The Oil Import Question: Research, Report, Reaction

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The Oil Import Question: Research, Report, Reaction

In March 1969, President Nixon appointed a seven member cabinet level task force\(^1\) to conduct a thorough review of mandatory oil import restrictions. Less than a year later, in February 1970, the Task Force submitted a report which recommended "a substantial change in both the method and direction of import controls."\(^2\) Five of the seven members concurred generally in the suggested revision of the program; the remaining two disagreed completely and filed a separate report.\(^3\)

This Note will explore the short history of the oil import program, the features of the present program, the arguments and the forces both for and against alterations in the program, the recommendations of the Task Force, the oil industry's response to the Task Force report, the President's reaction to his committee's recommendations, and Congressional response to the whole controversy.

I. History of the Oil Import Program

During the early 1930s, the newly formed Independent Petroleum Association of America and several oil producing states appealed to the federal government for some restrictions on imports. As a result, the National Industrial Recovery Act Petroleum Code of 1933\(^4\) was passed, enabling the President to fix quotas on oil imports.\(^5\) The quota system lasted only until 1934, when the Supreme Court, in *Panama Refining Co. v. Ryan*,\(^6\) declared this delegation of legisla-

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\(^1\) The Secretary of Labor, George P. Schultz, was Chairman. Other members were: Secretary of State William P. Rogers, Secretary of the Treasury David M. Kennedy, Secretary of Defense Melvin R. Laird, Secretary of the Interior Walter J. Hickel, Secretary of Commerce Maurice H. Stans and the Director of the Office of Emergency Preparedness George A. Lincoln. Also present were observers from the Department of Justice, Bureau of Budget, Council of Economic Advisers Office of Science and Technology, Office of the Special Trade Representative for Trade Negotiations and the Federal Power Commission. *The Oil Import Question*, A report on the Relationship of Oil Imports to the National Security *by the Cabinet Task Force on Oil Import Control* (hereinafter cited as *Task Force Report*), February 1970, at iii.

\(^2\) Letter from Chairman Schultz to President Nixon, Feb. 2, 1970, in id. at ii.

\(^3\) Secretary of Commerce Stans and Secretary of Interior Hickel were the dissenting members. *Id.* at 341.

\(^4\) Act of June 16, 1933, ch. 90, § 3, 48 Stat. 196.


\(^6\) 293 U.S. 388 (1934).
tive power to be unconstitutional. Quotas on oil imports were not again instituted until the present system came into being.

At the end of World War II, the Petroleum Industry War Council proclaimed it in the public interest for the United States to restrict oil imports so that domestic oil production would not be affected or diminished. Two years later, a Senate committee investigating petroleum resources concluded, in like vein, that steps should be taken to guarantee sufficient oil supplies "for all eventualities." These steps would involve both increased exploration for new domestic deposits and increased research in synthetic fuels to augment existing supplies. In contrast, the Secretary of Defense, at about the same time, was advocating an active governmental policy in favor of considerable oil importation in order to meet continually expanding military and civilian requirements.

But the oil industry was showing signs of concern. In 1949, the National Petroleum Council, the industry's advisory body to the federal government, laid down principles, at the request of the Secretary of the Interior, which stated that a healthy domestic oil industry was the sine qua non of a nation secure.

In 1952, The Presidential Materials Policy Commission concluded that domestic oil reserves would become progressively inadequate to meet security needs. The Commission recommended expansion of both domestic reserves and reserves in other producing Western Hemisphere countries.

Two years later, President Eisenhower set up an Advisory Committee on Energy Supplies and Resources Policy, which warned that continued increases in imports of crude and residual oils threatened the "orderly industrial growth which assures the military and

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11 1 President's Materials Policy Committee Report 109 (1952), in Maynard, supra note 5, at 151.
12 This was also a cabinet level task force composed of the Director of the Office of Defense Mobilization as Chairman and the heads of the Departments of State, Treasury, Defense, Justice, Interior, Commerce and Labor. C. Fulda & W. Schwartz, supra note 7, at 316.
civilian supplies and reserves" essential to national security. Oil companies were subsequently asked to voluntarily limit their oil imports in compliance with the committee's admonitions.

At the same time, Congress was acting to empower the Director of the Office of Defense Mobilization (ODM), when he "has reason to believe that any article is being imported into the United States in such quantities as to threaten to impair the national security . . .\) to so advise the President. Should the President, after an investigation into the facts, agree that a threat existed, he would have the power to adjust imports accordingly.

