

**Statement by the
Coalition of Service Industries
before the International Trade Commission on
Property and Casualty Insurance Services: Competitive Conditions In
Foreign Markets**

Investigation No. 332-499

October 7, 2008

Introduction

The Coalition of Service Industries (CSI) appreciates the opportunity to present its comments on competitive conditions in foreign markets for the property and casualty insurance services providers. CSI is the leading business association dedicated to reducing barriers to U.S. services exports and mobilizing support for policies that enhance the global competitiveness of U.S. service providers. Our membership consists of U.S. corporations and associations engaged in many commercially important services sectors including property and casualty insurance services.

This testimony will focus on the international trade objectives of the property and casualty insurance industry, best practices as identified by the Financial Leaders Group (a global financial sector support group formed in 1997 to promote the liberalization of trade in financial services), and barriers impeding our ability to do business abroad.

Our negotiating priorities reflect the tremendous economic importance of services in developed and developing economies. Services are essential inputs into the production of virtually all products. The price and quality of services influences costs and productivity in all other sectors in an economy, including manufacturing and agriculture. Thus, when liberalized and made more efficient, services have a strong effect on the competitiveness of an entire economy.

The service sector is tremendously important for the United States; it represents 80% of US economic output and employs roughly the same share of the US workforce. While the US is the world's most competitive services exporter, our services exports are only about 40% of the value of our goods exports. This is due in part to significant barriers that service providers face in foreign markets, and it suggests that there is great scope for growth in this important sector, if we are successful in reducing foreign trade barriers.

The Critical Role of Property & Casualty Insurance Services in Economic Development

Property and casualty insurance services are essential prerequisites for dynamic modern economies. Liberalizing trade in insurance services improves capital market efficiency, bolsters financial sector stability, and supports economic growth and job creation. Moreover, insurers mitigate consumer risk by reducing risks of loss from fire, theft and other covered perils.

Studies have shown that a sound financial system boosts economic growth; however these benefits will only be realized if foreign insurers can establish and operate without significant commercial barriers. Enhanced competition stimulates modernization and provides consumers with the broadest range of products and services at the lowest cost. Furthermore, a transparent regulatory system and increased competition can also help reduce corruption.

Objectives of the Property & Casualty Insurance Industry

Through international negotiations on financial services from NAFTA to the present, the property and casualty insurance industry has pursued the following objectives: the right to establish and own the majority share of a business, the right to be treated no less favorably than a domestic company, the right to transparency, the ability to trade across borders, protection of acquired rights in a market and investment protection guarantees.

Investors have sought liberalization through many forums including the World Trade Organization (WTO) Doha Development Agenda, Free Trade Agreements (FTAs) such as the pending Korea, Colombia and Panama agreements, and bilateral investment treaties. In each of these agreements our underlying objectives for the insurance industry have been:

Mode of Establishment and Ownership: Foreign insurers should be able to establish through a wholly owned entity or other form of business ownership such as a branch. The right to operate through a branch is especially important for some companies. This form of establishment provides access to the home office capital as well as any local capital, and therefore has more financial protection than a subsidiary. Full ownership of the entity is important, particularly for financial services companies.

Cross Border Services: Countries should remove unnecessary restrictions on cross-border trade in insurance services. All professional insurance intermediaries should be permitted to place business in the most suitable market for each risk and to render related services without being required to establish in the country where such services are delivered. This applies particularly to marine, aviation, and transport placements, and to clients facing international risks, large undertakings, or the need for reinsurance support.

National Treatment: National treatment is necessary to ensure that foreign companies are not regulated differently from domestic companies and allowed the same rights. Equal treatment benefits consumers since it encourages competition, greater product choice and lower prices. Furthermore, foreign and domestic insurers benefit.

Regulatory Transparency: This is of particular importance for the financial services industry due to its complexity and heavily regulated nature. Similar to the U.S. Administrative Procedures Act, our companies seek the right of notice and comment on rulemaking, prompt licensing decisions, clearly laid out requirements for licenses, explanations when licenses are denied, and the right to appeal a license decision to an objective tribunal. Open dialogue between regulators and the private sector allows regulators to consider comments received prior to promulgating their final regulation, improving the quality of regulations. Moreover, regulatory authorities should be independent.

Acquired Rights: Trade agreements should not impair the existing operations of those companies already established and should permit them to continue to operate on the basis of their existing license and corporate structure.

Model Schedule and Best Practices in Insurance

In 2001 the Financial Leaders Group¹ adopted a “Model Schedule” for the use of WTO Members in scheduling commitments under the framework of the General Agreement on Trade in Services (GATS). The model schedule serves as the key reference document for insurance liberalization, and represents commitments to market access and national treatment. It builds on existing commitments already in the WTO 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. The Model Schedule and Checklist derived from this project can be found in Annex 1.

In addition to the “Model Schedule”, the industry has developed “Best Practices in Insurance”, which could take the form of “additional commitments” under GATS Article XVIII. It addresses those aspects of domestic regulation that are not covered by the market access or national treatment provisions. They reflect regulatory obligations that exist for both foreign² and indigenous suppliers of services. These obligations can also be found in Annex 1.

Country Specific Examples of Barriers

In addition to the liberalization pursued through the signed FTAs with Korea, Colombia, and Panama, CSI has identified 11 key emerging markets where significant barriers remain. Working with the United States Trade Representative’s (USTR) services office, we have sought to address the barriers we face through the GATS negotiations. The countries identified include: Argentina, Brazil, China, Egypt, India, Indonesia, Malaysia, Philippines, South Africa, Thailand, and Turkey. Lists of barriers for these countries can be found in Annex 2. Additionally, we have highlighted below in more detail some barriers faced by our insurers in China, India and Korea.

¹ The Financial Leaders Group (FLG) and its Working Group (FLWG) were formed in 1996. It provided unified European-North American financial sector support to liberalizing trade in financial services in the World Trade Organization. Since 1996, the FLG’s geographic representation has expanded to include financial sector leaders from Japan, Australia, and Hong Kong. The FLG continues to play an influential role in aggressively pursuing commercially meaningful liberalization in the WTO services negotiations.

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

China

U.S. - China bilateral services trade and investment have grown sharply in recent years. U.S. cross-border services exports to China increased from \$4.9 billion in 2001 to \$9.1 billion in 2006, with the U.S. services trade surplus growing from \$1.3 billion to \$1.9 billion. U.S. exports were especially strong in education, business, transportation, technical and financial services including insurance.

After amending China's Insurance Law in 2003, the China Insurance Regulatory Commission (CIRC) adopted rules applying to insurance companies, asset management, risk control and other aspects of insurance regulation. However, China has yet to implement many of its obligations related to further liberalization of the insurance market.

A recent draft CIRC regulation titled *Measures on the Administration of Equity Interests in Insurance Companies* ("Measures") would place discriminatory requirements on foreign companies and hamper market access. While non-life insurance companies do not face FDI cap issues like the life insurance sector, the CIRC continues to maintain discriminatory branch approvals against foreign insurers. China also maintains unusually high capitalization requirements for both branch and subsidiary operations, and does not permit insurers to use the financial reserves of the parent company in the case of firms establishing as a branch, and of the initial subsidiary in the case of firms establishing as a subsidiary.

Foreign insurance companies are currently shut out of China's "statutory insurance business." Such business, according to China, includes "third party auto liability insurance." To date, China has not provided a good rationale for allowing only local insurance companies access to this market.

Liberalizing the statutory insurance sector is in China's own interest. Given the growing number of vehicles and the mandatory nature of this line of insurance, it is imperative that China opens this market to allow foreign companies' expertise, quality products and services to enrich it. Otherwise, China runs the risk of seeing a rise in claims and premium costs, resulting in domestic insurance companies becoming insolvent due to insufficient capital to meet consumer claims.

China also continues to deny national treatment in insurance brokerage to provide foreign brokers with the same scope of business activities as domestic firms, e.g. claims handling, risk management services and consulting, application process and placement services, and reinsurance brokerage. Foreign brokers are also not permitted to provide services for small business, group life, and health business and affinity programs.

CSI continues to be engaged in a number of trade and economic forums related to China, which include the Joint Commission on Commerce and Trade (JCCT), Joint Economic Committee (JEC), and the Strategic Economic Dialogue (SED) to resolve these outstanding issues and we recently submitted a statement to the Trade Policy Staff Committee, an extract of which can be found in Annex 3.

India

India is potentially the largest insurance market in the world. However, it maintains a number of barriers which hinder foreign insurers from fully participating in this market. Foreign insurance companies accounted for only 1.6% of the current \$30 billion insurance market in India, and with an insurance penetration rate (premiums as a percentage of the country's GDP) at only 3.1%, India is well behind the 12.5% for the UK, 10.5% for Japan, 10.3% for Korea, 9.2% for the US, and even 3.4% for China, which is indicative of the barriers foreign insurers face in doing business in India.

India maintains a 26% cap on foreign ownership in all insurance firms, even though the Government has committed itself to raising this to 49%. Increasing the equity cap on foreign investment in insurance (insurers and intermediaries) is a key step in insurance liberalization for India. We strongly believe that early removal of the foreign equity cap in insurance is essential to the further expansion of India's insurance sector. The first step should be an increase to 49% as a significant initial measure towards full openness in the near future. According to Associated Chambers of Commerce and Industry of India, if the foreign equity cap is raised to 49%, FDI in the next two years would grow from the current \$500 million to nearly \$2 billion.

For the full benefits of liberalization to be reaped, further liberalizing measures are needed, covering all aspects of the supply of insurance and reinsurance in India, which would enhance the range of competitive commercial and personal insurance lines available to Indian businesses and consumers.

The 10-year disinvestment provision (IRDA Act 1999) should also be changed. This provision currently applies to both local and foreign partners. An insurance company takes about 8 years to break even. If the disinvestment provision is implemented as foreseen in the 1999 Act, both Indian and foreign partners would stand to lose after 10 years of patient investment by having to divest down to 26%.

Korea

South Korea is the world's eighth largest insurance market, with total premium volume of more than \$65 billion, only slightly behind China, at \$68 billion. Given the size and dynamism of the Korean market, the free trade agreement with South Korea has a far greater commercial significance than any other trade agreement since NAFTA. The financial sector reforms that South Korea will undertake as a result of the FTA will contribute to a stronger and more resilient economy for the country and help it to deepen capital markets and investment for the long term.

Moreover, Korea has in many respects been closed to competition from US service suppliers, as regulatory and other barriers have kept US participation in the Korean market in check. Many of these impediments will be eliminated once the Agreement enters into force, and others will be addressed over time. This agreement is important to the US insurance industry because it sets a new standard for addressing regulatory, as well as market access, barriers. Given the nature of the insurance business, regulatory hurdles and the need for a level playing field are often as critical as our ability to enter or establish in a market.

The Agreement commits Korea to MFN and national treatment provisions across the sector, and provides the full range of establishment rights, including joint ventures, wholly-owned subsidiaries, or branches. It does not place any quantitative or geographic restrictions on the number of licensed insurers in the market. The Agreement also permits the standard range of services provided on a cross-border basis, including marine-aviation-transport (MAT) insurance, reinsurance, retrocession, intermediation (agency & brokerage), and services auxiliary to insurance. The agreement also permits cross-border portfolio investment management and advisory services two years after its entry into force.

The Agreement will also ensure a more level playing field between private insurers and government-owned Korea Post and sectoral cooperative insurance providers, which presently enjoy tremendous advantages over private insurers. Korean financial regulatory authorities will also, for the first time, be bound by regulatory transparency rules.

The US-Korea FTA is the first of any trade agreement to contain, in the financial services annex, specific reference to data transfer, enabling US companies to freely transfer customer data into and out of Korea, which will be fully implemented within two years of the Agreement's entry into force.

Conclusion

CSI appreciates the opportunity to comment on this very important subject. Failure to liberalize foreign insurance markets will mean lost opportunities for both US insurers and also for countries that fail to modernize their insurance sector.

Significant liberalization will improve the insurance sector's efficiency and offer a greater choice of providers and products for consumers at lower costs. The liberalization that has been undertaken to date is a start but in many countries, much remains to be done.

Annex 1:

FINANCIAL LEADERS WORKING GROUP

INSURANCE

MODEL SCHEDULE

&

BEST PRACTICES

The Model Schedule was published on 19 October 2001.

The insurance associations subscribing to the Model Schedule include associations from all the Quad countries (Canada, the European Union, Japan and the United States). The full list of subscribing associations is as follows: American Council of Life Insurers, 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 World Federation of Insurance Intermediaries (WFII), 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 E.U. member states (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom). In the case of the United Kingdom, the constituent U.K. member of the CEA includes the Association of British Insurers, the International Underwriting Association of London and Lloyd's.

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 foreign³ 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.

