

**How the US Private Sector Approaches the FTAA Negotiations**  
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**Linda Schmid**  
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**Introduction**

Thank you for this opportunity to present on how the US private sector approaches the FTAA negotiations. I'm delighted to see so many representatives of the insurance industry and supervisory offices. As the Former Vice President of the US Coalition of Service Industries, I hope to offer you three insights:

1. The private sector perspective on the FTAA;
2. How your counterparts in foreign markets develop negotiating objectives; and
3. Transparency objectives for the agreement.

The US private sector does not look at the FTAA in isolation. They view it comprehensively from the perspective of the multilateral trade regime, which centers on the World Trade Organization (WTO<sup>1</sup>).

The insurance industry is particularly interested in the WTO General Agreement on Trade in Services (GATS), which governs WTO members' financial service obligations to date. "Over 100 WTO members made GATS commitments in financial services during the 1986 to 94' Uruguay Round of trade negotiations, and afterward in financial services talks ending in December 1997."<sup>2</sup>

Why does the insurance industry pay attention to the WTO and the GATS in particular? Because the GATS agreement provides for progressive liberalization overtime potentially in 147 markets and may help discipline domestic regulation of the insurance sector. Services negotiations **also** started anew in the WTO<sup>3</sup> in the year 2000, despite the battle in Seattle.

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<sup>1</sup>The WTO was established in 1995 with its genesis in the General Agreement on Tariffs and Trade completed in 1948.

<sup>2</sup> Updated Analysis of the Doha Round of Trade Negotiations, Sidley Austin Brown & Wood LLP, Autumn 2002.

<sup>3</sup> As of March 2004, there were 41 offers on the table, including 28 offers from developing and transition economies.

To demonstrate how important the WTO negotiations are to the insurance industry, this week a delegation of private sector services representatives from around the world, including insurance firms, from the EU, Canada, Japan, and the US, are in Geneva.

They are discussing progress in the services negotiations with the Secretariat and WTO delegates and calling for WTO members to resolve difficult agricultural issues to move the services negotiations forward. They are reminding trade delegates that **more than half of all global flows of foreign direct investment are now in the services sector** -- normally in the form of investment in local companies, often with local partners.

In addition to paying close attention to the WTO, insurance firms monitor bilateral agreements. For example, if they were from this region, they would naturally examine CARICOM agreements with Cuba, the Dominican Republic, Venezuela, and, on a regional basis, the ACP/EU Agreement. They would also focus on the services provisions of the CARICOM Single Market and Economy and the proposed elimination of services restrictions by January 2005.

To summarize, industry considers the FTAA from the prospective of the world trade regime in light of multilateral, bilateral and subregional arrangements.

I would like to share with you the second insight -- a look at **the process of developing insurance objectives** for negotiations. The insurance industry works with regulators, negotiators, legislators and ministries as well as other companies to define priorities for negotiators in the FTAA. They reflect objectives for the WTO and build on recent US bilaterals -- particularly the US Singapore Free Trade Agreement.

Insurance firms work closely with their regulators to advance negotiating objectives. It is a subtle tug of war, with private firms advancing positions, in consultation with regulators, in light of their own domestic regimes. For example, the industry has developed priorities for transparency in government processes and procedures. They consulted with supervisors to define objectives for **standard-setting, the regulatory application process, and judicial, arbitral or administrative tribunals**. All of these elements are critical to ensuring a transparent, contestable insurance market.

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To prepare for negotiations, the industry assessed regulatory and administrative barriers in priority markets. They tried to determine if they are applied, on a discriminatory basis, vis-à-vis national firms or other international firms. By grappling with regulatory and administrative barriers in foreign markets, in conjunction with supervisors, they were able to zero in on principles for standard-setting, licensing, and adjudication.

To help negotiators, the industry provided **market and product knowledge** to convey the business model for their products and those in development. They explored with negotiators how their products will be delivered to consumers in global markets, and what form such products will take. For example, in the US Chile Free Trade Agreement, they worked with negotiators to neutralize potential reservations on new products. They explained the intricacies of their product line and were able to eliminate reservations.

Insurance firms demonstrate the importance of the insurance market to negotiators, so they will go to bat for them at the negotiating table. The industry dedicates time to documenting the contours of their home market and outlining:

- The # of people employed in their industry;
- Employment in other sectors dependent on their own sector; or
- The percentage of employment at home dependent on the overseas operations.

