Position Paper

Response to EC consultation on the EU trade policy review

Our reference:	ECO-IAR-20-038
Referring to:	EC public consultation on EU trade policy review
Contact person:	international@insuranceeurope.eu
Transparency Register ID no.:	33213703459-54

Introduction

Insurance Europe welcomes the opportunity to comment on the European Commission's public consultation on the EU trade policy review.

The insurance industry serves a key function in both European society and the economy at large and is also a global success story with a significant presence outside the borders of the EU.

The insurance industry is Europe's largest institutional investor, investing over €10bn in the economy. Through its role, both as an investor and provider of protection, the sector is uniquely positioned to contribute to sustainable European economic growth, and can help to finance the transition to a carbon-neutral, resource-efficient and more sustainable economy. In addition, life insurers are also major providers of occupational and personal pensions, encouraging stable and sustainable savings and pension provision.

Beyond their key role in Europe, insurers have significant presence outside of Europe's borders – in fact, the European (re)insurance industry is the world's most international (re)insurance sector and a global success story. Today, around a third of all internationally active insurance groups (IAIGs) are headquartered in the EU. Europe is also the global leader in reinsurance.

The EC vision on trade and competitiveness of the EU in the world is very relevant for the sector. Insurance Europe provides below its high-level views on key areas of the EC consultation note *'Renewed trade policy for a stronger Europe'.*

Key positions of the (re)insurance industry

In a tough economic environment and fast-changing world, Europe's (re)insurers need the right EU and international regulatory environments to be able to maintain their competitiveness on the world stage. They also need the right trade conditions to enable them to access international markets.

Insurance Europe aisbl
Rue Montoyer 51, B-1000 Brussels
Tel: +32 2 894 30 00 • Fax: +32 2 894 30 01
E-mail : international@insuranceeurope.eu
www.insuranceeurope.eu

© Reproduction in whole or in part of the content of this document and the communication thereof are made with the consent of Insurance Europe, must be clearly attributed to Insurance Europe and must include the date of the Insurance Europe document.

insurance europe

The insurance industry proposals are as follows:

1. **The EC should consider global competitiveness as a clear objective in EU policymaking.**
2. **The EC and European negotiators in international agreements should ensure that global standards do not create competitive disadvantages for the European industry.**
3. **The EC should engage in dialogues with third-country jurisdictions to ensure that market access and trade barriers to European market players are removed and the strength of the EU regulatory system is appropriately recognised.**
4. **Given the global nature of sustainability, policymakers should promote international coordination and a global approach.**

Comments on the EC objective of "Building more resilience – internal and external dimensions"

Industry proposal 1: Consider global competitiveness when setting EU regulation
The insurance industry is very supportive of the European Commission's ambition to promote Europe's competitiveness on the global stage. Europe's global leadership is an ambition that is shared by both the public and the private sector. Global competitiveness should therefore be a clear objective in EU policymaking.

Sound and trusted regulation is vital for healthy EU industries that can thrive at home and abroad. The regulatory environment must also allow European businesses to maintain their global competitiveness and their ability to contribute to the EU objectives of sustainable, innovative and inclusive growth.

European (re)insurers are regulated by Solvency II, the European regulatory framework for (re)insurance. As major European players traditionally have a significant business presence outside the borders of the EU, an effective and efficient supervisory system is key to support this global presence. Solvency II is the most sophisticated prudential regime for insurance in the world, but from a global regulatory level-playing field perspective, it is also the most conservative. **The European industry supports a strong, risk-based regime with very high levels of consumer protection, but the excessively high requirements of the Solvency II framework damage the ability of the industry to maintain and grow its international presence**. Internationally, European (re)insurers compete with companies that follow regimes that differ greatly from Solvency II. Solvency II's unnecessarily high conservativeness thus damages their global competitiveness. Other jurisdictions appear to have taken much greater account of the special characteristics of insurers' long-term business model, as well as their economic and social goals, in the design and calibration of their regulatory frameworks.

