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Lifting the Export Ban on Alaskan Oil: A Trilateral Trade Proposal

by Steven R. Perles*

I. OVERVIEW

In 1968 oil was discovered at Prudhoe Bay, Alaska. Environmentalists sought to block commercialization of the field. However, Congress intervened and authorized construction of the Trans-Alaska Pipeline System. As part of a political compromise needed to ensure Congressional authorization, export restrictions, intended to severely hamper the export of the Trans-Alaska Pipeline System crude oil to Japan, were placed upon the pipeline’s throughput.

Subsequent to the passage of the Trans-Alaska Pipeline Authorization Act, Congress, in the form of an amendment to the Export Administration Act, effectively banned the export of crude oil from Prudhoe Bay. The ban, rather than assisting U.S. energy policy, has worked to its detriment, as well as adversely affecting two of America’s allies, Mexico and Japan.

Japan, with the third largest economy in the world, is entirely dependent upon imported oil. The bulk of Japan’s oil comes from the Middle East. As Japan learned during the Iranian hostage crisis, the Middle East’s political instability poses substantial energy-security problems. If Alaskan oil exports were decontrolled, one-third to one-half of the pro-

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2 Id.
4 See infra notes 87-92 and accompanying text.
5 See infra note 97 and accompanying text.
duction would go to Japan; this would substantially decrease Japan's dependence on Middle Eastern oil. The problem is so acute for Japan that the issue was discussed by President Reagan and Prime Minister Nakasone during the Prime Minister's visit to the United States in January, 1983.6

Mexico has substantial oil reserves but is on the verge of bankruptcy. Export controls on Alaskan oil force some of that oil to be shipped to states along the Gulf of Mexico, displacing oil that could be sold by the Mexicans.

This article proposes the establishment of a trilateral trade agreement between Alaska, Japan and Mexico. Under this proposal, Alaskan oil presently shipped to the Gulf of Mexico would go to Japan, replacing Middle Eastern oil, and Mexican oil would replace the Alaskan oil going to the Gulf of Mexico. This proposed system of trade would effectively divert the present revenue stream which flows from Japan to the Middle East, into Mexico. This proposal would have no balance of trade impact on the United States.

The benefits of trilateral trade to the United States would be substantial. The decreased transportation charges for the delivery of Alaskan crude would increase the well-head value of the crude resulting in over one billion dollars per year in additional revenue accruing to the federal government and the State of Alaska.7 U.S. security interest with Japan would be enhanced and, as a major supplier of oil to Japan, our leverage at trade negotiations would markedly increase. The contribution of a trilateral trade agreement to Mexican solvency would enhance U.S. security interests in Latin America and help to prevent a financial crisis for American banks that have loaned money to Mexico.

The establishment of a trilateral trade would require an amendment to section 7(d) of the Export Administration Act of 1979.8 Pragmatically, the only other way Alaskan crude oil will be sold to Japan is through a repeal of section 7(d).9 For a variety of political reasons, it would be easier to convince Congress to amend the Act rather than repeal section 7(d).

II. LEGISLATIVE HISTORY OF CONTROLS ON ALASKAN OIL

To understand the importance of section 7(d) and its impact on current world energy and economic problems, it is useful to first review the legislative history of export controls in the United States, and specifically the history of the enactment of this section.

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6 See infra note 146 and accompanying text.
7 See infra note 192.
9 See infra note 12 and accompanying text.
Currently, section 7(d) of the Export Administration Act of 1979\(^\text{10}\) provides that crude oil produced in Alaska may not be exported from the United States. The statute does provide, however, for three limited exceptions: (1) Alaskan crude oil may be exported to Canada or Mexico if it is refined and consumed there in exchange for the same quantity of crude oil imported back into the United States from that country;\(^\text{11}\) (2) Alaskan

\(^{10}\) Id. Section 7(d) provides:

(d) Domestically produced crude oil. — (1) Notwithstanding any other provision of this Act [sections 2401 to 2420 of this Appendix] and not withstanding subsection (u) of section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), no domestically produced crude oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652)(except any such crude oil which (A) is exported to an adjacent foreign country to be refined and consumed therein in exchange for the same quantity of crude oil being exported from that country to the United States; such exchange must result through convenience or increased efficiency of transportation in lower prices for consumers of petroleum products in the United States as described in paragraph (2)(A)(ii) of this subsection, or (B) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and reenters the United States) may be exported from the United States, or any of its territories and possessions, unless the requirements of paragraph (2) of this subsection are met.

(2) Crude oil subject to the prohibition contained in paragraph (1) may be exported only if—

(A) the President makes and publishes express findings that exports of such crude oil, including exchanges—

(i) will not diminish the total quantity or quality of petroleum refined within, stored within, or legally committed to be transported to and sold within the United States;

(ii) will, within 3 months following the initiation of such exports or exchanges, result in (I) acquisition costs to the refiners which purchase the imported crude oil being lower than the acquisition costs such refiners would have to pay for the domestically produced oil in the absence of such an export or exchange, and (II) not less than 75 percent of such savings in costs being reflected in wholesale and retail prices of products refined from such imported crude oil;

(iii) will be made only pursuant to contracts which may be terminated if the crude oil supplies of the United States are interrupted, threatened, or diminished;

(iv) are clearly necessary to protect the national interest; and

(v) are in accordance with the provisions of this Act [sections 2401 to 2420 of this Appendix]; and

(B) the President reports such findings to the Congress and the Congress, within 60 days thereafter, agrees to a concurrent resolution approving such exports on the basis of the findings.

(3) Notwithstanding any other provision of this section or any other provision of law, including subsection (u) of section 28 of the Mineral Leasing Act of 1920 [30 U.S.C. § 185(u)], the President may export oil to any country pursuant to a bilateral international oil supply agreement entered into by the United States with such nation before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

\(^{11}\) Id. § 2406(d)(1)(A).
crude oil may be exported if the President expressly finds that such exports will not diminish total quantities or quality of petroleum products in the United States, that acquisition costs to refiners are reduced as a result, that the savings are passed on to consumers, and that Congress approves of such exports within 60 days after the President's findings are given to Congress; or, (3) Alaskan crude oil may be exported to Israel as part of the "Camp David Peace Plan" between Israel and Egypt. The effect of these exceptions, however, is to do little more than give Congress approval power over any effort by the President to enter into international exchange arrangements involving Alaskan produced oil.

In reviewing the legislative history, three points will be made. First, the prohibition on exporting Alaskan crude oil runs counter to the reasons export controls have been in effect in the United States since 1949. Second, the enactment and subsequent efforts to repeal the prohibition have historically come before Congress at times when the United States has been involved in major world economic conflicts involving energy, thereby clouding the issues. Third, and closely related to the first two, Congressional prohibition of exporting Alaskan crude oil can be viewed as a case study of the American political system and the problems caused by a lack of intelligent communication between Congress and its constituents.

A. The Export Control Act of 1949

Prior to 1949, export controls in the United States were primarily limited to the curtailment or prohibition of exporting military equipment and related items. In 1949, upon the expiration of prior export control

12 Id. § 2406(d)(2)(A) & (B). See also infra note 50.
13 Id. § 2406(d)(3).
14 As demonstrated by the legislative history of the prohibition against Alaskan oil exports, a major reason for House support of the prohibition has been the concern of Congressmen that their constituents would vote to remove them from office if Alaskan oil was exported at a time when the United States was facing major energy shortages, long lines at the gas pumps, and rapidly rising fuel prices. Elected every two years, House members are far more responsive to constituent pressure. As such, the proposals for the prohibition have principally arisen in the House of Representatives, introduced by members representing areas of the United States hardest hit by the Arab oil embargo of 1973. See, e.g., infra note 62 and accompanying text.
15 Act of July 2, 1940, Pub. L. No. 703, § 6, 54 Stat. 712, 714 (1940). This act authorized the President to prohibit or curtail the export of military equipment or munitions and related items, and imposed penalties for violations. The geographic scope of this section was clarified by the Act of May 28, 1941, Pub. L. No. 76, 55 Stat. 206 (1941). The Act of June 30, 1942, Pub. L. No. 638, 56 Stat. 463 (1942) broadened the power to cover "any articles, technical data, materials or supplies." The section was extended regularly until 1949 when Congress passed a more comprehensive statute. Export Control Act of 1949, Pub. L. No. 11, 63 Stat. 7 (1949). For a complete legislative history of the 1949 act, see S. Rep. No. 31, 81st
laws, Congress passed a more comprehensive statute establishing a wider purpose for export controls "to protect the domestic economy by limiting exports of scarce materials, and to channel exports to countries where need is greatest and where our foreign-policy and national security interests would be best served." The pre-1949 export controls were primarily used during World War II. After the war, some controls were maintained in an effort to reduce inflation which had been created by abnormal foreign demand for U.S. supplies. The government sought, however, to decontrol exports, but when supply situations did not improve, the Department of Commerce made use of quotas and limited licenses. Congress placed the power to control exports completely within the hands of the President and intended it to be a flexible control, allowing quick response to changing world and national events.

Shortages of oil and other petroleum products were of concern to the country in 1949 just as they are today. For supply reasons petroleum was among the major commodities under the Export Control Act of 1949. The Senate noted, in its passage of the 1949 Export Control Act, that "[a] careful check has had to be maintained on the volume of exports [of petroleum] . . . because petroleum continues to be in tight world supply." Congress did not, at that time, see any need to specifically direct the President not to export any U.S. produced oil or petroleum products even though, as the Senate further noted, "The balance in supply and demand was achieved in this country in 1948 by importing more petroleum than we export. This is a basic change from prewar when, in 1939 for example, we exported five times as much as we imported."

Since 1949, the Export Control Act has been regularly reenacted and extended for two- and three-year periods. The only significant change occurred in 1965 when Congress amended the act to include an anti-boycott policy opposing restrictive trade practices or boycotts imposed by foreign countries against other countries friendly to the United States.


In 1969, Congress undertook to revise the export controls and enact a more comprehensive statement of policy for the President to follow. While the President's plenary power to control exports for reasons of na-
tional security, foreign policy and short supply were maintained.\(^2\) Congress found it necessary to insert a stronger statement of policy to include concerns for the domestic economy.\(^2\) The Conference Committee Report on the 1969 Act explained that export controls were also to be used "to further the sound growth and stability of our economy."\(^2\) This was followed in 1972, however, by the Equal Export Opportunity Act\(^2\) which amended the Export Administration Act of 1969 with specific directions that the President decontrol certain U.S. exports. Section 4(b) of the Export Administration Act was amended to read, in part:

\[
\text{[T]he President shall remove unilateral export controls on the export from the United States of articles, materials, or supplies, including technical data or other information, which he determines are available without restriction from sources outside the United States in significant quantities and comparable in quality to those produced in the United States, except that any such control may remain in effect if the President determines that adequate evidence has been presented to him demonstrating that the absence of such a control would prove detrimental to the national security of the United States.}\(^2\)
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The Senate Report on the 1972 Act explained that the reasons for this change in policy was "to facilitate prompt removal of United States unilateral export controls which are not necessary to protect our national security, [and] to insure that the commercial and technical expertise of private industry is utilized as effectively as possible in the administration of export controls."\(^2\)

The Senate Committee on Banking, Housing and Urban Affairs explained this apparent reversal in the trend of export controls by stating:

The Committee believes that Title I of this legislation is needed because the United States is handicapping itself by continuing to control the export of many items which are not of strategic value and are not controlled by our foreign competitors. While it is essential to the national security that the government continue to restrict the export of some items to Communist countries, the Committee believes that restricting the export of items which can be bought freely from our Western European or Japanese competitors does not benefit the national security. Excessive restrictions result in a worsened balance of payments situation, fewer export sales for American industries, and fewer jobs for American

\(^{26}\) See id.
The Senate Committee on Foreign Relations and the Conference Committee adopted this language in their respective reports on the 1972 Act. As a result, a Congressional intent to decontrol exports in 1972 for economic reasons was established.

