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BLOG

Crude Oil Export Ban and the Jones Act

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President Obama signed into law the Consolidated Appropriations Act, 2016, often referred to as the "Omnibus Appropriations Bill," on December 18. Among other things, that Act repeals the 40-year old general restriction on crude oil exports. The repeal was taken, almost word-for-word, from H.R. 702, a bill which passed the U.S. House of Representatives on October 9 by a vote of 261-159. The repeal is qualified such that the President retains emergency and war powers to prohibit exports again generally and specifically with regard to certain countries or persons.

During the debate in Congress on whether to lift the crude oil export restrictions, proposals were floated to apply a U.S.-flag requirement to such exports. The precedent for such a requirement appears is the 1995 legislation permitting the export of Alaska North Slope crude oil but only on U.S.-flag vessels. In the end, such a requirement was not included in the Consolidated Appropriations Act, 2016.

On the flip side of the coin, certain refinery interests also advocated that the Jones Act (which restricts U.S. domestic maritime trade to qualified U.S.-flag vessels) should be modified or repealed if the crude oil export restrictions were eliminated. They argued that U.S. source crude oil could be exported to Europe and other refinery destinations on non-U.S.-flag vessels more cheaply than such oil can be delivered to U.S. refineries in Jones Act-qualified vessels if there were no crude oil export restrictions. The Consolidated Appropriations Act, 2016 also does not modify the Jones Act.

The Act does contain, however, a tax break for "independent" refineries for qualifying transportation costs. Specifically, the new law contains a temporary (through December 31, 2021) tax break "for costs related to the transportation of oil." According to the Joint Explanation accompanying the legislation, "the provision would temporarily exempt 75 percent of transportation costs of certain independent refiners from calculating their domestic production activities under Section 199 [of the Internal Revenue Code]."

Although the genesis of this requirement may have been Jones Act tank vessel costs, there does not appear to be any connection between this new deduction and Jones Act transportation costs—any transportation costs would presumably be eligible for the new tax treatment. "Independent refiners" is defined as a "taxpayer who is in the trade or business of refining crude oil and who is not a major integrated oil company . . .[as defined in the Internal Revenue Code]."

On the issue of the pre-existing special Alaska north slope oil export law, it is not clear what effect the new legislation has. The legislation provides that “notwithstanding any other provision of law . . . no official of the Federal Government shall impose or enforce any restriction on the export of crude oil.” Arguably, the 1995 U.S.-flag requirement applicable to ANS oil is a “restriction on the export of crude oil” and therefore was wiped away by the new legislation and the sweep of the phrase “notwithstanding any other provision of law” but that is not clear in the legislation.

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