

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.² But with increased oil and gas production comes a glut of excess supply.³ 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.⁴ 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.⁵ 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.⁶ 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.⁷

2. Jeffrey Ball, *Palin's Policy: Drill, Baby, Drill*, WALL ST. J. (Sept. 4, 2008, 8:26 AM), <http://blogs.wsj.com/environmentalcapital/2008/09/04/palins-policy-drill-baby-drill/>; Bruce Drake, *How Americans View the Top Energy and Environmental Issues*, PEW RES. CTR. (Jan. 15, 2015), <http://www.pewresearch.org/fact-tank/2015/01/15/environment-energy-2/> [<http://perma.cc/7E8R-NB2S>] (“[W]hen asked about specific policies to address the energy supply, a majority of Americans continued to support allowing more offshore oil and gas drilling in U.S. waters (56%) and more mining and drilling on federally owned land (58%)—opinions largely unchanged from previous years.”).

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-idUSKCN0SU03Z20151105> [<http://perma.cc/65UH-GP6E>] (reporting that crude prices fell nearly 4 percent due to an oversupply of crude).

4. ERIN CARSON & JANIS KREILIS, U.S.-MEXICO OIL SWAPS UNLOCK AVENUE FOR U.S. LIGHT CRUDE 2 (2015), <https://enerknol.com/wp-content/uploads/2015/08/EKR-FF-U.S.-Mexico-Oil-Exchange-Transactions-8-24-2015.pdf> [<http://perma.cc/PXP7-6LRM>].

5. *Id.* at 7-8.

6. *Id.* at 2, 8; see also Zachary Cikanek, *API: Crude Exports to Mexico Highlight Broader Benefits of Free Trade*, AM. PETROLEUM INST. (Aug. 14, 2015), <http://www.api.org/news-and-media/news/newsitems/2015/august-2015/api-crude-exports-to-mexico-highlight-broader-benefits-of-free-trade> [<http://perma.cc/48DU-6P5L>] (“Study after study shows that free trade in crude oil would promote the creation of U.S. jobs, put downward pressure on fuel costs, and reduce the power that foreign suppliers have over our allies. America is now a global energy superpower, and lifting ‘70s-era restrictions on U.S. oil exports will help bring the benefits of trade home to U.S. workers and consumers.”).

7. John Miller, *Could Congress's Lifting the Crude Oil Export Ban Threaten U.S. Energy Security?*, ENERGY COLLECTIVE (Oct. 2, 2015), http://www.theenergycollective.com/jemiller_ep/2277415/could-congress-s-lifting-crude-oil-export-ban-threaten-us-energy-security [<http://perma.cc/B5YM-L8YZ>]; Brad Plumer, *U.S. Oil Exports Have Been Banned*

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.⁸ 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.⁹ 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.¹⁰ This began the American

for 40 Years. *Is It Time for That to Change?*, WASH. POST (Jan. 8, 2014), <https://www.washingtonpost.com/news/wonk/wp/2014/01/08/u-s-oil-exports-have-been-banned-for-40-years-is-it-time-for-that-to-change/> [<http://perma.cc/P969-5PKZ>].

8. Kristina Peterson, *Congress Passes \$1.15 Trillion Spending Bill*, WALL ST. J. (Dec. 18, 2015, 12:02 PM), <http://www.wsj.com/articles/house-passes-1-15-trillion-spending-bill-1450450381>.

9. Tim Fowler, *U.S. Oil-Production Rise is Fastest Ever*, WALL ST. J. (Jan. 18, 2013, 8:07 PM), <http://www.wsj.com/articles/SB10001424127887323468604578249621718888086>; Dan Holder, *Founding Principles Guide ‘Better Business’ Publication Through Half Century of Change*, AM. OIL & GAS REP., <http://www.aogr.com/about-us/history> [<http://perma.cc/XE6U-8HXY>] (last visited June 9, 2017); *The Story of Oil in Pennsylvania*, PALEONTOLOGICAL RES. INST. (Feb. 5, 2017), <https://www.priweb.org/ed/pgws/history/pennsylvania/pennsylvania.html> [<http://perma.cc/73GA-NWX4>].

10. *Spindletop Launches Modern Petroleum Industry*, AM. OIL & GAS HIST. SOC’Y (Nov. 13, 2015), <http://aoghs.org/oil-amanac/spindletop-launches-modern-oil-industry/> [<http://perma.cc/64EN-QR95>].

addiction to “black gold.”¹¹

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.¹² Most U.S. oil imports arrived from the Middle East.¹³ Later, Middle Eastern oil-rich nations formed the Organization of the Petroleum Exporting Countries (OPEC) in order to coordinate and strengthen their energy industries.¹⁴

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.¹⁵ 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.¹⁶ 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.¹⁷ American consumers immediately felt the effect of the oil embargo. Long lines formed at gas stations across America due to

11. See Nelson D. Schwartz, *America's Oil Addiction: Chronicle of a Crisis Foretold*, N.Y. TIMES (July 6, 2008), <http://www.nytimes.com/2008/07/06/business/worldbusiness/06iht-06oil.14260674.html>.

12. *Id.*; NEELESH NERURKAR, CONG. RESEARCH SERV., R42465, U.S. OIL IMPORTS AND EXPORTS 1 (2012).

13. Michael Tamakis, *International Seaborne Trade*, in THE BLACKWELL COMPANION TO MARITIME ECONOMICS 52, 55 (Wayne K. Talley ed., 2012).

14. *Brief History*, ORG. PETROLEUM EXPORTING COUNTRIES, http://www.opec.org/opec_web/en/about_us/24.htm [<http://perma.cc/BW7X-ENVR>] (last visited June 9, 2017).

15. *Oil Embargo, 1973-1974*, OFF. HISTORIAN, <https://history.state.gov/milestones/1969-1976/oil-embargo> [<http://perma.cc/4ED9-CNHW>] (last visited June 9, 2017).

