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Office of the U.S. Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: Comments Regarding the 2014 National Trade Estimate Report on Foreign Trade Barriers (Docket USTR-2013-0027)

The American Insurance Association (AIA) is pleased to submit these comments pursuant to the Office of the United States Trade Representative's (USTR) request for "Comments Regarding the 2014 National Trade Estimate Report on Foreign Trade Barriers", published August 19, 2013.

AIA is the leading property-casualty insurance trade organization in the U.S., representing approximately 300 major U.S. insurance companies that provide all lines of property-casualty insurance to consumers and businesses in the United States and around the world. AIA members write more than \$117 billion annually in U.S. property-casualty premiums and approximately \$225 billion annually in worldwide property-casualty premiums. AIA members make up some of the most globally active property-casualty insurers.

This submission is not intended to be an exhaustive list of trade barriers that U.S. property-casualty insurers face. Many of the barriers U.S. insurers face abroad were listed in the 2013 National Trade Estimate (NTE) and we encourage USTR to re-list persistent barriers. This submission is intended to highlight several country-specific trade barriers that have been identified by our members that were not included in the 2013 NTE or to provide an update on several barriers that were included in the 2013 NTE.

AIA appreciates greatly the opportunity to make suggestions for additional barriers to be listed in the 2014 NTE, building on the excellent work that has been put into previous NTEs. If we can help with the creation of the 2014 NTE in any other manner we are more than willing to do so.

BRAZIL

- AIA appreciates the listing of Brazil's protectionist reinsurance regulations (CNSP Resolutions 225 and 232 in the 2013 NTE, and urges that the language on Resolutions 225 and 232 be included in the 2014 NTE. These regulations continue to be a source of immense concern from the U.S. insurance sector.

- AIA appreciates the listing of the newly-created *Segurobras* (aka ABGF) state-owned insurer in the 2013 NTE. We ask that concern regarding unfair competition with private insurers in the surety market be included in addition to housing and vehicle insurance. Additional concern comes from Article 38 of Law 12.712 that creates *Segurobras*. It states that the agency will not grant surety to those risks that are fully covered by the private insurance market, as long as the market is providing it in rates and conditions comparable with those adopted by ABGF. Though the Brazilian Government claims that ABGF is not intended to compete with private insurers and would not distort the market as a result, we believe that this provision could create a government price control mechanism in the surety market.
- Regulatory overreach by SUSEP is another concern for U.S. insurers. Circular Letter No. 06/2013 was issued by SUSEP on July 17, 2013. It demands information about penalties imposed in the international market on companies that are considered occasional reinsurers in Brazil. SUSEP lacks the authority to demand information from occasional reinsurers about matters that occur outside of Brazil. An “occasional reinsurer” is a reinsurer that has no physical presence in Brazil and is therefore not deemed to be operating in Brazil. The occasional reinsurer has only an “agent” or “attorney-in-fact” in Brazil.

CANADA

- In Canada, financial credit is allowed for reinsurance ceded to unregistered reinsurers only if the reinsurer posts full collateral, regardless of the financial strength of the reinsurer and the adequacy of supervisory regulation in the reinsurer’s jurisdiction. The United States has recently evolved from requiring 100% collateral by all unaccredited foreign reinsurers and is now moving towards the newly-adopted credit for reinsurance model adopted by the NAIC. The new reinsurance regime being adopted by the states regulates the collateral requirements of foreign reinsurers based upon a variety of factors, including the financial strength of the reinsurer and the adequacy of solvency and reinsurance regulation in the reinsurer’s foreign jurisdiction.
- In Canada, insurance companies are subject to supervisory requirements at both the provincial and the federal level. This creates an additional reporting burden and higher costs for doing business. Work needs to be undertaken to harmonize and achieve greater uniformity in Canadian regulatory reporting requirements both between the provinces and with the Office of the Superintendent of Financial Institutions (OSFI) at the federal level.
- Under regulations which went into effect on January 1, 2010, OSFI asserted sweeping new jurisdiction over all insurance and reinsurance policies with even the most minimal transactional link to Canada. While OSFI has historically exercised jurisdiction over insurance policies when the risk was located in Canada, the new regulations broaden the definition of what constitutes risk “in Canada” and fundamentally shift oversight from a

“location of risk” to a loose “location of transaction” basis. This regulation poses troubling international legal questions, is inconsistent with other Canadian laws, and discriminates against and creates significant hardship for U.S. and other multinational insurers operating in Canada. The implementation of this regulation should be reversed to ensure that Canada’s insurance regulations reflect international best practices and do not disadvantage multinational insurers.

CHINA

- The high cost of doing business associated with regulatory hurdles, excessive compliance requirements and other factors limit the ability of foreign insurers to make a profit, which calls into question the long-term sustainability of foreign operations in China.
- China should encourage U.S. insurance companies to cover those sectors that China has identified as “strategic emerging industries” (SEIs). These industries, which include energy conservation and environmental protection, next generation information technology, bio-technology, advanced equipment manufacturing, new energy, new materials and new-energy vehicles, are all technology heavy.
- In order to provide truly non-discriminatory treatment, CIRC will need to harmonize treatment for domestic and foreign insurers. Separate regulatory structures – one for domestic and one for foreign companies administered through CIRC’s International Affairs Department – are no longer justified, are not in keeping with either international best practices or the International Association of Insurance Supervisors’ (IAIS) core principles, and may create conditions that are inconsistent with China’s national treatment commitments.
- Discriminatory processes for foreign insurers in obtaining regulatory approvals from CIRC persist, limiting the ability of foreign insurers to expand and take advantage of the strong WTO commitments that China made. Foreign insurers are frequently put at a disadvantage relative to domestic insurers in applying for licenses, and in obtaining approval for multiple concurrent branches. The abilities to expand geographically and diversify risk portfolios are basic, fundamentally important insurance principles. Insurance companies need to be able to develop geographic reach and risk diversification in order to avoid concentration of risk and unbalanced, over-exposed books of business. CIRC should make it clear that foreign-invested insurers are able to submit multiple applications for branch approval, and if qualified, CIRC should approve them concurrently. This issue has been included in the 2013 NTE and previous NTEs, and we strongly encourage USTR to continue listing it.

MALAYSIA

- Malaysia maintains an insurance regulatory system that gives a strong preference to Malaysian insurers and reinsurers. Malaysian insurers and reinsurers are given a right of first refusal over foreign insurers and reinsurers.

- There is a 70% cap on foreign equity ownership of insurance companies in Malaysia.

RUSSIA

- Under the current Russian insurance law the regulator is given significant discretion in granting insurance licenses. This procedure lacks transparency and licenses are being refuted on grounds that contradict local law and regulations. This is further complicated by the lack of real procedures to challenge the decision of the regulator.
- Foreign insurers and reinsurers are currently prohibited from establishing new branches in Russia.
- Foreign-invested insurers are discriminated against the area of public procurement in Russia.
- While Russia has committed to increase the factual charter capital for all foreign insurers from 25% to 50%, we would ultimately like to see the cap on foreign insurers removed. The agreed increase to the quota share to 50% also remains to be implemented in a timely manner.