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**TRADE DIRECTORATE
TRADE COMMITTEE**

Working Party of the Trade Committee

**MANAGING REQUEST-OFFER NEGOTIATIONS UNDER THE GATS:
THE CASE OF INSURANCE SERVICES**

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**MANAGING REQUEST-OFFER NEGOTIATIONS UNDER THE GATS:
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EXECUTIVE SUMMARY

This paper is part of the on-going project on trade in services to produce a set of sector specific checklists in partnership with UNCTAD, by building on the generic negotiating checklists developed in the request-offer paper [“Managing request-offer negotiations under the GATS” TD/TC/WP(2002)13/FINAL].

A key objective of this project is for the checklists to be of immediate operational use in the context of the GATS request-offer negotiations. In particular, it is hoped that they could serve as a capacity building tool to assist WTO Members, in particular developing countries, to assess current requests and offers and fine-tune any further requests and offers. At the same time, they could also yield useful insights into a range of issues arising at the interface of domestic regulation and services trade and investment liberalization. This paper thus aims to present some of the key issues and questions concerning request and offer in the insurance sector.

The checklists below address a range of issues, including the benefits of, and concerns about, open insurance markets, as well as the necessary regulatory elements to be considered in framing the nature of any liberalisation. They also provide an optional menu of questions that WTO Members may wish to consider in the request and offer process in the insurance sector. They can be used by developing Members in the formation of requests and offers and in formulating questions and answers for trading partners

This paper has three parts. **Part I** provides a brief background on insurance services and their importance in the economy. **Part II** outlines the treatment of insurance services in the GATS, including the Annex on Financial Services and the Understanding on Commitments in Financial Services, and the state of play in the current negotiations. **Part III** contains the negotiating checklists, which are presented in three parts: 1) the benefits of, and concerns about, liberalization and the necessary regulatory reform; 2) questions to be raised with trading partners in the GATS context; and 3) additional relevant questions beyond the scope of the GATS.

Introduction

1. This paper is part of the on-going project on trade in services to produce a set of sector specific checklists in partnership with UNCTAD, by building on the generic negotiating checklists developed in the request-offer paper [“Managing request-offer negotiations under the GATS” TD/TC/WP(2002)13/FINAL]. At its 27-28 June meeting, the Trade Committee Working Party agreed this project and at its 14 October meeting, it further agreed to proceed with four sectors: insurance, legal, energy and construction services. Given the comparative analytical strengths of both organizations, it was agreed that the former two would be undertaken by OECD and the latter two by UNCTAD.

2. A key objective of this project is for the checklists to be of immediate operational use in the context of the GATS request-offer negotiations. In particular, it is hoped that they could serve as a capacity building tool to assist WTO Members, in particular developing countries, to assess current requests and offers and fine-tune any further requests and offers. At the same time, they could also yield useful insights into a range of issues arising at the interface of domestic regulation and services trade and investment liberalization. This paper thus aims to present some of the key issues and questions concerning request and offer in the insurance sector.

3. Relative to other sectors, some significant progress has been achieved in the insurance sector. However, taking into account that many barriers on market access and national treatment still remain, there is a need for further liberalization and improvement of commitments in the context of the current negotiations. The liberalization of the insurance sector is further motivated by the rapid progress and technological innovation in this sector and the growing recognition of the role of insurance and insurance-related services in underpinning a range of economic activities. Indeed, in the context of global financial markets where transparency and predictability are more and more important, increasing the level of bound liberalisation under the GATS in the insurance sector could be an important outcome from the negotiations.

4. However, in deciding whether – and/or how – to include insurance services in their GATS schedules of specific commitments, WTO Members face a range of challenges. They need to assess whether domestic needs for insurance are being met by existing providers, or whether these needs could be met, or met more efficiently, by foreign insurance services. Any liberalisation also needs to be underpinned by a sound regulatory framework, necessitating **a considered assessment of the current regulatory environment, and of the regulatory reform to provide high quality, efficient regulation appropriate for a liberalised market. This process itself requires consultation and coordination with various constituencies both domestic and foreign, public and private.** In the insurance sector, these should include at least trade negotiators, the regulatory and supervisory authorities and representatives from the private insurance sector. Indeed, the 1997 negotiations on financial services that led to the Fifth Protocol to the GATS, involved intensive consultation and close cooperation amongst these and other stakeholders.

5. For many developing country WTO Members, in particular, reviewing regulatory issues and their relationship to liberalization is no easy task. To make meaningful negotiating offers, Members need to feel confident in their own ability to manage the regulatory and economic implications. They also need to take a broad view of other relevant horizontal or other sectoral commitments that affect the insurance sector in addition to assessing multiple effects of the particular commitments in the insurance sector. This paper aims to assist in this process by highlighting some of the issues which Members may wish to consider in framing and assessing requests and offers.

6. The checklists below address a range of issues, including the benefits of, and concerns about, open insurance markets, as well as the necessary regulatory elements to be considered in framing the nature of any liberalisation. They also provide an optional menu of questions that WTO Members may wish to consider in the request and offer process in the insurance sector. **The checklists are indicative in nature, not prescriptive.** They can be used by developing Members in the formation of requests and offers and in formulating questions and answers for trading partners. The checklists also highlight some issues which, while technically beyond the scope of the GATS negotiations, may nonetheless have an impact upon the operational value of requests and offers.

7. This paper has three parts. **Part I** provides a brief background on insurance services and their importance in the economy. **Part II** outlines the treatment of insurance services in the GATS, including the Annex on Financial Services and the Understanding on Commitments in Financial Services, and the state of play in the current negotiations. **Part III** contains the negotiating checklists, which are presented in three parts: 1) the benefits of, and concerns about, liberalization and the necessary regulatory reform; 2) questions to be raised with trading partners in the GATS context; and 3) additional relevant questions beyond the scope of the GATS.

I. Brief background on insurance services

A. *The international nature of insurance services*

8. Insurance plays an important role in economic development. It provides a vital national infrastructure for business activities as well as for individual lives. Insurers accept a relatively large or long-term risk in return for relatively small payment by calculating the likely claims and required payments and collecting a large number of similar risks. Economic development has inevitably expanded the scope of risks and increased individual risks; for business, from maritime, aviation, and large industrial plants to individual corporation liabilities, and for individuals, from auto and fire to specific disease and care for ageing needs.

9. Some classes of insurance tend to be international. Insurance linked to transports such as marine and aviation and to trade in goods are inherently international. The huge risks associated with natural catastrophes and large industrial plants require diversification of cover in the international market; reinsurance is typically an international service. As risks come in different sizes and forms, no individual country has the insurance capacity necessary to efficiently cover all of the risks present in the country. Moreover, the recent spread of electronic information concerning available coverage of business and individual risks and the proliferation of internet transactions has enhanced market opportunities for other types of insurance and associated intermediary services which had been supposed to be less directly linked to international transactions.

10. Prudential regulation and supervision play an important role at the various levels to ensure policy objectives including protection of policyholders and investors, given the diverse nature of risks and relevant stakeholders. One particularly important feature of the insurance sector is that it provides products which not only cover large risks, but which may include long-term responsibilities. This time-frame, and the extent of the required investment, greatly increases the value of the guarantee of a stable regulatory and policy environment. For this reason, the insurance industry has attached high importance to binding commitments under the GATS.

11. World trade in insurance services predominantly takes place via commercial presence (mode 3), although the importance of cross-border transactions (mode 1) is increasing. This trade is currently dominated by suppliers from developed countries. Given the insurance markets in developed countries have matured while those in developing countries have been growing, insurance companies in developed

countries have been seeking overseas emerging markets. While the negotiations provide an opportunity for developing country suppliers to gain access to other markets and a few developing countries in fact maintain highly developed insurance markets, for many developing countries, the primary focus of the negotiations will be how the activities of foreign insurers in their domestic markets can help to maximize the gains for national development.

