Property Casualty Insurers
Association of America

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U.S.-EU FREE TRADE AGREEMENT (TTIP)—POTENTIAL BENEFIT TO THE TRANS-ATLANTIC INSURANCE MARKET IF DONE RIGHT

This statement is submitted on behalf of the Property Casualty Insurers Association of America (PCI) that represents nearly 1000 insurers and reinsurers, many of which do business in the EU and around the world. We are pleased to provide these comments consistent with our mission to promote and protect the viability of a competitive private insurance market for the benefit of consumers and insurers.

The European Union (EU) and United States of America (U.S.) are the two largest insurance markets in the world. For the most part, insurance trade between them flows smoothly, governed by effective regulation on both sides of the Atlantic, with established rules and procedures. In this context, the proposed U.S.-EU trade negotiations – if done right -- have the potential to enhance the trans-Atlantic insurance market, benefit the U.S. and EU and their insurance companies and preserve the effective and evolving U.S. and EU insurance regulatory regimes.

PCI Supports Free Trade Agreements that Benefit the General Economy and Include Financial Services Regulatory and Market Access Objectives.

PCI supports free trade agreements that help grow the general economy for the common good, which also increases the demand for insurance coverage, improves competition and expands the ability of insurers to identify, price for, and work to reduce, risk. This is truly a “win/win” situation.

As the main barriers to insurance arise out of regulation, we believe that market access and regulatory issues are inextricably intertwined and that both need to be addressed in trade agreements in a balanced way. In this connection we note that according to the U.S. International Trade Commission, U.S. property and casualty insurers lose nearly $40 billion annually due to foreign barriers to trade in insurance arising out of regulation.

In addition, this trade agreement will likely be used as model in the future. For this reason, along with the other reasons, we believe that financial services, including insurance, should be a part of the TTIP.

We also believe that the TTIP could provide an additional, useful legal framework for on-going regulatory discussions, including the EU-U.S. Dialogue Project, to help assure that they do not bog down or fail to be outcomes based with mutual recognition as the goal.

A U.S.-EU Agreement Could Further the Critical Goal of On-going Efforts to Secure Mutual Recognition of the U.S. and EU Regulatory Systems.

Insurance regulatory systems on both sides of the Atlantic have a strong record of protecting consumers and providing for sound and competitive insurance markets, despite the financial crisis, a difficult global economy and unprecedented natural catastrophes. This agreement should accelerate on-going efforts to achieve mutual recognition as the two regulatory systems evolve and thereby prevent new regulatory trade barriers by encouraging cooperation, communication and coordination among regulators.

The EU has recently approved Solvency II, a new insurance regulatory regime. At the same time, the U.S. is analyzing its own regulatory system under the Dodd-Frank Act and state-based reforms. The U.S.-EU negotiations could help both markets if it led to a determination that the U.S. insurance regulatory system is "equivalent" to Solvency II, thereby avoiding duplicative regulation and opening up business opportunities in the EU for U.S. companies.

Under Solvency II, companies based outside the EU must comply with EU regulations, in addition to their home-country regulations, unless their home-country regimes are deemed equivalent to Solvency II for purposes of group supervision, group capital regulation and reinsurance regulation. It remains to be seen how the EU will make this determination with respect to the U.S. The countries that have so far submitted themselves to a Solvency II equivalence review have had to demonstrate that their laws and regulations are very similar to Solvency II to be deemed equivalent. This burdensome, rule-by-rule approach to equivalence determinations is not necessary to determine whether a regime achieves similar regulatory outcomes as Solvency II and is not appropriate for the U.S. insurance regulatory system and the U.S. insurance industry, especially in view of modifications the states are adopting.

Indeed, as the recent report of the EU-U.S. Regulatory Dialogue (conducted under the auspices of National Association of Insurance Commissioners (NAIC), Federal Insurance Office, European Insurance and Occupational Pensions Authority and the European Commission) amply demonstrates, the U.S. and the European regulatory systems are equally effective at protecting consumers and performing all of the fundamental regulatory functions. They accomplish these objectives, however, in different ways. The U.S. regime, with its state-based system, a vast diversity of business models in the industry and a tradition of legal entity supervision, is by and large a bottom-up regulatory system. Solvency II, however, reflects the centralized business models of the EU insurance industry, the interconnectedness of insurance with other financial services and the perceived need for a more uniform Europe-wide regulatory regime, and therefore regulates from the top of the group down.

