TALK IS CHEAP, SO IS OIL: WHERE DO WE GO NOW THAT WE’VE LIFTED THE U.S. CRUDE OIL EXPORT BAN

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“By fighting you never get enough, but by yielding you get more than you expected.”1

I. INTRODUCTION

“Drill, baby, drill!” the chant of the Republican Party since 2008, is used to express both Republican and public sentiment for

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1. DALE CARNEGIE, HOW TO WIN FRIENDS AND INFLUENCE PEOPLE 150 (hardcover
ed. 2009).
increased oil and gas production within the United States. But with increased oil and gas production comes a glut of excess supply. On August 14, 2015, the U.S. Department of Commerce’s Bureau of Industry and Security (BIS) decided to allow oil swaps between the United States and Mexico. This landmark decision has sparked discussion about lifting the U.S. crude oil export ban as a solution to the excess supply of light, sweet crude produced domestically. Supporters of lifting the crude oil export ban argue that the policy is antiquated, creates detrimental consequences to both oil producers and consumers, and creates inefficiencies to U.S. refining capacity. Conversely, opponents of lifting the crude oil export ban argue that lifting the ban would hurt U.S. energy security; increase prices of gasoline, hurting consumers; potentially increase the total level of greenhouse gas emissions; and hurt U.S. refineries who benefit from low crude oil prices.


3. See Barani Krishnan, Oil Ends Down as Much as 2 pct on Oversupply, Gasoline Pressure, REUTERS (Nov. 5, 2015, 4:34 PM), http://www.reuters.com/article/2015/11/05/us-global-oil-idUSKCN0SU0320151105 (reporting that crude prices fell nearly 4 percent due to an oversupply of crude).


5. Id. at 7-8.


On December 18, 2015, after much debate, Congress passed and President Barack Obama signed into law a $1.15 trillion spending bill that included provisions to lift the decades-old U.S. crude oil export ban. This Comment attempts three things. First, it will briefly discuss the legislative history of the U.S. crude oil export ban and its reversal. Then, it will discuss the current world market conditions of oil and how, despite a complete policy reversal of the crude oil export ban, U.S. crude oil exports will not be a likely reality anytime soon. Lastly, it will argue that while lifting the U.S. crude oil export ban is a step in the right direction, the United States must attempt to coordinate with other oil-producing countries in order for true global energy stability to be realized.

II. BACKGROUND

In 1859, Edwin Drake drilled the first commercially producing oil well known as the “Drake Well” in Titusville, Pennsylvania, just two years prior to the start of the American Civil War. The modern petroleum industry, however, did not launch until the infamous Spindletop well was drilled in Beaumont, Texas in 1901; this spurred innovation of new oilfield technologies that changed both the American transportation and oil and gas industries forever. This began the American


addiction to “black gold.”

A. A Brief History of U.S. Oil

In the 1940s, U.S. oil consumption surpassed oil production for the first time and the United States began to import oil from other nations in order to satisfy its appetite for black gold. Most U.S. oil imports arrived from the Middle East. Later, Middle Eastern oil-rich nations formed the Organization of the Petroleum Exporting Countries (OPEC) in order to coordinate and strengthen their energy industries.

The symbiotic relationship between the United States and its trading partners in OPEC continued until 1973, when the United States declared support of Israel in its war with Egypt and Syria. Due to their political differences, OPEC cut off its supplies of crude oil to the United States in an event known as the Arab Oil Embargo. Simultaneously, OPEC announced that its oil producing nations would cut back on oil production, thus decreasing the existing global supply and raising the posted price of oil. American consumers immediately felt the effect of the oil embargo. Long lines formed at gas stations across America due to

the fear of a gasoline shortage. This in turn caused prices of gasoline to skyrocket even more, contributing to a major economic downturn in the United States. In response to OPEC’s actions and the general sentiment that the United States was too dependent on Middle Eastern oil, the U.S. Congress passed the Energy Policy and Conservation Act (EPCA) in 1975. It prohibited the exportation of crude oil and natural gas exports, with some exceptions, in order to boost U.S. energy security. Recently, however, the laws and regulations surrounding the exportation of natural resources were altered to permit the unlimited exportation of petroleum products and the exportation of crude oil products so long as these products comply with the applicable licensing requirements.