B. The role of insurance in economic development

12. Efficient insurance services can contribute to economic development in various ways (See [Skipper 1997]), including:

- **Business facilitation;** Insurance enables businesses to operate with less volatility and risk of failure and provides greater stability in commercial transactions. It responds to trade and commercial specialization demands relative to levels of innovation and development in trade and commerce in the economies.
- **Reduced uncertainty for individuals;** Insurance provides greater financial and social stability within national economies and reduces anxiety for individuals regarding life and property.
- **Risk management services for businesses and individuals;** Insurance services cover risk pricing, risk transformation and risk reduction. Businesses and individuals need to transform their risk exposures in property, liability, loss of income to meet their needs. Life insurance enables individuals to manage their savings to match the liquidity, security and other risk profiles they need.
- **Risk management through risk pooling;** Insurers take underwriting and investment together and reduce volatility by pooling. If volatility is reduced, there is a smaller risk premium to be faced by those insured and the borrowers. Through risk management, insurers have economic incentives to help the insured reduce risk exposures and loss.
- **More efficient allocation of a country's capital;** Insurers gather substantial information to conduct their evaluations of firms, projects and managers for the purposes of deciding on issuance of insurance or lending and investment. In making such investment and insurance decisions, insurers provide signals to the market about well-managed firms and projects and thereby foster a more efficient allocation of a country's scarce financial capital and insurance bearing capacity.
- **Mobilization of national savings;** Countries with high saving rates tend to show fast growth. Insurers offer the same advantage as other financial intermediaries in channeling domestic savings into domestic investment.

II. The GATS and Insurance Services

A. General Background on the GATS

13. The GATS provides a framework within which WTO Members liberalize their markets by undertaking commitments on market access, national treatment and other regulatory measures. The GATS affords WTO Members considerable flexibility in making commitments. Members can:

- exclude parts of a sector or sub-sector or a particular mode of supply;

- limit access in any sector, sub-sector and/or mode of supply by scheduling market access restrictions;
- discriminate against foreign suppliers in any sector, sub-sector and/or mode of supply by scheduling limitations on national treatment;
- discriminate amongst foreign suppliers where an MFN exemption has been taken or where they are party to economic integration (e.g., a regional or bilateral trade agreement) which meets the requirements of GATS Article V;
- bind at less than the statutory or regulatory status quo;
- pre-commit to liberalisation at a future date;
- make additional commitments.

14. Market access (Article XVI) consists of six different types of limitations which must be scheduled if WTO Members wish to maintain them. Such limitations, the bulk of which relate to non-discriminatory measures of a quantitative nature, comprise certain measures that:

- a) limit the number of services suppliers;
- b) limit the total value of services transactions or assets;
- c) limit the total number of service operations or the total quantity of services output;
- d) limit the total number of natural persons who may be employed in a particular service sector; as well as;
- e) restrict or require specific types of legal entity or joint venture through which services may be supplied; and
- f) limit the participation of foreign capital.

Some examples in insurance are that; a) –the number of life insurance companies is limited and foreign life insurance companies are not allowed to sell life insurance; b) –total caps on the percentage of the market for foreign suppliers; e) -foreign insurance companies are required to establish a joint venture with a domestic partner; f)-foreign equity in domestic insurance companies is limited a specific percent.

15. National Treatment (Article XVII) also permits Members to schedule and maintain limitations on non-discrimination. For example, a discriminatory tax measure on foreign insurance premiums is relevant to this commitment. Moreover, Article XVIII provides an opportunity for a Member to decide to undertake any “additional commitments” relating to measures other than those subject to scheduling under market access or national treatment, for example, relating to qualification requirements, technical standards and licensing requirements. Those commitments should be inscribed as additional commitments in the fourth column of the schedule.

16. For the purposes of making specific commitments, the GATS developed four mode of service supply: Mode 1 Cross-border supply; Mode 2 Consumption abroad; Mode 3 Commercial presence; and Mode 4 Temporary movement of natural persons. In general, various types of insurance and insurance related services are supplied under different modes. Large commercial risks such as marine, aviation and

transport tend to be insured from highly developed insurance centers via Modes 1 and 2. Life insurance and other retail type insurance are commonly supplied to individuals through established commercial presence on Mode 3, although recent progress in electronic transaction would enhance opportunities for supplies via Modes 1 and 2. Mode 4 in the insurance sector may be less pertinent than in the case of professional services. Current commitments for this mode tend to be limited to the intra-corporate transfer of managers, executives and specialists. It is noted however that Mode 4 would have important implications for insurance businesses such as auxiliary services (e.g., claim settlement) or the daily activities (e.g., the possibility of natural persons to conclude or sign contracts to sell insurance services), though the trade figures are less visible of these activities.

17. Given the structure of the GATS and the scheduling practice, the level of liberalization arguably depends crucially on the commitments on market access. These commitments determine whether foreign services and service suppliers are assured of the right to enter the market. Furthermore, under the Article XX:2, any measures inconsistent with both Article XVI (market access) and Article XVII (national treatment) are scheduled in the market access column of the schedule. Moreover, most of the entries in the national treatment column are highly correlated with those in the market access column so that liberal market access commitments are frequently accompanied by full national treatment commitments, and vice versa.

B. *The Annex on Financial Services: Definitions and “Prudential Measures Clause”*

18. The Annex on Financial Services, which applies to measures affecting the supply of financial services, was adopted as an integral part of the GATS at the end of the Uruguay Round. The Annex defines financial services as including **insurance and insurance-related services**, i.e.: i) direct insurance (including co-insurance), life and non-life; ii) reinsurance and retrocession; iii) insurance intermediation, such as brokerage and agency, and iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services. These definitions of **insurance and insurance-related services** are a starting point to deal with the insurance sector in light of GATS commitments by WTO Members. Indeed, these definitions are the result of further refinement of the general list in the “Services Sectoral Classification List” (NTM.GNS/W/120 dated 10 July 1991) that stipulates “all insurance and insurance-related services (under this heading; a. Life, accident and health insurance services; b. Non-life insurance services; c. Reinsurance and retrocession; d. Services auxiliary to insurance (including broking and agency services).”

19. The Annex also clarifies, for financial services, the scope of services supplied in the exercise of government authority, which are excluded from the application of the GATS (See GATS Article I.3(b) and (c)). By this definition, insurance and insurance related activities forming part of a statutory system of social security or public retirement plans and other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government fall outside of the scope of the GATS. It is noted that if a WTO Member allows these activities to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, these activities will fall under the GATS.

20. The GATS Annex on Financial Services includes an exception that states that notwithstanding any other provision of the GATS, a Member shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity or stability of the financial system. However, that exception also states that such measures shall not be used as a means of avoiding the Member’s commitments or obligations under the GATS.

C. *The Understanding on Commitments in Financial Services*

21. Many developed country WTO Members made commitments in accordance with the Understanding on Commitments in Financial Services. This reflected the wish of those Members for there to be strong, and relatively uniform, basic commitments from the outset in financial services, including a standstill obligation, the right of establishment, national treatment, and entry of key personnel. However, the Understanding is not an integral part of the GATS. It is an alternative approach by some WTO Members which agreed on more far-reaching rules and disciplines in the financial services sector. Equally, it represents the commitments that those Members were prepared to undertake at that time; it was not designed to set limits on the scope of any future financial liberalization.

22. The rules in the Understanding are not themselves binding; they are binding only as far as WTO Members voluntarily adhere to the Understanding by referring to it in their schedules of specific commitments, normally by inserting a head-note in the section on financial services to the effect that their specific commitments are taken in accordance with the Understanding. Since a Schedule is an integral part of the GATS, that makes the rules and disciplines of the Understanding binding on the Member concerned. The Understanding is an alternative approach for scheduling and does not conflict with the GATS; commitments apply on an MFN basis. Most of the developed countries made commitments according to the Understanding in the negotiations. However, some have also inscribed in their schedules certain reservations against the obligations of the Understanding. Key elements of the Understanding are set out in Box 1.

Box 1. The essence of the Understanding on Commitments in Financial Services

Standstill

It ensures the **status quo** or **acquired rights**. For example, if a Member already allowed foreign participation in a domestic insurance entity more than 51%, it could not restrict it to 49% when taking specific commitments. This represents an agreement not to use the existing flexibility in the GATS to commit to less than regulatory status quo.