³ “Foreign” means “from another WTO member” throughout the Model Schedule and the “Best Practices” annex

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

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

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

Market Access and National Treatment

A. Acquired Rights

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

B. Market Access - Cross Border delivery in respect of Reinsurance, MAT Insurance

1. Reinsurance, MAT insurance and insurance services related to these types of insurance are to be bound under the cross border mode of supply without restrictions to market access. Members will assume identical undertakings with respect to access to MAT and insurance intermediation (brokerage and agency) services related to these types of insurance by clients located

abroad, without regard to whether the foreign insurance supplier is registered in the consumer country.

2. For life and non-life reinsurance⁴ 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 collateralization 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;

⁴ 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.

- (d) Foreign insurance suppliers should not be denied a commercial presence in the form of a branch or a subsidiary on the basis of their form of legal organization in the home market.

2. Equity shares

- (a) Where commercial presence is in the form of a joint venture with a partner located in the host country, the decision to operate through a joint venture, and the percentage of equity shares assumed by the foreign partner, should be determined solely by the joint venture partners themselves;
- (b) Foreign equity share restrictions will be eliminated. Where necessary, this will be achieved over a transition period terminating by a fixed date, not to exceed two years from the entry into force of this schedule of commitments;
- (c) During the above transition period, any such limitations should permit the foreign partner to hold at least 51% of the equity in the company, with staged increases.

3. Compulsory Lines

Members will assume full commitments to market access and national treatment that cover compulsory risks, to ensure that foreign insurance suppliers can compete for insurance lines and insurance services that are required of persons and businesses that reside in Member countries.

4. Monopolies

Members should endeavor to eliminate the provision of insurance services by designated monopolies or exclusive services suppliers.

5. Private participation in Pensions and Funds Management⁵

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 services⁶ will

⁵ Reservation by the Italian market.

⁶ 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

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.⁷

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 enrolment services.

⁷ These obligations under the fourth mode of supply must be read with undertakings in the headnotes to services schedules addressing this category. For Members who have scheduled according to the Understanding on Financial Services, any specific obligations assumed under the Understanding must be read with these obligations.

E. National Treatment

1. In addition to the right to compete for all lines of insurance in a host country, foreign insurance suppliers, who are licensed or established in the host country, shall have the same opportunities to compete for domestic insurance business as indigenous insurance services suppliers with respect to insurance for state-owned or state affiliated enterprises, or any enterprise where the state holds an equity share.
2. Foreign insurance suppliers will be treated no less favorably 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 favorable 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 insure their availability to all interested parties.⁸
2. New or revised regulations will be submitted for public comment prior to their enactment. A reasonable period of time, ordinarily no less than one month, will be provided to interested parties to submit comments on all proposed regulations.
3. New or revised regulations will not be made effective until market participants have had a reasonable period of time to become familiar with their contents and take necessary steps to implement them. Except for regulations which must be implemented immediately, due to emergency or other exigency, they will, at a minimum, enter into legal force two weeks following their publication.
4. As part of the procedures for implementing new or revised regulations, Members will provide, in writing, their explanation as to the reasons for rejecting or accepting proposals made by interested parties.
5. An insurance supplier applying for a license will be provided with a written statement, setting out fully and precisely the documents and other information 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 insure that insurance suppliers are free to provide information on their creditworthiness to the public, including information from independent rating organizations that provide such assessments.⁹
7. Subject to the exception under Article XIV(c)(ii), Members will ensure that there will be no restrictions on the availability of financial services information from domestic or foreign sources to registered insurance suppliers.

⁸ This obligation forms part of a general obligation assumed by all Members under GATS Article III.

⁹ 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. Standardized 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.¹⁰
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.

¹⁰ This obligation is addressed in Article VIII (2) of GATS.

INSURANCE MODEL SCHEDULE CHECKLIST

Issue	YES	NO	COMMENTS
MARKET ACCESS			
1. Acquired rights			
2. Reinsurance, MAT insurance allowed cross border			
3. Reinsurance: Access to MAT and intermediation on cross border basis			
4. Life and non-life reinsurance			
a) Elimination of mandatory cessions			
b) Elimination of restrictions for cessions to foreign reinsurance companies			
c) Elimination of right-of-first refusal privileges			
d) Elimination of discriminatory collateralization and localization of assets			
e) Abolition of reinsurance monopolies			
f) Guarantee of freedom of form for reinsurance contracts			
5. Establishment			
a) Freedom to establish in the form of company's choice (sub., branch, etc.)			
b) Full regard for relationship between parent and sub			
c) Use of home company name in host country			
d) Form of establishment not to be denied on basis of legal entity in home market			
e) Freedom to determine percentage of foreign equity shares in joint venture			
f) Staged elimination of foreign equity limitations with minimum 51% ownership during staging period			
6. Compulsory lines: fully bound by national treatment and market access, as defined by GATS			
7. Monopolies: Best endeavors to eliminate insurance monopolies			

Issue	YES	NO	COMMENTS
and exclusive services provides			
8. Temporary Entry of Natural Persons			
a) Avoidance of nationality/residency requirements			
b) Freedom of foreign insurance company to select its own representative in host country			
c) Provision of temporary visa or work permits for short periods of stay			

Issue	YES	NO	COMMENTS
NATIONAL TREATMENT			
9. Ability to compete for insurance coverage of state-owned or state affiliated enterprises			
10. NT with respect to capital, solvency, subject to prudential carve out. Requirement to explain reasons for less favorable treatment under prudential carve out			
11. Insurance mediation: monetary transfer obligations limited to what is necessary to assume legal responsibilities in host countries.			
BEST PRACTICES			
12. Transparency			
a) Regulations to be made publicly available			
b) Prior comment on new and revised regulations			
c) Reasonable time interval prior to new regulations entering into force			
d) Written explanations for rejecting or accepting proposals			
e) Written statement to insurance applicant outlining necessary documentation			
f) Ability to provide information to the public on creditworthiness of a company			
g) No restrictions on availability of financial services information to insurance suppliers			

Issue	YES	NO	COMMENTS
h) Availability of rules and procedures with respect to identification of financially troubled institutions			
i) New tax measures affecting insurance enter into force only after their notification to WTO on semi-annual basis			
13. Solvency and Prudential Focus			
a) New products, rates and services for other than personal or compulsory lines not subject to file and approval			
b) Regulations aimed at allowing the market to determine which products and rates applied			
c) Written explanation required of products that require file and approval procedures			
d) "Deemer" method for use in file and approval procedures			
e) No limits on number or frequency of new products by an insurance supplier			
f) No restriction on dividend payments provided solvency provisions met			
g) Encouragement of international "best practices" standards or accounting and auditing			
14. Insurance Monopolies			
a) Monopolies generally prohibited from offering products outside monopoly designation, with			

Issue	YES	NO	COMMENTS
provision that they not abuse monopoly position when authorized to do so			
b) Insurance suppliers with monopoly rights with keep separate accounts from monopoly and non-monopoly activities			
15. Insurance regulator will be an independent government entity			
16. Pensions			
a) Full market access/national treatment when countries allow for private pensions; immediate obligations to MA/NT to those who provide private pensions			
b) Private pension fund managers to manage public or private pensions in host country			
c) Freedom to select form of commercial presence			
d) Ability to offer range of product/investment options			

Annex 2:

Financial Leaders Working Group

Barriers List: Last Updated 2005

ARGENTINA

Primary Objective: Secure agreement to include the Insurance Model Schedule and Best Practices as part of each country's GATS commitments.

Examples of Current Barriers Inconsistent with the Model Schedule for Insurance:

I. Market Access and National Treatment

A. Acquired Rights:

- Whether a country protects acquired rights will be evident as offers are made and should be addressed according to the Model Schedule.

B. Market Access – Cross Border Trade:

- Suppliers have to be either incorporated in Argentina, registered with the Insurance Commissioner (federal), or accessed by a registered insurance/reinsurance broker. Insurance of local risks is only legal with local insurance companies.

C. Market Access – Commercial Presence:

- Does not permit branching.
- The Corporations' Regulator has recently established that a minimum share of 5% should be assumed by any investor (foreign or domestic) to be considered a shareholder

D. Market Access – Temporary Entry of Natural Persons:

- No specific barriers identified, other than horizontal

E. National Treatment:

- Discrepancies in the treatment of foreign and domestic insurance suppliers with respect to capital, solvency, reserve, tax and other financial requirements. The discrepancies are not formal, but leeway is given to large domestic companies with strong lobbies.

- Discriminatory 3.5% tax on premiums for reinsurance obtained abroad, but in practice obviated under most Argentine double taxation agreements.

II. Best Practices in Insurance

A. Transparency:

- New and existing regulations are not submitted for public comment with a reasonable amount of time for comment prior to their enactment.
- Market participants are not afforded an adequate time period to become familiar with and be prepared to implement new and revised regulations before they become effective.
- Insurance providers who provide comment and recommendations on proposed or revised regulations do not receive a written reply from the supervisory authority.
- No written statement is provided to insurance providers applying for a licence, however the procedure is clearly regulated.
- The procedures to ensure that consumers can assess the creditworthiness of insurance companies and for insurers to provide information on their creditworthiness to the public are difficult to use and rating is not mandatory.
- No transparent, publicly available, non-discriminatory rules and procedures established that govern the identification and handling of financially troubled institutions, including disclosure. The rules and procedures are applied at the discretion of the insurance commissioner.
- No procedures are in place to provide notification to the World Trade Organization before measures are adopted with respect to taxation that affect all insurance products.

B. Solvency and Prudential Focus:

- Burdensome requirements for new products, forms, rates and services to be filed and approved.
- Where filing and approval of an insurance product is required, the policy reasons for such requirements are not made publicly available by the regulatory authority, and no explanation is given of how the requirements are the least burdensome means of satisfying the policy reasons for filing and approval.
- No deemer provision that allows new products to be deemed approved after a set period if the insurance supervisor has not taken action to disapprove it.
- Restrictions on the payment of dividends by foreign insurance providers under Foreign Exchange Control Law.

C. Insurance Monopolies:

- Designated insurance monopolies in the country are allowed to offer insurance products outside of their monopoly designation.

D. Independent Regulatory Authority:

- No barrier: there is an Independent Regulatory Authority.

Market Background Information:

In insurance, full market access and national treatment are guaranteed. The previous ban on new establishment in the insurance sector has now been lifted. Argentina's insurance market is largely open. Following liberalizing reforms effective from October 1998, foreign owned companies may establish as wholly-owned subsidiaries, as a joint venture with a local firm, or through purchase of an existing, licensed company. The National Institute of Reinsurance has been liquidated.

Insurers in Argentina are operating in a market in which regulation is not adequately enforced (particularly as regards solvency). The result is that foreign companies are not on an equal footing when it comes to competing with poorly supervised local companies who are not subject to the full force of regulation. This variable application of regulation effectively discriminates against foreign insurers. For instance, there has been a system since 2002 of specific authorizations granted by the Monetary Authority (Argentina Central Bank) and the National Insurance Superintendence to wire transfer payments outside the country; but, while these regulations are applicable to both domestic and foreign concerns, they may in practice give rise to discrimination.

Significant fields in which Argentina has not yet made any commitments include (but are not confined to):

- insurance intermediation and services auxiliary to insurance. (Modes 1,2,3,4).

BRAZIL

Primary Objectives: Secure agreement to include the Insurance Model Schedule and Best Practices as part of each country's GATS commitments. Secure Brazilian ratification of the Fifth Protocol (not ratified as at 1 December 2005).

Examples of Current Barriers Inconsistent with the Model Schedule for Insurance:

I. Market Access and National Treatment

A. Acquired Rights:

- Whether a country protects acquired rights will be evident as offers are made and should be addressed according to the Model Schedule.

B. Market Access – Cross Border Trade:

- Does not permit cross border sales for reinsurance, MAT insurance and insurance services (including brokerage and agency) on behalf of both domestic and foreign clients.
- No commitments for cross-border and consumption abroad in MAT insurance, reinsurance or other insurance services (including brokers and agency), except for freight and vessels.
- Both foreign and domestic reinsurers are not granted right of first refusal privileges.
- Does not offer freedom of form for reinsurance and freedom of reinsurance contract forms.
- Legal requirement for imported goods or goods in transit to be insured with insurers resident in Brazil.
- Imposes restrictions on MAT insurance. An economic needs test restricts direct insurance contracts with foreign insurers to cases where risks can not be covered by domestic insurers or the risk is against the national interest. In addition, requires approval by the Superintendência de Seguros Privados (SUSEP) before the contract is signed.
- Requires submission of detailed information on the contract and approval by SUSEP when an insurance contract, except for contracts on maritime shipping, aviation, goods in international transit and export credit, is concluded in foreign currency.
- State monopoly on workers' compensation.
- State monopoly on reinsurance.
- Prohibitive taxation (effectively double taxation) on fees of services rendered abroad leads to systematic refusal by agents abroad to render services to Brazilian clients.