16. Michael Corbett, *Oil Shock of 1973-74*, FED. RES. HIST. (Nov. 22, 2013), <http://www.federalreservehistory.org/Events/DetailView/36> [<http://perma.cc/72A2-Z4LY>]; Greg Myre, *The 1973 Arab Oil Embargo: The Old Rules No Longer Apply*, NPR (Oct. 16, 2013, 12:15 PM), <http://www.npr.org/sections/parallels/2013/10/15/234771573/the-1973-arab-oil-embargo-the-old-rules-no-longer-apply>.

17. David Kashi, *Four Decades After the Arab Oil Embargo, the US Outperforms Saudi Arabia; How the 1973 Crisis Changed US Energy Policy and Habits*, INT'L BUS. TIMES (Oct. 18, 2013, 6:26 PM), <http://www.ibtimes.com/four-decades-after-arab-oil-embargo-us-outperforms-saudi-arabia-how-1973-crisis-1431010> [<http://perma.cc/FNB9-J23A>].

the fear of a gasoline shortage.¹⁸ This in turn caused prices of gasoline to skyrocket even more, contributing to a major economic downturn in the United States.¹⁹

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 1975.²⁰ It prohibited the exportation of crude oil and natural gas exports, with some exceptions, in order to boost U.S. energy security.²¹ 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.²²

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."²³ 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.²⁴

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.²⁵ In this

18. Brian Resnick, *What America Looked Like: The 1970s Gas Crisis*, ATLANTIC (May 31, 2012), <https://www.theatlantic.com/national/archive/2012/05/what-america-looked-like-the-1970s-gas-crisis/257837> [http://perma.cc/FEM4-JTLL].

19. Myre, *supra* note 16.

20. Energy Policy and Conservation Act, Pub. L. No. 94-163, 89 Stat. 871 (1975); Meagan Clark, *Why the U.S. Bans Crude Oil Exports: A Brief History*, INT'L BUS. TIMES (Mar. 20, 2014, 2:50 PM), <http://www.ibtimes.com/why-us-bans-crude-oil-exports-brief-history-1562689> [http://perma.cc/GF6U-8R7C]; 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").

22. U.S. ENERGY INFO. ADMIN., EFFECTS OF REMOVING RESTRICTIONS ON U.S. CRUDE OIL EXPORTS vii (2015).

23. *Id.*

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

25. *Id.* at 7-8; Timothy Cama, *Administration Approves Oil Exports to Mexico*, HILL (Aug. 14, 2015, 12:35 PM), <http://thehill.com/policy/energy-environment/251144-obama-admin-approves-landmark-oil-exports-to-mexico> [http://perma.cc/EWX8-AQVG]; *see also*

decision, the BIS cautioned that approval of these licenses did not depart from existing law.²⁶ Rather, BIS approval of U.S. and Mexico oil swaps “is based on language in the 1975 Energy Policy [and] Conservation Act.”²⁷ This Act “directs [the Department of Commerce] to consider historical trade relations with Canada and Mexico when limiting crude exports.”²⁸ 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.”²⁹ 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.³⁰

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.³¹ Through these new technologies, the United States has surpassed Saudi Arabia as the top oil and natural gas producer.³²

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.

28. *Id.*; Energy Policy and Conservation Act, Pub. L. No. 94-163, § 103(d)(3), 89 Stat. 871, 878 (1975).

29. Cama, *supra* note 25.

30. *See* Peterson, *supra* note 8; Brian Wingfield & Dan Murtaugh, *U.S. Eases 40-Year Crude Export Ban by Allowing Mexico Swap*, BLOOMBERG (Aug. 15, 2015, 12:01 PM), <http://www.bloomberg.com/news/articles/2015-08-14/obama-said-to-approve-crude-oil-exports-to-mexico-easing-ban>.

31. *See* STEPHEN P.A. BROWN ET. AL., CRUDE BEHAVIOR: HOW LIFTING THE EXPORT BAN REDUCES GASOLINE PRICES IN THE UNITED STATES 2 (2014), <http://www.rff.org/files/sharepoint/WorkImages/Download/RFF-IB-14-03-REV.pdf> [<http://perma.cc/49RF-R7WL>].

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.”).

33. U.S. ENERGY INFO. ADMIN., TECHNICAL OPTIONS FOR PROCESSING ADDITIONAL LIGHT TIGHT OIL VOLUMES WITHIN THE UNITED STATES iv (2015), <https://www.eia.gov/analysis/studies/petroleum/lto/pdf/lighttightoil.pdf> [http://perma.cc/VTK5-U6Y2].

34. U.S. ENERGY INFO. ADMIN., SHORT-TERM ENERGY OUTLOOK JANUARY 2016, at 7 (2016), <https://www.eia.gov/outlooks/steo/archives/jan16.pdf> [http://perma.cc/9GRR-7E3J]; Fowler, *supra* note 9.

35. See *U.S. Imports by Country of Origin*, U.S. ENERGY INFO. ADMIN., https://www.eia.gov/dnav/pet/pet_move_impcus_a1_Z00_ep00_im0_mbbldpd_a.htm [http://perma.cc/KR7Z-7F2Z] (last updated May 31, 2017) (indicating that the United States imported around 10,000 bbl/d from foreign sources from 2011 to 2016).

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.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.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.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.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.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).⁴⁶ This all changed on December 18, 2015.⁴⁷

41. *Id.*

42. BROWN ET AL., *supra* note 31, at 5.

43. *Id.*

44. CARSON & KREILIS, *supra* note 4, at 5; see U.S. ENERGY INFO. ADMIN., *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.”).

45. BROWN ET AL., *supra* note 31, at 1, 5.

46. Energy Policy and Conservation Act, Pub. L. No. 94-163, § 103, 89 Stat. 871, 877 (1975); CARSON & KREILIS, *supra* note 4, at 8.

