United States

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

The US oil industry is divided into three sectors: upstream (exploration and production), midstream (processing, storage and transportation) and downstream (refining, distribution and marketing).

Industry participants are categorised as 'supermajors,' 'majors' and 'independents.' 'Supermajors' are the handful of very large integrated companies that account for most of the US oil industry revenues. US-based supermajors include ExxonMobil, Chevron and ConocoPhillips, whereas the overseas-based supermajors BP and Shell have substantial US operations. Smaller-scale integrated firms include Marathon, Hess and Murphy Oil.

A larger number of companies specialise in particular sectors. The 'independents' engage exclusively in upstream activities and include Occidental, Devon, Anadarko and Apache. Midstream specialists include El Paso, Kinder Morgan and Plains All American. Refining and marketing operations are conducted by Valero, Sunoco, Tesoro and Western. The industry is supported by oil service companies led by Schlumberger, Halliburton and Baker Hughes, and by a variety of trade associations including the American Petroleum Institute (API).

US subsidiaries of national oil companies owned or controlled by foreign governments (NOCs) are important participants in the US oil industry. For example, Venezuelan-based Petróleos de Venezuela SA (PDVSA) owns Citgo's 10,000 retail outlets and interests in three refineries in the US.

'Proved reserves' are estimates of the amount of oil that is reasonably certain to be recoverable from known reservoirs under current economic and operating conditions. The US ranked eleventh among nations in proved oil reserves, estimated by the government at 21.4 billion barrels at the end of 2005. US proved reserves peaked in 1970 and have since declined by 45 per cent. About one-quarter of proved reserves are located offshore.

The US also has an estimated 175 billlion barrels of unproved technically recoverable crude oil, 60 per cent of which is concentrated in federal land including offshore waters on the Outer Continental Shelf (OCS). The Securities and Exchange Commission (SEC) requires public companies to report only proved reserves following its methodology adopted in 1978. Industry has urged the SEC to adopt the system developed by the Society of Petroleum Engineers (SPE), which accounts for a broader range of technologies.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil – as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

Currently, oil provides an estimated 40 per cent of total US energy needs, along with coal (23 per cent), natural gas (23 per cent), nuclear (8 per cent) and renewables (6 per cent). Two-thirds of oil consumption occurs in the transportation sector, primarily in the form of gasoline. The industrial sector consumes another quarter for heating, diesel engines, and as petrochemical feedstock. Only 3 per cent of US power generation is fuelled by oil.

The US consumed 20.5 million barrels per day of petroleum (b/d) in 2006 but produced only 8 million b/d. The US imports over 12 million b/d – more petroleum than is consumed by any other nation in the world. Canada, Mexico, Saudi Arabia, Venezuela and Nigeria collectively provided 64 per cent of imports. OPEC nations supplied 46 per cent of imports.

US crude oil consumption is expected to increase by 1 to 2 per cent annually for the next decade. US crude oil production peaked in 1970 and has declined 47 per cent since. Domestic production is projected to increase by about 10 per cent by 2010 as a result of technological innovation and deepwater production, but to decline again by 2016.

To satisfy domestic demand, the US increasingly must compete with industrialising economies, particularly the emerging Asian economies that are projected collectively to increase oil consumption by 3.6 per cent annually and by 21 per cent from 2010 to 2020. Political instability regarding Iraq, Nigeria, Venezuela and Iran contributes to market fluctuations. Domestic supply is also subject to disruptions; the US experienced significant impacts from Hurricanes Katrina and Rita in the Gulf of Mexico in 2005 and from refinery outages and other causes in 2007.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

After 13 years of debate and with a strong impetus from the US president, Congress passed the Energy Policy Act of 2005 (EPAct 2005). While EPAct 2005 made major changes to the electricity industry (eg, eliminating the Public Utility Holding Company Act of 1935) and included significant incentives for receipt of liquefied natural gas (LNG), it did not provide an overall energy policy. The most significant provisions relating to liquid fuels were incentives for the production of ethanol, as much an agricultural subsidy as an attempt to reduce dependence on petroleum.