Because Solvency II implementation is delayed and there is little guidance on how the EU will determine whether the U.S. regime is equivalent, many questions arise. Will the U.S., due to its size and connections with Europe, in addition to its robust and effective business and regulatory models, merit an equivalence determination that is outcomes-based? Or, will the U.S., like other countries, be required to adopt a Solvency II-like regime as the only way to demonstrate it is equivalent? The proposed U.S.-EU trade negotiations provide an opportunity to obtain satisfactory answers to these questions and bring about beneficial on-going mutual recognition.

Most importantly, the negotiations potentially provide a legal framework for determination either that the U.S. is not subject to Solvency II equivalence or that our system is equivalent. That is because regardless of the results of regulator-to-regulator dialogues, the ultimate decision on Solvency II equivalence is made at the political level, by the European Commission.

The U.S.-EU Negotiations Should Not Be Used to Impose Unproductive Changes on the U.S. Regulatory System.

As noted, the U.S. insurance regulatory system is currently being updated with new global concepts but should not be made to mimic any other regulatory system, because the U.S. insurance regulatory system has worked well through the years and reflects the unique character and diversity of the U.S. insurance market. Specifically, any Solvency II "equivalence" determination should take into account the following factors:

Group supervision: U.S. states already perform all of the key regulatory functions and they are improving their ability to do so, through amendments to the Model Holding Company Act and creation of an Own Risk and Solvency Assessment regulatory tool. The Property and Casualty Insurance Association of America (PCI) conducted a review of U.S. insurance group supervision and concluded that necessary changes are being made but that wholesale adoption of Solvency II group supervision would not benefit our market. In addition, the NAIC is now reviewing group supervision procedures to determine where they can be improved.

Group capital regulation: Again the U.S. states have a different approach from Solvency II. U.S. insurance regulation assures that each subsidiary is adequately capitalized, and provides tools to identify risks originating from the group that might affect the legal entities. U.S. state regulators are also participating in international supervisory colleges to increase overall regulatory coordination and communication.

Reinsurance regulation: Current U.S. regulation requires either that the reinsurer be subject to U.S. regulation or that it post collateral. This collateral helps protect U.S. policyholders. The NAIC has sponsored an effort to find a compromise with critics of reinsurance requirements on foreign firms, many of whom are European, and the NAIC alternative is being reviewed and addressed by the states. Under this compromise, highly rated reinsurers would have their collateral requirements reduced to zero, via a sliding scale. The NAIC is now working on procedures to expeditiously implement the decisions called for under the compromise.

In addition, any negotiations should not result in the trading of the interests of one sector off against another. Each sector's interests should be determined and negotiated on their own merits.

Horizontal Issues of Relevance to Insurers Should be Taken Up.

Among the issues of broad cross-sectoral interest are regulatory procedures, which are fundamentally important to any heavily regulated sector, and especially so to insurers. In this connection, we urge the agreement to include the substance of the OECD's Policy Framework for Effective and Efficient Financial Regulation. This document, subscribed to by many of the countries that would be involved in any EU-U.S. negotiation, provide for precision in identifying problems, notice and comment rulemaking, selection of the policy option that is both effective and least costly to the industry and periodic reviews for effectiveness.

This Agreement Could Serve as a Model for Other Agreements and Improve Over-all Competitiveness

Recognizing that two of the three largest insurance markets are engaged, this agreement could serve as a model for other negotiations. On-going mutual recognition should be a result of the negotiations because of the high quality of both systems and the evolution that is occurring in both.

Conclusion

The proposed U.S.-EU trade negotiations provide an opportunity to improve the general economy and enhance insurance trade without harming insurance regulation by erecting new barriers in the well-functioning trans-Atlantic marketplace. It is critical that on-going mutual recognition be a result of any insurance negotiations and that regulatory processes comply with the OECD's recommendations.

Respectfully submitted,

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