service introductions by an insurance supplier.
3. Members will not restrict the payment of dividends by foreign insurance suppliers provided solvency margins are met.

⁸ This obligation is subject to Article 2 (b) of the Annex on Financial Services.

About ICC

ICC is the world business organization. Grouping together thousands of member companies and associations from over 140 countries, it is the only representative body that speaks with authority on behalf of enterprises of all sizes and sectors in every part of the world. This ICC policy statement is prepared by the ICC Commission on Financial Services and Insurance, a specialized ICC working body that examines major policy issues and builds consensus among users, providers and intermediaries of financial and insurance services. This statement complements the general policy recommendations submitted to the WTO by the ICC Commission on Trade and Investment Policy.