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The U.S. Crude Oil Export Ban: An Update



The Export Ban Stems from Several Statutes

- Energy Policy and Conservation Act (EPCA)
 - General prohibition on exports of crude oil
- Mineral Lands Leasing Act (MLA)
 - General prohibition on exports of “domestically produced crude oil transported by pipeline over rights-of-way granted” under the MLA
- Outer Continental Shelf Lands Act (OCSLA)
 - General prohibition on exports of “any oil or gas produced from the outer Continental Shelf”
- Naval Petroleum Reserves Production Act (NPRPA)
 - General prohibition on exports of “any petroleum produced from the naval petroleum reserves”
- Export Administration Act (EAA)
 - Authority to prohibit exports for reasons of “short supply”



Limited Presidential Discretion

- EPCA: Requires the President to “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.*”
- MLA, OCSLA, and NPRPA: Permit certain swaps/exchanges involving “adjacent foreign states.”
- OCSLA and NPRPA: Permit exports based on Presidential “national interest” determinations.



Crude Oil v. Petroleum Products

- Crude oil produced in or entering the United States cannot be exported, to any destination, without a license
- No restrictions on exports of petroleum products
- Crude oil is: “[A] mixture of hydrocarbons that existed in liquid phase in underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities **and which has not been processed through a crude oil distillation tower**. Included are reconstituted crude petroleum, and lease condensate and liquid hydrocarbons produced from tar sands, gilsonite, and oil shale. Drip gases are also included, but topped crude oil, residual oil, and other finished and unfinished oils are excluded.”



Few License Exceptions

- Commerce normally will approve license applications for exports:
 - 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 MB/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 MLA, OCSLA, or NPRPA



Swaps: Just an Illusion?

- BIS will consider license applications for swaps where:
 - (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.”**
- BIS has not licensed such a swap.



Exchanges with “Adjacent” Countries

- BIS also will consider license applications for –
“Exports involving temporary exports or exchanges that are consistent with the exceptions from the restrictions of the statutes listed in paragraph (c) of this section.”
- These statutes include the MLA and OCSLA, which include exceptions for –
“such crude oil which is either **exchanged in similar quantity** for convenience or increased efficiency of transportation with persons or the government of an **adjacent foreign state....**”
- “Adjacent states” include Canada and Mexico



A Century of Oil Trade Controls

- 1900 – 1950s: Texas Railroad Commission effectively controls U.S. production and global prices
- 1957 – 1973: Oil imports targeted as threat to U.S. producers
 - “Voluntary,” then mandatory import controls
- 1971 – 1973: President Nixon imposes wage, price, and allocation controls
 - Oil production falls farther, imports increase 3.5x from 1970 – 1975
 - TRC abandons production controls
- October 1973: OAPEC oil embargo; sharp price increases, gasoline scarcity



Export Door Opens Slightly

“National interest determinations” authorize particular exports based on source or destination:

- 1985 – Exports to Canada for “consumption or use therein”
- 1985 – Exports from Cook Inlet, Alaska (any destination)
- 1988 – Exports of Alaskan North Slope Oil to Canada: Up to 50 MB/D of crude transported by the Trans-Alaska Pipeline (TAPS)
- 1992 – Exports of California Heavy Crude: Up to 25 MB/D of California heavy crude (any destination)
- 1995/1996 – Exports of Alaskan North Slope Oil: Based on Congressional authorization, President Clinton permits unlimited export of TAPS oil (any destination)
- 2015 – Mexico?
 - February 18 letter from 21 Senators urges that Mexico be given equivalent export status as Canada



Processed Condensate Exports

- In mid-2014, the Commerce Department issued commodity classification decisions to Pioneer Natural Resources and Enterprise Products Partners confirming their assessments that condensate processed through a distillation tower is not “crude oil” under the EAR definition.
 - The crude oil export rules thus do not apply to such products
- Numerous other companies reportedly then submitted their own commodity classification requests.
- In late December 2014, BIS issued FAQs providing guidance on the type of processing required for non-exportable crude oil to become an exportable petroleum product.



New Analytical Consensus

- Resources for the Future (February 2014)
- ICF International (March 2014)
- IHS (May 2014)
- Brookings/NERA (September 2014)
- GAO (September 2014)
- Aspen Institute (October 2014)
- EIA (October 2014)
- CBO (December 2014)
- Columbia University Center on Global Energy Policy (January 2015)
- Rice University Baker Institute for Public Policy (March 2015)



Former Senior Officials Urge Change

“I believe that the question of whether the United States should have a substantially more permissive policy with respect to the export of crude oil and with respect to the export of natural gas is easy. The answer is affirmative. The merits are as clear as the merits with respect to any significant public policy issue that I have ever encountered.”

Dr. Lawrence H. Summers, Former Treasury Secretary and former Director of the National Economic Council (September 9, 2014)

“Lifting the [crude oil export] ban will advance our economy, our energy future, and our foreign policy and national security goals. It is the next step in leveraging our energy posture to protect and to enhance U.S. leadership for years to come.”

Hon. Thomas E. Donilon, Former National Security Adviser (January 21, 2015)



Experts Concur

“An energy independent and net exporter of energy as a nation has the potential to change the security environment around the world – notably in Europe and in the Middle East.” (General Martin Dempsey, Chairman of the Joint Chiefs of Staff, March 13, 2014 Congressional testimony)

“[T]he necessary impactful thing that America should do at home now is for the president and Congress to lift our self-imposed ban on U.S. oil exports, which would significantly dent the global high price of crude oil.” (Thomas Friedman, NY Times, September 6, 2014)

“The intellectual case has become so strong that there's no rationale for” the export ban. (Dr. Daniel Yergin, Reuters, October 27, 2014)



And So Do Editorial Writers

THE WALL STREET JOURNAL.

"The studies... show that oil exports would result in big economic and job gains, as producers plow higher returns back into production... To the extent it increases supply, U.S. oil exports would also provide a strategic benefit. Lower world prices put pressure on rogue regimes that are big oil producers such as Russia, Iran and Venezuela."

-Wall Street Journal Editorial Board, January 16, 2015

The Washington Post

"Consumers would benefit through expanding U.S. oil production, allowing U.S. crude to go [to] the refineries that most want it, promoting stability in the global crude oil supply and, perhaps, putting some downward pressure on global prices... [T]he United States' continuing export restrictions diminish the country's credibility when it asks other nations to adopt rational policies that rankle economic nationalists. Congress should let the country participate fully in the international oil market."

-Washington Post Editorial Board, December 17, 2013

The Boston Globe

"...[A]s Washington considers a major change in US energy policy that has divided the fossil fuel industry, it's the oil companies who have a better argument. The current ban on exporting oil has done pretty much nothing to help everyday consumers, but it has enriched refineries. There is no longer a convincing justification for this outdated policy."

-Boston Globe Editorial Board, December 28, 2014

Chicago Tribune

"Like free trade in general, selling American oil overseas would be good for our economy. It would make the oil market more efficient, encourage a build-out of the U.S. energy network and stabilize prices over time for consumers... [A]dditional business would translate into job creation as the oil industry invested in refineries and transportation networks to handle the light, high-quality crude being produced domestically."

-Chicago Tribune Editorial Board, December 30, 2013



Prospects for Change?

- 2015: 40th anniversary of EPCA
 - Price controls ended in January 1981
- House and Senate hearings, March 2015
- House and Senate Comprehensive Energy Legislative Agendas
- National Security environment – Iran, Russia
- Congressional or Presidential action – or both?



Thank you!



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