1. INTRODUCTION

Comments by U.S. Energy Secretary Ernest Moniz at an energy conference in Seoul in May set energy markets abuzz with speculation that the White House may reverse the long-standing ban on U.S. crude oil exports. Mr. Moniz said that “the issue of crude oil exports is under consideration [because] the nature of the oil we’re producing may not be well-matched to our current refinery capacity.” U.S. domestically-produced oil is light and sweet, meaning it has low levels of sulfur. But U.S. refineries lining the Gulf Coast are built to

3. 原油はその密度や硫黄分などの含有物によって特徴付けられる。一般的に軽質低硫黄原油は重質高硫黄原油よりも製油所で石油製品を精製するためのコストが脱硫処理などの過程を経ないため低くなる。しかし米国の多くの石油精製能力が集中しているメキシコ湾岸地域の製油所は歴史的に重質原油への対応を進めてきた。
process heavy and sour crude oil from Latin America and Canada.\(^5\)

Earlier in the same month, one of President Obama’s most senior counselors, John Podesta, said that the White House was “taking an active look” at the surging domestic supply wrought by the U.S. drilling boom.\(^6\) He mentioned in particular the production in Eagle Ford in Texas.

However, the “debate” effectively began January 2014 when Senator Lisa Murkowski (R-AK), Ranking Member of the Senate Energy and Natural Resources Committee, released her white paper, “A Signal to the World: Renovating the Architecture of U.S. Energy Exports.” Her paper addresses export policies covering a range of hydrocarbons, while also covering renewables and nuclear technology. But her comments on “ending the prohibition on crude oil and condensate exports” are the ones which gained media attention.

Indeed, during the first few months of 2014, along with White House officials’ comments, there were many events and news headlines on U.S. crude oil export ban. Along with Sen. Murkowski’s paper, the American Petroleum Institute called to end “arbitrary or unfair limits or outright bans on energy exports.” The U.S. Senate Energy Committee conducted its first public hearing on the future of U.S. crude oil export policy, that is, whether to lift the U.S. ban on crude oil exports. Other key U.S. senators also outlined their positions in the debate. Senators Edward Markey (D-MA) and Robert Menendez (D-NJ), supporters of the oil export ban, sent a letter to President Obama outlining why the Department of Commerce does not have the legal authority to lift the ban on its own – emphasizing that only Congress has the ability to adjust U.S. oil export policy, instead of the executive branch. In February, Reuters released a news story about the U.S. Department of Commerce having issued licenses for crude oil cargoes bound for Europe.\(^7\) (Reuters later made the distinction that the cargoes bound for the U.K. and Italy, which received export permits in January, were simply re-exports of foreign-origin crude, and did not invoke the legal exemption applying to crude oil swaps or sales from the Strategic Petroleum Reserve.)

Despite such a seeming shift in tone, due to legal and policy constraints, the Obama administration has little leeway in lifting the ban. U.S. mid-term elections are set for November 2014, with one-third of U.S. Senate seats up for contention, as well as all 435 seats in the House of Representatives. Looking forward to the Presidential elections in 2016, the U.S. political climate is in a state of flux. There is thus a lack of consensus in accomplishing this during the remainder of President Obama’s administration.

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2. CRUDE OIL EXPORT RESTRICTIONS

Anchoring the U.S. crude export policy is the Energy Policy and Conservation Act (EPCA) of 1975, which directs the President of the United States to restrict the export of domestically-produced crude oil, along with natural gas. (The Department of Energy determines natural gas licensing export process. It is less restrictive as set forth by the Natural Gas Act of 1938.) The law establishes a broad policy of banning crude oil export. Crude oil transported on pipelines that received federal right of ways; produced on the Outer Continental Shelf; or produced from the Naval Petroleum Reserve—these are all restricted from exports. (These restrictions are covered under the statutes of the Mineral Leasing Act of 1920, the Export Administration Act of 1979, the Exports of Alaskan North Slope Oil Title (technically part of the Mineral Leasing Act), the Outer Continental Shelf Lands (OCS) Act of 1953, and the Naval Petroleum Reserves Production Act from 1976.)