In 1957, the Director of the ODM advised the President of his belief that crude oil was being imported in threatening quantities. Eisenhower promptly established another cabinet level committee to examine and advise on crude oil imports. This committee reported, in summary, that "some reasonable balance between imports and domestic production" should be maintained and that limiting imports would achieve that balance. The Voluntary Oil Import Program, which resulted from the President's acceptance and implementation of his committee's recommendations, went into effect in mid-1957. It continued until March 1959, when the present mandatory program was established by presidential proclamation.

II. PRESENT MANDATORY OIL IMPORT PROGRAM

The Mandatory Oil Import Program (Oil Program) is the only American restriction on imports justified solely on the basis that it preserves national security by insuring adequate domestic petroleum supplies in the event of war or other emergency. It is administered by the Oil Import Administration in the Department of Interior.

The Oil Program seeks primarily to accomplish (1) the regulation of imports through many separate quota restrictions, (2) the

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14 Id.
allocation of those imports among domestic importers, and (3) the administration of the program.\footnote{20}

For purposes of administration, the United States is divided into the five districts, plus Puerto Rico, which were used for petroleum administration during World War II (see Appendix). Puerto Rico is treated separately. The main distinction within Districts I-IV is that residual fuel oil is exempted from control only in District I.\footnote{21}

Petroleum imports are classified, for purposes of the Oil Program,\footnote{22} as follows:

1. Crude Oil
2. Unfinished oils (i.e. those imported for further processing; e.g. naphtha)
3. Finished products (e.g. gasoline, No. 2 home heating oil, jet fuel, lubricating oils and asphalt). These need no further processing and represent three per cent of total imports.
4. Residual fuel oil to be used as fuel.\footnote{23}

The Oil Import Administration does not encourage product imports since this tends to favor foreign refiners. For the continental United States, Alaska, and Hawaii, imports of finished products are permitted as a function of previous imports by certain importers during the last allocation period before the Oil Program was imposed. The total thus permitted is deducted from the overall quota. Unfinished oils may be imported under a crude license — up to 15 per cent of the license in Districts I-IV and 25 per cent of the license in District V.\footnote{24}

By presidential order,\footnote{25} overland imports from Canada and Mexico were exempted. However, agreements between the United States and each of those governments limit in practice the quantity of oil admitted.\footnote{26}

\footnote{20 Task Force Report, supra note 1, § 117.}
\footnote{21 This type of fuel is used to heat and power utilities, industries, apartment and office buildings, schools, hospitals, and other institutions. Its cost is much less than other oil products and it is used predominantly on the East Coast. Venezuela is the principal supplier, but Libya's market share is increasing. Task Force Report, supra note 1, § 119a.}
\footnote{22 Task Force Report, supra note 1, § 119b.}
\footnote{23 Id. § 121d n.24.}
\footnote{24 Id. § 119b.}
\footnote{26 This has resulted in a bizarre drama, enacted every three minutes at the Mexican}
QUOTAS: The Oil Program recognizes two principal quota levels: 27 (1) overall crude-products quota 28 and (2) residual fuel oil quota. These levels vary geographically.

(1) Crude-Products Quota — In District V (West Coast, Alaska, Hawaii) the crude-products quota is the difference between estimated annual demand and estimated United States and Canadian supplies, either produced in or shipped into the District. Producers in District V, thus, receive complete protection. 29 In Districts I-IV, the crude-products quota is set at 12.2 per cent of estimated production in those Districts. Estimated Canadian overland oil is no longer exempted but is now deducted from the 12.2 per cent quota. Both Mexican and Canadian oil are voluntarily limited by inter-governmental agreement. Since the agreements provide no enforcement mechanisms, and the Canadian shipments have exceeded the agreed amounts, this arrangement has caused dissatisfaction among competing domestic producers. 30 The District I-IV quota is further reduced by the amount of finished product imports from Puerto Rico and the Virgin Islands. 31

(2) Residual Fuel Oil Quota — Residual fuel oil is much less valuable than the products in the other oil import categories. Domestic producers have reduced their residual fuel oil production since World War II in favor of the higher priced gasoline and jet fuel. Imports are controlled in Districts II-V on a historical basis, but District I has had virtually no import limitations since 1966. 32

ALLOCATIONS: In order to effectuate allocation of imports among domestic refiners, import licenses (commonly called “quota tickets”) are issued for (1) crude and unfinished oils, (2) residual fuel oil to be used as fuel, and (3) finished products 33 as a percent-

border at Brownsville, Texas. Oil from Mexico reaches the Texas coast by tanker. It is immediately placed in bond and transferred to trucks which re-enter Mexico and, on a continuous, nearly non-stop circular road, re-enter the United States. It is then released from bond and treated as having entered “overland.” The oil is then reloaded on tankers bound for the East Coast.

