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The Honorable Ron Kirk
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-2012-0001

Subject: American Fuel & Petrochemical Manufacturers' Comments on the United States Trade Representative's U.S.-EU High Level Working Group on Jobs and Growth. [Federal Register Volume 77, Number 7 (Wednesday, January 11, 2012)]

Dear Trade Representative Kirk:

AFPM, the American Fuel & Petrochemical Manufacturers, is pleased to provide comments on the United States Trade Representative's US-EU High Level Working Group on Jobs and Growth referenced above. 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 United States, as well as fuels that are in some cases exported to the European Union. As such, our businesses will be directly and adversely affected if the European Commission adopts the proposed amendment to the Fuel Quality Directive (FQD).

I. Introduction

Since the objective of the US-EU High Level Working Group is to identify policies and measures to increase US-EU trade and investment to support mutually beneficial job creation, economic growth, and international competitiveness, AFPM recommends the Working Group examine the EU's proposed Fuel Quality Directive. If the EU approves the proposed amendment to the FQD (authored by Commissioner Hedegaard), then it would adversely affect the US-EU trade relationship.

Energy is an important part of the United States and European Union trade relationship. Since the demand for gasoline and diesel differs between the US and the EU because the US imports gasoline from Europe and exports diesel to Europe, the market for diesel manufactured in the US but shipped to the EU is an \$11 billion-per-year business. The adoption of the amendment to the



FQD places this business in jeopardy. Hence, this issue is important for the Working Group to focus on.

II. Discriminating GHG Default Values Result in US-EU Trade and Security Implications

In 2009, the EU amended its Fuel Quality Directive to reduce greenhouse gas (GHG) emissions of fuels by six percent from 2010 levels by 2020. On October 4, 2011, the Climate Action Directorate-General (DG) of the European Commission (EC) presented EU member states with an FQD proposal to assign a lifecycle greenhouse gas emission value for oil sands and oil shale crude, and coal-to-liquids that would essentially make them unusable in the EU. This proposal of a separate value for oil sands has been very controversial within the EC, and was opposed by the DGs for Energy, Enterprise and Industry, External Action Service, and Trade. AFPM has a serious and continued concern with the EC's October 2011 FQD proposal. 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.

In order to track overall progress and compliance against the Directive's GHG reduction targets, the FQD proposes to assign average carbon dioxide (CO₂) default values to crudes which are subsequently refined to road transport fuels. However, the FQD assigns a default GHG value that is 22% higher for oil sands crude, with higher default values for oil shale, coal-to-liquids and gas-to-liquids, compared with other crude types. Unfortunately, for these, the FQD proposed amendment assigns carbon intensity values which would make them essentially unusable. As written, the proposed Fuel Quality Directive would assign a higher life-cycle GHG default value to fuels that are derived from oil sand, oil shale, coal-to-liquids, and gas-to-liquids as compared to fuels derived from conventional crudes. AFPM has concerns that these proposed values would unfairly target natural bitumen, such as that being produced as oil sands in Canada, and also possible future finds from the United States. The high values in the proposal are not supported or justified by sufficient scientific or technical analysis and we believe they are discriminatory. There are several crudes currently in use in Europe that have higher life-cycle GHG intensity, but are not assigned similar higher default values. . This proposal stands in contrast to an earlier decision by the EU to not differentiate crudes, leaving open an option to reevaluate this in 2014 but only if the science progresses sufficiently.

A recent study finds the GHG intensity of fuels from bitumen from Alberta, Canada, could very well be lower than that of many fuels derived from conventional crudes in Europe that are not treated separately under the European Commission's proposed Fuel Quality Directive.¹ When considering the Alberta, Canada fiscal policy of charging carbon fees for production methods not equivalent to carbon capture and sequestration, the situation becomes even more pronounced.

¹ According to a recent report by IHS CERA titled *Oil Sands, Greenhouse Gases, and US Oil Supply: Getting the Numbers Right*, "[t]he average oil sands import to the United States has well-to wheels life-cycle GHG emissions about 6 percent higher than the average crude refined in the United States."



Adoption of the European Commission's proposed FQD amendment could result in undesirable and unnecessary trade impacts. Europe exports gasoline to the U.S., and when market conditions warrant, the U.S. in turn exports diesel to Europe. The FQD amendment discriminates against U.S. refiners' diesel exports to Europe. These exports averaged about 250,000 barrels per day in 2010 which resulted in an \$11 billion-per-year business. The proposed FQD amendment provides significant disincentives for EU markets to import fuels from the U.S. such as diesel that may be derived in part or whole from oil sands.

