

# A MODEL SCHEDULE OF INSURANCE COMMITMENTS

## A MODEL SCHEDULE OF INSURANCE COMMITMENTS FOR THE NEXT WTO ROUND OF NEGOTIATIONS

**John Cooke,**

*Association of British Insurers*

### Introduction

The agreement on a new World Trade Organisation (WTO) Negotiating Round that was reached at the WTO Doha Ministerial Conference (November 2001) will give a welcome impetus to the negotiations on services that had already begun in the previous year. In particular, the Doha Declaration sets a brisk timetable for the negotiations on services. The detailed bargaining process begins in 2002, with a deadline on 30 June 2002 for governments to make requests in respect of the sectors and markets where they wish to extend their services exports. By 31 March 2003 WTO members will declare what they will offer in return to trading partners. The Doha Declaration also sets a deadline of 1 January 2005 for the completion of negotiations.

As a result, existing work – both for governments and in the private sector – will accelerate. Much of this will concern internal regulation, as regards both its general principles and its operation in particular sectors, notably the highly regulated sector of financial services. Adaptation of internal regulation is integral to the process of liberalisation of trade in services under the General Agreement on Trade in Services (GATS). This article draws attention to current insurance sector initiatives aimed at identifying key features that could form the basis for greater standardisation of liberalisation commitments in the field of insurance.

### The Importance of Trade Agreements

Banking, insurance, and trading in currencies and financial instruments, which comprise the financial services sector, account for a large part of the developed world's export earnings. Developing countries with large populations, such as Brazil, India, Indonesia, the Philippines, and China, hold the potential for enormous markets. Smaller more

advanced market economies, such as Argentina, Chile, Hong Kong, the Republic of Korea, Malaysia, Singapore, Thailand, and Taiwan, are already significant markets.

Not only are financial services an economically large sector that accounts for a significant proportion of the EU's GDP, but they also have a central function in the working of the economy as a whole. Their inclusion in multilateral agreements is a development of major significance in international economic cooperation. The GATS creates a dynamic which, over the years, should continue to make a major contribution to the liberalisation and expansion of international trade in financial services.

### The GATS Approach

In the GATS an approach has been formulated to take account of the nature of services, and the fact that services supply takes various forms. Four "modes" of service supply are defined in the GATS on the basis of the origin of the service-supplier and consumer, the degree and type of territorial presence that they have at the moment, and the way the service is delivered. These four modes are:

- (1) **Cross-border:** where the service supply takes place from the territory of one member into that of another. Only the service itself crosses the border, without the movement of persons, such as information and advice passing by means of fax and electronic mail, or cargo transportation.
- (2) **Consumption abroad:** this relates to services consumed by nationals of a member, in the territory of another member where the service is supplied. Essentially, the service is supplied to the consumer outside the territory of the member where the consumer resides.
- (3) **Commercial presence:** where the service-supplier crosses the border to have a "commercial presence" abroad through which the service is provided. This presence can take the form of any type of business or professional establishment, including incorporation, branches, representative offices, joint ventures, and so on.

- (4) **Presence of natural persons:** this mode applies to natural persons only, when they stay temporarily in the market, for the purpose of supplying services, for example, the self-employed, and employees of service-suppliers.

Meaningful market access can often only be achieved if commitments are made on a combination of the relevant modes, because the relationship between the cross-border mode, commercial presence, and the presence of natural persons can be of particular importance where the service supplier has a large part to play in the actual supply of a service, such as for professional services, and the presence of company personnel. In the case of insurance, Mode 3 (commercial presence, or "establishment") is particularly important for those setting up businesses in other markets, on a branch, subsidiary or joint-venture basis.

The GATS includes a sectoral Annex on Financial Services amplifying and complementing the general framework provisions. In addition, there is the WTO Understanding on Commitments in Financial Services reflecting the wish of OECD countries for there to be strong commitments from the outset in financial services, including the right of establishment, national treatment, entry of key personnel and a "standstill" safeguarding acquired rights and preventing new restrictions on market access. Non-OECD countries, on the other hand did not consider that special and different liberalisation patterns for financial services were justified: they held that all sectors should be subject to the notion of progressive liberalisation, and, in particular, developing countries should be able to make liberalisation commitments taking into account their overall level of development and the stage of development in specific sectors. The OECD initiative was preserved in the WTO Understanding, which forms the basis for commitments on financial services given by most OECD member-countries.

Following the General Agreement on Tariffs and Trade (GATT) Uruguay Round of negotiations there were WTO negotiations on financial services in the

1990s. These were successfully concluded on 12 December 1997 in the WTO Financial Services Agreement, under which WTO members included financial services on a permanent and Most-Favoured-Nation (MFN) basis in the GATS. All major trading partners subscribed to this agreement, and many of them submitted significantly improved commitments as regards both market access and national treatment for foreign financial service providers.

The insurance sector, represented in the Financial Leaders Working Group (FLWG), took a close interest in the conclusion of the WTO Financial Services Agreement 1997. The Agreement (the Fifth Protocol to the WTO Agreements of 1994) was a very considerable step, the more so for being concluded against the uncertain background of the Asian financial crisis. For insurers, it represented a considerable success. But the insurance sector also learned lessons from the 1997 Agreement. The Agreement contained a strong element of entrenching ("binding") existing degrees of liberalisation rather than making forward commitments to new liberalisation. While insurers attach enormous importance to the bindings that were given, they now would welcome more commitments to future liberalisation.

