

**STATEMENT
OF
AMERICAN INSURANCE ASSOCIATION
ON
BARRIERS TO INTERNATIONAL TRADE IN
PROPERTY AND CASUALTY INSURANCE
U.S.I.T.C
September 23, 2008**

**David F. Snyder
Vice President and
Assistant General Counsel
dsnyder@aiadc.org
202-828-7161**

**STATEMENT
OF
AMERICAN INSURANCE ASSOCIATION
ON
BARRIERS TO INTERNATIONAL TRADE
IN
PROPERTY AND CASUALTY INSURANCE**

The American Insurance Association (AIA) represents more than 300 insurers that are domiciled throughout the U.S., Asia, and Europe. These insurers conduct business in every corner of the globe. For some, their business extends to dozens of countries and multiple lines of insurance, including commercial property, directors and officers liability and political risk insurance. Some write personal insurance, as well. For others, their global business is concentrated in a specialized and highly technical field, such as insuring power plants. They operate through branches, subsidiaries and joint ventures. Although incredibly diverse in business goals and operations, one fact unites them all—they are good at what they do and they want to do more of it.

AIA has long been engaged in the international arena. We were the first US property and casualty trade association to become and remain an official Observer at the International Association of Insurance Supervisors and in that capacity regularly comment and testify on a wide range of international regulatory issues. AIA is the property and casualty industry representative on the US delegation to the OECD's Insurance and Private Pensions Committee and we have participated in several formal insurance dialogues in China and served as an expert in meetings in the Middle East and Russia. AIA staff interacts on a daily basis with USTR, Treasury, Commerce and State and are regularly consulted on technical matters, in connection with all of the Free Trade Agreements (FTAs), discussions at the WTO and in other bilateral and multilateral discussions, including the all important insurance dialogues with China. And after trade agreements are signed, we work for their approval independently and as an active member of groups such as the Coalition of Service Industries, Engage China and all of the FTA advocacy coalitions, including Korea and Colombia.

The relationship between trade and domestic regulation was considered in an article I wrote for the Journal of Insurance Regulation, Volume 26, Issue No. 1 (Fall 2007) entitled: "Free Trade in Insurance and Domestic Insurance Regulation—in Harmony or in Conflict?" It summarized the issue as follows: "Free trade and domestic regulation can be harmonized to create an open, competitive and well regulated insurance market, or they can be juxtaposed to cause conflict, with domestic insurance regulation being used for protectionist purposes to restrict foreign competition. This is not simply an academic

issue, but is, instead, one of supreme importance to insurers, regulators and the public.”
P.116

Recent Global Trends in Non-life Insurance Are Mixed and Not Spectacular.

In 2007, non-life (property and casualty, health and accident coverage) insurance premiums fell in the industrialized markets even as growth slowed in the emerging markets, resulting in a global non-life premium growth of only 0.7%. This contrasted negatively with the continued strong global economic growth that year. The results for 2008 are not expected to be better. Swiss Re, *sigma* No 3/2008.

To the extent there was growth in 2007, it was in emerging markets. Central and Eastern Europe showed a growth of 12% while the Middle East and Central Asia both grew 9.6%. Swiss Re, *sigma* No 3/2008. And, as the report demonstrates, many large countries still exhibit very low non-life insurance penetration and density.

The Lack of Purchase of Property and Casualty Insurance Is Not in Anyone's Interest.

While slower than desired growth in property and casualty insurance is clearly not in the economic interest of our companies, it is even less in the interest of society at large. This is because property and casualty insurance has significant social value. I summarized the issue in a presentation I made to UNCTAD. See Attachment 1.

In the first instance, property and casualty insurance provides compensation to individuals and businesses, in the event of loss, allowing quicker and more complete physical and financial recovery. And by privatizing compensation, critical government resources that would otherwise have been used for compensation are freed up for other purposes, such as education.

Premiums collected and retained to pay future claims are invested predominantly in socially productive instruments, such as government bonds. For example, in the US, property and casualty insurers held \$306.9 billion in municipal bonds, 16 % of that market. These bonds finance roads, bridges, libraries, transit systems, public safety stations and a host of other critical infrastructure projects. This public infrastructure, in turn, is critical to economic growth and improvement in the quality of life.

Insurers are also major players in individual and collective efforts to reduce economic loss, death and injury. To their customers, insurers provide loss prevention engineering services, seminars, educational materials and economic incentives for safe behavior and operations through pricing which reflects loss prevention measures and results. Insurers also engage in product and design testing and analyses, made available to the public

through such entities as the Insurance Institute for Highway Safety and the Institute for Building and Home Safety.

As advocates in the public arena, property and casualty insurers push for laws that reduce societal risk in all areas relevant activity, including the designs of buildings, the quality of industrial operations, and the safety of the transportation systems. These loss prevention efforts pay off spectacularly for society at large. Here are just two simple examples. In the US, insurers have advocated for safer cars highways and driving behavior, since the 1960s. Had these efforts, combined with those of other advocates, not have taken place, we estimate that the US highway fatalities in 2006 would have been nearly 165,000, instead of 42,000 and there would have been 5 million serious injuries instead of 2.5 million. Similar results are seen in workplace injuries, the frequency of which has been cut in half from 1991-2005.

While Proper Regulation Is Necessary for a Sound Insurance Market, if Used for Protectionist Purposes, It Can Be a Barrier to the Expansion of Property and Casualty Insurance and the Enjoyment of the Related Social Values.