C. Market Access – Commercial Presence:

- Presidential decree required for establishment of commercial presence in insurance.
- Does not allow direct branching. Incorporation under Brazilian Law is required to establish commercial presence.
- Restrictive commitments on insurance intermediation and services auxiliary to insurance.
- Exclusive service supplier arrangements or monopolies for reinsurance prevent full and open competition (IRB).
- Imposes mandatory cessions for reinsurance of 100% to IRB.
- State monopoly on workers' compensation.
- State monopoly on reinsurance.

D. Market Access – Temporary Entry of Natural Persons:

- A business entity which has more than 3 employees is obliged to hire Brazilian employees who must comprise more than two thirds of its total employees.

E. National Treatment:

- Restrictive conditions and limitations on monetary transfers by insurers and insurance intermediaries.

Special 2% tax on premiums ceded to foreign reinsurance undertakings.

Requirement of minimum funds ranging from US\$100-150m for the creation of a reinsurance undertaking.

II. Best Practices in Insurance

A. Transparency:

- No transparent, publicly available, non-discriminatory rules and procedures to govern the identification and handling of financially troubled institutions, including disclosure.

B. Solvency and Prudential Focus:

- Burdensome limitations on the number and frequency of new product and service introductions.
- Restrictions on the payment of dividends by foreign insurance providers.

C. Insurance Monopolies:

- It is not known whether the state monopolies in reinsurance and workers compensation have wider implications for regulatory best practice.

D. Independent Regulatory Authority:

- No barrier: there is an Independent Regulatory Authority.

Market Background Information:

The Brazilian insurance regime includes a web of restrictions, many of which act as very significant barriers to market entry. It remains of high importance for these to be removed. Amendments to the Constitution in 1995 opened the insurance sector to foreign investment and removed the distinction between the treatment of foreign and national capital. Privatization of workers compensation insurance have long been pending. But current regulations prevent development of traditional agency forces, and labor law restrictions exclude traditional agents from selling life insurance (permitted only brokers and banks).

Foreign exchange controls mean that Central Bank approval is required for monetary and profit repatriation.

Brazil has still not privatized its State monopoly reinsurer (IRB). Removal of the monopoly was decided in principle by the law (Lei 9932/99) approved in December 1999. However, the National Congress has not yet adopted the legislation. Prior to the privatization of the IRB, the reinsurance market should be de-monopolized in the interim period before that legislation is implemented.

It is proposed that, after the new legislation is adopted, a new regime for reinsurance (offering some foreign market access) will be put in place. But the proposed new regime for reinsurance would limit cross-border reinsurance cessions to 10% of total reinsurance placements. Furthermore, for two years after the privatization of IRB, insurance companies will have to offer 60% of cessions to the new IRB or new state reinsurer preferentially and with restriction on cession abroad. In addition, a minimum deposit of US \$5 million will be required of those reinsurers establishing in the Brazilian market. This requirement will present a barrier to entry and will, in particular, affect established insurance companies, who will effectively have to set up as reinsurers in order to access their world-wide Group financial capacity.

Significant fields in which Brazil has not yet made any commitments include (but are not confined to):

- Cross-border provision and transfer of financial information;
- pension fund management (Mode 3).

CHINA

Primary Objective: Secure agreement to include the Insurance Model Schedule and Best Practices as part of each country's GATS commitments.

Examples of Current Barriers Inconsistent with the Model Schedule for Insurance:

I. Market Access and National Treatment

A. Acquired Rights:

- Whether a country protects acquired rights will be evident as offers are made and should be addressed according to the Model Schedule.

B. Market Access – Cross Border Trade:

- Restrictions on cross-border supply, except international MAT insurance and reinsurance and brokerage related to international MAT and large-scale commercial risk insurance and reinsurance.
- Restrictions on consumption abroad of brokerage.
- Consumption abroad of brokerage unbound.
- Requirement for reinsurance cessions (reducing under WTO accession terms).
- The list of legal entities permitted to write insurance and reinsurance does not include “an association of underwriters”.

C. Market Access – Commercial Presence:

- Accident & Health insurance restricted to life companies only.
- Limit of 50% for foreign equity holdings in life insurance joint ventures, 50% restriction on joint broking ventures.
- Restrictions on granting of licenses.
- Geographical commercial presence for transitional periods after Chinese accession to the WTO.
- Restrictions on branching, including requirements for consecutive branch-by-branch approval, with lengthy application processes
- Restrictions on business scope of commercial presence.
- Requirement for reinsurance cessions.
- The list of legal entities permitted to write insurance and reinsurance does not include “an association of underwriters.”

D. Market Access – Temporary Entry of Natural Persons:

- Requirement that natural persons designated as agents must be permanent residents.

E. National Treatment:

- Imposes a \$50,000 floor on large-scale commercial risk.
- Limits investment options available to foreign funded insurers.
- Restrictions on investment of assets.
- Restrictions on cross-border transfer of capital (which is subject to authorization).
- Higher capitalization requirements for foreign insurers.
- Foreign insurers restricted from “statutory” insurance business and certain other classes (e.g. surety bonds).
- Discriminatory restrictions on sub-branches (foreign-owned insurers may only establish one sub-branch at each application, while domestic insurers are permitted to establish multiple sub-branches).
- Tax burden greater for foreign insurers.

II. Best Practices in Insurance

A. Transparency:

- Accession commitments are still being implemented. It is not yet clear how far problems will arise.

B. Solvency and Prudential Focus:

- Accession commitments are still being implemented. It is not yet clear how far problems will arise.

C. Insurance Monopolies:

- Accession commitments are still being implemented. It is not yet clear how far problems will arise.

D. Independent Regulatory Authority:

- No barrier: there is an Independent Regulatory Authority.

Market Background Information:

Although China has made significant concessions to open its insurance market further, a number of major obstacles remain. The removal of geographical restrictions on commercial presence could be accelerated. Chinese licensing and regulatory processes are not yet fully transparent, and there is lack of clarity in the division of regulatory authority between national and provincial officials and agencies. China should be urged, within the framework of discussions under GATS Articles VI and VIII, to specify plans for applying regulation in a transparent and non-discriminatory manner.

The **national treatment** barriers are significant, especially in **statutory insurance**. Restrictions on foreign-owned insurers from writing “statutory” insurance business have effects going wider than the strict ambit of such business. For instance, in the field of motor insurance, the “statutory” insurance which foreign insurers may not write is third party motor liability insurance. This is itself a serious impediment, as the motor third party liability market accounts more than 50% of the total Chinese non-life market. But the restrictions tends to go wider: it

means in practice that foreign insurers have no access to the market for related motor risks (e.g. covering risks such as fire, theft, loss or damage affecting the insured's own vehicle) as policyholders generally insure such risks with the domestic insurer offering the "statutory" cover. As a separate statutory insurance matter, the recent nationalization of workers compensation may affect foreign insurers' newly developed position in the employers' liability market.

There are various **regulatory restrictions** which (while arguably falling under the GATS Financial Services Prudential Carve-Out) have significant restrictive effects on market entry. **Capitalization requirements** in China remain high at a minimum of RMB200 million for initial establishment and RMB20 million for each additional branch: these requirements could be eased without sacrificing prudential rigor. There are also excessive requirements for insurance companies engaged in overseas use of foreign exchange funds (usually foreign insurers) which only the largest companies can meet:

- (1) The company has a permit for conducting foreign exchange business;
- (2) Its total assets at the end of the previous year are not less than RMB 5 billion;
- (3) Its foreign exchange funds at the end of the previous year are not less than USD 15 million or equivalent value in a freely convertible currency;
- (4) Its solvency margin complies with relevant stipulations of the CIRC;
- (5) It has a specialized fund-use department or a relevant insurance asset management company;
- (6) Its internal management system and risk control system comply with the stipulations of the Risk Control Guidelines for Use of Insurance Funds;
- (7) The number of its professional managerial personnel with over 2 years' overseas investment experience complies with relevant stipulations;
- (8) Other qualifications specified by the CIRC and the SAFE.

Similarly, **insurers' permitted investments** in the securities sector are heavily restricted by Provisional Regulations jointly issued and put into effect by the State Council, China Insurance Regulatory Commission and China Securities Regulatory Commission in October 2004. These specify that an insurer's annual permitted investments cannot exceed 5 percent of its total reported assets at the end of the previous year, according to the regulations. This means that most insurance company funds may only be invested in low-return bank deposits, and certain types of bonds - a serious impediment for foreign insurers, whose attractiveness and profitability suffer from their inability to invest in a wider range of investment products. Greater flexibility on investment options and equality of treatment on foreign investments for both domestic and JV insurers is desirable.

Monitoring Chinese WTO accession commitments remains important. There are three main areas:

Restriction of foreign life and non-life insurers and intermediaries to certain cities: The fact that foreign insurers and intermediaries are restricted to certain cities means that they are barred from entering potentially lucrative markets (e.g. at provincial or nationwide level), and they are unable to compete effectively with domestic Chinese companies, which enjoy a nationwide presence. However, this restriction (limiting market-opening first to Shanghai, Guangzhou, Dalian, Shenzhen and Foshan (December 2001), with the addition of Beijing, Chengdu, Chongqing, Fuzhou, Suzhou, Xiamen, Ningbo, Shenyang,

Wuhan and Tianjin by December 2003) was due to be lifted on 11 Dec 2004, after which internal branching will be permitted consistent with the phase-out of geographic restrictions.

Compulsory Reinsurance Cessions: compulsory cessions are to be phased out on the following basis: a 20 per cent cession of all lines of the primary risks for non-life, personal accident and health insurance business with an appointed Chinese Reinsurance Company shall be required (until December 2002); 15 per cent (until December 2003); 10 per cent (until December 2004); and 5 five per cent (until December 2005). Four years after accession (i.e. from December 2005), no compulsory cession will be required.

Permitted Classes of Business: from December 2004 (i.e. three years after WTO accession) foreign insurers may provide both individual and group life insurance, and health insurance, group insurance and pension/annuities insurance, to both foreigners and Chinese nationals.

It will be important to ensure that the progressive liberalization promised in all three areas is carried out punctually and straightforwardly.

EGYPT

Primary Objective: Secure agreement to include the Insurance Model Schedule and Best Practices as part of each country's GATS commitments.

Barriers:

- Economic needs test on all "inland" insurance services.
- Restrictions on branching by foreign firms.
- Restrictions on foreign ownership outside the "free zones". In life, health and personal accident insurance, foreign capital equity restricted to 51%, except in free zones, as of 1 January 2000. In non-life, foreign capital equity restricted to 51%, except in free zones, as of 1 January 2003 (49% before that date).
- 1998 reforms not bound.
- Cross-border supply and consumption abroad of MAT insurance and insurance intermediation services related to it are not bound.
- Restrictions on establishment of foreign insurance brokers. Foreign brokers are not allowed to offer their services related to non-life risks, in particular MAT, as well as to large industrial or commercial risks (and all related services: consultancy, risk assessment, risk management, etc).
- 5% compulsory reinsurance cession to African Re and Egypt Re.
-

Market Background Information:

Egypt's current commitments stand out among developing countries. They have granted full market access under all forms of commercial presence and eased some of the restrictions in insurance. However, further liberalization should be sought. Direct branching is still not permitted in insurance, and, although majority shareholding is granted to life insurers, outside free zones, non-life insurers will have to wait for majority control.

Privatization of the "Big Four" Egyptian companies. Misr, National, Al-Charq and Egypt Re, is planned by 2003. Potential buyers for the four were identified by April 2001. Valuation of the Big Four was complicated by seeking an objective determination of outstanding liabilities and a possible selling off of vast real estate holdings, which also had to be properly evaluated and valued. The Government of Egypt is in the process of evaluating the appropriate factors to use in determining a realistic valuation for the four companies. The reforms expected in 2003 in the pension sector should be incorporated in the new GATS offer.

Two companies based in the free zones have been privatized, Egyptian American Insurance Co. (ACE/CIIC) and the Arab International Insurance Co. (AXA/Allianz). They have received approval from EISA to operate in the national market.

In addition, eight private companies operate in the market, some with foreign participation (AIG, Legal and General of the UK).

Personnel: The requirement for an Egyptian managing director on the board has been removed. Furthermore, the prohibition on foreign nationals serving as corporate officers has been removed.

Creation of an insurance information centre is planned. The centre's purpose is to provide more transparency, credibility and increase public confidence. The centre will ensure the computerization of filings, to enable EISA to perform its supervisory and data dissemination roles more efficiently.

