Coalition of Service Industries

Statement of
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First of all, thank you, Chairwoman Biggert and Ranking Member Gutierrez, for inviting me to testify at this hearing. This is a very timely topic for discussion. The insurance market in the United States is a mature market. Our US-based insurance companies and brokers – as well as other financial services companies - are looking outside our borders to expand into new markets. Around the world, middle classes are emerging, they are buying cars and homes and building assets, and they need a way to safeguard and protect those assets that they've worked hard to earn. Insurance allows them to do just that. As a long-time member of the Congressional Services Caucus, Chairwoman Biggert, you have been a staunch supporter of services trade and growth opportunities that allow US-based companies to thrive globally and here at home. You and your staff have been a great friend and ally of services trade, and speaking on behalf of the broad membership of CSI, we applaud your foresight in holding this hearing.

On behalf of CSI, I also want to express our appreciation for the Committee's work to establish the Federal Insurance Office under the Dodd-Frank Act. We support the constructive role the new Federal Insurance Office is playing to coordinate and develop Federal policy on prudential aspects of international insurance matters, particularly in its representation of the United States in the International Association of Insurance Supervisors, in the regulatory dialogue with the European Union and in the Strategic and Economic Dialogue with China.

INTRODUCTION TO CSI

CSI is the leading business organization dedicated to the development of US domestic and international policies that enhance the global competitiveness of the US service sector. CSI represents ten leading insurance companies and associations among our 42 member organizations.

To ensure healthy expansion of the US services industries, CSI works closely with the Office of the US Trade Representative, the State Department, Commerce Department, Treasury Department, international organizations, foreign embassies, think tanks, and other DC-based stakeholders. CSI engages with services coalitions around the world through the Global Services Coalition, which CSI co-chairs. CSI maintains a robust congressional outreach program, supporting the Congressional Services Caucus.

We are particularly grateful to the exceptionally expert and dedicated staff of the Office of the United States Trade Representative. In successive free trade agreements and many other forums they have worked to secure greater market access for our insurers and indeed, all our services companies.

SERVICES IN THE US ECONOMY

The US enjoys a strong comparative advantage in services. Services accounted for 78% of US private sector GDP in 2011, or $11.8 trillion, and insurance accounts for nearly 3% of total GDP. Services jobs accounted for over 83% of US private sector employment. Services jobs pay an average of $60,608 per year. In addition, workers in export-intensive services industries earn 15-20% more than comparable workers in other service industries.

The US is the strongest single services exporter. Our services exports in 2011 reached $588 billion with a surplus of $193.5 billion - a new annual record. US insurance exports accounted for 2.6% of all services exports in 2011, or over $15 billion.

Although US services exports are strong, the US still has the potential to export far more services. In a recent study, Dr. Brad Jensen of Georgetown University's Center for Business and Public Policy estimates that US services exports could be about $860 billion more than they are now. This suggests about 3 million more US jobs could be created just from increased cross-border trade, <u>if</u> we can remove the many, complex barriers to our services trade. This is a far more ambitious goal than the National Export Initiative, which called for doubling exports by 2014, but it requires a determined campaign of trade liberalization.

THE SERVICES TRADE NEGOTIATIONS AGENDA

CSI was founded thirty years ago to bring services to the forefront of the US trade agenda, and we believe we have achieved that goal.

The Doha Round of WTO trade negotiations, launched in 2001, raised the hopes of the global services community that serious progress could be made in achieving our goals of a fair, transparent, and open global trading system. That vision has not been realized.

During the Doha Round the US nonetheless negotiated a number of bilateral trade agreements with increasing sophisticated provisions benefiting services, including insurance.

In the "post-Doha" period there have emerged numerous forums, organizations, and other opportunities in which CSI and its members vigorously engage in order to promote insurance trade and investment. Five key ones are the International Services Agreement, the Trans-Pacific Partnership, the US-E.U. High Level Working Group, and the Trade and Investment Partnership for the Middle East and North Africa (MENA), and bilateral investment treaties (BITs).

