American
Fuel & Petrochemical
Manufacturers

1667 K Street, NW
Suite 700
Washington, DC
20006

202.457.0480 office
202.457.0486 fax
afpm.org

May 10, 2013

Filed Electronically

The Honorable Demetrios Marantis
Acting U.S. Trade Representative
Office of the U.S. Trade Representative
600 – 17th Street, N.W.
Washington, D.C. 20508

Attention Docket ID No. USTR-2013-0019-0001

Subject: American Fuel & Petrochemical Manufacturers' Comments on the Proposed TransAtlantic Trade and Investment Partnership (TTIP) Negotiations with the European Union. [Federal Register Number 2013-07430 (April 1, 2013)]

Dear Ambassador Marantis:

The American Fuel and Petrochemical Manufacturers, AFPM, requests that the USTR include the proposed modifications to article 7a of the European Union (EU) Fuel Quality Directive (FQD) (98/70/EC) [herein referred to as the "proposal"] as a topic to be addressed in U.S. TTIP negotiations with the EU. AFPM would like to request the opportunity to testify at the USTR hearings on the morning of May 29. The concerns stated in this letter represent a summary of the testimony that would be given.

We note that the TTIP agreement is aimed at achieving a substantial increase in transatlantic trade and investment. As AFPM outlined in our February 3, 2012 letter to Ambassador Kirk, if the EU approves the proposed amendment to the FQD authored by Commissioner Hedegaard, it would adversely affect the U.S.-EU trade relationship, potentially eliminating a $32 billion-a-year flow of trade. This makes the FQD a critically important topic for U.S.-EU trade talks.

AFPM is a trade association representing high-tech American manufacturers of virtually the entire U.S. supply of gasoline, diesel, jet fuel, other fuels and home heating oil, as well as the petrochemicals used as building blocks for thousands of vital products in daily life. AFPM members manufacture virtually all the fuel and petrochemicals produced in the U.S., as well as fuels that are in some cases exported to the EU. As such, our businesses will be directly and adversely affected if the European Commission adopts this proposal that would require separate reporting values for products derived from oil sands and oil shale crudes.

The Commission issued a proposal in October 2011 which would establish default carbon intensity values for diesel and gasoline from all crude oils except natural bitumen (oil sands) and oil shales.

Higher carbon intensity values would be assigned for diesel and gasoline derived from oil sands or oil shale crudes.

AFPM believes there shouldn't be any differentiation among any crudes. Rather, AFPM believes adoption of a single value for all crudes represents the correct approach.

We note that the EU proposal differs sharply from California's low carbon fuel standard (LCFS) in that California assigns all refiners a single industry average crude carbon intensity regardless of the crudes used at any single refinery.

Potential World Trade Organization (WTO) concerns with the proposal.

In addition to the negative impact the proposal would have on U.S. – EU fuels trade and the resulting net increase in global greenhouse gas (GHG) emissions, we believe the proposal also raises significant concerns under at least two WTO agreements: the General Agreement on Tariffs and Trade (GATT) and the Agreement on Technical Barriers to Trade (TBT). These agreements, respectively, seek to prevent discrimination against imports from a particular country vis-à-vis like imports from another country or those from domestic producers ("Most-Favored Nation" and "National Treatment" principles); and to remove unnecessary obstacles to trade such as the imposition of needlessly complex compliance requirements or ill-tailored regulatory measures. Should article 7a of the FQD be implemented, we may have no choice but to request the U.S. and Canada seek redress at the WTO.

The proposed Directive will significantly impact the U.S. – EU fuels trade, likely resulting in the inability of the U.S. to export diesel and other petroleum products to the EU. To comply, the U.S. refining industry would need to establish extensive, costly and likely infeasible Identity Preservation schemes to track crude oil molecules, through production into finished products and to end-users.

The proposed methodology for implementing Article 7a of the EU FQD (98/70/EC) places carbon intensity (CI) values on crudes produced from oil sands and oil shale along with synthetic fuels that, for all practical purposes, makes the crudes and products derived from them, unsalable in the EU.

According to the U.S. Energy Information Administration (EIA), in 2012, the U.S. refining industry exported 335 thousand barrels per day (KBD) of diesel to the EU, and the EU refining industry exported 349 KBD of gasoline to the U.S. The trades together represent $32 billion dollars per year[1]. This product

---

[1] Distillate export volumes were taken from available U.S. Energy Information Administration (EIA) data for January through December 2012. http://www.eia.gov/dnav/pet/pet_move_impcus_a1_NUK_epm0f_im0_mbblpd_a.htm. Gasoline import volumes were used from available EIA data for finished gasoline. http://www.eia.gov/dnav/pet/pet_move_impcus_a2_nus_epm0f_im0_mbblpd_m.htm and gasoline blending components http://www.eia.gov/dnav/pet/pet_move_impcus_a2_nus_epobg_im0_mbblpd_m.htm. In both cases, only EU country data plus volumes associate with Gibraltar were used, assuming most Gibraltar volumes destined for EU countries. Monthly average spot New York ULSD and conventional gasoline prices were taken

flow occurs because of differing fuel production and usage patterns in the U.S., which uses comparatively more gasoline than the EU, which uses comparatively more diesel fuel than the U.S. The trade is built on the comparative advantages these differing consumption patterns produce for refiners in the U.S. and the EU on increases in efficiency and competitiveness of the refining sectors in both regions.