In 1968 the Atlantic Richfield Company discovered oil at Prudhoe Bay in Alaska, and shortly thereafter a rush began to develop and to produce what promised to be one of the largest oil reserves in the United States. Oil companies worked to develop the technology necessary to extract and transport the newly found oil and attempted to secure the necessary state and federal permits. However, a major oil spill off the coast of Santa Barbara, California occurred in 1969 and caused a major political roadblock in the production of the Alaskan oil.

In 1969 Congress was working on legislation to establish a national environmental policy. Following the Santa Barbara oil spill, the Senate Committee on Interior and Insular Affairs held a one-day hearing and, at least in part based on the experience of the oil spill, an "action-forcing" measure was added to the National Environmental Policy Act of 1969 (NEPA). The measure required federal agencies to prepare environmental impact statements on all proposed actions which might significantly affect the environment. NEPA was signed into law on January 1, 1970, and less than four months later an injunction was issued to stop the Department of Interior from approving the construction of the Trans-Alaska pipeline until an environmental impact statement was prepared.

As a result, two years were spent preparing the environmental impact statement, and an additional year was spent in the courts after the Interior Department again decided to approve the pipeline on May 11, 1972. It finally took an Act of Congress to clear the environmental roadblocks.

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28 Id. at 3086.
33 Id. § 102(2)(c).
35 BUREAU OF LAND MANAGEMENT, CHRONOLOGICAL LISTING OF MAJOR ACTIVITIES: TAPS PROJECT (master file).
36 For a further discussion of the fight in Congress over the environmental issues surrounding the Trans-Alaska Pipeline, see Corrigan & Varfield, Energy Report: Pipeline Lobby Uses its Political Muscle to Bypass Environmental Law, 5 NAT'L J. REP. 1172 (1973).
The Trans-Alaska Pipeline Authorization Act (TAPS) authorized and directed the Secretary of the Interior to take whatever appropriate actions were necessary for the construction, operation, and maintenance of the pipeline. In the process, Congress declared: "The early development and delivery of oil and gas from Alaska's North Slope to domestic markets is in the national interest because of growing domestic shortages and increasing dependence upon insecure foreign sources."

In the 1974 amendments to the Export Administration Act of 1969, Congress began to show more concern for controlling exports of supplies and materials that were scarce in the domestic market. Section 3(2)(A) of the Act was amended to remove the word "abnormal" in the definition of foreign demand of scarce materials. "Under the change . . . it will no longer be necessary for foreign demand to be abnormal before export controls may be imposed. Instead, controls may be used when foreign demand results or will result in both an excessive drain of scarce materials and serious inflation." Thus, Congress acted to make it easier to impose export controls on "short supply" items.

Significantly, even though the Arab oil embargo of 1973 had already begun, the Senate Committee on Banking, Housing and Urban Affairs made a special point that it would be U.S. policy to make essential raw materials such as oil available for exportation in order not to disrupt international economic development. Thus, section 2 of the Export Administration Act of 1969 was amended to provide that "unreasonable restrictions on access to world supplies can cause worldwide political and economic instability, interfere with free international trade, and retard the growth and development of nations."

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38 Id. § 203(b).
39 Id. § 202(a) (emphasis added).
41 Id. § 2. For the original language, see Pub. L. No. 91-184, 83 Stat. 841 (1969).
The intent of the conferees that export regulations implementing this policy reflect that foreign demand need not be the major cause of serious inflation in the price of a commodity as a condition to permit the use of export controls. It is sufficient that such demand be a significant factor in causing inflation in the price. It is also the intent of the conferees that controls should be imposed to prevent an excessive drain of scarce materials from taking place and that controls need not be held in abeyance until such an excessive drain has actually occurred.
C. Prelude to Controls on Alaskan Oil Exports

In November of 1973 a limitation was placed on the President's plenary power over export controls with the passage of the Trans-Alaska Pipeline Authorization Act. Of significance was Title I of the Act which amended section 28 of the Mineral Leasing Act of 1920 by placing certain limitations on the export of Alaskan oil. The amendment specifically subjected the exporting of "domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to Section 28 of the Mineral Leasing Act of 1920" to the Export Administration Act of 1969. Further, while leaving the President with basic authority to approve such exports, the amendment required that he submit a finding to Congress that such exports "will not diminish the total quantity or quality of petroleum available to the United States, and are in the national interest." The restriction on the President's plenary power was the provision that Congress could, within 60 calendar days, by a concurrent resolution, disapprove such Presidential findings and cease such exportation.

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47 See Pub. L. No. 93-153, § 101, 87 Stat. 576 (1973) which provides:
(u) Any domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to [this section], except such crude oil which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1969 . . . and, in addition, before any crude oil subject to this section may be exported under the limitations and licensing requirements and penalty and enforcement provisions of the Export Administration Act of 1969 the President must make and publish an express finding that such exports will not diminish the total quantity or quality of petroleum available to the United States, and are in the national interest and are in accord with the provisions of the Export Administration Act of 1969: Provided, That the President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within this time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to the aforementioned Presidential findings shall cease.
48 Id.
49 Id.
50 Id. The legislative veto is a relatively recent phenomenon but not all uncommon. Over the past five decades, this device has been placed in nearly 200 statutes. However, in Immigration & Naturalization Serv. v. Chadha, —U.S.—, 103 S. Ct. 2764 (1983), the Supreme Court held the one House veto provision in section 244(c)(2) of the Immigration and
The amendment was specifically aimed at the new Alaskan North Slope oil based on Congressional concerns that the oil companies had selected the route for the Trans-Alaska Pipeline in order to facilitate exportation of the North Slope oil in Japan. Congress did not believe, however, that an outright ban on exporting Alaskan oil was necessary and, in fact, Congress recognized that a swap of Alaskan oil to Japan in exchange for other, more accessible oil for the East Coast could be beneficial.

After the effect of the Arab Oil Embargo of 1973 was felt in the United States, Congress found that the "[c]ontinuing dependence on foreign petroleum, and the economic consequences of another embargo, require that the United States take steps to effectively reduce its vulnerability to future import interruptions." In 1975 the Energy Policy and Conservation Act was passed giving the President standby authority to deal with future energy supply emergencies, including authority to carry out the International Energy Program by prescribing rules and regulations for international oil allocations.

U.S. export control policy in the mid-1970's was not significantly different from that which had prevailed at the end of World War II and when the first major export control legislation was enacted in 1949. There were still three major objectives supporting all export controls: (1) national security controls, primarily directed at keeping sensitive supplies and materials, as well as technology, out of Communist countries; (2) short supply controls, aimed at insuring that scarce materials were not exported; and, (3) foreign policy controls, mainly in the areas of international economics with some policy directives regarding international boycotts of friendly nations.

By 1977, however, some very significant events had developed which began to affect the United States. First, the national economy was being severely strained due to the economic pressures being placed upon the United States and other nations by the Organization of Petroleum Ex-

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52 Id.
53 See, e.g., statement of the Senate Committee on Interior and Insular Affairs, id. at 2433.
56 Id. § 6271(a).
porting Countries (OPEC). Secondly, the Arab boycott of Israel was in full effect, and political pressure from Jewish lobbying groups in the United States was evident in Congress. It was against this background that Congress, in 1977, undertook to amend the Export Administration Act. The principal change which Congress set out to make in the Act was a strengthening of U.S. policy against compliance with foreign boycotts.67

The Arab boycott of Israel led the way to the first major change in export controls in the United States since 1965—the reduction of the President's plenary authority over export controls.68 By early 1977 many members of Congress felt there had been a failure on the part of the Executive Branch to effectively react to the Arab boycott.69 Congress was displeased with the manner in which the President was carrying out his plenary powers over export controls. The result of this displeasure was partially felt when the House of Representatives included in the 1977 amendments to the Export Administration Act specific restrictions on the exportation of Alaskan oil set to flow through the Trans-Alaska pipeline.70

D. Export Administration Amendments of 1977: Control of Alaskan Oil Exports

The principal objectives of the 1977 amendments to the Export Administration Act were to improve the licensing procedure for exportation, to make it easier and quicker for business and industry to receive permission to export certain items, and to strengthen U.S. policy against the Arab boycott of Israel.71 Significantly, neither the House bill nor the Senate bill, as originally introduced, contained language to control or limit Presidential power to export Alaskan oil. Such language was introduced as an amendment to the House bill by Representative Stewart B. McKinney of Connecticut.72

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71 See, e.g., 123 CONG. REC. 11,418 (1977) (introductory statement of Representative Clement Zablocki); 123 CONG. REC. 13,769 (1977) (introductory statement of Senator Adlai Stevenson).
72 Rep. McKinney's amendment read as follows:

Prohibition of Certain Petroleum Exports
Section 110. Section 4 of the Export Administration Act of 1969, as amended by sections 107, 108, and 109 of this Act, is further amended by adding at the end
On April 18, 1977, President Carter declared that the energy crisis in the United States was the "moral equivalent of war." Three days later, Representative McKinney used that declaration as a justification to introduce export controls on Alaskan oil:

[W]e have before us a bill (H.R. 5840) which, as written, could be used to justify the exportation of 400,000 barrels per day of Alaskan oil. . . . It would be incomprehensible to expect that the administration and this Congress can convince the American people of severe supply shortages while we simultaneously export nearly a half million barrels of oil per day to Japan.\(^{44}\)

McKinney adopted the language which Congress inserted into the Trans-Alaska Pipeline Authorization Act\(^{55}\) to convince his colleagues that the amendment was consistent with the basic intent of the Export Administration Act:

The amendment will further insure the fulfillment of our specific intent in passing the Trans-Alaska Pipeline Authorization Act—TAPS Act—the domestic distribution of Alaskan oil. . . . As dictated by Section 28(U) of the Mineral Leasing Act—as amended by the TAPS Act—the President can only approve the export of North Slope crude if he determines it will benefit the national interest. As you may recall, the 93d Congress, in approving the TAPS Act, determined that the national interest would best be served by distributing the North Slope crude domestically.\(^{66}\)

Some Congressmen argued that the debate regarding exportation of Alaskan oil should not be taking place in the context of an amendment to the Export Administration Act; rather, it should be taking place after the President presented his proposals for a comprehensive energy program,

\(^{63}\) Television Address by James E. Carter, President of the United States, Apr. 18, 1977.