Significant fields in which Egypt has not yet made any commitments include (but are not confined to):

- insurance intermediation and services auxiliary to insurance (Modes 1,2,3,4) except for life insurance and reinsurance intermediation (Modes 1 and 2).

INDIA

Primary Objective: Secure agreement to include the Insurance Model Schedule and Best Practices as part of each country's GATS commitments.

Examples of Current Barriers Inconsistent with the Model Schedule for Insurance:

I. Market Access and National Treatment

A. Acquired Rights:

- Whether a country protects acquired rights will be evident as offers are made and should be addressed according to the Model Schedule.

B. Market Access – Cross Border Trade:

- Imposes 20% mandatory cessions across the board for non-life classes to state reinsurer (S.101A, Insurance Act 1938).
- Requires different percentages for domestic and foreign reinsurers with respect to mandatory cessions. Domestic cessions have to be maximized before foreign cessions (Article 3 (1) IRDA (General Insurance-Reinsurance) Regulations, 2000). (See Market Background Information).
- Foreign reinsurers are not granted right of first refusal privileges while domestic reinsurers have this right (see Market Background Information).
- There is a reinsurance monopoly in the non-life sector in India.
- Restricted commitments on intermediation for reinsurance.
- Substantially prohibits cession abroad. In the Schedule of Specific Commitments of India, it is stated that reinsurance can be taken out with foreign reinsurers to the extent of the residential uncovered risk after obligatory or statutory placements has been made domestically with Indian insurance companies (Article 3 (1) IRDA (General Insurance-Reinsurance) Regulations, 2000).
- When Indian citizens or enterprises purchase insurance services from an insurer abroad, they are required to have overseas remittance permission from the Reserve Bank of India in accordance with "The Foreign Exchange Management (Insurance) Regulations, 2000 Sec 3." However, the permission is not granted.
- Prohibits cross border trade and consumption abroad for MAT, except for freight insurance, where goods in transit to and from India may be insured with foreign insurers.
- Legal form discrimination for insurance and reinsurance: no provision allowing licensing of "an association of underwriters".

C. Market Access – Commercial Presence:

- Restrictions on foreign equity ownership of insurance and insurance brokerage companies. Foreign insurers and brokers cannot establish unless via a joint venture with an approved partner with a minimum 74% local shareholding (Ss.2, 7A(b), Insurance Act 1938, as amended).
- Private sector participation in the pension system is not permitted (both private and public), but some private sector participation is expected by 2002.
- Limit on earnings permitted to be paid to shareholders.
- Commercial presence for insurance intermediaries limited to reinsurance only, with restrictive conditions.
- Legal form discrimination for insurance and reinsurance: no provision allowing licensing of “an association of underwriters”.

D. Market Access – Temporary Entry of Natural Persons:

- No specific barriers identified at this time.

E. National Treatment:

- There is the question whether there are discriminatory tax requirements on foreign insurers.
- Foreign reinsurers are not granted right of first refusal privileges while domestic reinsurers have this right (see Market Background Information).

II. Best Practices in Insurance

A. Transparency:

- Insurance companies who provide comment and recommendations on proposed or revised regulations do not usually receive a written reply from the supervisory authority in response to those comments.
- No procedures are in place to provide notification to the World Trade Organization before measures are adopted with respect to taxation that affect all insurance products.

B. Solvency and Prudential Focus:

- 74 % of the market gross written premium (GWP) is regulated by tariff, with the Tariff Advisory Committee (TAC) deciding on price, terms and conditions. This results in poor development of underwriting skills, leads to cross-subsidisation, and prevents insurance companies from competing for market share by offering product or price differentiation.

C. Insurance Monopolies:

- No specific barriers identified at this time.

D. Independent Regulatory Authority:

- No barrier: there is an Independent Regulatory Authority.

Market Background Information:

India's commitments in 1997 were very limited. With the passage of the Insurance Regulation and Development Authority Act 1999, the Indian insurance industry is now being liberalized, and privatization of the Indian insurance market has begun. The nationalized General Insurance Corporation and Life Insurance Corporation no longer enjoy monopolies. These liberalization measures should now be bound through fresh GATS commitments.

Various **regulatory issues** affect market entry and competitiveness. Capitalization requirements (US\$ 25 million for initial establishment) may restrict entry of single-line insurers (e.g: health). The effect of the tariff is gradually being reduced, as various lines are de-tariffed; but motor insurance (highly significant in the non-life field) has yet to be included in de-tariffing. Restrictions on claims-payments in foreign currency often entail a lengthy permission process from the Reserve Bank of India (RBI); and removal of these restrictions would reduce administrative costs and reduce currency risk. Solvency requirements are also comparatively high; and restrictions on insurers' permitted investments mean that most funds may only be invested in low-return state and central government bonds - a particular impediment for foreign insurers, whose investment returns and profits may suffer from denial of access to a wider range of investments. Accounting standards do not yet allow for the inclusion of deferred acquisition costs.

There are ongoing issues relating to the position of **joint ventures with foreign participation**, on the one hand, and domestic-owned insurers, on the other. On the one hand, the current foreign equity cap of 26% hampers private companies' growth prospects, as growth require more capital allocation which the local partners may be unable to match: and for this reason the current government has made clear its intention to raise the foreign equity ownership cap to 49%, although this has yet to result in action. On the other, current Indian law (the Indian Insurance (Amendment) Act 2002 (i.e. the Insurance Act 1938, as amended by the IRDA Act 1999)) has disinvestment provisions that currently bite mainly on Indian promoters holding 74% of joint-ventures with foreign participation or up to 100% of Indian insurance companies. These provisions (Section 6AA) say that where an Indian insurance company includes promoters holding more than 26% of the equity, the promoters must divest the excess over 26% after the company completes 10 years of operation or "within such period as may be prescribed by the Central Government". In the case of an FDI joint-venture this would result in promoters holding 52 % (26 % by the Indian and 26 % by the foreign promoter), with the balance of 48 % being widely held (presumably following a public flotation). Section 6AA would therefore sit oddly with allowing foreign participation to increase to 49%. It would imply that if foreign investors raise their holdings beyond 26% (no doubt paying an acquisition premium), they will have to reduce them again to 26% a few years later (risking a loss in a forced divestment sale). All this could create market uncertainty for the Indian private insurance sector, quite apart from threatening the basis on which insurers could meet additional capitalization requirements for solvency margin purposes.

As the market becomes more liberalized, **restrictions on reinsurance** represent an increasing constraint. There is a requirement for 20% mandatory cessions (across all non-life classes of business, and without regard to any underwriting requirement for cessions) to the General Insurance Corporation (GIC, the public sector general insurer which acts as national reinsurer). The GIC thus benefits as of right from an automatic share of 20% of all business written by all insurers in India. In addition, the GIC has the right (but no obligation) to accept any risks that require reinsurance over and above the 20% mandatory cessions, and so can operate its own economic needs test to determine whether, and to what extent, such risks can be ceded to foreign reinsurers. This unfair advantage works to the detriment of foreign reinsurers, and has allowed the GIC to remain, in effect, a monopoly reinsurance provider for most purposes, substantially preventing cessions abroad. Taken as a whole, this system of preferential cessions to the GIC has several related effects. Most importantly, it inhibits competition in reinsurance, by preventing direct insurers in India from seeking better rates and terms available from foreign reinsurers competing in the global reinsurance market (which in turn would make for downward pressure on reinsurance costs, not least by allowing scope for increased commission payments to ceding insurers). In the same way, it also prevents Indian insurance joint ventures with foreign partners from benefiting from economies of scale potentially available through efficient use of the foreign partner's global reinsurance links. Finally, it distorts underwriting practice by preventing direct insurers from retaining profitable classes of business in their own books, which would eliminate unnecessary reinsurance costs and increase their profits.

Certain **other marketplace practices** currently inhibit competition and favor public sector insurers. Some Government Banks are unwilling to accept insurance covers written by private insurance companies (e.g.: Marine), so deflecting their clients from placing risks with private insurers. Some public sector entities insist on cover by public sector insurers. Such practices make it difficult for private insurers to target certain segments of the market. Without them, the revenues available to private insurers would increase.

Significant fields in which India has not yet made any commitments include (but are not confined to):

- cross-border insurance and intermediation.

INDONESIA

Primary Objective: Secure agreement to include the Insurance Model Schedule and Best Practices as part of each country's GATS commitments.

Examples of Current Barriers Inconsistent with the Model Schedule for Insurance:

I. Market Access and National Treatment

A. Acquired Rights:

- Whether a country protects acquired rights will be evident as offers are made and should be addressed according to the Model Schedule.

B. Market Access – Cross Border Trade:

- Restrictions on cross-border trade in MAT insurance and reinsurance.
- Economics needs test for consumption abroad (allowed only where Indonesian firms cannot or will not handle the business, or where the clients are not Indonesian).
- Restrictions on authorized investment options, including overseas.
- Restrictions on marine cargo insurance on exports and imports.
- Mandatory reinsurance cessions of 2.5% of insured amount or US\$50,000 to Re Indo. Lines of insurance with imposed mandatory cessions are fire, property all risks, commercial all risks, industrial all risks.
- Also requires cession of more than 10% to one domestic reinsurer and one domestic direct insurer when treaty reinsurance is ceded to foreign reinsurers except for excess of loss cover for natural catastrophe and cases where the business would be declined by a domestic insurer or reinsurer.
- Legal form discrimination for insurance and reinsurance: no provision allowing licensing of “an association of underwriters”.

C. Market Access – Commercial Presence:

- No freedom to establish in desired form, whether as a wholly-owned subsidiary, joint venture or branch. Establishment of branch offices is not permitted to foreign insurers.
- Legal form discrimination for insurance and reinsurance: no provision allowing licensing of “an association of underwriters”.
- No freedom to choose investment partners (life requirement: that partner must be in same line of business).
- Restricted commitments on insurance intermediation.
- Restrictions on foreign equity participation in the case of non-publicly listed companies.
- Limits foreign equity participation in local insurance companies to 80% or less. However, following the amendment of the Insurance Law in July 1999, investment

- exceeding 80% was allowed to foreign investors who had already taken an 80% share in the company.
- Aggregate foreign shareholding in a joint venture insurance or reinsurance company may exceed 80%, so long as there is no change in the amount of investment held by the Indonesian partner.

D. Market Access – Temporary Entry of Natural Persons:

- No specific barriers identified at this time.

E. National Treatment:

- 80% limit on foreign ownership (which under current legislation reduces to 49% by 2013).
- Higher paid-up capital requirement for foreign companies.
- Discrimination against joint ventures in enforcement of regulation, e.g. tax audits.
- Discriminatory screening of foreign investors for national interest policy reasons with approval of foreign investment based on economic needs test.
- Informal limits on access by foreign insurers to business covering risks for Government controlled entities and utilities.

II. Best Practices in Insurance

A. Transparency:

- Regulations normally enter into operation prior to public comment.

B. Solvency and Prudential Focus:

- No specific barriers identified at this time.

C. Insurance Monopolies:

- Social security business restricted to state insurers.

D. Independent Regulatory Authority:

- No specific barriers identified at this time.

Market Background Information:

Despite Indonesia's economic volatility of the past several years, and the ensuing political uncertainties, the insurance market has continued to grow, both in premium and in the numbers of insurers. The Insurance Council of Indonesia (DAI) reported that premium income grew by nearly 33% in 1998, and expanded at an even faster rate during the first half of 1999, growing at 60% of the 1998 premium income during those six months. Six new life insurance companies

entered the market in 1998, for a total of 59 companies in the market, with 23 being joint ventures. Shortages of capital and human resources, however, have combined to limit further expansion. Few insurers are currently reviewed by rating agencies. Indonesia offers a promising market for the future, with the world's fourth largest population. Only about 10% of the population holds any insurance.

However, Indonesia's commitments still remain limited and, to some extent, contradict the liberalization trend. Market access and national treatment limitations will only be eliminated by 2020 – an excessively long timetable. Domestic law and practice allow 80% foreign ownership for insurance companies. The decree of 1994 allows foreign ownership of up to 100%, but this decree has not been implemented. Access is very limited in insurance, but fairly generous in banking and securities. Indonesia should be pressed to extend its commitments in the insurance sector to allow branching, 100% foreign ownership and to remove existing discrimination against foreign insurance companies and insurance intermediation (brokerage and agency) companies.

There is a potential horizontal barrier to insurance distribution, given the forthcoming Government regulation limiting access and connection to Internet.

Significant fields in which Indonesia has not yet made any commitments include (but are not confined to):

- cross-border supply of insurance intermediation services related to MAT.

MALAYSIA

Primary Objective: Secure agreement to include the Insurance Model Schedule and Best Practices as part of each country's GATS commitments.