Canada, the United States’ northern neighbor, enjoys freely granted licenses as well as crude oil from the Alaskan North Slope, “re-exports of foreign-sourced crude, and certain exports from California.” In fact, Canada is the primary destination for U.S. crude oil exports, with imports that exceeded 570,000 barrels per day (bbl/d) in May 2015—a record high.

On August 14, 2015, the BIS announced its approval of licenses for limited exchanges of crude oil between the United States and Mexico to allow U.S. producers to swap their lighter, sweeter crude oil for Mexico’s heavier-grade crude. In this


19. Myre, supra note 16.


21. Energy Policy and Conservation Act § 103; CARSON & KREILIS, supra note 4, at 8; see also Myre, supra note 16 (“The embargo made the U.S. feel heavily dependent on Middle Eastern oil”).


23. Id.

24. CARSON & KREILIS, supra note 4, at 4.

decision, the BIS cautioned that approval of these licenses did not depart from existing law. The BIS approval of U.S. and Mexico oil swaps “is based on language in the 1975 Energy Policy and Conservation Act.” This Act “directs [the Department of Commerce] to consider historical trade relations with Canada and Mexico when limiting crude exports.” Furthermore, in its application for U.S. crude oil swaps, “Mexican state oil company Pemex [stated that] it wanted to exchange about 100,000 barrels a day—about 1 percent of United States output.” Hence, the exchanges are unlikely to make a significant dent in the United States’ domestic supply of light, sweet crude. Nonetheless, debate regarding the symbolic potential of the BIS’s August 2015 decision exploded throughout the nation, culminating in a significant policy reversal by the United States on its crude oil export ban.

B. The Status Quo of the U.S. Oil and Gas Industry

Technologies such as hydraulic fracturing and horizontal drilling are the primary reason for the surge in oil and gas production in the United States. Through these new technologies, the United States has surpassed Saudi Arabia as the top oil and natural gas producer.

Cikanek, supra note 6 (arguing that the wider trade of crude oil with Mexico will highlight the economic benefits that free trade in crude oil will create).

26. CARSON & KREILIS, supra note 4, at 3; see also Cama, supra note 25 (“Commerce also rejected export applications to countries in Asia and Europe, because they are not afforded the same priority under the law as Mexico and Canada, which already gets U.S. shipments.”).

27. CARSON & KREILIS, supra note 4, at 2.


29. Cama, supra note 25.


32. Kashi, supra note 17; see also Krishnan, supra note 3 (“Crude prices fell nearly 4 percent after the U.S. government reported a 2.85 million-barrel crude inventory spike..."
1. Lack of Refining Capacity to Process Light, Sweet Crude

The U.S. Energy Information Administration (EIA) estimated that U.S. crude oil production would average about 9.3 million bbl/d in 2015 and 9.5 million bbl/d in 2016—a stark increase from the 5.6 million bbl/d produced in 2011.33 A majority of the increased production is due to the fracking and drilling of light tight crude oil from low permeability, or tight resource formations such as the Bakken, Permian Basin, and Eagle Ford.34

Yet, the increase in supply of domestically produced crude oil has not prevented the continued import of foreign crude oil.35 Despite excess supply of crude oil, U.S. imports of foreign crude oil remain high.36 This is primarily due to the fact that most refineries in the United States are configured to process heavier types of oil like those produced in Canada or Venezuela.37 The oil drilled and produced by the United States is typically a light, sweet crude,38

The difference between the two crudes is significant, particularly in terms of market value.39 Light, sweet crude is easy and cheap to process into other petroleum products because it has low density and sulfur contents and thus has a higher price.40 In

as higher domestic production made up for lower imports last week.”)


36. Nicole Friedman, Why the U.S. Keeps Importing So Much Oil, WALL ST. J. (Apr. 8, 2015, 2:14 PM), http://blogs.wsj.com/moneybeat/2015/04/08/why-the-u-s-keeps-importing-so-much-oil/ (“Crude imports to the U.S. rose last week to 8.2 million barrels a day, the highest weekly level since December, the U.S. Energy Information Administration said Wednesday.”).