\(^{64}\) 123 Cong. Rec. 11,442 (1977).


\(^{66}\) 123 Cong. Rec. 11,442 (1977) (emphasis added). Representative Don Young of Alaska also favored the export ban on Alaskan oil. See id. at 11,443-44. While Congressman Young may have been more concerned with getting the Alaskan oil to market than with the energy crisis, his support was important for the McKinney Amendment.
and then, only if the President found that Alaskan oil should be shipped to Japan. Faced with the prospect of having to explain the apparent inconsistency between rationing fuels in the United States while at the same time exporting domestically produced oil overseas, after the President's declaration of the imminent perils of the growing energy shortage, the House adopted the McKinney Amendment by a voice vote and sent the legislation to the Senate for further debate.

In the Senate, as in the House, the purpose of the Export Administration Amendments of 1977 was to improve the licensing procedures for exports and to strengthen the U.S. anti-boycott policy. After the debates on the House bill, Senators John A. Durkin and Thomas J. McIntyre of New Hampshire introduced an amendment similar to the one that had already passed in the House to prohibit exportation of Alaskan oil.

The Carter administration opposed both the McKinney Amendment in the House and the Durkin Amendment in the Senate because the amendments eroded the powers of the President to control exports.

Support for the Durkin Amendment was centered on the TAPS Act language which declared that domestic use of Alaskan oil was in the national interest. It should be noted that the need for the TAPS Act arose due to the opposition to the pipeline from environmental groups in the United States. Congress, at the time, was faced with the difficult situa-

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67 See, e.g., 123 CONG. REC. 11,444 (1977) (statement of Congressman Jonathan Bingham of New York). In addition, Representative Stephen Solarz argued that the amendment was unnecessary and potentially counterproductive. Id. at 11,442-43.

68 Sen. Durkin's amendment read as follows:

   Domestically Produced Crude Oil

   Section 119. Notwithstanding any other provision of this Act and notwithstanding subsection (u) of section 28 of the Mineral Leasing Act of 1920, no domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to such section 28 (except any such crude oil which (1) is exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or (2) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States) may be exported from the United States, its territories and possessions.

123 CONG. REC. 13,783 (1977). The arguments made in support of the Durkin Amendment were similar to those made in the House. See, e.g., id. at 13,783 (remarks of Senator John A. Durkin of New Hampshire).

Senate opposition to the export ban stressed several factors: (1) a surplus of oil resulting from Alaskan production exists on the west coast; (2) transporting the oil to other parts of the United States is very costly, while the costs of shipping the oil from Alaska to Japan are low; and (3) the east coast can obtain oil from OPEC nations at a lesser cost than it can from Alaska. Id. at 13,784 (remarks of Senator Adlai Stevenson of Illinois). For an explanation supporting an exchange of oil with Japan, see id. at 13,786.

69 Id. at 13,787 (administration position reported to the Senate).

70 See supra notes 35-38 and accompanying text.
tion of approving a project which environmentalists contended would destroy important and sensitive ecological systems in the wilderness areas of Alaska. However, Congress passed the TAPS Act and reversed court orders enjoining the construction of the pipeline. Ultimately, the Durkin Amendment was defeated by a vote of 66 to 27, and the Export Administration Improvements and Extension Bill was passed shortly afterwards by a vote of 90 to 1. Thus, the House bill and the Senate bill differed significantly on the matter of prohibiting exportation of Alaskan oil.

A conference was convened between members of both Houses of Congress for the purpose of hammering out a compromise on the language in disagreement. The result of the conference on the Export Administration Act Amendments of 1977 was the adoption of the softened House language, which was ultimately approved by both the House and the Senate.

The compromise agreed to by the conference committee was that Alaskan oil could be exported, but only by way of a:

[V]ery elaborate procedure, whereby there must be a specific Presidential determination that the crude oil export: First, will not diminish the total quantity or quality of petroleum available to the United States; second, will have a positive effect on consumer oil prices by decreasing the average crude oil acquisition costs of refiners; third, will be made only pursuant to contracts which which may be terminated if the petroleum supplies of the United States are interrupted or seriously threatened; fourth, are in the national interest; and fifth, are in accordance with the provisions of the Export Administration Act. Furthermore, the President must report these findings to the Congress and the report cannot go ahead until the expiration of a 60-day period, during which either House of Congress can veto the proposed export.

The significant portion of this language was the 60-day period within which Congress would have the power to veto a Presidential effort to export Alaskan oil. By the time the Export Administration Act came up for renewal again in 1979, it was clear to those who favored exportation of

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72 123 CONG. REC. 13,810 (1977). The defeat came on a vote to table the amendment, which made the amendment moot once the bill itself was passed later in the day.
74 The one nay vote was cast by Senator Jesse Helms of North Carolina. Nine Senators did not vote. See id.
Alaskan oil to Japan that the provisions of the 1977 Act had, in fact, made it extremely difficult to export that oil because the President would have to find that such exports would "have a positive effect on consumer oil prices." 77

E. 1979 Amendments: The Prohibition is Made More Complete

The cap on Alaskan crude oil exportation was made more secure by the amendments to the Export Administration Act in 1979, changing the Congressional "veto" power to a Congressional "approval" power. 78 As with previous legislation concerning export controls, the existing political climate was important to the considerations of the 1979 amendments. 79

Concerns persisted in early 1979, when Congressional hearings were being conducted on the Export Administration Act, over the potential of Alaskan oil being exported to Japan. The AFL-CIO had an interest in the export question because of the fact that if the oil was not exported, new tankers, pipelines and refineries would be needed to handle the Alaskan oil in this country, and that, if the oil was exported to Japan, "[e]mployment in shipyards and the construction industry will be exported along with Alaska oil." 80 To assure that this would not happen, the AFL-CIO urged the Senate Banking, Housing and Urban Affairs Committee to provide in the new legislation that the Act "be changed to require a specific congressional approval before any proposed export of Alaska oil is allowed." 81

The issue of benefits to American consumers, introduced in the 1977 Amendments, was not so easily disposed of, as John O'Leary, then Deputy Secretary of Energy made clear during the Senate Committee's questioning. In an exchange with Senator Adlai Stevenson, Chairman of the Subcommittee on International Finance, Mr. O'Leary admitted that the inability to show consumer benefits was the one issue which would prevent the President from proposing a swap of Alaskan crude oil with Japan and Mexico. 82

77 See supra note 76 and accompanying text.
79 In January 1979, Mohammed Reza Shah Pahlavi, the Shah of Iran, fled his country and a provisional revolutionary government was established under the leadership of the Ayatollah Ruhollah Khomeini. This change of government in Iran included a temporary cut off of all oil exports from that country, thus reviving the concern over U.S. dependence on foreign energy sources.
80 U.S. Export Control Policy and Extension of the Export Administration Act: Hearings on S.737 and S.977 before the Subcommittee on International Finance of the Senate Committee on Banking, Housing and Urban Affairs, 96th Cong., 1st Sess. 37 (1979) (statement of Dr. Rudolph Oswald, Director, Research Department, AFL-CIO).
81 Id. at 33.
82 Mr. O'Leary stated:
As before, the principal purposes of the 1979 amendments were to protect national security, to support U.S. foreign policy, and to preserve resources in short supply, not to prohibit the exportation of Alaskan oil. In fact, in 1979 the major concern of Congress was to protect the domestic economy from the excessive drain of scarce materials and the reduction of serious inflationary impacts caused by foreign demand.83

Thus, the Senate committee supported the view that a possible inflationary impact caused by oil exports should be a sufficient condition for the implementation of controls in short supply situations. The converse would also seem worthy of support; exports which would improve economic conditions, such as a reduction in the balance of payments, should be a sufficient condition to warrant the listing of controls. However, even though the Carter administration argued that exporting Alaskan crude oil to Japan would have this result, the Senate passed an amendment to strengthen the prohibition on exporting Alaskan crude oil.84

There is an additional point, Mr. Chairman. There is a requirement under the provisions of section 4(1) [of the Export Administration Act] that the President find that benefits will flow to consumers.

It's unlikely, under the sort of contract that I put before you, that the consumer will, in fact, benefit in direct ways.

Now, please understand me, I'm not pleading the case for higher net backs to producers on the North Slope because I like to see oil companies get more money. I'm pleading the case because there's a direct link between their price expectations and the amount they are willing to invest.

And I think its absolutely imperative that over the next dozen years or thereabouts that we make a major, indeed, a massive exploration effort in Alaska.

I think that will not be forthcoming unless the attitude, the price attitude or atmosphere, is as beneficial as we can make it.

These benefits will not go in the short run to the consumers. Ultimately, if producers are successful in finding additional supplies of oil, quite clearly the consumer will benefit. I'm not sure the President can make the literal findings that are required by the section as it reads now and probably he could well be subject to a challenge if he attempted to do so.

SENATOR STEVENSON. Is that the only finding that the president would have difficulty making, a finding with respect to a positive effect on consumer oil prices by decreasing the average crude oil acquisition cost to refiners?

Mr. O'LEARY. That's the one that we would regard as virtually impossible to make in the real world.

Id. at 152-53.


The only exceptions permitted by either House of Congress involved the Camp David agreement between Israel and Egypt in which the United States agreed to supply oil to Israel under specified conditions for 15 years. This exception affected Senate ratification of U.S. involvement in that treaty.
In 1979, when the Senate and House went to conference on the Export Administration Act Amendments, little compromise was necessary. The Conference Report summarized the issue of the export of Alaskan oil succinctly:

The Senate bill permitted the export of oil after a period of 60 calendar days of congressional session unless both Houses of Congress adopt a concurrent resolution of disapproval.

The House amendment would permit the export of oil only if Congress passes a concurrent resolution approving such export within 60 days.

The committee of conference agreed to the House provision. President Carter signed the Export Administration Act into law on September 29, 1979. The Act was reauthorized and extended on December 29, 1981. Thus, the legislative history demonstrates how the political realities of constituent pressures operated to prevent legislation intended to encourage economic efficiency and to promote the nation's welfare.

III. Japan's Dependence on Imported Oil

Japan, a small island nation with a population roughly half that of the United States, has the world's third largest gross domestic product (GDP). As an island nation, Japan imports many natural resources and exports finished goods to maintain its highly successful economy.

Japan imports 84.1 percent of its energy needs. No other major industrial power is as dependent upon imported energy. For example, by comparison the United States imports only 18.6 percent of energy consumed. Oil is the primary source of energy in Japan accounting for 66.4 percent of energy consumed. Japan is 99.8 percent dependent upon im-

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90 Id.

ported oil. This compares with an 11.1 percent dependence on imported oil for the United States.

The conventional wisdom in the United States is to view Japan as an industrial behemoth whose export policies are responsible for many of our economic and social ills. The facts indicate, however, that in spite of Japan's efficiency in industrial mass production, its economy is fragile and precariously dependent upon imported energy. Japan's efficient use of energy reflects its national concern for this problem as well as national priorities. Japan's extraordinary dependence on foreign energy necessarily becomes a focal point of foreign policy. Sixty-nine percent of Japan's oil comes from the Middle East. National leaders of the Middle Eastern countries are quite aware of Japan's dependency upon their oil.