International Services Agreement (ISA or "plurilateral")

A group of eighteen WTO members, of which the US is a leader, have formed the "Really Good Friends of Services" (RGF), which meets regularly in Geneva to discuss the possibility of a plurilateral International Services Agreement (ISA). These represent well more than 70% of global services trade. The ambition of the group is to fashion an agreement that will take the best elements of the FTAs already negotiated, plus the "21st Century" issues described below, and incorporate them into one FTA. We applaud the work of USTR, especially Ambassador Michael Punke, who is leading this effort in Geneva. After the long and fruitless effort to bring success in the Doha Round, the ISA offers a new pathway to achieving more open markets for insurance companies and other service providers. The ISA offers an important opportunity to establish a global standard ensuring the right to establish, and freedom from discrimination, in a transparent regulatory context.

Trans-Pacific Partnership (TPP)

The TPP provides another very important opportunity to liberalize global trade and investment in services, including insurance. Our Government, instigated by CSI and the US Chamber of Commerce, tabled a chapter providing disciplines on SOEs in the TPP at the TPP session in Peru last year. Of special concern is the effort to curb postal operators' involvement in the insurance sector. I will discuss the importance of this bold initiative below.

CSI supports the inclusion of Canada, Mexico and Japan in the TPP, which would expand the negotiations to twelve countries, contingent upon their willingness to (1) accept the high standards being developed in this agreement, and (2) ensure that the negotiations will not be slowed down to accommodate their participation. If these countries can develop and implement their negotiating positions in accordance with these factors, they should be included in the current negotiations as soon as possible; if not, discussions should focus instead on developing a process for their integration into the agreement as soon as possible following its conclusion.

United States – European Union High-Level Working Group

The US-EU High-Level Working Group presents an opportunity to increase cooperation and services trade between these two giant services-based economies. Increased cooperation and communication between the US and EU through the High-Level Working Group could both increase opportunities for services trade between the two economies, and also improve the position of the economies in relation to third parties.

The US and the EU share a common outlook and a similar determination to maintain remarkably open insurance markets; both enjoy the benefits of liberalized services trade regimes. Both have cooperated in the WTO and other forums to expand their open approach to trade in services to other markets.

Regulatory cooperation between the US and the EU is especially important in insurance, particularly as the EU forms its Solvency II regime and other financial services regulations in response to the global financial crisis. Significant economic gains may lie in regulatory facilitation and elevating and supporting the existing regulatory dialogue. Finding ways to bridge regulatory differences to meet common objectives would be a significant achievement. To that end, a high-level regulatory dialogue should set achievable outcomes and have regular reporting milestones that will encourage private-sector participation and comment. The Federal Insurance Office has been very important in this effort.

Trade and Investment Partnership for the Middle East and North Africa (MENA)

The Trade and Investment Partnership for the Middle East and North Africa was launched last year by the Administration to strengthen business ties between the US and the MENA region. Though the US Government does not intend for the initiative to lead to trade negotiations, the goal of government agencies in developing a roadmap to encourage MENA economic activity should be to move incrementally toward our trade and investment goals. CSI formed a MENA Working Group, chaired by MetLife, to engage with the US Government in its efforts.

Bilateral Investment Treaties (BITs)

The US government recently announced the conclusion of the Model BIT review. This marks an important milestone and provides the US with another tool to address some of the obstacles impeding the growth of US insurers overseas.

The trade agenda for services including insurance is crowded. Progress was held back by the inability of the Doha Round to progress. We are grateful to be in a fresh new environment with many more options for progress on an array of important issues.

MARKET ACCESS AND NATIONAL TREATMENT

In all services negotiations in which the US participates, a foundational objective is to achieve access to foreign markets. For the insurance sector, and others, the keystone is to achieve the right to establish your business in a foreign market, to own it fully, and to establish in the corporate form most suitable to your business, including branches.

A recent example of a market access issue on which progress has been made is that of the mandatory third party automobile liability insurance (or MTPL) market in China. For many years foreign insurers were not allowed to write MTPL coverage in China. This restriction effectively blocked foreign firms from China's auto insurance market, which accounts for 70% of the property & casualty market, and substantially undermines the ability of US insurers to achieve sustainable development in China. Ironically, China itself had numerous problems in this market as a result of its own domestic preferential policies, including underwriting losses and lack of public confidence.

