

Review on Potential Standardisation of LNG Sale and Purchase Agreements

Energy Charter Secretariat
2017

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ISSN : 2593-1458

ACKNOWLEDGEMENT

The report, preliminary drafted by members of the LNG team of Baker Botts, benefited from the comments and input provided by several external experts, industry participants (from both consumer and producer sides, as well as financing), governments and organisations (GIIGNL, IOGP); in particular during the specific workshop held at the Secretariat on 29 September 2017 and during several LNG events in 2017 (Tokyo Gastech and 8th Turkmenistan Gas Conference).

Review on Potential Standardisation of LNG Sale and Purchase Agreements

1. This paper is the first step in an iterative process involving an industry task force established by the Energy Charter Secretariat, and is intended to provide a basis for a discussion of key issues relating to the potential standardisation of LNG SPAs. This review is primarily focused on medium to long term LNG SPAs, but it may also be applicable to certain spot contracts, as defined by GIIGNL.¹ In considering the standardisation of LNG SPAs, the intention is not to take into account specific market factors, such as whether there is (or is perceived to be) under or over supply of LNG in the market, or any other market related issues, now or in the future. It is considered that standard contracts and provisions should be equally applicable in all market situations.
2. This review does not represent the views or opinions of any LNG industry participant, LNG legal or other advisor, or the Energy Charter Secretariat.

1. LNG Markets

1.1 The Evolving Market

3. The LNG market continues to evolve and mature in response to many factors and forces, including: international treaties, governmental policies, technological developments, environmental issues, economic issues, LNG market related factors, and similar issues impacting the broader worldwide energy market. This process will continue as the LNG market strives for equilibrium in the short, medium and long terms, in the context of the broader interrelated worldwide energy market, that is itself continuing to evolve.

1.2 Complex Nature of LNG Seller - Buyer Relationship

4. While the specific context of the seller and buyer relationship will be fundamental in shaping the terms and conditions of such relationship, these factors are too numerous and variable to permit universal standardisation of LNG SPAs at this time. Such variables include, but are not limited to:
 - o **parties:** whether the sellers and buyers are (as applicable) NOCs, IOCs, independents, governmental entities, utilities, aggregators, traders or investors, acting individually or collectively, and whether selling/buying individual equity volumes, jointly marketed volumes, aggregated volumes or otherwise.
 - o **sources:** the source of gas or LNG; whether derived from a new or existing reservoir, pipeline or hub or other existing source (i.e., secondary sales); whether the project is greenfield, brownfield, on-shore, off-shore or a floating LNG project; the geographic location of the project, including the relative degree of isolation from other LNG

¹ The International Group of Liquefied Natural Gas Importers (GIIGNL) defines “spot contracts” as “trades where cargoes are delivered within three (3) months of the transaction date”.

projects, and proximity to potential buyers and markets; and the political context of the project and all major stakeholders.

- **uses:** for use in base, intermediate or peak load power generation, including “swing-load” to address seasonality issues; industrial and general gas market supply; bulk breaking and sale as LNG into smaller regional markets or to specific projects; small-scale use such as for transportation or other alternative uses; and storage and arbitrage.
 - **market factors:** whether any LNG market is, or is perceived to be, over or under supplied (in the short, medium and long term) for any reason; regional pricing issues, including the relative price of alternative fuels (oil, coal, pipeline gas, nuclear or green); and the broader market factors impacting the non-LNG worldwide energy market.
 - **commercial factors:** whether the transaction is for medium or long-term sales or on a spot basis; whether on a FOB / DES / DAP / DAT basis; and whether or not supplied with restrictions, including diversion, re-sale and similar destination restrictions.
 - **political factors:** government policy decisions impacting any of the above factors, including decisions as to preferred energy supply mix in the short/medium/long term (such as decisions moving power generation from coal to gas, or nuclear to LNG) for any reason, including environmental and energy security issues, as a result of natural disasters or otherwise; anti-trust matters, trade laws, regulations and sanctions.
5. Each of the above factors will likely require careful attention by the parties, and specific LNG SPA provisions addressing the relevant issues in each case.