This overland exemption, on the other hand, has not been extended to trans-Great Lakes shipments of oil from Canada, or to shipments from Canada to Ketchikan, Alaska, which are subject to a short rail car ferry crossing. TASK FORCE REPORT, supra note 1, ¶ 120.

27 TASK FORCE REPORT, supra note 1, ¶ 121.
28 “Overall crude-products” include crude oil, unfinished oil and finished oil.
29 TASK FORCE REPORT, supra note 1, ¶ 121a.
30 Id. ¶ 121b.
31 Id. ¶ 121c.
32 Id. ¶ 121d. In 1968 District I accounted for 99.6 per cent of all residual fuel oil imported into the United States.
33 Id. ¶ 122.
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age of refinery inputs, subject to several exceptions: (a) Exempt overland imports do not count as inputs for the allocation scheme. Because quota tickets are denied to refiners for their Canadian inputs, domestic crude becomes more attractive than the "exempt oil"; 84 (b) by means of a sliding scale, small refiners are allocated a larger than prorata share of imports; (c) since December 1965, several oil companies have been given larger import allocations and permission to ship their products to the United States mainland. The purpose of this generosity was to create employment in Puerto Rico and the Virgin Islands. These companies have privately negotiated contracts with the Department of Interior, 85 (d) petrochemical companies, the only companies outside the refining industry receiving regular allocations of crude and unfinished oils, are permitted a uniform percentage of qualified petrochemical feedstock inputs. 86 The amount available for allocation among petrochemical companies is negotiated between the companies and government officials. 87

Allocation of finished products 88 are made in proportion to the import levels in 1957, minus a fraction. 89 The authority of the Oil Import Appeals Board in "hardship" cases has often been invoked recently by New England's independent home heating oil sellers, complaining of inadequate supplies and increasing prices. 90

Allocation of residual fuel oil is effectively without controls in District I. Generally, allocations in Districts II-V are set at 1957 import levels, except that special permission has been granted to non-refiners in District V to import low-sulfur residual fuel oil. 91

There also exists in District V a "bonus crude program," which

84 Id. § 123.
85 Id. § 123d. Phillips Petroleum Company and Commonwealth Oil Company may import additional crude oil from Western Hemisphere countries and may ship specified quantities of derived products from Puerto Rico into Districts I-IV above prior permitted levels. Hess Oil Company has similar rights with respect to finished products originating in the Virgin Islands. These shipments are not treated as exempt, rather they are deducted from the crude-oil products quota. Proclamation No. 3693 § 3, 3 C.F.R. 153 (1964-65 comp.), amending Proclamation No. 3279 § 3(b)(2), 3 C.F.R. 11 (1959-63 comp.), noted at 19 U.S.C. § 1862 (Supp. IV, 1969).
87 TASK FORCE REPORT, supra note 1, § 123c.
88 "Finished products" is defined as one or more of a variety of petroleum products which may be used without further processing except for mechanical blending; e.g., liquified gases, gasoline, jet fuel, naphtha, fuel oil, lubricating oil, asphalt, and natural gas products. 32A C.F.R. ch. X, § 22(g) (1970).
89 TASK FORCE REPORT, supra note 1, § 124.
90 Id.
91 Id. § 125(a).
permits refiners to earn a bonus of one barrel of imported crude oil for each barrel of low-sulfur residual fuel oil manufactured to comply with local anti-pollution programs.\textsuperscript{42}

These are the broad outlines of the program as it exists today. There are many additional requirements relating to administrative control, surveillance, and changes in regulations,\textsuperscript{43} but discussion of them is not within the scope of this Note.

III. POLICY CONSIDERATIONS

The positions of the various antagonists are fairly well defined. Following is a summary of each of the arguments advanced.

Oil Program Proponents Argue:

(1) Oil is practically our only energy source for transportation. Our national security depends on continued, adequate oil supplies. Oil also furnishes over two-fifths of the nation's heating needs. Since oil cannot be stockpiled in significant quantities for reasons of space and expense, any interruption in our supply from foreign sources would result in commercial and industrial paralysis. The sort of curtailment experienced during the Middle East crises in 1956 and again in 1967 could recur and for longer periods. Therefore the United States should not become dependent on foreign sources for such an essential commodity as oil.\textsuperscript{44}

(2) Our domestic wells produce an average of 14 barrels per day per well. Under free market conditions, they cannot compete with some foreign wells (in the Middle East) which deliver 5,000-10,000 barrels per day. If this foreign oil is allowed unrestricted access to American markets, the result will eventually be the demoralization and destruction of the domestic industry. Another result will be the loss of incentive to explore for new reserves and to increase domestic production.\textsuperscript{45}