37. Id.; CARSON & KREILIS, supra note 4, at 5.

38. CARSON & KREILIS, supra note 4, at 5.

39. See id. (stating that the market value of a crude is a reflection of the crude’s density and sulfur content).

40. Id.
contrast, heavy, sour crudes denote high density and high sulfur content and, as a result, are more difficult to process into gasoline and diesel fuel; hence, its lower price.\textsuperscript{41}

One should not, however, discount the value of heavy, sour crude. Prior to the use and development of fracking technology, oil production throughout the world was geared toward the extraction and development of heavy crudes.\textsuperscript{42} U.S. refineries invested in “cracking” facilities to convert heavier crudes into lighter products like gasoline, jet fuel, and diesel—some of the most valued crude products on the market.\textsuperscript{43} Currently, U.S. refineries process light, sweet crude that is domestically produced by blending it with heavier, sour crude oils because there is limited ability to process light, sweet crude.\textsuperscript{44} Despite the fact that the United States is now experiencing record oil and gas production, the country’s refineries are unable to efficiently process the light, sweet crude that is being brought to surface.

In comparison, most refineries outside of the United States are technologically equipped to refine light, sweet crude.\textsuperscript{45} As such, it would be both environmentally and economically efficient to allow the United States to export its light, sweet crude to foreign refineries for processing. In exchange, U.S. refiners would be able to continue to import heavy, sour crude to refine in its “cracking” facilities. Until recently, the EPCA prohibited U.S. producers from unloading their excess supply of crude oil by selling it to other nations (aside from countries such as Canada that hold a license from the U.S. Department of Commerce).\textsuperscript{46} This all changed on December 18, 2015.\textsuperscript{47}

\begin{thebibliography}{99}
\bibitem{note41} Id.
\bibitem{note42} \textsc{Brown et al.}, \textit{supra} note 31, at 5.
\bibitem{note43} \textsc{Id.}
\bibitem{note44} \textsc{Carson & Kreilis}, \textit{supra} note 4, at 5; \textsc{see U.S. Energy Info. Admin.}, \textit{supra} note 22, at 10 ("U.S. refineries have accommodated much of the growth in U.S. crude production from 2010 to 2014 with two limited- or no-investment-cost options: displacing imports of crude oil (primarily light crude, but also medium crude) from countries other than Canada, and increasing refinery utilization rates.").
\bibitem{note45} \textsc{Brown et al.}, \textit{supra} note 31, at 1, 5.
\bibitem{note46} \textsc{Energy Policy and Conservation Act, Pub. L. No. 94-163, § 103, 89 Stat. 871, 877 (1975)}; \textsc{Carson & Kreilis}, \textit{supra} note 4, at 8.
\bibitem{note47} \textsc{Peterson, \textit{supra} note 8}.
\end{thebibliography}
2. Lifting the Crude Oil Export Ban

The road to lifting the export ban put in place by the EPCA has been strenuous. Those in favor of lifting the crude oil export ban argued that it is antiquated and should be lifted because of the following circumstances: 1) the excess supply of light, sweet crude in the United States; 2) the lack of U.S. refining capabilities to efficiently process light, sweet crude; and 3) changing global conditions in the Middle East. Arguments against lifting the crude oil export ban focus instead on how doing so could: 1) hurt U.S. energy security; 2) increase prices of gasoline and hurt consumers; 3) increase overall greenhouse gas emissions; and 4) hurt U.S. refineries who benefit from low crude oil prices.

As early as February 2015, congressional bills, such as Representative Joe Barton’s “To Adapt to Changing Crude Oil Market Conditions” and Senator Heidi Heitkamp’s “American Crude Oil Export Equality Act,” proposed a reconsidered stance on the crude oil export ban. Amid the urging to repeal the forty-year-old ban on U.S. crude exports, the Office of Management and Budget released a Statement of Administration Policy on October 7, 2015, clarifying President Obama’s stance against Representative Barton’s bill and instead urged Congress to focus its efforts on “supporting our transition to a low-carbon economy.”

In spite of this, on December 15, 2015, Congress passed the Consolidated Appropriations Act, 2016. Under Section 101 of the Consolidated Appropriations Act, 2016, Congress repealed

48. CARSON & KREILIS, supra note 4, at 8; BROWN ET AL., supra note 31, at 2-4; see also Cikanek, supra note 6 (“At a time when the U.S. is working on a deal to allow Iranian crude onto the global market, policymakers should focus on preserving America’s competitive position as the world’s top oil and gas producer. By lifting our own self-imposed sanctions, we can give U.S. producers the same access to global markets and protect America’s competitive edge.”).