EPCA allows the President to permit crude oil export only in circumstances where the exports are deemed to be in the national interest. The President made such determinations in 1992 for limited export of heavy crude oil from California, crude oil produced from Alaska’s Cook Inlet in 1985, and oil exports to Canada for use or consumption therein in 1985 and 1988.

The Department of Commerce regulates crude oil export licenses through the Bureau of Industry and Security (BIS). The BIS administers guidelines for crude oil exports that fall in categories listed in its Short Supply Controls. The BIS will grant licenses under the requirements in the Export Administration Regulation (EAR) listed below:

(i) Exports from Alaska’s Cook Inlet;
(ii) Exports to Canada for consumption or use therein;
(iii) Exports in connection with refining or exchange of strategic petroleum reserve oil;
(iv) Exports of heavy California crude oil up to an average volume not to exceed 25 Mbd/;
(vii) Exports 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

10 Ladislaw, Sarah O.
11 Nerurkar, Neelish.
Crude oil shipped on the Trans-Alaska Pipeline, produced overseas, or is from the Strategic Petroleum Reserve are also permitted for exports.

(1) LOOPHOLE FOR EXPORTS

The BIS does allow exports of refined petroleum products, bypassing the need for a license.\(^{13}\) The President is not bound by EPCA to restrict refined products such as gasoline, diesel, distillate and propane. The U.S. is already exporting liquids such as naphtha and condensates.\(^{14}\) The result is that U.S. exported 4.3 MMbd in December 2013. U.S. Energy Information Administration chief Adam Sieminski says that the U.S. is one of the largest petroleum exporters in the world, becoming a net exporter by 2017. The U.S. exports gasoline mainly to Latin America and diesel to Europe.

(2) HISTORY OF CRUDE OIL EXPORT RESTRICTIONS

The historical underpinning of U.S. hydrocarbons export ban stems from the “oil shocks” of the 1970s. At the time, the prevailing view was the U.S. faced a persistent energy crisis, due to permanent shortage resulting from declining domestic production; increased domestic demand; and vulnerability to disruptions stemming from the politicized global market. Imports had risen in the early 1970s, while U.S. production was on the decline, having peaked in 1970. In 1973, supplies were disrupted, when OPEC imposed an oil embargo against the U.S. in retaliation for U.S. support of Israel during the Arab-Israeli War.\(^{15}\) Another major disruption occurred during the Iranian Revolution of 1979. Pricked by a scarcity mentality, the prevailing mindset in the U.S. was that exports were detrimental to national security.

3. ECONOMICS OF EXPORTS VS. IMPORTS

The situation today is, of course, vastly different. The U.S. is just entering what has been termed the “Great Revival”.\(^{16}\) Since 2008, U.S. production has grown to 3 MMbd or 50%. U.S. demand has also decreased to 2 MMbd lower than 2005. Several factors have contributed to lowered demand: the recession of 2008; U.S. motorists are driving less; biofuel use has grown; fuel economy of the U.S. vehicle fleet has improved; along

\(^{13}\) Nerurkar, Neelesh.


\(^{16}\) Burkhard, Jim, Managing Director, CERA, U.S. Senate Committee on Energy and Natural Resources Testimony, January 31, 2012, http://www.energy.senate.gov/public/index.cfm/files/serve?File_id=a0ce3c7f44de-49db-b053e4af9bbbed87e2
with the potential of using natural gas instead of diesel for trucks.

It is important to understand that crude oil comes in many varieties. They are measured and graded by whether they are light or heavy. The American Petroleum Institute gravity or API gravity gives crude oil types their measurements. A higher API gravity number indicates a lighter crude oil whereas a lower API gravity number indicates a heavier crude oil. Although API gravity has no units, it is nonetheless expressed in “gravity.” In general, crude oil with lower API gravity and higher sulfur content (crude oil is also characterized by its content of sulfur) are more costly to refine compared to those with higher API gravity and lower sulfur content.

