



O'MELVENY & MYERS LLP

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**North American Oil and Gas: Opportunities and Challenges for
Policymakers
Restrictions on Exports of U.S. Crude Oil**

Several Laws Restrict Crude Oil Exports

- Energy Policy and Conservation Act of 1975 (EPCA)
- Mineral Leasing Act of 1920
- Export Administration Act of 1979
- Outer Continental Shelf Lands Act
- Naval Petroleum Reserves Production Act of 1976
- One statutory exception: Crude oil produced from Alaska's North Slope “may be exported unless the President finds that exportation of this oil is not in the national interest.”

These laws prohibit exports of crude oil (including lease condensate), but not most petroleum products.



EPCA Framework

- EPCA requires the President to “exercise the authority provided for...to promulgate a rule **prohibiting the export of crude oil and natural gas produced in the United States.**”
- The President may “**exempt** from such prohibition such crude oil or natural gas exports which he determines to be **consistent with the national interest and the purposes** of this chapter.”



EPCA – Congressional Purposes

- Congress intended to “decrease dependence upon foreign imports, enhance national security, achieve the efficient utilization of scarce resources, and guarantee the availability of domestic energy supplies at prices consumers can afford.”
- “The President must also be vigilant to assure that exemptions do not result in greater reliance on imports.”



Export Administration Regulations (EAR)

- The Commerce Department administers the crude oil export rules as part of the EAR “Short Supply” Controls
- All exports must be licensed
- Commerce will approve license applications for certain transactions:
 - From Alaska's Cook Inlet
 - To Canada for consumption or use in Canada
 - In connection with refining or exchange of Strategic Petroleum Reserve oil
 - Of up to an average of 25,000 bbl/d of California heavy crude oil
 - Of foreign-origin crude oil where the exporter can demonstrate that the oil is not of U.S. origin and has not been commingled with oil of U.S. origin
 - That are consistent with findings made by the President under an applicable statute



Additional License Possibilities

- Commerce will consider other applications on a case-by-case basis. Proposed transactions must be consistent with the national interest and the purposes of EPCA.
- Only one example in rules (for certain swaps):
 - (1) The exports will result directly in the importation into the United States of an equal or greater quantity of crude oil,
 - (2) The exports are under contracts that may be terminated if the “petroleum supplies of the United States are interrupted or seriously threatened,” *and*
 - (3) The applicant for export can demonstrate there are compelling economic or technological reasons beyond its control such that the “crude oil cannot reasonably be marketed in the United States.”



Crude Oil v. LNG Export Process

- EPCA prohibits exports of both crude oil and natural gas except in the “national interest.”
- In the Energy Policy Act of 1992, Congress “deemed” that applications to export LNG from or to nations with which the United States has a free trade agreement are in the public interest and must be granted without modification.
- Energy Department considers LNG export license applications.
 - Notice and public comment
 - Project-based licenses
 - FERC conducts site license process
- Commerce Department handles crude oil license applications.
 - Confidential process
 - Transaction-based licenses