Market Access

-Monopoly rights

This is an additional discipline to Article VIII of the GATS. Article VIII requires Members to ensure that monopoly suppliers of services in their territory do not, in the supply of a monopoly service in the relevant market, act in a manner inconsistent with their obligations under Article II and their specific commitments. In the case of supply of services outside the scope of monopoly rights but covered by specific commitments, a Member must ensure that the monopoly service supplier does not abuse its monopoly position in the committed open market. In the Understanding, each **Member must list in its schedule any existing monopoly rights** in the financial services and must **endeavour to eliminate them or reduce their scope**. This obligation also applies to activities conducted by a public entity for the account or with the guarantee or using the financial resources of the government that normally fall outside the scope of the GATS. This point concerning monopoly by a public entity **goes beyond the GATS** since services supplied in the exercise of governmental authority are not subject to specific commitments unless conducted on commercial terms or in competition with other financial service suppliers. It should be noted, however, that while Members must schedule these monopoly rights, the obligation to remove or reduce them is best endeavours only.

-Procurement

The Understanding provides higher disciplines in that a Member must ensure that financial service suppliers of other Members established in its territory are accorded **MFN and national treatment** regarding the purchase or acquisition of financial services by its public entities in its territory. Commitments based upon this provision *go beyond the GATS* since Article XIII of the GATS exempts government procurement from the application of Articles II (MFN), XVI (Market Access) and XVII (National Treatment).

-Cross-border trade

On Mode 1 (cross-border supply), the Understanding provides that **a Member must permit non-resident suppliers of financial services to supply, as a principal, through an intermediary or as an intermediary, and under the terms and conditions that accord national treatment, certain services: 1) insurance of risk relating to maritime shipping, commercial aviation, space launching and freight, and goods in international transit; 2) reinsurance, retrocession and the services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services; 3) provision and transfer of financial information and financial data processing by suppliers of other financial services and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services.** This limited scope of the obligation reflects concerns by Members that cross-border financial suppliers are not directly subject to the supervision and regulatory powers of a host Member's financial regulator, including the aspect of adequate protection of policy holders. For example, cross border supply of life insurance falls outside of the scope of the Understanding. It should be noted however that a Member still may make commitments on cross-border supply of life insurance in accordance with the Part III of the GATS. On Mode 2 (consumption abroad), the Understanding provides that a Member must permit its residents to purchase in the territory of any other Member the financial services on 1) and 2) above.

-Commercial Presence

The Understanding provides that a Member must grant financial service suppliers of other Members the **right to establish or expand** within its territory, including through the acquisition of existing enterprises, a commercial presence. "Commercial presence" means an enterprise within a Member's territory for the supply of financial services and includes wholly or partly owned subsidiaries, joint ventures, partnerships, sole proprietorships, franchising operations, branches, agencies, representative offices or other organizations. The intention of this obligation is to give a foreign financial service supplier the right to establish a commercial presence, whatever the type of the presence, either through internal growth or the acquisition of other institutions. However, it does not prevent a Member from imposing terms, conditions and procedures for the authorization of the establishment and expansion of a commercial presence, provided they do not circumvent the Member's obligation to grant a right to establish and expand a commercial presence and they are consistent with the other obligations of the GATS. A Member thus may still reserve, for example, the national treatment obligation concerning a term, condition or procedure on the condition that it schedules the relevant measures in accordance with Article XVII.

-New financial services

The Understanding provides that a Member must permit financial service suppliers of any other Member established in its territory to offer in its territory any new financial service. A new financial service can not be a financial service that does not exist anywhere, that is, it must be already supplied in the territory of at least one Member.

-Transfer of information and processing of information

The Understanding addresses the issue of transfer and processing of information indispensable for the conduct of the ordinary business of a financial service supplier. It provides that a Member may not take measures that prevent transfers of information, the processing of financial information or even transfers of equipment where such transfers or processing of information are necessary for the conduct of the ordinary business of a financial service supplier. **This provision goes beyond the GATS since it addresses *inter alia* the transfer of equipment.** It should be noted that it also secures the right of Members to protect personal data, personal privacy and the confidentiality of individual records and accounts.

-Temporary entry of personnel

The Understanding provides that a Member must permit temporary entry into its territory of the following personnel of a financial service supplier of any other Member that is establishing or has established a commercial presence in the territory of the Member: **senior managerial personnel possessing proprietary information essential to the establishment, control and operation of the services of the financial service supplier; and specialists of the financial service supplier.** A Member must also permit, subject to the availability of qualified personnel in its territory, temporary entry into its territory of the following personnel associated with the commercial presence of the financial service supplier of another Member: **specialists in computer services, telecommunications services and accounts of the financial service supplier; and actuarial and legal specialists.** It should be noted that this does not prevent Members from taking measures to regulate the temporary entry of the personnel identified above such as visa requirement.

-Other non-discriminatory measures

The Understanding includes best endeavour clauses to reduce or to limit certain measures that are non-discriminatory but nevertheless have adverse effects on financial service suppliers, provided that any action taken would not unfairly discriminate against the financial service suppliers of the Member taking such action.

National Treatment

The Understanding secures access to certain systems or organizations that are indispensable for a foreign services supplier to have effective access to the market of a host Member. A Member must grant to financial services suppliers of other Members established in its territory, under national treatment terms and conditions, **access to payment and clearing systems** operated by public entities and **to official funding and refinancing facilities** available in the normal course of ordinary business. Moreover, when **membership or participation in, or access to, any self-regulatory body, or any other organizations or association,** is required by a host Member in order for financial service suppliers of other Members to supply financial services on an equal basis with the host Member's financial service suppliers, or when the host Member provides directly or indirectly those entities with privileges or advantages in supplying financial services, the host Member must ensure national treatment to financial suppliers of other Members resident in its territory.

D. Current commitments and beyond

23. The Decision on Financial Services adopted at the end of the Uruguay Round extended the negotiations on financial services. By July 1995, an interim agreement was concluded with improved

commitments. This interim agreement expired on 1 November 1997. New negotiations on financial services were held from April 1997 and, as a result of these negotiations, a new and further improved set of commitments on financial services was agreed on 12 December 1997. The new commitments include improvements on commercial presence of foreign service suppliers by eliminating or relaxing limitations on foreign ownership of local financial institutions, on the judicial form of commercial presence (branches, subsidiaries, agencies, representative offices, etc.) and on the expansion of existing operations. The new commitments also included “grand-fathering”, i.e., providing for the maintenance of the rights of existing branches and subsidiaries of foreign financial institutions that are wholly or majority-owned by foreigners.

24. Further negotiations under the GATS, mandated under Article XIX, commenced on 1 January 2000, with guidelines for the conduct of the negotiations agreed on 31 March 2001. At the 2001 WTO Ministerial in Doha, WTO Members further agreed to table initial negotiating requests by 30 June 2002, and to submit initial negotiating offers by March 2003. WTO Members have and will continue to table offers as a basis for negotiating improvements, including for insurance services.

III. Checklists for insurance services

25. In the current request and offer process, WTO Members face a number of options. They can choose to:

- **commit to new market opening** (which will require planning for the appropriate regulatory framework to underpin this liberalization);
- **bind the status quo** (i.e., any existing liberalization), providing legal certainty for investors and trading partners and locking in domestic reforms;
- **commit to less than the status quo**, in order to maintain additional regulatory flexibility in this sector;
- **pre-commit to future liberalization**, to give the local industry time to adjust and/or additional time to ensure that the appropriate regulatory framework is in place;
- **undertake no commitments on insurance services.**

26. Clearly, each WTO Member’s choice will be based on consideration of its own regulatory and market conditions, as well as the economic and social policy objectives it wishes to pursue. Determining these choices will also require dialogue and consultation between different parts of the government and a wide range of domestic stakeholders. The aim of these checklists is to assist that process by highlighting some of the specific factors which WTO Members might want to consider in determining the nature of any commitments they might make under insurance services.