The United States and Japan enjoy a unique bilateral relationship, a relationship that many Americans believe benefits Japan far more than this country. From an economic perspective, the United States is Japan's largest export market. Additionally, since the Second World War, either as a matter of U.S. foreign policy, or of Japan's own volition, Japan has not maintained a conventional armed force. Japan's entire strategic defense umbrella has been maintained by the United States.

The possible divergence between U.S. political interests and Japan's economic interests in maintaining a continuous supply of imported energy is a frightening prospect for Japanese foreign policy makers. This can be no better exemplified than through the schism that developed between the United States and Japan during the Iranian hostage crisis. The failure of the government of Japan and its nationals to honor U.S. requests for sanctions against the government of Iran after that government condoned the seizure of the American Embassy in Tehran provides ample proof that: (1) Middle East oil can be used to pressure Japan politically; (2) Japan is highly vulnerable to economic pressures from its foreign oil suppliers; and (3) the U.S. national security network can easily break down, to the extent that its Japanese alliance is neutralized.

92 Id.  
93 For example, the industrial sector uses 57.9 percent of all energy consumed in Japan. By comparison, U.S. industry consumes only 36.8 percent of the total U.S. energy supply. Id. at 8.  
94 Id. at 20.  
Unlike the confrontation with the United States during the Iranian hostage crisis, Japan's dependence on foreign sources of oil usually manifests itself in far less dramatic elements of its foreign policy. In 1979 for example, then Prime Minister Masayoshi Ohira hosted an economic summit of the seven leading industrial democracies. At that meeting Mr. Ohira, in an effort to curry favor with Japan's Middle Eastern oil suppliers, proposed a joint declaration calling for recognition and respect for the rights of Palestinians. It was reported that the President of France, Valery Giscard d'Estaing, opposed the declaration believing that it was inappropriate for an economic summit to make a political statement. Mr. Ohira's proposal was defeated, probably by the arrival of news that OPEC had just voted a major price increase.

Japan's dependence on foreign oil shaped not only Mr. Ohira's objectives at the summit but isolated Japan from the rest of the participants in the framing of a response to OPEC's price increase. Mr. Ohira was the only head of state at the conference who objected to a resolution criticizing OPEC for its price increase. The resolution stated: "[W]e deplore the recent decisions taken by the OPEC conference." Mr. Ohira reportedly found the word "deplore" too strong, not wishing to offend OPEC oil suppliers. Clearly the availability of oil, and not price, was Japan's major concern in 1979.

As an island nation, Japan has historically been concerned with resource conservation. In October 1979, Japan enacted the Law Concerning the Rationalization in the Use of Energy. The Act provides "a standard for rationalization of [the] use of energy for factories, buildings, home electric appliances, and automobiles." Like the United States, Japan provides financial and tax incentives for investment in energy-saving facilities as well as "guidance and assistance to medium and small enterprises." Through the Moon Light Project, the government of Japan funds the research and development of "[l]arge-scale energy conservation technology as well as that of leading and basic technology."
Measured as a percentage of change, with 100 percent being the standard, Japanese domestic petroleum consumption from the period 1975 through 1979 was as follows:\footnote{PETROLEUM REPORT supra note 88, at 16 app., table 7.}

<table>
<thead>
<tr>
<th>Year</th>
<th>Consumption Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1975</td>
<td>96.9</td>
</tr>
<tr>
<td>1976</td>
<td>107.2</td>
</tr>
<tr>
<td>1977</td>
<td>100.6</td>
</tr>
<tr>
<td>1978</td>
<td>102.5</td>
</tr>
<tr>
<td>1979</td>
<td>99.2</td>
</tr>
<tr>
<td>1980</td>
<td>89.7</td>
</tr>
<tr>
<td>1981</td>
<td>93.1</td>
</tr>
</tbody>
</table>

Preliminary data for 1982 indicates that crude oil imports will be only 92 percent of 1981 levels while the Japanese economy sustained a projected growth rate of 3.7 percent.\footnote{Id. at 2.}

The government of Japan credits its conservation efforts and the technological advances achieved through the Moon Light Project for making Japan one of the most energy efficient countries in the world.\footnote{ENERGY IN JAPAN, supra note 89, at 16.} Of the major industrial powers, Japan has the lowest per capita consumption of energy.\footnote{Id. at 17.}

Japan has equally ambitious plans for its alternative energy programs. In May 1980, Japan implemented the Law Concerning the Promotion of Development and Introduction of Petroleum Substituting Energy.\footnote{Id. at 18.} By October 1980, the government had established the New Energy Development Organization.\footnote{Id. at 19.} Japan spent 158 billion yen in fiscal year (FY) 1981 and an estimated 166 billion yen in FY 1982 in furtherance of its alternative energy policies.\footnote{Id. at 24.} On April 30, 1982 the government of Japan announced the official Supply Target for Alternative Energy to be 51 percent of all energy consumed in Japan in 1990.\footnote{Id. at 2.} The alternative energies to be utilized are "coal, nuclear power, [liquified] natural gas (LNG), hydro-power, geothermal energy, solar energy and other alternative energy sources."\footnote{Id.} Of these, coal, nuclear and LNG will account for the bulk of increased alternative energy production.\footnote{Id.}

Japan relies on coal as a major alternative source of energy for electrical power generation and for industrial applications. There presently exists a moratorium of new oil fired power plants with the exception of those plants already under construction.\footnote{Id. at 19.} Conversion of plants from oil to coal firing is encouraged. In addition to the use of steam coal as fuel,
Japan is also conducting research into the more exotic coal technologies such as coal-oil mixtures.\textsuperscript{121}

The increased demand for steam coal will be met by imports from Australia, China, the contiguous portion of the United States or the State of Alaska, as Japanese coal production is expected to remain constant.\textsuperscript{122} Of particular interest to Japan and the State of Alaska is the development of the Beluga coal field.\textsuperscript{123} In addition, the Japanese government "places its greatest expectations on nuclear energy as the alternative energy source for the future."\textsuperscript{124}

The last of the three major alternative energy sources, LNG, presently accounts for six percent of Japan's energy consumption.\textsuperscript{125} In 1979 "special contract rates" went into effect which the United States designed to increase LNG consumption.\textsuperscript{126} Japan hopes to increase demand to the extent that LNG will account for 11.5 percent of Japan's domestic supply by 1990.\textsuperscript{127} Since the mid-1960's, the Kenai gas fields of Alaska have been supplying LNG to Japan.\textsuperscript{128}

The final goal of Japanese domestic energy policy is to secure stable oil supplies by decreasing Japan's dependence on Middle Eastern oil. The trilateral trade of petroleum between Alaska, Japan and Mexico is the ideal solution to Japan's energy policy goals.

Despite Japan's extraordinary efforts in the field of energy conservation and alternative energy production, it is inconceivable that petroleum will cease to be a major source of energy for Japan. Japanese projections show petroleum providing for 49.1 percent of Japan's energy needs in 1990 and 38 percent of its needs in 2000.\textsuperscript{129} It is imperative as a matter of

\textsuperscript{121} Id. at 5.
\textsuperscript{122} Id. at 24.
\textsuperscript{123} The Beluga coal field is located in the Cook Inlet of South Central Alaska and is closer to Japan than the remaining free world fields located in Australia. The relatively low BTU content per ton of coal makes coal highly transportation cost sensitive.
\textsuperscript{124} See Energy in Japan, supra note 89, at 22.
\textsuperscript{125} Id. at 26.
\textsuperscript{126} Id.
\textsuperscript{127} Id.
\textsuperscript{128} N.Y. Times, Feb. 10, 1983, at D1. In addition, the oil fields of Prudhoe Bay, Alaska contain vast reserves of natural gas. However, no gas pipeline has been built to transport the product to market. An overland pipeline to extend from Alaska across Canada into the midwestern United States was suggested by President Carter in 1977, but for a variety of political and financial reasons, the project has not gone forward. In January, 1983, a Committee, chaired by two former Alaskan Governors, recommended that a gas line be built linking Prudhoe Bay to a liquefaction facility in South Central Alaska. An additional recommendation that the LNG be exported to Japan was based on the strong and increasing demand for LNG in Japan and the geographic proximity of Alaska to the Japanese market. Governor's Economic Committee, State of Alaska, Trans-Alaska Gas System Economics of an Alternative for North Slope Gas (1983).
\textsuperscript{129} Petroleum Report, supra note 88, at 3 app., table 1.
public policy, for both Japan and the United States, that Japan acquire politically secure sources of petroleum.  

Obtaining secure sources of petroleum is a difficult, long-term project for Japan. The Middle East remains the principal source of supply of Japan. Recently, Japan has secured oil from other sources such as Mexico and China. Although this represents only a small percentage of Japan’s total import requirements, Japan’s overall reductions in the use of petroleum have been made at the expense of Middle Eastern sources resulting in a decline in the number of barrels per day of imports from that region.

In the oil industry, worldwide petroleum operations are divided into the exploration, production and refining components (upstream) and the marketing and distribution functions (downstream). Japan’s oil industry is structurally weak in that it lacks significant upstream capability. Only 6.8 percent of Japan’s imported petroleum comes from overseas work conducted by Japanese oil exploration companies. Japanese exploration companies have retained a progressively smaller share of the Japanese imported oil market. This substantially complicates Japan’s efforts to obtain secure oil sources. To combat this problem the government-owned Japan National Oil Corporation heavily subsidizes the operations of Japanese exploration companies.

Though Japan as a nation may be weak in the field of oil exploration, Japanese trading companies enjoy a much deserved worldwide reputation for their astuteness. Japanese trading companies are actively seeking permission to buy Alaskan crude oil, albeit on a bilateral rather than trilateral basis. The purchase of Alaskan crude has many advantages for Japan. The most obvious advantage is that Alaska is a politically stable and secure source of petroleum. The enormous throughput of the Trans-Alaska Pipeline System (TAPS) makes the prospect even more appealing to the Japanese.

TAPS is presently producing 1.6 million barrels per day. The U.S. Department of Energy (DOE) estimates that as many as 594,000 barrels per day could be exported to Japan if export controls were lifted. In

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130 This is acknowledged by the Japanese government. See id. at 7.
131 Id. at 8 app., fig. 4.
132 Id. at 3.
133 This can be inferred from the data in figure 4 and table 9. Id. at 8, 18 app.
134 Id. at 8 app., fig. 4.
135 Id. at 12.
136 Id. at 16 app., fig. 5.
137 Id.
138 Id. at 20.
140 D. Lindahl, Exports of Alaskan Crude Oil 1 (Dec. 4, 1981) (memorandum published
December 1982 this estimate was increased to 800,000 barrels per day by Marshall Hoyler of the Logistics Management Institute, who as a former DOE employee had calculated the previous DOE estimate. Thus, Japan, which presently imports 2,749,000 barrels per day from the Middle East could reduce its dependence on Middle Eastern crude oil by as much as 29 percent. The resulting reduction would make the United States Japan's second largest supplier of oil.