The proposal would make the U.S. export of diesel and other petroleum products to the EU a practical impossibility because it would require U.S. refiners to ensure that any petroleum product, including diesel, was not produced using crude oil derived from these sources in the crude slate.[2] Since crudes are comingled based on refinery configuration and economics, the need to ensure that oil sands crude does not end up in a particular refineries diet would require the establishment of an Identity Preservation scheme for crudes used in U.S. refineries – a costly, complex, and probably unachievable task. The details of the resulting Chain of Custody system would require directing crudes to particular refineries, product segregation based on crude input, rigorous recordkeeping, and the establishment of an accounting scheme for managing the process. Such a task would be significantly more challenging than the Chain of Custody schemes required of biofuel suppliers in the EU; segregation of biomass supply on a supplier basis is more achievable due to the nature of biofuel lot production and the mass balance approach utilized.[3] The onerous nature of such accounting would likely have a significant impact on the U.S. – EU fuels trade.

A higher default value for oil sands crude could then effectively eliminate the EU as a viable future market for exports from the United States of diesel fuel and gasoline manufactured from these crudes. Further, other non-U.S. exporters to the EU may not have sufficient or accurate records of crude source to differentiate their imports from the average default basis. Thus, these imports to EU will be advantaged relative to those sourced from U.S. refineries. The EU's FQD proposal constitutes a discriminatory action that impacts U.S. refiners, and Canadian crude suppliers, and could result in the adoption of similarly discriminatory measures in other jurisdictions. EU jurisdiction outside EU territories and changes in international crude reservoir and production techniques further create unknowns and inequities in treating produced products differently by crude type.

It is important to note that the EU proposal would not achieve its proposed environmental goal. Crude and fuel markets are global in nature. Thus if U.S. produced diesel were not exported to the EU, the net result would not be a net decreased use of oil sands derived crude globally, because such crudes

---

from EIA's website as well http://www.eia.gov/dnav/pet/pet_pri_spt_s1_m.htm. The 2012 values were calculated assuming the average export and imports daily rates persisted for the entire year.

[2]Since the CI value assigned in this proposed amendment for Oil sands derived and conventional crude is 26 versus 6 g CO2e/MJ, respectively, it is unworkable to meet the FQD target of 6% CI reduction if refined products from oil sands crude (i.e., diesel) is used in fuel blends for sale in the EU.

[3]For more information on Chain of Custody Schemes, particularly for biofuels, see the IPIECA publication: "Chain of Custody Schemes" http://www.ipieca.org/publication/chain-custody-options-sustainable-biofuels

and fuels refined from them would be shipped to alternative markets, and be utilized elsewhere (termed crude and fuel shuffling). The net result would be an increase in global GHG emissions, due to the fuel consumption from increased transportation of these crudes and fuels elsewhere. The Wood Mackenzie consulting study[4] details the likely impact of the proposal on global crude and fuel trading and finds that EU consumers would face incrementally higher fuel costs and higher GHG emissions stemming from transportation of crudes and fuels to alternative markets. For additional information, a study on crude shuffling and GHG impacts may be found in a study by Barr Engineering.[5]

Summary

AFPM recommends the USTR include article 7a of the FQD in its TTIP negotiations with the EU. The assignment of a higher default GHG value for fuels that are derived from oil sands constitutes a discriminatory action against U.S. refiners that could effectively eliminate the European Union as a viable future market for exports from the United States of diesel fuel and other finished products.

Thank you for your consideration of this important matter. AFPM would welcome the opportunity to discuss our concerns in further detail at a meeting at your convenience. If you have any further questions, I may be reached by phone at (202) 552-8461 or by e-mail at dfriedman@afpm.org.

Sincerely,

David Friedman
Vice President, Regulatory Affairs
AFPM

[4] http://www.europia.com/DocShareNoFrame/docs/1/LPPLFNBCCADIOJLLDFONOIBHGH4K48S4H786HCVD1HYO/CEnet/docs/DLS/Wood_Mckenzie_Report-Executive_summary-2013-00109-02-E.pdf

[5] Barr Engineering report: "Low Carbon Fuel Standard "Crude Shuffle" Greenhouse Gas Impacts Analysis," June, 2010. Report available on demand.