

American Property Casualty Insurance Association

Testimony of the American Property Casualty Insurance Association (APCIA)

Before the Office of the United States Trade Representative and the Trade Policy Staff Committee

Hearing on Negotiating Objectives for a U.S.-United Kingdom Trade Agreement [Docket Number USTR–2018–0036]

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Thank you for the opportunity to testify today on the goals of the U.S. insurance industry for trade negotiations between the United Kingdom and the United States. My name is Stephen Simchak, and I serve as Vice President and Chief International Counsel for the American Property Casualty Insurance Association (APCIA), which was formed on January 1 from the merger of the American Insurance Association (AIA) and the Property Casualty Insurers Association of America (PCI).

Representing nearly 60 percent of the U.S. property casualty insurance market, APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe.

APCIA's members feel that this negotiation is critically important, as it involves two of the world's largest and most interconnected insurance markets and it offers the opportunity to create the highest-standard agreement for use as a model in other contexts.

My testimony today will highlight the most important issue areas for our association in the potential U.S.-UK negotiations, and I would urge those who are interested in more detail to read APCIA's January 14 written submission. As the outcome of the "Brexit" negotiations will have an effect on the bilateral U.S.-UK negotiations and the U.S. and UK have not yet decided on the scope of the negotiations, our comments will focus on broad goals for the U.S. industry in several areas.

Once bilateral trade negotiations are launched, we urge both governments to pursue strong, mutually-beneficial commitments on financial services. Insurance and other financial services play an essential role in both countries' economies, employing almost 8.5 million people and accounting for \$30 billion in bilateral trade—over a quarter of all bilateral services trade. The insurance industries in both countries already enjoy close links and arguably constitute the most important bilateral insurance relationship in the world.

A bilateral trade agreement that includes deep, innovative commitments on financial services will strengthen that relationship, benefitting people and businesses in both countries, and can serve as the best model for future trade agreements with other partners. We therefore encourage the governments to think creatively about how to best shape new commitments on financial services that will enhance trade and economic growth, and to create new processes for regulatory cooperation that explicitly address the market access implications of regulatory measures while maintaining appropriate prudential controls.

Regulatory Cooperation

We believe that strengthening regulatory cooperation between our two markets could yield significant benefit for industry and consumers in both markets because most of the areas in which there could be improvements in conditions in the UK for U.S. insurers are regulatory in nature.

A bilateral agreement should establish an industry-involved, formal, comprehensive U.S.-UK Financial Regulatory Forum with the explicit mandate of addressing regulatory measures that unnecessarily restrict financial services trade.

A U.S.-UK Financial Regulatory Forum also could explore how to reduce unnecessary and contradictory regulation in significant, interconnected emerging issue areas. Those areas could include cybersecurity, “FinTech” and “InsurTech” developments, and data privacy rules.

Generally, though, we encourage the UK to consider where it can lessen the regulatory burden on U.S. groups without jeopardizing reasonable prudential expectations. Member companies have reported that even relatively small levels of business in the UK expose them to high levels of regulation that discourage them from entering or expanding in the UK market.

U.S. insurers have noted that compliance with data regulations in the UK, particularly with regard to the EU’s General Data Protection Regulation (GDPR), is overly burdensome. We suggest that the U.S.-UK negotiations be used to reduce that burden in a post-Brexit UK.

Finally, on regulatory cooperation, as comfort with each other’s systems grows as a result of enhanced regulatory dialogue and the recently concluded U.S.-UK Covered Agreement, we believe it would be appropriate for each government to support the other’s system in plurilateral and multilateral standard-setting fora.

Market Access Commitments

Although the U.S. and UK insurance markets are generally open for international trade and investment, we recommend negotiating the highest-standard trade commitments in all areas and especially where new trade commitments have emerged in recent years. In this way, the U.S.-UK agreement could represent the best model for other trade agreements.

For example, a U.S.-UK trade agreement should reflect the outcomes of the U.S.-Mexico-Canada Agreement (USMCA) on the location of computing facilities. For the first time in a U.S. free trade agreement, USMCA introduced commitments that prohibit data and IT localization

requirements for insurers and other financial services suppliers (subject to regulatory access to required data). This commitment was a significant achievement of the USMCA, met congressional negotiating objectives under trade promotion authority, and should be a necessary piece of all future U.S. trade agreements.

We also believe that the U.S. and the UK should explore expanding the type of commitments that are generally included in trade agreements for cross-border insurance trade. In most trade agreements to which the U.S. is a party, National Treatment (NT) and Most-Favored Nation (MFN) treatment apply to certain types of cross-border insurance and reinsurance. The cross-border commitments for direct insurance typically include insurance for maritime shipping, commercial aviation, space launching and freight, and goods in international transit. These types of insurance are referred to in trade policy as “marine, aviation and transportation”, or MAT insurance. The General Agreement on Trade in Services (GATS) and other agreements made cross-border commitments for these lines because they directly facilitate trade in goods and agriculture flowing in cross-border commerce. However, as our conception of what constitutes international trade evolves and increasingly trade is performed by multinational enterprises (MNEs) across multiple national jurisdictions, we believe that trade negotiators should consider expanding the cross-border insurance commitments to insurance lines that facilitate global value chains. MNEs make up roughly two-thirds of all trade in global value chains, and these global value chains raise new risks for those companies engaging in international trade. This new reality demands that we look at how risks are managed globally and promote solutions through international agreements to facilitate the management of those risks to support international trade.

Discussions about how to structure those solutions will necessarily involve creative thinking from industry, trade negotiators, regulators, and others as to how we can best modernize insurance trade commitments to support global commerce while maintaining strong prudential outcomes. Our written submission includes some initial ideas to start the conversations.

One option for the governments to consider would be to include commitments that make it easier for insurance groups to offer “international insurance programs” for MNEs by making commitments for “difference in conditions” (DIC) and “difference in limits” (DIL) coverage. A broader option would be to consider cross-border commitments for lines covering large commercial risks for large MNEs, as was the case in Costa Rica’s commitments in the Dominican Republic-Central America Free Trade Agreement with the United States (CAFTA-DR).

Finally, no testimony would be complete without addressing investor-state dispute settlement (ISDS). APCA supports the application of strong ISDS provisions to investment commitments for insurers. Under the USMCA, a limited number of sectors such as the energy industry retained the “full suite” of ISDS coverage, despite the fact that most service sectors, and insurance in particular, must make considerable investments in foreign markets in order to effectively compete abroad. We encourage the U.S. to consider advocating for the same protections for the U.S. insurance industry in the UK.

Conclusion

Thank you again for the opportunity to testify today. Successful negotiation of the above issues is fundamentally important to the insurance markets in both the U.S. and UK and to the individuals, families, businesses, nonprofits and governments that rely on the protection our members provide. I would be pleased to answer any questions you might have in person or in additional written submissions.