27. The negotiation checklists are used as describe at Box 2 and are set out below in three parts:

- Benefits to be achieved [III.A.(i)]; concerns to be addressed [III.A.(ii)]; benefits and concerns by interested groups [III.A.(iii)]; required regulatory framework to be adjusted or regulatory reform efforts to be undertaken [III.A.(iv)].
- Questions to raise with trading partners (and be prepared to answer at the domestic level) concerning the value of a request or offer [III.B; Table 2]

- Thinking beyond the GATS: additional questions of relevance to services negotiations [III.C; Table 3]

Box 2. The use of the Services Trade Negotiations Checklists

I. The services trade negotiation checklists can be used in the following circumstances:

- developing a Member's own offer (autonomous, or linked to a request);
- assessing a request from a Member's trading partner;
- assessing an offer from a Member's trading partner;
- formulating a request to a Member's trading partner;
- assessing whether or not to sponsor a position developed by another WTO Member.

II. The requests or offers involved could be any of the following:

- removal of a scheduled restriction;
- removal of an "unbound";
- scheduling of existing statutory or regulatory practices, (i.e. locking in the status quo);
- scheduling of new liberalisation commitments (immediate, phased in or as an additional commitment);
- implementing a scheduled liberalisation commitment.

A. Benefits, Concerns and the required regulatory framework for insurance liberalization

(i) The potential benefits of open markets for insurance services

28. While the role of insurance for economic development is outlined in section I, the case for liberalization of cross border transactions and foreign direct investment in insurance services can be argued in different ways (See [Skipper 1997] for "benefits" and "concerns"). Some of the potential benefits of liberalizing insurance services include:

- **Improvements in customer services and value;** Foreign insurers and intermediaries can bring additional and possibly innovative marketing and product competition to the national market. This deepens and broadens the domestic financial services market. It can meet the growing demands and give firms and individuals greater choice and better service.
- **Additional external financial capital;** Foreign insurers can often be part of a much larger international insurance group. Their risk pooling activities might provide better pricing and investment stability.
- **Increased domestic savings;** Participation by foreign insurers can strengthen the insurance market, mobilize personal savings, and enable higher national savings rates, and thus contribute to national economic development.
- **Tax revenue;** Participation by foreign insurers can expand the business activities in the market, broaden the tax base, and increase government tax revenue.

- **Transfer of technological and managerial know-how;** foreign insurers and intermediaries can bring innovative and more efficient means of gathering and evaluating information and claims experience and thus contribute to the development of better local markets.
- **Creation of beneficial domestic spillovers,** including the addition of more and higher quality jobs, increase in the quality of linked backward and forward business, and social loss reduction.
- **Improvements in the quality of insurance regulation,** foreign insurers and intermediaries can help to disseminate knowledge about good regulatory practices internationally, contributing to the process of domestic regulatory reform. This in turn can help to attract much more foreign direct investment, not only for the insurance sector but also for other relevant industries.
- **Help develop financial services infrastructure,** thereby leading to more diversified economies and ability to export services and manufactured goods.

(ii) *Concerns to be addressed about liberalization and counterarguments*

29. Some governments may have considered reserving certain of insurance services to domestic suppliers. The true reason for this may sometimes be reliance on the entities concerned as a source of government revenue. But other arrangements are put forward including:

- **National policy reasons:** Governments may feel that the national industry should remain locally owned for national policy reasons, such as national security concerns, or objectives such as economic diversification. Governments may also feel that state or nationally owned insurance providers enable them better to direct the insurance industry's investments towards overall national investment priorities, given the important role of insurance industries in national savings and investments.
- **Social reasons:** Given the role of insurance in maintaining financial security and quality of life, governments may consider whether there needs to be a strong state-controlled or state-dominated domestic industry, or state-dominated compulsory insurance scheme.
- **Cream-skimming, anti-competitive practices, or market concentration issues:** Some governments can be concerned that allowing access for foreign suppliers will result in foreign domination of the insurance market and that foreign suppliers will also provide only profitable products or operate in profitable regions or market segments (cream-skimming). Equally, governments can be concerned that the admission of foreign insurers could cause fierce price competition that would lead to insolvency of weaker local firms and to dominant pricing by major players. Moreover, governments may address the eventual market concentration as a result of liberalization efforts and stronger prudential regulation, by paying attention to providing adequate orderly exit (e.g., encouraging M&A, etc.).
- **Infant industry arguments:** Governments may consider the infant industry argument which holds that new domestic industries should be sheltered from foreign competition if they hold promise of ultimately competing successfully against foreign rivals. The future gain to the economy will more than compensate for the welfare losses from the temporary protection accorded to the industry. One argument is based upon the assumption that once the protected firms achieve a certain economy of scale, they can compete successfully with foreign firms. The other argument is that inexperienced local firms need shelter from foreign competition until they have "learned by doing" sufficiently to be able to compete with foreign firms. According to these arguments, allowing foreign firms into the market too soon could result in the disappearance of local firms.

- **Balance of payment concerns:** Some government may consider whether it is necessary to reduce insurance-related foreign exchange outflow by having local insurers provide the bulk of the national insurance supply. The aim is to reserve foreign exchange for other indispensable products instead of spending it on insurance-related services.

30. Many of these concerns can be addressed by the creation of an appropriate regulatory framework including an authority independent from industry or suppliers to underpin liberalisation (See also (iv) below). These concerns can be questionable in the following ways:

- **National policy reasons can be arguable.** National security concerns mainly come from the fear of withdrawal of foreign insurance services. However, the relevant capacity withdrawn in the case of conflicts would be only on a short-term cross-border basis and it can be covered by domestic insurers whatever their ownership. Moreover, the problem can be avoided in the businesses by developing a wider range of sources to spread their risk. With respect to the objective of economic diversification, some governments may encourage diversification of national production for a range of industries, but nothing in the diversification argument suggests that local capacity need to be exclusively locally owned. Likewise, concerning the government's investment policy, the national investment priority can be better achieved by competitive markets.
- **Social reasons can also be arguable.** Experiences have shown that the liberalisation process would change the nature of the state involvement from state owned or controlled operations to adherence to market opening rules under an appropriate regulatory framework. Social needs including minimum suppliers for the poor and/or geographically disadvantaged can be satisfied by the appropriate regulatory framework, rather than the reliance on the state-dominated industry.
- **Cream-skimming, anti-competitive practices, or market concentration issues can be solved.** Concerns that foreign companies would engage in cream-skimming can be addressed by requiring these suppliers to provide a wide range of services, including those in disadvantaged regions. Strong national competition frameworks can prevent foreign suppliers from engaging in anti-competitive behaviour, including in relation to dominant pricing.
- **Infant industry arguments have been questioned in economic theory as well known.** The competitive market would rather enhance economic welfare despite short term disadvantages to inefficient local firms, and would give incentive local entrepreneurs to enter the market aiming at long term gain. Moreover, governments may take other less trade restrictive measures to promote domestic industries (e.g., internal tax incentives) instead of taking protective measures for inefficient firms.
- **Balance of payment concerns are also questionable.** When trade is performed through establishment (mode 3), there is hardly any balance of payment flow involved since transactions between the affiliate of a foreign company and domestic consumers are transactions between two residents. Moreover, given the fact that most developing Members are net importers of insurance, it should be noted that the protective direction undermines the benefits such as lower price and better services that contribute to export growth in other areas, and ultimately causes indirect adverse effects to overall capital flows.

(iii) *Benefits and concerns by interested groups*

31. These benefits and concerns can also be seen from viewpoints of interested groups. Table 1 below provides illustrative lists of possible benefits and concerns by a group in formulating requests and offers.

