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Response to the European Commission's Consultation on the Implementation of the EU Foreign Subsidies Regulation

The U.S. Chamber of Commerce is the world's largest business organization representing companies of all sizes across every sector of the economy. Our members range from the small businesses and local chambers of commerce to leading industry associations and large corporations, including many internationally headquartered firms.

We welcome this opportunity to provide comments as policymakers consider implementation of the Foreign Subsidies Regulation (FSR). We appreciate the Commission's commitment to ensure transparent, nondiscriminatory, and equitable implementation of the FSR and believe there are important unanswered questions that require urgent clarification to achieve this objective.

Chamber member companies are concerned about the lack of sufficient detail to prepare for enforcement of the FSR starting in July 2023. Key concerns relate to the specific subsidies to be reported, the number of years' worth of information required, and the level of detail that is expected. Following are principles the U.S. Chamber believes should guide FSR implementation.

1. <u>Clarify Key Definitions</u>
   The FSR's overly broad definition of "foreign financial contributions" should be narrowed and more explicitly defined.

    - Public procurement contracts, research and development tax credits, payments for employee health insurance, and other targeted investment incentives that are open to all companies operating in a particular market, regardless of their headquarters, should be out of scope.

    - Tax exemptions for COVID-19 relief, economic recovery programs including measures to address excessive energy prices, or financial assistance in the wake of natural disasters or other similar events which are broadly available to all companies should be out of scope.

2. <u>Maintain Proportionality</u>
   The FSR should be appropriately targeted only at foreign financial contributions that are genuinely market-distorting.

- Any received subsidy with a valuation of less than **€5 million** should be exempt from reporting requirements. Such *de minimis* exemptions should also be extended and applicable to public procurement procedures.

- Reporting requirements should be limited to a period of no more than the previous 3 years.

3. <u>Promote Shared Public Policy Objectives</u>
   The Commission should develop a tailored list of desirable public policy objectives, in concert with industry, for which financial contributions would be exempt from the FSR.

   - In many instances, government investments are directly linked with advancing and achieving public policy goals that are shared by the European Commission and EU member states. These should generally not be subject to FSR reporting obligations or potential enforcement actions.

   - For example, projects designed to produce positive, sustainable impacts for the environment (i.e. investments in renewable energies, carbon emission reductions, to prevent deforestation, or lower energy usage) should be encouraged, not punished.

4. <u>Ensure Non-Discrimination</u>
   The FSR should be implemented and enforced in a non-discriminatory fashion, without targeting companies based on the location of their headquarters.

   - The relative level of state investment in a firm should be a deciding factor in determining whether to pursue an investigation.

5. <u>Exempt WTO Government Procurement Agreement Partners</u>
   The Commission should exempt companies' government procurement contracts agreed with countries covered by the WTO Government Procurement Agreement.

   - In countries with open, transparent, and market-based procurement procedures, it would make little sense to penalize non-EU companies with successful contracts for allegedly distorting the EU single market, while exempting EU companies for doing the same.

   - For example, if a European company were to win a public transport contract in Canada, this would not be deemed a foreign financial contribution or subsidy. However, if a British, Japanese, Swiss, or American firm were to win the same contract, it would be subject to FSR reporting requirements and potential EU market access restrictions. This makes little sense.

6. <u>Protect Confidentiality</u>
   The FSR must appropriately protect confidentiality and institute effective safeguards

to ensure sensitive information related to national security and defense is kept secure.

- In some cases, government contracts or other projects may relate to confidential information or other projects linked to national security. In these cases, the European Commission should connect directly with the relevant foreign government to secure the necessary information, since companies in these circumstances typically are forbidden from disclosing sensitive information with outside organizations or governments.

7. Minimize Compliance Burden
   The Commission should explicitly define what information is to be reported and in what manner.

   - Without additional specificity on reporting requirements, companies will default to providing excess information, creating unnecessarily large compliance costs — in terms of time and financial resources. Such a situation also would be burdensome for the still undefined entities charged with implementing and enforcing the FSR.

   - Streamlined and clear reporting requirements will assist both companies' ability to comply with the law and the Commission's ability to conduct investigations where warranted.

Conclusion

We believe the above principles will allow for careful and measured implementation of the FSR. This in turn will minimize compliance burdens on companies and government agencies alike, while enabling the FSR to target genuine market distortions—which emanate overwhelmingly from non-market economies.

We also urge the Commission to discuss FSR implementation within the context of the EU-U.S. Trade and Technology Council to develop common approaches and best practices to target illegal and market-distorting foreign subsidies.

The Chamber appreciates this opportunity to provide preliminary input and looks forward to further opportunities to collaborate as these policies are developed and implemented.

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