Oil Program Opponents Argue:

(1) The nation's security is best insured by conserving our resources, not by depleting them. The only way to hoard oil is to shut down the wells until the oil is wanted.\textsuperscript{46}

(2) The Oil Program is pure protectionism achieved through

\textsuperscript{42}Id. \S 125(b).
\textsuperscript{43}Id. \S\S 128-30.
\textsuperscript{44}Maynard, supra note 5, at 153-54.
\textsuperscript{45}Id. at 154.
\textsuperscript{46}Johnson, A Legal Alternative to Instability in International Oil, 6 Nat'l Res. J. 368, 370 (1966).
the efforts of American oil producers. These producers, in actuality, fear the competition of foreign oil, and are arguing "national security" to achieve the controls they seek. For example, in 1957, when foreign oil was readily available, domestic production was reduced. Texas wells were operating at a record low of twelve days per month. It was then that domestic producers renewed their attacks on foreign imports, citing the 1956 crisis as an example of the unreliability of foreign oil.47 In response, it was claimed that, during the 1956 crisis, independent American producers actually resisted government requests for increased domestic production and instead forced an increase in domestic crude prices which were passed on to the public.48

(3) Quotas have a harmful effect on the economy. By limiting availability, domestic consumers are forced to pay unnecessarily high prices for gasoline and fuel oils. Since 1959 controls were imposed, domestic oil costs have continued to rise. In 1967-68 alone, they rose by ten per cent. As a result, the United States consumers pay (depending on who is estimating) from three to five billion dollars per year as a direct result of the quota system.49

(4) These high prices are inflationary. The Council of Economic Advisers has estimated that the potential inflationary effect of oil and gasoline price rises in the northeastern United States as "about one fourth as large as the ultimate dollar impact that would have followed a five per cent general increase in steel prices."50 If these prices rose across the nation, the dollar amount would approach that of a five percent increase in steel prices.51 In that case, American consumers would be paying about $885 million per year more than previously for gasoline and heating oil.52

(5) In economic terms, it is unwise to keep the glaringly inefficient American wells in production under the quota umbrella. They are high cost operations and the consumer ultimately pays in higher prices.53

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47 Maynard, supra note 5, at 155.
48 Id. at 155 & n.52.
49 Id. at 155-56; Testimony by Professor Walter J. Mead, University of Santa Barbara on THE ADVOCATES, NET channel 25 WVIZ, carried on March 30 & April 6, 1970 in Cleveland, Ohio.
50 Administration Watchdogs Bark at Oil Price Rises, BUS. WEEK, Aug. 31, 1968, at 19.
51 Id. at 20.
52 Id. at 21.
53 Maynard, supra note 5, at 156-57.
(6) The stifling of free trade and the collective benefits that free trade brings create resentment among potential suppliers to the United States. There is a possibility that such a trade barrier as this constitutes a violation of the General Agreement on Tariffs and Trade (GATT),\textsuperscript{54} to which the United States subscribes. While the GATT specifically forbids quotas, it does allow exceptions for national security.\textsuperscript{55} The United States has never been challenged on the validity of her oil quota system.\textsuperscript{56}

In arguing for the elimination of "all quotas or other quantitative limits on imports," one expert said:

It is time and long since, to dismiss the ancient red herring of comparative wage scales from tariff controversies. If our crude oil is expensive in terms of world prices, it is not because of our scales but because of the staggering inefficiency in extraction methods which we continue to tolerate . . . and because of the impact of monopolistic organization on the oil industry's structure of cost and prices. The remedy for such waste is not more . . . protection but improvements . . . under the goad of competition.\textsuperscript{57}

IV. THE TASK FORCE REPORT

A. Recommendations of the Majority

In analyzing the national security reasons for the program, the majority report focused on the anticipated effects of abandoning or relaxing import controls.\textsuperscript{58} Without controls, the domestic wellhead price could be expected to fall from $3.30 (February 1970, domestic price) to $2.00 per barrel (February 1970, world price).\textsuperscript{59} The majority found no evidence which would lead them to predict a substantial price rise in world oil markets up to 1980.\textsuperscript{60} Without controls, American consumers would save about $5 billion annually now and in excess of $8 billion by 1980.\textsuperscript{61} Savings would approximate two thirds of these amounts if the domestic price fell to $2.50 per barrel and one quarter if the price were $3.00 per barrel.\textsuperscript{62}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{55} Id. at art. XI, 61 Stat. A32 (temporary emergency export controls); art. XII, 61 Stat. A34 (safeguarding financial security); art. XXI, 61 Stat. A63 (specific security exemptions).
\item \textsuperscript{56} Maynard, supra note 5, at 157.
\item \textsuperscript{57} E. Rostow, A NATIONAL POLICY FOR THE OIL INDUSTRY 201 (1948).
\item \textsuperscript{58} TASK FORCE REPORT, supra note 1, §§ 406-20.
\item \textsuperscript{59} Id. J 407.
\item \textsuperscript{60} Id. J 406.
\item \textsuperscript{61} Id. J 407.
\item \textsuperscript{62} Id.
\end{itemize}
\end{footnotesize}
Without controls, Texas and Louisiana "market demand pro-
rationing," which determines how much oil can be taken from wells,
would become "pointless." This would mean that over a million
barrels per day of domestic capacity would become usable over a two
year period, thus offsetting the 500,000 barrels per day from expen-
sive, inefficient stripper wells which would be lost. At a $2.50 per
barrel price, about half of these stripper wells would be abandoned.\(^68\)