47. Peterson, *supra* note 8.

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.⁴⁸ 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.⁴⁹

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.⁵⁰ 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."⁵¹

In spite of this, on December 15, 2015, Congress passed the Consolidated Appropriations Act, 2016.⁵² Under Section 101 of the Consolidated Appropriations Act, 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.

50. H.R. 702, 114th Cong. (2015); S. 1372, 114th Cong. (2015).

51. Office of Mgmt. & Budget, Statement of Administration Policy: H.R. 702 – To Adapt to Changing Crude Oil Market Conditions (Oct. 7, 2015), https://obamawhitehouse.archives.gov/sites/default/files/omb/legislative/sap/114/saphr702r_20151007.pdf [http://perma.cc/7CYS-DG2H].

52. Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, 129 Stat. 2242 (2015).

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.

54. Press Release, White House Office of the Press Sec’y, Statement by the Press Secretary on H.R. 2029 (Dec. 18, 2015), <https://obamawhitehouse.archives.gov/the-press-office/2015/12/18/statement-press-secretary-hr-2029> [<http://perma.cc/EH2Y-FLZC>]; see also Billy House et al., *Pelosi, White House Support Plan Allowing U.S. Crude Oil Exports*, BLOOMBERG POL. (Dec. 17, 2015, 11:20 PM), <http://www.bloomberg.com/politics/articles/2015-12-16/congress-reaches-fiscal-deal-that-ends-u-s-crude-oil-export-ban> (“[While] Obama and many congressional Democrats oppose lifting the ban on oil exports . . . the fiscal package, H.R. 2029, was a success for the administration.”); Kassie Siegel, *President Obama’s Crude Oil Exports Decision Is True Climate Test*, HUFFINGTON POST (Dec. 18, 2015, 1:18 PM), http://www.huffingtonpost.com/kassie-siegel/president-obamas-crude-oi_b_8830924.html [<http://perma.cc/DKS7-3D28>] (arguing that if President Obama would veto the Consolidated Appropriations Act if he truly meant his comments at the Paris climate summit, where he called on world leaders to fight climate change).

55. Consolidated Appropriations Act, div. O, § 101.

56. *Id.*

57. *Id.* § 101(b)-(d).

58. 50 U.S.C. §§ 1701-06 (2012).

59. 50 U.S.C. §§ 1601-51 (2012).

60. Pub. L. No. 94-163, 89 Stat. 871 (1975).

that is designated as a state sponsor of terrorism, to prohibit exports.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.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.”⁶³ There are three conditions under which the President may impose such restrictions.⁶⁴

The first is during a state of national emergency that has been formally declared by the President and noticed in the Federal Register.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.⁶⁶

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

61. Consolidated Appropriations Act, div. O, § 101(c).

62. *Id.* § 101(d).

63. *Id.* § 101(d)(1)

64. *Id.*

65. *Id.* § 101(d)(1)(A).

66. *Id.* § 101(d)(1).

67. *Id.* § 101(d)(1)(B).

68. *Id.*

period of not more than one year.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.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.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.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.⁷³ So far, it seems as though OPEC’s strategy is working.⁷⁴ Thus, one must ask: what will happen now that the

69. *Id.* § 101(d)(1)(C).

70. See Brian Wingfield, *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.’”).

71. Patti Domm & Tom DiChristopher, *U.S. Oil Falls on Unexpectedly Large Inventory Build*, CNBC (Jan. 20, 2016, 6:25 PM), <http://www.cnbc.com/2016/01/19/oil-prices-fall-further-on-glut-worries-us-crude-slumps-below-28.html> [<http://perma.cc/8DGY-S4H4>]; Matthew West, *Just How Low Can Oil Prices Go and Who is Hardest Hit?*, BBC (Jan. 18, 2016), <http://www.bbc.com/news/business-35245133> [<http://perma.cc/U8M3-3LHY>].

72. Matt Clinch, *U.S. Shale and OPEC Oil: Game of Chicken?*, CNBC (Nov. 18, 2014, 6:18 AM), <http://www.cnbc.com/2014/11/18/us-shale-and-opec-oil-game-of-chicken.html> [<http://perma.cc/TK29-Z8LD>].

73. Alex Lawler et al., *Inside OPEC Room, Naimi Declares Price War on U.S. Shale Oil*, REUTERS (Nov. 28, 2014, 11:16 AM), <http://www.reuters.com/article/us-opec-meeting-shale-idUSKCN0JC1GK20141128> [<http://perma.cc/59M8-9AKD>]; see Press Release, Org. of the Petroleum Exporting Countries, *OPEC 166th Meeting Concludes* (Nov. 27, 2014), http://www.opec.org/opec_web/en/press_room/2938.htm [<http://perma.cc/JWT9-S939>] (announcing that in order to restore market equilibrium, OPEC would maintain production levels at 30 million bbl/d).

74. Swetha Gopinath & Joshua Schneyer, *As U.S. Shale Drillers Suffer, Even the Bankrupt Keep Pumping Oil*, REUTERS (Apr. 1, 2016, 4:44 PM), <http://www.reuters.com/article/us-usa-energy-bankruptcies-idUSKCN0WY3JU> [<http://perma.cc/6NX9-4TQ4>]; Ivana Kottasova, *OPEC Is Winning: Other Oil Producers Are Cutting Back*, CNN (Dec. 11,

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.

2015, 8:37 AM), <http://money.cnn.com/2015/12/11/investing/oil-opec-winning-iea/> [<http://perma.cc/39KA-MXTA>]; Justin Scheck, *Oil Rout Forces Companies to Delay Decisions on \$380 Billion in Projects*, WALL ST. J. (Jan. 14, 2016, 10:58 PM), <http://www.wsj.com/articles/oil-rout-forces-companies-to-delay-decisions-on-380-billion-in-projects-1452775590>; see also U.S. ENERGY INFO. ADMIN., *supra* note 34, at 7 (estimating a decrease in the average U.S. crude oil production in 2016 from 9.4 million bbl/d in 2015 to 8.7 million bbl/d due to declining oil prices, causing oil companies to decide to scale back investment programs and defer any major projects until a sustained price recovery occurs).

