Position Paper

Insurance Europe position on the Trade in International Services Agreement

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Insurance Europe's position on the plurilateral negotiations

Insurance Europe, the European insurance and reinsurance federation, represents all types of insurance and reinsurance undertakings, which account for around 95% of total European premium income. Many of these insurers and reinsurers have an interest and a desire to trade with third countries; however, in certain cases such trading relationships could be further enhanced by removing existing trade barriers, increased regulatory convergence and increased recognition of robust supervision already conducted elsewhere.

Against the backdrop of stalled Doha WTO negotiations and the recent protectionist turn taken by certain WTO members Insurance Europe welcomes the establishment of the "Really good friends of services" (RGF) as a timely positive initiative. Insurance Europe is pleased to see progress regarding a potential "International Services Agreement" (TISA) among the RGF members and believes that it is important that the negotiations lead to an ambitious agreement in services, including (re)insurance in all modes of service.

Importance of liberalisation commitments in (re)insurance

An open and robust international (re)insurance market is a key driver of economic growth and financial stability. As an industry that conducts a significant amount of its business cross border the insurance industry operates most efficiently and effectively in open and competitive private markets. This is particularly relevant for certain classes of insurance which due to their complexity and size are provided almost exclusively by foreign firms via Mode 1 (cross-border) or Mode 2 (consumption abroad).

The imposition of barriers to trade also has a negative impact on the local markets in which they are in place; namely they i) increase concentration risk through limiting the ability of (re)insurers to diversify risks geographically, ii) limit competition and thereby reduce available capacity in certain areas and push up the price of obtaining coverage and iii) generate additional frictional costs which are ultimately borne by the policyholder. This is true for well-developed as well as emerging and developing countries. In addition, open markets for (re)insurance facilitate technical skill transfers, improved risk management practices, catastrophe/large event protection and reduced claims volatility.

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An important feature of insurance is that it generally provides long term contracts (in life insurance and pensions some contracts have a time horizon larger than 40 years) with relatively predictable claims outflows. Therefore, the insurance sector has the ability to brings stability to local markets through its stable long-term investment horizon provided it is supported by a stable and transparent regulatory environment with clear legally-bounded market access and national treatment commitments.

Against this background, Insurance Europe strongly welcomes the RGF's intention to establish an agreement which is compatible with the WTO GATS rules. An agreement of this nature would ensure commitments are legally binding as well as facilitate extension of the agreement to other WTO members in the future, including emerging economies which are key markets for European (re)insurers. In addition, the General Agreement on Trade in Services (GATS) structure has other practical advantages such as a standard for comparison of the degree of liberalisation between markets and a comprehensive and accessible system for businesses.

Specific remarks on a possible TISA: current WTO GATS Commitments
Insurance Europe believes it is of upmost importance that the participating countries re-evaluate and bind their current commitments:

- **Automatic binding of existing levels of market access and national treatment, where this is not included in a formal agreement-** TISA should bind the existing levels of openness (standstill clause), thereby prohibiting participating countries from introducing new nonconforming measures.
- **Full compliance with the WTO GATS commitments** – Insurance Europe believes that the TISA should ensure that participating countries comply fully with their previous GATS commitments. For example, in Japan the Japan Post entities enjoy favourable treatment from the Japanese Government, breaching Japan's commitments on national treatment (Article XVII GATS).
- **Reduction of GATS *unbound* sector commitments** – TISA should aim to reduce the number of commitments in the insurance sector specified as not applicable or *unbound*. This is also the case for commitments which are bound but contain important restrictions.
- **Re-examination of the "prudential carve-out" currently included in the GATS** – As it stands, the "prudential carve-out" contained in the GATS Annex on financial services (Article 2a) risks limiting the effects of trade liberalisation and may be used to avoid trade commitments. The TISA should introduce language aiming to reduce the scope of the carve-out, ensuring that it is applied always in a proportionate and non-discriminatory manner to foreign service suppliers. In addition, the TISA should establish a transparent consultation process in cases of application of the carve-out.