Examples of Current Barriers Inconsistent with the Model Schedule for Insurance:

I. Market Access and National Treatment

A. Acquired Rights:

- Whether a country protects acquired rights will be evident as offers are made and should be addressed according to the Model Schedule. Malaysia refused to do so in its commitments in the WTO Financial Services Agreement 1997.
- Foreign capitalized insurers which have already operated their business as branches are required to incorporate on the basis of the Corporate Act 1965 (Article 217(b) Insurance Act 1996).

B. Market Access – Cross Border Trade:

- Economic needs test for cross border business.
- Cross-border operations in reinsurance permitted only if local capacity is not available. Overseas cessions are allowed up to a limit of 50% of the sum insured (up to 25% with the lead reinsurer and up to 10% for other participating overseas reinsurers) (Bank Negara Guidelines on Scheme for Reinsurance of Large and Specialized Risks 8 December 1993 JPI/GPI-11, Paragraph 11 of appendix to Bank Negara Guidelines on General Reinsurance Arrangements 21 April 2000 JPI/GPI-22).
- Rules on credit for reinsurance require direct insurers who reinsure abroad to set aside additional reserves (MASB Standard 17-20, Bank Negara Malaysia Guidelines JPI/GPI-3(iii) 18).
- “Voluntary” (in effect mandatory) reinsurance cessions of 5% to the state reinsurance company (MNRB) in auto, accident, health and other non-life sectors, prescribed by administrative guidance, are a serious obstacle for free reinsurance transactions (Bank Negara Malaysia Circular 22 November 2002 JPI 22/2002).
- MAT and other non-life insurance requires approval and is permitted only if local capacity is not available (S. 140(2) Insurance Act 1996).
- Business may not be solicited in Malaysia (Ss. 2, 8 and 9 Insurance Act 1996).

C. Market Access – Commercial Presence:

- Granting of new insurance and reinsurance licenses not bound. Numerical license limitation for life and non-life sectors.
- Ban on establishment of insurance brokers.
- Restrictions on foreign equity holdings to 51% for established operations (although certain foreign companies have, for the time being, succeeded in retaining 100%).

- Restrictions on foreign equity holdings to 30% for new operations, plus a minimum 30% of Bumiputra capital in the total Malaysian capital.
- Prohibits branching by companies with foreign participation of 51% or more (Bank Negara Malaysia Circular 17 April 2003 JPI 9/2003, Branching Policy for Insurers).
- Restrictions on management/service agreements (e.g. preventing reimbursement of genuine expenses incurred by overseas parent companies).

D. Market Access – Temporary Entry of Natural Persons:

- Strict limits of admission of expatriate personnel.
- Restricts the numbers of foreign managers and specialists and the issue of work permits (work permits require approval by Bank Negara Malaysia).
- With occasional (and therefore non-transparent) exceptions, representatives of foreign-capitalized insurance joint ventures are restricted to local nationality. The status of foreign staff is limited to “Director” or “Technical Advisor” (Ss 8(1)(b)(ii) and 51(b), Insurance Companies Ordinance, Paragraph 11(a) Insurance Authority’s authorization Guidelines).
- Requirement for 30% of staff to be indigenous Malays (Bumiputra policy).

E. National Treatment:

- Prohibits branching by companies with participation of 50% or more.
- Malaysian Insurance Act (1996) imposes restrictions on insuring property/liability risks with non Malaysian insurers.
- Imposes discriminatory tax systems against foreign companies: Discriminatory 1.5% additional tax (2.5% in total) on cession abroad while only 1% tax on cession to domestic reinsurers (Ss 40(5)(b)(ii) and 60(7), Income Tax Act 1967).
- Discriminatory tax incentive to local companies by which 200% of marine insurance premiums on imports and exports is permitted to be deducted (Income Tax Rules 1982 and 1995).
- Informal limits on access by foreign insurers to business covering risks for Government controlled entities and utilities.
- Restrictions on foreign insurers ability to invest in real estate.
- Restrictions on foreign insurers ability to sell bancassurance through foreign banks.

II. Best Practices in Insurance

A. Transparency:

- Various restrictions imposed by the authority not based on official documents.

B. Solvency and Prudential Focus:

- Scope of portfolio investment abroad is relatively limited as subject to a maximum limit corresponding to 5% of “solvency margin and liabilities”.

C. Insurance Monopolies:

- No specific barriers identified at this time, other than mandatory cessions.

D. Independent Regulatory Authority:

- No specific barriers identified at this time.

Market Background Information:

Malaysia's commitments in the 1997 WTO Agreement only permit foreign entry under strict control. Although Malaysia has "grandfathered" the rights of foreign firms in banking, it has not done so in insurance. The law of 1996 required all foreign insurance firms to divest down to a minority holding of no more than 49%, but in the 1997 WTO negotiations Malaysia conceded that foreign insurance firms could have 51% holdings. It would appear that a maximum of 49% foreign ownership is still the government's goal. The forced divestment above 51% caused the United States to take an MFN exemption threatening reciprocal action against countries pursuing forced divestment policies. Since then, Malaysia has extended for five years the deadline within which firms must reduce holdings to the 51% ceiling. However, only those insurance firms without foreign majority holdings are permitted to branch. The foreign equity restrictions for new entrants are even less favorable than for existing firms. Such restrictions inhibits from entering new and innovative strategic marketing partnerships, e.g. bancassurance.

Those shares of a part foreign-owned company that are in Malaysian hands are subject to a further restriction that stipulates that a minimum of 30% of such shares must be owned by "Bumiputra" (Malays), (although the government has also been prepared to exercise flexibility, in certain circumstances, and there are signs of a relaxed approach to enforcing maximum ownership rules in this and other areas). Given the economic situation in Malaysia, it is extremely difficult to find and retain Malaysian shareholders. Many Malaysian shareholders in joint venture insurance operations have sought to pull out, but there are no buyers.

In the wake of the Asian financial crisis, the government seeks to streamline the insurance industry in Malaysia and has instituted policies to encourage consolidation on the insurance sector. A new minimum paid-up capital requirement of RM 100 million was scheduled to take effect as of June 2001, although some local companies have had difficulties meeting the new threshold, which only about half a dozen companies in the market at present can meet. The government aims for 10 to 15 financially viable insurers in the market by 2003.

A new government Master Plan for the sector was scheduled for release in February 2001. Apart from streamlining the number of companies in the market, other goals include introducing better products that will induce greater savings, and to enhance corporate governance through measures such as the creation of internal auditing systems. Greater use of information technology in sectors such as mandatory motor insurance will increase efficiency and boost market share. But at the same time there currently remains restrictions on supply of new business products and services (Takaful, Unit Trust, Annuities, Credit Card) and distribution methods (internet). The Master Plan for 2001-2005 recommends phased liberalization of the insurance industry,

including the lifting of existing restrictions on employment of expatriate specialists, increasing caps on foreign equity, and fully opening the reinsurance sector to foreign competition. Liberalization included in the Master Plan should be the subject of GATS commitments.

Significant fields in which Malaysia has not yet made any commitments include (but are not confined to):

- cross-border intermediation related to MAT;
- insurance brokerage (Mode 3);
- life insurance (Mode 3);
- pension fund management (Mode 3);
- provision/transfer of financial information (Mode 3).

PHILIPPINES

Primary Objective: Secure agreement to include the Insurance Model Schedule and Best Practices as part of each country's GATS commitments. Secure ratification of the Fifth Protocol (not ratified as at 1 September 2005).

Examples of Current Barriers Inconsistent with the Model Schedule for Insurance:

I. Market Access and National Treatment

A. Acquired Rights:

- Whether a country protects acquired rights will be evident as offers are made and should be addressed according to the Model Schedule.

B. Market Access – Cross Border Trade:

- Cross-border operations in relation to direct insurance not permitted, though fronting arrangements can be organized.
- Imposes mandatory cessions for reinsurance. 10 % of total reinsurance cessions to foreign unauthorized reinsurers must be ceded to the National Reinsurance Corporation of the Philippines (NRCP).
- Facultative reinsurance abroad is only allowed if reinsurance has been offered to and declined by 5 domestic insurers, 3 foreign-owned domestic insurers, and 3 domestic reinsurers. For MAT reinsurance, the numbers are 2,1,3 respectively (Circular Letter No. 19-96).
- Reinsurance abroad is not permitted for motor insurance (Insurance Memorandum Circular No. 2-93, 22 December 1992).
- Imposes discriminatory requirements on foreign reinsurers relating to collateralization and localization of assets.
- Restrictions on freedom of reinsurance contract forms.
- Cross-border trade in MAT insurance subject to licensing requirements and permitted only for licensed companies (Article 309, Insurance Code).
- Restricted commitments on services auxiliary to insurance.
- Legal form discrimination for insurance and reinsurance: no provision allowing licensing of "an association of underwriters".

C. Market Access – Commercial Presence:

- Restrictions on providing cover in compulsory lines.
- 40% foreign equity limit in reinsurance companies and auxiliary services.
- No commitment on insurance branching (which is however permitted in domestic legislation).
- Compulsory security deposits for branches of existing companies.
- Widely drawn economic needs test (Article 187, Insurance Code, Department Order No. 100-94, 22 October 1994).

- Philippine bindings go no further than according foreign investors a 51% share in an existing or newly incorporated life or non-life domestic insurance company, even though domestic legislation permits 100% foreign equity holdings (RA 8179).
- Compulsory security deposits for branches of existing companies.
- Only affiliated entities permitted to sell bancassurance.

D. Market Access – Temporary Entry of Natural Persons:

- Restrictions on the ability to select personnel.
- Limits non-citizens to one third membership of domestic company's Board and requires at least half of the Board members to be resident in Philippines (both restrictions appear in the Philippines latest draft schedule of specific commitments, but have no basis in current Philippines domestic law).
- Imposed additional tax (1,650 pesos) on foreign workers with working visas and re-entry permits on their temporary departure from the country.

E. National Treatment:

- Restrictive conditions and limitations exist on monetary transfers by insurance intermediaries.
- Restrictions on participation by foreign insurance firms in publicly-funded projects.
- Discriminatory requirements for minimum capitalization, rising with the percentage of foreign equity participation in an insurance company (Circular Letter No. 7-2004).
- Restrictions on repatriation of profits.
- Restrictions on certain nationalized areas of investment.

II. Best Practices in Insurance

A. Transparency:

- Restrictions on the availability of financial services information from domestic and foreign sources to registered insurance suppliers.
- No procedures are in place to provide notification to the World Trade Organization before measures are adopted on taxation that affect all insurance products.
- Lack of transparency on tax laws.

B. Solvency and Prudential Focus:

- Regulatory authority does not use all internationally recognized accounting and auditing standards, although some are in use.
- Insurance companies' permitted investments are limited. Most funds in insurance companies are allowed to be invested only in government bonds for Peso- and Dollar-denominated policies. These restrictions should be eased, so as to allow more investments in foreign instruments such as government and corporate bonds.

C. Insurance Monopolies:

- No specific barriers identified at this time.

D. Independent Regulatory Authority:

- No barrier: there is an Independent Regulatory Authority.

Market Background Information:

Although the Philippines' current bound commitments are less than local legislation allows, their offer in 1997 was a good one, particularly in the context of the Asian crisis. After nearly 40 years as a closed market, the Philippines started to take the first steps towards liberalization in 1994. Their existing commitments allow foreign firms to hold majority shares of an existing or newly-incorporated insurance company in both life and non-life.

The Philippines' commitments are binding well below domestic legislation. Local legislation allows 100% foreign equity holding in insurance companies and insurance branching. Capitalization (or security deposited with the Philippines Insurance Commission in the case of a branch) of existing local and foreign companies was increased from Ps 10m to Ps 50m in June 1994. In the same year, new foreign insurance companies were allowed to set up companies or branches in the Philippines. However, the capitalization requirement depends on the percentage of foreign ownership as follows:

- (1) Ps 250m where foreign equity is 60% or more.
- (2) Ps 150m where foreign equity is more than 40% but less than 60%.
- (3) Ps 75m where foreign equity is 40% or less.

This is clearly discriminatory. A foreign company seeking entry as a branch has to deposit with the Philippines Insurance Commission securities satisfactory to it of not less than Ps300m[♦]. It may therefore be preferable to set up a new local company or a joint venture.

Brokers must be locally incorporated and may not branch to enter the market. Moreover, brokers should rank among the top 200 foreign insurance or reinsurance brokers worldwide, or among the top 10 in their country of origin.

Foreign firms dominate the life insurance sector in the Philippines, holding 56% of consolidated life sector assets. The non-life sector has been less attractive, due to perceptions of negative risk. Non-life insurance is subject to a heavy tax burden, encouraging foreign and joint venture companies to purchase insurance overseas rather than locally. Shortages of skilled workers and a proposed income tax of 0.75% have also dampened prospects for the non-life segment. Rate cutting in the non-life sector to gain business has been a problem in the market.