75. Jonathan Leff, *Exclusive: China Buys First U.S. Crude Cargo Since End of Export Ban*, REUTERS (Jan. 14, 2016, 10:57 PM), <http://www.reuters.com/article/us-usa-oil-china-exclusive-idUSKCN0UT086> [<http://perma.cc/AL2R-T5QW>]; Valerie Volcovici & Catherine Ngai, *Oil Companies Rush to Exploit End of U.S. Crude Ban*, REUTERS (Dec. 23, 2015, 3:01 PM), <http://www.reuters.com/article/us-enterprise-products-exports-idUSKBN0U61Q920151223> [<http://perma.cc/ZZ6V-FXXE>].

76. Michael A. Levi, *Oil Exports Budget Deal? Market, Climate, and Geopolitical Consequences*, COUNCIL ON FOREIGN REL. (Dec. 15, 2015), <https://www.cfr.org/blog-post/oil-exports-budget-deal-market-climate-and-geopolitical-consequences> [<http://perma.cc/HKN7-NBKV>]; Volcovici & Ngai, *supra* note 75 (“It’s universally agreed in the short term that we won’t see a flood of ships leaving for foreign ports because the economics aren’t right.”).

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 2017.⁷⁷ 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 2017.⁷⁸ Despite the decrease in production by U.S. shale oil producers, total world supply of oil remains high.⁷⁹ 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.⁸⁰ 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.⁸¹ 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.⁸² Simple economics teaches that whenever

77. U.S. ENERGY INFO. ADMIN., *supra* note 34, at 1.

78. U.S. ENERGY INFO. ADMIN., SHORT-TERM ENERGY OUTLOOK JANUARY 2017, at 1 (2017), <https://www.eia.gov/outlooks/steo/archives/Jan17.pdf> [<http://perma.cc/9BN2-5RVU>].

79. INT'L ENERGY AGENCY, OIL MARKET REPORT: 11 DECEMBER 2015, at 20-21 (2015), <https://www.iea.org/media/omrreports/fullissues/2015-12-11.pdf> [<http://perma.cc/Ry8J-UV6E>]; ORG. OF THE PETROLEUM EXPORTING COUNTRIES, 2015 WORLD OIL OUTLOOK 1 (2015), http://www.opec.org/opec_web/static_files_project/media/downloads/publications/WOO%202015.pdf [<http://perma.cc/J8XL-ADM5>]; Matt Egan, *Cracks Emerge in U.S. Oil Boom*, CNN (Oct. 6, 2015, 4:43 PM), <http://money.cnn.com/2015/10/06/investing/us-oil-production-declines-gas-prices/> [<http://perma.cc/GRG6-JRZ9>].

80. Patrick DeHaan, *EIA: Crude Inventories Surge . . . Again*, GASBUDDY (Feb. 11, 2015, 10:35 AM), <http://www.albertagasprices.com/posts/EIA-Crude-inventories-surge-again/1715-599841-2886.aspx> [<http://perma.cc/WV5W-AXAV>]; *IEA Releases Oil Market Report for November*, INT'L ENERGY AGENCY (Nov. 13, 2015), <https://www.iea.org/newsroom/news/2015/november/iea-releases-oil-market-report-for-november.html> [<http://perma.cc/GPW7-7X23>].

81. Robert Grattan, *'Missing Barrels' May Hold New Oil Demand*, HOUS. CHRON. (June 16, 2015), <http://www.houstonchronicle.com/business/energy/article/Missing-barrels-may-hold-new-oil-demand-6331673.php> [<http://perma.cc/AN2T-CMRP>].

82. Devika Krishna Kumar, *Oil Plunges Below \$29 on Prospects of More Iran Crude, China Worries*, REUTERS (Jan. 15, 2016, 7:26 PM), <http://www.reuters.com/article/us-global-oil-idUSKCN0UT02I> [<http://perma.cc/BQ68-FTZW>]; see Amir Paivar, *What Lifting Iran Sanctions Means for World Markets*, BBC (Jan. 16, 2016), <http://www.bbc.com/news/business-35317159> [<http://perma.cc/9M8Y-4NWZ>] (reporting that Iran intends to export

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).

83. Mark Shenk, *Crude Falls Below \$30 a Barrel for the First Time in 12 Years*, BLOOMBERG (Jan. 12, 2016, 1:17 PM), <http://www.bloomberg.com/news/articles/2016-01-12/wti-oil-falls-below-30-for-first-time-since-dec-2003>; Ivana Kottasova, *Strong Dollar Could Send Oil to \$20*, CNN (Jan. 11, 2016, 2:01 PM), <http://money.cnn.com/2016/01/11/investing/oil-prices-strong-dollar/> [<http://perma.cc/KRR3-JUPQ>].

84. See Tom Randall, *Break-Even Points for U.S. Shale Oil*, BLOOMBERG (Oct. 17, 2014), <http://www.bloomberg.com/news/2014-10-17/oil-is-cheap-but-not-so-cheap-that-americans-won-t-profit-from-it.html> [<http://perma.cc/CC6W-6F3W>].

85. U.S. ENERGY INFO. ADMIN., *supra* note 78, at 2.

86. Chris Mooney, *Oil Prices Keep Falling—This is Why*, WASH. POST (Dec. 21, 2015), <https://www.washingtonpost.com/news/energy-environment/wp/2015/12/21/oil-prices-keep-falling-this-is-the-reason-why/> [<http://perma.cc/M24K-TFR5>].

87. INT’L ENERGY AGENCY, OIL MARKET REPORT: 16 MAY 2017, at 4 (2017), <https://www.iea.org/media/omrreports/fullissues/2017-05-16.pdf> [<http://perma.cc/RVU3-LA2U>].