Crude oil is a commodity traded globally. In terms of the debate on U.S. crude oil exports, the most important benchmark prices are those for West Texas Intermediate (WTI, priced in Cushing, OK) and Brent (produced in the North Sea for delivery to Sullom Voe in Scotland.) Light Louisiana Sweet (LLS) at the US Gulf coast is also quickly rising in importance as a secondary benchmark supplementing the traditional benchmark WTI.

The U.S. also has price differentials for crude as reported by the Petroleum Administration Defense Districts or PADDs. PADDs cover the East Coast, Midwest, Gulf Coast, Rocky Mountains, and the West Coast. The price spread between WTI and Brent has been around U.S.$6.50-7.00. Some analysts posit that will likely widen if the crude oil export ban is kept in place. The crux of the debate on whether to maintain the restriction on U.S. crude exports or to lift the ban is the implications for crude oil price—domestic and international.

The fracking revolution has brought considerable light sweet crude to the U.S. market, creating excess supply. The major surplus of oil produced in the U.S. is light sweet oil, with the prolific areas of the Bakken in North Dakota and the Eagle Ford in Texas as the premier stand-outs. Historically, U.S. crude imports have been comprised of the heavy sour crudes coming from Canada, Venezuela, and Mexico. The explosion of new U.S. domestically-produced crude is creating a glut in the refinery system, specifically in the Gulf Coast (PADD 3), site of America’s largest refinery industry.

Because of the export ban, excess supply of light sweet oil is stuck in the U.S. and cannot be shipped to other refiners. U.S. refiners, especially those located in PADD 3 in the Gulf Coast, thus are struggling to keep pace with the flow of light oil. Gulf Coast refiners have been shipping excess light sweet crude to PADD 2 refining centers and east coast Canadian refineries. According to EIA’s statistics, the U.S. refining system is currently operating almost full, more than 85% of capacity for the past 12 months. It’s likely that the U.S. refining system need to add more capacity to absorb the additional supply. And most analysts agree that the U.S.

17 Canada is one of exception of US crude oil export restriction.
refinery industry will reach its point of light crude saturation. Some call this the “light crude wall.” They say it will arrive well after President Obama has left office.

**PADD Map of the United States**

4. POLITICS AND PROCESS OF LIBERALIZING CRUDE OIL IMPORTS

There has been much talk in the recent weeks from several senior Obama administration officials who have spoken publicly about conducting a serious review of U.S. policy toward crude oil exports. However, some analysts have described the White House approach as “cautious,” as discussions over amending the policy will be lengthy and contentious. The most important consideration is that entirely lifting the export ban would require legislative action, rather than an executive order from President Obama. Even if the White House were to invoke the use waivers for the sake of “national interest,” President Obama would face strong opposition from within his party. Sens. Ed Markey (D-MA) and Bob Menendez (D-NJ), both of whom support the ban, wrote a terse letter to the President, saying that the Department of Commerce does not have the legal authority to lift the ban. Only the legislative has the ability to adjust the policy, not the executive branch. Even among politicians who are aware of the uneconomical nature of the export restrictions, there is still much opposition to
liberalizing the statute. For example, Senator Rob Portman (R-OH) expressed concerns about price impacts on gasoline if the ban were lifted. It is important to note that Ohio is located in PADD 2, and that a major independent refinery, Marathon Petroleum Corporation, maintains its headquarters in Ohio. As the debate unfolds, state-interest issues will come to the fore.

Some lawmakers are said to appear nervous in embracing crude oil exports. They are afraid of facing political attacks in upcoming elections should gas prices rise for unrelated reasons. No new legislation thus far has appeared to overturn the ban and few expect any lawmakers to introduce measures before the November mid-tem elections. It seems that the Republican Party leadership in Congress has been mainly silent on the issue. Republican Senate seats are up for re-election in 2016, including Illinois, Ohio, and Pennsylvania. These vulnerable Republican Senators, especially, would fear having their opponents using the vote against them. A Republican candidate in the 2016 presidential election season would be hard-pressed to include lifting the ban as part of their platform. It is also important to note that the 2018 Senate races include two shale-state Democrats who are up for re-election. They are Jon Tester from Montana and Heidi Heitkamp of North Dakota. It thus appears that opponents of liberalizing U.S. crude oil export policy have an easier argument than those who support it.

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