With respect to long term production and exploration, at world
prices ($2.00 per barrel) the total United States reserves (including
Alaskan reserves) would show slight declines. Exclusive of Alaska,
additions to reserves could be expected to diminish to less than half
the present rate by 1976. At a domestic price of $2.50 the total
United States reserves in 1980 would approximate present levels.\(^64\)

Some jobs would be lost as a result of the phasing out of ineffi-
cient production. The loss, however, would be trivial when the
economy is viewed as a whole. Total employment in gas and oil
production in the United States is less than 300,000. An estimated
7,000 jobs per year would disappear if oil prices dropped to $2.50
per barrel. This matches the 1957-67 job decline rate the oil in-
dustry has experienced anyway. Thus, with investment and em-
ployment as mobile as they are, the national economy would not
experience severe adverse effects.\(^66\)

The short run impact on our balance of payments would also
be minimal; however, it would become significant after 1975.\(^68\)

Even at the February 1970 domestic rate ($3.30 per barrel) im-
ports must increase due to increased demand. At a $2.50 price,
estimates indicate that imports would be more than 40 per cent of
United States demand by 1980. However, all these additional im-
ports could come from Western Hemisphere sources if such course
were desirable.\(^67\)

In considering regional hostilities in or affecting oil producing
countries and resulting in a significant interruption of oil flow to the
United States, the Task Force rejected as unlikely the possibility
that conflagrations would occur simultaneously in all the oil export-

\(^{68}\) Id. \(\S\) 408. "Stripper wells" are oil wells which have fallen off in production to as
little as two barrels per day. \textit{What 30-Cent Crude Price Cut Would Do to United

\(^{64}\) \textit{TASK FORCE REPORT, supra} note 1, \(\S\) 409.

\(^{65}\) Id. \(\S\) 410.

\(^{66}\) Id. \(\S\) 411. \textit{For a detailed analysis see Appendix A of TASK FORCE REPORT,
\textit{supra} note} 1, at 267-98.

\(^{67}\) Id. \(\S\) 412.
ing nations. Even given hostile regimes in all the Middle Eastern and North African oil producing countries, the likelihood that all of them would be willing to forego revenues over a long period of time is remote, if not non-existent. The Task Force does recognize, however, in view of the volatility of the political situation in that part of the world, that a Middle Eastern boycott of all major (not just United States) markets, while "difficult to sustain for a pro-
longed period, it is . . . the possibility most productive of concern."^68

The pivotal question considered by the Task Force was whether import controls are an effective protection against interruption in supply.\(^69\) They conclude that even abandonment of all import controls would affect United States and free world supplies only minimally by 1975.\(^70\) The Task Force recognized that there was legiti-
mate disagreement over the possibility of widespread interruption in oil supply.\(^71\) Their estimates showed that a "one year supply crisis in 1980 would leave about 21 per cent of the United States and Cana-
dian demand unmet if North America received no Eastern Hemi-
sphere or Latin American oil."\(^72\) Although granting complete inter-
ruption of oil supplies to the United States a minute chance of real-
ization, the Task Force nonetheless refused to state that "com-
plete abandonment of import controls at this time would be con-
sistent with the national security."\(^73\)

The Task Force did agree, however, that national security would be sufficiently protected by revising the present program and im-
mediately instituting a modest reduction in import restraints.\(^74\) They also agreed on the need for further liberalization, but would make it dependent upon future clarification of the new Alaskan and Cana-
dian reserves.\(^75\) The liberalization approved by the majority would replace the quota system with a tariff to be progressively reduced

\(^{68}\) Id. \(\S\) 415.

