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Office of the United States Trade Representative (USTR)  
ATTN: USTR-2013-0019

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**RE: USTR-2013-0019  
Request for Comments Concerning Proposed Transatlantic Trade  
and Investment Partnership**

Cigna is a global health services organization, headquartered in Connecticut, with insurance subsidiaries that are major providers of medical, dental, disability, life and accident insurance and related products and services. Cigna's mission is to improve the health and well-being and sense of security of the individuals it serves around the world. Key to our mission and strategy is our customer-centric approach; we seek to engage our US-based and global customers by offering effective, easy-to-understand insurance health and wellness products and programs that meet their unique needs. We do this by providing access to relevant information to ensure informed buying decisions, collaborating with physicians and care providers, and delivering a highly personalized customer experience. This approach aims to deliver high quality care at lower costs for each of our stakeholders: individuals, employers, and governmental entities.

The Cigna companies (including the US-domiciled Cigna Health and Life Insurance Company, and the EU-domiciled Cigna Life Insurance Company of Europe, S.A.-N.V., and their affiliates, collectively "Cigna") are one of the leading global providers of health insurance and related services. Accordingly, Cigna has a keen interest in the United States Trade Representative's (USTR) negotiations with the European Union (EU) relating to the proposed Transatlantic Trade and Investment Partnership (TTIP) agreement and we are pleased to provide the following comments.

**(i) Existing Barriers to Trade in Services between the United States and the EU**

Global competition amongst health insurance companies is rapidly increasing as the world's population continues to be globally mobile. We believe that any healthcare system must enable global competition among health care professionals and health care plans to accommodate the needs of the globally mobile. As a provider of domestic and international health coverage and services in the United States and the EU, we welcome transatlantic efforts to find workable solutions to support our global clients and customers.

As the US and various EU countries continue to develop their healthcare delivery systems, we support initiatives that enable US-based health insurance issuers to compete effectively with their foreign competitors. We hope that the US-EU Transatlantic Trade and Investment Partnership can serve to address and eliminate the trade barriers that Cigna faces in the EU. In Cigna's experience, several EU Member States are imposing localization barriers which protect, favor or maintain domestic industries at the expense of foreign companies.

Some EU Member States take the strict view that any individual within their borders may only be covered by locally admitted insurance. Other jurisdictions require locally admitted insurance in order to grant a work visa. Such requirements can be at odds with obligations under US laws such as the Patient Protection and Affordable Care Act (PPACA), putting the insurer, employer and employees in a position of having to purchase dual and largely duplicative policies or risk non-compliance with one country's law (i.e. the US vs. the country of expat assignment.)

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Examples of such barriers in the health insurance industry include the following:

- Czech Republic – Foreign nationals applying for a business visa or residence permit must purchase health insurance from an insurance company licensed or otherwise authorized to provide insurance in the Czech Republic. Individuals are denied a visa if their policy is issued by a US insurance company. This requires US employers to have a corporate entity capable of acting as a European policyholder. The Czech insurance product must also be customized to meet requirements of local law which deviate from industry standards within the EU and the US. Due to these requirements, US companies with employees working in the Czech Republic are forced to purchase a Czech-specific insurance policy, typically in addition to their US policy, resulting in additional cost and duplication. Because each insurance product would be designed to meet applicable local law, US employers must choose between conflicting plans or offer different health insurance benefits to employee populations based on location.
- The Netherlands – Unless they qualify for one of the limited exceptions, residents and non-residents employed in the Netherlands and whose income is subject to Dutch wage tax must purchase insurance from a private health insurance company in the Netherlands. They must pay a nominal premium and an income-related contribution for this additional insurance.

We urge USTR to seek to prohibit EU localization requirements affecting US insurance arrangements for coverage of expatriates and their families. One solution could be that the U.S. and EU recognize the sufficiency of each other's laws related to insurance, and that therefore any insurance plan issued to an individual or organization in a location in which that individual or organization is situated will be deemed to meet any local requirements in the place to which an individual covered by such plan may subsequently travel or be re-located.

#### **(j) Electronic Commerce and Cross-border Data Flow Issues**

Regulation of international data flows is a services barrier for US companies doing business in the EU. This is especially true for the insurance industry which processes health information and individually identifiable financial and personal information. For example, we may be required to steer claims processing to a certain location simply because of an individual's location or nationality.

As mentioned in the USTR's annual National Trade Estimate Report (NTE) on Foreign Trade Barriers, the United States is not recognized by the European Commission (Commission) to provide a blanket adequate level of protection which would allow broader transmission of EU data to the United States. As a result, US companies need to individually demonstrate the existence of one of the specific and limited programs the Commission deems adequate under the EU Data Protection Directive (1995/46), such as the Safe Harbor Framework, Binding Corporate Rules, or intercompany data transfer agreement (Model Clauses) approach.

