U.S. Chamber Feedback on the FAIR Transition and Competition Act

1. **Overall Approach**. We applaud the members' effort and appreciate the engagement and opportunity to comment. Taking steps to limit carbon leakage is an important aspect of effective climate policy, as is preserving the international competitiveness of manufacturing and industry impacted by domestic GHG policies.

2. **Timing and Need for Additional Deliberation.** As the concerns described below illustrate, it is important for a policy as complex and impactful as this to undergo thoughtful deliberation and study. This is not an attempt to stall but rather a good faith call for dialogue and study of potential ramifications of a Border Carbon Adjustment (BCA). While the EU Carbon Border Adjustment Mechanism (CBAM) is often cited as an impetus for U.S. action, its development was preceded by extensive study and consultation, and EU officials indicate it could be delayed beyond the currently planned 2026 phase-in date to allow more data gathering. This should allow time for study and dialogue similar to what took place in the EU, in order to better address the concerns that have been identified.

3. **Absence of Economy-wide Carbon Market**. As discussed in the July meeting with Congressional staff, the Chamber supports an economy-wide carbon price or market-based mechanism that allows for transparent GHG mitigation costs on industries. We believe this is the most effective tool to broadly accelerate emissions reductions, and that without it, border carbon adjustments are extremely difficult if not impossible to effectively implement. It is also important to advancing the integrated, holistic, and balanced implementation of the Paris Agreement (Article 6). Accordingly, we hope to work with members to advance these policies.
    - Illustrative company comment: "A CBAM without a carbon price will foment negative trade outcomes without actually addressing the price disparities between low and no carbon technology and traditional technology. For example, we are investing significantly in hydrogen technologies, however, without a carbon price our customers have no reason to switch to an H2 solution. A CBAM will make some of our inputs for that technology even more expensive, without creating any market signal to invest."

4. **Impacts on Clean Energy Transition.** While tariffs on steel, aluminum and other industrial imports may prevent leakage and protect U.S. industry from economic disadvantages, the competitiveness of many clean energy industries is dependent on affordable steel and aluminum and fabricated products containing high amounts of steel and aluminum. Some Chamber members warned that raising the costs of such goods could negatively impact deployment of clean energy technologies such as electric vehicles or renewables. We encourage exploring

ways to minimize impacts to industries reliant on affordable steel and aluminum, including clean energy industries.

> Illustrative company comment: "As you probably know, wind turbines are very steel intensive. The major turbine suppliers source their parts globally, so the new tariff would be very harmful. Raising costs at the same time as the federal production tax credits expire would be very detrimental to the U.S. wind industry and the clean energy transition."

5. **Trade Diplomacy**. We believe that enhancing climate-related trade diplomacy efforts is paramount, and commend inclusion of language requiring it. However, engagement with other nations in the context of the WTO in advance of implementation of this measure is essential if immediate retaliation is to be avoided.

6. **Applicable Countries**. The legislation authorizes the Secretary of State to designate a country as exempt from BCA tariffs if laws and regulations of that country are "at least as ambitious" as Federal laws and regulations addressing GHGs. The Chamber recommends the addition of language ensuring objective and transparent criteria to guide such determinations.

   In the absence of such criteria, diplomatic complications could arise from uneven application of the authority. For example, do developing countries (beyond those already exempt) receive more leeway or a longer timeline to demonstrate comparable ambition, and if so, how does this square with non-discrimination obligations the United States has undertaken in the WTO agreements? Similar questions could apply to close allies, or countries from which strategically important goods or resources are imported.

7. **Trade Impacts**. Given the extensive benefits to U.S. businesses and the workers they employ from participation in the global rules-based trading system, we must ensure this new initiative is framed to uphold obligations the United States has undertaken in the WTO agreements. The bill should also provide greater clarity for how the United States will account for foreign environmental costs incurred on imports. Failing to address these concerns would present substantial risks:
   - The potential for retaliation against U.S. exporters is a significant concern. It is noteworthy that China and others have already threatened measures to retaliate against the EU's proposed CBAM. A trade conflict on this scale would deprive U.S. businesses of access to important foreign markets, depress export sales, and endanger large numbers of American jobs.
   - A unilateral approach that fails to uphold nondiscrimination obligations the United States has undertaken in the WTO agreements would also threaten the BCA's efficacy as a tool to combat climate change, which is a global challenge

that can only addressed through concerted international action. Certainly a trade war will make doing so more difficult.

- Tariffs will raise costs for import-dependent sectors and generally depress demand for carbon-intensive goods throughout the economy in ways that do not necessarily advance climate goals. For example, despite U.S. energy abundance, many refineries import heavy crude oil because of its compatibility with existing facilities. Tariffs on such imports would flow through the economy in the form of increased gasoline prices, negatively impacting the competitiveness of other sectors (agriculture, manufacturing, and transportation, for example). This may be unavoidable, but should be studied and understood to ensure such added costs are transparent, consistent with how the bill improves transparency with regard to domestic environmental costs..

8. **Administrative Feasibility**. As we discussed, the administrative feasibility of the legislation is a concern. In particular, assigning sectors a "domestic environmental cost incurred" associated with GHG policies at the Federal, state, and local levels is a Herculean task, both because of the wide variation in such costs across states and regions but even more so due to the difficulty in ascertaining reasonable estimates for those costs. This further reinforces the need for an economy-wide market-based mechanism.

9. **Border Adjustment for U.S. Exports**. The absence of an adjustment for carbon emissions compliance costs upon export means U.S. export sectors will not be fully protected against competitive disadvantages resulting from domestic GHG policies. For example, U.S. LNG, fertilizer, or aluminum exporters competing against other exporters for global market share. Inclusion of such a mechanism warrants strong consideration.

10. **EU CBAM Compatibility**. Due to the absence of an economy-wide carbon price in the U.S., the BCA is not directly compatible with the proposed EU CBAM, thus U.S. exporters may still face the prospect of trade barriers when selling to the EU market. Again, this emphasizes the importance of trade diplomacy as well as passing legislation instituting an economy-wide market mechanism eliminate overlapping domestic environmental costs—both policies that the Chamber supports.

11. **Scope**. The scope of sectors included may not align with those most impacted by GHG policies. Beyond the power and transportation sectors, it is unclear how the Biden Administration will approach direct GHG regulations on trade-exposed industries. To the greatest extent, aforementioned trade diplomacy efforts should endeavor to achieve a harmonized approach toward the sectors included and GHGs covered.