Acquisition of Alaskan crude could also affect the way Japan conducts its entire Middle East policy. The probability that Japan could be held as an economic hostage, as the Ayatollah Khomeini attempted with the completion of a petrochemical complex at less than favorable terms, would be substantially diminished. Japan's negotiating posture with all OPEC members would be enhanced. Japan would also be less susceptible to political blackmail by its oil suppliers. Ayatollah Khomeini's so-called "allegiance test," which forced Japanese companies to buy crude oil at above market prices during the Iranian hostage crisis, is the best example of the potential result of political blackmail against Japan.

Japan's acquisition of Alaskan crude oil also diminishes the possibility of a divergence between U.S. political interests in the Middle East and Japan's economic interest in maintaining a continuous supply of Middle Eastern oil, such as that which arose during the Iranian hostage crisis.

A significant non-oil related benefit from the export of Alaskan crude oil to Japan is a substantial lowering of Japan's trade surplus with the United States. It may well be that current inquires by the government of Japan regarding the availability of Alaskan crude for export have been more strongly motivated by the politics of Japanese-U.S. trade negotiations than by energy security.

For the last several years, the growing U.S. trade deficit with Japan has been the subject of increased concern in this country. This has

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142 This is calculated by dividing Japan's present imports of Middle Eastern crude (2,749,000 barrels/day) into the potential volume of imports from Alaska (800,000 barrels/day).

143 Saudi Arabia, Japan's largest oil supplier, provided Japan with 35.3 percent of its oil needs in FY 1981. PETROLEUM REPORT, supra note 88, at 8 app., fig. 4. Indonesia, who supplied 15.8 percent of Japan's oil requirements during the same period, ranks third. Id.

144 See BUREAU OF ECONOMIC ANALYSIS, U.S. DEP'T OF COMMERCE, SURVEY OF CURRENT BUSINESS 50 (June 1981). These figures reflect the adjusted balance of payment excluding military sales and event expenditures.

U.S. markets are for the most part freely open to imported Japanese goods. Japanese markets, on the other hand, are believed to be largely closed to U.S. imports. Public awareness of the U.S./Japan trade issue has recently increased given the decline of the automobile industry due in part to the penetration of Japanese automobiles into the U.S. market. How-
been a source of friction between the two countries and negotiations of substantial economic and political significance to both parties have been ongoing. As the trade deficit between the two nations has grown and public sentiment in the United States heightened in its call for demonstrative action, the Office of the Special Trade Representative has intensified its efforts, repeatedly pointing to the widening trade deficit between the two nations.

In 1982 Japanese negotiators realized that one reason the deficit between the United States and Japan was so high was that export restrictions were placed on Alaskan crude oil. If Japan could buy up to 800,000 barrels per day of Alaskan crude oil, the trade deficit between Japan and the United States would be reduced by $7.3 billion per annum.\(^{146}\) Often, when Japanese negotiators are reminded of Japan's tariff and non-tariff import barriers they rightfully respond by pointing at U.S. export controls.

Whether for reasons of energy policy, or trade negotiations, or both, the government of Japan is quite interested in purchasing Alaskan crude oil. In January of 1983, during Prime Minister Nakasone's visit with President Reagan, the two heads of state exchanged views on a variety of issues. President Reagan asked that Japan increase its defense budget and Prime Minister Nakasone asked President Reagan, among other things, to consider exporting Alaskan crude to Japan.\(^{146}\) As a result of that request, President Reagan has ordered a Cabinet level working group to review export controls of Alaskan oil.\(^{147}\)

IV. MEXICO: AN OIL RICH NATION ON THE VERGE OF BANKRUPTCY

Throughout 1980 and 1981, banks around the world were lining up to lend money to fuel Mexico's oil based economic boom. By late July 1982, Mexican government officials were scurrying around to many of the same banks searching for emergency cash to maintain their national solvency. Most experts agree that this dramatic change in Mexico's finances was due, ironically, to the same forces of development that were made possible by the momentum of the oil boom. The collapse of the worldwide oil market in 1981 was not met with a concomitant temperance of the economic growth policies of the economic planners.

In a recent state of the nation address, then-President Jose Lopez ever, the major U.S. negotiating efforts have been to reduce Japanese trade barriers on agricultural products strongly lobbied for by the Japanese agricultural industry.

\(^{146}\) This figure was determined by multiplying the throughput to Japan by the well-head price at the time the article was written.

\(^{146}\) Interview with Lennie Boston, Special Staff Assistant to Governor Bill Sheffield of Alaska (Jan. 1983).

\(^{147}\) Id.
Portillo\textsuperscript{148} defended the policies which led to Mexico's $80 billion national debt. Portillo pointed out that the lending banks relied on Mexico's oil wealth to secure these loans\textsuperscript{149} and that the economic growth of the type experienced by Mexico since 1976 had to be taken to the limit to insure the attainment of certain economic growth levels.\textsuperscript{150}

The economic development policies of Jose Lopez Portillo's Administration grew out of the 1976 discovery of enormous oil fields in the south-eastern part of Mexico. By mid-1980 the potential reserves were estimated at 250 billion barrels.\textsuperscript{151} Between 1976 and 1981 production of crude oil increased by 190 percent.\textsuperscript{152} The production development plan was an ambitious one, but even so, in many respects actual production surpassed the estimates of the planners. For instance, in the second half of 1981, 18 months ahead of schedule, production reached 2.75 million barrels per day, thrusting Mexico into the number four position among world oil producers.\textsuperscript{153}

The development of the industry envisioned the maintenance of exports at 1.5 million barrels daily.\textsuperscript{154} This was based on the underlying theory that oil exports would serve to offset the imports required for the future industrialization of Mexico. The plan was to use oil production to secure the future economic well-being of the country.\textsuperscript{155}

Another by-product of Mexico's new economy was its role as a respected member of the developing world. Recently, Mexico presented a World Energy Plan to the United Nations.\textsuperscript{156} This plan was predicated on the theory that energy sources should be used for the benefit of all nations, not just a privileged few.\textsuperscript{157} In an arrangement with Venezuela and in an attempt to implement this policy, the two countries supplied Central America and the Caribbean countries with petroleum under very favorable financial terms. This plan has placed Mexico in a leadership role among developing nations. In recent years Mexico has taken the view that in order to affect the international forces which bear on Mexico's

\textsuperscript{148} Mexico has a one party system. The President serves a single term of six years.
\textsuperscript{149} BANCO NACIONAL DE MEXICO, VOL. LVIII, NO. 681/682, REVIEW OF THE ECONOMIC SITUATION OF MEXICO 295-313 (Aug./Sept. 1982) [hereinafter cited as ECONOMIC REVIEW OF MEXICO].
\textsuperscript{150} Id.
\textsuperscript{151} INSTITUTO MEXICANO DE COMERCIO EXTERIOR, MEXICO 82, at 15 (1982) [hereinafter cited as MEXICO 82].
\textsuperscript{152} Id. at 15-16.
\textsuperscript{153} Id. at 16.
\textsuperscript{154} Id.
\textsuperscript{155} In 1980, the sale of hydrocarbons represented 64.5\% of all Mexican exports. Total exports rose from $15.3 billion in 1980 to $19.6 billion in 1981. However, imports rose to $23.3 billion translating into a $3.7 billion balance of trade deficit in 1981. Id. at 26.
\textsuperscript{156} ECONOMIC REVIEW OF MEXICO, supra note 149, at 255.
\textsuperscript{157} Id.
internal well-being, the country must take an active role in international matters. It was a Mexican initiative that brought twenty-two heads of state together at the Cancún Meeting.\textsuperscript{158} In 1980 and 1981 Mexico effectively carried out its duties on the United Nations Security Council.\textsuperscript{159} Its participation was heralded by many as an ideal mix of independence and reason which promoted just causes and supported principles rather than countries. Mexico has been able to exercise its leadership in the Caribbean Basin in a similar spirit. Its leadership has acted as a buffer between the forces of social reform and the adverse interests of the United States.

The new role of Mexico in the international community has gradually come to be accepted by the United States. Increasingly, the United States has sought the intervention of Mexico in matters not strictly bilateral. At the United Nations, Mexico was found to be indispensable in dealing with the problems of Central America and the Caribbean countries as well as with the Falklands conflict.\textsuperscript{160} In all matters relating to global negotiations, Mexico has dealt with the major powers along lines of mutual respect.

For Mexico, the economic growth which stems from its new posture as an oil producing nation represents the opportunity to effectuate some fundamental social changes which until now had given rise to much rhetoric and nothing more. The oil-based economic growth has enabled Mexico to promote agricultural development and to begin to become self-sufficient in food production.\textsuperscript{161}

In the past six years, Mexican officials have continually attempted to minimize the importance of oil in the economy. In fact, oil is viewed as the means of transforming an economy based on a non-renewable resource into an industrial base of renewable resources providing future economic security for the country.

The world oil glut which commenced in 1981 presented the Mexican government with a choice of: (1) continuing one of the most dramatic and ambitious development plans of modern times; or (2) cutting back economic development in a manner reflecting world economic realities. Perhaps influenced by the developing countries' traditional mistrust of the

\textsuperscript{158} Id.
\textsuperscript{159} Id. at 256.
\textsuperscript{160} Id. at 261.
\textsuperscript{161} For example, in 1980, the Mexican President proposed the Mexican Food System, and the Congress approved massive agricultural development programs. These programs were designed to promote Mexican self-sufficiency in the production of corn, beans, rice and wheat. During the 1981-82 harvest season, Mexico's wheat crop reached an unprecedented level of 4.3 million tons, and the corn, bean and rice crops increased by 19, 51 and 41 percent respectively. In addition, farmland increased by 3,350,000 hectares further enabling Mexico to progress toward self-sufficiency in food production. Id. at 278. This agricultural development illustrates the social effects of the oil-based economic growth in Mexico.
motives of international financial institutions, Mexican officials opted to prolong the country's debt status to whatever extent the creditors would allow.\textsuperscript{162} This was done in the hopes of not interrupting the oil boom; it was an attempt to bridge the oil glut. Money was borrowed to stimulate continued economic growth, decrease unemployment and keep down the cost of living.\textsuperscript{163} The result was an $80 billion foreign debt.\textsuperscript{164}

If Mexico can overcome the present stagnation in the world oil market, it has the means and resources to continue its development program. Recognizing this, shortly after the devaluation of the peso in August 1982, the U.S. government increased its petroleum purchases from Mexico for the U.S. Strategic Petroleum Reserve.\textsuperscript{165} The increase represented nearly a quadrupling of purchases from 50,000 barrels a day to 190,000 over the next year.\textsuperscript{166} Facing the realities of its need for hard cash the Mexican government eliminated its limits on oil production as an unaffordable luxury.

The fortunate side of the Mexican economic situation at this point is that the public investments made with income in foreign exchange and through indebtedness are a permanent part of the national assets. These assets represent the solution to the present crisis; the production of oil is the key to the country's recovery. As Mexico enters an era of economic reconstruction under new leadership, it will be searching for ways to implement several economic recovery measures based on its production of oil.

