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Hard Choices: American Oil Import Dependence and Oil Import Fees

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Hard Choices: American Oil Import Dependence
and Oil Import Fees

I. INTRODUCTION: THE RISE OF AMERICAN OIL DEPENDENCE

Over the past forty years, the United States has become increasingly dependent on imported oil. In 1990, nearly forty-five percent of the oil consumed in the U.S. came from foreign wells. Oil is of vital importance to industry, manufacturing, and transportation, while import dependence presents foreign policy, national security, and economic concerns.

The supply of affordable foreign oil was important to developing industrial society, and today it is an indispensable element of the global economy. The abundant supply of cheap foreign oil has conferred many benefits upon the United States. However, dependence on imported oil also presents many serious problems. As a policy, long term dependence on oil is unwise because it is a finite resource. In the short term, substantial dependence on imported oil increases the likelihood of oil supply disruptions, and is a threat to national security. A significant disruption of supply would cause increased unemployment and inflation, and would severely hamper American economic performance.

An oil import fee could help reduce U.S. dependence on imported oil. Such a fee would increase oil prices, encouraging domestic oil production. Increased oil prices would have negative economic effects. However, the ill effects of a phased in, anticipated oil import fee are preferable to the severe consequences of a sudden disruption in oil supply. Import dependence is an extremely difficult problem, and requires that some hard choices be made to increase American energy independence.

A. The Early Years

Oil is a cornerstone of modern industrial society. Indispensable to industry and manufacturing, it allows us to be extremely mobile.1

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pendence on oil, and the numerous benefits which flow from its abundant supply, began with the Industrial Revolution. According to one author, it is only in the last 125 years that mankind has entered the Age of Petroleum.\(^2\) By the end of the 19th century, oil was an important commodity of international trade, and a significant source of revenue for the United States, which was exporting large quantities of oil.\(^3\)

As commercial enterprise flourished, the leading industrial nations became increasingly dependent on imported oil, however they found their domestic supplies insufficient to meet the growing demand.\(^4\) Sufficient supply of imported oil was of vital importance to the emerging industrial societies.\(^5\) Levels of oil imports increased consistently throughout the first half of the 20th century, and by the end of World War II, the United States was a net importer of petroleum.\(^6\) Over the ensuing forty years, this trend has persisted as the United States has grown increasingly dependent on foreign oil. By the 1950s, oil had become an indispensable element of international trade and the world had entered "the era of multilateral energy interdependence."\(^7\)

B. Effects of Import Dependence

The emergence of oil as a premium energy source of industrial society has created, in addition to its many benefits, a multitude of problems for oil dependent importing countries. One of the most pervasive problems inherent with oil dependence is that as a natural resource, it is finite. More than a mere theoretical finitude, depletion of the supply is well within contemporary capability. Estimates of when exhaustion will occur vary, yet all but the most optimistic ones predict the barrel will be dry by the mid-twenty first century.\(^8\) The immediate implications of oil

\(^{2}\) EDWARD W. CHESTER, UNITED STATES OIL POLICY AND DIPLOMACY 3 (1983). The first American petroleum company, the Pennsylvania Rock Oil Company, was organized on December 30, 1854. \textit{Id.}

\(^{3}\) \textit{Id.} By the early 1880s, oil exports ranked fourth in value behind cotton, breadstuffs and provisions. \textit{Id.}

\(^{4}\) JOSEPH S. SZYLIOWICZ & BARD E. O'NEILL, THE ENERGY CRISIS AND U.S. FOREIGN POLICY 142-43 (JOSEPHS S. SZYLIOWICZ & BARD E. O'NEILL eds. 1975) [hereinafter Szyliowicz & O'NEILL]. Western Europe and Japan became heavily dependent on imported oil, while the United States remained a relatively low importer. By 1960, Europe was importing over 90% of its oil. \textit{Id.}


\(^{7}\) SZYLIOWICZ & O'NEILL, supra note 4, at 142.

\(^{8}\) John Norton Moore, \textit{Foreign Policy Dimensions of the Crisis in Oil}, 17 WILLAMETTE L. REV. 111, 113 (1980) (Predicting that worldwide production could begin to drop as soon as the year 2000). \textit{See also}, ARABINDA GHOSH, OPEC, THE PETROLEUM INDUSTRY, AND UNITED STATES ENERGY POLICY 109 (1983) (Venezuela will run out of oil in the next ten years; Algeria within
dependence are equally serious. Supply disruptions of imported oil and the resultant shortages threaten every oil dependent economy.

The challenge to find new resources to adequately meet future energy demand is one of the most difficult and pressing problems mankind has ever faced.\(^9\) The reality of the world's finite oil supply, and the fact that a substantial amount of the remaining world oil reserves are located in a militarily and politically insecure region\(^10\) both give compelling policy arguments for reducing American dependence on imported oil. From a political standpoint, dependence on foreign oil transforms energy policy into an essential factor of foreign policy.\(^11\) From an economic standpoint, continued (or increased) dependence will exacerbate the already substantial transfers of wealth from the importing countries to the exporting countries.\(^12\) From a strategic standpoint, it is poor policy to rely so significantly for oil on an insecure source, insofar as it increases the likelihood of substantial interruptions of supply.\(^13\) Recognition of such a danger has been an element of American energy policies for the last half century.\(^14\) Noting the negative implications of import dependence, one commentator has called imported oil "our drug of choice."\(^15\)

C. Increased American Dependence

While the debate about imported oil has become more acute as global dependence on oil has grown, concern over oil dependence is not a new phenomenon. As early as the first World War, one author wrote that "[i]t is doubtful whether future discoveries of oil within the United

fifteen years; and Kuwait, UAE, Iraq and Saudi Arabia will run out in 50-75 years). See also, Energy Policy, supra note 1, at 3 (Current Middle Eastern oil reserves would last more than 100 years at current production rate of 6 billion barrels per year). See also, Thomas W. Lippman, Is This Help in the Nick of Time, or More Coals for Newcastle?, WASH. POST, Oct. 22-28, 1990, at 15 (Nat'l Week. Ed.) [hereinafter Nick of Time]. Saudi Arabia, already the world's largest oil exporter, has recently made new discoveries of oil which could increase its reserves by 20%. If these estimates are accurate, Saudi Arabia could produce oil at its current rate into the 22nd century. Id.

\(^9\) SZYLIOWICZ O'NEILL, supra note 4, at vii.


\(^11\) SZYLIOWICZ & O'NEILL, supra note 4, at 50.

\(^12\) JAMES M. GRIFFIN & DAVID J. TEECE, OPEC BEHAVIOR AND WORLD OIL PRICES 186 (1982) [hereinafter GRIFFIN & TEECE].

\(^13\) SZYLIOWICZ & O'NEILL, supra note 4, at 56.

\(^14\) MANCKE, supra note 6, at 4-5. The goal of reducing dependence on militarily/politically insecure sources has been one of the four goals of U.S. policy since the 1930s. Id.

