AMERICAN PETROLEUM INSTITUTE

January 20, 2012

Assessment of Foreign Trade Zone Tax Claims Relating to the Keystone XL Pipeline Project

Foreign Trade Zones (FTZs) Generally: FTZs are secured areas, at or near U.S. ports of entry, where foreign goods may be admitted for storage, assembly, manufacturing or processing without being immediately subject to customs duties. Duties are not assessed unless the goods enter the U.S. stream of commerce. For Canadian crude, duties will never be assessed as those imports are exempt under NAFTA. FTZs are located in all 50 states.[1]

Myth: Several groups have made the claim that because the Keystone XL Pipeline terminus is in Port Arthur, Texas, a Foreign Trade Zone (FTZ), oil from Canada will be exported without paying U.S. taxes. (See Addendum).

Facts: Canadian oil sands crude from Keystone XL will replace declining heavy crude imports from Venezuela and Mexico.[2] The above assertion relies on the assumption that oil sands crude from Canada will be imported via Keystone XL, refined, and then exported. With respect to U.S. taxes, the fact that Port Arthur is an FTZ has **no** bearing on U.S. revenue from Canadian oil sands imports and/or exports. Keystone XL opponents could be referring to any or all of the following taxes:

- **Duties**: Canadian oil sands crude imports, like Mexican crude imports, are not subject to duties under NAFTA. This designation applies regardless of whether the crude is imported into an FTZ or not.
- **Income Tax**: Refiners will pay the same income tax from sales irrespective of whether a product is consumed in the U.S. or exported. This is true whether or not the refinery is in an FTZ.
- **Motor Fuel Excise Taxes**: These federal and state taxes are imposed on motor fuels, the revenues of which are dedicated to federal and state transit programs. Since motor fuel excise taxes have a "user pays" element they are generally considered to be borne by the consumer.[3] For practical purposes, industry merely collects and remits these taxes to the government when motor fuel is sold domestically. To the extent product is exported, these taxes are not applicable. Because these taxes apply after refining, only

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[1] Dennis Puccinelli, Foreign *trade Zones: U.S. Customs Procedures and Requirements*, available at: http://trade.gov/exportamerica/TechnicalAdvice/ta_foreign_trade_zones_0203.pdf (last visited January 11, 2012).

[2] Carmine Difiglio, *Memorandum: Comments on the Tar Sands Road to China*, June 22, 2011.

[3] GAO, *Federal User Fees: A Design Guide*, GAO-08-386SP (Washington, D.C.: May 2008) at 4; *see also* Congressional Budget Office, *The Growth of Federal User Charges: An Update* (Washington, D.C.: October 1995), available at: http://www.cbo.gov/ftpdocs/47xx/doc4756/1995doc32.pdf (last visited January 20, 2012).

on motor fuels for domestic use, the FTZ status of a refinery has no connection to their imposition and collection.

Conclusion: The FTZ status of the Keystone XL terminus has **no** impact on U.S. tax revenue from Canadian oil sands crude imports or exports. Petroleum products are traded globally, and the U.S. has a long history of exporting certain petroleum products and importing others to balance global demand. Ultimately, if any petroleum products are exported, from an FTZ or not, they are still refined in U.S. refineries by U.S. workers and the U.S. economy benefits from an improved balance of trade from all exports.

Addendum:

1. "Keystone XL would divert Canadian oil from refineries in the Midwest to the Gulf Coast where it can be refined and exported. Many of these refineries are in Foreign Trade Zones where oil may be exported to international buyers without paying U.S. taxes."[4]
2. "Keystone XL would be Canada's first step in diversifying its energy market. The pipeline would divert large volumes of Canadian oil from the Midwest to the Gulf Coast, where it would be available for the first time to buyers on the world market. To sweeten the deal, many of the refineries on the Gulf Coast happen to be located in foreign trade zones, where they can export Canadian oil to the world market without paying U.S. taxes."[5]
3. "The Port Arthur refinery operates as a Foreign Trade Zone (FTZ), which traditionally gives tax benefits to companies that use imported components to manufacture items within the United States. Usually refineries importing oil tax-free will still pay taxes when selling the refined products into the U.S. market. By both importing into and exporting from Port Arthur the company will avoid paying tax on the product sales."[6]

[4] Anthony Swift, *Keystone XL is a Tar Sands Pipeline to Export Oil Out of the United States*, available at: http://switchboard.nrdc.org/blogs/aswift/keystone_xl_is_a_tar_sands_pip.html (last visited January 4, 2012).
[5] *Id*.
[6] *Exporting Energy Security: Keystone XL Exposed*, available at: http://priceofoil.org/2011/08/31/report-exporting-energy-security-keystone-xl-exposed/ (last visited January 4, 2012).