9 March 2021

IUMI Policy Agenda

12. Macroeconomic factors

Brief description

<u>Trade agreements</u>

Multinational marine insurers are affected by a wide range of barriers of doing business abroad; limited movement of data across borders, unfair competition from state-owned enterprises, lack of transparency and need for due process of law, and forced local ownership and discrimination in obtaining business licenses and permits. Some countries also require that import or export shipments have to be insured by a locally registered insurer, while buyers are only allowed to buy insurance coverage for import shipments abroad or on basis CIF. Any agreement which leads to a reduction of the aforesaid restrictions would contribute to enable marine insurers to achieve their full potential.

Recent developments with a view to a “trade war” between large importing and exporting nations are affecting the movement of goods and trade flows. Consequently, this is also affecting marine insurance and the cargo market in particular.

WTO & TiSA
The World Trade Organization (WTO) is the global international organization dealing with the rules of trade between nations. The WTO agreements are important to ensure that trade flows as smoothly, predictably and freely as possible.

Since the World Trade Organization (WTO) established the General Agreement on Trade in Services (GATS) in 1995, trade in services has evolved dramatically due to technological advances, changing business practices, and deeper global integration. The dynamism and importance of trade in services contrast strongly with the slow pace of multilateral negotiations in this area. When the Doha Development Round of a multilateral trade negotiation reached an impasse, the idea of the Trade in Services Agreement (TiSA) was launched by the U.S. and proposed to a group of WTO members; the so-called Really Good Friends (RGF) group. The group met regularly from February 2012, but the proceedings came to a complete halt in January 2017 with the Presidency of Donald Trump in the U.S.

TiSA represents an opportunity to improve and expand trade in services. Major and fundamental barriers to trade in services are addressed, and a more liberal approach to cross-border regulation in areas such as marine and energy insurance has been suggested. IUMI supports the TiSA process, and encourages the proceedings to resume in the near future.

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Brexit
Following the UK vote in June 2016 to leave the European Union there has been ongoing negotiations about what any future post-Brexit trading relationship might look like. Following the triggering of Article 50 of the Lisbon Treaty in March 2017, the UK initiated the process of formally exiting the EU and this became effective as of 1 January 2021 when the transitional period expired.
Additionally, until the end of the transitional period on 31 December 2020, the UK was treated as an EU member state by the EEA-EFTA states. Accordingly, the rights and obligations contained in the EEA Agreement continued to apply between the UK and the EEA-EFTA states. The prevailing view is that the UK ceased to be a party to the EEA Agreement on 31 January 2020, when it withdrew from the EU. Accordingly, after the end of the transitional period, the UK is a third country within the meaning of the EEA Agreement and the territory of the UK is no longer part of the EEA.

Two kinds of negotiations took place simultaneously and, indeed in some areas, remain ongoing.

1. The Withdrawal Agreement – the terms on which the UK departs the EU. Key political issues included the financial settlement, citizens' rights and the Irish border.

2. The Future Economic Partnership – the new relationship between the EU and the UK. Key issues included goods, agricultural, food, fishery products, customs, transport, energy and services including financial services. A trade deal has been agreed but does not cater for financial services.

For financial services, industry bodies have argued for a bespoke trade deal or, failing that, agreed regulatory equivalence to manage the post-Brexit UK / EU relationship. We currently have neither, posing questions on the implications for London market insurers providing cross-border (re)insurance into the EU (and vice-versa) and, also, the wider impact of Brexit on maritime insured's in their day-to-day operation.

To combat the loss of EU passporting rights, most UK based insurers have adapted their corporate structures to operate via subsidiaries within an EU State, at least until there is a future agreement. Dublin and Luxembourg are the two most popular although Brussels, Paris, Munich, Malta and Lichtenstein are all chosen options depending on the business operation of the insurer. Most insurers wish to continue to use resources based in London and to retain minimal risk within the new EU subsidiary, at least in the early years of operation. EU entities wishing to underwrite UK business need to have an authorised branch or subsidiary already in place or be in the process of creating one and therefore in the UK Temporary Permissions Regime (TPR). To continue trading in the UK under the TPR regime, firms must have submitted an application for UK authorisation before the (now expired) deadline in order to be considered 'in' the TPR regime while they await full authorisation.