There are currently proposals for a new tax regime that could create difficulties for insurers. The Bureau of Internal Revenue (BIR) has canvassed the idea of imposing a tax based on Gross

[♦] some £3.0 million

Income instead of the current Gross Profit. While gross income under such a scheme would be subject to the normal deduction of cost of sales, the insurance industry as a whole would have particular problems with it, since an insurer's income stream is spread over a period and, as insurers do not defer acquisition costs, cost of sales goods sold will have effectively been allocated to earlier years (i.e. "income" received in one year may relate to "sales" made some years earlier). If the new tax regime is instituted as proposed, there is scope for significant doubt over the definition of "cost of sales", with the prospect of numerous legal battles with the BIR.

Significant fields in which the Philippines has not yet made any commitments include (but are not confined to):

- insurance intermediation (Modes 1,2,3).

SOUTH AFRICA

Primary Objective: Secure agreement to include the Insurance Model Schedule and Best Practices as part of each country's GATS commitments.

Examples of Current Barriers Inconsistent with the Model Schedule for Insurance:

I. Market Access and National Treatment

A. Acquired Rights:

- Whether a country protects acquired rights will be evident as offers are made and should be addressed according to the Model Schedule.

B. Market Access – Cross Border Trade:

- Cross-border transactions in MAT or reinsurance not permitted.
- Commitments on intermediation and services auxiliary to insurance limited to consumption abroad.

C. Market Access – Commercial Presence:

- No freedom to establish in desired form, whether as a wholly-owned subsidiary, joint venture or branch.
- Authorization required for acquisition of more than 25% of shares in locally incorporated insurance companies.
- Branching not permitted.

D. Market Access – Temporary Entry of Natural Persons:

- Discriminatory residency requirements for Board members and for life insurance actuaries.

E. National Treatment:

- No specific barriers specified at this time.

II. Best Practices in Insurance

A. Transparency:

- No specific barriers identified at this time.

B. Solvency and Prudential Focus:

- No specific barriers identified at this time.

C. Insurance Monopolies:

- No specific barriers identified at this time.

D. Independent Regulatory Authority:

- No barrier: there is an Independent Regulatory Authority.

Market Background Information:

South Africa is still emerging from the economic restrictions of the apartheid era. The authorities are concerned about currency outflow and maintain extensive restrictions on operations, including exchange controls. Establishment in insurance is limited, as branching is not permitted. Furthermore, foreign investment in insurance companies is subject to authorization over a threshold of 25%. Cross-border transactions in MAT or reinsurance are not allowed, although South Africans may themselves buy insurance abroad.

South Africa's insurance market in the past has been highly structured and protected. Services were provided mostly by brokers carrying multiple lines, and structuring packages of insurance to fit individual customer needs. Direct marketing and bank insurance is growing in popularity in the market. New players in the insurance market include banks, retail stores and car dealers.

The government is considering amendments to the Long-term Insurance Act, 1998, and the Short-term Insurance Act, 1998, to assist in modernizing the industry. Any resultant liberalization should be reflected in South Africa's schedule of GATS commitments.

Significant fields in which South Africa has not yet made any commitments include (but are not confined to):

- cross-border insurance supply;
- insurance intermediation and services auxiliary to insurance (Mode 3).

THAILAND

Primary Objective: Secure agreement to include the Insurance Model Schedule and Best Practices as part of each country's GATS commitments.

Examples of Current Barriers Inconsistent with the Model Schedule for Insurance:

I. Market Access and National Treatment

A. Acquired Rights:

- Whether a country protects acquired rights will be evident as offers are made and should be addressed according to the Model Schedule.

B. Market Access – Cross Border Trade:

- Reinsurance cessions of 5% to Thai Reinsurance are in effect mandatory, although they have no basis in Thai domestic law.
- Restrictions on offshore reinsurance (Register's Order):
 - 1) Fire and all risk policy: only the portion exceeding 20 million Baht of sum insured can be reinsured abroad, subject to the application of the so-called "free rate" in the case of any contract whose sum insured is over 300 million Baht: in such cases, up to 30% of the sum insured has to be retained within Thailand (i.e. in effect reinsured with Thai Re);
 - 2) transit policy: only the portion exceeding 3 million Baht of sum insured can be reinsured abroad;
 - 3) personal accident policy: only the portion exceeding 1 million Baht of sum insured can be reinsured abroad (as of December, 2002).
- Limited cross-border commitments in non-life insurance (only MAT is bound).

C. Market Access – Commercial Presence:

- Restrictions on form of establishment.
- Restricted commitments on insurance intermediation and services auxiliary to insurance.
- Requirement for Cabinet approval for new establishment.
- Restrictions on establishing a joint venture, choice of joint-venture partners and amount of foreign equity permitted in a joint venture (foreign equity formally limited to 25% (sometimes circumvented): new rule under consideration would increase this to 49%) (Article 9, Non-Life Insurance Act).
- Restrictions on direct branching in insurance (number of branch offices per existing foreign insurer restricted to one, and new entry by way of direct branching is effectively prohibited) and inadequate protection for existing branch operations (Article 7, Non-Life Insurance Act).
- Prohibition on private sector participation in pensions system.

- Foreign participation in auxiliary services limited to 25%.
- Prohibition on Thai registered insurance brokers from soliciting or placing business with non-admitted insurers.
- Legal form discrimination for insurance and reinsurance: no provision allowing licensing of “an association of underwriters”.

D. Market Access – Temporary Entry of Natural Persons:

- Citizenship/residence requirements for company executives and staff (requirement to employ 4 Thai staff for every one foreign staff. The number of work permits for foreign staff at the foreign insurer's business is restricted to one for every 2 million Baht of capital) (Article 7, Non-Life Insurance Act).

E. National Treatment:

- Foreign insurers can only really compete with indigenous insurance service suppliers for providing insurance for state-owned or state-affiliated enterprises on a reinsurance basis behind national companies. No state assets are directly insured by foreign companies.
- Restrictions on overseas remittances by foreign insurers (who must obtain prior approval for such remittances from the Department of Insurance (DOI), although there is no clear requirement for this in Thai domestic law).

II. Best Practices in Insurance

A. Transparency:

- No procedures in place to ensure that consumers can assess the creditworthiness of insurance companies and for insurers to provide information on their creditworthiness to the public.
- Restrictions on the availability of financial services information from domestic and foreign sources to registered insurance suppliers.
- No transparent, publicly available, non-discriminatory rules and procedures established that govern the identification and handling of financially troubled institutions, including disclosure.
- No procedures are in place to provide notification to the World Trade Organization before measures are adopted with respect to taxation (national and sub-national) that affect all insurance products.
- Lack of transparency in the regulatory approach to premium discounts. Some insurers apply discounts on contracts taken out via “in-house brokers” (i.e. brokers which are affiliates of insureds). The Thai supervisory authorities should apply clear and transparent market conduct rules governing such practices.

B. Solvency and Prudential Focus:

- Burdensome requirements for new products, forms, rates and services to filed or approved. The insurance commissioner is slow to approve new forms for any insurer. However, new products are occasionally approved, but it takes 6-12 months.
- Where filing and approval of an insurance product is required, the policy reasons for such requirements are not made publicly available by the regulatory authority, and no explanation is given of how the requirements are the least burdensome means of satisfying the policy reasons for filing and approval.
- No deemer provision that allows new products to be deemed approved after a set period if the insurance supervisor has not taken action to disapprove it. Formal and specific approval is required.

C. Insurance Monopolies:

- Exclusive service supplier arrangements or monopolies for insurance and reinsurance prevent full and open competition. Though not a monopoly, the Ministry of Finance owns the Dhipaya Insurance Company and the majority of government or state-enterprise business is channelled through them.

D. Independent Regulatory Authority:

- No independent regulatory authority in the host country.

Market Background Information:

Thailand's commitments in the 1997 WTO Financial Services Agreement were limited by the financial crisis, which broke out in July 1997, after which Thailand reached an agreement with the IMF. Increased commitments should therefore be expected in the next WTO Round. Before 1995, Thailand was virtually a closed market. It is now gradually opening to foreign institutions. In insurance, equity holdings remain limited at 25%, new entry requires Cabinet approval and there are limits on the admission of expatriate personnel. In insurance consultancy, loss adjusting and actuarial services, the ceiling for foreign equity is higher at 49%. But the end result is likely to continue to be a restriction to a maximum of 49% for the foreseeable future. Over the past several years, the Thai Government has increasingly liberalized access for foreign firms to the Thai financial sector, but significant restrictions continue to exist.

Cross-border transactions are allowed for MAT and reinsurance, but no commitments in the non-life sector are made beyond this, nor are any commitments made with regard to intermediation. The brokerage sector was opened to foreign participation in 1997, but foreign firms are permitted to own majority shares (above 49%) only on a case-by-case basis.

There continues to be intensive administrative regulation on highly detailed issues (e.g. tariffed premiums and approval required for all new policies and ratings); and this hinders product development and insurers' ability to meet customers' changing needs. Insurance companies' permitted investments are strictly limited, with detailed DOI identification of types of

investments permitted to life insurers (mostly low-return fixed income and bank deposits, with little scope for diversification into e.g. property). In addition, there are Bank of Thailand (BoT) restrictions on overseas investment, with life insurers requiring both BoT and DOI approvals for the amount and type of overseas investment and for cross-border remittances of profits or dividends.

Some European insurance companies have "grandfathered" foreign shareholdings in Thai insurance businesses that exceed the 25% threshold, as this ownership predated the "alien business law". As in the case of Malaysia, a number of Thai shareholders in insurance joint ventures would be happy to sell out, but foreign companies are unable to increase the percentage of their holding.

Significant fields in which Thailand has not yet made any commitments include (but are not confined to):

- cross-border supply or consumption abroad of insurance intermediation services.

TURKEY

Primary Objective: Secure agreement to include the Insurance Model Schedule and Best Practices as part of each country's GATS commitments.

Examples of Current Barriers Inconsistent with the Model Schedule for Insurance:

I. Market Access and National Treatment

A. Acquired Rights:

- Whether a country protects acquired rights will be evident as offers are made and should be addressed according to the Model Schedule.

B. Market Access – Cross Border Trade:

- Commitments on cross-border supply of non-life insurance (restricted to part of MAT).
- Compulsory reinsurance cession. Mandatory treaty reinsurance cessions to Milli Re will remain until May 2006, though surplus reinsurance cession abroad was permitted at the end of 2001.
- Limited commitments on insurance intermediation.

C. Market Access – Commercial Presence:

- Restrictions on access to bonding business.
- Restrictions on form of commercial presence in services auxiliary to insurance, except for consultancy and risk management. Need to establish a local subsidiary.
- Limited commitments on insurance intermediation.
- Limited commitments on services auxiliary to insurance.

D. Market Access – Temporary Entry of Natural Persons:

- Discriminatory restrictions on insurance and reinsurance broking personnel.
- Discriminatory nationality restrictions on loss adjusters and actuaries (must be Turkish citizens).

E. National Treatment:

- No specific barriers identified at this time.

II. Best Practices in Insurance

A. Transparency:

- No specific barriers identified at this time.

B. Solvency and Prudential Focus:

- No specific barriers identified at this time.

C. Insurance Monopolies:

- No specific barriers identified at this time.

D. Independent Regulatory Authority:

- No barrier: there is an Independent Regulatory Authority.

Market Background Information:

Turkish commitments are based on the GATS Understanding. Turkey is a long-standing OECD member and its offer addresses most of the few insurance barriers that were identified during the 1997 Round. Thanks to a series of reforms in the period 1983-93, the Turkish market is fairly open to foreign financial services firms. Establishment as a subsidiary or as a branch is virtually without restriction. Consumption abroad for life insurance is bound but not cross-border business. Thus Turks may buy life insurance abroad, but non-established foreign firms may not seek business in Turkey.

According to the Legislation, Milli Reassurans, which is majority held by the Is Bank Group (owner of Anadolu Sigorta) had a monopoly in the Turkish Reinsurance market for a ten-year period (which expired on 31 December 2001). The monopoly has been extended on a narrower scale with effect from 31.12.01. Insurance companies now have to offer 20 % of each cession to a foreign reinsurer to Milli Re.

Compulsory earthquake insurance for homes and buildings was introduced at the end of 1999, after two serious earthquakes that year. The obligatory tariff for this is 20%, with a deductible ranging from 2% to 10%, depending on the election of the insured. Premiums from the compulsory insurance are ceded to the Turkish Catastrophe Insurance Pool, managed by Milli Re under the supervision of a committee consisting of public sector and insurance industry representatives.

Insurance and reinsurance providers of earthquake insurance must set aside their retained earthquake premiums plus the net revenue from sales of this product for 15 years to create reserves against losses in fire and engineering insurance from future earthquakes.