A higher discriminatory default value for oil sands crude could effectively eliminate the EU as a viable future market for exports from the United States of diesel fuel and gasoline manufactured from these crudes—crudes that will represent an increasing source of U.S. supply. Such a scenario could result in potential fuel cost and supply impacts in EU markets, and will likely have repercussions in the US fuels market. Also, targeting the Canadian oil sands could possibly conflict with the World Trade Organization rules. Of note, refineries in the EU do not currently process Canadian Oil sands crudes, therefore, this regulation may attempt to regulate crude production extra jurisdictionally.

Further, discriminating against oil sands with differentiated default values on different types of crude oil may reduce the European (and possibly global) security of supply. Crudes that the EU FQD currently claims are associated with fewer GHG emissions have historically traded at a significant premium, thus increasing the costs to both EU refineries and consumers.

III. Finished Fuels Cannot be Distinguished Based on their Feedstock

Refiners accept crudes from a variety of different sources and all crudes vary in their compositions to a degree. However, at various stages in the refining and transporting process, feedstocks of all types are commingled and processed into finished fuels that are indistinguishable. When crudes of all types are refined into gasoline, jet fuel, diesel, etc., they leave the refinery as fungible products that meet identical specifications and are thus shipped together in pipelines and stored together at tanks in terminals, at which point there is no way to determine from which crude oils a given finished fuel was derived. Therefore, it would be virtually impossible for U.S. refiners to comply with the regulatory burden of maintaining chain of custody for all fuels that may be derived from oil sands, as is proposed by the Commission's proposed Directive, unless oil sands are no longer refined in US refineries.

When burned in an engine, one gallon of gasoline emits the same amount of CO₂ as another gallon of gasoline. However, if the entire lifecycle of that same gallon versus another gallon is taken into account, variations in life cycle GHG emissions will occur. Variations in the associated life cycle GHG intensity of fuels may relate to geography, crude type, field maturity, production or processing techniques, transportation distances, and many other factors.



The US to EU exports averaged 250,000 barrels per day in 2010 which resulted in an \$11 billion-per-year business. However, the FQD proposal could present many U.S. refiners with a choice: cease exports to the EU, cease use of oil sands as crude, or account for all fuels that may in part or in whole be derived from oil sands – a regulatory burden that is impossible to meet.

A higher default value for oil sands crude could 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.

IV. A Single Value for Crudes is Needed

AFPM clearly believes the European Commission's proposed Fuel Quality Directive would not only unjustly discriminate against fuels derived from oil sands and oil shale feedstocks, but its adoption would undoubtedly result in weakening of EU refining competitiveness and security of supply without reducing greenhouse gases. Rather than apply differentiated CO₂ average default values to specific sources of crudes, there should be a single value for upstream emissions. This value, irrespective of nature of feedstock or country of origin, could be used in the reporting of life-cycle GHG's from fuels in the EU.

V. Petroleum-Based Fuels Should be Averaged Together

A small but significant amount of refined fuels are exported from the U.S. to the EU each year. For example, over 91 million barrels of distillate fuel was exported from the U.S. to the EU in 2010, according to the U.S. Energy Information Agency. In response to changes in global markets, U.S. exports of petroleum products to the EU have doubled in recent years, mostly as diesel fuel. These refined fuels exported from the U.S. to the EU contribute to the greater EU energy security. However, there is no way to know what percentages of those fuels were derived from oil sands, thus presenting U.S. refiners with a distinct dilemma if the Commission's proposed Directive is adopted. They must choose between halting exports to the EU, or complying with the impossible regulatory burden of maintaining a chain of custody for all fuels that may in part or in whole be derived from oil sands.



VII. Conclusion

In conclusion, with the US-EU exports averaging 250,000 barrels per day resulting in an \$11 billion-per-year business in 2010, the Working Group's examination of the Fuel Quality Directive is important to ensure a viable future market with the US-EU trade relationship.

AFPM recommends the Working Group focus on preventing the FQD from using discriminatory GHG default values for fuels derived from oil sands and oil shale feedstocks. 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. This would also result in severe effects on EU refining competitiveness and the security of supply without further advancing the EU's objective to reduce GHG's. AFPM opposes the Commission's current proposed FQD approach and favors one that provides a single value for crudes and does not assign separate discriminatory default GHG values for fuels derived from oils sands and oil shale feedstocks.

Sincerely,

David Friedman
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