On 31 January 2006, the president called for an end to the country's 'addiction' to oil. However, this call has not been followed by specific policy objectives or legislation. In his 2007

State of the Union address, the president announced a proposal to reduce US gasoline consumption by 20 per cent in the next 10 years, by increasing supply of alternative fuels and raising motor vehicle fuel efficiency standards.

To the extent that the US has an oil policy, it resides in various laws and industry practices, many of which are described throughout this chapter. If enacted, currently proposed legislation – much of which focuses on reducing US dependency through the use of alternative fuels – will further shape the country's policy.

Regulation overview

4 Describe the key laws and regulations that make up the general legal framework regulating oil activities?

The determination of which laws apply to oil activities at a given surface location depends on whether the underlying resources and location are owned by a federal or state government or by private parties, and whether the location is onshore or offshore.

The Mineral Lands Leasing Act governs upstream activities on federal onshore property, while the OCS Lands Act governs development of federal offshore property. Additional industry-specific federal statutes include the Oil and Gas Royalty Management Act governing lease and royalty agreements, and the Petroleum Marketing Practices Act regulating supply agreements and leases held by retailers and wholesalers of trademarked motor fuels. State laws, such as the Texas Natural Resources Code and the California Public Resources Code, govern exploration and production on state- and privately owned land, including state offshore property.

5 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil activities.

Within the Department of the Interior (DOI), the Bureau of Land Management (BLM) regulates oil exploration and production on federal onshore property; the Minerals Management Service (MMS) regulates federal offshore activities; and the Bureau of Indian Affairs (BIA) regulates American Indian land development along with the BLM. The Federal Energy Regulatory Commission (FERC) has jurisdiction over interstate oil pipelines. The Department of Energy (DOE) administers the Strategic Petroleum Reserve, collects industry data, and funds and conducts other energy research and production programmes.

Each of the major oil-producing states has an agency tasked with regulating certain upstream activities, such as the issuance of drilling permits. These agencies include the Railroad Commission of Texas; the California Department of Conservation's Division of Oil, Gas and Geothermal Resources; the Louisiana Office of Conservation; and the Alaska Department of Natural Resources' Division of Oil and Gas. Some state public utility commissions oversee aspects of intrastate oil pipelines.

Many other agencies enforce police power laws and regulations regarding environmental, health, safety and work conditions (see question 20).

6 How does your country manage appeals of government regulatory decisions?

Federal agency actions are governed by the Administrative Procedure Act and related rules. Industry-wide rulemakings follow different appeal processes than do party-specific adjudications. Review of an agency adjudication is generally available first within the agency. Parties affected by federal agency decisions generally have a right of appeal directly to a US Court of Appeals after the agency has made its final, appealable decision, and the parties have exhausted any available administrative remedies; further review by the US Supreme Court is discretionary. When reviewing a final agency decision, the courts are typically deferential to the agency's opinion and unlikely to overturn it unless the petitioner can show a failure to comply with applicable procedural or statutory requirements, an abuse of discretion, or constitutional grounds for reversal. Review of agency rulemaking is granted even more deference on review. (States have their own administrative procedure laws governing appeals.)

7 What standards are employed for oil measurement and oil facility equipment? Are these voluntary or compulsory? Are they established by a government body?

Federal and state laws do not typically mandate measurement or equipment standards. Instead, regulations refer to or supplement privately established standards. The API has led the development of oil equipment and operation standards. The API's Manual of Petroleum Measurement Standards (MPMS) is widely used, as are publications of the American National Standards Institute (ANSI) and the American Society for Testing and Materials (ASTM).

8 What government body maintains oil production, export and import statistics?

Official statistics on oil production, imports and exports are collected by the Energy Information Administration (EIA) of the DOE. EIA also provides forecasts and analysis of oil consumption, production, reserves, refining and trade. State agencies maintain data on local oil production.