While a robust regulatory framework is vital for a trusted, healthy and well-functioning insurance industry, exaggerating its conservativeness harms European competitiveness on the global stage and therefore acts against the EC's ambition. **In the current review of the Solvency II framework, policymakers must include the objective of ensuring international competitiveness as an objective of the framework, along with the objectives of policyholder protection and financial stability.**

Comments on the EC objective of Ensuring fairness and a level-playing field

Industry proposal 2: Ensure global standards do not harm EU competitiveness
The (re)insurance industry strongly supports the EU's efforts to promote Europe's competitiveness in its economic relations with other jurisdictions.

It is essential that Europe's negotiations and decisions in the area of global standards for insurance do not create additional disadvantages for the industry's ability to compete globally.

While global standards may have the merit of addressing regulatory fragmentation, they can achieve their potential only if designed appropriately and implemented consistently across jurisdictions.

insurance europe

Industry proposal 3: Seek to remove market access and trade barriers

There is significant potential for the EU to further strengthen the global presence of European businesses via its trade negotiations and agreements. The (re)insurance industry faces a variety of market access and trade barriers. These include restrictions on foreign ownership of companies, barriers to the establishment of operations, barriers to cross-border provision of services, and discriminatory and anti-competitive mechanisms. **EU policymakers must target cases of protectionism and discriminatory trade barriers and must prioritise ambitious trade negotiations that lead to more global opportunities for EU businesses.**

The reinsurance sector is particularly harmed today by a number of barriers across the world. The latest list of reinsurance trade barriers and market access issues published by the Global Reinsurance Forum in May 2020 identifies 46 major territories, including regional groupings, that have either implemented, or are in the process of implementing, barriers to the transfer of risks through global reinsurance markets. These barriers are found on all continents and take a variety of forms:

- Restrictions on the ability of reinsurers to freely conduct business on a cross-border basis, which limits the capacity of global reinsurers to spread risk globally and to prevent domestic concentrations of risk.
- Requirements for reinsurers operating on a cross-border basis to collateralise or localise assets, preventing the global reinsurance market from transferring and spreading risk on the basis of a competitive, level playing field across borders.
- Restrictions on foreign ownership of subsidiaries and other barriers to the establishment of branches, subsidiaries and operations. This limits the ability of reinsurers to deliver their full economic benefit by providing local underwriting expertise and direct services to transfer risk out of domestic markets on an open and competitive basis.
- The use of discriminatory and anti-competitive mechanisms — such as compulsory cessions to domestic entities, systems of "right of first refusal" and compulsory subsidised or monopolistic governmental mechanisms — limiting the competitive capacity of global reinsurers to operate on a level playing field.

The effective functioning of insurance markets relies on the global nature of the reinsurance market and the ability of writers of large coverages to pool these risks effectively with other risks diversified by geography, line of business, etc. **Open reinsurance markets are vital to enable reinsurance markets to operate efficiently, to diversify risk globally and to promote the continued growth and recovery of global and national economies. Barriers to trade in reinsurance – such as limitations to transfer risk and assets abroad – undermine the efficiency of reinsurance markets. They lead to higher reinsurance costs and less capacity in the long term.**

The Reinsurance Advisory Board (RAB) paper on freedom of reinsurance highlights the need and benefits of enabling reinsurance to contribute to the development and maintenance of stability of local markets all over the world. Reinsurance provides a mechanism for insurers to reduce their underwriting risk across a broad range of non-life and life business classes. It thereby enables insurers to strengthen their own solvency and expand their capacity to absorb different types of business and customer risk, both catastrophic and non-catastrophic. In addition, reinsurance helps insurers to reduce the volatility of their earnings, accompanied by positive effects on capital costs that insurers can pass on to policyholders, for example in the form of lower prices.

Growing protectionism is a particularly unfortunate trend at a time when there remains a huge and persistent gap between the level of economic losses experienced (particularly following catastrophes) and insured levels worldwide.