National treatment, freedom to establish and cross-border insurance opportunities for commercial customers, no preferences for government provided insurance are all essential for the growth of insurance and its related benefits. But despite most of these having been long established in international agreements, such as in the GATS, we see continued examples of the violation of these basic precepts.

To function, an insurance market needs sound prudential regulation focused first and foremost on solvency protection. This has long been our position, both within the US and internationally, and recent events only serve to underscore the wisdom of this view. For this reason, we have supported solvency related enhancements to the US regulatory system and have supported IAIS efforts to move toward improvements in global solvency regulation. Legitimate, national and international level solvency regulation is generally a positive element in encouraging the growth of insurance and the enjoyment of its related social values.

Regulation of matters best left to the market, such as pricing, product design and corporate structure, often inhibits the growth of insurance and the enjoyment of its related social values. Unfortunately, many regulatory resources are diverted from this critical function and instead interfere with insurer functions that should be left to the market, e.g. corporate structure, pricing, product design and sales. Each of these areas of intrusion offers an excellent field of play for protectionist forces. To maximize the growth of insurance and its related social values, regulation should not substitute government action for matters best left to the market.

A transparent regulatory process is also essential for a sound insurance market. Insurance, in particular, is heavily regulated and the process for doing so can often lead to better or worse regulations, depending on how open it is. And protectionism thrives best in a closed environment where domestic players have a built-in advantage. At a

minimum, publication, notice and comment, legitimate cost benefit analyses and frequent consultation are hallmarks of a good regulatory system.

Dispute settlement and consultation mechanisms are important to provide for the expeditious resolution of new and emerging issues. Trade agreements can deal with the issues recognized today, but can also help provide on-going mechanisms by which governments and private sector parties can prevent and resolve disputes. We view such mechanisms as very important, both to enforcement of existing agreements and for dealing effectively with areas of conflict that might arise in the future, including from domestic regulatory actions.

Cross-border insurance should not be hindered because it is important to stimulate trade in manufacturing and agriculture. While we understand the legitimate concerns of local regulators, multinational businesses should be able to operate and expand through the ability to use global insurance contracts for their multinational operations. Multinational insurers should also, to the extent possible, be regulated once by a highly competent group-wide insurance regulator.

A Few Specific Examples of Protectionist Insurance Regulation Illustrate the Challenges That Abound.

China, potentially the world's largest insurance market, continues to engage in highly protectionist regulatory policies, thereby stunting the growth of insurance and the important role it can play in making China a safer and more secure society. These include restrictions on approvals of branching and licensing by territory, the political risk insurance monopoly, mandatory auto insurance which foreign companies are precluded from writing, higher than necessary capital requirements, possible expansion by China Post, industry groups taking on regulatory roles and an inconsistent approach to regulatory transparency.

India, potentially the second largest insurance market, continues to restrict foreign ownership to 26%. This is significant because effective management and control of operations is important to assure a global insurer that it can maintain, in all of its local operations, high quality service and compliance with all applicable standards.

Japan's privatization of Japan Post continues to raise questions. We remain concerned that it may try to expand its operations into non-life insurance, and carry its historical and cultural advantages into that area, even though technically "privatized".

Korea engages in many protectionist regulatory practices that would be effectively curtailed, upon approval of the proposed FTA. These include industry review of advertising and the possible expansion of Korea Post. And in Malaysia, we continue to have issues with their ownership cap and reinsurance requirements.

In parts of Latin America, we see unnecessarily intrusive regulations, with the most recent example being the proposed Costa Rica regulations that were supposed to assure an open market in place of its government monopoly.

In some countries of the Middle East, there are uncertain regulatory regimes and requirements to hire local managers. In the case of the UAE, there is, in addition, a restrictive foreign ownership cap of 25% and drawn-out approval processes that can take 18-24 months.

All of the Available Tools to Combat This Counterproductive Protectionism Must Be Used to the Maximum Extent.

In connection with the WTO's Doha Development Round, we should continue to advocate a comprehensive and ambitious set of services requests and offers, and potentially a restructuring of services negotiations to avoid the current procedural roadblocks. We believe new bilateral negotiations are needed with some of our leading trading partners, and that is why we strongly support the initiative and successful conclusion of Bilateral Investment Treaties with China and India. The work of the OECD on better regulatory frameworks should be pushed aggressively.

Approval of the current FTAs, especially Korea and Colombia, is essential for improving market access in those countries. As an example of a high standard trade agreement that deals with a host of domestic regulatory issues, we cite the Korea-US Free Trade Agreement. See Attachment 2, which is our statement on that agreement submitted to you, in which we summarized its most important features.

We also believe continued work at the UN and elsewhere is valuable to help improve understanding of the social value of insurance. And, last but certainly not least, IAIS should pursue regulatory initiatives that will help grow insurance markets, provide for high levels of solvency regulation and mutual recognition to avoid regulatory overlaps and enhance competition, such as a standard on regulatory transparency.

Conclusion

The simple fact is that property and casualty insurance is not nearly as widely purchased as it should be, resulting in less enjoyment of its many important social values and lower than necessary returns for insurers. That is not due to lack of the desire to expand by insurers. While over-all economic conditions are partly to blame, so too is a patchwork of protectionist domestic regulation that hinders the growth of the private insurance markets. The worst of these regulations restrict the mode of establishment, discriminate against foreign insurers, interfere with free market pricing, prevent necessary cross-border insurance for global commercial enterprises and restrict the introduction of products to the marketplace.