The minimum paid-up capital for insurance and reinsurance was increased by the Undersecretariat for the Treasury to 3 trillion Turkish Lira in July 1999. This amount will be increased from time to time, in line with inflation. The Association of Turkish Insurance and Reinsurance Companies have established a Guarantee Fund as of November 1998 to handle

claims from insureds. The Association has also formed in 1999 an “Executive Committee of Life and Health Insurers” to examine ways of developing these lines in the Turkish market.

Turkish tax regulation currently provides favorable tax treatment for pension products, but not life insurance products. The result has been a shift from life insurance into pension products, with little net increase in national savings. Life insurers argue that tax treatment should be equalized so that savings-oriented life insurance products are provided the same tax treatment as pensions products.

Significant fields in which has not yet made any commitments include (but are not confined to):

- Cross border supply of life insurance.
- Non-life insurance (other than for part of MAT).
- Intermediation.

Annex 3:

Statement by the Coalition of Service Industries before the Trade Policy Staff Committee

“China's Compliance With WTO Commitments: Seventh Year Review”

October 2, 2008

The Coalition of Service Industries (CSI) appreciates the opportunity to present its update on China's compliance with services commitments in the World Trade Organization (WTO). CSI is the leading business association dedicated to reducing barriers to U.S. services exports and mobilizing support for policies that enhance the global competitiveness of U.S. service providers. Our membership consists of U.S. corporations and associations engaged in many commercially important services sectors. Many of our member companies have significant presence in China and are deeply interested in China's full implementation of its WTO commitments and the continuation of sectoral reforms.

After its WTO accession, China registered impressive growth in the services sector, which now constitutes over 40% of Chinese GDP. The Chinese government has come to the realization that it cannot base its economic success story on manufacturing alone, but services play a crucial role in moving China's production up the value ladder, and in developing China as a more diversified, robust, and innovative economy. However, severe under-development of the services sector still poses an obstacle to implementing China's economic objectives. Thus, the Chinese leadership has acknowledged that maintaining China's competitive edge will require promoting value-added services.

U.S. - China bilateral services trade and economic relations also developed dramatically in recent years. U.S. cross-border services exports increased from \$4.9 billion in 2001 to \$9.1 billion in 2006, with the U.S. services trade surplus growing from \$1.3 billion to \$1.9 billion. U.S. exports were especially strong in education, business, transportation, technical and financial services.

China's WTO accession commitments expedited essential economic reforms, which meant to open China's commercially important services sectors to foreigners and spur growth in the services sector. This liberalization was supposed to allow foreign companies to increase the scope of their operations by lowering equity restrictions, restrictions on commercial presence for foreign investors, and providing national treatment. However, in many areas, for example distribution and motor vehicle finance, China delayed substantially the implementation of its commitments.

To remove services trade barriers, our two countries have been engaged in recent years in a number of trade and economic forums, which include the Joint Commission on Commerce and Trade (JCCT), Joint Economic Committee (JEC), and the Strategic Economic Dialogue (SED). We value the progress that the U.S. Government has made in those forums. For example, JCCT process has resulted in obligations which committed China to submit its WTO offer in government procurement last year, helped eliminate the license backlog in distribution, and ensured the use of legal software by all Chinese government agencies. However, China is yet to implement many of its obligations, including further liberalization of the insurance market, creating favorable market access in express delivery, and strengthening its IPR enforcement efforts.

We are pleased that the last SED round resulted in the launch of bilateral investment treaty negotiations and the transportation forum, commitments to expand foreign companies' participation in securities and asset management services, China's additional transparency pledges, and assurances that China will work towards a successful outcome to the Doha Development Round. At the same time, we would also like to see China address other substantive, long-standing issues in services market access, and provide more detail on how and when its new liberalization initiatives will be implemented.

We are concerned that the positive dynamic of the U.S. - China bilateral trade dialogue is slipping away due to increased protectionist trends in China. This development is surely unhelpful to securing progress on key services trade issues, including those identified in our status report on China's WTO compliance below.

SERVICE INDUSTRY SUGGESTIONS TO U.S.-CHINA TRADE FORUMS

CROSS-SECTORAL ISSUES

U.S. businesses continue to face significant obstacles in licensing and regulatory transparency, intellectual property rights (IPR) protection, government procurement, and anti-monopoly regulation.

Regulatory and Licensing Transparency

We commend China's efforts to strengthen regulatory transparency and adhere to public notice and comment requirements, which were promulgated under the State Council's directive of March 2006. At the 2007 and 2008 SED meetings, China confirmed its commitment to improve regulatory transparency and predictability, such as publishing all trade-related measures before they enter into force and providing an opportunity for public comment. However, CSI members are concerned that interested parties have often been unable to comment on important trade rules, and that transparency issues regarding licensing and implementation of trade measures persist.

It is in China's interest to fully embrace regulatory transparency. China made substantial WTO commitments to regulatory and licensing transparency, such as notice and comment requirements

for new trade laws and regulations, improved licensing procedures, and judicial review. However, full implementation of these commitments simply has not taken hold in the Chinese bureaucracy. Chinese laws, regulations, and administrative practices frequently change without warning, and are frequently not applied uniformly. We are also concerned that China's rules often provide regulators with broad discretion, resulting in unpredictable rules and decisions.

A modern economy requires transparent government and regulation, including in the judicial process. Transparent rule-making and licensing are one of the best ways to fight corruption in China. Through consistent, adequate notice and comment periods and the involvement of key stakeholders in the regulatory development process, many specific trade and investment problems U.S. companies continue to confront might be eliminated. Moreover, Chinese regulators should review and discuss comments from U.S. industry submitted as part of the notice and comment process, and incorporate recommendations as appropriate. We encourage the Chinese Government to seek active participation by all stakeholders in regulatory reform. Preparation of new postal legislation, for example, would benefit from active consultation with the private express delivery industry. China should also consult with the private sector on its pending telecom bill, draft insurance law, and other important sectoral legislation.

Chinese officials acknowledge that their regulatory agencies for securities, insurance, and other services are not sufficiently developed. China's trade negotiators have repeatedly used this argument as a reason to deny better offers on services. We suggest that USTR, Treasury, and other agencies offer technical assistance to help the Chinese strengthen their regulatory institutions. For instance, the Chinese telecom regulators are not sufficiently independent in their functions and responsibilities from the state-owned monopolies. Establishing independent regulators could serve as the basis for a significant expansion of China's services sectors. We must also address the concern that a growing number of Chinese regulatory bodies interpret their mission to be the development of domestically owned and managed industries, often to the detriment of foreign owned companies operating in those industries.

Anti – Monopoly Legislation

CSI is concerned about China's Anti-Monopoly Law (AML), which came into force on August 1, 2008. Its provisions permit Chinese competition authorities to exempt state-owned enterprises (SOE's) from AML enforcement in strategic sectors, and thus allow SOE's to abuse their monopoly positions or engage in anti-competitive practices. It would be very unfortunate for China's development if SOE's were to form buyers' cartels or engage in other forms of monopolistic conduct designed to enhance their market power when negotiating transaction terms with private domestic and multinational vendors.

The law defines "monopolistic conduct" as conduct that "eliminates or restricts competition in China." The law's provisions on anti-competitive conduct by administrative agencies and trade associations appear weaker than those applied to the private sector. However, its provisions on unilateral conduct and "abuse" of IP rights are open-ended and could cover conduct that increases efficiency or expands consumer welfare.

As with other policy tools such as government procurement, national standards, and regulations on foreign direct investment into China, the interpretation and resulting enforcement of the AML will have significant implications for U.S. companies with innovative technologies and IPR based products and services.

The law raises the following specific issues:

- **Definition of “dominant market position” and types of anti-competitive conduct.** The law establishes broad parameters to determine whether a company has a dominant market position. It also defines “dominant market position” as a market position held by companies “that can control the price or quantity of products or other transaction conditions by the relevant market or can block the access of other undertakings to the relevant market.” Foreign enterprises found to have abused a dominant position by withholding proprietary technology might confront cease-and-desist orders under Article 47 directing them to transfer IPR and technology to their Chinese competitors.
- **IPR treatment.** The law is “not applicable to conducts by undertakings to protect their legitimate intellectual property rights in accordance with IP law and relevant administrative regulations.” However, “this law is applicable to the conducts by undertakings to eliminate or restrict market competition by abusing intellectual property rights stipulated in IP law and administrative regulations.” “Abuse” of IP is not defined further. This is an important issue given that most IP is held by foreign companies, and thus brings in a concern where China may pursue a more aggressive approach to enforcement. In addition to its definition, clarification of enforcement by SIPO is also necessary.
- **Merger and “acquisition of control” regime.** The law requires advance notice of mergers and “acquisitions of control” that meet certain thresholds and governs the review of such transactions. We are concerned that some provisions are inconsistent with practices in the U.S. and other major jurisdictions and could possibly be used unfairly against U.S. companies. China’s inconsistent merger review regulations, such as the Interim Provisions on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors, also raise questions of China’s WTO compliance.
- **Remedies for violations.** In addition to injunctions, penalties and criminal prosecution, the law provides that agreements between competitors or sellers and buyers that violate the law are null and void. A more appropriate remedy in such cases should be to eliminate the offending practice or agreement provision.
- **Implementation.** An “Antimonopoly Enforcement Authority” is trusted with enforcing the law directly or through delegation of authority to regional and local governments. While it is not clear to what extent this provision will be given effect, the prospect that AML enforcement authority might be delegated to regional and local government officials is unsettling because those officials may have no background in competition law or economics.

CSI members call for fair, transparent, non-discriminatory, and consistent enforcement of the implementing regulations. We suggest that China continue to invite industry comments, both

directly and through business and trade associations, as it implements the AML and to ensure that enforcement authorities do not discriminate against foreign suppliers or seek to protect domestic firms, SOE's, or other Chinese entities.

SECTOR-SPECIFIC ISSUES

Insurance

After amending China's Insurance Law in 2003, the China Insurance Regulatory Commission (CIRC) followed with important implementing rules concerning the administration of insurance companies, asset management, risk control and other aspects of insurance regulation. However, we would also like to stress the following important barriers in the Chinese insurance sector:

Foreign Equity Restrictions

CSI, the American Council of Life Insurers, the American Insurance Association and partner associations in Canada, Great Britain and Japan documented their concerns that CIRC's recent draft *Measures on the Administration of Equity Interests in Insurance Companies* ("Measures") would place discriminatory requirements on foreign companies and hamper market access in China. Specifically, we stressed the following national treatment issues in the joint comments submitted to CIRC in April 2008:

Restrictions on investment in same type companies. The Measures appear to prohibit foreign financial institutions which have obtained approval for investments in China's insurance market from investing in other insurance companies "of the same type." This would prohibit insurance holding companies from engaging in the common practice of investing in multiple insurance companies of the same type to provide better service by segmenting business in accordance with the needs of the insured.

Furthermore, this restriction would prohibit foreign insurance companies from having equity interests in more than one foreign-invested insurance enterprise, or in one such enterprise and an equity interest in a Chinese insurance company. We believe that this constitutes a violation of both GATS Article XVII and Article XVI.2(a), the latter of which prohibits limitations on the number of service suppliers. Moreover, this rule would not parallel the regulations on foreign investment in the commercial banking industry, which allow equity interests in more than one commercial bank in addition to wholly-owned or joint venture subsidiaries. Indeed, there appears to be no legitimate rationale for this difference in treatment between the two financial service sectors.

Discriminatory Minimum Asset Requirements. Foreign financial institutions must have minimum aggregate assets of US\$2 billion in order to invest in a Chinese insurance company. We do not believe this is justifiable. Foreign financial institutions, unlike joint ventures or wholly-owned enterprises, are investors with no obligation to invest beyond the purchase price or capital contribution for the equity interest they acquire. If they have sufficient funds to acquire such equity interest, there should be no requirement that they possess assets beyond the purchase

price for their equity interest. This is particularly so given that the Measures are also proposing an investment cap of 20% (as provided in Article 4).

Equity cap for single investors. The Measures place a 20% equity interest cap on foreign investment in domestic insurance companies. This equity cap improperly prevents the acquisition of a majority interest and other large investments across all insurance sectors. As this requirement does not apply to domestic enterprises, it runs counter to GATS Article XVII. We also believe this restriction would violate GATS Article XVI:2(f), which does not permit WTO Members to place limitations on the participation of foreign investment in scheduled services.

Discriminatory profitability requirements. The rules would require foreign financial institutions to have three consecutive years of profitability while domestic enterprise juridical persons only have to demonstrate a record of profitability. Again, this would appear to violate GATS Article XVII.

The Measures also appear to stipulate discriminatory restrictions on acquiring equity interests in insurance holding and asset management companies. Foreign investment funds, mutual funds and consortia appear to be prohibited from holding equity interests. In addition to these restrictions, investors would be subject to burdensome reporting requirements for share acquisitions.