49. Plumer, supra note 7.


Section 103 of the EPCA, reasoning that:

to promote the efficient exploration, production, storage, supply, marketing, pricing, and regulation of energy resources, including fossil fuels, no official of the Federal Government shall impose or enforce any restriction on the export of crude oil.53

Contrary to the Democratic stance on oil, President Obama signed the Consolidated Appropriations Act into law on December 18, 2015.54 The decades-old U.S. crude oil export ban was finally lifted.55

The export ban, however, was lifted with limitations.56 While “no official of the Federal Government shall impose or enforce any restriction on the export of crude oil,” Congress included a savings clause under the Consolidated Appropriations Act57 reserving the President the authority to act under the International Emergency Economics Powers Act,58 the National Emergencies Act,59 the EPCA,60 or any other provision of law that imposes sanctions on a foreign person or foreign government (including any provision of law that prohibits or restricts United States persons from engaging in a transaction with a sanctioned person or government), including a foreign government

53. Id. § 101.
56. Id.
57. Id. § 101(b)-(d).
that is designated as a state sponsor of terrorism, to
prohibit exports.\textsuperscript{61}

Furthermore, under the Consolidated Appropriations Act,
Congress specifically expressed their legislative intent, ensuring
that U.S. crude oil exports would not be permitted without any
limitations.\textsuperscript{62} Under Section 101, Congress enunciated that under
certain conditions, the President “may impose export licensing
requirements or other restrictions on the export of crude oil from
the United States for a period of not more than 1 year.”\textsuperscript{63} There
are three conditions under which the President may impose such
restrictions.\textsuperscript{64}

The first is during a state of national emergency that has been
formally declared by the President and noticed in the Federal
Register.\textsuperscript{65} If the President imposes export requirements or
restrictions under the first condition for reasons of national
emergency, then such requirements or restrictions may be
renewed for a maximum duration of one year per renewal.\textsuperscript{66}

The second condition is if such sanctions are made for either
presidentially- or congressionally-declared national security
reasons.\textsuperscript{67} These requirements or restrictions apply to one or more
countries, persons, or organizations.\textsuperscript{68}

The third and last condition exists in a situation in which both
the Secretary of Commerce and the Secretary of Energy find and
report to the President that the export of crude oil authorized by
the Consolidated Appropriations Act has either resulted in a
material oil supply shortage, or caused oil prices to rise above
world market levels. If such supply shortages or price increases
cause or are likely to cause sustained material adverse
employment effects in the United States, then the President may
impose crude export licensing requirements or restrictions for a

\textsuperscript{61} Consolidated Appropriations Act, div. O, § 101(c).
\textsuperscript{62} Id. § 101(d).
\textsuperscript{63} Id. § 101(d)(1)
\textsuperscript{64} Id.
\textsuperscript{65} Id. § 101(d)(1)(A).
\textsuperscript{66} Id. § 101(d)(1).
\textsuperscript{67} Id. § 101(d)(1)(B).
\textsuperscript{68} Id.
period of not more than one year.\textsuperscript{69}
Overall, the lifting of the U.S. crude oil export ban was a major victory in the eyes of U.S. oil producers who have yearned for a way to sell their product in the world market.\textsuperscript{70} Amid 2015-2016 market conditions in which the trading price of crude oil plummeted from its peak of around $100 per barrel in 2014 to just $28 per barrel in January 2016 for Brent crude, the major benchmark for world crude prices, it seems as though lifting the U.S. crude oil export ban is too little, too late.\textsuperscript{71} While the falling price of crude oil is attributed to many factors, perhaps the most important is the “game of chicken,” or price war, between OPEC and U.S. shale producers.\textsuperscript{72} Led by Saudi Arabia’s Oil Minister, Ali al-Naimi, OPEC initiated the price war in November 2014 in an effort to crowd out the competition and choke out U.S. shale producers.\textsuperscript{73} So far, it seems as though OPEC’s strategy is working.\textsuperscript{74} Thus, one must ask: what will happen now that the

\begin{align*}
\text{69. Id.} & \text{ § 101(d)(1)(C).} \\
\text{70. See Brian Wingfield, } & \text{U.S. Reverses Decades of Oil-Export Limits with Obama’s Backing, BLOOMBERG (Dec. 18, 2015, 5:25 PM), http://www.bloomberg.com/news/articles/2015-12-18/house-votes-to-repeal-u-s-oil-export-limits-senate-vote-next (”Oil producers including ConocoPhillips and Continental Resources Inc. had lobbied in favor of the repeal, which American Petroleum Institute President Jack Gerard described in a statement as ‘a historic moment in our energy renaissance.”).} \\
2017] UNITED STATES CRUDE OIL EXPORT BAN 735

United States has lifted its crude oil export ban?

