CEA
Insurers of Europe

U.S.-EU High Level Working Group
Docket Number USTR-2012-0001

The European Insurance and Reinsurance Federation (CEA) welcome the establishment of the High Level Working Group on Jobs and Growth under the Transatlantic Economic Council (TEC) and, in particular, the opportunity to provide our comments to the Working Group on policies and measures to increase transatlantic trade and investment.

Transatlantic trade and investment flows constitute the largest economic relationship in the world, creating jobs, increasing economic growth, and driving competitiveness on both sides of the Atlantic. The insurance sector is an important part of this economic relationship with bilateral trade and investment in our sector exceeding 185 billion dollars a year, and the EU-US insurance and reinsurance markets representing over two thirds of current global premium volume. That said, in order to encourage further growth and help us remain globally competitive despite rapid expansion of certain developing insurance markets, we believe this relationship could be further improved.

In this regard we see the establishment of the High Level Working Group as a positive step forward in working towards increased regulatory convergence and reducing barriers to trade between the US-EU insurance markets. More specifically, we would like to see the Working Group build on the work done by the Financial Markets Regulatory Dialogues (FMRD) and other on-going insurance dialogues between the US and the EU and provide vital political momentum to these discussions.

We would ask the Working Group to consider and recommend the relevant bodies fulfil the as yet unrealized 2008 TEC instruction to jointly identify and develop a road map 'to resolve discriminatory laws, regulations or practices'. In addition, we would like to see established a regular consultative mechanism with the private sector to bring increased transparency to the process and ensure policy makers efforts are most appropriately focused on areas of most importance to our respective markets.

More specifically the CEA would like to highlight a number of areas where we would like to see progress made:

- Regulatory understanding - In working towards achievement of supervisory recognition the focus should be on equivalence of outcome not the methodologies used in achieving it i.e. equivalence should be a principles based outcomes focused assessment.

- Global policy setting and coordination – important that the EU and the US work together in a coordinated manner in the global fora such as the G20, FSB and IAIS. As the focus of the G20 agenda moves towards implementation a coordinated transatlantic contribution will be more important and powerful than ever.

- Systemic risk regulation – The situation must be avoided whereby a globally operating company is designated as 'systemically risky' in a foreign jurisdiction but not in its domiciliary jurisdiction. Therefore it is important that a consistent transatlantic approach is adopted to minimise duplication, market distortions and moral hazard.

- International Supervisory Colleges - As recognized by the Financial Stability Board and the G20, establishing international supervisory colleges is key to strengthening global supervision and ensuring that potentially dangerous 'gaps' in regulation do not occur in the future. In addition, international colleges should help to facilitate convergence in global supervisory practices, thus making group supervision more effective and efficient on a global scale.

- Data Confidentiality - The ability for regulators to share confidential information securely is a pre-requisite for better supervisory cooperation and coordination. The recent IAIS data collection exercise and the work on-going on supervisory colleges both underline the necessity for progress to be made in this area to facilitate supervisors working together internationally.

To conclude, the CEA do not look to the High Level Working group to duplicate insurance dialogues already going on in other forums, but in recognition of the political nature of a number of issues being discussed, we would like the High Level Working group to ensure that political momentum is applied to the process. In this regard, the CEA would also like to use this opportunity to highlight in the annex a number of issues European insurers currently face when trading with the US which if resolved, we believe, through improving market access will bring benefits to the economies of both the US and EU.

ANNEX

Market Access Issues for European insurers and reinsurers when trading with the US

Discriminatory practises/proposals

US Reinsurance Collateral

For many years the CEA has opposed the discriminatory collateral requirements in the US which have required non-US reinsurers to post 100% collateral in order for US cedents to take balance sheet credit for their reinsurance. The CEA, therefore, welcomes the NAIC's adoption of a revised credit for reinsurance model law and regulation in early November 2011. However, the CEA still believe that important additional work is needed on the revised Model Law most immediately in the following key areas:

- Collateral benefits are only allowed on a prospective basis we believe they should be allowed retroactively
- Burden associated with financial reporting should be reduced – current draft includes a requirement for reporting to be reconciled to US GAAP and mandated use of US specific forms for reporting of certain data;
- Collateral rating scale should be modified - the collateral required for A- rated 'certified reinsurers' was changed from 20% in previous NAIC drafts to 50% in the final proposal.

In addition, the CEA remains disappointed that once a jurisdiction is deemed to be 'qualified', reinsurers from that jurisdiction will still find themselves subject to a collateral rating scale in stark contrast to US domestic reinsurers. The CEA strongly believes that once a jurisdiction is deemed to be a 'qualified' jurisdiction, reinsurers from that jurisdiction should be treated the same as US domiciled reinsurers.

In any event, uniform implementation of the revised Model law and regulation across the US is very important and unless this occurs, in a timely manner, much of their potential benefit will be lost. The pre-emption powers of the newly formed FIO provide a potential avenue through which uniform collateral reform could be achieved. We believe, therefore, that the FIO's engagement in the collateral reform discussions is the key to achievement of meaningful reform.