Natural resources

9 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

In the US, title to oil, gas and minerals is generally held by the owner of the surface until and unless that right is severed and granted to others. This title to the 'mineral estate' may be separated from the 'surface estate' by a grant or a reservation. Both the federal government and many states own oil, gas and mineral rights both onshore and offshore. Government and private transfers frequently reserve to the grantor all or a portion of the mineral rights, so the land title records must be carefully reviewed. (In Louisiana, only a mineral servitude with a limited right of exploration and production is recognised.)

10 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production (eg for environmental, military, agricultural, fishing, other commercial purposes)?

In 2005, US oil production was concentrated in federal offshore waters (26 per cent), Texas (21 per cent), Alaska (17 per cent), California (12 per cent) and Louisiana (4 per cent). Oil exploration is currently focused in the Gulf of Mexico, where 80 per cent of new discoveries in the past five years have been made.

Almost all existing offshore leasing is in the central and west-

ern Gulf of Mexico. Moratoria on new leases now apply to most of the Pacific, Atlantic and Alaskan coasts and the eastern Gulf of Mexico (though legislation to open some offshore areas is proposed). Onshore, the Arctic National Wildlife Refuge in Alaska remains off limits to drilling despite intense debate in Congress. In April 2007, the government finalised a five-year plan lifting the moratoria on the offshore leasing of parts of the OCS. The affected area primarily includes the Alaskan oceanic regions of Bristol Bay, Lower Cook Inlet, and Chukchi and Beaufort Seas.

Apart from national parks and wilderness areas, federal lands outside Alaska are largely available for exploration and production. However, federal and state agencies can also impose drilling restrictions on particular lands on environmental, military or other grounds.

11 What government body regulates oil exploration and production in your country? What is the character of that regulation – licensing or concession regime, state oil company, production-sharing agreements, or some combination thereof?

US practices do not feature concessions or production sharing agreements typically associated with a state oil company. The right to conduct exploration and production on the lands of another is obtained through an oil and gas lease granting the right to explore for and extract oil from the leased premises, and the ownership of oil actually produced. The terms of the lease and applicable law limit lessee activities.

Processes established by the BLM (onshore), MMS (offshore) and BIA (American Indian lands) govern the awarding of leases for land subject to federal jurisdiction. Analogous state agencies award leases for state-owned lands. Private owners of subsurface mineral rights negotiate or invite tenders for leases, which may follow trade association formats or contain terms and conditions specific to the particular lease.

12 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production?

Federal leases impose a fixed royalty of a defined fraction of the amount or value of the oil or gas removed or sold from each lease. A royalty rate of $^1/_8$ was common up until the 1970s, though currently rates such as $^3/_{16}$ or $^1/_6$ are common. For onshore operations, this federal rate must be no less than $^1/_8$, whereas offshore operations tend to have $^1/_6$ royalties. Statutes fix most federal royalty rates, but both the DOI and special legislation (like the Deep Water Royalty Relief Act) can modify standard terms, usually by reducing the stated royalty rate or suspending payment of royalties, to make frontier development more attractive.

Recently, some members of the US Congress have objected to the practice of reducing or suspending payment of royalties. Legislation is currently pending in the US Senate that would require lessees to renegotiate old leases that contain royalty suspensions. The proposal provides that any lessee who refuses to renegotiate will be prohibited from participating in future federal leases. In 2007, the DOI increased the royalty rate on most new deep water leases from $^1/_8$ to $^1/_6$, the same rate charged for shallow water leases.

State and private leases have more variability in their royalty terms, and may include a basis for payment other than proceeds or market value. States reap varying portions of the royalty for federal leases of land within or adjacent to their borders.