This is an issue of significant importance to Europe, since it is home to the largest global reinsurers and is therefore particularly affected by this trend of restrictive practice.

Below is a summary of key concerns in a range of foreign markets, particularly relevant for the European (re)insurance industry:

Argentina

European (re)insurers continue to face significant barriers when placing business in Argentina. While a number of positive measures related to the reopening of the Argentinian market were introduced in 2017, the scope of these provisions does not foresee the full opening of the market at the end of the planned implementation timeline.

The percentage of ceded premiums per contract that may be ceded by Argentinian insurers to Admitted Reinsurers has been gradually increased from 60% currently to 75% on 1 July 2019.

Brazil

Insurance Europe supports the progress made over recent years in addressing trade barriers in Brazil. However, it would suggest that more ambition is needed to support the ability of European (re)insurers to place business in Brazil on a competitive, non-discriminatory basis.

Positive measures have been taken with 2017 resolutions removing restrictions on affiliates' transactions and modifying other limitations. In addition, Decree No. 10,167 of December 2019 modified the reinsurance and retrocession limits applicable to cessions to occasional reinsurers as follows:

- Local insurance companies can now cede in reinsurance to occasional reinsurers up to 95% of the premiums transferred to reinsurers, calculated based on all transactions carried out in a given calendar year (the previous limit was 10%).
- Local reinsurers can now cede in retrocession to occasional reinsurers up to 95% of the total premium issued in relation to the risks they have underwritten, calculated based on all transactions carried out in a given calendar year (the previous limit was 50%).

However, key restrictions remain in place:

- Right of first refusal
    - Cedants are required to cede or offer preferentially at least 40% of their reinsurance cessions to local reinsurers. To satisfy the preferential offer requirement, cedants must engage in a formally regulated consultation process with the local market, offering at least 40% of each reinsurance risk on the same terms and conditions as to admitted or occasional reinsurers.

China

The European (re)insurance sector continues to have significant concerns over a range of regulatory provisions in China. Insurance Europe strongly encourages the European authorities to raise these concerns in their bilateral engagements with China.

There are a number of concerns related to existing regulations or proposals for new regulations in China. Specifically:

- Reinsurance is permitted on a cross-border basis. However, Chinese insurers face credit risk charges on all cessions, based on the solvency ratios and collateralised assets of the reinsurer. The charges applied to foreign (offshore) reinsurers are greater than those applied to domestic reinsurers.
    - For business conducted on a cross-border basis, discriminatory requirements are in place, as foreign reinsurers need to collateralise their reinsurance assets in order to avoid a credit risk charge of 58.8% for all cessions. Only by collateralising can foreign reinsurers lower the credit risk charge they face to 8.7%, assuming they meet the additional solvency requirement.
    - There are restrictions to the amount of business ceded to reinsurers. With the exception of aviation, aerospace, nuclear, oil and credit reinsurance contracts, the amount of proportional business ceded to any one reinsurer for any one risk should not exceed 80%

of the sum insured or liability limit of the direct insurance policy. The amount of each facultative cession to an affiliated company of the cedant should not exceed 20% of the sum insured or the limit of liability of the direct insurance policy.
    - In July the China Banking and Insurance Regulatory Commission (CBIRC) launched a consultation on Solvency regulation, with very concerning proposals, requiring (re)insurers to maintain an adequate proportion of on-shore admissible assets on their balance sheets. This proposal would negatively impact the ability of international European reinsurers to pools risks globally and restrict their ability to manage liquidity.
    - Furthermore, the CBIRC is currently reviewing the Reinsurance Business Regulation. One of the major concerns is linked to a potential removal of a clause on the home office recognition (Art. 33). It could lead to more challenges around information exchange and would lead to more localised requirements for foreign reinsurers.

- The Cyber Security Law that came into force in June 2017 poses major challenges to corporations using cloud services with offshore storage. Legal checks and risk assessment by law firms are essential to cope with the myriad legal and IT guidelines, exposure drafts and technicalities from many different but inter-related Chinese government/semi-governmental agencies.