\(^15\) Lippman, supra note 1, at 22.
States will keep pace with our consumption." Those doubts quickly became reality. The years following World War II saw North America shift from a net exporter of energy to a net importer.17

Whether due to a lack of leadership, or the lack of a comprehensive plan to limit foreign oil dependence, today imports serve much more than a supplementary purpose. In 1949 American oil producers adopted the slogan "[i]mports to supplement but not to supplant."18 In 1955, due to the increasing amounts of oil imports, the federal government asked importers to limit the levels of imported oil on a voluntary basis,19 and in 1957 a formal "Voluntary Oil Import Program" was instituted by President Eisenhower.20 The voluntary approach to limiting imports was unsuccessful. As a result, the Eisenhower Administration, in 1959, announced a mandatory limitation program, establishing ceilings for foreign oil imports.21

The flow of imported oil into the United States, as well as into Japan and Western Europe, steadily increased through the 1960s and early 1970s. Combined Western European and Japanese crude imports increased almost twofold between 1967-73, and American imports of crude rose more than 150%.22 In 1970, 25% of the oil consumed in the United States came from foreign wells,23 and the early years of that decade saw American import dependence increase at nearly 30% annually.24

Between 1970-81, American crude oil imports more than tripled, from 545 million barrels in 1970 to 1,763 million barrels in 1981.25 More significantly, the proportion of oil imports to total U.S. oil supply in-

16 HERBERT FEIS, PETROLEUM AND AMERICAN FOREIGN POLICY, 14 (1944).
17 HUSSEIN ABDALLAH, THE MARKET STRUCTURE OF INTERNATIONAL OIL WITH SPECIAL REFERENCE TO THE ORGANIZATION OF PETROLEUM EXPORTING COUNTRIES 108-109 (1979). This was largely due to increased oil imports. Imported oil made up only 6.3% of overall consumption in 1952, but was up to 12% in 1956 and 21.3% in 1963. Id.
18 CHESTER, supra note 2, at 22.
20 CHESTER, supra note 2, at 32.
21 Id. at 34-35 (Nationwide import levels were limited to the 1957 level of 480,000 barrels per day). See also, Lawrence, supra note 19, at 104 (This oil import quota excluded Mexican and Canadian Oil). See also, MANCKE, supra note 6, at 18 (Quotas restricting oil imports throughout the 1960's were costly to the United States without providing any real benefit, as no legitimate threat of supply disruption existed).
22 NATIONAL STRATEGY INFORMATION CENTER, INC. OIL, DIVESTITURE AND NATIONAL SECURITY 107 (1977) [hereinafter NSIC]. In 1973, imported oil represented 63% of total energy resources in Western Europe, 85% of Japanese energy and 17% of American energy supplies. As the proportion of imported oil to total oil supply was greatest in Japan, the degree of import dependence was the most severe. Id.
23 Hart, supra note 10, at 280.
24 MANCKE, supra note 6, at 18.
creased as well; it constituted 16.4% of total supply in 1971 and 36.1% in 1981.26 Today the import/supply ratio is even higher. In the first eight and one half months of 1990, the United States imported approximately 45% of its oil needs.27

The 1973 oil embargo brought concern over foreign oil dependence into the forefront.28 American support of Israel in the Middle East war prompted the oil producing and exporting countries to invoke the "oil weapon."29 The weapon was successfully used, as oil production was cut and oil prices soared.30 Skyrocketing gas prices and long lines at the gas pumps made many, both inside and outside of government, question the propriety of continued American dependence on foreign oil.

During President Nixon's tenure, American oil imports rose more than 150%.31 In the wake of the 1973 oil embargo, President Nixon unveiled Project Independence, his plan to put the United States on the road to energy self-sufficiency.32 In addition, the Federal Energy Agency (FEA) was created to handle energy policy matters.33 Despite an aggressive energy plan, including federal fuel allocation programs, price controls, and oil import fees, the end result of the Nixon administration's energy policy was increased dependence on imported oil.34

President Ford imposed an oil import fee of $1 per barrel beginning February 1, 1975, increasing to $2 per barrel in June of that year.35 In addition to his attempt to reduce oil consumption through the per barrel

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26 Id. at 29. At their peak in 1977, imports constituted 45.6% of total oil supply. The proportion of imports to total supply is the important focus. As that proportion increases, so does the degree of dependence. Id. See also, Thomas H. Lippman and Mark Potts, The Current Oil Shock is Proving Less Electrifying, WASH. POST, Nov. 26-Dec. 2, 1990, at 20 (Nat'l Week. Ed.) [hereinafter Electrifying].


28 Energy Policy, supra note 1, at 1, (Predicting that the recent Gulf crisis will renew Congressional interest in reducing dependence by utilizing alternative fuels, conservation, energy taxes and oil import fees).

29 SZYLIOWICZ & O'NEILL, supra note 4, at 184.

30 Id. at 185. See also, GHOSH, supra note 8, at 161. (Retail gas prices doubled almost immediately).

31 NSIC, supra note 22 at 107.

32 GHOSH, supra note 8, at 163.

33 Id.

34 GHOSH, supra note 8, at 163. See also, Moore, supra note 8, at 113 (Five years after Project Independence was released, oil imports had risen, constituting 45% of American oil consumption). See also, Lippman, supra note 1, at 22 (Nixon's Project Independence called the last "concerted attempt by the federal government to eliminate oil imports"). See also, [Congressional Research Service, (Libr. Cong. Oil) Import Fees (Taxes) For Deficit Reduction: Revenue and Economic Effects], at 2 (1989) [hereinafter OIF]. In 1973 there was a 10.5 cent per barrel tax on imported crude oil. Id.

35 Id. at 164. It was estimated that the $2/barrel fee would reduce oil imports by 800,000
tariff, President Ford also introduced several measures designed to increase domestic exploration and to encourage domestic production.\textsuperscript{36} Despite his ambitious intentions, disagreement between the Republican President and the Democratic Congress prohibited the formulation of any coherent national energy policy.\textsuperscript{37}

President Jimmy Carter entered the office with oil imports at an all time high, domestic production levels plummeting, and a staggering bill for U.S. oil imports.\textsuperscript{38} The Carter Administration replaced license fees and customs duties currently in place with a scheme of oil import quotas.\textsuperscript{39} In addition, the Crude Oil Equalization Tax (COET) was introduced, with the hope that it, would reduce oil consumption by increasing prices.\textsuperscript{40} The COET was proposed to operate within the framework of existent oil price controls, but would permit the regulated price of newly discovered oil to rise.\textsuperscript{41} By imposing a tax equal to the difference between world and domestic oil prices, it was believed that oil consumption could be cut.\textsuperscript{42} However, President Carter was unable to sell his aggressive energy plan to Congress, and like his predecessors, was unable to formulate a long-term energy policy which would reduce import dependence.\textsuperscript{43}

Ronald Reagan's faith in the free market as a means of reducing import dependence was made clear early in his presidency when he eliminated the price control on domestic oil instituted by President Carter.\textsuperscript{44} Through the first half of 1981 this decentralization of domestic oil pricing had the positive effect of increasing the amount of newly completed oil wells.\textsuperscript{45} Over the long-term, however, Reagan administration policies increased, rather than decreased, import dependence.\textsuperscript{46} Many commen-
tators have noted that President Bush's National Energy Strategy similarly indicates his reliance in the free market as a means of reducing import dependence.\textsuperscript{47}

In 1977, nearly 40\% of the oil consumed in the United States was imported.\textsuperscript{48} Today import dependence is more severe, as oil demand continues to rise,\textsuperscript{49} and domestic production continues to fall.\textsuperscript{50} In the first six months of 1990, the United States imported in excess of 45\% of its oil.\textsuperscript{51}

Even with the implementation of an aggressive energy policy aimed at reducing import dependence, foreign oil will remain an indispensable element of U.S. energy supply through the turn of the century.\textsuperscript{52}

\textbf{D. Foreign Policy and National Security Implications}

In addition to increased prices and genuine energy shortages, the 1973 oil embargo demonstrated that oil import dependence has significant foreign policy and national security implications and that exporting nations have the power to affect international political stability.\textsuperscript{53} In a more limited sense, import dependence transforms energy policy into an element of foreign policy.\textsuperscript{54}

The concentration of oil reserves in the Middle East region gives those nations an amplified, albeit distorted, sense of importance in the international community. The value of oil to the exporters is greater than the market price per barrel. Oil is a political commodity,\textsuperscript{55} a weapon which threatens the import dependent nations of the industrialized world.