III. ANALYSIS

After the passage of the Consolidated Appropriations Act, 2016, crude oil exports are now allowed for the first time in forty years; yet only a few shipments of U.S. crude oil exports have left the country.75 In present depressed market conditions, where an excess supply and lack of demand exists, few believe that U.S. oil producers will be able to take advantage of the new policy.76 This means excess supply of U.S. light, tight, sweet crude is unlikely to be exported and refined. This section will first discuss the current global glut of oil and how an end to the supply glut does not appear to be forthcoming, followed by a discussion of the current lack of significant demand for crude oil to offset the oversupply and how the slowdown of the world’s major economies points to an even further depressed demand for oil. Finally, this Comment will discuss why the United States should be concerned about the conditions of the global oil market, especially after recently lifting the U.S. crude oil export ban, and propose a change in U.S. relations with OPEC.


A. The Supply Glut

In January 2016, the EIA predicted that the average production of crude oil will be 8.7 million bbl/d in 2016 and 8.5 million bbl/d in 2017. In response to low oil prices, however, U.S. oil producers are expected to slightly curtail production and it is estimated that they will produce around 9.0 million bbl/d in 2017. Despite the decrease in production by U.S. shale oil producers, total world supply of oil remains high. In 2015, the International Energy Agency (IEA) reported that commercial crude oil inventories stored around 1.18 billion barrels of crude oil and that total world inventory is overstocked by around 3 billion barrels. Furthermore, the IEA reported that, according to its estimates, total global supply of oil has outpaced total global demand by around 2 million bbl/d. In early 2016, sanctions against Iran, an OPEC member, were lifted; the markets plummeted in fear that Iran would add to an already bloated global oil supply. Simple economics teaches that whenever

77. U.S. ENERGY INFO. ADMIN., supra note 34, at 1.
supply increases and demand decreases, prices decrease. In January 2016, prices fell below $30 per barrel and concerns grew that prices could fall even further.83 For U.S. oil producers to remain in business, prices need to be around $50 a barrel.84 While the average price of oil in 2016 was $44 a barrel ($8 a barrel less than the average in 2015), the estimated average price of oil for 2017 is $53 per barrel.85

B. Weak Demand

“Every signal the market is getting suggests we’re going to have weak demand.”86 According to the IEA, the worldwide average demand for oil and liquid fuels for the year of 2017 is around 97.9 million bbl/d.87 Currently, the top three energy consumers in the world are China, the United States, and India.88 As “economic growth is a main driver of oil demand,” it comes as no surprise that one of the world’s fastest growing economy in recent years, China, is also the world’s biggest energy consumer.89

500,000 bbl/d and increase total exports to around 2.5 million barrels by 2017).


In 2011, China overtook the United States as the world’s largest energy consumer and is currently the world’s second largest oil consumer after the United States.\(^90\) In 2015, China surpassed the United States as the world’s largest importer of oil for the first time ever, with imports of 7.4 million bbl/d or about 200,000 more than the United States.\(^91\) In fact, despite slowing growth in 2015, China still accounted for more than one-third of global oil demand growth in 2014.\(^92\)

But what goes up must come down. For years, analysts have predicted China’s slowdown.\(^93\) However, recent trends in China’s stock market are causing analysts to be concerned that perhaps China’s slowdown will be worse than expected, resulting in China’s problems spilling over into global markets that have been dependent on China’s insatiable need for commodities.\(^94\)

C. Why Should We Care?

The United States is listed among some of the world’s top countries most dependent on oil to fuel economic growth; however, of those countries, it is among the least dependent on oil.\(^95\) The significance of the oil industry in the United States,

\(^{90}\) China, supra note 89.