- Insurers and reinsurers are required to calculate solvency in accordance with standards prescribed under China's Risk Oriented Solvency System (C-ROSS). Pursuant to C-ROSS, the CBIRC assigns each (re)insurer an integrated risk rating of "A" to "D" every quarter, based on an evaluation of the company's core solvency ratio, comprehensive solvency ratio and various other non-capitalised risk factors.

Canada

In June 2018, the Canadian regulator — the OSFI — published a discussion paper on reforms to the Canadian reinsurance framework, including several potential threats to the operations of foreign reinsurers. One of the reforms would create an unlevel playing field between non-registered reinsurance (ie business written on a cross-border basis) and registered reinsurance (ie business written from the branch), in favour of registered reinsurance. It would also lead to additional restrictions and/or increased capital charges on policy limits, significant quota shares, fronting arrangements and the use of unregistered reinsurance.

Indonesia

The Indonesia financial regulator (OJK) issued a new regulation in June 2020 to gradually remove market access barriers for foreign reinsurers by the end of 2022, subject to an existing "bilateral agreement" between Indonesia and the market of reinsurer's domicile. The financial regulator is currently in the process of identifying applicable bilateral agreements. This condition on the qualifying trade agreements for the new regulation may create an uneven playing field between foreign reinsurers in Indonesia by discriminating certain trade agreements at the expense of a healthy market competition in Indonesia.

- (Re)insurance retention limits

Local compulsory cessions diminish the possibility to diversify risk, creating high local exposure in the event of, for example, a natural disaster.

- As of 1 January 2016, Indonesian insurers are required to place all reinsurance of motor, health, personal accident, credit, life and surety business ("simple risks") with domestic Indonesian reinsurers. The OJK specifies only a few limited exceptions to this restriction.
- For other insurance business ("non-simple risks"), a minimum of 25% of the (re)insurance must be placed with domestic (re)insurers.
- "Non-simple risks" and exempted "simple risks" must run through a tiered declinature procedure before they can be placed with foreign (re)insurers.

Limitations on using foreign reinsurance have had the following impact:

- Primary insurers can only place a limited share of business in the overseas reinsurance market (and the health, motor, life, personal accident, credit and suretyship business lines are

excluded), which means that risks are less diversified in the market, which becomes more prone to financial stability issues.
- The market share of foreign reinsurance has shrunk, while local reinsurance has grown by ~40% in the past three years.

Given Indonesia's ambition in the area of services in the ongoing negotiations of a free-trade agreement with the EU (launched in July 2016), Insurance Europe believes that this would represent an appropriate platform for the EU authorities to raise the industry's concerns, with the aim of eliminating the current barriers and supporting the business potential of European (re)insurers in Indonesia.
OJK is moving gradually towards the liberalisation of market access for foreign reinsurers. However, if Indonesia applies the new market access regulation only to reinsurers domiciled in countries with which it has specific bilateral agreements, an uneven playing field will be created between foreign reinsurers.

India
A recent review of the Indian reinsurance regulations has produced some positive changes towards the further opening of the insurance sector for international reinsurers, who have long recognised the potential of the market and transferred resources and experience to India accordingly.

- Order of preference/Offer of participation

The Reinsurance Regulations 2018, which came into force in January 2019, amended the way in which the order of preference is applied to local cedants when placing reinsurance business. While the new approach gives more business opportunities to international reinsurers, it still limits their ability to compete on equal terms with national reinsurers.

- Compulsory cessions and similar restrictions targeting foreign reinsurers

The recently reviewed reinsurance regulations maintained the compulsory non-life reinsurance cession at 5% to the General Insurance Corporation of India (GIC Re) for the financial years 2020 to 2021. For tax purposes, foreign reinsurance branches are treated as "non-residents", requiring them to pay a corporate tax of 40% plus surcharge/education cess (for local player the corporate tax is only 22%). This puts them at a significant disadvantage compared to local reinsurers. On the withholding tax on reinsurance premiums, there was a positive development in September 2020, as foreign reinsurer branches (FRBs) were placed on the same standing as foreign banks by CBDT.