1.3 Governmental Initiatives, Policies and Laws

6. The Tokyo Declaration on the Energy Charter,² and recent statements by the G7 Rome Energy Ministerial Meeting, and actions by the European Council and the Ministry of Economy, Trade and Industry of Japan, support a transparent and competitive market, with greater flexibility in relation to LNG contracting and the LNG market. In addition, governmental policies and laws, particularly in relation to anti-trust and competition related issues, of certain key trading countries should be taken into account when considering the potential standardisation of LNG SPAs.
- (a) The Tokyo Declaration on the Energy Charter
7. The Members of the Energy Charter Conference, in the Tokyo Declaration, reiterated their belief “... *that a well-functioning, transparent and competitive global gas market including LNG trading hubs should be further developed and destination clauses should be abolished.*”
- (b) G7 Rome Energy Ministerial Meeting

² Tokyo Declaration on the Energy Charter, Energy Charter Conference, Tokyo, 25-26 November 2016.

8. The Chair's Summary of the G7 Rome Energy Ministerial Meeting held in April 2017³ refers to the Heads of Delegation "*reaffirm[ing] the importance of greater flexibility of commercial clauses in LNG contracts, including relaxing destination clauses, and similar restrictive mechanisms. To this end, they encouraged the sharing of information, on a voluntary basis, of private sector and regulatory best practices.*"
- (c) Memorandum of Cooperation between the European Commission, on behalf of the European Union, and the Ministry of Economy, Trade and Industry of Japan dated 11 July 2017
9. A stated objective of the Memorandum of Cooperation⁴ is "*supporting and strengthening the cooperation between Participants to establish a liquid, flexible and transparent global LNG market.*" The Memorandum further states that the Participants intend to cooperate in establishing such a market, in particular through:
- "a. accelerating efforts in facilitating more flexible LNG contracts in terms of destination - aiming at avoiding related restrictions - and of re-selling, duration and price setting and review;*
- b. exchanging experiences and exploring possibilities in establishing reliable LNG spot price indices, reflecting the true LNG demand and supply, and in promoting physical and LNG-based financial trade; [...]*
- d. exchanging information and practices between the Participants on policies and common positions related to natural gas and LNG such as LNG procurement, supply diversification, market de-regulation, trading hubs and promotion of open access infrastructure including, LNG regasification terminals, underground gas storage and transmission pipelines; [...]*
- f. enhancing cooperation to engage other importing countries and, in particular, exporting countries in joining efforts to establish a liquid, flexible and transparent global LNG market, and also enabling necessary upstream investment;...."*
10. In addition, the Memorandum also notes "*the importance of effective competition, and compliance with competition rules, for the development of a liquid, flexible and transparent global LNG market....*"
- (d) Anti-Trust and Competition Related Issues
11. It is clear that anti-trust and competition related issues of certain key trading countries should be taken into account in relation to the potential standardisation of LNG SPAs. While the scope of any such review will need to be determined as part of such exercise, it would likely include a review of the relevant anti-trust and competition related laws, regulations and policies of the major "seller" and "buyer" jurisdictions.
12. The most recent and potentially significant development in this area is the report by The Japan Fair Trade Commission (JFTC) on LNG Trades dated 28 June 2017⁵,

³ G7 Rome Energy Ministerial Meeting - Energy Security: from Rome 2014 to Rome 2017, Rome, 9-10 April 2017.

⁴ The Memorandum of Cooperation between the European Commission, on behalf of the European Union, and the Ministry of Economy, Trade and Industry of Japan on Promoting and Establishing a Liquid, Flexible and Transparent Global Liquefied Natural Gas Market, signed in Brussels on 11 July 2017.

⁵ The Japan Fair Trade Commission report dated June 2017 entitled "Survey of LNG Trades (Chapter 4, Ensuring of fair competition in LNG trades).

which focuses on the use of destination clauses, diversion clauses, and profit share mechanisms in relation to Japan's competition rules. It is also possible that similar authorities in other Asian "buyer" countries may conduct a review of such issues. The existing laws, regulations and policies of key trading countries (including key "seller" countries) will also need to be taken into account, and a comparative analysis between the respective positions of these various countries may be required.

13. The impact and effect of each of the above on the LNG market will be determined in the months and years ahead, and will be influenced by the positions and actions of other governments and market participants. However, as noted in 3.1 below, these and related issues are currently at the forefront of the industry, and will likely be a centre of attention for the foreseeable future.

