AmCham EU
SPEAKING FOR AMERICAN BUSINESS IN EUROPE

Brussels, 7 October 2015

Miguel ARIAS CANETE
Commissioner
Climate Action & Energy
European Commission
Rue de la Loi, 200
B-1040 Bruxelles

Re: Impact assessment of the Emissions Trading System reform proposal

Dear Commissioner Arias Cañete,

The American Chamber of Commerce to the European Union (AmCham EU) represents U.S. companies across all sectors operating and committed to the European Union. Given the challenges posed by climate change, our members are committed to carbon reduction. We therefore recognise the importance of the EU Emissions Trading System (ETS) in EU climate policy and in reducing carbon emissions cost-effectively.

However, we believe that the legislative proposal released on 15 July falls short of the Better Regulation Standards set by the Juncker Commission. We are concerned by what we perceive to be a rushed adoption process, incomplete studies which serve as the basis for the Commission's impact assessment, and a lack of clarity surrounding the process for determining the sectors deserving carbon leakage relief.

We would welcome the opportunity to discuss these matters with you in the near future, as we believe clarification on these points is necessary for a fruitful legislative debate in the months to come. We thank you in advance for your consideration.

Yours sincerely,

Susan Danger
Managing Director
American Chamber of Commerce to the European Union (AmCham EU)

Copy to:
Ms. Cristina Lobillo Borrero, Head of Cabinet, Commissioner Miguel Arias Cañete;
Mr. Ben Smulders, Head of Cabinet, First Vice-President Frans Timmermans.

1. The adoption of the proposal seems to have been rushed

The rushed process under which such an economically important proposal was adopted concerned us. A first version of the impact assessment was rejected by the Impact Assessment Board on 22 May. It was then revised substantially and adopted on 17 June. Less than a month later, the College of Commissioners adopted the proposal on 15 July, after a fast-track inter-service consultation.

We are concerned that the College of Commissioners may not have been aware of the impact assessment's original shortcomings, or the revisions made to it, when it adopted the ETS Review legislative proposal. It is therefore unclear whether the changes made to the impact assessment were taken into consideration in the proposal that was released on 15 July.

2. The impact assessment is based on incomplete studies

The Commission's impact assessment relied heavily on external expert opinion. In particular, the impact assessment relies on the 2014 ICF International study which was meant to 'evaluate the existing ETS Directive […]it analyses the EU ETS in terms of relevance, effectiveness, efficiency, EU-added value and coherence with other Union policies.'[1] However it appears that this report was not finalised.[2] Given this, the impact assessment seems incomplete and based on sources unavailable to the public.

Out of the four studies on which this impact assessment relies, three were not finalised including the ICF International study. The other two studies pertain to elements of the proposal which are essential in assessing the legislative proposal's impact. These elements include 'the ability pass through carbon costs[3]' and an assessment of the allocation system based on benchmarks[4].

3. Assessment is based on potentially invalid assumptions on ETS schemes globally

The impact assessment states that ETS-like schemes are quickly developing globally. The Commission relies on this fact to justify a reduction in EU relief for carbon leakage industries, and decreasing the number of industries benefitting from free allowances by two thirds.

AmCham EU questions whether this is valid justification. The EU ETS differs substantially from most other carbon trading schemes existing globally[5]. The existence of other schemes seems insufficient to warrant increasing risks to EU competitiveness.

The ETS-like schemes mentioned in the impact assessment are mostly on a sub-national scale (city or regional) like in Quebec and California, and present some fundamental differences with the EU ETS. For

[1] Impact Assessment accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments SWD(2015) 135 final, p.18.
[2] Impact Assessment, Footnote 36, p. 18 states: '*At the time of writing, the final evaluation report has not yet been received*.'
[3] Impact Assessment, Footnote 8, p. 10 states: '*'Study on different pass-through factors to assess the impact of the EU ETS carbon cost' –* ***on-going work***'
[4] Impact Assessment, Footnote 8, p. 10 states: '*Assessment of the first years of the functioning of the new allocation system based on benchmarks –* ***on-going work'***
[5] As acknowledged by the impact assessment itself '*their approaches, design, features and levels of ambition are heterogeneous, making it difficult to quality the impact*.' p. 33.

American Chamber of Commerce to the European Union
Avenue des Arts 53, 1000 Brussels, Belgium
T: +32 (0)2 513 68 92 F: +32 (0)2 513 79 28 E: info@amchameu.eu W: www.amchameu.eu
ING: 310 1802069 89 VAT: BE 0862 178 560

instance, in the case of Quebec, allocation is based on actual emissions not historical ones, which means that production growth is fully factored in. When they are national, these schemes represent countries that do not have a strong industrial base, such as Kazakhstan, New Zealand, South Korea and Switzerland.

As for China's seven pilot projects launched in 2014, they cover the equivalent of 14 million tons of carbon dioxide, whereas the EU ETS covers more than 8,300 million tons[6]. With this in mind, we believe that in due course a national scheme in China can be a game changer, provided that issues with black plants and unaccounted emissions are also addressed.

4. Lack of clarity in process for determining sectors deserving of carbon leakage relief

The calculation formula defining which sectors deserve carbon leakage relief is at the heart of the Commission's current proposal for a number of AmCham EU's members. Given our observations above, we believe the Commission should provide additional clarifications to justify this part of its legislative proposal.

We also find that the Commission's proposal fails to provide predictability to the 100 sectors which will lose most of their carbon relief in 2020. The new carbon leakage list is only due to be released in 2018 at the earliest. This gives industries which are close to the cut off criteria little ability to plan for their increased costs. This is likely to have a negative impact on Europe's attractiveness to foreign investment in the relevant sectors over the next few years.

[6] Figures from Bloomberg, quoted in the Impact Assessment, p. 15.

American Chamber of Commerce to the European Union
Avenue des Arts 53, 1000 Brussels, Belgium
T: +32 (0)2 513 68 92 F: +32 (0)2 513 79 28 E: info@amchameu.eu W: www.amchameu.eu
ING: 310 1802069 89 VAT: BE 0862 178 560