13 What is the customary duration of oil leases, concessions or licences?

Private as well as public oil and gas leases usually feature a fixed primary term and a conditional secondary term. The number of years in the primary term ranges from as low as one year in mature fields to 10 years for frontier regions; private and American Indian leases tend to have short primary terms. Even though no production may be required during the primary term, the lease may be subject to termination if the lessee fails to drill test wells or undertake specified action or, in lieu thereof, pay an additional rental fee.

The secondary term continues indefinitely beyond the primary term so long as either the leased area produces oil or gas in paying quantities or the lessee performs other specified activities on the leased premises. The lease often excuses brief interruptions in production and longer interruptions due to force majeure.

14 For offshore production, how far seaward does the regulatory regime extend?

The Submerged Lands Act establishes state jurisdiction over submerged lands extending three nautical miles (3.5 statutory miles, or 5.6km) offshore (except Texas and Florida on the Gulf of Mexico, whose jurisdiction extends three leagues (approximately 10 statutory miles, or 16km)). The OCS Lands Act establishes federal jurisdiction beyond the state limit, and a 1983 presidential proclamation declared that jurisdiction to extend to the boundary of the US Exclusive Economic Zone, 200 nautical miles (about 230 statutory miles, or 370 km) from the coastline. (In practice, oil development is active only to the edge of the OCS.)

15 Who may perform exploration and production activities? What criteria and procedures apply in selecting such entities?

The MMS employs sealed-bid processes for OCS leases in accordance with a five-year plan. Auctions are based not on variable royalty rates but rather on the 'signature bonus' offered. The BLM may negotiate federal onshore leases individually, but awards most through a less formal bid process. (See question 28 regarding restrictions on foreign holdings.)

16 What is the legal regime for joint ventures?

The US does not specify a particular kind of joint venture for collaborative development of an oil production project. Operations by one or more party come in two main categories. The first is a contract venture to share costs and benefits from a joint undertaking, often conducted by one mineral rights owner or lessee on behalf of others with interests in the same land or in lands embracing a particular reservoir. (An example is the joint operating agreement, often entered into on Association of International Petroleum Negotiators (AIPN) or Association of American Landmen (AAPL) forms. The accounting procedure under a joint operating agreement is often that specified by the Council of Petroleum Accounting Societies (COPAS).) The second category consists of separate legal entities, which are typically encountered in processing, midstream and downstream applications. These entities include general or limited partnerships, corporations and limited liability companies.

17 How does reservoir unitisation apply to domestic reservoirs and cross-border reservoirs?

Unitisation is the consolidation of exploration and production activities affecting several parcels of land, or several interest holders in a given parcel. The consolidated activities are usually conducted by a unit operator. The goal is the efficient development of the reservoir and equitable distribution of the benefits of production. Unitisation may be consensual or, in several jurisdictions, may be mandated when statutory requirements are triggered or agency determinations are made. Unitisation of federal lands requires DOI approval. There are no cross-border reservoir unitisations involving the US.

Transportation

18 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

Rates and rules for oil transportation via interstate pipelines are regulated by the Federal Energy Regulatory Commission (FERC), and pipeline operators must file tariffs with FERC. FERC generally allows carriers to charge market-based rates up to a ceiling. FERC regulations also require interstate carriers to provide non-discriminatory service to all shippers. The Pipeline and Hazardous Materials Safety Administration of the Department of Transportation (DOT) regulates the safety of interstate oil pipelines. States regulate intrastate oil pipelines and may regulate gathering lines and other transportation activities. Some states have adopted variations of FERC's market–based rates policy.

Trucking and marine vessel transportation prices are not currently regulated. However, safety, health and environmental regulations apply generally to pipelines, vessels and trucks (see question 20).

19 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

Construction of a new interstate oil pipeline does not require approval from the federal government unless the pipeline will cross federal lands, but the operator must file a tariff with FERC. Pipeline construction projects require permits from state or local agencies, although some states no longer require public utility approval to construct new pipelines. Other forms of transportation are not generally subject to public utility regulation, but are subject to the Federal Motor Carrier Safety Act and other health, safety and environmental laws.