2. Analysing the LNG SPA

2.1 Categorising the Provisions

14. Considering the form of "common law" LNG SPAs (e.g., under the laws of England, the United States, Singapore, Australia, etc.), the various provisions thereof may conveniently be placed into the following categories. While certain provisions or issues could readily be included into more than one category, for the purpose of this review we have kept each in a separate category:

- *commodity provisions:*

- source of supply, reserves, restrictions in supply, suspension of supply, excess capacity;
- volumes, annual contract quantities (ACQ), adjusted ACQ, make-good, round up/down, down-flex, up-flex, force majeure restoration, make-up, additional volumes (long and short term), debottlenecking (additional trains) attribution and revisions to the above;
- delivery programmes, annual delivery programme, 90 day delivery schedule and changes to each;
- initial supply period, loading and unloading ports;
- quality specifications, off-spec gas or LNG;

- *operational provisions:*

- commencement of agreement and deliveries;
- ship-shore compatibility;
- vessel and facilities inspections, exchange of information;
- port obligations;
- vessel arrival, berthing and departure, vessel cool down and/or purging;
- vessel loading and unloading;

- *technical provisions:*

- units of measurement, standards;
- methods of measurement and required equipment;
- measurement processes and procedures;

- sampling and analysis procedures;
- quantities of LNG (determination of loaded LNG, density, gross heating value, etc.);
- independent surveyor/expert;
- *HSSE provisions:*
 - recognition of safety, security and environment protection;
 - safe performance of all services and work at all facilities;
 - safe performance of all LNG shipping and other marine activities by third parties;
 - commercial provisions:
 - commercial operation date
 - base term, extensions;
 - pricing, including price basis and methodology;
 - change of indices;
 - price reviews;
 - restrictions on re-sale, diversions and unloading destinations;
- *legal provisions:*
 - conditions precedent;
 - representations and warranties;
 - sale and purchase, title warranty;
 - delivery point, title and risk transfer (including offshore title transfer);
 - alternative performance (take-or-pay, deliver-or-pay) and mitigation;
 - liquidated damages;
 - loading and unloading delays, demurrage;
 - taxes and charges;
 - invoicing, disputed invoices, delay in payment;
 - force majeure;
 - liabilities, limitation and mitigation;
 - default, remedies and termination;
 - expert determination and dispute resolution;
 - credit support (letters of credit, bank guaranty, parent guaranty);
 - insurance;
 - marine terminal operations manual, agreement and “club rules”;
 - confidentiality;
 - waiver of sovereign immunity;
 - governing law;
 - requirements of financing (direct agreements and cooperation);
 - business practices and sanctions;

- miscellaneous, including: assignment, confidentiality, no third party beneficiary, no agency, entire agreement, survival, notices, press releases, counterparts, etc.

2.2 Standardisation of Issues

15. Considering the above, certain LNG SPA provisions are likely to present greater opportunity for standardisation than others. For example, using the above categories, the following ranking is possible.
16. References to “context” in the below table are intended to refer to all the facts and circumstances relating to the specific LNG SPA relationship - including the types of assets and facilities involved and those issues noted in 1.2 above (Complex Nature of Seller - Buyer Relationship).

Relative Ability to Standardise LNG SPA Provisions

1	Generally Standardisable	HSSE & Technical provisions	Generally standardisable across all contexts However, such provisions are likely to require adaptation in each context due to applicable classifications requirements, industry standards, regulations and laws (“Standards and Laws”)
2	Potentially Standardisable	Operational & certain Legal provisions Legal provisions such as: CPs, reps/warranties, title and risk transfer, payment and invoicing, tax, FM, liability and general boilerplate	Operational and certain legal provisions are potentially standardisable in specific contexts (e.g., FOB v DAP) However, such provisions will require adaptation in each context due to applicable Standards and Laws, the specifics of the project and the sell/buy relationship
3	Not Easily Standardisable	Commodity & commercial provisions	Generic language/concepts standardisable However, may vary significantly depending on the context
4	Difficult to Standardise	Other legal provisions (not noted above)	Need to be developed to address the specific circumstances of each context

17. Assuming the above categorisation to be plausible, what conclusions (if any) can be drawn from this analysis?

2.3 Potential Approaches to Achieve Greater Standardisation

18. One conclusion is clear: there cannot be one single LNG SPA applicable to the entire LNG industry. One day, this outcome may be feasible, when LNG becomes a truly “liquid” commodity, traded (perhaps from “hubs”, with hub pricing) on an “over-the-counter” (OTC) basis, with OTC type contracts. Until then, a different solution is required.