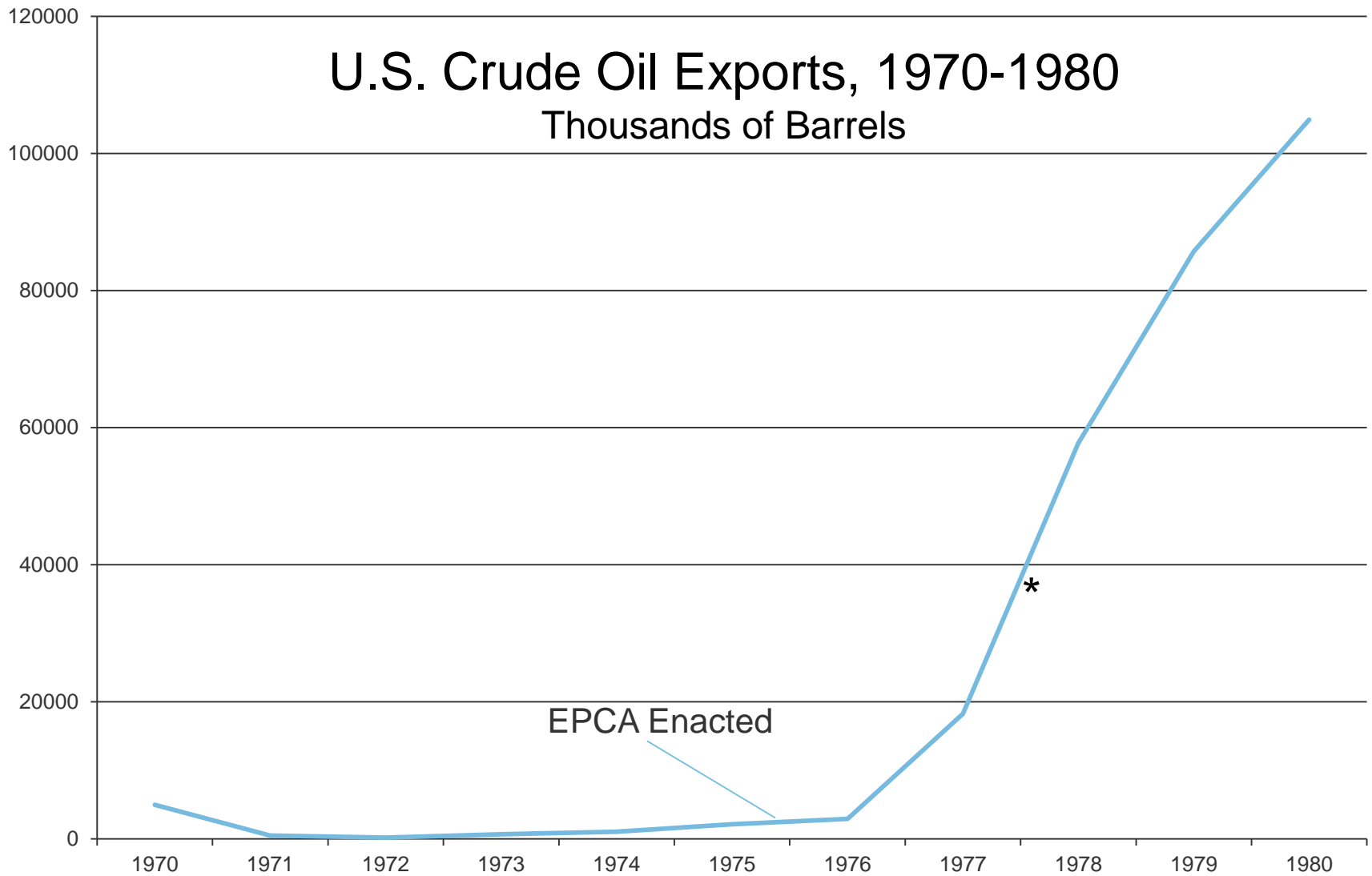
Possible Options for Change

- Legislation
 - North Slope approach: Reverse presumption; President authorized, but not required, to prohibit exports in the national interest
 - Natural gas approach: Favorable licensing consideration for trade agreement partners, national security allies
- Create favorable licensing policy options by rule
 - *E.g.*, trade agreement partners, national security allies