\(^{69}\) The effect of the interruption of oil supplies to the United States and the free world for short and long periods of time is explored in detail in Part II of the Task Force Report. The problem is examined in terms of: (1) projected oil markets for 1975-1980; (2) cost of restrictions as opposed to benefits anticipated; (3) general and particular war contingencies; and (4) pre- and post-crisis responses to interruptions. Id. \$§ 201-53.

\(^{70}\) Id. \(\S\) 250.

\(^{71}\) Id. \(\S\) 423.

\(^{72}\) Id. \(\S\) 424(1).

\(^{73}\) Id.

\(^{74}\) Id. \(\S\) 424.

\(^{75}\) Id. \(\S\) 424(5).
and to be accompanied by a full review of the whole picture no later than 1975.76

The Task Force Chairman emphasized the planning aspects of any transition schedule with flexibility to make alterations as realities dictate.77

B. The Minority Dissent

Two members of the Task Force, the Secretaries of Interior and Commerce, joined by the Chairman of the Federal Power Commission as observer, filed a separate report.78 In it they detailed the kinds of changes they would make in the present program — for even the minority recognized that the Oil Program could be improved.

Their fundamental disagreement with the majority report revolved around their views that: the present program, in general, is a sound one;79 the majority report is based on assumption rather than record;80 the economic results of the majority’s proposals were not adequately explored;81 the majority exaggerated the cost of the present program to the consumer;82 the balance of payments would become increasingly adverse if the majority’s recommendations were implemented;83 the majority’s criticism of state prorationing systems is inappropriate;84 and implementation of the majority’s suggestions would retard the growth of domestic fuel industries.85 These criticisms were wrapped in the familiar theme that a quota, not a tariff, would protect the national security — as it has done these past ten years.

The changes advocated by the dissenters were aimed at gradual

76 Id. § 425. The Task Force recommended an initial tariff of $1.45 per barrel; this is $1.35 per barrel above existing tariff levels. This would produce a price in the United States of $3.00 per barrel, $.30 below the February 1970 domestic price. Specific preferences in the form of lower tariffs would be granted to Canada and Latin America. Privileges not related to national security would be phased out. E.g., preferences for small refiners, preferences for historical importers, and preferences for certain Puerto Rican companies. Id. § 428, § 343 & Tables O & P.
77 Id. § 425(a)(4).
78 Id. at 341.
79 Id. at 353-54.
80 Id. at 355-56.
81 Id. at 356.
82 Id.
83 Id. at 357-58.
84 Id. at 356-57. The Minority view was that the ultimate regulatory responsibility is properly a matter for Congress, not the Executive branch. Id. at 357.
85 Id. at 358.
elimination of the historical and company preferences, a slow increase in the present quota on a year-by-year basis, an increase in allotments to petrochemical producers, unrestricted entry of residual fuel oil into District I, encouragement of domestic production of low-sulfur residual fuel oil, and encouragement of imports from Western Hemisphere producers due to their greater security of supply.\footnote{\textit{Id.} at 358-59.}

V. \textbf{Response of the Oil Industry}

The oil industry sounded the tocsin in an article in the \textit{Oil \& Gas Journal} three months before the Task Force Report was completed.\footnote{\textit{Tariif Might Jar World Price Structure}, \textit{Oil \& Gas J.}, Jan. 19, 1970, at 24.} In anticipation of a recommended change to a tariff system, Walter Levy, a well-known oil consultant, was cited as warning of a possible resultant increase in world crude prices. Only if a tariff were not preferentially applied to Canadian and Latin American sources would the oil producing countries not be tempted to raise prices. A change in tariffs would, he maintained, create an administrative nightmare. The uncertainty of a preferential tariff system would immediately affect the confidence of investors adversely. They would be reluctant to commit funds for exploration when returns were dependent on crude prices and profits over a protracted period.

He cited the harmful balance of payments on oil importing countries and raised the hobgoblin of another $3 billions per year flowing to unfriendly and aggressive Middle Eastern countries.\footnote{Id.}

The beneficial effect on the consumer was claimed to be minimal under a tariff system with moneys going from refiners to the government. The government would, the industry claimed, be brought into the business of influencing oil prices, oil investments, and oil production, both foreign and domestic.\footnote{Id.}

In a subsequent article, the industry predicted "disastrous long-range consequences" with only a $.30 cut in the price of crude oil.\footnote{\textit{What 30-Cent Crude Price Cut Would Do to United States Oil}, \textit{Oil \& Gas J.}, Jan. 26, 1970, at 81.} A $.30 decrease would destroy small independent producers and enhance the major companies. It would make thousands of stripper wells, as well as more sophisticated recovery projects,\footnote{One of the more exotic oil recovery methods is thermal recovery. The method is effected by injecting live steam or hot water into the well, or ignition of the subsur-
and "[c]ripple domestic production . . . ."92 In five major oil states (Texas, Louisiana, California, Oklahoma, and Kansas) about 230,000 such wells would have to be plugged.93 A $.30 cut would reduce exploration by as much as 50 per cent and would depress a significant segment of the economy which depends on the continuation of the entire petroleum industry (e.g., supply companies, contractors, and banks as well as local, state, and federal treasuries). The industry argument concluded that "[m]ost oilmen express utter disbelief that the White House would seriously consider [the Task Force recommendation], much less adopt it . . . ."94 As we shall see, the oilmen were right. There was no need to fear the White House.