\(^{92}\) China, supra note 89.


however, should not be discounted. Despite only representing about 1 percent of growth in the U.S. gross domestic product (GDP), the U.S. oil and natural gas industry still has a significant impact on our national economy. In 2014, the oil and gas industry contributed $430 billion to the U.S. GDP, roughly equating to $1,400 for every American. Furthermore, at the national level, each direct job in the oil and natural gas industry supported approximately 2.8 jobs elsewhere in the U.S. economy. Daniel Yergin, one of the world’s leading energy experts, predicts that the U.S. shale revolution has generated about 1.7 million new jobs in the United States, including direct and “induced” employment. Yergin also predicts that by 2020, the year in which the United States is set to surpass Saudi Arabia and Russia as the top oil and gas producer, this number should double.

Most of the oil and gas jobs created by the U.S. fracking revolution pay nearly twice the national average salary. Even more significantly, such jobs require only middle-level skills and thus represent a major opportunity for those with lower education to move up the social ladder. However, amid low oil prices, the U.S. oil and gas industry has been forced to cut jobs, laying off...
around 93,800 workers in 2015. As such, the U.S. energy sector holds the record for the industry with the most job losses in 2015. The loss of these employment opportunities will thus cause significant stress and financial burdens upon American families who were formerly employed in such positions.

Additionally, concerns regarding consumer spending and losses to other sectors of the economy are growing. As oil industry workers become unemployed, their household budgets will tighten and spending will be reduced. Some argue that because oil prices have fallen, consumers will be able to benefit from savings at the gas pump and such savings will be translated into spending elsewhere. However, recent data indicates that this does not seem to be the case. Rather, consumer spending seems to have increased slightly in the spring of 2015, but has since fallen below expectations.


104. Id.


106. Dani, supra note 105.


Perhaps the most concerning fear in the minds of analysts is the possibility of a recession caused by the oil price shock.\textsuperscript{110} Generally, it has been thought that whenever oil prices are high, a recession follows.\textsuperscript{111} But recent concerns are growing that when oil prices become too low, a recession could also follow.\textsuperscript{112} Nevertheless, it should be noted that because oil prices have now fallen beyond charted territories, analysts can only speculate as to what may happen, with no real idea of what is to come.\textsuperscript{113} Because low oil prices caused by an abundance in supply and less than desirable demand have had adverse effects on the national and global economy, it may be time to revisit U.S. relations with OPEC and other oil-producing nations. Such negotiations will ensure that the benefits of removing the U.S. crude oil export ban become a reality and are not just a symbolic gesture.

\textbf{D. Time to Negotiate}

1. Majority of Oil Producing Nations Unhappy with The Status Quo

Due to low oil prices, many oil-producing nations are hurting...
financially.\textsuperscript{114} Civil unrest in many of OPEC’s member countries, such as Nigeria and Venezuela, grow as their oil-dependent economies shrink.\textsuperscript{115} As prices continue to decrease, many of OPEC’s member countries, along with non-member countries dependent on oil, are upset with Saudi Arabia, who leads the charge of flooding the markets with oil in order to flush out competitors in the United States.\textsuperscript{116} In fact, in as early as 2014, some of OPEC’s South American and African members expressed sentiments that they were ready to negotiate an end to this price war.\textsuperscript{117} Returning OPEC member, Iran, also announced that in response to the dire conditions of the international oil markets, Iran was “ready to negotiate with Saudi Arabia and other OPEC members.”\textsuperscript{118}

In October 2015, OPEC Secretary General, Abdalla Salem El-Badri announced that it was important for all oil producers, both OPEC and non-OPEC alike, to work together to reduce excess barrels of oil currently being produced.\textsuperscript{119} Russia, a


\textsuperscript{119} \textit{A Brave New World . . .}, OPEC BULL., Oct. 2015, at 1, http://www.opec.org/
non-OPEC member, responded by calling for negotiations with OPEC. A non-OPEC member, concurred with Russian sentiments for negotiation but stated that “an agreement depends on talks between [OPEC] and ‘large’ producers outside the cartel.” Similarly, OPEC Secretary General Abdalla Salem El-Badri has also expressed a desire for collaboration between non-OPEC oil producers, stating “[i]f the situation right now is a problem for all of us, including the United States, let us talk.” As of December 2015, U.S. oil and gas producers have not participated in the negotiations.