Table 1. Illustrative lists of possible benefits and concerns by interested groups in formulating requests and offers

Group	Possible benefits	Possible concerns
Country/Economy general	<ul style="list-style-type: none"> • Improve performance of the insurance market. • Meet growing demands for business cover (e.g., MAT and reinsurance) and for personal lines (e.g., life and pension). • Increase domestic savings and accumulate national capital (that satisfy the domestic investment needs, too). • Increase tax revenue. • Transfer of technology and managerial know-how. • Expand job opportunities and enhance their skills. • Improve the quality of insurance regulation and systemic financial stability, which thus attracts FDI. • Increase economic growth through collective benefits above. 	<ul style="list-style-type: none"> • Assess national policy for the insurance industry (e.g., national security, economic diversification, its role in national savings and investments, etc.) and assess social needs (including minimum supplies for the poor and/or geographically disadvantaged). • Put in place adequate regulatory framework including prudential measures (such as protection for policy holders) and competition laws (e.g., addressing cream-skimming, anti-competitive practices, or market concentration. (See (iv) below) • Infant industry arguments.(See counter arguments (ii) above) • Balance of payments. (See counter arguments (ii) above) • Determine the overall strategy for bindings (status quo, below status quo, pre-commitment to future liberalization).
Consumers (individuals), Business (user)	<ul style="list-style-type: none"> • Lower prices. • Better quality of insurance services (convenience, responsiveness, timeliness). • Greater choice; new services offering. 	<ul style="list-style-type: none"> • How to improve adequacy, reliability, and quality of insurance services. • Adequate protection for insolvency. • Adequate protection against service suppliers conduct (e.g., fraud). • Adequate provision for the poor and/or geographically disadvantaged. • Overall, adequacy of regulatory framework including prudential measures and competition laws. (See (iv) below)
Business (Joint players or competitors)	<ul style="list-style-type: none"> • Lower costs. • Additional capital. • Access to larger markets. • Enhanced scope for merger and strategic alliances. • Transfer of technology and managerial know-how. • Expand job opportunities and enhance their skills. • Increase quality of domestic regulation to which they are subject. 	<ul style="list-style-type: none"> • Ensure the growth of local enterprises, recoup of initial investments. • Encourage reinvestment. • Adequacy of regulatory framework including prudential measures and competition laws. (See (iv) below)

(iv) *Regulatory issues: required regulatory framework to be adjusted or regulatory reform efforts to be undertaken*

32. An effective insurance regulatory framework is crucial for addressing a fundamental market information deficit, namely that an insurance consumer has no means of forming a judgement of the long term soundness of an insurance provider. It is also the key to assuaging concerns about open markets and foreign participation. Regulatory reform efforts are fundamental to ensure a better regulatory framework with effective prudential regulation that gives confidence to all stakeholders. Far from entailing de-regulation, liberalised markets generally require a degree of re-regulation, or regulatory reform to ensure both that the benefits of liberalisation are reaped (e.g., in the creation of a genuinely competitive market) and that important policy objectives (e.g., consumer protection) remain realised via efficient and effective regulation.

33. A number of important policy objectives lie behind regulation in the insurance sector. An UNCTAD study [UNCTAD 1995] shows that the basic rationale for supervision of insurance services includes protection of consumers, establishment of the long-term reliability of insurance services providers, and improvement of market efficiency. An OECD study [OECD 2001b] also states that the common objective of insurance supervision is to protect the policy holder, the insured, the beneficiary of an insurance contract, as well as a third party who may have a right of direct claim against an insurer under certain insurance agreements, by making sure that an insurance company is in a position to meet its obligations at any time.

34. Some of the regulatory issues which WTO Members may wish to consider in the context of making commitments on insurance services include:

- **Is legal certainty secured?** Effective regulatory and supervisory systems focusing particularly on prudential regulation, and consumer protection should be established by law.
- **Is there adequate prudential regulation?** Laws and regulations should address all relevant aspects of insurers' operations and establish reasonable solvency standards and regulation to protect consumers. Adequate entry requirements - such as: capital requirements including asset quality, set at a level discouraging entry of unsound operators; and requirements for business/operating plan and estimates, actuarial and auditing reporting- should be in place. An adequate system for monitoring operations - such as: effective reporting and accounting practices; and continuous monitoring of capital adequacy, solvency, reserves and investment - should also be in place. While those prudential regulations for consumer protection are of primary importance, other consumer related measures - such as: public complaints processing; consumer education and information; and adequate policy holder protection solutions to protect consumer interests in case of insolvency with due consideration to the risk of moral hazard and to their limitation - are also worth taking into account. The International Association of Insurance Supervisors IAIS has adopted various guidelines, principles and standards in this respect.
- **Are competition laws and principles established?** One element for supporting liberalization of the insurance market is the establishment of competition rules. Countries often establish rules to address abuse of dominant power or universal service issues. Countries should consider systems that enable rates to be determined by market forces, rather than through product-or price control.
- **What is the level of State engagement?** The liberalization process changes the nature of the State involvement in insurance from controlling insurance operations to establishing and monitoring prudential solvency standards and adherence to market-opening rules. Restrictive regulations on

distribution that only allow expressly authorised products undermine the potential for innovative, high quality and low cost products.

- **Is there an adequate admission or licensing process** (i.e., whether laws and regulations describe all relevant aspects of the admission or licensing process)?
- **Is there an appropriate and proportionate system of market conduct regulation** (covering insurance contracts; marketing and the role of intermediaries (including fraud))?
- **Is the supervisory authority impartial and does it possess sufficient expertise?** For any liberalised environment, a supervisory authority should be established, whose role and powers are defined by law. Cooperation between supervisors of different Members may have to be improved and enhanced. An independent supervisory authority from industry or suppliers may enhance the effectiveness of regulation and supervision. Moreover, in this complicated financial field, specialised expertise is required among the staff of the supervisory authority. For example, with respect to reinsurance, due consideration should be given to the fact that while insurers in developing countries accept reinsurance business from abroad, the majority of developing countries are net buyers of reinsurance. Therefore, the insurance supervisory authority can play a role in exercising oversight over the choice of reinsurers by domestic insurance companies. On the other hand, such oversight will be ineffective if the supervisory authority itself lacks sufficient knowledge of the international reinsurance markets and international reinsurance practice.
- **What is the level of transparency?** Transparency in the regulatory process is fundamental to ensuring a competitive market. Existing laws and regulations should be easily available to the public, including consumers and businesses and to the insurer and other related services providers. Another aspect of transparency requires that all interested parties have the opportunity to be aware of and to comment on proposed regulations and that methods to challenge regulatory decisions be available. In crafting proposed insurance laws and regulations, the authority should: make such proposals easily available to the public; invite comments on the proposals; and allow sufficient time for interested parties to provide comment. (Some developing countries have raised concerns about the administrative resources required to conduct prior consultation; consideration should be given to how these might be addressed, including by efficient use of information technology.) Laws and regulations should require the supervisory authority to supply justifications for its regulatory decisions and should provide for appeals against such decisions.
- **Is regulation of the insurance market appropriate, efficient and effective?** Are regulatory objectives being addressed by the most efficient means possible? (i.e., Can regulations be made less burdensome but equally effective in achieving their designed objective?)

35. **There is no general prescription** as to how to undertake the process of liberalization. Different Members have different satisfactory solutions to regulation and supervision, and **there is no one-size-fits-all approach for the reform**. Moreover, **there is a tension between setting adequate supervisory laws for the supervision of the insurance business and ensuring that rules on prudential supervision are as little trade restrictive as possible**. **Trade negotiators and regulators should be aware of this point and maintain a continuing dialogue on relevant issues**.

36. Additionally, a key issue for many developing country WTO Members is the question of regulatory capacity; that is, whether they have the human and institutional resources to devise, administer and enforce the required regulatory framework for successful liberalisation. Assessment of this capacity will determine the nature and pace of any liberalisation undertaken. For example, countries may wish to consider making pre-commitments, with the implementation date for future liberalisation determined by

the estimated time necessary to put the regulatory framework in place. This assessment – and the pre-commitment - could also include an analysis of the type of technical assistance and capacity building needed. International cooperation between regulatory agencies could form an important part of this capacity building. This is especially relevant for the OECD which has a long-standing history in *liberalization and regulatory* issues (see Box 3.1, 3.2) -- for both OECD and non OECD countries-- and the International Association for Insurance Supervisors (IAIS), which develops worldwide standards on insurance *supervision and related regulation* (see Box 4). The implementation of these standards is assessed by the IMF and World Bank in the framework of the Financial Sector Assessment Program (FSAP). Both organizations are working in close co-operation.

Box 3.1. The OECD Insurance Committee

Since its inception, more than 30 years ago, one of the main components of the mandate of the OECD Insurance Committee has been to work towards the liberalisation of establishment, investment and the cross-border operations of insurance companies. This work is carried out in close co-operation with the Committee on Capital Movements and Invisible Transactions, as far as the “*OECD Codes of liberalisation*” are concerned and with the Trade Committee for related conceptual issues. The OECD Insurance Committee is the only international forum, other than the WTO, to develop principles and standards related to insurance market liberalisation.