Specific remarks on a possible TISA: New Commitments
Insurance Europe believes that the TISA should not only ensure compliance with countries current commitments in (re) insurance included in the GATS but go beyond these and push for trade liberalisation in new areas:

- **Horizontal minimum commitments which would apply across all sectors** – Insurance Europe calls the RGF to negotiate ambitious horizontal <u>market access</u> and <u>national treatment commitments</u>. This would set from the start a high level of determination and would establish "minimum standards" for both participating and future signatory countries:
  - Regarding national treatment the TISA should grant:
    - Equal laws, taxation, regulation and supervision for foreign and local firms. This should include in practice equal capital and licencing rules, access to public and private distribution networks, access to government contracts and to avoid the presence of government guarantees or privileged financial support for local players.
  - With respect to market access, the TISA should eliminate:
    - Localisation requirements, including the obligation to establish a commercial presence in a specific legal form.
    - Shareholding requirements, in particular foreign capital caps or joint venture requirements.
  - Requirements for the operation of State-Owned Enterprises (SOE):

- TISA should mandate national treatment, market access and other commitments to apply to SOEs, including postal financial services suppliers even when they are granted universal service requirements, in order to establish a level playing field with the private sector.
- This should focus particularly on government-granted (including governmental organisations) preferential treatment and other kinds of implicit and explicit support.

- **Specific (re)insurance commitments** – Alongside horizontal commitments, the TISA should include ambitious (re)insurance specific commitments. These engagements should address the main market access barriers faced by (re)insurers in all four modes of service, with a specific focus on Mode 1 (cross-border supply), Mode 2 (Consumption abroad) and Mode 3 (commercial presence):
  - Restrictions on foreign affiliates (re)insurance cessions.
  - Compulsory level of (re) insurance to be placed locally.
  - Collateral requirements for reinsurance placements.
  - Onerous approval and licensing requirements, including consecutive licensing and branch approval requirements in regions or provinces.
  - Nationality requirements for officers, senior management or board members
  - Investment restrictions, including compulsory investments and the obligation to convert financial assets into local currency.
- **Elimination of restrictions for reinsurance, retrocession, energy, larger risks, engineering lines, agro insurance, non-admitted, credit and bond and marine, aviation and transport insurance (MAT) -** These lines of business tend to be inherently international, due to the size and/or complexity of risks associated and therefore provided from highly developed insurance centres on a Mode 1 (cross-border) or Mode 2 (consumption abroad) basis. Insurance Europe believes that, given the vital role of these kinds of insurance in economic development; market access restrictions in these lines of business should be eliminated.
- **Understanding on Commitments in Financial Services –** Insurance Europe believes that all countries taking part in the TISA negotiations should sign up to the currently optional "Understanding on Commitments in Financial Services" appended to the Final Act of the Uruguay Round. Committing to this understanding would ensure participant members take important steps on specific commitments that go beyond the GATS in vital areas such as monopoly rights (Paragraph B.1), cross-border trade (Paragraphs B.3 and B.4) or commercial presence (B.6). In addition, the Understanding in Financial Services would automatically include new financial services (Paragraph B.7) which are the consequence of constant innovation in the sector.
- **Transparency**. Insurance Europe would like the TISA to include the transparency clauses established under GATS Article III and particularly to allow all RGF members to comment on any new regulatory policies in a transparent and timely manner. This should include any new exemption or preferential treatment granted to a domestic supplier. In addition, the TISA should set up a transparent investor-state resolution mechanism.

Insurance Europe appreciates the consideration of our comments and would be glad to discuss the content of this position paper.

Annexes:

- Insurance Europe (2012) *"Market Access issues in insurance"*
- *ABI (2003) "Insurance liberalisation and the model schedule"*
- Financial Leaders Working Group (2005) "*trade barriers in insurance"*