



EUROPEAN UNION
DELEGATION TO THE UNITED STATES OF AMERICA

The Head of Delegation

Washington, 7 April 2017
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The Honourable Wilbur Ross
Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Ave, NW
Washington, DC 20230
Attn. Office of Policy and Strategic Planning

**Re: Construction of Pipelines Using Domestic Steel and Iron – Request for
Comments, Federal Register Vol. 82, No 50 of March 16, 2017 (Docket Number:
170309252-7252-01) - Comments on behalf of the European Union**

Dear Secretary Ross,

I write to you on behalf of the European Union (EU), in response to the request for comments issued by the Department of Commerce on March 16, 2017, concerning "Construction of Pipelines Using Domestic Steel and Iron".

We note that the Department of Commerce is required to deliver a plan to the President by July 23, 2017, for the domestic sourcing of materials for the construction, retrofitting, repair, and expansion of pipelines inside the United States, as directed by the January 24, 2017 Presidential Memorandum regarding "Construction of American Pipelines" (Presidential Memorandum).

We further note that the plan is expected to ensure that *"all new pipelines, as well as retrofitted, repaired, or expanded pipelines, inside the borders of the United States, including portions of pipelines, use materials and equipment produced in the United States, to the maximum extent possible and to the extent permitted by law."*

The objectives of this plan, as specified within the Presidential Memorandum, raise a number of questions and concerns from the EU perspective. We understand that the Notice of Request for Comments issued by the Department of Commerce invites any input considered relevant to the development of a plan for the domestic sourcing of materials for the pipelines. On this basis, I submit the following comments on behalf of the EU and its stakeholders.

The EU is concerned that the memorandum and the subsequent Notice of request for comments refer to a very broad coverage of Buy American obligations which, if implemented, would reduce the opportunities of EU industries to contribute to any US pipeline construction or repair projects in the future. It appears that the definition of "produced in the US" would cover all manufacturing processes. We understand that in practice any steel or iron of EU origin or any material or products containing steel or iron manufactured in EU Member States would be excluded from US pipeline projects. We understand that this would mean for instance that components manufactured in the EU, such as pipes and valves, would not qualify for US pipeline construction, repair or maintenance. Such a restriction would have various negative effects.

Apart from the negative implications that the plan would have on European businesses, we believe that domestic preference policies lead to increased costs, bureaucracy and delays in US pipeline projects. We understand the legitimate goal to promote full-employment and high wages. However, we believe that the proposed Buy American restrictions are not the appropriate way to meet these goals.

It is worth noting that the EU does not apply such domestic preferences. This also applies to government procurement where the US has restrictions in place. Moreover, the present consultation implies that the plan would be targeted primarily at private investment and private entities. It would impose domestic content requirements on the purchasing decisions of private companies. This is unprecedented and would have serious consequences also with respect to policies with third countries, if it is put into practise.

The EU has and will continue to advocate for open markets in international fora. Additional domestic preferences would be contrary to that objective. Both the US and the EU have in the past been pursuing a clear policy against localisation requirements in third countries, including China, India and Russia. The US Department of Commerce has in the past specifically instructed third countries that competition with other markets, for instance by attracting investment, is possible only if local content requirements are eliminated. These potential measures, which would be harmful to US industry, would also make the international fight against third countries' local content requirements much more difficult. In fact, this initiative would set a very bad example for third countries.

Furthermore, the EU is concerned that the plan under discussion would not comply with the US commitments in the World Trade Organization (WTO). In this respect, we would draw attention to the obligations based on the WTO agreements, in particular GATT 1994. The US Government has committed to treat imports and foreign companies the same way it treats domestic products and companies. The imposition of domestic preference requirements on private entities could be considered an introduction of discrimination between domestic and foreign producers/suppliers in potential violation of the National Treatment obligation of Art. III of GATT 1994.

The plan being developed raises legitimate concerns also from the public procurement rules' angle. In this respect, we would like to draw your attention to the WTO Government Procurement Agreement (GPA), to which both the United States and the EU are parties. It is not clear, on the basis of the consultation, whether future pipeline projects would be considered public projects or only projects conducted by private operators. GPA obligations, and in particular the obligation not to discriminate, would have to be respected if public procuring entities participate in projects. It would first be necessary to verify if any of the procuring entities involved in the purchases of a specific


pipeline project were covered by the US GPA commitment schedules. If a purchase is conducted by public entities covered by the US commitments, there is no specific exception under GPA to exempt domestic preferences for pipeline construction or repair projects, even if funded by the Federal Government. I note that some commentaries have also indicated that pipeline-projects could be conducted under a "public-private partnership" framework. It cannot be excluded that in the future some US pipeline projects would be public-private partnerships covered by the United States' GPA obligations.

The Notice of Request for Comments does not contain information about how the possible domestic content restrictions on pipeline projects would in practice be enforced and whether the obligations would be subject to legislation. The reference "to the extent permitted by law" would not appear to be sufficient to fulfil US international commitments.

We understand that the Department of Commerce has been directed to develop this plan concerning the construction of US pipelines. We would, however, strongly encourage you to reflect on the negative implications of, and further precedent-setting effects of imposing domestic preference policies or regulations and to ensure full respect of the international obligations to which the US has committed.

Thank you for your consideration of our concerns. If we can be of further assistance, or if you have any questions regarding this letter, please do not hesitate to contact me or my staff.

Yours Sincerely,



David O'Sullivan
Ambassador