As stated in its 2003-2004 programme of work, the Committee is currently finalizing work related to the revision of the OECD Codes provisions related to insurance and is also expected to work on a number of issues involving liberalization, notably the relationship between deregulation, prudential rules and liberalisation as well as the analysis of issues related to mutual recognition. The Committee has always stressed in this respect the importance of the link between liberalisation and appropriate regulations – a relationship which is now on the agenda of international discussions on trade in services. This relationship was specifically included in the “*Framework for insurance market liberalisation*” endorsed by the Committee in 2000 (see Box 3.2.).

The Committee is also promoting transparency on obstacles to international transactions involving insurance and private pensions, in particular by identifying and analyzing such obstacles. This work has led to the publication on “*Liberalisation of international insurance operations: cross border trade and establishment of foreign branches*”. This work was extended to non-member economies through specific references to insurance trade-related regulations on the publication on “*Insurance regulation and supervision in Asia and Latin America*”. The promotion of regulatory awareness of non-member countries was also completed through the circulation to all worldwide supervisory insurance authorities of a 2500 pages compendium on regulatory and supervisory issues.

Twenty insurance guidelines for emerging economies were as well endorsed in 1997 by 17 economies in transition and 21 OECD Countries. The guidelines list the major prudential rules which are essential to ensure the development of a sound insurance market. At the same time, the guidelines strongly encourage countries to apply regulation in a transparent, predictable and non-discriminatory manner and to move towards open insurance markets. They include the following recommendations:

- establishment of foreign insurance companies should be based on prudential but non discriminatory rules;
- liberalisation of cross-border operations related to reinsurance and international risks should be encouraged;
- dismantling of monopolies and privatisation of state-owned insurance companies are strongly encouraged;
- regulation should not restrict free access to international reinsurance markets;
- regulations should allow for fair competition within the insurance and reinsurance market.

Other key work by the Insurance Committee include the development of guidelines for the governance of insurance companies and pension funds, regulatory principles for pension funds, good practices on claim management or a (binding) Decision on the exchange of information on reinsurers.

**Box 3.2. Framework for Insurance Market Liberalisation
(endorsed by The OECD Insurance Committee in 2000)**

Framework For Insurance Market Liberalisation

-- Considering that the liberalisation of the insurance markets (including reinsurance) is beneficial to the consumers, the economy and the insurance industry, and the consequent need to promote it;

--Considering that liberalisation requires genuine access to national markets as well as to local markets of federal states;

-- Considering that a successful liberalisation calls for an adequate regulatory and supervisory framework;

-- Conscious that the liberalisation process may need to be achieved progressively and may need to take account of differences in classes and modes of delivery;

-- Having regard to the OECD Codes of liberalisation, the work of the OECD related to the revision of these Codes and to liberalisation issues in general, the Twenty Insurance Guidelines for economies in transition, and taking account of the non-binding nature of this “framework for insurance market liberalisation”;

The OECD Insurance Committee

agrees on the following basic principles for the liberalisation of the insurance markets:

Principle No.1: Liberalisation requires genuine market access.

Principle No.2: Liberalisation requires adherence to the concept of national and non-discriminatory treatments.

Principle No. 3: Liberalisation requires a suitable regulatory framework and adequate prudential rules.

Principle No. 4: Liberalisation requires open and ongoing dialogue among regulators and all market participants, transparent markets, and a transparent regulatory and supervisory process.

Principle No. 5: Liberalisation requires fair competition and de-monopolisation.

invites non-member countries to adopt these principles;

agrees to develop, in the framework of the 2001-2002 programme of work of the OECD Insurance Committee, further analytical work on the implementation of these principles, the identification of the obstacles for such implementation and to consider the best policy recommendations and guidelines that the Committee could consider in this respect and possibly report to the OECD Council.

Box 4. International Co-operations by financial regulators and supervisors

At the international level of financial services, several organizations are making efforts to codify principles and best practices on regulation and supervision and promote them. Amongst these organizations (some of which being private sector bodies), the following ones can for instance be mentioned:

--for banking principles: the Basel Committee on Banking Supervision (BCBS)

--for securities principles: the International Organization of Securities Commissions (IOSCO)

--for insurance principles: the International Association of Insurance Supervisors (IAIS) and the Organisation for Economic Co-operation and Development (OECD)

--for pensions principles: the OECD and the International Network of Pensions Regulators and Supervisors (INPRS)

--for monetary, financial and fiscal policy transparency best practices: the International Monetary Fund (IMF)

--for corporate governance principles: the OECD

Concerning insurance, the OECD has a long-standing history in development of liberalisation and policy regulatory principles (see boxes 3.1 and 3.2) while the International Association of Insurance Supervisors (IAIS) is the leading international standard-setter for insurance supervision and related regulation.

The IAIS has been active in promoting co-operation among insurance regulators and supervisors and developing principles and standards since its establishment as a private law based international organisation in 1994. It is one of the most genuinely multilateral organisations. It has no bar on membership; and insurance authorities from over 160 jurisdictions are members and approximately 70 organisations and individuals are observers. The IAIS "Standards" and "Principles" are adopted by consensus.

The IAIS develops various principles and standards that include, the Insurance Core Principles, capital adequacy and solvency standards, reinsurance, disclosure, and cross border business transaction. Supervisory standards on capital adequacy and solvency describe supervisory standards on prudential regulation and supervision including of policy liabilities, assets, and capitals. The supervisory standard on reinsurance companies states how reinsurance companies should be supervised. The disclosure standard states public disclosure requirements by insurers. The standard on cross border business transaction (insurance concordat) describes best practices for co-operation between insurance supervisors in the supervision of the foreign business operation of international insurers and insurance groups. The implementation by authorities is assessed by the IMF and the World Bank in accordance with their Financial Sector Assessment Program (FSAP).

The IAIS also encourages member jurisdictions to:

- identify weaknesses in the insurance supervisory system by carrying out assessment of observance of standards; and
- address the weaknesses by implementing the principles and standards into national legislation.

In this regard the IAIS organises self-assessment programmes, develops learning material for supervisors, arranges more than 15 regional seminars annually and provides technical assistance.

The IAIS and the OECD are closely co-operating together towards the promotion of good practices in insurance regulation and supervision.

B. Questions to raise with trading partners (and be prepared to answer at the domestic level) concerning the value of a request or offer

37. The process of bilateral request-offer negotiations in services trade is both time- and information-intensive. In this context, developing country WTO members may have human resource constraints and limited sectoral expertise. While the intensive experience of the last negotiations on insurance services (leading to a set of commitments in financial services under the GATS agreed on 12 December 1997 which was annexed to the Fifth Protocol to the GATS) may have left certain institutional memory, the resource issues remain in this sector where officials need to know both trade agreements and financial policy.

38. While the questions below are primarily framed in request mode for clarity, it is useful to prepare answers to those policy questions from the viewpoint of the services importer. Given the fact that most developing country WTO Members are likely to be primarily importers in the case of the insurance and insurance related services, this question and answer exercise on policy issues from the viewpoint of importers might assist in deepening understanding of relevant concerns and desirable solutions.

39. The two-way policy interaction afforded by request-offer negotiations also provides an opportunity for policy dialogue on relevant regulatory issues and underpins attempts towards regulatory good practices in the insurance sector. It also enhances a domestic dialogue between trade officials and regulators, regulators and the public, through the provision of information on the progress of this request-offer, question-answer process.