U.S. Crude Oil Exports, 1970-1980

Thousands of Barrels



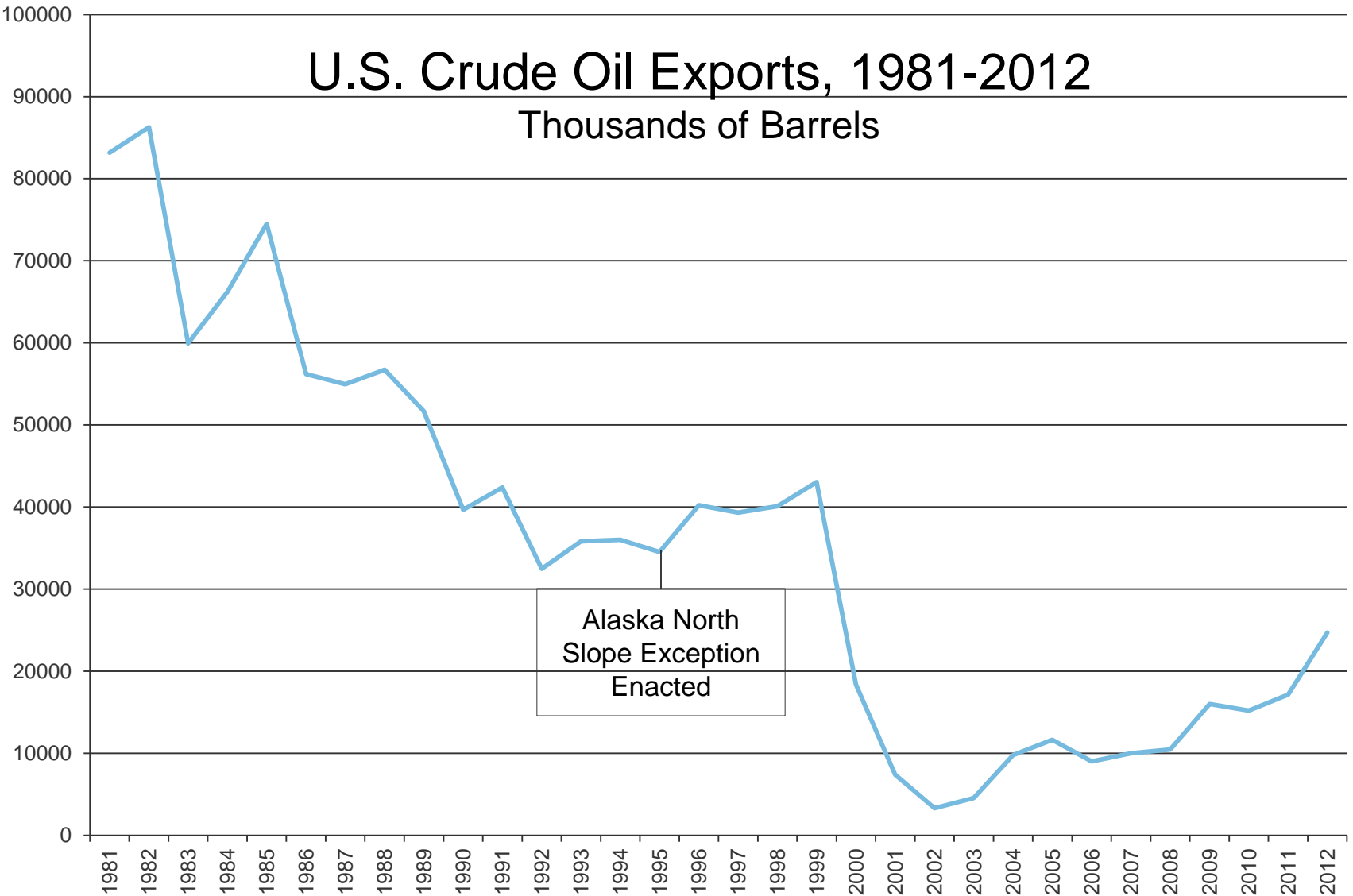
Source: Energy Information Administration

* "Exports" included shipments to the U.S. Virgin Islands.