After years of engagement by the US Government, and by the US industry, China finally agreed to open this market as part of the 2012 US-China Strategic & Economic Dialogue, resulting in a true win-win for the US and China. Yet more work still needs to be done to effectively open the market, including implementing new regulations to license foreign companies and to relax current rate restrictions. As you know, China's commitments may take years to implement. We are hopeful our negotiators will continue to press this issue.

The right to establish is impaired in many countries, including the large emerging markets, by equity caps imposed by governments to bluntly limit foreign ownership. In India, the government imposes an equity cap of 26% on foreign insurers' ownership of their operations in India. In China, where Chinese firms maintain over 95% market share, foreign life insurers continue to be inhibited by a 49% equity cap.

Hand in hand with the right of establishment is the right to the same treatment that a local company receives, that is the freedom from discrimination by government and regulatory authorities (also known as 'national treatment'). This is particularly important for services companies, which are typically highly regulated, and where authorities may enforce onerous licensing requirements that stifle growth and tip the playing field toward local participants. For instance, in China, foreign insurance companies are unable to apply for concurrent branch licenses. This and additional administrative challenges in China make the cost of doing business for US insurers enormously high relative to doing business in other markets.

21st CENTURY ISSUES

To reach this potential, it is imperative to address some of the 21st century issues faced by US services companies, including insurance companies, in the developing and emerging markets. These are issues that have manifested themselves more recently, and thus are not covered adequately in existing trade agreements.

State-Owned Enterprises (SOEs)

One of the most important 21st century issues is that of foreign government policies that favor state-owned enterprises (SOEs) and state-supported enterprises (SSEs). These entities are sponsored as national champions, and they create major competitive distortions in markets around the world.

These market distortions take many different forms. Regulatory favoritism takes place when governments use policy instruments – such as regulations and subsidies – to change market results. Governments should ensure that there is a level playing field for all businesses, irrespective of ownership, and not confer competitive advantages on SOEs and SSEs at the expense of private business, including US competitors.

For instance, governments sometimes provide preferential market access to SOEs and SSEs, which adversely affects foreign companies selling to or competing with these favored domestic businesses. An example of market distortion through favoritism of state-owned or supported insurance companies are those involving SOEs that operate under the umbrella of national postal services. In many cases, the sale of insurance through post offices is a growing trend and represents a significant impediment to fair competition in insurance. For instance, Japan Post is a 100% government-owned postal entity offering not only regular mail delivery services but also insurance, banking and express delivery services, which are all in direct competition with private sector companies.

Having received different and more favorable treatment from the Government of Japan than its private sector for many years, Japan Post Insurance is now the largest insurance company in the world. The Japanese Diet recently passed legislation that will expand favorable treatment provided to Japan Post Insurance and make it easier for the entity to offer its new or modified insurance products on a discriminatory basis.

Other forms of market distortions through SOE and SSE support exist, such as preferential purchasing and sales for these entities, and provision of financial support on terms not available in the commercial market. SOEs or SSEs are often steered by explicit or implicit government mandates, incentives or informal guidance in their purchasing, sales, technology licensing or other business decisions. Non-market financing or guarantees provided by government policy enable these firms to operate on a noncommercial basis, with an unfair competitive advantage.

Data Flows

Cross-border trade in services has grown in recent years, due in large part to the internet, which has allowed worldwide electronic delivery of previously untraded services. In the current global economic climate, it is more essential than ever for this growth, and the jobs created by it, to be sustained.