40. Table 2 below provides a list of questions relating more specifically to insurance and insurance-related services that may be addressed under the GATS. It is noted that Table 2 and Table 3 below have been adapted from generic checklists [TD/TC/WP(2002)13/FINAL]. Therefore, it might be the case that certain questions seem to be so general and not particularly relevant for the insurance and insurance-related sector or less relevant for them, but those questions are also incorporated into the checklists in light of covering as many outstanding issues as possible for the sector and meeting the objective for effective operational use of the checklists. **Questions may overlap and final determination as to whether a particular measure needs to be scheduled under the GATS is up to the Members concerned.**

Table 2. Negotiating Checklist: GATS related questions

<p>a) Measures affecting cross-border supply</p>	<ol style="list-style-type: none"> 1. In scheduling of restrictions of insurance and insurance-related services, do you follow the classification of the GATS Annex on Financial Services? Otherwise, what is the reason for not following the Annex classification? If UN Central Product Classification (CPC) codes are used, is the coverage of the codes listed broad enough to cover the entire industry? 2. Can non-resident suppliers of insurance and insurance-related services serve the market on a cross-border basis (i.e. without an established presence)? Is it necessary to channel those transactions through local/foreign intermediaries? Are there any restrictions on the electronic transmission on a cross-border basis? 3. What types of insurance and insurance-related services are allowed, or restricted, as regards cross-border supply? 4. What are the policy reasons for any such restrictions on cross-border supply? (e.g., buying time to improve domestic entities? protection of domestic consumers (firms or individuals)? Balance of Payment (BOP) concerns?) 5. Can non-resident suppliers solicit or advertise business on a cross-border basis? What are the consequences for consumer protection and host/home country regulation? 6. Where and how clearly are such restrictions spelled out? 7. Is there any regulation (e.g., an economic needs test: ENT) allowing non-resident suppliers to provide services only when the same services are not available by domestic entities? 8. Insurance and insurance-related services provided by government (such as social security and public investment plans) fall outside of the scope of the GATS if they are not provided in competition with a public entity or another financial service supplier. Does the government allow <i>the same</i> statute-based services to be supplied by private sector in competition with a public entity? If so, are there any restrictions on non-established suppliers? 9. Where there are compulsory classes of insurance (e.g., automobile liability, and household earth quake insurances), is supply by non-resident suppliers permitted? 10. If cross-border supply of marine, aviation, and transport (MAT) insurance, and reinsurance and retrocession is restricted, what are the reasons for restricting these services, given that they are inherently international? What about the treatment of large non-MAT risks? 11. Is there any regulation of mandatory cessions to specified insurance or reinsurance suppliers? Are there any discriminatory requirements against non-resident suppliers on cessions and localization of asset? What are the policy reasons for these? 12. If cross-border supply by an intermediary is not covered, what are the reasons? Are there any restrictions on types of intermediary (such as brokerage and agency)?
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	<p>13. If cross-border supply of services auxiliary to insurance is not covered, what are the reasons? Are there any restrictions on the types of auxiliary (such as consultancy, actuarial, risk assessment, and claim settlement services)?</p> <p>14. Can the policy rationale for restricting cross-border supply be addressed through other less restrictive measures (e.g., requirements of cession on certain risks or collateralisation, rather than the absolute ban)?</p> <p>15. Are non-resident suppliers required to establish a local presence as a pre-condition for serving the importing market?</p> <p>16. Are there any discriminatory tax measures for non-resident suppliers?</p> <p>17. Does the state or designated providers hold exclusive or monopoly rights in particular market of insurance and insurance related services?</p> <p>18. Are there any quantitative limitations on the number of service providers in the form of numerical quotas, or economic needs test? What is the policy rationale for maintaining quantitative limits to competition in the sector? Where and how are such tests spelled out?</p>
<p><i>b)Measures governing ownership/commercial presence</i></p>	<ol style="list-style-type: none"> 1. In scheduling of restrictions of insurance and insurance related services, do you follow the classification of the GATS Annex on Financial Services? Otherwise, what is the reason for not following the Annex classification? If CPC codes are used, is the coverage of the codes listed broad enough to cover the entire industry? 2. Is private ownership in the provision of insurance and insurance related services allowed? 3. Is foreign participation in the provision of insurance and insurance related services allowed? Are there any limitations on foreign equity? 4. Are foreign suppliers required to establish locally through a particular legal form of establishment (e.g., subsidiaries, joint ventures, mutuals, branches, agencies, and representative office)? Is there any restriction based on specific juridical forms (e.g., are branches not allowed to perform or engage in certain activities)? Are there any restrictions on expansion within the country once established, e.g., internal branching? Any geographical restrictions? What are the policy reasons? 5. Are such establishments subject to investment screening on the part of the host Member? Is there a value threshold above which mergers and acquisitions in the sector are subject to investment screening or vetting by the host Member's competition authority? 6. Are foreign businesses required to form joint ventures with domestic businesses in order to provide services in the domestic market? 7. Are there restrictions as regards the joint ventures/partnerships/associations that locally-established foreign owned businesses can form with domestic firms? 8. Are foreign established businesses subject to particular performance requirements (local hiring and training, local sourcing, etc.)? 9. Are there discriminatory capital requirement for foreign businesses? 10. Are there any discriminatory tax measures for foreign businesses?

	<ol style="list-style-type: none"> 11. Are there any discriminatory subsidies against foreign businesses? 12. Are there restrictions on the use and the purchase of land by foreigners? 13. Does the host Member restrict payments or transfers by locally-established foreign operators to their parent companies in the home Member? 14. Is there a self regulatory body, a payment system, a safety-net system? Are there any restrictions on membership? 15. Are there restrictions on the use of the international/foreign name of a firm? 16. Are there services that locally established suppliers are not allowed to supply? Any geographical restrictions? What are the policy reasons? 17. Are there any regulations allowing foreign firms to provide services only when the same services are not available by domestic entities? 18. Insurance and insurance-related services provided by government (such as social security and public investment plans) fall outside of the scope of the GATS if they are not provided in competition with a public entity or another financial service supplier. Does the government allow <i>the same</i> statutory activities to be conducted by services suppliers in competition with a public entity? If so, are there any restrictions on foreign suppliers? 19. Where there are compulsory classes of insurance (e.g., automobile liabilities, household insurances and earth quake insurances), is supply by foreign firms allowed? 20. Do the State or designated providers hold exclusive or monopoly rights in a particular market of insurance and insurance related services? 21. Are there private sector providers within the pension system? If so, are there any restrictions on foreign suppliers in this market? 22. Are there any quantitative limitations on the number of service providers in the form of numerical quotas, or economic needs tests? What is the policy rationale for maintaining quantitative limits to competition in the sector? Where and how are such tests spelled out? 23. Are there any limitations or ceilings on the market share of foreign suppliers? 24. Is there any protection for the acquired rights of foreign suppliers for commercial presence?
<p>c) Regulatory measures</p>	<ol style="list-style-type: none"> 1. Who regulates the sector in the importing Member? Are regulatory agencies independent from industry or suppliers? 2. Is the sector subject to potentially trade- or investment-restricting regulation maintained at the sub-national/regional/provincial level? Where can information on the nature of such policy measures be obtained? Is there a mechanism to respond to inquiries from the public for information? 3. How transparent is the regulatory regime in the importing Member? How are laws and regulatory decisions made public?

	<p>4. Are stakeholders consulted or allowed prior comment in advance of development of laws and regulatory decisions?</p> <p>5. In what sectors do foreign services providers require prior authorisation before entering/serving the market? Where and how clearly are such authorisation procedures spelled out? Are authorisation procedures maintained at the sub-national level?</p> <p>6. Do foreign firms enjoy equal standing before regulatory bodies in commenting on proposed legislative or regulatory changes?</p> <p>7. What recourses exist in the importing Member for foreign services providers to appeal administrative decisions? Are such appeal procedures available at both the federal and sub-national levels? Do foreign services suppliers enjoy standing before such bodies? Must foreign services providers have a local presence to enjoy standing?</p> <p>8. Does the government or the relevant regulatory agencies regulate prices/tariffs?</p> <p>9. For authorised suppliers, are there any requirements for prior approval on insurance products (forms or prices/tariffs)? Are there any limits on the number of products that may be introduced per calendar year? Are there any restrictions on new products and services which would be allowed by law but are not currently offered in the market?</p> <p>10. Do foreign suppliers face particular restrictions in becoming members of professional bodies or industry associations in the importing Member?</p> <p>11. Which of the following government programmes are available to locally established foreign services providers: (i) tax exemptions; (ii) preferential access to credit; (iii) below-market interest rates; (iv) export financing; (v) government-provided risk insurance; (vi) underwriting of feasibility studies; (vii) subsidies for R&D activities?</p> <p>12. Are there specific service standards that are enforced (e.g., contracts or policy forms)? If so, by whom? Do such standards comply with international standards? Are standards-related matters also subject to sub-national regulation? Where can foreign services suppliers find information on standards-related issues in the importing Member?</p>
<p>d) Measures relating to licensing</p>	<p>1. If the number of providers is not restricted by policy, what are the main types of licenses that providers must obtain in order to operate in the market?</p> <p>2. What regulatory agencies are responsible for issuing licences? Where and how clear are conditions governing the granting of licenses spelled out?</p> <p>3. Are licences required of domestic or foreign companies (or both)?</p> <p>4. Are foreign services suppliers subject to different or additional licensing conditions from domestic suppliers? (i.e., if there are additional licensing requirements for foreigners, this might constitute a national treatment limitation and should therefore be scheduled.)</p> <p>5. Is the validity of a licence and the right to supply the market restricted temporally or geographically? Do licences grant exclusivity periods or market segments?</p>

