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December 3, 2013

Ambassador Michael Froman
U.S. Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Ambassador Froman,

I write to urge you to vigorously oppose any attempts in the World Trade Organization (WTO) to weaken or undermine the important and longstanding U.S. law restricting the export of American crude oil. It was recently reported by *Bloomberg News* that the American Petroleum Institute (API) is planning to challenge a longstanding U.S. law that prohibits the export of crude oil produced in the United States. According to an API planning document reportedly obtained by *Bloomberg*, API intends to "highlight potential violations of the World Trade Organization rules against export restrictions."[1] The Energy Policy and Conservation Act of 1975 clearly indicates Congress's intent that domestically-produced crude oil should first benefit American consumers and industry and enhance our national security, not be shipped overseas to benefit the oil industry. As U.S. oil production continues to increase, crude oil produced here should continue to be used here in America to displace imported oil from unstable regions of the world.

It was reported recently that for the first time in nearly two decades U.S. crude oil production has surpassed net imports.[2] Indeed, U.S. crude oil production in August – the most recent month for which we have complete data – was its highest level in more than 22 years, according to the Energy Information Administration (EIA). As U.S. oil production has increased, the oil industry has already begun moving to export significant quantities of refined petroleum products, which are not subject to the same export restrictions as crude oil. In 2011, the United States became a net exporter of refined fuels for the time since 1949. Today, the United States is the world's largest fuel exporter.[3] More than $120 billion in petroleum fuels were shipped abroad in 2012, and we are on pace to surpass that level in 2013.[4]

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[1] Bloomberg News, "Oil Industry May Invoke Trade Law to Challenge Export Ban." November 6, 2013. Available at: http://www.bloomberg.com/news/2013-11-06/oil-industry-may-invoke-trade-law-to-challenge-export-ban.html

[2] AP, November 13, 2013. Available at: http://abcnews.go.com/Politics/wireStory/key-shift-us-oil-production-tops-net-imports-20877233

[3] Bloomberg, February 8, 2013. Available at: http://www.bloomberg.com/news/2013-02-08/trade-deficit-in-u-s-plunges-on-record-petroleum-exports.html

[4] http://www.census.gov/foreign-trade/Press-Release/current_press_release/ft900.pdf

Yet, the oil industry is clearly not satisfied with only sending America's refined fuels overseas and is now looking to change U.S. law to allow for exports of crude oil. Last year, the President of API, Jack Gerard, reportedly said that the United States should consider easing restrictions on the export of crude oil.[5] Earlier this year, the CEO of ConocoPhillips, Ryan Lance, stated that "this means allowing…at some point even exports of oil."[6] He reiterated that sentiment recently at an oil and gas conference in Houston, saying "The world needs the [U.S.] crude and there are places where we could export that crude into existing refineries."[7] API's reported plan—to assemble a legal analysis that could enable a foreign nation to bring suit against the United States through the World Trade Organization—is a strategy designed to undermine existing U.S. law, circumvent Congress and the legislative process, and ignore the will of the American people. I find it profoundly troubling.

The Energy Policy and Conservation Act of 1975 (EPCA) prohibited the export of crude oil produced in the United States, with few exceptions.[8] The conference report accompanying EPCA spoke to the goals of Congress in passing such a restriction. It stated, "for the long run, the Act will decrease dependence upon foreign imports, enhance national security, achieve the efficient utilization of scarce resources, and guarantee the availability of domestic energy supplies at prices consumers can afford."[9]

The longstanding U.S. restrictions on the export of crude oil, taken together with other U.S. policies, are wholly consistent with U.S. commitments under the WTO. Trade between WTO members in energy products such as oil is regulated under the General Agreement on Tariffs and Trade (GATT).[10] There are a number of exemptions to the trade obligations outlined in the GATT. For instance, Article XX outlines a number of exemptions to trade obligations of the members, and it explicitly states that "nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures . . . relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption."[11] The Congressional Research Service also notes that "restrictions on fossil fuels for reasons of international or domestic security that would otherwise violate the GAT 1994 may be justified under the broadly worded exception for essential security interests contained in Article XXI."[12]