88. *Total Energy Consumption*, ENERDATA, <https://yearbook.enerdata.net/energy-consumption-data.html#energy-consumption-data.html> [<http://perma.cc/4X5S-JK7F>].

89. ORG. OF THE PETROLEUM EXPORTING COUNTRIES, *supra* note 79, at 30, 65; *China*, U.S. ENERGY INFO. ADMIN. (May 14, 2015), <https://www.eia.gov/beta/international/analysis.cfm?iso=CHN> [<http://perma.cc/Y2Y3-FW4Q>]. *But see* Jeffrey Kleintop, *India Becomes World’s Fastest Growing Economy: What Investors Need to Know*, CHARLES SCHWAB (Nov. 23, 2015), <http://www.schwab.com/public/schwab/nn/articles/India-Becomes-World-s-Fastest-Growing-Economy-What-Investors-Need-to-Know> [<http://perma.cc/4EK5-T62A>] (noting that while both China and India are two of the most rapidly growing economies in the world, China’s growth rate has been slowing).

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.

91. Kevin McSpadden, *China Has Become the World's Biggest Crude Oil Importer for the First Time*, TIME (May 11, 2015), <http://time.com/3853451/china-crude-oil-top-importer/> [<http://perma.cc/K532-J2MF>].

92. *China*, *supra* note 89.

93. *E.g.*, Jane Haltmaier, *Challenges for the Future of Chinese Economic Growth 1* (Int'l Fin. Discussion Paper No. 1072, 2013), <http://www.federalreserve.gov/pubs/ifdp/2013/1072/ifdp1072.pdf> [<http://perma.cc/D76N-66JF>]; INT'L MONETARY FUND, PEOPLE'S REPUBLIC OF CHINA: STAFF REPORT FOR THE 2015 ARTICLE IV CONSULTATION 6 (2015), <http://www.imf.org/external/pubs/ft/scr/2015/cr15234.pdf> [<http://perma.cc/GHP2-F9L4>].

94. Ana Swanson & Kevin Sieff, *China's Slowdown, Financial Mayhem Casts Long Shadow Across World*, WASH. POST (Jan. 11, 2016), <https://www.washingtonpost.com/news/wonk/wp/2016/01/11/chinas-slowdown-financial-mayhem-cast-long-shadow-across-world/> [<http://perma.cc/HE2M-FPFC>]; *see* David Wille, *The China Slowdown: Who Loses in the Middle East?*, GLOBAL RISK INSIGHTS (Sept. 3, 2015), <http://globalriskinsights.com/2015/09/the-china-slowdown-who-loses-in-the-middle-east/> [<http://perma.cc/G93L-LVB9>] (commenting on forecasts of slower growth in Chinese consumer's demand for oil which will further add to the issue of the oil supply glut and put downward pressure on crude prices);

95. *See* Chris Giles, *Winners and Losers of Oil Price Plunge*, FIN. TIMES (Dec. 15, 2014), <https://www.ft.com/content/3f5e4914-8490-11e4-ba4f-00144feabdc0>; John W. Schoen, *What Countries Lose When Oil Prices Drop*, CNBC (Nov. 4, 2014, 3:13 PM), <http://>

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.⁹⁶ In 2014, the oil and gas industry contributed \$430 billion to the U.S. GDP, roughly equating to \$1,400 for every American.⁹⁷ 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.⁹⁸ 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.⁹⁹ 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.¹⁰⁰

Most of the oil and gas jobs created by the U.S. fracking revolution pay nearly twice the national average salary.¹⁰¹ 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.¹⁰² However, amid low oil prices, the U.S. oil and gas industry has been forced to cut jobs, laying off

www.cnn.com/2014/11/04/what-countries-lose-when-oil-prices-drop.html
[<http://perma.cc/6JDY-MFE9>].

96. Schoen, *supra* note 95; AM. PETROLEUM INST., ECONOMIC IMPACTS OF THE OIL AND NATURAL GAS INDUSTRY IN 2011, at 6, 7 tbl.2 (2013), http://www.api.org/~media/Files/Policy/Jobs/Economic_impacts_Ong_2011.pdf [<http://perma.cc/GC5P-L7MV>].

97. MICHAEL E. PORTER ET AL., AMERICA'S UNCONVENTIONAL ENERGY OPPORTUNITY: A WIN-WIN PLAN FOR THE ECONOMY, THE ENVIRONMENT, AND A LOWER-CARBON, CLEANER-ENERGY FUTURE 19 (2015), <http://www.hbs.edu/competitiveness/Documents/america-unconventional-energy-opportunity.pdf> [<http://perma.cc/YUP5-C2YH>].

98. AM. PETROLEUM INST., *supra* note 96, at E-2.

99. Charles R. Morris, *Comeback: America's New Economic Boom*, REUTERS (May 9, 2013), <http://blogs.reuters.com/great-debate/2013/05/09/comeback-americas-new-economic-boom/> [<http://perma.cc/3GHH-K27B>].

100. *Id.*

101. PORTER ET AL., *supra* note 97, at 19; *see also* Marcellus Shale Coalition, *New IHS Study: American Shale Boosting Job Creation*, INST. FOR 21ST CENTURY ENERGY, <http://www.energyxxi.org/new-ihs-study-american-shale-gas-boosting-job-creation> [<http://perma.cc/N73Y-CWPJ>] (last visited June 9, 2017) (stating that unconventional oil and gas sector jobs tends to be high quality and high paying, with workers making around \$35.15 per hour).