To help **legislators and ministries** involved in the negotiations, they undertake research to effectively participate in **public hearings and advisory committees**. Public hearings have been held on the WTO, FTAA and bilaterals -- and insurance industry and regulators have responded. They have testified on their negotiating objectives and answered questions on market barriers. They have created a record of public information on their commercial activities and priorities for legislators and ministers.

Firms work in coalitions across industries to identify horizontal issues or barriers that affect many sectors. For example, they are very interested in telecommunications provisions, as their industry depends on an affordable, high-quality communications infrastructure. Perhaps your firm has looked at the cost of communications in the region and data services available and asked how trade negotiations may alleviate constraints in the market.

All of these distinct activities have helped the insurance industry develop and refine negotiating objectives to be pursued by their negotiators. The insurance firms have made themselves available to answer questions during the negotiations and they are also very active on implementation of trade agreements.

Let's talk about objectives for the FTAA. Let's examine how industry looks at the agreement and why they focus on certain areas. Insurance objectives for the FTAA include horizontal issues and sector specific issues.

Insurance firms are interested in the **structure of the agreement**, as it will determine how the agreement is interpreted. Industry believes substantive services provisions should be provided in a single services chapter with cross-references to provisions for investment, movement of persons, and specific sectors (e.g. financial services and telecommunications) in separate annexes or chapters.

Insurance firms are interested in **the negotiating approach** because it will bear on the degree of clarity in the market and the depth of liberalization. They believe the negative list should be used to identify only exclusions and ensure deep liberalization. Use of the negative list presumes that all services should be fully liberalized thereby putting the burden on countries seeking to limit liberalization to specify and justify their exceptions<sup>4</sup>.

Insurance firms are interested in **special & differential treatment for developing countries**. They believe they should tailor the scope of their commitments and phase in provisions to their sectoral needs. They are interested in this area because the majority of the 34 countries in the FTAA are considered developing countries.

Also, they believe developing countries are subject to the same economics as developed countries and can accrue similar benefits of market liberalization as developed countries. Mauritius, Singapore, Hong Kong, and other island states have successfully exposed their firms to the international market by promoting

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<sup>4</sup> The negative list provides transparency superior to alternative scheduling methodologies. (1) A country seeking a limitation is required to do so with precision by naming the specific sector, subsector, mode of delivery, and measure for which the limitation is sought; and (2) countries are required to disclose all nonconforming measures (including some federal laws and regulations). Third, it simplifies the negotiation and implementation process by eliminating the need to negotiate agreed to this definitions of all services covered by the agreement (FTAA Americas Business Forum 2003 Submission).

an export orientation rather than a confined domestic market with limited competition.

As I mentioned previously, insurance firms are interested in **rules on domestic regulation** because they determine the clarity and the contestability of the market.

To ensure nondiscrimination in **standard setting**, they propose that negotiators agree on principles that make regulations available for public comment prior to adoption. To facilitate such notice and comments, public hearings should be held. Also, government should address the comments received from interested parties.

With regard to the **regulatory application process** the following general principles should apply, for example:

- All current regulations and licensing criteria should be publicly available and accessible in writing and through electronic media so that all market participants have easy access to such material.
- Regulators should establish a mechanism to respond to inquiries on rules and regulations from service suppliers.
- Regulatory interpretations and grants of regulatory exemptions should be made available to the public on a prompt basis.

With regard to **judicial, arbitral, or administrative tribunals**, service providers should have the opportunity to effectively engage in the adjudication process<sup>5</sup>.

In the services arena, how domestic regulation is developed and applied is of utmost importance to the transparency and contestability of the marketplace. It is in the interest of market participants to ensure that domestic regulations are formulated and applied in an open and transparent way without regard to the nationality of the industry or company affected by them.

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<sup>5</sup> For example, service providers should have an opportunity to file a complaint about inconsistent enforcement between foreign and domestic providers. Service providers should have an opportunity to file a complaint about arbitrary regulatory action against those who give comments in regulatory hearings. Applicants should have an opportunity to file a complaint in the event that a license application is refused review or the relevant authority delays decision.

## **Conclusion**

I hope this presentation has conveyed the importance of looking at the negotiations from a comprehensive perspective. I also hope industry representatives and supervisors here today have a sense of how their counterparts in foreign markets engage in negotiations.

Finally, I hope that we can all agree that transparency in government regulatory processes and procedures are necessary for clarity and contestability in the insurance market and that these elements are worth pursuing unilaterally and in trade negotiations.

We all recognize that a vibrant insurance industry governed by sound prudential regulations contributes to deeper capital markets and hastens faster economic growth through better risk sharing and investment.

Thank you.