Effective use of "the oil weapon" enables exporting countries to af-

\textsuperscript{47} 	extit{Still Not Serious About Energy}, WASH. POST, Feb. 18-24, 1991, at 29 (Nat'l Week. Ed.). The Bush Administration has cut out the principle conservation measures of the Energy Strategy, and has instead focused on increased domestic production as the way to reduce import dependence. Referring to Bush's apparent faith in the free market, is stated that "Ideology is always the death of sensible policy and particularly in a field as highly polarized as energy." \textit{Id.}

\textsuperscript{48} NSIC, supra note 22, at 116.

\textsuperscript{49} INTERNAT'L ENERGY AGENCY, ANNUAL ENERGY REPORT 7 (1988) (American oil consumption up 2.8\% in 1988).

\textsuperscript{50} DOMESTIC OIL PRODUCTION, CONGRESSIONAL RESEARCH SERVICE, at 1 (1991) [hereinafter DOMESTIC] (Between 1985-89, domestic oil production was down 15\%).


\textsuperscript{53} SAM H. SCHURR \textit{ET AL.}, \textit{ENERGY IN AMERICA'S FUTURE} 418 (1979) [hereinafter S. SCHURR].

\textsuperscript{54} Bush, supra note 5, at 29. "Energy security is national security. . . ." National Security was one of three reasons for U.S. involvement in the Gulf crisis. \textit{Id.}

\textsuperscript{55} SZYLIOWICZ \& O'NEILL, supra note 4, at 74. See also, \textit{Energy Policy}, supra note 1, at 6.
fect the energy policy and foreign policy of the importing countries. Clearly, American policies are affected by the actions of the oil-rich nations. Oil import dependence is a political and economic weakness which is necessarily a factor in U.S. policies toward the exporters. Fluctuations in international oil prices have negative economic, political and international security ramifications, and an outright failure to obtain enough oil from abroad would be a "serious blow" to the American economy. As the threat of disruption in the flow of foreign oil is very real, the time to take steps to reduce import dependence is now, not when the oil stops flowing.

Current global dependence on oil as a source of energy necessarily makes its trade a matter of vital importance to the international community, particularly to the principle importing and exporting countries. Indeed, the trade of oil is the key link between the energy consuming and energy producing sectors of the global economy. Energy related decisions of the individual nations effect this "global linkage." This link, however, is heavily weighted in favor of the exporting countries, and the resulting imbalance forces many of the oil consuming nations to avoid confrontations with their oil-rich suppliers. Insofar as oil is a factor in U.S. foreign policy decisions, national security is negatively impacted by increased levels of import dependence. As one commentator stated, "[e]nergy self-reliance — is the forgotten element of our national security policy."

Recognition of the national security aspects of American import dependence is not a recent phenomenon. Indeed, "[n]ational security considerations have always been an important factor in the U.S. Government's foreign oil policy." In 1944, one commentator advised that increased American ownership (or control) of foreign oil reserves would be a desirable policy. In July 1950, a committee of the National Petroleum Council, set up to examine oil import, policy reported that

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56 DOUGLAS R. BOHI & W. DAVID MONTGOMERY, OIL PRICES, ENERGY SECURITY, AND IMPORT POLICY, at xii (1982) [hereinafter BOHI & MONTGOMERY] “[O]ptimal U.S. policy depends on the behavior of the oil-exporting countries, which is poorly understood.” Id.

57 NSIC, supra note 22, at 106.

58 BOHI & MONTGOMERY, supra note 56, at xi.

59 CHESTER, supra note 2, at preface. See also, Bush, supra note 5, at 29.

60 S. SCHURR, supra note 53, at 416. This is particularly true considering that an extensive time period is required for planning and investment in order to increase the use of non-oil energy sources. Id.

61 Id. at 415-416.

62 GRIFFIN & TEECE, supra note 12, at 186.

63 Hart, supra note 10, at 280.

64 PETROLEUM INDUSTRY RESEARCH FOUNDATION INC., UNITED STATES OIL IMPORTS: A CASE STUDY IN INTERNATIONAL TRADE 59 (1958) [hereinafter PIRF].

65 FEIS, supra note 16, at 19.
"[i]mports of crude oil and its products, if increased beyond the limits of supplementing domestic production, will adversely affect the domestic industry, the national economy, and national security." The Eisenhower Administration echoed concerns about the rising U.S. dependence on foreign oil, specifically noting its potential negative implications for defense preparedness, but opposed federal government intervention to address the problem.

Although national security problems related to import levels were recognized early, these problems were not taken seriously throughout the 1950s and 1960s. Indeed, until the late 1960s, national security reasons for restricting oil imports were not legitimate, as no valid threat to import supplies existed. Furthermore, the state of domestic supply was much better, as until the early 1960s a great deal of total oil demand was met by domestic production. Today, both the sources of U.S. oil imports, and the state of domestic production legitimize national security concerns over import dependence.

The late 1960s saw the Middle East become a principal supplier of American oil imports. Insofar as energy policy is a factor of foreign policy, American objectives in the Middle East region reflect its oil needs. One author has stated the major policy goals of the United States in the Middle East are "to ensure that the region does not fall under the control of an outside power hostile to the United States and its allies . . . and to ensure the continued availability of Middle Eastern oil on acceptable terms to our Western European allies and . . . to the United States itself." Another commentator has identified the following central energy policy goals. (1) A sufficient and safe supply of petroleum; (2) maintaining a "reasonable and predictable" price for oil; (3) maintenance of national security, and (4) the maintenance of viable foreign relations.

E. Free Market Principles and International Oil

One of the ironies of the oil import problem is that the free market system, which allowed the United States to establish itself as the world's dominant economic, political, and military nation, is today threatening that dominance. The principles and assumptions underlying the free market do not appear to be capable of dealing with the energy depen-

66 CHESTER, supra note 2, at 22.
68 MANCKE, supra note 6, at 15. Most of American imported oil still came from secure sources, namely the Caribbean or Canada. Id.
69 MOHAMMED E. AHRARI, OPEC THE FALLING GIANT 37 (1986).
70 Id. at 37.
72 ROBERT B. KRUEGER, THE UNITED STATES AND INTERNATIONAL OIL 83 (1975).
dence and national security problems which result from heavy dependence on foreign oil. While the market will generally assure the availability of reasonably priced oil, it cannot recognize the "costs" of import dependence. In this sense, the free market is simply not capable of dealing with matters of national security. One commentator has stated that reliance on the free market in the oil trade leaves importing economies "vulnerable to... the vicissitudes of Middle Eastern history and to pure luck..." Low prices and abundant supply of foreign oil promote economic growth, but wholly ignore the underlying problem of energy dependence. Indeed, the nature of the import problem is inconsistent with the free market, as "security and economic efficiency seldom coincide."

Some commentators, rather than finding the free market inadequate to address the import problem, insist that there is no free oil market. Control of a large portion of the world's remaining oil reserves by the OPEC nations prevents the existence of a free market. This line of thought is implicitly founded on the belief that no free market can exist where output levels and price are within the discretion of the exporting governments. Summarizing this theory, one commentator noted that "the oil market hasn't operated as Adam Smith envisioned a free market would."

II. ORGANIZATION OF PETROLEUM EXPORTING COUNTRIES (OPEC)

A. Introduction

Whether one believes in a free oil market, in the impossibility of a free oil market, or in some intermediate position, one must take into account the Organization of Petroleum Exporting Countries (OPEC).