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[5] Reuters, "Rising US Crude Output May Open Door to Exports – API Head." June 15, 2012. Available at: http://articles.chicagotribune.com/2012-06-15/news/sns-rt-usa-apiexportsl1e8hfh7g-20120615_1_crude-oil-production-exports

[6] Wall Street Journal, "ConocoPhillips CEO says U.S. Should Work Toward Exporting Oil." March 5, 2013. Available at: http://online.wsj.com/news/articles/SB10001424127887324678604578342473176583436

[7] Fuel Fix, "CononoPhillips CEO calls for removing crude oil export ban." November 19, 2013. Available at: http://fuelfix.com/blog/2013/11/19/conocophillips-ceo-calls-for-removing-crude-oil-export-ban/

[8] 42 U.S.C. § 6212(b)(1)

[9] House Report No. 94-700. December 9, 1975. P. 117.

[10] Congressional Research Service, "Federal Permitting and Oversight of Export of Fossil Fuels," September 17, 2013. R43231

[11] GATT 1994, Art. XX & XX(g)

[12] Congressional Research Service, "Federal Permitting and Oversight of Export of Fossil Fuels," September 17, 2013. R43231

EPCA also recognized the importance of resource conservation by establishing fuel efficiency standards for passenger cars and light trucks while also imposing the aforementioned restrictions on crude oil exports. In recent years, the United States has adopted policies to strengthen fuel efficiency standards and promote the use of renewable fuels that reduce our consumption of oil. The United States has also continued a variety of policies that protect some areas from oil and gas development. Taken together, these measures would seem to clearly satisfy the Article XX(g) exemption for export restrictions made in conjunction with restrictions on domestic production and consumption of an exhaustible natural resource outlined in the GATT.

The notion that U.S. restrictions on crude oil exports would violate WTO obligations is even more absurd when viewed in the context of the policies of WTO Members who are also members of the Organization or the Petroleum Exporting Countries (OPEC). These countries and their state-owned oil companies actively collude to restrict oil production in their countries in an attempt to manipulate global oil prices. Indeed, three-fourths of OPEC's members are Members of the WTO, including Saudi Arabia, the United Arab Emirates, Venezuela and Nigeria. Tomorrow, oil ministers from these countries will formally meet to set their collective production policy for 2014. In the context of these manipulative, price-rigging production and trade policies, it is even more important to ensure that America's exposure to OPEC supply is minimized and that domestically-produced oil stays in the U.S. for use by American consumers.

Moreover, despite the oil industry's apparent desire to lift U.S. restrictions crude oil exports, challenges to WTO obligations can only be made by other WTO nations, not by trade associations or other interested parties. The WTO's Understanding on Rules and Procedures Governing the Settlement of Disputes states in Article 1 that the rules and procedures apply "to consultations and the settlement of disputes between Members concerning their rights and obligations under the provisions of the Agreement establishing the World Trade Organization."(Emphasis added.)[13] As API is not a Member of the WTO, it lacks the ability to utilize WTO's rules and procedures to attempt to challenge EPCA. Therefore, the only way for API to seek to challenge U.S. restrictions on crude exports would be to convince another WTO member nation to bring such a challenge. If API attempts to pursue an effort to spur another nation to bring a challenge against U.S. law it would be a profoundly troubling tactic, and would be in conflict with the spirit of appropriate collaboration between the Members of the WTO spelled out in GATT Article XXXVI.[14] I encourage you to continue to monitor this situation going forward.

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[13] WTO "Understanding on Rules and Procedures Governing the Settlement of Disputes." Available at: http://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm

[14] GATT 1994, Art. XXXVI(7) (" There is need for appropriate collaboration between the CONTRACTING PARTIES, other intergovernmental bodies and the organs and agencies of the United Nations system, whose activities relate to the trade and economic development of less-developed countries.")

Longstanding U.S. law restricting crude oil exports is vital to national security, to protect American consumers and wholly consistent with our obligations under international commitments within the WTO. I therefore urge you to vigorously defend this law against any challenges in the WTO.

Sincerely,

Edward J. Markey

Edward J. Markey
United States Senator