Knowledge-based services, including business services, financial services, computer and information services, insurance services, audiovisual services, telecommunication, and professional services, can readily be delivered around the world via advanced communication networks. In fact, in 2006 UNCTAD estimated that ICT-enabled services constituted nearly half of global services exports, and trade in these services has continued to grow at a rapid pace. US digitally-enables trade in services was $116 billion in surplus last year

Such growth opportunities in ICT-enabled services are threatened, however, by the potential for restrictions on cross-border data flows. Many countries are considering restrictions on the location of storage and processing for various types of data, a problem that existing trade agreements do not address. For example, exceptions in the World Trade Organization General Agreement on Trade in Services give countries the right to regulate for national security, privacy, compliance with regulations, protection of public safety, and the prevention of fraudulent practices, to ensure the integrity of the financial system, among other reasons. Any of these reasons might be used as an excuse to block data flows and effectively create barriers to insurance and other forms of services trade.

While governments have the right to regulate, they should rely on market forces, voluntary best practices and public-private partnerships whenever possible. When regulation is necessary, it should be done in the most narrowly tailored, least-trade-restrictive way possible to redress the specific and demonstrable policy concerns.

It is in the interest of the US to address these cross-border data issues in all bilateral, regional and intergovernmental negotiations and organizations. For instance, an initiative could build pursuant to the EU-US Trade Principles for ICT Services and the OECD Internet Policy Principles, and be added to the work on e-commerce and services trade in ongoing free trade agreement negotiations.

Existing outdated laws also threaten the free flow of data. Current data protection and privacy laws lack uniformity and have not kept up with the developments in the business and technological environment. Today, in multinational corporations, data no longer flows in a point-to-point manner but in a global networked environment. Thus, in order for global businesses to meet customer needs and provide efficient services, governments must refrain from unduly restricting the global flow of data.

Since regulation of data flows derives from a number of distinct legal traditions, there are significant differences in the existing mechanisms that provide for cross-border data flows. Given the growth in the complexity and volume of global data flows, as well as the changing nature of such transfers, companies with locations all over the world now need to be able to efficiently move information across national borders in order to deliver services to their customers. Yet because of the current divergent nature of privacy laws around the world, significant work still needs to be done before a truly global approach for cross-border data flows is possible. Quite simply, unnecessary data flow restrictions are an impediment that has adverse implications for consumers, businesses, and economies.

Increasingly, countries are attempting to require that all financial services data, including insurance data, be processed and stored in country. Insurers join with other services industries in calling for governments to ensure minimal disruption to the free flow of data that is vital to a

21st century economy. However as a regulated industry already subject to data use and storage restrictions, insurers would point out that they are unique in some important respects. Insurers would ask that this be borne in mind as policymakers consider policy measures addressing the free flow of data.

Forced Localization

Forced localization occurs when a country requires multinational companies to conduct their business activities domestically, or requires that business processes or hiring be conducted "in-country". Forced localization is also a growing impediment to economic efficiency and commerce. Forced localization can take many forms and reach across many services sectors. Examples include mandating in-country data processing centers, mandating that national systems are used for all electronic payments, requiring that national banks and depositories be used for financial transactions, and requiring that percentages of employees in sectors such as oil and gas exploration be nationals of the host country, among others.

Many of the newest localization regulations have been imposed in the emerging economies. For instance, Brazil is forcing the localization of reinsurance by requiring that all insurers operating in Brazil cede at least 40 percent of their risk to local reinsurance companies. In addition, Brazil is restricting the ability of foreign insurance companies to enter its market in the first place by limiting the amount of risk that an insurance company can cede to an offshore, affiliated reinsurer to 20 percent. Argentina has taken many similar steps to force global insurance businesses to localize. Last September the Argentine Government put in place a new regulation that essentially prohibits cross-border reinsurance operations. Prior to that, US reinsurers were able to engage in the reinsurance business from the United States, either through registration with the Government of Argentina, or through brokers that are registered in Argentina. Furthermore, the new regulations require that reinsurance risks be ceded completely to domestic reinsurers or Argentine-based subsidiaries or branches of foreign companies.

As with the other 21st Century issues, the Coalition of Service Industries continues to engaged with the US government and other governments to oppose local content measures. As is the case with other forms of protectionism, forced localization in one country only encourages the spread of forced localization to other countries, to the detriment of global commerce and domestic economies alike.

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Chairwoman Biggert and Ranking Member Gutierrez, thank you again for the opportunity to offer our views in this hearing. I look forward to answering any questions you may have.