Health, safety and environment

20 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record keeping is required? What are the penalties for non-compliance?

Entitlements for development

A new or modified exploration or development operation will usually need a local land use development permit as well as drilling and operating permits. Many projects must undergo a thorough environmental impact review under the federal National Environmental Policy Act (NEPA) or a state analogue. The process includes substantial public involvement and can be quite contentious. Failure to complete the process or comply with permits can lead to significant delays, penalties and injunctions.

Discharge restrictions

With a few exceptions (eg, the Oil Pollution Act and the Pipeline Safety Improvement Act), the federal discharge laws applicable to the oil sector are generally not industry-specific. They are instead based on a particular impact: the Resource Conservation and Recovery Act for solid and hazardous waste, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) for cleanup of contaminated sites, the Clean Air Act for air emissions, and the Clean Water Act and Safe Drinking Water Act for water discharges. The principal enforcement agency is the Environmental Protection Agency (EPA) but state agencies enforce similar state laws. Federal law generally permits the EPA to delegate enforcement and permitting authority to the state or local levels.

The EPA has issued effluent guidelines specific to both upstream and downstream oil operations, as well as rules applicable to the discharge of oil into navigable waters. There are also rules issued by the Coast Guard and MMS dealing with oil spills on the OCS.

Discharge or emission limits may apply to all sources of a particular type (eg, refinery heaters and boilers), or may be facility-specific. Regulations and permit conditions may include detailed recordkeeping and reporting requirements. Each statute and agency has considerable penalty, injunction and criminal law remedies for non-compliance (over US$33,000 per day and imprisonment for the Clean Air Act), and in some cases private parties may also recover damages or enforce public interests via citizen suits.

Both federal and state environmental laws regulate new and existing sources of pollution. New sources, including existing sources undergoing major modifications, must often comply with more stringent emissions or technology standards.

Navigation

Activities affecting navigable waters are regulated by the Army Corps of Engineers among other agencies, enforcing laws including the River and Harbors Act.

Ecology

The Endangered Species Act can prohibit activities that might materially impair the habitats of threatened and endangered species. For example, a new facility might be prohibited in an area with an endangered plant species, or particular mitigation measures (such as habitat replacement or augmentation) might be required to minimise adverse impacts to an animal species. For offshore exploration, the Fishery Conservation and Management Act governs impacts on the fishing industry, and the Marine Mammal Protection Act does the same for the affected mammals.

Cultural resources

A number of mandates deal with projects that may disturb or uncover property of cultural significance, including the National Historic Preservation Act, the Antiquities Act, the Archeological Resources Protection Act, the Abandoned Shipwreck Act and the National Marine Sanctuaries Act.

Health and safety

The Occupational Safety and Health Administration (OSHA) and state and local governments all enforce rules protecting employees and contractors from workplace injuries. Record-keeping

requirements can be very significant; for example, records of occupational injury must be kept for the duration of the employee's service plus 30 years.

Homeland security

The Department of Homeland Security (DHS) is now developing multiple requirements affecting safety and security, which to date include chemical facility anti-terrorism rules and more general standards for oil-related facilities. Additional requirements are anticipated.

21 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record keeping is required? What are the penalties for non-compliance?

The EPA regulates the composition of mobile source fuels and fuel additives. However, a large portion of oil regulation occurs at the state level. Uniquely, California may adopt its own fuel standards, which may then be adopted verbatim by other states. These regulations specify many elements of fuel composition, such as volatility and aromatics, oxygenate and sulphur content. In 2006, there were several major federal fuel specification changes. Among these changes were a reduction in the sulphur content of gasoline, the elimination of the oxygen mandate, and a renewable fuels mandate. Sales of imported products that do not comply with EPA standards are prohibited.