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73 Hart, supra note 10, at 287. "The market does not possess a sense of national urgency." Id.
74 Costs of oil dependence are both financial and non-financial. Large negative balance of payments and an expanding foreign debt illustrate the financial costs. The national security and foreign policy implications of oil dependence highlight the non-financial costs.
76 McKie, supra note 51, at 736.
77 Id. at 742. But see Kazi Golam Mohiuddien, The International Oil Market: Analysis and United States Policy Alternatives, 6 NORTHROP U.L.J. 55, 60 (1985). "The optimal American oil policy approach is a mixed policy whose primary feature is reliance upon free market mechanisms." Id. "Through the 1980's, U.S. energy policy was driven by a free-market approach." Kriz, supra note 52, at 2185.
78 Moore, supra note 8, at 123. See also, S. SCHURR, supra note 53, at 417 ("Oil markets are not purely competitive"). See also BOHI & MONTGOMERY, supra note 56, at 13 (The oil market is neither competitive nor monopolistic and therefore does not lend itself to traditional economic analysis).
79 BILL & STOOKEY, supra note 71, at 171.
80 Kriz, supra note 52, at 2185.
Since its founding in 1960, OPEC has played a pivotal role in the international oil market. As one author has written, OPEC is a “well-financed, politically savvy, and arguably hostile new world power. . . .” Conclusions about the purpose and utility of OPEC are heavily, if not completely, dependent on the position one occupies in the international oil trade. From an importers viewpoint, OPEC is commonly characterized as a cartel or a monopoly, the primary function of which is to limit competition within the international oil market.

OPEC was formed on September 10, 1960, in Baghdad, Iraq and in the ensuing thirty years has become a familiar, but misunderstood entity. Originally only composed of Iran, Iraq, Kuwait, Saudi Arabia, and Venezuela, by November 1973, the founding membership of five had grown to its present membership of thirteen. In order to gain membership, a country must have large amounts of net oil exports and must be approved by three-fourths of the members, including all five of the founding members. Shortly after its founding, the OPEC membership clause was amended to require that a nation wishing to join have “fundamentally similar interests to those of the member countries.”

The formation of OPEC allowed the oil rich nations to more effectively use “the oil weapon,” and from 1961-73 the member countries set up a comprehensive organizational network. As cooperation regarding oil policy between the OPEC nations increased, oil supply disruptions became “a real and growing possibility.” Indeed, beginning in 1971, OPEC formed a “common front,” making importers increasingly susceptible to supply disruptions.

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81 ABDALLAH, supra note 17, at 7.
82 MANCKE, supra note 6, at 3.
83 BILL & STOOKEY, supra note 71, at 172. Yet OPEC characterizes itself as a collection of sovereign governments looking out for the good of their people. Id. See also Norman S. Fieleke, Oil Shock III?, NEW ENG. ECON. REV. 3, 9 Sept.-Oct. (1990), where OPEC is characterized as a partial market sharing cartel. See also Mohiuddin, supra note 77, at 55, (defining OPEC as a government cartel). See also, NSIC, supra note 22, at 2, where OPEC countries are referred to as the greatest monopoly of all time.
84 Fieleke, supra note 83, at 7.
85 Id. at 6-7. OPEC is a United Nations registered intergovernmental organization. Id.
86 ABDALLAH, supra note 17, at 7.
87 BILL & STOOKEY, supra note 71, 110-11; AHRARI, supra note 69, at 183 (The current thirteen members of OPEC are Iran, Iraq, Kuwait, Saudi Arabia, Venezuela, United Arab Emirates [UAE], Qatar, Nigeria, Libya, Algeria, Indonesia, Gabon and Ecuador).
88 Fieleke, supra note 83, at 7.
89 ABDALLAH, supra note 17, at 7.
90 CHESTER, supra note 2, at 48. In 1962, OPEC resolutions elevated the price of oil to pre-1960 levels. In 1967, OPEC delegates voted to lift the “selective petroleum embargo” imposed on the United States, Great Britain, and West Germany. The latter action, naturally, served to increase net oil exports and revenues. Id.
91 MANCKE, supra note 6, at 18.
92 ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT THE PRESENT SITUATION...
Ostensibly, OPEC was formed to give the oil-rich nations leverage against the multinational oil companies which dominated the Middle-East region throughout the 1940s and 1950s. However, the OPEC founding documents lay out broader and less self-serving objectives than are evidenced by the “similar interest” language of the membership clause. According to its statutes, the primary goals of OPEC are to:

coordinate and unify the petroleum policies of Member countries and determine the best means for safeguarding their interests, individually and collectively [and to] devise ways and means of ensuring the stabilization of prices in international crude oil markets with a view to eliminating harmful and unnecessary fluctuations.

While consuming nations have traditionally harbored considerable animosity toward the exporting countries, exporting countries had long complained that they were entitled to a more direct role in the oil trade, as it is the single most important element of their economies. Viewed in this light, the exporters, through OPEC, are simply exercising rightful control over what is theirs to control.

The initial period of growth and development prepared OPEC well for the 1970s, when it would become a true world power. OPEC success resulted from exploitation of its power over the import dependent countries, from poor policy of the importers, and from changes in the supply conditions of the international oil market. One such change was that the 1970’s saw the oil market shift from a buyer’s market to a seller’s market. The power of the exporters during this period is well demonstrated by the oil crisis of 1973 and 1979, as well as by the per barrel price of oil. In 1970, OPEC oil was commanding $1.80/barrel on the market, and in 1980 the same barrel was trading for $32.

While OPEC is no longer as visible as it once was, it retains much of its power to affect, if not determine, the price of international oil. Several OPEC agreements in the 1970s allowed the exporters to push up the

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93 See Bill & Stookey, supra note 71, at 111. At its inception, OPEC sought to restore prices to their 1959 level and demand it be consulted in all future price alterations. Id.
94 OECD, supra note 92, at 79.
95 Ahrari, supra note 69, at 199.
96 Abdallah, supra note 17, at 50.
97 Mancke, supra 6 note at 93. The latter two factors contributed to the dramatic rise in world oil price from $1.20/barrel in 1970 to over $11/barrel in 1975. Id.
98 Karim Pakravan, Oil Supply Disruptions in the 1980's 24 (1984). This dramatic rise in price caused three major changes in the international oil market: a decline in oil demand by advanced countries, a decline in the growth of oil demand for developing countries, and a 40% increase in oil production by non-OPEC, non-communist countries. Id.
price of oil, and to "establish itself as a price manipulating entity."\(^{100}\) The power and willingness of OPEC to manipulate world oil prices was extremely pervasive throughout the 1980s, as it decreased production at times when oil prices were high.\(^ {101}\) Possession of vast oil reserves gives the Middle East countries the power to increase or decrease world oil prices at will.\(^ {102}\) The dramatic increase in oil prices following the Iraqi invasion of Kuwait is evidence that OPEC is still a factor in international oil.\(^ {103}\)

**B. Mutual Dependence**

As a result of the dependence of the industrialized world on oil, OPEC has political and economic power in the international community. As vital as oil is to the importing countries, the importance of the oil trade to the exporting countries is often overlooked. As most of the Middle-Eastern countries rely heavily on oil money for the progress and well-being of their countries, there is a degree of mutual dependence.\(^ {104}\)

Seventy-five to eighty percent of OPEC oil goes to North America, Western Europe, and Japan, constituting 95% of OPEC member exports.\(^ {105}\) Just as disruptions in supply threaten the economic well being of the importers, a downward turn in demand for OPEC oil (reduced exports) could have far reaching economic and political effects on the exporting nations.\(^ {106}\) Therefore, although the OPEC nations have influence over the dependent importers,\(^ {107}\) heavy dependence on one commodity for export revenues is a weakness which can be exploited.\(^ {108}\)

**C. OPEC Oil Revenues**

To be sure, OPEC nations have become extremely rich as a result of the dependence of industrialized economies on foreign oil. Between