Delivering efficient, personalized insurance and related products and services to US-based and global customers requires companies like Cigna to process and retain clients' personal data in multiple venues. The regulation of international data flows is of crucial importance, with the US and EU key reference points for global standard setting as regards the processing, retention and security of personal data. Mismatches and lack of recognition between the two legislative regimes create significant challenges for Cigna in the ordinary course of business. To date, the solutions on offer have proven cumbersome for Cigna to implement; they are insufficiently tailored to health insurance industry needs and may even be detrimental to the data subject's vital interests. Disruption in the delivery of a prompt, seamless service, as required by our clients, is a significant risk.

It is, therefore, of great concern to Cigna that the EU has yet to recognize the robust nature of US privacy legislation and its enforcement regime. Cigna supports continued efforts by the various US bodies to visit Brussels to increase understanding of the US approach and to reassure EU stakeholders that individual rights are as protected in the US as they are in the EU. In our view, privacy is a prime issue on which the US and EU should conclude that, even if the methods and procedures are diverse, our regimes are, in fact, equivalent. If a compromise on the adequacy of US data protection standards in general is not possible, we would propose that an exception be made when the data transfer is compliant with HIPAA which is a reasonable and arguably higher standard of data protection than in the EU in the case of health data.

Cigna would be pleased to share further information with the USTR based on our experience in dealing with international data flows, if this would help to ensure an appropriate outcome which enables us to concentrate on delivering a modern insurance service to our global customer-base.

#### **(p) Transparency and Anticorruption Issues**

With our operational presence in the US and Europe, in particular in the UK, and our clients' and customers' presence throughout the EU, Cigna is impacted by the application and enforcement of transparency and anti-corruption laws. Current differences between the US Foreign Corrupt Practices Act ("FCPA") and the UK Bribery Act create uncertainty for persons and entities subject to these laws. These differences complicate the conduct of business in the US and EU as well as the implementation of effective compliance programs. We are concerned not only about the inconsistencies, but also about the broader scope of the UK Bribery Act.

Inconsistencies between the FCPA and UK Bribery Act include but are not limited to the following:

- The scope of the UK Bribery Act is broader than the scope of the FCPA. The UK Bribery Act extends to private person-to-private person bribery in addition to bribery of a foreign public official. The FCPA applies to the bribery of foreign government or political officials only.
- Corporate hospitality and facilitation payments (*i.e.* small payments to a foreign official to expedite or secure the performance of non-discretionary routine governmental actions) are treated differently. Under the FCPA there is an affirmative defense of "reasonable and bona fide expenditures". Certain facilitation payments are exceptions to the prohibition against bribery. Under the UK Bribery Act there is no such affirmative defense and facilitation payments could trigger § 1, 6, or 7 offenses, subject to prosecutorial discretion. While the common law defense of duress may be applicable in some circumstances, it is limited to threats to life or limb.
- The jurisdictional reach of the UK Bribery Act differs from the FCPA. The FCPA only applies to US companies or persons, issuers, their agents, and/or actions committed in the United States. The UK Bribery Act applies to actions committed in the UK, or if committed outside the UK it also applies to those with a "close connection" with the UK – not just UK nationals and bodies incorporated in the UK, but also persons ordinarily resident in the UK. The Section 7 Failure to Prevent Bribery offense is even broader, as it applies to "relevant commercial organizations." including any company, wherever incorporated, which "carries on a business or part of a business" in the UK.
- The mental element differs under each law. Under the FCPA the authorities must show that the defendant had the requisite state of mind with respect to his actions; this generally means proving 'corrupt intent'. Under the Bribery Act differing mental elements apply, with no corrupt

intent being required. Under the section 7 offense no mental element is needed, as relevant commercial organizations will be held strictly liable for the acts of “associated persons”.

- The significance of adequate procedures differs under each law. Under the FCPA, a business organization can be held responsible based on principles of “*respondeat superior*” (e.g. that an employer is responsible for acts of its employees regardless of “adequate procedures” being in place). Under the UK Bribery Act a relevant commercial organization could be strictly liable for acts of an “associated person”, anyone who “performs services for or on behalf of” the organization, but the presence of adequate procedures would be a complete defense.

#### **Localization Barriers to Trade on which the US and the EU May Share Similar Concerns**

As discussed under subsection (i), Cigna faces localization barriers in certain EU Member States that are burdensome and costly to the policy holder and the insurance industry. Cigna seeks USTR to address these services localization barriers in the TTIP negotiations. US and EU companies face similar localization barriers in third country markets around the world, which protect, favor or maintain domestic industries at the expense of foreign companies. For example, localization barriers in Switzerland adversely affect both EU and US companies:

- Switzerland – Inbound foreign workers can be exempt from Switzerland’s mandatory local coverage requirement if they are exempt from social security contributions, based on a bilateral social security agreement, for up to five years. While the US has such an agreement with Switzerland, some cantons have reduced the instances in which they will grant exemptions. Each canton makes independent determinations, creating uncertainty for visa applicants and their employers and health insurers. Individuals may have purchased global coverage in the United States which provides full coverage for the time during which he or she is working in Switzerland, but the canton will not recognize such coverage and requires the purchase of a local policy.

Thank you for your consideration of these comments.

Respectfully,



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