In most cases, fuel composition must be certified by the EPA or the state air authority. These agencies may impose substantial penalties (see question 20) for sale of non-complying fuels and for failure to maintain accurate composition and manufacturing records. The EPA incentivises self-evaluation, self-disclosure and correction of violations by not recommending civil or criminal penalties for entities that promptly address their non-compliance.

Labour

22 What government standards apply to oil industry labour? How is foreign labour regulated? Are there anti-discrimination requirements? What are the penalties for non-compliance?

Foreign workers

Oil companies, like other private employers, must comply with a variety of laws respecting immigration. Hiring a non-resident generally requires an employment-based (or 'non-immigrant') visa, such as the L-1 for existing foreign employees of a corporate group who will be working in an executive, managerial or specialised-knowledge position for the US subsidiary or branch, the H-1B for new employees for positions with professional, college-level degree requirements, or the B-1 for shorter-term assignments. US employers must guard against the hiring of undocumented individuals under the Immigration Reform and Control Act, and many oil companies require their contractors to warrant they have not engaged in such hiring.

Labour relations

Empoyers in oil as well as other sectors must comply with a wide range of federal statutes and regulations, including the National Labor Relations Act (NLRA), the Fair Labor Standards Act (FLSA) and the Family and Medical Leave Act (FMLA). State and local laws and agencies supplement the federal workplace rules.

The NLRA confers on private sector employees a variety of rights to form unions; to engage in union organisation campaigns; to bargain collectively; and to strike and take other concerted activity. The NLRA also imposes limitations on those rights, and empowers employers to conduct labour relations alone or in concert with similarly situated firms, and is enforced by the National Labor Relations Board. Important labour unions in the US oil industry include the Oil, Chemical and Atomic Workers Union.

The FLSA imposes overtime and minimum wage requirements for certain 'non-exempt' employees (ie, those not in exempt categories, including management and some administrative activities). Specific wage or overtime rules are set forth for particular oil industry employers, such as wholesale distributors of refined products. The FLSA is enforced by the Department of Labor (DOL).

The FMLA requires larger employers to provide up to 12 weeks of unpaid annual leave for certain employees who have serious health conditions or who desire to care for dependents. An employee who exercises the FMLA right enjoys certain assurances of post-leave employment and protection from retaliation. This statute is also enforced by the DOL.

Anti-discrimination

Many federal, state and local laws prohibit discrimination in employment on the basis of a 'protected classification' such as race, colour, sex, religion, national origin, disability (mental or physical, including pregnancy), age, Vietnam-era veteran status, sexual orientation or medical condition. Even an ostensibly neutral policy that results in a 'disparate impact' on a race or sex classification can be the basis for a claim, unless the employer can demonstrate the policy is justified by 'bona fide occupational qualifications'. The federal laws include the FLSA, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Rehabilitation Act and the Americans with Disabilities Act. These statutes are generally enforced by the Equal Employment Opportunity Commission.

The remedies for a discrimination claim can be significant. They can include orders of reinstatement, compensatory damages such as lost pay, and punitive or exemplary damages. Only a few of the anti-discrimination laws have maximum penalties, such as the US$300,000 available under Title VII. Oil industry employers have faced significant claims, both by individuals and by collections of similarly situated employees bringing class actions.

Taxation

23 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

The income tax regime for exploration and production has numerous special features, whereas transportation, marketing and distribution are generally subject to the same rules facing other industrial businesses. A host of industry-specific deductions apply to upstream expenditures – including pre-drilling exploration costs, intangible drilling costs, accelerated depreciation of oilfield equipment, and depletion of subsurface resources. Tax planning is required for optimal acquisition and divestiture of leases and other production interests, such as production payments and farm-ins. State income tax laws supplement these provisions and incentives (though not all states impose an income tax). Some states also impose severance taxes on production.

Federal and state excise taxes are collected on the retail sale

of motor fuels. Oil companies are subject to state property tax on holdings of real property and certain personal property; state sales and use tax on certain acquisitions of personal property; withholding requirements on distributions to certain foreign shareholders and partners; and transfer taxes on sales of real property.