102. PORTER ET AL., *supra* note 97, at 20-21.

around 93,800 workers in 2015.¹⁰³ As such, the U.S. energy sector holds the record for the industry with the most job losses in 2015.¹⁰⁴ 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.¹⁰⁵ As oil industry workers become unemployed, their household budgets will tighten and spending will be reduced.¹⁰⁶ 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.¹⁰⁷ However, recent data indicates that this does not seem to be the case.¹⁰⁸ Rather, consumer spending seems to have increased slightly in the spring of 2015, but has since fallen below expectations.¹⁰⁹

103. Tom DiChristopher, et al., *Oil Rout and OPEC Reverse Surge in Energy Jobs Market*, CNBC (Dec. 4, 2015, 12:10 PM), <http://www.cnbc.com/2015/12/04/oil-rout-and-opec-reverse-surge-in-energy-jobs-market.html> [<http://perma.cc/7KUS-QYDD>].

104. *Id.*

105. Michael McDonald, *The Domino Effect on the Economy of Disappearing Oil Jobs*, FISCAL TIMES (Apr. 29, 2015), <http://www.thefiscaltimes.com/2015/04/29/Domino-Effect-Economy-Disappearing-Oil-Jobs> [<http://perma.cc/F9ED-V6WQ>]; see also Jeff Daniels, *Texas Jobs, Consumer Economy Feel the Low Price of Crude Oil*, CNBC (Nov. 11, 2015, 12:24 PM), <http://www.cnbc.com/2015/11/11/texas-jobs-consumer-economy-feel-the-low-price-of-crude-oil.html> [<http://perma.cc/EY2G-U5S6>] (reporting losses of consumer companies in Texas who saw less earnings during the 2015 fiscal year); Millie Dent, *How Plunging Oil Prices Threaten the U.S. Economy*, FISCAL TIMES (Jan. 27, 2016) <http://www.thefiscaltimes.com/2016/01/27/How-Plunging-Oil-Prices-Threaten-US-Economy> [<http://perma.cc/E7JY-YZBS>] (citing losses to the finance industry and housing market).

106. Daniels, *supra* note 105.

107. *E.g.*, Chris Arnold, *Why Cheap Gas Might Not Be Good for the U.S. Economy*, NPR (Jan. 28, 2016, 5:31 PM), <http://www.npr.org/2016/01/28/464726409/why-cheap-gas-might-not-be-good-for-the-u-s-economy>; see also David Dayen, *How Plunging Oil Prices Could Create Economic Upheaval*, FISCAL TIMES (Jan. 16, 2015), <http://www.thefiscaltimes.com/Columns/2015/01/16/How-Plunging-Oil-Prices-Could-Create-Economic-Upheaval> [<http://perma.cc/H3SP-JKTT>].

108. Patrick Gillespie, *Cheap Gas is Saving Americans \$750. So Far They Aren't Spending It*, CNN (Apr. 1, 2015, 7:28 AM), <http://money.cnn.com/2015/04/01/news/economy/cheap-gas-750-savings-america/> [<http://perma.cc/77PN-AJQR>].

109. Dina Gusovsky, *An American Fuel Gauge on the Fritz and Proving Tough to Fix*, CNBC (Jan. 29, 2016, 11:40 AM), <http://www.cnbc.com/2016/01/29/a-us-cheap-gas-rift-as-stubborn-as-opec-impasse.html> [<http://perma.cc/P84Q-PT25>].

Perhaps the most concerning fear in the minds of analysts is the possibility of a recession caused by the oil price shock.¹¹⁰ Generally, it has been thought that whenever oil prices are high, a recession follows.¹¹¹ But recent concerns are growing that when oil prices become too low, a recession could also follow.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.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.

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

110. Nichola Saminather, *Oil Sucks Stocks Down as Global Recession Fears Bubble Up*, REUTERS (Jan. 19, 2016, 1:34 AM), <http://www.reuters.com/article/markets-stocks-oil-idUSL3N1523BR> [<http://perma.cc/Y4PA-MDMN>].

111. Lutz Kilian & Robert J. Vigfusson, *The Role of Oil Price Shocks in Causing U.S. Recessions* 1 (Int'l Finance Discussion Paper No. 1114, 2014), <http://www.federalreserve.gov/pubs/ifdp/2014/1114/ifdp1114.pdf> [<http://perma.cc/KD42-SYN3>]; see Michael R. Darby, *The Price of Oil and World Inflation and Recession*, 72 AM. ECON. REV. 738, 738 (1982) (stating that the increase in the real price of oil was a major cause for inflation and recession both in the United States and abroad in 1973-74).

112. See Dent, *supra* note 105; Ivana Kottasova, *Citi: Fear the "Oilageddon" Recession*, CNN (Feb. 5, 2016, 1:03 PM), <http://money.cnn.com/2016/02/05/investing/oilageddon-recession-oil-citi/> [<http://perma.cc/7ZPA-KXMA>]; see also Gary Shilling, *Will Oil Cause the Next Recession?*, BLOOMBERG VIEW (Sept. 2, 2015, 2:00 AM), <http://www.bloombergview.com/articles/2015-09-02/if-oil-prices-keep-slipping-recession-could-follow> [<http://perma.cc/7WZN-T6LV>] (arguing that because lower oil prices will cause deflation, a "vicious downward cycle" may follow: consumers withhold spending in anticipation of lower prices, causing an increased supply that further decreases prices).

113. See, e.g., Lisa Shalett, *Is Oil Rout Fueling Recession Fears?*, MORGAN STANLEY (Jan. 22, 2016), <http://www.morganstanley.com/ideas/is-oil-rout-fueling-recession-fears> [<http://perma.cc/63V8-79TU>] ("We don't think that the global economy is heading for recession . . . We are clearly in uncharted territory, in which oversupply could conceivably cause a recession—especially if it undermines confidence.").

financially.¹¹⁴ Civil unrest in many of OPEC's member countries, such as Nigeria and Venezuela, grow as their oil-dependent economies shrink.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.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.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."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.¹¹⁹ Russia, a

114. Andrew Critchlow, *Oil Nations Feel the Strain of OPEC's Continuing Price War*, TELEGRAPH (Oct. 18, 2015, 3:01 PM), <http://www.telegraph.co.uk/finance/newsbysector/energy/oilandgas/11936525/Oil-nations-feel-the-strain-of-Opecs-continuing-price-war.html>; Clifford Krauss & Rick Gladstone, *From Venezuela to Iraq to Russia, Oil Price Drops Raise Fears of Unrest*, N.Y. TIMES (Aug. 24, 2015), <http://www.nytimes.com/2015/08/25/world/from-venezuela-to-iraq-to-russia-oil-price-drops-raise-fears-of-unrest.html>.