There are particular reasons why the insurance industry attaches such importance to binding commitments under the GATS. Perhaps uniquely among financial services, the insurance sector provides products that may last as much as forty years or more, particularly in the case of life and pension products. Insurers therefore need the guarantees of a stable environment that bindings in the GATS are designed to provide. That stable environment is an important feature of insurance companies' individual decisions as to the markets in which they will make investments. To reach a decision to make such an investment, an insurer is helped if there are in place GATS commitments from the host country demonstrating that the regulatory environment has reached a particular level of liberalisation and will remain stable at that level. It is better still if there are prospects of further liberalisation and greater freedom to operate.

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Against that background the 1997 Agreement was very important. But it also demonstrated that certain features could be refined further. The Agreement showed that the language of commitments could be rather vague, or in some cases contradictory: different WTO member countries might have broadly the same intention as to a commitment to be offered, but commitments might be expressed in different ways, they might diverge from GATS, and the language of commitments might be imprecise. Moreover, excepting in rare cases, there was rather little on best practice in regulation.

These lessons prompted the work undertaken by the insurance industry in the Financial Leaders Working Group Insurance Evaluating Team (representing a group of national insurance associations, and the Comité Européen des Assurances (CEA) in the "Quad" countries (Canada, EU, Japan and the US)<sup>1</sup>, after the Agreement of 1997. The first step was the publication by the Financial Leaders Working Group of Pro-Competitive Regulatory Principles for Insurance in 1999. These attempted to set out structured principles of market access, national treatment, and regulatory best practice that the insurance industry considered important if liberalised insurance markets were to combine

strong prudential regulation with competition, innovation and diversity. But it became clear that simply to express principles was probably unlikely to be enough to provide the clarity that was necessary for framing more standardised schedules of commitments. The Financial Leaders Working Group therefore decided on the further step of translating the Pro-Competitive Regulatory Principles into the actual language of commitments on insurance under the GATS.

The result was the Model Schedule and the Best Practices that accompany it, which are set out in the annex to this article. The Model Schedule covers market access and national treatment. On market access, Sections A to D of the Model Schedule correspond to GATS Modes 1 to 4. Section E covers principles of national treatment. The accompanying Best Practices in effect cover the additional commitments that WTO members can make under the GATS, and commitments that are not directly addressed under market access and national treatment.

In putting forward the Model Schedule the participating insurance associations are offering a structured approach to the commitments to be sought both on market access and national treatment and on best regulatory practices. In the case of market access and national treatment, it is recognised that not all countries can or will act at once on all of these. The Model Schedule recognises the need for liberalisation to proceed at different paces in different markets. Nonetheless, the hope behind the text is that all countries can make the full set of commitments within a finite number of years, say two years, after the entry into operation of the agreement to emerge from the next Round. As for the Best Practices, it is hoped that they will be adopted uniformly by a critical mass of all the countries participating in the negotiations.

<sup>1</sup> The full list of subscribing associations is as follows: American Council of Life Insurance, Reinsurance Association of America, American Insurance Association, International Insurance Council, Council of Insurance Agents and Brokers, Bureau International des Producteurs d'Assurances et de Réassurances (BIPAR), the Marine & Fire Insurance Association of Japan, the Canadian Life and Health Insurance Association, the Comité Européen des Assurances (CEA) and its fifteen national member-associations from EU member states (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom).

## ANNEX: PROPOSED MODEL SCHEDULE FOR FUTURE INSURANCE COMMITMENTS BY WTO MEMBERS

### 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 foreign<sup>1</sup> 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 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 can not 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.

<sup>1</sup> "Foreign" means "from another WTO member" throughout the Model Schedule and the "Best Practices" annex

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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/Transport Insurance

1. Reinsurance, marine/aviation/transport 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 marine/aviation/transport 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 reinsurance<sup>2</sup> 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;
  - (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;

<sup>2</sup> 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.

(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 Management<sup>3</sup>

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 services<sup>4</sup> 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.<sup>5</sup>

<sup>3</sup> Reservation by the Italian market.

<sup>4</sup> 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.

<sup>5</sup> 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.

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## 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.<sup>6</sup>

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 licence will be provided with a written statement, setting out fully and precisely the documents and other information 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.<sup>7</sup>
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.

<sup>6</sup> This obligation forms part of a general obligation assumed by all Members under GATS Article III.

<sup>7</sup> This obligation is subject to Article 2 (b) of the Annex on Financial Services.

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.
4. Standardised Reporting, Actuarial, Training Practices/Requirements.

Members should encourage adoption of accounting and auditing standards based on recognized international "best practices" standards. International Actuarial Association standards should be adopted to harmonize standards, and to facilitate the evaluation and comparison of insurance suppliers' financial strength, and their incorporation of new skills.

## **C. Insurance Monopolies**

For remaining insurance monopolies, the following obligations are to be assumed:

1. As a general rule, designated insurance monopolies are to be prohibited from offering insurance products outside the area of their monopoly designation. Where monopolies are permitted to engage in the sale or underwriting of insurance products outside the area of their monopoly rights, appropriate supervisory and oversight steps will be taken to ensure that monopolies do not abuse their monopoly position when competing in product areas that are open to competition.<sup>8</sup>
2. Insurance suppliers with designated monopoly rights will maintain separate accounts for monopoly and non-monopoly activities, to insure that revenues from the monopoly do not subsidize competitive insurance activities.

## **D. Independent Regulatory Authority**

The insurance regulatory body will be an independent government entity, to ensure that decisions regarding procedures adopted by the regulator are impartial with respect to all participants, and will encourage a competitive insurance market.

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<sup>8</sup> This obligation is addressed in Article VIII (2) of GATS.