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100 AHRARI, supra note 69, at 32.
101 Fieleke, supra note 83, at 8. OPEC output tends to be reduced during price rises which is at least evidence of direct attempts to manipulate price. However, the author doubts the effectiveness of such price manipulation in the long-term. Id., at 10.
102 Energy Policy, supra note 1, at 3.
103 Jack L. Morvey, Oil and Competition in World Markets, CHICAGO FED LETTER (FEDERAL RESERVE BANK OF CHICAGO), Nov. 1990, at 1 (1990). In July 1990, oil was $20 per barrel, but was nearly $40 per barrel in November. Id.
104 BILLY & STOOKEY, supra note 71, at 171. See also Susan Dentzer & Carla Robbins, Forget the Petro Party, U.S. NEWS & WORLD REP., Jan. 14, 1991, at 42. It is noted that increased oil revenues from high oil prices resulting from Iraq's invasion of Kuwait will be used primarily for domestic purposes.
105 BILLY & STOOKEY, supra note 71, at 116.
106 Id.
107 NSIC, supra note 22, at 110.
108 S. SCHURR, supra note 53, at 417. "[R]educing imports by even a small amount can have large effects on the receipts of oil exporters. . . ." Id.
1965-74 OPEC oil revenues increased substantially, from just under $4 billion in 1965 to more than $86 billion in 1974.\textsuperscript{109} Oil revenues continued to increase between 1973-79 in all 13 OPEC countries,\textsuperscript{110} and increased over three times between 1974-82, from $90.5 billion in 1974 to $201.9 billion in 1982, peaking at $278.8 billion in 1980.\textsuperscript{111} Oil exports are the major export item for most of the oil-rich nations. In 1979, with the exception of three members, oil exports represented over 90% of total exports for each of the OPEC nations.\textsuperscript{112} Increased oil revenues, representing huge financial drains on the importers, served to increase the standard of living in many of the oil-producing nations.\textsuperscript{113}

Massive OPEC oil revenues have had positive effects within the exporting countries.\textsuperscript{114} Short term benefits from large export revenues are many, but dependence on one commodity for export revenues and heavy reliance on the West for consumer goods has the OPEC nations scrambling to diversify their economies.\textsuperscript{115} There is a degree of interdependence. However, there is a fundamental conflict between the importers and the exporters: the former must move to reduce dependence, while the latter are dependent on the oil revenues from exports for progress and stability.

D. Collective Interests and Member State Interests

Acting in a cooperative arrangement has allowed the exporters to maximize both revenues, through manipulation of price and political clout. However, the individual nations remain important within the OPEC framework. Although each member country clearly benefits from its association with OPEC, each individual nation still places its individual goals and policies above any collective goals of OPEC.\textsuperscript{116} The inherent tension between the individual interests and the collective interests is best expressed as follows:

The point to be stressed here is that such interests may or may not always coincide. To the extent that the goals (economic or political) of a given country conform to those of the group, there will be a com-

\textsuperscript{109} Szylowicz & O'Neill, supra note 4, at 85; Ahrari, supra note 69, at 183. See also Bill & Stookey, supra note 71, at 127, estimating that OPEC 1974 revenues were closer to $105 billion. In 1974, $71 billion in oil revenues was taken in by the six major Persian Gulf countries; Saudi Arabia, Iran, Iraq, Kuwait, Abu Dhabi and Qatar. Id.

\textsuperscript{110} Ahrari, supra note 69, at 183 (Total revenues more than doubled, from $90.5 billion in 1974 to $195.2 billion in 1979). See also Ghosh, supra note 8, at 109.

\textsuperscript{111} Ahrari, supra note 69, at 183.

\textsuperscript{112} Ghosh, supra note 8, at 109.

\textsuperscript{113} Ahrari, supra note 69, at 199.

\textsuperscript{114} Ghosh, supra note 8, at 107. See also, Alnasrawi, supra note 5, at 112.

\textsuperscript{115} Ghosh, supra note 8, at 110.

\textsuperscript{116} OPEC behavior cannot be correctly understood unless one examines the conflicts and compromises of the individual member states. Alnasrawi, supra note 5, at 3.
monality of interests and a uniformity of application. The moment the perception exists that an individual country's interests and goals are not served by an OPEC decision, however, the interests of that country can be expected to supersede those of the organization's common objectives.\textsuperscript{117}

The formation and continued existence of OPEC has allowed exporters to maximize oil revenues. The first statement issued by OPEC stressed the importance of oil revenues to the member countries for economic development and progress.\textsuperscript{118} Soaring oil revenues were inevitable as world demand for oil tripled between 1955-73, from 15 million barrels per day (mbd) in 1955 to 45 mbd in 1973.\textsuperscript{119} The thirst for imported oil is not limited to the United States; most of the Big Seven industrial countries import more oil than the United States.\textsuperscript{120}

Despite a relative diminution in power, OPEC remains an important player in the international oil trade and "will play a leading role in shaping the substance of international economic relations for a long time to come."\textsuperscript{121} OPEC will possess substantial power so long as oil remains an indispensable source of world energy.\textsuperscript{122} The late 1980s have seen a resurgence of OPEC from its relative weakness in the beginning of the decade, although revenues and market share remain well below previous levels.\textsuperscript{123} OPEC will have power in the future by means of its dominion over so much of the world's remaining oil reserves.\textsuperscript{124} One commentator

\begin{itemize}
\item \textsuperscript{117} Id. at 3.
\item \textsuperscript{118} ABDALLAH, supra note 17, at 15.
\item \textsuperscript{119} AHRARI, supra note 69, at 40.
\item \textsuperscript{120} Fieleke, supra note 83, at 7. While four of the Big Seven are more dependent than the United States, this does not mean these countries import greater volumes of oil. Rather, they import more oil per billion dollars of gross domestic product. The greater the ratio of imports per billion dollars of GDP, the greater the degree of dependence. \textit{Id.} at 10. See also, Bill Powell \textit{Fire on the Other Side}, NEWSWEEK, Jan. 21, 1991, at 25.
\item \textsuperscript{121} MANCKE, supra note 6, at 93. Lack of substitutes for OPEC oil and non-availability of adequate non-petroleum energy resources dictates that OPEC will have an important role in the future. \textit{Id.}
\item \textsuperscript{122} Dentzer & Robbins, supra note 104, at 44. Following the Mid-East crisis, many of the oil producing nations will take steps "to establish dominion over oil prices and production. \textit{Id.} See also, Nick of Time, supra note 8, at 15 (Saudi Arabian official characterized recent oil discoveries as a guarantee of future international influence).
\item \textsuperscript{123} Amuzegar Jahangir, \textit{Oil and a Changing OPEC: Organization of Petroleum Exporting Countries}, 27 FIN. & DEV. 43 (1990) (OPEC oil exports increased by more than half from mid 1980s levels).
\item \textsuperscript{124} "Generally accepted forecasts by independent experts that more than 40 per cent of ultimately recoverable oil reserves are to be found in [OPEC] member countries." ALI M. JAIDAH, AN APPRAISAL OF OPEC OIL POLICIES 86 (1983). American oil companies lost most of their Mid-East oil interests in the late 1970s and early 1980s to nationalization efforts of the exporting countries. Mark Potts, \textit{The Oil Companies' Embarrassment of Riches}, WASH. POST, Feb. 4-10, 1991, at 22 (Nat'l Week. Ed.). See also, Lippman, supra note 1, at 22 (U.S. will remain dependent on large amounts of imported oil for "years to come.").
\end{itemize}
has suggested that OPEC's exercise of power in the future should be based on international cooperation, as opposed to its confrontational style of the 1970s. Indeed, a truly cooperative approach would help to stabilize the international oil market, benefitting importers and exporters alike.

E. OPEC and the United States

OPEC still possesses considerable influence over the United States. Despite the hard lessons of the embargo, in 1983 nearly two-thirds of all American oil imports came from OPEC sources, and in 1990 more than 25% of American imports came from Mid-East sources. Increased oil dependence has put a heavy strain on American finances, as oil imports have substantially increased the total U.S. import bill, the trade deficit, and negative balance of payments.