115. HAROLD TRINKUNAS, VENEZUELA BREAKS DOWN IN VIOLENCE (2014), <http://www.brookings.edu/research/papers/2014/01/venezuela-breaks-down-violence-trinkunas> [<http://perma.cc/H7WV-JJQU>]; Krauss & Gladstone, *supra* note 114; Neil MacFarquhar, *Russians' Anxiety Swells as Oil Prices Collapse*, N.Y. TIMES (Jan. 22, 2016), <http://www.nytimes.com/2016/01/23/world/europe/russians-anxiety-swells-as-oil-prices-collapse.html>.

116. Dalan McEndree, *Saudis Could Face an Open Revolt at Next OPEC Meeting*, OILPRICE.COM (Aug. 20, 2015, 5:42 PM), <http://oilprice.com/Energy/Crude-Oil/Saudis-Could-Face-An-Open-Revolt-At-Next-OPEC-Meeting.html> [<http://perma.cc/KX8L-MZBQ>]; Ivana Kottasova, *Defiant Saudi Arabia Says It Can Handle Low Oil Prices For a Long, Long Time*, CNN (Jan. 21, 2016, 2:05 PM), <http://money.cnn.com/2016/01/21/investing/davos-energy-saudi-oil/> [<http://perma.cc/4F64-FSK8>].

117. Christopher Helman, *After a Bloodbath In Oil, What Next?*, FORBES (Dec. 1, 2014, 1:32 AM), <http://www.forbes.com/sites/christopherhelman/2014/12/01/after-a-bloodbath-in-oil-what-next/#7fdf2fad3927> [<http://perma.cc/6E9Y-268Y>]; David McNew, *OPEC Split Over Oil Production Cuts*, RT (Jan. 22, 2016, 11:43 AM), <https://www.rt.com/business/329803-opec-oil-saudi-nigeria/> [<http://perma.cc/XA8B-D4SJ>].

118. *Iran Set to Negotiate on Oil Market with Saudi Arabia*, AL JAZEERA, (Feb. 10, 2016), <http://www.aljazeera.com/news/2016/02/iran-set-negotiate-oil-market-saudi-arabia-160210050125453.html> [<http://perma.cc/3A9T-J2QQ>].

119. *A Brave New World . . .*, OPEC BULL., Oct. 2015, at 1, <http://www.opec.org/>

non-OPEC member, responded by calling for negotiations with OPEC.¹²⁰ Azerbaijan, another 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.”¹²¹ 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.”¹²² 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.¹²³ 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.¹²⁴ First, OPEC and non-OPEC members have intermittently held discussions since November 2014, with no action resulting from these discussions.¹²⁵ Second, Saudi Arabia explicitly stated that

opec_web/static_files_project/media/downloads/publications/OB102015.pdf [http://perma.cc/6ATS-WFAB]

120. McNew, *supra* note 117.

121. *Id.*

122. *A Brave New World . . .*, *supra* note 119.

123. Kedar Grandhi, *Oil Crisis: Officials from Saudi Arabia, Russia, Venezuela and Other Opec Members Meeting in Doha*, INT’L BUS. TIMES (Feb. 16, 2016, 5:47 AM), <http://www.ibtimes.co.uk/oil-crisis-officials-saudi-arabia-russia-venezuela-other-opec-members-meeting-doha-1544051> [http://perma.cc/H7P3-4VN8]; Wael Mahdi & Elena Mazneva, *Saudi, Russian Oil Ministers Plan Talks in Doha Tuesday*, BLOOMBERG (Feb. 16, 2016, 2:06 AM), <http://www.bloomberg.com/news/articles/2016-02-15/saudi-russian-oil-ministers-said-to-plan-talks-in-doha-tuesday-ikoag6a0>.

124. Jon Gambrell, *Surging Oil Production, Low Prices to Challenge Doha Meeting*, U.S. NEWS (Apr. 16, 2016, 9:22 AM), <http://www.usnews.com/news/business/articles/2016-04-16/surging-oil-production-low-prices-to-challenge-doha-meeting> [http://perma.cc/F8CF-2NGX]; Grandhi, *supra* note 123; Mahdi & Mazneva, *supra* note 123; Nallur Sethuraman & Vijaykumar Vedala, *ANALYST VIEW-Reactions to Saudi, Russia Deal to Freeze Oil Output*, REUTERS (Feb. 16, 2016, 4:20 PM), <http://www.reuters.com/article/oil-meeting-idUSL3N15V4K3> [http://perma.cc/N55J-LXJL].

125. Mahdi & Mazneva, *supra* note 123.

unless all oil producers, OPEC or non-OPEC, agree to reduce production, Saudi Arabia will not reduce production.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.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.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.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.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.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

126. Kottasova, *supra* note 116; McNew, *supra* note 117.

127. Kottasova, *supra* note 116; Peter Buxbaum, *What's Up With OPEC?*, GLOBAL TRADE (Oct. 20, 2016), <http://www.globaltrademag.com/global-trade-daily/whats-up-with-opec> [<http://perma.cc/E5WS-4YAQ>]

128. Sam Meredith, *OPEC Reaches Agreement to Cut Oil Production to 32.5 Million Barrels a Day: Oil Ministers*, CNBC (Nov. 30, 2016, 11:55 AM), <http://www.cnbc.com/2016/11/30/opec-reportedly-reaches-agreement-to-cut-oil-production.html> [<http://perma.cc/JJN2-PAFT>]; Stanley Reed & Clifford Krauss, *OPEC Reaches Deal to Limit Production, Sending Prices Soaring*, N.Y. TIMES (Nov. 30, 2016), <http://www.nytimes.com/2016/11/30/business/international/opec-energy-oil-saudi-iran.html>; Press Release, Org. of the Petroleum Exporting Countries, OPEC and Non-OPEC Ministerial Meeting (Dec. 10, 2016), http://www.opec.org/opec_web/en/press_room/3944.htm [<http://perma.cc/32XC-7AMW>]

129. Reed & Krauss, *supra* note 128.

130. Press Release, Org. of the Petroleum Exporting Countries, *supra* note 128.

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.¹³² 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.¹³³ 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.¹³⁴ Thus, without a third-party watcher and enforcer, the deal will likely fall through.