In terms of economic efficiency, the best opportunity available to Mexico to provide for a steady flow of foreign exchange income for its development plan is to supply oil to the eastern United States and displace Alaskan oil which could then be diverted to Japan. The advantages to Mexico of such an arrangement include: (1) a secure market for the sale of oil at a time when the world oil glut is expected to continue; and


\textsuperscript{163} For example, massive building projects continued in expectation of rising oil revenues. The government also helped to pay for selected consumer goods by subsidizing products ranging from tortillas (a $1.4 billion subsidy) to petroleum products (a subsidy estimated at 6 percent of the gross domestic product). \textit{Id.}

\textsuperscript{164} \textit{Id.} These short-term measures were soon overextended given the weakening oil prices and the deepening world recession. Inflation in Mexico had reached 30 percent by 1981. \textit{Id.} at A14, col. 1. This increase in contrast with a decreasing inflation rate in the United States caused a rapid deterioration of the balance of payments. These circumstances along with the devaluation of the peso provoked the transfer of capital from Mexico to the United States. This outflow continued even though the government implemented several austerity programs. As bankers began to refuse to renew short-term government loans, the Mexican government closed its exchange markets to stop the outflow of capital and began to look to international banks for assistance. \textit{Id.}


\textsuperscript{166} \textit{Id.}
(2) increased well-head prices resulting from reduced transportation costs due to the proximity and size of the eastern U.S. market, and the development of two new industrial parks on the Gulf of Mexico which are to be the future centers of heavy industry, including primary petro-chemical complexes which are ideally suited for the exportation of oil to the eastern United States at least cost.

These logistical advantages maximize the net return to Mexico on a per barrel of throughput basis. Mexico's revenues, as with other owners of oil, are dependent on the well-head price. The well-head price is the fair market value of the oil at port of landing less transportation costs. Delivery of Mexican oil to the U.S. Gulf of Mexico and east coast ports represents a short haul, low transportation cost delivery which will maximize revenues per barrel to Mexico.167

Throughout its history, Mexico has had an aversion to dependence on the United States. In the context of Mexico's increased prominence in world affairs and its present need to revive its oil sales, the historical fears can now give way to a strong trade connection with the United States.

Another major benefit to be derived from selling oil to the eastern United States is the favorable impact that such trade would have on Mexico's $3.7 billion trade deficit.168 As we have seen, the industrialization of the Mexican economy is dependent on its continued ability to offset the cost of importation of industrial machinery with revenues resulting from the export of oil.

By securing this market, Mexico will also reestablish itself as an important oil power. Mexico has proved itself to be independent of U.S. influence in world affairs, but the security of the hemisphere has been and will continue to be a common concern. Regardless of the ideological differences between the countries, Mexico's resurgence as an oil power is a goal which allows it the leverage necessary to maintain its leadership role among developing nations. Its eventual ability to assist other nations in the Caribbean Basin will enhance the principles of cooperation among developing nations. Within this context, it should be noted that this goal parallels the Caribbean Basin Initiative announced by the Reagan Administration.169

Mexico has always been a prominent member of the Latin American community. The dynamics of leadership among Latin American countries, as well as in other groups of developing nations, dictate that a country cannot maintain a leadership role unless it can demonstrate its ability

167 The Library of Congress estimates the total net back to be shared by all parties to the trilateral trade to be $3.50 per barrel. D. Lindahl, supra note 140, at 2.
168 Mexico 82, supra note 151, at 26.
169 18 WEEKLY COMP. PRES. DOC. 217 (Mar. 1, 1982).
to emerge from underdevelopment. Such is the message which Mexico would send by establishment of a strong trade relationship with the United States. The final and perhaps most important reason for Mexico's participation in the U.S. oil market is that by trading with the United States on such a scale Mexico would receive hard currency. The flight of capital from Mexico was the major cause of the problems experienced by that country in the summer of 1982. The hard currency from the oil trade is a possible remedy which may be a step towards recovery. In addition, currency flow will put in place the machinery to continue those vitally needed development projects which will insure the nation's continued economic survival irrespective of the depletion of its nonrenewable resources. In short, it will make possible the implementation of its social policies at home and abroad.

The solution to Mexico's economic problems, then, lies in the establishment of a strong oil trade. This trade should include a secure market which geographically would afford Mexico the opportunity to maximize revenues through low transportation costs. By establishing such a trade with the United States Mexico's trade deficit would be reduced and, thus, Mexico would possess greater bargaining power in its dealings with the United States. Moreover, Mexico's economy would receive the much needed hard currency. The currency flow from this trade would allow for the reestablishment of Mexico's development programs. The security of a neighboring market would give Mexico's development the type of continuity necessary for success. Mexico could then take part in the formation of international policy and regional development, a role which could also be of great benefit to the United States.

V. THE UNITED STATES: OPTIMAL USE OF OIL RESOURCES

The proposed trilateral trade for crude oil is designed to use Alaska's proximity to Japan and Mexico's proximity to the east coast of the United States to optimize transportation efficiency in the delivery of oil from the well-head to consumer markets.

Alaska comprises one-fifth of the land mass of the United States and over sixty percent of its coastline. Surrounding the northern portion of the Pacific Ocean, a group of land masses and islands in close proximity to each other make up what is commonly called the Pacific Rim. They are Japan, Korea, Taiwan, China and Alaska. A quick calculation shows that on great circle routes Tokyo is about as far away from Anchorage as Chicago is from Anchorage.171

171 Even though Tokyo and Chicago are equal distances from Anchorage, the Pacific Ocean allows more convenient and economical trade between Anchorage and Tokyo as the
Japan and Alaska have developed a very special trade relationship which results from the Japanese need to import resources, Alaska's need to export resources, the geographic proximity of the two entities, and the convenience of waterborne transportation over the Pacific. The two governments recognize and cultivate this relationship. The Foreign Ministry of Japan posts a Consul General in Anchorage, a city with a population of only 250,000 people, and Alaska was the first and is still one of the few states in the Union to maintain a fully staffed trade office in Tokyo.\(^{172}\)

Since the close of the Second World War, Alaska has sold an increasing percentage of its natural resources to Japan. Japan is presently Alaska's major market for fish, timber, liquified natural gas (LNG) and urea ammonia fertilizer.\(^{173}\) Japanese companies have made major investments in the Alaskan timber and fishing industries. Alaska hopes to expand trade to include coal.\(^{174}\) The demand for coal in Japan has caused some Japanese companies to consider investing in the development of Alaska's coal resources.

Whenever a government chooses to have the economic activities of its nationals conducted in a controlled rather than in a free market economy there necessarily results inefficiencies that can be measured in dollars and cents. Export controls on the throughput of the Trans-Alaska Pipeline System (TAPS) cause inefficiencies in shipping by effectively forcing oil to be shipped either through the Panama Canal, Trans-Panama Pipeline or around South America to the East Coast of the United States, rather than to Japan. In the instant case, the victims of the cost of government imposed inefficiencies are the Treasury of the United States, the Treasury of the State of Alaska and the producers who own the TAPS crude.\(^{175}\)

Each dollar of revenue resulting from the sale of TAPS crude, measured at Valdez (the southern terminus of the system), is apportioned between the U.S. government, the State of Alaska and the producers in

cargo can be transported entirely by ship from one city to the other. However, trade between Anchorage and Chicago or any inland U.S. city requires transfer of the goods to a form of overland transportation after shipment to Seattle.

\(^{172}\) Statement of Kevin Coyner, Legislative Assistant to Senator Frank Murkowski (1984) (formerly Assistant to the Director, Alaska State Asian Office, Tokyo, Japan). This office was established in 1964 when U.S.-Japanese trade was virtually non-existent, thus evidencing the long-standing relationship between Alaska and Japan.


\(^{174}\) DEP'T OF COMMERCE AND ECONOMIC DEVELOPMENT, ALASKA STATE ASIAN OFFICE, GOVERNMENT LEVEL DISCUSSION ON IMPORT OF ALASKAN OIL AND U.S. COAL (Apr. 11, 1982) (translation); See also supra note 123 and accompanying text.

\(^{175}\) See infra note 193 and accompanying text.
accordance with Figure 1.\textsuperscript{176}

Figure 1

Increased Netback Breakdown

Each dollar added to the Valdez price is split up between the State of Alaska, the U.S. Treasury, and Alaskan producers as follows:

- $0.125 Alaskan Royalty Oil
- $0.1313 Alaskan Severance Tax
- $0.0699 State Income Tax
- $0.5206 U.S. Windfall Profits Tax
- $0.0705 U.S. Corporate Income Tax
- $0.0827 Producers' Profits

The U.S. government is by far the largest revenue earner, taking in 59.11 cents per dollar of oil sold.\textsuperscript{177} The State of Alaska ranks second at 32.62 cents collected for each dollar of oil sold.\textsuperscript{178} The producers earn the balance, 8.27 cents profit on the dollar.\textsuperscript{179} Losses in revenue resulting from transportation inefficiencies created by export controls are similarly apportioned.

Persian Gulf crude is used as the pricing benchmark in the oil industry. Oil produced from different fields around the world varies in quality and, therefore, price. Using Persian Gulf oil as the quality and price standard, all other crudes are sold at a quality-adjusted Persian Gulf price (PG). Similarly, the price of crude oil at a given consumer market is equal to the PG plus the tanker rate per barrel from the Persian Gulf to the consumer market.\textsuperscript{180} The net back for a given barrel of TAPS oil is the PG for TAPS oil, plus the cost of shipping a barrel of Persian Gulf oil to the destination of the TAPS oil, less the cost of shipping the TAPS oil to that destination.\textsuperscript{181} Using this formula we can calculate the net backs for TAPS oil under export controlled and non-export controlled conditions. The tanker rates necessary to perform the calculations appear in Figure 2.\textsuperscript{182}

\textsuperscript{176} M. Hoyler, supra note 139, at 21.
\textsuperscript{177} Id.
\textsuperscript{178} Id.
\textsuperscript{179} Id.
\textsuperscript{180} Id. at 3 n.a.
\textsuperscript{181} Id. at 3. A producer's netback equals the price in a given market less transportation costs from the well-head to that market.
\textsuperscript{182} Id. at 18.
Figure 2
Assumptions Regarding Transportation Costs

Under export controls an estimated 600,000 to 800,000 barrels per day of TAPS oil, not consumed on the west coast of the United States, are shipped through the Panama Canal or Trans-Panama Pipeline to the Gulf of Mexico.\(^{185}\) If export controls were lifted that oil would be shipped to Japan. Net back calculations for delivery to those markets are as follows:\(^{184}\)

<table>
<thead>
<tr>
<th>Consumer Market</th>
<th>Price of Persian Gulf Oil &amp; Tanker Rate Persian Gulf to Market $2.03</th>
<th>Tanker Rate Valdez to Market $4.00</th>
<th>Net Back Valdez $PG - $1.97</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gulf Coast U.S.</td>
<td>PG + $2.03</td>
<td>$4.00</td>
<td>PG - $1.97</td>
</tr>
<tr>
<td>Japan</td>
<td>PG + $0.96</td>
<td>$0.51</td>
<td>PG + $0.45</td>
</tr>
</tbody>
</table>

Thus, lifting of export controls would increase the net back $2.42 (i.e., $0.45 - (-$1.97)) per barrel.\(^{185}\)

The balance of the TAPS throughput would be shipped to the west coast of the United States. The net back from this oil would also change. Under export control, west coast refiners know that net backs from ex-

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\(^{183}\) Interview with Marshall Hoyler, supra note 141.