The huge amounts of money paid to the exporters represent transfers of not only financial wealth, but also of political power insofar as import dependence is an element of foreign policy and a threat to national security. The current status of American domestic oil production indicates that the ill effects of import dependence will persist. In 1970, U.S. production peaked at 9.6 mbd, and has since declined significantly. In the first six months of 1990, U.S. oil production was at a 26 year low of 7.6 mbd, down 5.6% from 1989. It is predicted that domestic production will continue to decline in the 1990s, possibly going as low as 5.8 mbd by the year 2000.

Cooperation will help OPEC to maintain "an influential market share" in the energy sector. Rene G. Ortiz, The OPEC Role Until the Year 2000, 8 Fletcher F. 285, 286 (1984). See also OIF, supra note 34, at 9. Today there is a "greater recognition by OPEC that its interests lie in market stability rather than instability." Id.

126 JAI dah, supra note 124, at 86.
127 Lippman, supra note 1, at 22.
128 Mohiuddien, supra note 77, at 56 (U.S. exports have not increased enough to offset the increased levels of imports).
129 Id. This effect is not confined to the United States. Aggregate oil debts of other nations, coupled with American debts, threaten "the collapse of the world economy in the coming decade." Id.
130 Lippman, supra note 1, at 22.
131 Jahangir, supra note 123, at 43.
132 Lippman, supra note 1, at 22.
133 Jahangir, supra note 123. All non-OPEC countries in general are expected to experience decreases in output levels over the coming decade). Decreased domestic production, even if oil demand was to remain at current levels, will further import dependence. Id. See also, Lippman, The Oil Shortage is Over, WASH. POST NAT'L WEEK. ED., Dec. 17-23, 1990, at 20 [hereinafter Oil Shortage]. Current U.S. consumption is averaging 16.8 mbd. Id.
AMERICAN OIL IMPORT DEPENDENCE

III. OIL IMPORT FEES

A. Introduction

An oil import fee could be an effective tool for reducing American oil imports.\textsuperscript{134} With only three exceptions, the last twenty years have provided little incentive to implement measures to reduce dependence on foreign oil, as the supply of reasonably priced foreign oil has been abundant.\textsuperscript{135} However, there are urgent political, economic and national security reasons to make energy independence a national priority.\textsuperscript{136}

B. History of the Oil Import Fee

The first U.S. attempt to impose a fee on imported oil was the Fordney-McCumber Tariff bill of 1921. This proposed tariff was introduced primarily to stem the flow of Mexican oil into the United States.\textsuperscript{137} Expecting that such a tax would substantially reduce U.S. oil reserves, and influenced by oil producers with foreign interests, the Harding administration opposed the bill and it failed to pass Congress.\textsuperscript{138} Ironically, today, supporters of the oil import tariff see the encouragement of domestic production, and thus eventual depletion, as one of its principle advantages. After two more unsuccessful attempts to tax foreign oil in 1929 and 1930, in 1932 Congress passed the first oil import tariff.\textsuperscript{139}

The 1970s saw a recurrence of interest in the oil import fee primarily as a means of reducing import dependence. Today, crude oil imports are

\textsuperscript{134} BOHI & MONTGOMERY, supra note 56, at 134. An import fee would also help to reduce the deficit and slow the growth of the national debt. Oil import fees are often discussed as a means of increasing federal revenues. Energy Policy, supra note 1, at 11. For a critique of the oil import fee as a revenue raising device, see, OIF, supra note 34, at 1.

\textsuperscript{135} Fieleke, supra note 83, at 3. There is ample evidence to show that the recent crisis will not give incentive to reduce import dependence. See Dentzer & Robbins, supra note 104, at 43. See also Electrifying, supra note 26, at 20. While price increases from $20 to $40/barrel are significant, they are smaller jumps than those experienced in the 1970s, and will not cause substantial decreases in oil demand. A $1 increase per barrel only decreases U.S. consumption by 63,000 barrels per day. Id. See also, Mark Potts, All We Have To Fear Is Fear in the Oil Market, WASH. POST NAT'L WKLY. EDITION, Oct. 8-14, 1990, at 9 [hereinafter Fear]. “It is the anticipation of a shortage, rather than an actual deficit, that is driving up oil prices.” Id. See also, Samuelson, supra note 10, at 28 (explaining that no true emergency in oil supply resulted from Iraq’s invasion of Kuwait, and that the resultant higher prices are “in the realm of inconvenience.”).

\textsuperscript{136} Our reliance on imports is misplaced, as imports are not “inherently reliable” OECD, supra note 92, at 78.

\textsuperscript{137} Lawrence, supra note 19, at 103.

\textsuperscript{138} Id. at 103.

\textsuperscript{139} Id.

\textsuperscript{140} WILLIAM H. PETERSON, THE QUESTION OF GOVERNMENTAL OIL RESTRICTIONS, 12 (1959) (Contained in the Revenue Act of 1932, it levied a $.21 tax on each barrel of imported oil). See also, OIF, supra note 34, at 2. This measure was contemplated primarily as a revenue raising device, not as a means of decreasing import dependence. At the time of its passage, less that 8% of U.S. oil was imported. Id.
subject to two minimal charges: (1) an 11.7 cent per barrel tax, and (2) a duty charge of either 5.25 cents or 10.5 cents per barrel, depending on the grade of the crude.\footnote{141}{OIF, supra note 34, at 4.}

An oil import fee would encourage domestic oil production by making it more competitive with OPEC oil and would lower total oil consumption by raising oil prices. Increasing import levels, foreign policy and national security concerns, and the ever-widening balance of payments deficits, all give compelling incentive to reduce oil imports. In 1990, the oil picture is as bleak as ever, as shown by the "warning signals" of the 1990's: sharply rising oil imports, falling domestic oil production and limited U.S. refinery capacity.\footnote{142}{In 1990, one-half of American oil was imported, with Saudi Arabia being the principle American supplier. Kriz, supra note 52, at 2183.}

C. GATT and Oil Import Fees

Insofar as an oil import fee would impose a fee upon an item of international trade, it is important to consider the oil import fee in the context of the General Agreement on Tariffs and Trade (GATT). The GATT serves an indispensable role in facilitating equitable trade relations within the international community. Because an oil import fee would increase the price of oil imports and encourage the use of domestic resources, clearly oil exporting countries would object to the imposition of such a fee. However, to the extent that crude oil is not "bound" under the GATT, it seems that an oil import fee could be imposed by the United States without violating any GATT provisions.\footnote{143}{Memorandum from American Law Division of the Congressional Research Service, Whether Crude Oil and Petroleum Products are Bound Under the GATT, at 1 (Mar. 28, 1991) [hereinafter Crude Oil]. The latest schedule of U.S. tariff concessions submitted to the GATT characterizes crude oil as not bound by the GATT. This most recent schedule, however, has not yet been approved by all of the GATT Contracting parties. \it Id.}

Furthermore, if crude oil imports were deemed to be an item subject to GATT jurisdiction, the "Security Exceptions" allowed under Article XXI of the GATT indicate that an oil import fee could nonetheless be imposed.\footnote{144}{Congressional Research Service, Compatibility of an Oil Import Fee and Certain Domestic Subsidies with United States obligations under the GATT and the United States-Canada Free Trade Agreement, at 4 (1991) [hereinafter Compatibility].}

The national security exception provision of the GATT provides that "[n]othing in this Agreement shall be construed . . . to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests . . . ."\footnote{145}{\it Id. at 4-5.} Conceding that the broad language of article XXI has rarely been invoked, one commentator has noted that the national security exception language is a loop-
hole in the GATT, which could serve as "a tacit justification for any number of governmental measures."\textsuperscript{146}

Under the Article XXI exception, the United States could pursue the goals of energy independence and security without violating its treaty obligations under the GATT. Clearly, there is a long standing view that oil is a crucial element of national security.\textsuperscript{147} The broad language of Article XXI and the fact that "it is a matter for the contracting party itself to define its essential security interests for purposes of the exception,"\textsuperscript{148} both indicate that an oil import fee is an acceptable measure under the GATT.