- Foreign direct investment

The Insurance Laws (Amendment) Act 2015, which passed in March 2015, increased the permitted percentage of foreign direct investment in locally licensed insurance companies from 26% to 49%. The guidelines that have since been released by the Insurance Regulatory and Development Authority of India (IRDAI) to implement the Insurance Act unexpectedly interpret the statutory definition of "ownership and control" of a jointly held company as remaining with Indian residents or Indian companies. The limitation of foreign direct investment prevents foreign reinsurers and other international players from fully supporting the local market, which can slow the overall growth of the economy.

- Lack of regulatory framework allowing corporate reorganisation of branches of foreign reinsurers.

There is currently no mechanism in Indian regulation that allows foreign reinsurers doing business in India through licensed branches to reorganize their corporate structure. Specifically, it is currently not possible to transfer the portfolio of an existing entity to a new branch of another wholly owned affiliate in the same group. This is not in line with international best practices and imposes additional challenges for foreign reinsurance branches.

The need to retain foreign investment limits in the insurance sector should be reviewed, as has been done in other sectors, and the signalling by the current Indian government that it intends to do so is welcome.

insurance europe

Comments on the EC objective of Supporting the green transition and making trade more sustainable and responsible

Industry proposal 4: Promote international coordination and a global approach to sustainability
The insurance industry supports the ambitious objectives of the European Green Deal to make the EU economy sustainable, and to achieve an economy with net-zero greenhouse gas emissions by 2050.

As sustainability is a global issue, it needs to be addressed through a global approach and international coordination. Global coordination efforts between public actors need to be enhanced to promote sustainable finance via convergence of standards and best practices. This is key in the context of the recovery which has brought about challenges that require increased international cooperation.

Europe's insurers remain as committed as ever to supporting the transition to a more sustainable society and to tackling climate change. The insurance industry believes that these fundamental policy ambitions must be pursued despite the significant, new challenges created by the COVID-19 pandemic.

The industry can play a key role in the sustainability transition by both investing in sustainable assets and providing insurance coverage to help society to deal with sustainability risks.

All economic sectors need to act jointly and contribute to the sustainability transition. For insurers to be able to contribute even further to the transition, an increased commitment is needed by companies and governments to financing sustainable projects and issuing green bonds which meet EU sustainability standards. In this respect, the public sector should lead by example in using sustainable finance tools and frameworks to encourage the recovery.

Sustainability is a global issue. Therefore, it needs to be addressed through a global approach and international coordination. However, the industry notes that the current level of global coordination between public actors for sustainable finance is not sufficient to promote sustainable finance globally. There is currently a need for a consensus view on climate change and the categorisation of environmental degradation as an urgent and global problem. Further policy action is needed to promote convergence of standards and best practices at global level, as well as to constantly increase the number of countries involved in the effort to move towards a more sustainable economy. This is vital to avoid the fragmentation of markets.

Implementation of “polluter pays” principles in more jurisdictions is also welcome. A global, reliable and significant carbon pricing with strong incentives for the real economy would likely have a more decisive impact on strengthening sustainable investments than uncoordinated national efforts.

Finally, EU sustainable finance tools (eg taxonomy, benchmarks, disclosures) can be used to help scale up the financing of sustainable projects and activities in emerging markets and/or developing economies. Their requirements may need adaptation to emerging markets and developing countries, which are at different stages of transition. In this respect, a more holistic view of unsustainable practices may be needed, with a strong focus on social and governance aspects for investments in emerging markets and/or developing markets.

Insurance Europe is the European insurance and reinsurance federation. Through its 37 member bodies — the national insurance associations — it represents all types and sizes of insurance and reinsurance undertakings. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe’s economic growth and development. European insurers pay out almost €1 100bn annually — or €2.9bn a day — in claims, directly employ over 900 000 people and invest nearly €10 200bn in the economy.