\(^{184}\) M. Hoyler, supra note 139, at 19.

\(^{185}\) Id.
port-controlled oil shipped to the U.S. Gulf Coast (PG - $1.97) are lower than net backs of oil shipped to their refineries (PG + $1.50 - $1.47 = PG + $0.03). The west coast refiners would like to share in that difference, thus increasing the profitability of their refineries. An analysis of 1981 data indicates that discounts were given to west coast refiners in excess of $1.00 per barrel, and in a fully competitive marketplace (i.e., the present world oil glut) transportation differentials indicate discounts should be in excess of $2.00 per barrel. Additionally, if export controls are lifted, increased competition among U.S. flag tankers for the Valdez to U.S. west coast trade would cause the tanker rate to decrease from $1.47 to $1.05 per barrel. The calculations for net back to the west coast under export controlled and non-export controlled conditions are as follows:

<table>
<thead>
<tr>
<th>Price of Persian Gulf Oil &amp; Tanker Rate</th>
<th>Tanker Rate Valdez to Market</th>
<th>Valdez Net Back</th>
</tr>
</thead>
<tbody>
<tr>
<td>Export Control</td>
<td>PG + $1.50</td>
<td>$2.00</td>
</tr>
<tr>
<td>Non Export Control</td>
<td>PG + $1.50</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

The increase in net back is PG + $0.45 - (- $1.97) or $2.42 per barrel. The net backs for Gulf Coast and west coast sales are the same under export controlled conditions. The net backs for Japanese and west coast sales under non-export controlled sales are also the same. This reflects the state of affairs in a competitive marketplace.

These net backs per barrel calculations would result in an increased revenue flow to the State of Alaska, both gross and net tax increases to the federal government, and an increase in producer profits. The United States, the State of Alaska and the producers will lose billions of

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186 Id.
187 Id. at 6.
188 Id. at 20 (data provided by Petroleum Revenue Dep't, State of Alaska).
189 Interview with Marshall Hoyler, Research Fellow with the Logistics Management Institute (Feb. 1984).
190 M. Hoyler, supra note 139, at 13, 18.
191 Id. at 19. These figures assume full discounting on the west coast. For a complete discussion of this issue, see id. at 10.
192 Id. at 19.
193 For example, annual increased revenues resulting from decontrol (assuming discounting on the west coast) were recently estimated as follows:

| Gross Federal Taxes | $980 million | Net Federal Taxes | $595 million | Alaska State Taxes | $461 million | Producers Profits | $564 million |

M. Hoyler, supra note 139, at 9. An earlier study reached a similar though less dramatic conclusion. D. Lindahl, supra note 140, at 2. The author believes the Hoyler estimates to be more accurate as they are more recent.
dollars over the life of the Trans-Alaska Pipeline System as a result of export controls. The effect of lifting export controls upon the price of oil in the United States would be negligible. The foregoing calculations have shown that Alaskan crude was selling on the Gulf Coast at a price equal to the quality adjusted, and tanker rate compensated, Persian Gulf price. Any oil sold in the Gulf of Mexico would be sold at that price. Implementation of the trilateral trade proposal would not affect the Gulf Coast price. The disappearance of discounts for TAPS oil on the west coast would cause refinery operations there to be less profitable. Consumer prices would rise only to the extent that refiners could pass on their increased costs.194

Congress may lift export controls by either repealing section 7(d) of the Export Administration Act in its entirety or by amending the section to provide for trilateral trade involving Mexico. If export controls are repealed, market forces would unquestionably, after an adjustment period, cause all of the TAPS oil presently being shipped to the U.S. Gulf Coast to flow to Japan. Gulf Coast refineries would purchase crude from other fields, some undoubtedly from Mexico. Whereas, if controls are amended to provide for trilateral trade, Mexico would be the sole supplier of oil. This makes no difference to U.S. consumers since they will continue to pay the Persian Gulf rate plus the Persian Gulf to Gulf of Mexico tanker rates. The foreign policy benefits to the United States of a trilateral trade arrangement, however, far outweigh those that would occur from a repeal of section 7(d).

Although U.S. foreign policy objectives with Japan would be enhanced in either case, U.S. foreign policy objectives with Mexico and much of Latin America would be enhanced only through the trilateral trade arrangement. Since Japan is not directly involved in U.S.-Latin American relations, and since Japanese trading companies undoubtedly view Mexican involvement in the TAPS trade as a complicating factor in the negotiation of contracts, lack of Japanese support for trilateral trade is understandable.

From a foreign policy and national security perspective, it is in the best interests of the United States to export Alaskan crude oil to Japan.195 The economic power and suasion of Japan’s pro U.S., democrati-

194 M. Hoyler, supra note 139, at 6.

195 Although Japan is the third largest industrial power in the world, its economy is 99.8 percent dependent upon imported oil with 69 percent supplied by the Middle East. See supra notes 87-95 and accompanying text. This high level of dependence makes Japan highly susceptible to economic or political blackmail by oil suppliers. Nothing points this out as clearly as the Iranian hostage crisis. See supra note 97 and accompanying text.

The export of Alaskan oil to Japan would lessen Japan’s dependence on Middle Eastern oil by as much as 29 percent making the United States Japan’s second largest supplier of oil. See supra notes 140-143 and accompanying text. Had the United States been in this posi-
cally elected government operates to anchor U.S. security and diplomatic interests throughout all of Asia.

The export of Alaskan crude to Japan should enhance U.S. influence with Japan over a wide front of diplomatic dealings that in all probability will not be confined to energy related matters. As previously stated, trade, in addition to energy considerations, may have motivated Prime Minister Nakasone to raise the issue of Alaskan oil exports with President Reagan during their recent meeting.\textsuperscript{196} Japanese trade negotiators believe that if Japan could buy Alaskan crude, the U.S. trade deficit with Japan would be substantially cut, thus reducing pressure for Japan to make trade concessions to the United States.\textsuperscript{197} The opposite, however, could also be true. As Japan becomes dependent on Alaskan crude oil U.S. suasion over Japan will increase, making it harder for Japanese trade negotiators to avoid giving their U.S. counterparts concessions for the import of items such as beef and citrus products. The leverage used by the United States would not be unlike that used by OPEC members to obtain Japanese industrial development projects in their respective home countries.\textsuperscript{198}

The repeal of section 7(d) of the Export Administration Act\textsuperscript{199} would provide the United States with a clear foreign policy advantage in dealing with Japan.\textsuperscript{200} However, an amendment to section 7(d) to provide for a trilateral trade involving Mexico has relatively more important foreign policy advantages for the United States with respect to Mexico and Latin America,\textsuperscript{201} not the least of which is providing substantial financial assistance to Mexico at no cost to the United States.

The trilateral trade arrangement provides increased revenues to Mexico in the following manner. Oil flows from Mexico to the Gulf Coast of the United States to replace TAPS crude sent to Japan and dollars flow from the United States to Mexico to pay for that crude. An equivalent amount of TAPS crude is sold to Mexico, but sent directly from Alaska to Japan. This effectively diverts a revenue stream, presently flowing from Japan to the Middle East,\textsuperscript{202} into Mexico. Since the United

\textsuperscript{196} See supra note 146 and accompanying text.

\textsuperscript{197} See supra note 145 and accompanying text.

\textsuperscript{198} See, e.g., N.Y. Times, Sept. 11, 1979, at D10.

\textsuperscript{199} Repeal of section 7(a) would allow Alaskan oil exports, but would not provide for a source of U.S. imports.

\textsuperscript{200} See supra note 195-198 and accompanying text.

\textsuperscript{201} The financial stability of Mexico is an important foreign policy concern of the Reagan Administration. Currently, Mexico is $80 billion in debt and on the verge of bankruptcy. See supra note 164 and accompanying text. The trilateral trade proposal is designed to save Mexico from insolvency in the face of falling oil prices.

\textsuperscript{202} Presumably, Japan's imports of Alaskan oil would be at the expense of Middle Eastern sources. Therefore, the dollars flowing from Japan to the United States, and later, from
States is buying and selling an equal amount of quality-adjusted Persian Gulf-priced oil,\textsuperscript{203} the transaction has no impact upon the United States balance of trade position. The well-head price in Mexico, increases, however, resulting in greater net revenues for the Mexican government.\textsuperscript{204}

In addition to providing Mexico with much needed hard currency it also provides a tangible demonstration of U.S. interest in Latin America at a time when U.S. relations in that part of the world are weak.\textsuperscript{205} Latin Americans will see that the United States is interested in the welfare of its Latin neighbors and is prepared to use its trade policy to their benefit.

Early in his administration, President Reagan put forth the Caribbean Basin Initiative as a means of expressing U.S. concern for Latin America.\textsuperscript{206} Although the Caribbean Basin Initiative was largely received apathetically by the Latins,\textsuperscript{207} Mexico actively supported the President.\textsuperscript{208} If framed properly the trilateral trade arrangement could be portrayed as part of the Caribbean Basin Initiative and a reward to Mexico for its support. This will give the President's Caribbean Basin Initiative new life.

Implementation of a trilateral trade arrangement, however, would have some negative side effects. One segment of the U.S. economy, U.S. flag oil tankers, would be severely injured.\textsuperscript{209} Oil shipped point to point in the United States is subject to the Jones Act.\textsuperscript{210} Jones Act vessels must be built in U.S. shipyards and crewed by American seamen.\textsuperscript{211} The cost of building and operating a U.S. flag vessel is roughly double that of a foreign vessel. Were the coastal trade of the United States open to foreign competition, U.S. flag vessels would not be competitive.\textsuperscript{212} Those U.S. vessels which operate in international trade do so under heavy subsidy from the government of the United States.\textsuperscript{213}

\textsuperscript{203} That is, the exports of Alaskan oil to Japan are offset by equal imports of Mexican oil.

\textsuperscript{204} See supra note 167 and accompanying text.

\textsuperscript{205} The statement made is the opinion of Mr. Sheldon Z. Kaplan based on his knowledge and experience in this area.

\textsuperscript{206} See supra note 169 and accompanying text.

\textsuperscript{207} Supra note 205.

\textsuperscript{208} Id.

\textsuperscript{209} M. Hoyler, supra note 139, at 5-6; D. Lindahl, supra note 140, at 3.


\textsuperscript{211} Id.

\textsuperscript{212} Dep't of Transportation, Impact on the U.S. Tanker Industry of the Removal of Restraints on the Export of Domestic Crude Oil and Petroleum Products 2 (1981) (internal memorandum) [hereinafter cited as Impact on Tanker Industry].