VI. REACTION TO THE REPORT

Since the Task Force's progress had been carefully followed, the majority report came as no surprise to most interested parties — but the reaction of the White House did.

The report was submitted to the President on February 9, 1970.95 Less than two weeks later the President responded to his own cabinet level advisors by rejecting the essence of their cautious recommendations and embracing the viewpoint of the minority and the oil industry96 — the "same sector of the economy that had originally proposed" that a study group be set up.97 The President also reacted by issuing a proclamation98 setting a fixed quota on oil from Canada to replace the oft exceeded voluntary controls.99 He justified the new quota on the basis of "national security."100

This represents, by industry figures, a daily production of 1.3 million barrels per day. Stripper wells (there are 367,205 in the United States), owned mostly by independent operators, are marginal or nearly so. The estimated "average cost of producing and maintaining a shallow stripper is $3.25 per day." Operators can make a profit at present prices if the well delivers 2 barrels per day. Stripper operators are netting "from 25-50c per barrel now." A "30c cut would wipe out profits." In California, over half the wells (22,000) produce less than 10 barrels per day and have profit margins of 30-35c per barrel. These would have to be closed off.

92 Id. at 81.
93 Id. at 81-84. This represents, by industry figures, a daily production of 1.3 million barrels per day. Stripper wells (there are 367,205 in the United States), owned mostly by independent operators, are marginal or nearly so. The estimated "average cost of producing and maintaining a shallow stripper is $3.25 per day." Operators can make a profit at present prices if the well delivers 2 barrels per day. Stripper operators are netting "from 25-30c per barrel now." A "30c cut would wipe out profits." In California, over half the wells (22,000) produce less than 10 barrels per day and have profit margins of 30-35c per barrel. These would have to be closed off.
94 Id. at 86.
99 N.Y. Times, Mar. 11, 1970, at 61, col. 3.
100 N.Y. Times, Mar. 11, 1970, at 61, col. 3.
The President also proposed another study, this time to investigate the feasibility of an integrated North American energy market — a feature upon which all members of the Task Force seemed to agree.\footnote{N.Y. Times, Feb. 21, 1970, at 47, col. 3.}

The oil industry, not prone to public comment, reacted "almost joyously" to the President's actions.\footnote{N.Y. Times, Feb. 21, 1970, at 47, col. 1.} Occidental Petroleum, an American company, was an exception. It had applied in 1968 to build a 300,000 barrel per day refinery in Maine, to be run on foreign oil. Occidental would need an allocation for importation of that oil. In view of the principles underlying the White House action, approval of their application seems unlikely.\footnote{Id. col. 4.} This production would have significantly reduced heating fuel prices to home consumers in New England.\footnote{Id.}

Critics saw the Presidential response as a victory for an industry which, by forcing high consumer prices, is increasing inflation under a banner reading National Security and National Economic Health. One editorial, late in February, concluded bitterly:

The President seems determined to file and forget the majority report. Those concerned about the public interest will be well advised not to let that happen for, aside from its policy recommendations, the report should become a classic in exposing the costs to the nation of a system of extreme protectionism in the guise of defending national security.

Commendable as it is that the report could be made at all, the summary rejection by the President of its basic recommendation that the oil quota system be ended tells much about the politics of oil and the real sources of influence in this Administration.\footnote{N.Y. Times, Feb. 24, 1970, at 36, col. 1. The oil industry has a powerful lobby which maintains over 60 offices in the Washington D.C., area alone, according to Martin Lobel, attorney, on THE ADVOCATES, supra note 49. For an illuminating account of the politics of oil, see Knoll, The Oil Lobby Is Not Depleted, N.Y. Times, Mar. 8, 1970, § 4 (Magazine), at 26. Cf. testimony of Barry Shillito, Assistant Secretary of Defense, before the House Mines and Mining Subcommittee Hearing on oil import controls. He said: "Analysis clearly indicated a relaxation in oil import controls over a time, coupled with appropriate Western Hemisphere preferences... would satisfactorily protect security of supply." N.Y. Times, Mar. 10, 1970, at 57, col. 4.}
controls. Shortly thereafter, President Nixon announced that the United States would increase its imports of Venezuelan oil during the remainder of 1970. Caldera had complained that Canadian oil was receiving preferential treatment in American markets at Venezuela's expense. The Canadians, however, had their own problems with American import policy. Until March 1, 1970, Canadian oil imports were theoretically limited by voluntary agreement to 332,000 barrels per day. Actually, much more than that was being transferred into the United States — over 500,000 barrels per day by early 1970. In March, the President by proclamation increased the official Canadian quota to 395,000 barrels per day. This level was then strictly enforced, resulting in an actual decrease in the amount of Canadian oil permitted into the United States. It appears incredible that the national security argument and its corollary, the undependability of foreign oil supplies, can be seriously entertained when Canadian, Venezuelan, or Mexican oil imports are being considered.