Foreign Investment Cap

CSI strongly encourages CIRC to lift the FDI cap, so that companies could more easily bring in capital to hire workers, deploy world class service platforms and invest in China's capital market. In order to protect the safety and soundness of the market, CIRC should have the authority to allow for foreign partners to increase their capital. Chinese JV partners should also be free to sell their stake to their foreign partners (as part of an orderly continuation of the company) if they choose to redeploy their capital.

Restrictions on Branches and Subsidiaries with Foreign Participation

China undertook in its WTO accession agreement to eliminate all geographic restrictions on foreign-invested life and non-life companies, and brokers by December 11, 2004. As for national treatment, China did not include in its WTO accession schedule any limitations regarding its obligations on form of establishment in the insurance sector. China also made commitments to allow internal branching consistent with the phase out of geographic restrictions. Despite these commitments, the following restrictions are still in place:

Discriminatory Branch Approval. The issue of current approval of multiple branch applications by foreign insurers has been raised at the SED, JCCT and JEC, but no progress has been made. Foreign insurers repeatedly report that they are told by CIRC officials that multiple branch applications cannot be submitted at the same time, or if submitted will not be concurrently examined and approved. There is evidence indicating that domestically-invested insurance companies, even new companies, have been permitted to expand aggressively through multiple branch applications approved concurrently. By contrast, it appears that no foreign-invested insurance companies have benefited from concurrent branch approvals.

Senior officials at CIRC have previously confirmed to USTR their commitment to allow foreign companies to establish multiple concurrent branches. We call on CIRC to confirm this intention publicly, during the JCCT, and in an administrative clarification to all CIRC staff.

CIRC should respond to single as well as multiple license applications within the timeframe they have set for themselves. The most critical aspect of the licensing process is the timely review of applications and a response within the timeframe CIRC has specified in its own regulations.

Capitalization Requirements. China requires RMB 200 million in registered capital for initial establishment of foreign insurance companies either as a branch or subsidiary. Also, for companies that have chosen to first establish as a branch, China requires RMB 200 million in registered capital for each additional sub-branch, and, for those companies that were first established as a subsidiary, China requires RMB 20 million in registered capital for each location (or branch) of that subsidiary until total registered capital for the company reaches RMB 500 million.

CIRC should provide a legitimate rationale for these capitalization requirements and explain to the U.S. Government why it would not be possible for CIRC to rely on the financial reserves of the parent company in the case of firms establishing as a branch, and of the initial subsidiary in the case of firms establishing as a subsidiary.

Limits on Single Mutual Funds

Under Article 8 of CIRC's *Interim Regulations for Insurance Companies' Investment in Mutual Fund* revised in December 2005, investment in a single mutual fund cannot exceed 3% of the last month's total assets. While CIRC may intend to set this cap for risk control and diversification purposes, this restriction creates a barrier to insurance investment. Mutual funds are already well diversified investment vehicles, because both regulatory and fund companies' internal policies have diversification requirements.

The 3% cap has a more severe impact on JVs, since most of them are small or medium-size companies. Larger, wholly-owned life insurers have a greater asset base, and they can more easily absorb limits on single fund investments. For small and medium-size companies, the 3% limit means that they have to bring more funds into their portfolios. This can also lead to lower quality funds in the portfolio and can result in poor investment performance. The requirement hinders insurance companies from fully using their expertise in selecting quality mutual funds and fund management companies.

Lifting the investment cap will help level the playing field for JV insurance companies that are mostly small or medium-size companies. It will also improve the fund performance by enhancing companies' selection of quality funds, and put China into conformity with international practice, since there is no such cap in other markets.

Investment of Assets

Overseas Utilization of Insurance Foreign Exchange Funds. CIRC's *Provisional Measures on the Administration of the Overseas Utilization of Insurance Foreign Exchange Funds* establish a qualifying threshold (total assets of RMB 10 billion) for companies to be able to invest their foreign exchange capital in overseas funds or equities. CSI members would like to know the rationale for this requirement. Industry is concerned that even though this limitation applies to both domestic and foreign providers, only the largest insurers, i.e., mostly domestic companies, will have the necessary assets to qualify. Many foreign-invested insurers invariably will not qualify unless CIRC recognizes the assets of the parent foreign company when determining the asset level of a foreign-invested company. To rectify this concern, CIRC should credit global insurers' international operating experience and capital in fulfillment of current seasoning and asset threshold requirements (eight years in the market, ten billion RMB) for asset managers.

Insurance Asset Management Restrictions. Under Article 8 of CIRC's *Interim Regulations for Insurance Assets Management Companies*, only providers that have held licenses for more than eight years are permitted to apply to establish an insurance asset management company. Although China previously stated that this limitation applies to both domestic and foreign providers, it effectively excludes all foreign companies entering the market since China's WTO accession in 2001. Again, there appears to be no legitimate rationale for this restriction. To rectify this concern, CIRC should credit global insurers' international operating experience and capital in fulfillment of current seasoning and asset threshold requirements (eight years in the market, ten billion RMB) for asset managers.

Investment Channels. From an investment perspective, excessive and often discriminatory capitalization requirements continue to act as constraints on foreign insurers' ability to compete with locally established insurers on a fair and equitable basis. In December 2005, CIRC's *Insurance Fund Management Regulation* enforced outsourcing of the asset management (on-balance and off-balance sheet funds) of small and medium insurance companies to an Insurance Asset Management Company (IAMC). The draft regulation stated that an insurance company that does not own an IAMC must outsource all its investments in equities, corporate bonds and mutual funds to an IAMC or any professional investment institution (no specific definition was given).

An IAMC is a subsidiary company to be set up by insurance companies that have total assets of at least RMB 10 billion. Currently there are nine approved IAMCs that are all formed by large domestic companies. CIRC's official rationale is that an IAMC has better internal controls and investment capabilities for improving insurers' risk management and returns. However, both domestic and foreign insurers do not want to outsource their investment function, which is a core business element, to their competitors. There are concerns regarding potential disclosure of investment asset portfolio information to competitors and potential conflicts for the IAMC to allocate assets to its parent insurance company's portfolio or those of competing insurance companies. If the proposal is implemented, all small and medium-size companies that are not able to set up their own IAMC will lose the right to manage their own assets to their competitors' IAMC. Many small and medium-size insurers viewed this initiative as a policy favoring large domestic insurers.

We suggest that insurers should also have the option of outsourcing investment assets to mutual fund companies. This will allow insurers to work with mutual fund companies (several with foreign partners) to leverage their extensive experience and global best practices on fund management. Such arrangements will also help avoid conflict of interest of outsourcing assets only to domestic insurance asset management companies that are competitors, and will promote efficiency and better service.

Corporate Bond Market Access. Corporate bonds are one of the most important asset classes for insurers. In China, the corporate bond market is moving from a guaranteed model to a market-oriented, non-guaranteed model. While the China Banking Regulatory Commission (CBRC) has been discouraging banks to provide guarantees, CIRC has not allowed insurers (the largest purchasers of corporate bonds) to invest in the non-guaranteed bonds due to credit risk concerns. The conflicting decisions by the banking and insurance regulators have created uncertainty, hindered corporate bond market issuance, and development of this market.

While the industry takes into consideration CIRC's concerns, there is a strong need for insurers to make proper asset allocations with this asset class. The current limitation in the corporate bond market environment has further limited choices of investment vehicles for insurance companies. Fixed-income securities are the best match for insurance liabilities, especially for traditional products. We strongly encourage the regulators to provide effective guidance and regulations to promote the corporate bond market.

Statutory Insurance

Foreign insurance companies are currently shut out of China's "statutory insurance business." Such business, according to China, includes "third party auto liability insurance." To date, China has not provided a good rationale for allowing only local insurance companies access to this market.

Indeed, while China appears to take an exception to "statutory insurance business" in its coverage of service sectors in providing "national treatment" for foreign non-life insurance companies under the GATS, China separately agreed to provide foreign companies market access to the "full range of non-life insurance services" by 2003. China's GATS Schedule explicitly states that "[w]ithin 2 years after China's accession, foreign non-life insurers will be permitted to provide the full range of non-life insurance services to both foreign and domestic clients." These contradictory statements in China's GATS Schedule raise serious concerns regarding China's WTO obligations under Articles XVI and XVII of the GATS, particularly in light of the guidance from various WTO panel and appellate body reports on interpreting the GATS and WTO schedules.

Furthermore, strong commitments to liberalize the statutory insurance sector are in China's own interest. Given the growing number of vehicles and the mandatory nature of this line of insurance, it is imperative that China opens its "statutory insurance" market to allow foreign companies' expertise, quality products and services, and healthy competition. Otherwise, China runs the risk of seeing a rise in claims and premium costs, resulting in domestic insurance companies becoming insolvent due to insufficient capital, and consumer outcry. CIRC Chairman Wu Dingfu has recently highlighted data inaccuracies and poor claims services as two of the main problems plaguing China's third party auto liability insurance market.

Political Risk Insurance Product Approval

Non-life insurance companies have been unable to gain CIRC approval to provide political risk insurance (PRI) coverage for Chinese companies.

China Export and Credit Insurance Corporation (Sinasure), is wholly owned by the Chinese government. Sinasure is the only insurer allowed to offer political risk insurance for non-domestic exposures. It appears that CIRC has been delaying the approval of foreign insurers PRI products because they have been instructed to protect Sinasure's monopoly, even though the market badly needs the additional capacity and expertise that American companies would bring.

If companies gain approval to underwrite political risk in China, Chinese investors could access enhanced, highly sophisticated risk management practices. Numerous Chinese companies have expressed a deep interest in access to new risk transfer options. China Ex-Im Bank and China Development Bank have indicated that they are not satisfied with Sinasure's service and limited capacity.

Innovative Products

The insurance industry is concerned that CIRC is considering a regulation that may limit the sale of unit-link products. The regulator has conveyed that it views unit-link products as investment products and that insurers should focus more on traditional protection products. Unit-link products are contracts which customers hold for the long-term and can provide higher returns for customers. These products are sold on international insurance markets, and have supported innovation in the insurance sector.

By limiting this product, CIRC will curb innovation in the market. At the same time, there are already effective distribution/good sales practices that foreign companies have deployed in China and worldwide to support unit-link products. By adopting good distribution practices, China will further strengthen compliance, disclosure and effective needs assessment of products.

Insurance Brokers

Brokers provide important market expertise and help educate the public on the need for risk management and insurance. Insurance brokers generate new business opportunities for insurance carriers and provide valuable services to businesses and individual consumers. Nevertheless, China denies national treatment in insurance brokerage to provide foreign brokers with the same scope of business activities as domestic firms, e.g. claims handling, risk management services and consulting, handling application process and placement services, and reinsurance brokerage. Foreign brokers are also unable to provide services for small business, group life, and health business and affinity programs.

Reinsurance

Senior officials at CIRC have confirmed to USTR their commitment to allow foreign reinsurance and insurance companies to conduct cross border reinsurance with Chinese direct insurers or reinsurers on the same basis as reinsurance companies admitted in China. Industry would call on CIRC to confirm this intention in an administrative clarification to all CIRC officials. This clarification should state that China will suspend implementation of the *2005 Regulations on Administration of Reinsurance Business*, as the regulation discriminates against foreign reinsurance companies by requiring right of first refusal for 50% of each primary company's reinsurance program with domestically admitted re-insurers. CIRC should also clarify that for purposes of these measures a 100% owned insurance operation may cede to a parent or affiliate insurance company.

China Post

Several Chinese language sources have substantiated reports that CIRC has approved China Post Group's launch of an insurance business through a wholly owned subsidiary China Post Life Insurance Co. Ltd. ("China Post Life"). China Post Life is expected to establish a nationwide insurance business, based on its 37,000 existing offices. It would appear from press reports that CIRC may consider granting China Post approval to operate throughout all of its existing offices and branches simultaneously, which is equivalent to blanket concurrent approval of all existing branches.

It is as yet unclear whether China Post Life will be a fully privatized insurance company that will be required to operate under the same rules as existing private sector insurers. However, this development calls into question issues of national treatment for branch approvals and the challenge for foreign companies when Chinese domestic insurers receive multiple licenses concurrently, while foreign insurers must wait consecutive approvals.

If China Post Life is not regulated in the same manner as its private sector counterparts, it will become potentially a dominant market competitor which enjoys regulatory and other discriminatory advantages, including unequal application of solvency rules, product approval and licensing intermediaries.

China took no reservation for a postal insurer in the Protocol of Accession, thus strict national treatment rules should apply. The proposed China Post reform also raises cross-subsidization concerns. Therefore, we ask that CIRC's intention with respect to China Post be clarified.