Unlike most oil rich nations, the U.S. oil market is not state-owned.¹³⁵ U.S. political leaders have, however, negotiated on behalf of U.S. oil producers with OPEC.¹³⁶ For example, Vice President George H.W. Bush met with the King of Saudi Arabia in 1986 to discuss the low oil prices.¹³⁷ When Bush became

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/cf81190c/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.").

133. E.g., Riva Gold & Georgei Kantchev, *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.cnb.com/2016/11/29/oil-markets-jittery-ahead-of-opec-meeting-later-in-day.html> [<http://perma.cc/GJR2-VF6D>].

134. 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 & Kantchev, *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/here-s-what-analysts-are-saying-about-the-opec-deal> [<http://perma.cc/V7YR-S2JS>].

135. *Where Our Oil Comes From*, U.S. ENERGY INFO. ADMIN., https://www.eia.gov/energyexplained/index.cfm?page=oil_where [<http://perma.cc/ZY3Y-PMA7>] (last updated Dec. 19, 2016).

136. Lachin Rezaian, *Oil Price Fall to Make US Negotiate with OPEC*, MEHR NEWS AGENCY (Jan. 12, 2015, 8:42 AM), <http://en.mehrnews.com/news/105443/Oil-price-fall-to-make-US-negotiate-with-OPEC> [<http://perma.cc/5RQ7-GYSV>].

137. Timothy J. McNulty, *Bush Sees Oil Glut Undermining U.S.*, CHI. TRIB. (Apr. 7, 1986), http://articles.chicagotribune.com/1986-04-07/news/8601250350_1_oil-prices-oil-situation-oil-production [<http://perma.cc/GQW9-JJSK>].

President in 1989, relations between the United States and Saudi Arabia continued to improve.¹³⁸ Additionally, during the Asian Financial Crisis of 1998, oil prices fell to under \$10 a barrel.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.¹⁴⁰ Throughout history, the United States has often used its foreign affair policies as tools to urge OPEC's cooperation.¹⁴¹ Thus, with the current level of civil and political unrest in the Middle East, the opportunity to negotiate is ripe.¹⁴²

IV. CONCLUSION

At one point in recent years, oil prices reached record highs of approximately \$120 per barrel.¹⁴³ Since then, however, oil prices fell below \$30 a barrel.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

138. JAREER ELASS & AMY MYERS JAFFE, *THE HISTORY OF U.S. RELATIONS WITH OPEC: LESSONS TO POLICYMAKERS* 53 (2010), http://www.bakerinstitute.org/media/files/Research/e3ef09d6/Amy_Jareer_U.S._Relations_with_cover_secured.pdf [<http://perma.cc/Y75S-GJT3>]; David Paul Kuhn, *The Tangled Web Of U.S.-Saudi Ties*, CBS NEWS (Apr. 20, 2004, 7:35 PM), <http://www.cbsnews.com/news/the-tangled-web-of-us-saudi-ties/> [<http://perma.cc/LC5P-BD9E>] ("The [U.S.-Saudi] relationship peaked under the presidency of George H.W. Bush. This is both due to personal and financial ties, but moreover because the Saudi royal family supported (was even grateful) for the first Iraqi war, when the United States ousted Iraqi troops from Kuwait.").

139. Daniel Fisher, *Memories of Houston, The Last Oil Plunge, and \$10 Crude*, FORBES (Jan. 6, 2015, 2:47 PM), <http://www.forbes.com/sites/danielfisher/2015/01/06/memories-of-houston-the-last-oil-plunge-and-10-crude/#52ea6a329f81> [<http://perma.cc/QL7-NFYH>].

140. ELASS & JAFFE, *supra* note 138, at 58.

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.").

142. See Ambrose Evans-Pritchard, *Saudi Arabia Risks Destroying Opec and Feeding the Isil Monster*, TELEGRAPH (Nov. 11, 2015, 9:25 PM), <http://www.telegraph.co.uk/finance/economics/11989469/Saudi-Arabia-risks-destroying-Opec-and-feeding-the-Isis-monster.html>.

143. *Crude Oil: WTI (NYMEX) Price*, NASDAQ, <http://www.nasdaq.com/markets/crude-oil.aspx?timeframe=7y> [<http://perma.cc/6Z26-L9KA>] (last visited June 9, 2017).

144. Matt Egan, *Oil Crashes to \$30 a Barrel*, CNN MONEY (Jan. 12, 2016, 3:52 PM), <http://money.cnn.com/2016/01/12/investing/oil-prices-below-30/index.html> [<http://perma.cc/3PHV-N99Y>].

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.

147. Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, div. O, § 101, 129 Stat. 2242, 2987 (2015).

148. CARSON & KRELLIS, *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.").

150. Josie Cox, *OPEC Decision 'A Watershed for the Oil Market' - Street Reacts*, WALL ST. J. (Nov. 28, 2014, 4:48 AM), <http://blogs.wsj.com/moneybeat/2014/11/28/opeca-watershed-for-the-oil-market-strategists-react/>; Press Release, Org. of the Petroleum Exporting Countries, *supra* note 73.