Michel Barnier
European Commissioner for Internal Market and Services
European Commission
BERL 10/034
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Belgium

AMCHAM EU
AMERICAN CHAMBER OF COMMERCE TO THE EUROPEAN UNION
SPEAKING FOR AMERICAN BUSINESS IN EUROPE

Dear Commissioner Barnier,

On 25 October, 2011, DG Internal Market proposed changes to the Directives on Transparency and on annual financial statements (Accounting Directive). One of these changes, in Chapter 9 of the Accounting Directive, provides for reports to be made by groups of corporations operating in the extractive and forestry industries relating to payments made by them to governments (Country-by-Country (or CbC) reporting). The draft directives are now in front of the Council and the Parliament.

We would like to share with you some serious concerns that members of the AmCham EU have about this project, and about suggestions from some in the Parliament for its extension outside the extractive (and forestry) sectors. The principal problem with this project is that proponents of CbC reporting having never made clear their objectives (and, even when objectives are put forward, how CbC reporting would help achieve those). Some claim it is to prevent corruption; others claim it would prevent “tax abuse” through "transfer pricing" by multinational corporations; others that it will improve tax collection in developing countries; others again, that it will help investors.

First, CbC reporting has never been requested by investors and other capital market participants. Existing EU requirements under the Transparency Directive (the EU Accounting Directives and IFRS 8 Operating Segments) meet their needs. Furthermore, the IASB is investigating making a new standard under IFRS. In fact, we believe that CbC reporting would make financial statements even more complex, and would increase the risk of information overload, as well as reduce investors´ capacity to interpret company information.

Second, we believe that combating corruption is a critically important goal. All businesses strive to operate under the predictable rule of law. In view of strict US and European laws against corruption, US and EU-owned companies are disadvantaged as compared to their competitors who could benefit from corruption. However, we believe that this issue can be best addressed by the Extractive Industry Transparency Initiative, which focuses not just on multinational companies, but also on the governments themselves. This is much more effective than a one-sided reporting regime that does not provide for an effective means of tracing of any monies paid.

Third, on tax collection, we believe that this mass of information may not serve the intended purposes. Many developing country governments have trouble processing information they already collect. We believe that governments of developing and developed countries should work together, in conjunction with EU institutions, to increase the capacity of tax authorities in developing countries to collect the tax due, to share information effectively but confidentially, and to design tax systems fit for the 21st century. The private sector have already made clear that they are anxious to play a serious, positive role in this Domestic Resource Mobilisation initiative.

Fourth on “transfer pricing abuse”, again the proponents show very little real evidence that this is the problem. For the extractive industries, commodity prices are well-known. Even if some think that the prices paid to governments are too low, that is not tantamount to transfer pricing abuse. Transfer pricing relates to payments made between related parties – not between the government and a separate corporation. (And, in any event, the information required would not allow the identification of an intragroup “transfer price”, nor the determination of its accuracy.)

We would ask you to urge the Commission not to pursue these changes. This CbC reporting would impose significant costs on business to no discernable advantage of the European Union, the Single Market, or developing countries. Furthermore, it could significantly disadvantage EU companies (in part through the commercial information that might have to be disclosed) against non EU (and US) competitors.

Finally, we strongly counsel against extending the Directive further to other business sectors. Whatever the special circumstances of the extractives sector, these arguments against CbC reporting apply with still more force to other sectors where concerns of governmental corruption are lower.

Yours sincerely,

The American Chamber of Commerce to the European Union

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AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate U.S. investment in Europe totalled €1.4 trillion in 2009 and currently supports more than 4.5 million jobs in Europe.

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