By July 1970, it appeared that the proponents of the theory that the Middle East was an undependable source of oil had not been completely wrong. The Libyan government reduced its production by 15 per cent, representing a reduction in production of 500,000 barrels per day. On May 3, 1970, the Trans-Arabian pipeline in Syria was rendered inoperative by an errant bulldozer. The Syrian government prevented its repair and another 500,000 barrels per day was kept from reaching the United States via the Mediterranean. In order to keep oil coming to American users, increased quantities were imported from the Persian Gulf and transported around South Africa. This increased tanker requirements by a factor of six to eight times and caused a rise in charter rates of 50 per cent over those in effect during the 1967 Arab-Israeli War. As a result, Persian Gulf oil, landed in the United States, cost $4.50 per barrel at the end of August 1970, compared with

107 N.Y. Times, June 18, 1970, at 22, col. 3.
109 Id.
110 N.Y. Times, June 18, 1970, at 22, col. 5.
114 Id.
$3.75 per barrel for Louisiana crude delivered to the East Coast.\textsuperscript{115} In response to this need, both Texas and Louisiana decided to step up their production.\textsuperscript{116}

By the end of July, Congress had begun to respond to the confusion in this area. On July 28, the House Ways and Means Committee voted 17 to 7 to include in a trade bill a provision freezing the oil import quota system into law.\textsuperscript{117} The Committee approved the trade bill two weeks later. It was subsequently passed by the House of Representatives.\textsuperscript{118} The House version contained the provision barring the President from shifting to any system of tariffs, thus putting the stamp of legislative approval upon the quota approach.\textsuperscript{119} The Senate Finance Committee, which is also considering its own trade bill, voted 9 to 3 on October 13 to approve inclusion of similar oil import quota restrictions. Since the Senate version has welfare riders attached which may render it veto-proof,\textsuperscript{120} the controversy of tariffs v. quotas may become moot. Several Senators have indicated displeasure with and an intent to focus attention on the President's decision to ignore his Task Force's recommendations.\textsuperscript{121} The Senate debate on the Trade Bill promises to be lively.

In retrospect and in summary, "[t]he question of a quota or a tariff, however, is only a surface issue. The real issue is whether or not to allow more foreign oil into the United States."\textsuperscript{122} Whether

\textsuperscript{115}Supra note 112. On Nov. 11, 1970, Gulf Oil Corp. posted an increase in crude oil prices of $.25 per barrel, thus raising their well-head price from $3.10 to $3.35. The next day Atlantic-Richfield followed suit. The administration announced, on Nov. 13, a "major investigation" into these increases. The power of the Executive Branch to inquire into this area derives from Section 6(a) of Proclam. 3279, supra note 17, which states:

In the event prices of crude oil or its products or derivatives should be increased . . . such surveillance shall include a determination as to whether such . . . increases are necessary to accomplish the national security objectives of . . . this proclamation.

N.Y. Times, Nov. 13, 1970, at 1, col. 8 and at 60, col. 7.

\textsuperscript{116}Supra note 113.

\textsuperscript{117}N.Y. Times, July 29, 1970, at 60, col. 6.


\textsuperscript{120}Id.

\textsuperscript{121}N.Y. Times, Aug. 19, 1970, at 53, col. 3; at 58, col. 4.

\textsuperscript{122}Smith, Oil Imports and Security: Will Nixon's Backing the Quota System Against a Tariff End the Arguments?, N.Y. Times, Aug. 21, 1970, at 45, col. 7.
one subscribes to the national security rationale to justify the Oil Program seems to be as much a matter of faith as of documentation. In this instance the argument has carried the day and in the confusion and hyper-reaction, the American consumer may have lost another round to the oil industry.

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APPENDIX

Map reprinted from TASK FORCE REPORT, supra note 1, at 16.