\textsuperscript{213} See Merchant Marine Act of 1936, Pub. L. No. 835, 49 Stat. 1985 (1936). The United States maintains this expensive system of merchant shipping preferences and subsidies for national defense reasons. Shipyards to build naval vessels, a U.S. merchant fleet to supplement and resupply the armed forces during an emergency, and trained merchant seamen to be called into service on short notice are absolutely essential to the security of
If export controls are lifted, TAPS oil presently flowing to the Gulf will go to Japan. Since the Valdez to Japan route is in international trade, Jones Act vessels would no longer be required.\textsuperscript{214}

The vessels in question\textsuperscript{215} are not cost competitive in international trade and probably would become idle. An estimated 2,840 American merchant seamen would lose their jobs.\textsuperscript{216} Many of these vessels have been built with Title XI loan guarantees, a form of U.S. government direct subsidies.\textsuperscript{217} Outstanding guarantees on these vessels, which are obligations of the U.S. Treasury, are estimated at not more than $593 million.\textsuperscript{218} The loss of these tankers represents an 18 percent reduction in the number of vessels in the U.S. flag tanker fleets and a 31 percent reduction in tonnage.\textsuperscript{219} The Department of Defense would like to purchase seventeen of the tankers in order to assure that there is adequate tanker capacity to meet our national defense needs, thus raising the potential cost to the taxpayer an additional 140-190 million dollars.\textsuperscript{220}

One possible compromise is for Congress to mandate that 50 percent of the oil exported from Alaska to Japan be carried on Jones Act tankers. The establishment of a trilateral trade arrangement has the added advantage that Congress could also mandate that 50 percent of the trade with Mexico be carried on U.S. flag tankers. No data is presently available on the number of jobs which would be saved by these two potential compromises. It is known, however, that the route from Valdez to Japan would involve the use of less than ten very large tankers. Lack of deep water on the east coast of the United States would result in a larger number of smaller tankers carrying oil over a relatively short haul on the Mexico to U.S. leg.

Most understandably, the principal opponents to the lifting of export controls on TAPS oil are the U.S. maritime interests. They have a very strong and effective lobby in Washington, D.C. which can be expected to fight as hard as possible in the best interests of its members.

VI. THE TRILATERAL TRADE: A LEGISLATIVELY EXPEDIENT SOLUTION

Past efforts to repeal the export controls on TAPS crude oil have

\textsuperscript{215} Currently, about fifty-five Jones Act tankers are involved in the transportation of Alaskan oil to the U.S. Gulf Coast. The opening of the Trans-Panama pipeline is expected to reduce this number to forty-nine. M. Hoyler, supra note 139, at 14-15.
\textsuperscript{216} Id. at 6, 15.
\textsuperscript{217} Id. at 15.
\textsuperscript{218} Id. at 16.
\textsuperscript{219} IMPACT ON TANKER INDUSTRY, supra note 212, at 3.
\textsuperscript{220} M. Hoyler, supra note 139, at 4.
failed largely because the issue's complexities run counter to the American public's fundamental view of appropriate energy resource management practices.\(^2\) This view occurs for several reasons: (1) the average person has neither heard of the term "net back" nor studied the implications in the export of oil to Japan; (2) there is a common perception that exporting oil runs contrary to our national security interest; (3) the coincidence of high unemployment in the United States and the U.S. trade posture with Japan has created such a negative impression of that nation that the American public does not want to do anything that would assist the Japanese; and, (4) the public believes anything good for the oil industry must be bad for consumers.\(^2\) The fact that the Treasury loses one billion dollars per year as a result of export controls,\(^2\) that national security would be enhanced with the lifting of controls,\(^2\) in addition to the improvement of the U.S. negotiating leverage with Japan on trade issues,\(^2\) is buried in the rhetoric of the Congressional debates and the instinctive anti-export emotions of the voting public.

If a proposal to lift export controls is to be successfully dealt with before Congress it must be based on some principal of public policy which the American public recognizes and supports. Unlike a repeal of section 7(d) of the Export Administration Act, an amendment to the Act providing for trilateral trade with Mexico has such a feature.

Mexico's present financial predicament has been well publicized in the United States.\(^2\) The American public appears to be genuinely concerned about Mexico's future and would presumably support measures to assist Mexico. If the Export Administration Act were amended as proposed in this article, Mexico would be assured of receiving a revenue stream which presently flows from Japan to the Middle East.\(^2\) As a political matter, the position favoring the elimination of export controls on TAPS oil can be explained to the American people and Congress as a means of ensuring the financial solvency of Mexico. Further, under a trilateral trade agreement, the American public knows that the resulting imports of oil come from Mexico, a politically stable next door neighbor, and not the Middle East.

Such an amendment would be simple. It need only delete the words

\(^{221}\) The statement made is the opinion of the author based on the accumulation of his knowledge and experience in this area.

\(^{222}\) Id.

\(^{223}\) See supra note 193 for an estimate of increased revenues expected from decontrol.

\(^{224}\) See supra note 97 and accompanying text.

\(^{225}\) See supra notes 144-145 and accompanying text.


\(^{227}\) See supra note 202 and accompanying text.
“to be refined and consumed therein.” The resulting change would allow the sale of oil to Mexico, but would free the Mexicans to dispose of the oil as they see fit. Market forces would cause the oil to be sold to Japan. (In practice oil sold to Mexico would be shipped directly from Valdez, Alaska to Japan.)

The format of the amendment has certain other advantages. Proponents could argue before Congress that the amendment does not overturn the will of past Congresses. By amending rather than repealing the Act, Congress will not have to admit that its past actions were incorrect. This is particularly important for those members of Congress who have voted in favor of export controls in the past. In pragmatic terms, an amendment to the Act, rather than a repeal of the pertinent section, allows members to support a program for exports of TAPS crude without having to explain to their constituencies why they switched positions on the issue. Furthermore, the inclusion of the previously outlined compromise regarding the use of Jones Act tankers in the international trade of oil between Alaska and Japan, and between Mexico and the east coast, offers a significant concession to the maritime interests which strongly opposed the lifting of export controls. The number of maritime jobs created by the obligatory carriage of a percentage of the oil transported between Mexico and the United States and the carriage of a percentage of the oil transported between Valdez and Japan, might be sufficient to pick up a critical number of votes.

If the Export Administration Act is amended, export controls under the TAPS Act will still be in force. This should pose little problem, however, since they can be lifted by the President. It is most improbable that the Export Administration Act could be amended without President Reagan’s support. Similarly, if Congress amends the Export Administration Act, it is most improbable that it would move to disapprove the President’s lifting of TAPS Act controls, especially given that the legislative veto provision in the TAPS Act is in all probability unconstitutional.

VII. Conclusion

The conditions in existence when export controls on Alaskan oil were first enacted have changed utterly. Congress must show an ability and

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228 See text of section 7(d), supra note 10.
229 See supra notes 180-185 and accompanying text.
230 While these points seem trivial when compared to the overriding national issues of export controls on TAPS oil, these types of issued often decide hotly contested Congressional debates.
232 See supra note 50 and accompanying text.
willingness to respond to rapidly changing circumstances so that the United States can remain competitive. Senator Frank Murkowski contends that the export controls are economically inefficient, harm the U.S. economy and must be removed in order to: (1) strengthen relationships with Japan and our other Pacific Rim neighbors; (2) minimize economically inefficient trade barriers and the concomitant retaliatory responses that result from such barriers; (3) encourage international cooperation and fair trade; and, (4) promote national security. Ultimately, these sorts of export controls merely harm the U.S. economy by unnecessarily interfering with free trade in the marketplace.

233 Letter from Senator Frank H. Murkowski to the author (Feb. 24, 1983) (available in the office of the Case Western Reserve Journal of International Law). Senator Murkowski is the Chairman of the East Asian Subcommittee of the Senate Foreign Relations Committee. His statement, prepared specifically for this article, is reproduced in the Appendix.
Appendix

Statement of Senator Frank H. Murkowski

The review of the Reagan Administration of the proposals to lift a ban on exports of American crude oil from Alaska's North Slope reserves has been subject to close scrutiny in recent weeks, and now that most arguments, pro and con, are being heard, the chances for relaxing restrictions are improving.

Opponents of oil export argue that oil sales would ease our bilateral trade deficit and reduce the pressure on Japan to open markets to U.S. goods. Let's remember that exports of 100,000 barrels per day will only change the trade deficit by approximately $1 billion. Although each billion is important, it cannot be argued that a $1 billion reduction in a $20 billion deficit will be sufficient to abandon our quest for reciprocity in trade.

If our bilateral trade deficit with Japan is adjusted not only as a result of oil exports but also due to changes in Japanese import policies sensitive to the needs of U.S. exporters, then I believe Congress and the Administration may find it in the U.S. interest to remove the ban prohibiting exports of crude oil. It should also be noted that the oil export question is not limited strictly to Japan. Korea, Taiwan, and Thailand, for instance, have also expressed interest in Alaskan oil.

One of the more important aspects that must be realized and emphasized in discussions regarding this issue is the potential for improving world conditions by strengthening our bilateral relationships with our Pacific Rim neighbors, especially Japan. Growth in international trade since World War II has occurred more rapidly than economic growth generally. We must recognize that international trade is essential to the prosperity of our nation and all nations. For instance, in 1981, our exports amounted to 7.8% of U.S. gross national product. In Japan that figure is 14%, and in other nations it is substantially higher. I know that in the State I represent, Alaska, one in every six jobs is trade related. Other States are even more dependent upon the export market.

I believe we must seek equity in our trade relations, but also, we should not lose sight of the obvious benefits each nation gains from increased bilateral trade. The U.S. is not the only world leader in trade today, and we must learn and effectively utilize the power of persuasion and become more sensitive to the legitimate needs and interests of others. Likewise, countries like Japan must recognize the dynamic restructuring U.S. industry is undergoing today.

Changes in our crude oil export laws are possible if both principal parties involved, the U.S. and Japan, acknowledge and are sensitive to each others needs and interests and subsequently act in response to those needs. Those in the U.S. who oppose export might reexamine the propo-
ponents' arguments for export and note how energy and national security interests in the U.S. and amongst our Pacific Rim neighbors will be enhanced by allowing crude oil export. Allowing exports could also provide additional incentive for increased exploration, especially for oil not subject to windfall profits tax. More importantly is the signal allowing oil exports will send to our allies regarding our long-term security and free world trade commitments through cooperation rather than adversative legislation that mandates "fair trade," a term in itself difficult to define.

For crude oil exports to become a reality, the Japanese must be fully cognizant of past trade practices and the subsequent impact of U.S. industries, and implement measures conciliatory to the legitimate demands made by businesses affected in the U.S. They must also be sensitive to any possible dislocations that may occur within our maritime fleet and shipbuilding industry, and be prepared to assist directly in lessening that impact to these vitally important industries.

I am hopeful and confident that measures being considered today will approach this issue from a multi-faceted perspective and try to balance some of the apparently conflicting concerns of the principal parties involved. As one representative voice among my 99 colleagues in the Senate who will also be considering the oil export question, I feel that it can potentially provide a means to address, and solve, many interrelated problems that our nation is facing today, and set the stage for similar problems we will confront in the future.