

United States Senate

WASHINGTON, DC 20510

January 30, 2014

The Honorable Barack Obama
President
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

Dear President Obama,

We write to urge you to continue supporting American consumers, our economy and our national security by ensuring that crude oil produced in the United States remains in the United States. Longstanding U.S. law requires that, with very few exceptions, domestically-produced crude oil cannot be exported. Yet some have begun calling for a reversal of this policy. We urge you to support longstanding law and precedent and oppose efforts to roll back these important protections for consumers and our national security.

In urging you to continue the nation's current protections against oil exports, we write to highlight the following issues:

1) The Commerce Department does not possess the authority to authorize new categories of crude exports on its own.

The Energy Policy and Conservation Act (EPCA, P.L. 94-163) clearly does not permit the Commerce Department to issue approvals of crude oil exports, unless the President specifically determines that exports of a particular type are consistent with the national interest and the purposes of that statute. In Section 103 of EPCA, Congress made very clear that a Presidential finding was needed to exempt a certain class of crude exports, based on “the purpose for export, class of seller or purchaser, country of destination, or any other reasonable classification or basis as the President determines to be appropriate and consistent with the national interest and the purposes of” EPCA. Under no circumstance was the Department of Commerce given the broad authority to waive the export ban generally. Therefore, without the prior issuance of a narrowly tailored Presidential finding that crude exports of a specific nature are in the national interest and consistent with EPCA, the Commerce Department does not possess the authority to authorize new categories of crude exports.

In the last 39 years, there have been only three presidential findings exempting narrow categories of crude oil exports from the general ban. The most significant exemption was granted in 1985 by President Reagan. Citing the legal authority provided in EPCA, President Reagan issued a determination that exports of crude oil to Canada for consumption or use therein were in the national interest.¹ In making this finding, President Reagan expressly determined that such exports to Canada would not diminish

¹ 50 FR 25189

the total quality or quantity of petroleum available to the United States, they would not increase America's reliance on imported oil, and that the exports were consistent with the purposes of EPCA. However, EPCA specifically highlights Canada and Mexico as unique examples, stating that any Presidential finding "shall take into account the national interest as related to the need to leave uninterrupted or unimpaired...the historical trading relations of the United States with Canada and Mexico." Clearly, a leap from granting narrow, categorical exemptions such as the one with Canada, to a broad finding that all or significant new quantities of crude exports are in the national interest and consistent with EPCA would be unprecedented.

2) New crude exports are inconsistent with current law and would increase reliance on imports.

We further believe that the approval of any new crude exports at this time would not be consistent with the purposes of EPCA, one of the requirements of such an authorization. When enacting the crude oil export ban as part of EPCA in 1975, it was clearly Congress' intent to ensure that U.S. crude oil would not be exported if it would increase our reliance on foreign oil. The Conference Report accompanying EPCA makes this crystal clear, stating that "[t]he President must also be vigilant to assure that exemptions [to the ban on exporting U.S. crude] do not result in greater reliance on imports."² When Congress passed EPCA in 1975, the United States was importing slightly more than one-third of its oil. Today, even after the significant increases in production we have seen under your administration, we remain just over one-third reliant on foreign oil, underscoring our continued vulnerability to supply disruptions and price shocks. In fact, on a net basis, we are importing 6.4 million barrels of petroleum each day, which is more than the 5.8 million barrels per day we were importing in 1975. In terms of crude oil alone, the United States is now importing nearly twice as much as we were when EPCA passed – 7.6 million barrels per day now compared to 4.1 million barrels per day in 1975. Expanding categories of crude exports stands to increase, not decrease, this reliance on oil imports and would therefore be inconsistent with the purposes of EPCA as outlined by Congress.

3) The export authority in existing regulation has been mischaracterized.

It has been suggested that the regulations³ permit the Commerce Department sufficient authority to lift the ban on crude exports on its own, without Presidential action. Specifically, some have pointed to language in regulation which states that "for compelling economic or technological reasons that are beyond the control of the applicant, the crude oil cannot reasonably be marketed in the United States" as authority for the Commerce Department to approve crude exports. This is an incomplete reading of the regulation and is plainly at odds with the underlying statute passed by Congress. A full reading of the regulations shows that this exemption must be used "as part of an overall transaction... That will result directly in the importation into the United States of an equal or greater quantity and an equal or better quality of crude oil." The technological or economic exemption in regulation only applies as part of a swap of oil or refined

² House Report 94-700, Senate Report 95-516. Conference Report accompanying the Energy Policy and Conservation Act, P. 126.

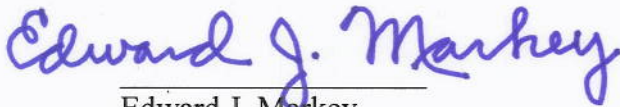
³ 15 C.F.R. § 754.2

product, not a straight export and is not sufficient authority for the Commerce Department to permit new classes of crude oil exports. More broadly, nowhere in regulation is the Commerce Department bestowed with the authority to approve large-scale new exports on its own and any attempt to do so would exceed the Department's existing authorities.

Existing law regarding crude oil exports is very clear. And while we are rapidly reducing our reliance on foreign oil under your leadership, the job is not yet complete. We remain just as reliant on foreign sources of oil today as we were when Congress and President Ford acted in 1975 to ensure that the oil produced in America would stay in America. Now is not the time to reverse these policies that protect American consumers and America's economic and national security. Keeping these protections in place is critical to help shield consumers in Massachusetts, New Jersey and across the nation from price spikes at the pump. We urge you to reject calls to authorize any new categories of exports of U.S. crude oil absent Congressional action.

Thank you for your attention to this matter.

Sincerely,



Edward J. Markey
United States Senator



Robert Menendez
United States Senator