2. Talk Is Cheap, So Is Oil

The one thing that all oil producers can agree upon is that current oil prices are not ideal. On February 16, 2016, Saudi Arabia agreed to meet with Russia’s Energy Minister and Venezuela’s Minister of Energy in order to discuss the oil market. While this news was a positive signal for stock purchasers, causing the market to rally, most agreed that nothing of value would come from these talks for three reasons. First, OPEC and non-OPEC members have intermittently held discussions since November 2014, with no action resulting from these discussions. Second, Saudi Arabia explicitly stated that

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120. McNew, supra note 117.
121. Id.
125. Mahdi & Mazneva, supra note 123.
unless all oil producers, OPEC or non-OPEC, agree to reduce production, Saudi Arabia will not reduce production.\textsuperscript{126} Lastly, because OPEC’s primary concern is to maintain its market share by edging out its competitors, primarily U.S. oil producers, it seems unlikely that they will back down from the price war without some sort of promise by U.S. oil producers to compromise.\textsuperscript{127} Thus, without U.S. oil producers at the table, it seemed unlikely that any sort of feasible agreement will occur.

Nevertheless, on November 30, 2016, OPEC surprisingly announced that starting January 1, 2017, its member countries would cut production by 4.5 percent, or 1.2 million bbl/d, so that its overall output would be 32.5 million bbl/d.\textsuperscript{128} While news of this agreement caused oil prices to increase by more than 8 percent, up to nearly $50 a barrel, indicators show that it is too early to celebrate.\textsuperscript{129} Firstly, the agreement to reduce production, either voluntarily or through managed decline, is only for six months which may then be extended for another six months pending market conditions.\textsuperscript{130} Additionally, the OPEC deal is contingent on the cooperation of Russia, a non-OPEC country, who was invited to participate in the negotiations of the deal.\textsuperscript{131} While Russia has agreed to cut production by 300,000 bbl/d, as a non-OPEC member there are no penalties for non-compliance.

\textsuperscript{126} Kottasova, supra note 116; McNew, supra note 117.


\textsuperscript{129} Reed & Krauss, supra note 128.

\textsuperscript{130} Press Release, Org. of the Petroleum Exporting Countries, supra note 128.

\textsuperscript{131} Reed & Krauss, supra note 128; Benoit Faucon & Georgi Kantchev, Oil Surges on OPEC Deal to Cut Production, WALL ST. J. (Nov. 30, 2016, 9:15 AM), http://www.wsj.com/articles/opec-reaches-deal-to-cut-oil-production-1480518187.
with the deal.\footnote{Jareer Elass & Amy Myers Jaffe, The History and Politics of Russia's Relations with OPEC, 22-23 (2009), http://www.bakerinstitute.org/media/files/Research/cfb1190c/EF-pub-ElassJaffeRussiaOPEC-050609.pdf [http://perma.cc/94V5-TTCA] ("Russia wants to influence OPEC, perhaps even pulling its strings, without offering up any responsibilities, contributions or the sacrifices that come with actual membership."); see also Reed & Krauss, supra note 128 ("Russia's reported 300,000 barrels-per-day cut is only a trickle in its total output.").} Most importantly, critics of the deal remain skeptical as to OPEC's commitment to enforcing the deal and ensuring that production occurs at the committed levels.\footnote{E.g., Riva Gold & George Katchev, Why OPEC's Prospective Deal May Not Create a Lasting Oil Rally, WALL ST. J. (Sept. 29, 2016, 8:24 AM), http://www.wsj.com/articles/why-opecs-prospective-deal-may-not-create-a-lasting-oil-rally-1475151854; US Crude Settles Up 9.3% at $49.44 After OPEC Finalizes Output Cut Deal, CNBC (Nov. 30, 2016, 2:39 PM), http://www.cnbc.com/2016/11/29/oil-markets-jittery-ahead-of-opec-meeting-later-in-day.html [http://perma.cc/GJR2-23JS].} Non-believers of the deal argue that certain OPEC members have a history of “cheating” despite production level agreements and that it is unlikely those members will keep their word this time around.\footnote{Omkar Godbole, Oil Forecast 2017: Bullish View at Risk of OPEC Non-Compliance, Sharp Rise in Shale Output, FXSTREET (Dec. 21, 2016, 10:13 AM), https://www.fxstreet.com/analysis/oil-forecast-2017-bullish-view-at-risk-of-opec-non-compliance-sharp-rise-in-shale-output-201612211013 [http://perma.cc/7DXZ-AXBV] ("OPEC members have only met 60% of their production cut commitments over the seventeen agreements made since 1982."); Gold & Katchev, supra note 133; Sid Verma, Here’s What Analysts are Saying About the OPEC Deal, BLOOMBERG (Sept. 29, 2016, 6:09 AM), https://www.bloomberg.com/news/articles/2016-09-29/heres-what-analysts-are-saying-about-the-opec-deal [http://perma.cc/V7YR-S2JS].} Thus, without a third-party watcher and enforcer, the deal will likely fall through.