D. Types of Oil Import Fees

There are two types of oil import fees: a unit tax, imposing a fixed tax per barrel (flat dollar fee) and an ad valorem tax based on the price of oil.\textsuperscript{149} One recent variation of the unit tax approach is the variable import fee. The traditional flat fee approach and the variable import fee approach will be examined here.

A flat fee is a fixed per barrel tax and "remains the same regardless of the price and volume of imports."\textsuperscript{150} On the other hand, a variable import fee is a flexible tax, and "would be adjusted to whatever level is necessary to push the price of imported oil to a predetermined level..."\textsuperscript{151} This predetermined price would be set at a level high enough to make domestic oil production competitive with imported oil.\textsuperscript{152} Once a predetermined price level (floor price) is set, a variable import fee would assure that every barrel cost at least that much. If the floor price were set at $25, a $20 barrel of oil would be assessed a $5 fee, while an $18 barrel of oil would be assessed a $7 fee.\textsuperscript{153}

\textsuperscript{146} Id. at 5. "Article XXI exceptions...provide a dangerous loophole to the obligations of GATT." Id. However, it is later noted that "some latitude must be granted for security as opposed to commercial purpose." Id. To this extent, the imposition of an OIF under the article XXI exception would allow the United States to pursue energy independence and security without violating its obligations as a party to the GATT. "It is important to note that when Presidents Nixon and Ford imposed, respectively, license fees and supplemental fees on imported oil in the mid 1970s, the United States apparently did not notify the GATT, nor were the fees formally challenged by any of the GATT parties. Id. at 6.

\textsuperscript{147} Id. at 6.

\textsuperscript{148} Id. at 7.

\textsuperscript{149} Energy Policy, supra note 1, at 11.


\textsuperscript{151} Id. The VIF is a flat rate tax, but the amount of the tax is not constant. OIF, supra note 34, at 4.

\textsuperscript{152} Id.

\textsuperscript{153} BARTON, supra note 150, at 43. See also OIF, supra note 34, at 4. Computation of the VIF is actually not this simple. To determine the actual fee amount, knowledge of the price elasticity of demand and supply of imported oil is required. Most bills proposing VIF's have set the floor
In the 100th Congress, 15 different bills proposing various oil import fees were introduced. In the first 6 months of the 101st Congress, nine bills proposing oil import fees were introduced. To date, no oil import measure has gathered sufficient political support for passage.

From a fiscal viewpoint, the flat fee per barrel approach is easier to calculate and would be a “superior revenue source.” It is estimated that a fee of $5 per barrel would yield $8 billion per year in federal revenues. This $5 figure is conservative, and most proposed figures for a flat dollar fee are closer to $10 per barrel. A major drawback of the flat dollar fee is that OPEC (and all oil exporters) could defeat the purpose of such a fee by lowering prices. The goal of the flat dollar fee is to raise the price of imported oil and thus make domestic (and non-OPEC) oil more competitive. A substantial reduction in price by OPEC, therefore, would render a flat fee useless as a means of reducing imports.

On the other hand, a variable import fee (VIF) is not susceptible to this sort of undercutting. Because the VIF is tied to a trigger price (floor price), even if OPEC were to reduce prices, the reduction in price would be “recaptured” by the fee. The VIF would raise the price of all oil and would encourage investment in alternative sources of energy which would be competitive with oil, thus decreasing dependence on oil, in general, as a source of energy.

E. Disadvantages of an Oil Import Fee

Increased oil prices resulting from an import fee could reduce the degree of import dependence, but there would be negative side effects. An oil import fee would “depress economic activity, raise inflation, have an uneven effect on different states, and hurt poor people relatively more, price between $18-$26. For simplicity’s sake, the concept is presented here for illustrative purposes only.

154 OIF, supra note 34, at 3. Between 1985-89, Congress considered and rejected oil import fee proposals on four separate occasions. Id.
155 Id. at 13-14.
156 Barton, supra note 150, at 43.
157 Id. at 38 (explaining that U.S. Crude Oil Production would be higher with a $5 per barrel import fee). See also, OIF, supra note 34, at 1.
158 PAKRAVAN, supra note 99, at 59; see also, BOHI & MONTGOMERY supra note 56, at 134.
159 PAKRAVAN, supra note 99, at 43.
160 Lawrence, supra note 19, at 112.
161 Barton, supra note 150, at 43. See also, Harold T. Ross & Bernard L. Wunstein, L.A. TIMES, Sept. 3, 1990, at 5 col 2. The variable import fee, “sliding scale oil import fee” is the best way to stabilize world oil prices. Id.
162 This is not to say that alternative energy sources can deliver energy independence, as most remain prohibitively expensive. See Electrifying, supra note 26, at 20 (Even at $40 per barrel, oil is a more economical than most alternative energy sources). See also, Energy Policy, supra note 1, at 1 ("Environmental priorities are diminishing the likelihood of increased use of coal, but are brightening the prospects for natural gas, and possibly the nuclear option.").
than others." These and related concerns have led one commentator to state that despite the substantial support of the domestic petroleum industry, there are "strong reservations about the wisdom of an oil import fee and even stronger skepticism about its workability."164

Although an oil import fee could have the positive effect of closing the price gap between American and imported oil, it would have the negative effect of raising prices and increasing the costs of oil generated energy and energy intensive industries.165 Such increased costs would render American goods less competitive on the global market.166

F. Advantages of an Oil Import Fee

The principle advantages of an oil import fee/tariff are best summarized as follows:

It will tend to make new domestic oil production and production of energy from alternative sources (such as shale, coal, or sunlight) more profitable, discourage consumption through higher energy prices, reduce imports and thereby improve the balance of payments and increase security of supply, and possibly help reduce world oil prices by reducing demand for OPEC oil.167

An oil import fee could reduce import dependence by raising the price of oil168 and thus reducing oil consumption.169 By raising the price of a barrel of foreign oil, an oil tariff could make domestic exploration

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163 OIF, supra note 34, at 2. An oil import fee would reduce Gross National Product (GNP), real income, employment, and production. Id. at 11. Damage to U.S. economic performance could be limited by phasing in the import fee. Id. at 1. However, such a phasing in would only prolong the inevitable inflationary effects. Id. at 10.

164 64 Platt's Oilgram News 2, Amoco's Morrow Warns of Danger of U.S. Energy Direction, Oct. 6, 1986. The domestic oil industry is not united on this issue. See, OIF, supra note 36, at 3. Generally, producers (drillers) are in favor of the import fee, while refiners, (who buy oil form outside sources), oppose any import tax. Id. See also, Thomas W. Lippman, Even the Best Ideas Aren't Always Fuelproof, WASHINGTON POST, Oct. 1-7, 1990 at 33 (Nat'l Week. Ed.) [hereinafter Fuelproof]. Consumer behavior, political upheaval in the oil rich nations and technological advances are all factors to be considered in taxing energy. Id.

165 Id. at 33. General "carbon tax" on coal, oil and natural gas "would undermine U.S. manufacturers by driving up the cost of their products." Id. However, phased in over a 10 year period, it is believed that a carbon tax could reduce energy consumption by 23%, while lowering real gross national product by only one percent. Id.

166 MANCKE, supra note 6, at 2.

167 KRUEGER, supra note 72, at 190. Decreased world oil prices would benefit the less developed importing countries as well. PAKRAVAN, supra note 99, at 59. Lowering energy costs could be "a less costly and less disruptive way to fulfill humanitarian impulses toward lesser developed nations . . . ." S. SCHURR, supra note 53, at 418.