	<p>6. Where insurance services markets are regulated at both the national and sub-national levels, are separate licences required to supply services in each jurisdiction? Is a local presence required in each jurisdiction for licensing purposes?</p> <p>7. In sectors where the number of service providers are limited by policy, through what mechanisms and according to what criteria are licences allocated?</p> <p>8. Once licences have been allocated, are there restrictions on the ability of service suppliers to sell or dispose of their licences?</p> <p>9. Are there requirements for a licence for each product (forms or prices/tariffs)?</p> <p>10. Is there any restriction for a new product which already exists in the other market (e.g., pension, long-term care insurance, disability insurance)?</p>
<p><i>e) Measures governing the movement of natural persons</i></p>	<ol style="list-style-type: none"> 1. In scheduling of restrictions of insurance and insurance related services, do you follow the classification of the GATS Annex on Financial Services? Otherwise, what is the reason for adopting another classification? 2. Are there residency, permanent residency or nationality requirements for any of the following categories of personnel employed by locally established foreign service suppliers: (i) members of the board of directors or company officers; (ii) executives; (iii) managers; (iv) key personnel/experts; (v) other staff categories? 3. What about these staff categories: senior managerial personnel possessing proprietary information essential to the establishment, control and operation of the services of the financial service supplier; and specialists of the financial service supplier? 4. Are the following qualified personnel available in the domestic market: specialists in computer services, telecommunications services and accounts of the financial service supplier; and actuarial and legal specialists? Are they permitted to enter if associated with a commercial presence? Is there a need to have qualifications recognized in the case of professionals (e.g., actuaries)? 5. Are there particular categories of intra-corporate transferees or professionals whose entry and stay is subject to labour certification tests in the importing Member? 6. Does the importing Member provide scope for allowing non-professional essential personnel to enjoy temporary entry privileges (i.e. no labour certification tests) during the execution of a service contract by a foreign services provider? 7. What scope exists for the importing Member to grant temporary entry privileges (no labour certification tests) to spouses of intra-company transferees granted temporary entry rights?

<p>f) Preferential liberalisation measures or MRAs</p>	<p>1. Are there any preferential agreements affecting the supply of services in the importing Member? What are the beneficiaries (e.g., countries) of that preferential treatment. What services-related measures are subject to preferential treatment? Are preferential measures maintained at the sub-national level? Do preferential measures also apply to the movement of natural persons? If so, what categories are covered?</p> <p>2. Does the importing Member maintain preferential access arrangements for developing Member service providers?</p> <p>3. Are there any mutual recognition agreements (MRAs) to recognize the prudential measures of other Members? What conditions must foreign services suppliers fulfil to meet the requirements of existing MRAs? Do foreign services providers need to be locally established (i.e., have a local presence) in order to be eligible for the requirement of a MRA?</p>
<p>g) Universal service obligations</p>	<p>1. Does the government impose universal service/access obligations for suppliers (e.g., to provide all types of insurance services or to grant protection to all types of consumers irrespective of their revenues)? How are these obligations defined? Are smaller firms exempt from such obligations? Do foreign firms have equal standing on this?</p>

C. Thinking beyond the GATS: additional questions of relevance to services negotiations

41. Insurance and insurance-related services may involve various linked activities and policy measures. Effective access to these markets requires close scrutiny of the interplay between the GATS issues and other issues. **While the GATS provides an important means of tackling many of the hurdles that potentially impede access to and presence in services markets, many other policy measures not typically subject to specific commitments under the GATS may still affect the value of bound liberalisation commitments entered into WTO Member's schedules.** There is, accordingly, a need for services negotiators to be alert to such potential impediments and ensure that proper co-ordination exists with negotiators and officials in related policy areas. Doing so will help ensure that Members secure commercially meaningful and development-promoting commitments from their main trading partners.

42. Table 3 lists a number of policy issues beyond the scope of the GATS which may nonetheless require the attention of services negotiators.

Table 3. Negotiating Checklist: Non-GATS Issues

a) Government procurement	<ol style="list-style-type: none"> 1. Can foreign service suppliers participate in procurement markets by (i) central entities; (ii) sub-central/national entities; (iii) local entities; (iv) state-owned enterprises? Is eligibility conditional on the foreign supplier maintaining a local presence in the importing Member? 2. Do foreign service providers with no commercial presence face similar procurement thresholds as those applying to locally established foreign suppliers? 3. Are foreign service suppliers (established or not) restricted in the range of procurement activities in which they can participate? 4. How are invitations or solicitations to bid on procurement projects made public? 5. Which of the following non-price criteria, if any, must procuring entities take into account during the suppliers' evaluation process: (i) use of local materials; (ii) licensing of technology to local firms; (iii) investment/local presence in the importing Member; (iv) employment/hiring in the importing Member? 6. In evaluating procurement contracts, do procuring entities at the central, sub-central or local levels grant price advantages to domestically-owned companies and locally-established foreign companies over non-established foreign companies? 7. Are procuring entities required to provide to unsuccessful bidders the reasons for the rejection of their bids? 8. Does the importing Member's procurement law provide for a system for appealing procurement decisions and receiving bidder complaints?
b) Temporary entry for services-related tools	<ol style="list-style-type: none"> 1. Are there restrictions on the temporary intra-firm transfer of: (i) equipment for data processing, and (ii) other materials (technical and training materials, engineering and design tools) that are necessary for ordinary business?
c) Services supplied in the exercise of government authority	<ol style="list-style-type: none"> 1. Are there any activities conducted by a public entity for the account or with the guarantee or using the beneficial resources of the Government? (E.g., statutory system of social security or public retirement plans) 2. Are there any efforts to reduce the scope of the activities conducted by the public entity? 3. Does the government allow the private participation in the government systems (e.g., pension)? Are there any restrictions affecting foreign suppliers?

<p>d) Prudential measures</p>	<ol style="list-style-type: none"> 1. Is the Member country involved in making any changes to aspects of its prudential regime? What sectors of insurance would these affect? 2. Are prudential measures transparent? Are they clearly set out in texts that are publicly available, simple to access and normally subject to consultation before revision? 3. Do consumers have confidence in protection by prudential measures? 4. Does the Member participate in the activities of relevant international organisations (such as IAIS)? Has the Member deemed it appropriate to incorporate any of the recommendations of international organizations into its own regime?
<p>e) Competition policy</p>	<ol style="list-style-type: none"> 1. Are there sectoral exemptions to competition law in the importing Member affecting conditions of competition in services markets? 2. How does the competition law in the importing Member deal with: (i) instances of abuse of monopoly or dominant position in services markets; (ii) fair and non-discriminatory access to essential facilities (e.g., whether foreign firms are able to access actuarial information by domestic business organisation at a reasonable cost); and (iii) predatory pricing? 3. Are there any general consumer protection laws relevant to insurance and insurance related services (e.g., unfair trade practices such as misguidance)?
<p>f) Other relevant measures</p>	<ol style="list-style-type: none"> 1. Foreign exchange controls. 2. Taxation-related issues. 3. Access to public services for professionals and intra-company transferees granted temporary entry rights (health, education, social security) 4. IPR-related issues. 5. E-commerce related issues such as digital signature, standard of encryption, etc. 6. Accessible and justifiable law of contract appropriate to insurance contracts.

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