Akin Gump
STRAUSS HAUER & FELD LLP

International Trade and Energy Alert

December 17, 2015

Budget Deal Includes Repeal of U.S. Crude Oil Export Ban

On December 15, 2015, U.S. congressional leaders announced a year-end budget compromise that removes the ban on the export of crude oil from the United States. In exchange for this concession, the Democratic-led opposition to the repeal secured multiyear extensions of certain currently expired renewable energy tax credits (discussed here). Assuming the legislation is passed by both the House of Representatives and the Senate (likely by Friday of this week), and the president signs the bill into law, as is currently anticipated, U.S. oil producers will soon be able to export crude oil with minimal restrictions for the first time in nearly 40 years.

In Title I, Section 101 of the more than 2000-page Consolidated Appropriations Act, 2016, the proposed legislation explicitly repeals Section 103 of the Energy Policy and Conservation Act, which has required that the president prohibit the export of crude oil except in limited circumstances. This provision in the proposed legislation further states that “no official of the Federal Government shall impose or enforce any restriction on the export of crude oil.” However, the president would still have the ability to prohibit crude oil exports in certain circumstances, such as those involving sanctioned countries, national emergencies and/or allocations under international energy programs. Moreover, the legislation allows the president to impose licensing requirements or other restrictions for a period of one year, which may be renewed annually, if:

- the president declares national emergency;
- an executive order or statute imposes sanctions or trade restrictions for national security purposes; or
- the secretary of Commerce, in consultation with the secretary of Energy, finds that (i) crude oil exports have caused “material oil supply shortages or sustained oil prices significantly above world market levels that are directly attributable to the export to crude oil produced in the United States,” and (ii) “those supply shortages or price increase have caused or are likely to cause sustained material adverse employment effects in the United States.”

With that context, the enactment of this law could significantly open the international market for U.S. domestic crude oil and potentially create greater parity between domestic (e.g., WTI) and international (e.g., Brent) crude oil prices. The framework would permit companies to export crude oil to most markets without a license, except in the narrow circumstances outlined above. While the time is ripe for business planning, companies should refrain from engaging in any exports of crude oil from the United States until the law is enacted and the U.S. government provides guidance on how the repeal will be implemented in the regulations and in practice.

Akin Gump
STRAUSS HAUER & FELD LLP

Contact Information

If you have any questions regarding this alert, please feel free to contact:

Edward L. Rubinoff
erubinoff@akingump.com
202.887.4026
Washington, D.C.

Stephen D. Davis
sddavis@akingump.com
713.220.5888
Houston

Henry A. Terhune
hterhune@akingump.com
202.887.4369
Washington, D.C.

Christian C. Davis
chdavis@akingump.com
202.887.4529
Washington, D.C.