US affiliated tax proposals

On October 12th 2011 bills were introduced by Representative Neal into the US House of Representatives (HR. 3157) and by Senator Menendez into the US Senate (S. 1693) which would limit the tax deductibility of certain affiliated reinsurance transactions. The objective of the bills is similar to legislation introduced by Representative Neal to the US House of Representatives in 2009 and President Obama's 2011 and 2012 Budget Proposals; namely to close a so called 'tax loophole' and impose a tax on affiliated reinsurance transactions paid to foreign reinsurers. These proposals would result in unequal treatment of European insurers whose affiliate transactions would effectively become subject to double taxation - EU insurers already pay substantial tax in the

EU Member States and cannot be seen as 'low tax countries'. It would also potentially place the US in violation of its General Agreement on Trade in Services (GATS) agreements under the World Trade Organisation (WTO) and is at odds with the non-discrimination provisions of income tax treaties between the US and certain member states.

Extra territorial application of US law

Over the last few years, on a number of occasions, legislation has been passed by US Congress which directly affects the business of some European insurers' which do not even write business in the US. Two recent examples of this are:

Foreign Accounts Tax Compliance Act (FATCA)

FATCA was enacted as part of the Hiring Incentives for Restoring Employment Act on March 18, 2010 and is effective from January 1, 2013. FATCA is intended to reduce tax evasion by US taxpayers with financial accounts at Foreign Financial Institutions (FFI). Entities classified as FFIs need to report identification and personal data to the US Internal Revenue Service (IRS) or be subject to a 30% withholding tax on US source payments. European insurers have both a low incidence of US policyholders and present a low risk of tax evasion. However, compliance with the FATCA will create a significant reporting/compliance burden (insurers currently do not even collect the information required) and potentially leave European insurers in breach of EU data protection legislation. As per preliminary implementing guidance issued by the US Inland Revenue Service (IRS) and US Treasury in August 2010 life insurance companies that issue cash-value life insurance, annuities, or similar instruments (other than term life contracts without cash value) will be included in the definition of a FFI. Subject to EU data protection concerns being resolved, the CEA remains keen to work with the US Treasury to ensure that the FATCA regulations are implemented in a proportionate manner and with consideration given to the specifics of the insurance industry.

Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA)

US law mandates that CMS (US Centres for Medicare and Medicaid Services) bear secondary liability for the claims of Medicare beneficiaries. To achieve this, liability insurers, including non-US liability insurers qualifying under a "doing business in the US" criteria (published by CMS via its website on February 7, 2011), are required to collect and report identification and personal data to CMS on US claimants from January 1, 2012 onward. It is arguable whether such external application of this is in line with the US caselaw concerning US regulation that is applied to foreign entities. This regulation further creates a significant reporting/compliance burden for European insurers, as it would require them to set up a time-consuming and expensive infrastructure simply to locate the few US claimants that may fall under the US Medicare system. Moreover, the reporting requirements will place most European insurers in breach of EU legislation, as they are prohibited by EU data protection law from transferring the required data to the US without the claimant's consent (which in the majority of cases, is unlikely to be obtained due to the lack of any actual relationship with the claimant). Failure to comply with the reporting requirements can result in a fine up to $1000 per day. The CEA would still like to see further clarification from CMS on their definition of "doing business in the US" and the scope of MMSEA limited to exclude European insurers with no real business in the US.

Difficulties arising from dealing with multiple regulatory jurisdictions

For international insurers doing business in a number of US states, differences in state-based regulatory requirements significantly add to the cost of doing business which in turn increases the price of insurance coverage for consumers. Any moves to streamline differences between state implementation of prudential regulatory requirements, therefore, would make the US market a more attractive place to do business while at the same time helping to improve the competitiveness of the US insurance market. In particular, the CEA would like to see greater uniformity in state insurance regulation with respect to US reinsurance collateral requirements and also the regulation and taxation of placements by surplus line insurers.

The surplus lines market

Currently, there is a lack of clarity and uniformity regarding the application of regulatory requirements to surplus lines insurers. Some state insurance laws provide explicit exemptions for surplus lines insurers. However, the vast majority of insurance laws and regulations are silent with respect to their applicability to surplus lines insurers. As a matter of policy, state insurance departments often exempt surplus lines insurers from regulatory requirements designed to protect unsophisticated policyholders.

Therefore, it is often very unclear which laws and regulations apply to surplus lines insurers. This difficulty is frequently compounded by changes in insurance department staff which often result in different interpretations of the applicability of laws and regulations. In recent years, surplus lines insurers have seen state insurance regulators attempting to apply a variety of restrictions designed for the admitted market such as deductible limits, detailed disclosure requirements and mandatory contract terms to surplus lines insurers, even though these requirements were never intended to apply to the surplus lines market.