For those contracts requiring run-off following Brexit, the UK gives EEA insurers a 15 year period (part of the Financial Services Contracts Scheme). Individual EU States have differing rules for UK insurers running off business, but all ensure that insureds are not disadvantaged.

On a future services deal for insurance, it should be noted that equivalence has significant limitations since Solvency II has no equivalence regime for direct insurance, and the

Insurance Distribution Directive - which gives cross border access to brokers - has no equivalence regime and no third country branch regime. Consequently, an enhanced equivalence regime has been proposed by the London market associations, based on Solvency II precedents, to cover large risks (i.e. including marine).

The difficulty in the negotiations on equivalence is future divergence. Here, the UK Government are pushing for “structured withdrawal of equivalence”, which would make the ongoing assessment of equivalence less political and increase certainty for both the EU and UK in the longer term. The aim is to ensure equivalence could not be withdrawn at short notice. In particular, the insurance industry would like to see the establishment of a Financial Regulatory Forum, enabling a regular exchange of information and consultation between the financial services regulators of the UK and EU, most notably on the implementation of international standards. This Forum could be used to monitor equivalence assessments.

With no current regulatory equivalency in place, from a supervisory perspective the UK will be treated as a “third country” in relation to the EU. In a pre-emptive move, the UK Government has assessed and granted equivalence to EU reinsurers. Therefore, similar reciprocity is awaited with optimism by the London market.

The EU has already reached an agreement with certain UK central counterparties, but the bloc has not confirmed whether it will assess the UK’s equivalence for reinsurance purposes under the Solvency II framework. USA, Japan and Bermuda currently hold reinsurance equivalence with the EU although the Japanese agreement is subject to renewal, having expired on 31 December 2020.

However, UK-based underwriters will still be able to write reinsurance business originating from the majority of EEA countries on a cross-border basis as long as local regulatory requirements are met. That is not the case for German or Polish reinsurance business however, and those risks will have to be written via an EU subsidiary. The UK Government has also published a guidance document for the UK's equivalence framework for financial services. This outlines the principles and processes which will govern the UK's equivalence framework from the end of the transition period. In addition, HM Treasury has published a table of its equivalence decisions and an annex showing the lead regulator for each of the decisions.

Whilst the current lack of a financial services deal is disappointing, the two sides have at least committed to a Memorandum of Understanding that would allow for close coordination, including the sharing of information, while also ensuring that each side can take autonomous decisions on financial markets regulation. It is hoped this will be revealed by the end of March 2021. Moreover, the insurance industry will welcome the fact that a deal has been reached as it reduces uncertainty and the cost of cross-border business for the real economy customers of financial services firms. It also sets a more positive environment for the discussions which are still to conclude on equivalence and regulatory cooperation.

Whether the UK will become a contracting party to the EEA Agreement in the future is currently not apparent. If the EEA territory is expressly referred to in insurance conditions, the territorial scope of the insurance cover may change. Likewise, the insured interest may change if it is linked to conduct by authorities from states in the EEA area.

Overall, disruption to insurance contracts has been managed and largely limited to back office and operational complexities. On the maritime sector, though the trade and cooperation agreement between the EU and the UK regulates, among other things the conditions for duty-free goods traffic, there is a customs border created between the UK and EU (with special status for Northern Ireland). This may make the processing of customs formalities more complex and bureaucratic, and thus possibly also more susceptible to errors in the execution of customs orders. This can lead to a changed risk situation for insurance products that cover customs claims. The impact on shippers and supply chains of the expected delays at ports caused by border checks, increased paperwork and the availability of qualified staff has not yet flowed through into insurance claims and, thinking optimistically, may be short-lived. As always, the response of the cargo, freight forward or other relevant policies will depend on their specific terms – whether, for example, delay claims are excluded - and the specific policy trigger.

China
The Chinese Government deems Free Trade Agreements (FTAs) as a new platform to further opening up to the outside and to speeding up domestic reforms. This is seen as an effective approach to integrate into the global economy and to strengthen economic cooperation with other economies. It is also considered an important supplement to the multilateral trading system. Currently, China has signed and implemented 16 FTAs, and an additional 8 are being negotiated.