168 Samuelson, supra note 10, at 28. Higher prices work to reduce dependence in several ways. In the short term, consumption is lower. In the long term, energy efficiency is increased. Id.

169 Higher prices resulting from an energy tax could reduce U.S. consumption by as much as 500,000 barrels per day. Id.
and production more economically feasible. While the import fee is not without critics, skeptics concede that an oil tariff could have the dual effect of reducing consumption levels and encouraging production of domestic oil. Increased domestic production would not be sufficient to fully meet current (or future) demand, but increased development of domestic resources would be an important step toward reducing long term oil import dependence.

The recent Gulf crisis highlighted the vulnerability of American oil dependence. It is imperative that the United States develop and implement a comprehensive energy policy to reduce import dependence and to prepare for the eventual depletion of world oil supply. An oil import fee is one of the most effective anticipatory methods available to reduce Western thirst for imported oil as it could reduce energy consumption, and make economical the exploitation of the domestic energy resources of the importing countries.

Dependence on foreign oil made many of the importing countries reexamine energy policies in the 1970s and 1980s, in order to reduce dependence on foreign oil. However, dependence on imported oil has continued to rise. The oil import fee offers a viable means of increasing

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170 Barton, supra note 150, at 30. Imported oil is the benchmark for domestic oil prices. Domestic oil prices would rise approximately the same amount as imported oil. OIF, supra note 34, at 10.

171 Bohn & Montgomery, supra note 56, at 135. However, it is empirically difficult to predict the effects of an oil tariff, since supplier reaction will play an important role. Id. See also Pakravan, supra note 99, at 58-9 ("Anticipatory Policies" for reduction of oil imports and increased flexibility of energy use).

172 It seems doubtful that the gap between demand and domestic supply could ever be closed. See Lippman, supra note 1, at 22. The U.S. Energy Department estimates maximum U.S. production at 9.4 mbd. Given current demand levels of nearly 17 mbd, "[i]t is not a question of whether we can eliminate imported oil, but whether we can stop our dependence from growing. Oil experts agree there is no plausible combination of increased U.S. oil production and reduced consumption that will make substantial inroads on U.S. import dependence in this decade. The gap between production and consumption can be narrowed, but imported oil—much of it from the Middle-East will remain an essential economic lifeline." Id.

173 "Chipping away at a huge problem can produce large chips, even if they seem insignificant compared to what is left." Energy Policy, supra note 1, at 3.

174 Pakravan, supra note 99, at 58. "Anticipatory policies" are vital to reducing import dependence. In the process of preparing for depletion, vulnerability to import supply disruptions would decrease. Id. Enacting an energy tax in the past would have served to "promote conservation and to insulate the U.S. market from the wild swings of world oil prices." Samuelson, supra note 10, at 28.

175 Pakravan, supra note 99, at 58-9. See also, Energy Policy, supra note 1 at 11. "Raising oil prices — the benchmark for the price of other energy resources — is one effective way to conserve energy . . . . [and] stimulate the domestic oil producing industry." Id.

176 Alnasrawi, supra note 5, at 115. Numerous measures were taken by the importing countries in the 1970s and early 1980s to increase energy independence. Id. Energy policy has been defined as "a set of governmental actions designed to be consistent and comprehensive in dealing with difficult energy-related issues that will permanently be with us." Krueger, supra note 72, at
energy independence. The advantages of an oil import fee include: (a) encouraging domestic production by raising oil prices, and (b) helping avoid the inflation and unemployment problems which would accompany a significant disruption in supply at current import levels.\textsuperscript{177}

In addition to making American oil more competitive, an oil import fee would have other positive effects. Indeed, it would help to prepare the oil dependent nations for a supply disruption and attract investments that would reduce consumption.\textsuperscript{178} Insofar as domestic and other non-OPEC oil would become more economically competitive, dependence on OPEC oil would decrease and our vulnerability to a supply disruption would be reduced.

An import fee would help put U.S. and other non-OPEC producers on equal footing with OPEC suppliers, who presently enjoy the advantage of substantially lower production costs.\textsuperscript{179} Indeed, “cheap foreign oil has virtually halted new domestic oil exploration and led to abandonment of thousands of marginally productive wells.”\textsuperscript{180} In December 1985, the number of functioning oil rigs was 1,898. It dropped to 697 by June of 1986.\textsuperscript{181} By increasing the price of imports, non-OPEC oil will become more competitive, and higher production costs will no longer act as a disincentive to domestic exploration and production.

When discussing the issue of taxing imported oil, there are two conflicting interests, namely, “the economic benefits of cheap world oil . . . . [and] the economic costs of oil supply disruptions.”\textsuperscript{182} The inclination towards letting the free market dictate energy policy is dangerous, since free market principles are not capable of recognizing the long-term implications of energy dependence. An oil import fee would be a bold step, as it would eschew cheap imported oil for the greater good of increased energy independence. To be sure, an oil import fee will cost the United States, but the risks of energy dependence and supply disruptions

\textsuperscript{83} Recent Persian Gulf crisis will force U.S. government to review energy policy “in all its aspects with a new focus.” Energy Policy, \textit{supra} note 1, at 1.

\textsuperscript{177} It is estimated that unemployment would increase by 6 percent and inflation would approach 20 percent if import supplies were interrupted at current levels. Lawrence, \textit{supra} note 19, at 114-5. Oil supply disruptions effect different sectors of the economy differently, depending on that sector’s relative energy dependence and its ability to increase oil/energy efficiency. Morvey \textit{supra} note 103. “Energy efficiency matters as much as dependency.” Powell, \textit{supra} note 120, at 25. Japan, whose overall energy efficiency is twice that of the United States as a result of an aggressive conservationist energy policy, will suffer less from increased oil prices. \textit{Id}.

\textsuperscript{178} \textsc{Bohi} & \textsc{Montgomery}, \textit{supra} note 56, at 135.

\textsuperscript{179} Barton, \textit{supra} note 150, at 31. Barton points out that oil production costs in the North Sea are forty times those associated with Saudi Arabian oil fields. \textit{Id}.

\textsuperscript{180} Lawrence, \textit{supra} note 19, at 100.

\textsuperscript{181} \textit{Id}., at 101.

\textsuperscript{182} Barton, \textit{supra} note 150, at 40.
threaten to cost much more.\textsuperscript{183}

III. CONCLUSION

Imposition of an oil import fee could be an effective way to reduce (or slow) ever growing American dependence on foreign oil by raising the price of oil, and encouraging domestic production. Given limited U.S. oil reserves, some degree of oil import dependence is inevitable. Today, American oil import dependence has reached alarming levels. Without swift federal intervention to address the import problem, U.S. import dependence will continue to increase. Continuing an energy policy which relies on the free market will further reduce domestic production and will result in the United States importing more than half of its oil needs in the very near future.

There is strong support for both sides of the oil import fee debate. Clearly, the imposition of an import fee would negatively impact American economic performance. However, a substantial disruption in supply at current (or increased) import levels would have devastating economic consequences as well. While an import fee could be phased in, and its negative effects anticipated, a disruption in supply would be sudden and unannounced.

It is easy for energy policy makers and legislators to choose cheap foreign oil (and its many benefits) instead of taking up the difficult task of formulating a comprehensive energy policy to reduce dependence on oil imports. Indeed, it is an extremely difficult problem, with no easy solution. On a purely economic scale, the short run disadvantages of an import fee outweigh the long term advantages of increased energy independence and security. However, a strict economic analysis is shortsighted and dangerous. The long run risks of continued oil import dependence are greater than any short term losses in economic performance. It is imperative that the United States take a step towards greater energy independence and the oil import fee is a hard choice whose time has come.

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\textsuperscript{183} An import fee would cost jobs, increase inflation and result in higher oil and fuel prices. Stepped up domestic production would create new jobs.

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