The principal tax agency is the Internal Revenue Service at the federal level, with customs duties being handled by the US Customs Service of the Department of the Treasury and state taxes being administered by a variety of agencies.

Commodity price controls

24 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

Crude oil is an international commodity, and as such its price is determined by international supply and demand factors. Neither the US federal government nor the states currently regulate the price of crude oil or refined products. In 2005, Hawaii became the first state to place a cap on the wholesale price of gasoline delivered to service stations, but the legislature indefinitely suspended the cap eight months later.

More than half of the states have laws or regulations that seek to regulate so-called 'price gouging'. They are typically triggered by a declaration of an emergency and are of uncertain scope and duration. On the federal level, bills have been introduced targeting OPEC, such as the 'No Oil Production and Exporting Cartels Act of 2007' (NOPEC), and attempting to penalise price increases.

Competition, trade and merger control

25 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

Two agencies enforce federal competition laws (called 'antitrust laws' in the US) – the Antitrust Division of the Department of Justice (DOJ) and the Federal Trade Commission (FTC). Each enforces statutes of general application, including the Sherman Act on cartels and monopolisation; the Clayton Act on mergers, exclusive dealing and tying arrangements; and the Robinson-Patman Act amendments to the Clayton Act on price discrimination and related practices. The FTC also enforces the Federal Trade Commission Act prohibiting 'unfair methods of competition' and similar offences.

Many states and some subdivisions have antitrust and unfair competition acts of broader generality. Private parties may also bring lawsuits seeking relief for most competition laws. At all levels, sanctions can include compensatory damages, punitive damages (often mandatory trebling of the compensatory damages), recovery of attorneys' fees and injunctive relief.

Regulations on concentration of oil leaseholdings include the MMS's Restricted Bidder List of companies not permitted to acquire more leases in a given region, and the review of new OCS lease awards by the FTC and DOJ.

A 2005 Congressional study concluded that oil mergers had contributed to higher prices, but the FTC staff disputed that view and stressed efficiencies resulting from most combinations.

In the aftermath of Hurricane Katrina, the FTC conducted a congressionally mandated investigation into whether gasoline prices were artificially manipulated. In its 2006 report, the FTC found no instances of the illegal market manipulation but isolated examples of pricing not justified by supply and demand conditions.

26 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

The DOJ's business review letter programme and the FTC's advisory opinion programmes are sometimes used for comfort on proposed joint ventures, information exchanges and similar concerted activities. The review period can extend many weeks or months from the submission of all supporting data, and the agencies only describe their current enforcement intentions without definitively approving the conduct.

Certain joint ventures, mergers and business purchases are subject to mandatory reporting under the Hart-Scott-Rodino Antitrust Improvements Act. Reports are made to both the DOJ and the FTC, but the FTC usually takes the more active role for oil industry matters. The parties are prohibited from closing the transaction until expiration of a waiting period for the government to decide whether to seek an injunction. The waiting period is usually 30 days after filing, or 15 days in the case of a cash tender offer, but can be extended when an agency asks for more data. After the waiting period expires, the parties can close but the agencies can still decide to file suit later. (In 2005, the FTC imposed divestiture orders on a merged oilfield business four years after the merger closed.)

International

27 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

Although the US is not a signatory to the 1973 United Nations Convention on the Law of the Sea, federal laws and executive orders have promulgated US offshore territorial zones and economic exclusion zones that are comparable to those set forth in that instrument.

The 1978 protocol to the 1973 International Convention for the Prevention of Pollution from Ships (MARPOL) has spawned several US statutes pertaining to oil tankers, including the Oil Pollution Act, the Port and Tanker Safety Act and the Act to Prevent Pollution from Ships.