132. Jareer Elass & Amy Myers Jaffe, The History and Politics of Russia's Relations with OPEC 22-23 (2009), http://www.bakerinstitute.org/media/files/Research/cfb1190c/EF-pub-ElassJaffeRussiaOPEC-050609.pdf [http://perma.cc/94V5-TTCA] ("Russia wants to influence OPEC, perhaps even pulling its strings, without offering up any responsibilities, contributions or the sacrifices that come with actual membership."); see also Reed & Krauss, supra note 128 ("Russia's reported 300,000 barrels-per-day cut is only a trickle in its total output.").


President in 1989, relations between the United States and Saudi Arabia continued to improve.\textsuperscript{138} Additionally, during the Asian Financial Crisis of 1998, oil prices fell to under $10 a barrel.\textsuperscript{139} As a result, Secretary of Energy Bill Richardson initiated negotiations with OPEC and convinced Saudi Arabia’s Oil Minister to reduce market oversupply and prevent extreme price volatility.\textsuperscript{140} Throughout history, the United States has often used its foreign affairs policies as tools to urge OPEC’s cooperation.\textsuperscript{141} Thus, with the current level of civil and political unrest in the Middle East, the opportunity to negotiate is ripe.\textsuperscript{142}

IV. CONCLUSION

At one point in recent years, oil prices reached record highs of approximately $120 per barrel.\textsuperscript{143} Since then, however, oil prices fell below $30 a barrel.\textsuperscript{144} The fracking technology now available to oil producers has opened a world of possibilities in relation to the United States’ position in the world as a leading oil and gas


\textsuperscript{140} Ellass & Jaffe, supra note 138, at 58.

\textsuperscript{141} Id. at 9 (“U.S. administrations have tried diplomatically over the years to bully and cajole OPEC into cooperating on containing high crude prices.”).


producer.145 Due to the fracking boom and horizontal drilling, thousands of high-paying jobs were created in the United States in order to bring light, sweet crude to the surface of the earth.146 Just recently, Congress voted to reverse a forty-year-old crude oil export ban put in place during the Reagan administration.147 This forty-year-old crude oil export ban was initiated in order to reduce U.S. dependence on non-domestic supply of oil.148 However, in light of the United States’ current refining capacity and needs, such an antiquated law no longer makes sense.

Ironically, the export ban was first implemented in response to the 1970s oil embargo initiated by OPEC.149 This very same export ban has now been lifted at a time when OPEC has once again attempted to exercise control over the oil market by increasing its own production, thereby decreasing oil prices and making it less profitable for U.S. oil producers to remain in business.150 Thus, it may be said that while the U.S. crude oil export ban was antiquated law in need of repeal, the reversal occurred at a time when the benefits of exporting crude oil was small.

As oil prices plunge, it may be prudent for the United States to realize that honey is sweeter than blood. In today’s globalized economy, the reality is that more coordination between producers of a scarce commodity is necessary in order to maximize benefits. If the United States is truly concerned about creating energy stability, it should enter into negotiations with other oil producing nations, including OPEC.

145. BROWN ET AL., supra note 31, at 5.
146. Morris, supra note 99; BROWN ET AL., supra note 31.
148. CARSON & KREILLIS, supra note 4, at 8 (stating that the Energy Policy and Conservation Act prohibited crude oil and natural gas exports with some exceptions).
149. BROWN ET AL., supra note 31, at 1; Myre, supra note 16 (“The embargo made the U.S. feel heavily dependent on Middle Eastern oil.”).