U.S. Crude Oil Exports, 1981-2012

Thousands of Barrels

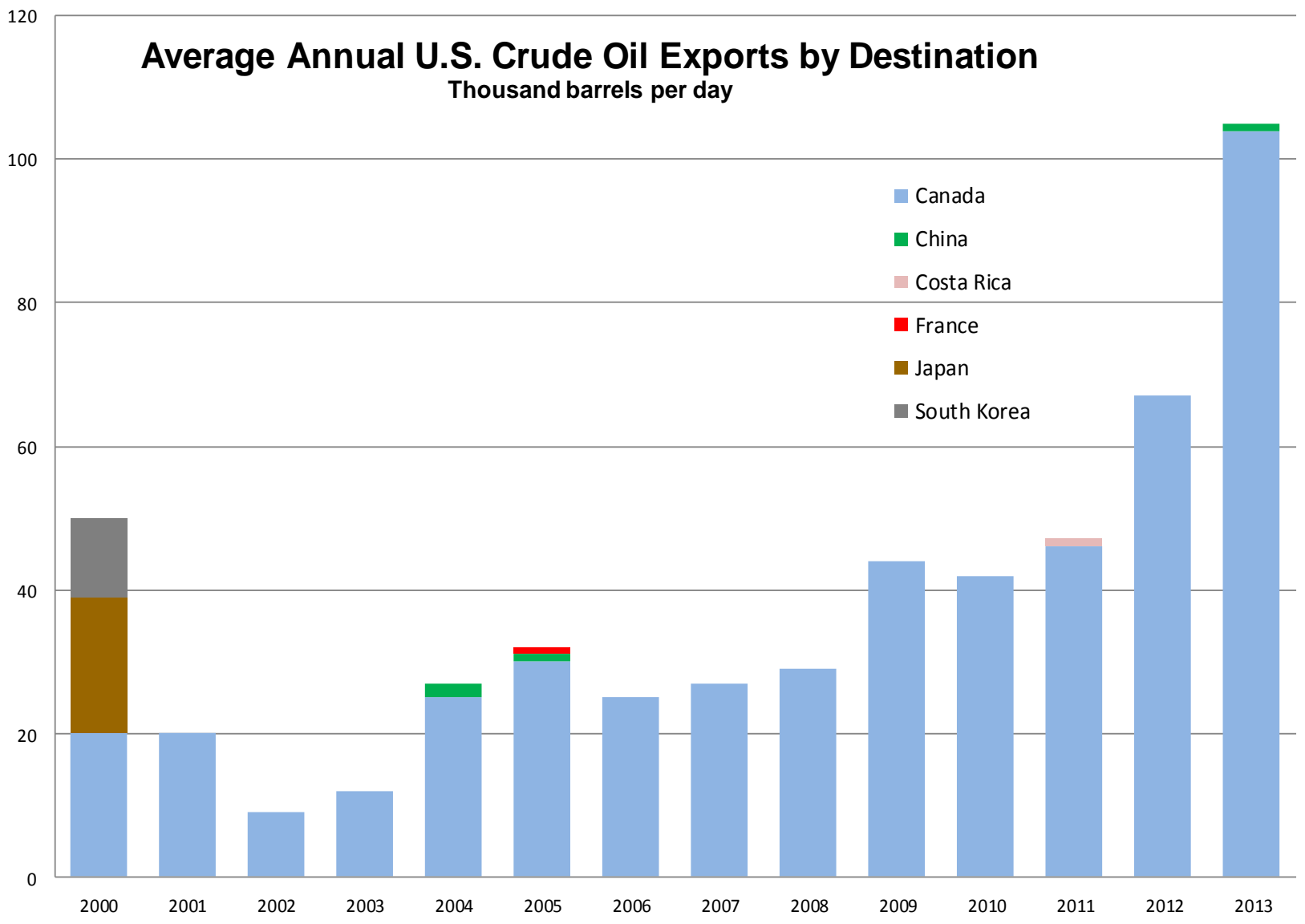


Source: Energy Information Administration



Average Annual U.S. Crude Oil Exports by Destination

Thousand barrels per day



Source: Energy Information Administration