<u>Transport networks</u>

Large investments in transport networks may have an impact on marine insurers by fostering existing trade routes and facilitating new ones.

Belt and Road Initiative
China's Belt and Road Initiative (BRI) focuses on connectivity and cooperation throughout Eurasia and the Pacific, involving some 68 countries. The initiative aims to bridge the "infrastructure gap" in Asia and beyond through a network of roads, ports, bridges, tunnels and pipelines. The BRI comprises "The Silk Road Economic Belt" and the "21st century Maritime Silk Road". China's new foreign investment law that commenced on 1 January 2020 opens foreign company participation in BRI procurement projects.

EU TEN-T
The Trans-European Transport Network (TEN-T) is a European Commission policy directed towards the implementation and development of a Europe-wide network of roads, railway lines, inland waterways, maritime shipping routes, ports, airports and rail-road terminals.

The ultimate objective of TEN-T is to close gaps, remove bottlenecks and eliminate technical barriers that exist between the transport networks of EU Member States, strengthening the social, economic and territorial cohesion of the Union and contributing to the creation of a single European transport area. The policy seeks to achieve this aim through the construction of new physical infrastructures; the adoption of innovative digital technologies, alternative fuels and universal standards; and the modernising and upgrading of existing infrastructures and platforms.

Relevant authority / organisations and documents

TiSA:

- **WTO** – General Agreement on Trade in Services (GATS), 1995.
- **Industry position papers**:
    - Insurance Europe, 10 June 2013.
    - Global Federation of Insurance Associations (GFIA), 28 November 2013.
    - IUMI, 6 November 2014 (https://iumi.com/opinions/position-papers).
- **Global Reinsurance Forum:** Reinsurance trade barriers and market access issues worldwide, July 2018.

Brexit:

- **European Commission**
    - European Commission notice on post-Brexit servicing of existing contracts.
    - DG MOVE notice to stakeholders: Withdrawal of the United Kingdom and EU rules in the field of aviation security and maritime security, 5 July 2018.
- **UK Parliament**
    - The European Union (Withdrawal) Act 2018.
    - Chequers White Paper "the future relationship between the United Kingdom and the European Union".
- **UK Department for Exiting the EU**
    - Government Position Paper: Future customs arrangements, 15 August 2017.
- **London Market Group / UK Government Liaison Group**
    - LMG: A Brexit roadmap for the UK specialty commercial insurance sector.
- **Insurance Europe / Task Force 50 Liaison Group.**
- **HM Treasury:** Guidance document for the UK's equivalence framework for financial services, 9 November 2020.
- **GOV.UK:** Transporting goods between Great Britain and the EU: guidance for hauliers and commercial drivers, 8 January 2021.
- **UK Financial Conduct Authority:** Flowchart – How the TPR and financial services contracts regime will enable EEA-based firms to continue operating in the UK after the end of the transition period.
- **TT Club:** Brexit analysis for supply chain stakeholders.

China FTA network:

- http://fta.mofcom.gov.cn/english/index.shtml

BRI:

- **The People's Republic of China:**
    - Vision for maritime cooperation under the Belt and Road Initiative, 20 June 2017.
    - China's Arctic Policy, 26 January 2018.

TEN-T:

- https://ec.europa.eu/transport/themes/infrastructure_en

Timeline / important dates

TiSA:

- Currently on hold.

Brexit:

- Brexit referendum: 23 June 2016.
- Start of Brexit negotiations: 19 June 2017.
- Withdrawal Agreement covering financial settlement, citizens' rights and Northern Ireland: December 2017.
- UK original exit date from EU: March 2019.
- Extension of Brexit until 31 October 2019.
- Majority of MPs vote in favour of Withdrawal Agreement, 20 December 2019.
- Brexit: 31 January 2020.
- Transition period until 31 December 2020.

BRI:

- The People's Republic of China, announcement of the Belt and Road Initiative by President Xi Jinping in September & October 2013.
- IUMI conference: Presentation by Wai Yue Loh, Ince & Co, Tokyo, 20 September 2017.

TEN-T:

- Funding period 2014-2020 for 9 Core Network Corridors.