

COALITION FOR COMPETITIVE INSURANCE RATES

Both the Neal Bill (H.R. 3424) and the Administration Proposal on Foreign Reinsurance Violate U.S. WTO Commitments

- One of the foundational principles of the World Trade Organization (“WTO”) is that a country cannot treat a foreign company worse than it treats its own companies. That’s called “national treatment.”
- But both the Neal bill and the administration proposal on foreign reinsurance clearly single out foreign reinsurers for treatment worse than U.S. reinsurers. Specifically, they both subject foreign reinsurers – but not U.S. reinsurers – to an arbitrary test to limit the tax deductibility of reinsurance premiums paid to them by their U.S.-based affiliates.
- This discriminates against foreign reinsurers, violating the U.S. national treatment commitment in the WTO agreement that deals with services, the General Agreement on Trade in Services, or “GATS.”
- There are exceptions to national treatment for measures to protect a WTO member’s tax base. But the Neal bill and the administration proposal penalize the use of even third party reinsurance, where there can be no tax avoidance whatsoever since any profit (or loss) is transferred to a third party. That shows that these measures are not truly intended to protect the U.S. tax base.
- Also, because neither the Neal bill nor the administration proposal allow foreign reinsurers to deduct losses from income before calculating tax, they operate as a tax on gross sales of reinsurance, not on income. Under GATS, the United States is allowed to tax gross sales of reinsurance at 1% (the Federal Excise Tax, or “FET”), but no higher. But both the Neal bill and the administration approach result in taxing gross sales at the full corporate tax rate of 35% – by ignoring losses, they effectively assume that all sales are always 100% profit and there’s never any loss, which is demonstrably false.
- The election to be treated as a U.S. company for reinsurance is a red herring. The United States has opened its market to foreign reinsurers without exception, beyond the FET. We cannot now add a new condition for access to our market for foreign reinsurers – one that they be treated as U.S. companies for tax purposes.
- Even the name of the coalition for the proponents of these proposals – Coalition for a Domestic Insurance Industry – suggests a motive to protect the U.S. market for U.S. insurance companies.
- But just as foreign countries can’t protect their insurance markets for their domestic insurance companies and treat U.S. companies unfairly, we can’t protect our market for our domestic insurance companies and treat foreign companies unfairly. That’s why the European Union and many individual countries have complained that these proposals violate U.S. WTO commitments and U.S. tax treaties.
- In fact, U.S. insurance companies benefit enormously from open markets, and are among the most aggressive in seeking foreign customers.