The US is a member of the World Trade Organisation (WTO) and a party to various WTO agreements. These instruments generally require member states not to discriminate against products and services of any member state or between products and services of different member states. However, there is an exception for free trade agreements such as the North American Free Trade Agreement (NAFTA), which creates zero-duty regimes for imports and exports of products among Canada, the US and Mexico, specifically including crude oil and refined products. In recent years the US has been active in seeking free trade agreements with other countries; among the oil-producing states, it has agreements with Bahrain and Oman, and is currently negotiating with Malaysia.

28 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals?

Update and trends

High crude oil and refined product prices in 2007 have led to numerous calls for re-examination of the enforcement standards for oil industry mergers and pricing practices. Foreign acquisitions of US energy assets will be given heightened scrutiny following the 2005 offer by China's CNOOC for the US company Unocal. The political outcry over lessee-favourable terms in offshore leases (many of which were awarded when oil prices were significantly lower) indicates that pressure for higher rental fees and royalty percentages will increase. The US Supreme Court's 2007 holding in *Massachusetts v EPA* that emission of carbon dioxide (CO_2) from motor vehicles is a pollutant within the purview of the EPA, along with other anticipated greenhouse gas regulations, will affect development opportunities for oil production and refining, and will ultimately have impacts on demand for hydrocarbons.

The presence of BP, Shell and PDVSA/Citgo demonstrates that foreign investment in oil resources has been welcomed and successful. However, some restrictions exist or may emerge.

Foreign persons cannot directly hold federal oil leases or certain pipeline interests. But so long as their country of domicile does not discriminate against US persons, the US laws permit such foreigners to own equity of a US legal entity that does hold the interest.

Foreign-owned and foreign-flagged oil tankers may call at US ports en route to and from foreign destinations. The combination of statutes known as the Jones Act requires that 'coastwise' trade between US ports generally must be conducted by vessels built and flagged in the US and staffed with US crews.

The OCS Lands Act limits foreign staffing of many OCS facilities. Foreign investors must comply with record-keeping requirements of the International Investment and Trade in Services Survey Act.

The Exon-Florio Amendment to the Defense Production Act of 1950 empowers a committee of several cabinet departments (the Committee on Foreign Investment in the United States, or CFIUS) to determine whether foreign acquisition of a US business 'threatens the national security of the United States'. The Byrd Amendment heightens the standard of review when the acquirer is a foreign government or its affiliate.

In 2005, an affiliate of China National Offshore Oil Corporation (CNOOC), held 70 per cent by China's government, made a purchase offer for the stock of the American-headquartered Unocal Corporation. This bid triggered a surge of interest in Exon-Florio's application to the energy industry. Members of Congress proposed declarations that oil assets raise national security concerns for Exon-Florio purposes. The question was never addressed because CFIUS determined that no review would commence until CNOOC signed an acquisition agreement, and ultimately Unocal was sold to an American company instead. The controversy over Unocal suggests that US oil acquisitions by foreigners, particularly those affiliated with foreign governments, will be given increased scrutiny. There are several legislative proposals to heighten the scrutiny required for energy acquisitions under Exon-Florio.

29 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

Imports

Imports of crude oil generally are subject to customs duties, except when imported from a country with which the United States has a free trade agreement. Many US oil refineries are located within 'foreign trade zones' that allow duty-free entry of oil for processing, making the duties of limited significance in any event. Licences or variances from the EPA or other agencies may be required for importing blendstock for making oxygenated refined products, such as RBOB (and CARBOB in California).

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Exports

The Department of Commerce restricts exports of crude oil on the basis of 'short supply' controls, but these are sometimes waived through the issuance of export licenses. Exports of refined products are not currently limited in this manner. 'Deemed export' controls can restrict disclosure of certain technical information of US origin – even to non-US persons working in the US.

Embargoes

The US maintains unilateral economic embargoes on certain countries, most notably Iran, Cuba and Sudan, pursuant to regulations administered by the Treasury Department's Office of Foreign Assets Control. These embargoes can prohibit US persons from engaging in transactions involving the embargoed countries or their companies or nationals, even when nothing will be imported into or exported from the US.