(a) *“Universal Modular” Approach*

19. One potential approach is to develop a modular system potentially applicable to all likely scenarios (i.e., on a universal basis). With the aid of software, it is conceivable that a standard LNG SPA could be generated in response to a more or less detailed questionnaire, including further alternatives and options as required to cater for specific preferences or contexts.
20. However, this would require an enormous investment in time, expertise and capital, and is an unlikely option at this stage. Further, it would not result in pure “standardisation”, but merely “computer assisted drafting”, which has been available for many years, but (arguably) never successfully implemented. One potential reason for this is that the context of each project or trade is different, in potentially many different ways. In other words, there are too many potential variables requiring subjective analysis to permit such an outcome at this time.

(b) *“Selected Modular” Approach*

21. This approach can be divided into (at least) two variants, the “selected specific” and “generic” approach, as follows.

(b).1. Selected Specific Approach

22. Under this approach, one or two preferred contexts are used as the basis for a model contract applicable to that particular context. For example, LNG derived from [pipeline gas] from [Gulf of Mexico] and supplied to [power utility] in [Japan/Korea/Taiwan]. The above bracketed language is illustrative only, and could respectively be replaced with other variables such as: [gas reservoir] / [Qatar/Australia] / [type of entity] / [country]. This more limited approach may not have universal applicability, but if it represented a significant share of world LNG trade, it could grow to become a more generally accepted market precedent (in a broader context) by virtue of its use by significant LNG players in a significant sector of world LNG trade.
23. In broad terms, it is possible that both the EFET⁶ General Agreement Concerning the Delivery and Acceptance of Natural Gas (May 2007) and the AIPN⁷ Model Form Master Sale and Purchase Agreement (June 2012) (spot MSA) fall into this “selected specific” category. This is possibly because the sell/buy relationship in the European gas market and spot contracts (respectively) have more in common with each other than the sell/buy relationship in the current LNG medium to long term LNG SPA market. However, this is not a scientific or precise analogy - and the AIPN Model could also perhaps be considered a “generic” model, as noted below.

⁶ European Federation of Energy Traders (EFET).

⁷ The Association of International Petroleum Negotiators (AIPN).

24. Further, as also noted below (see “*Trends and Issues Approach*”), the model LNG voyage charter party (LNGVOY) developed by BIMCO⁸ and GIIGNL in 2016 also probably falls into this “selected specific” category.

(b).2. Generic Approach

25. Under this generic approach, the model LNG SPA is prepared without any specific context. This would likely require the use of generic provisions and language, and would also likely require (potentially significant) adaptation and supplemental language to address the specifics of each circumstance. Both the GIIGNL Master Ex-Ship LNG Sales Agreement (2011) and the Master FOB Sales Agreement (2011) and, possibly, the AIPN Model fall into this generic approach - however, it is clear that the AIPN Model deals with the specific circumstances relevant to a spot contract, and that it is less generic than the GIIGNL Master Ex-Ship and FOB Sales Agreements.

26. Each of these approaches would likely require the use of alternate and optional language, as used in the AIPN Model. The nature of such alternative and optional language would likely vary significantly, depending on which approach is adopted.

27. It also understood that ASCOPE⁹ is developing its own model LNG SPA that, among other things, permits resale of LNG to ASEAN countries. As the ASCOPE model LNG SPA has not yet been made publicly available, no assessment can be made at this stage as to what approach was taken in developing such model.

(c) “Dominant Contract” Approach

28. One issue faced when analysing medium and long term LNG SPAs is that they are not generally made publicly available. Not only does this hinder a thorough analysis of a broad selection of industry precedents, it also hinders the evolution and development of the contracts across the industry (as key players tend to use their own precedents from project to project). One solution would be to base a standard contract on the world’s most publicly available LNG SPAs - being the contracts signed by Cheniere in relation to its Sabine Pass and Corpus Christi liquefaction projects in the Gulf of Mexico. As they are publicly available, and have been entered into by a broad selection of key LNG buyers, including: BG (now Shell), KOGAS, Gas Natural, GAIL, Total, Centrica, EconGas, Pertamina, and Pavilion, for significant volumes worth US\$73 billion in aggregate (according to various press reports). These contracts are tailored to their specific context, but could form the basis of an industry precedent if coupled with the above “modular” and below “trends and issues” approaches. These contracts also happen to be relatively flexible, and have virtually no destination restrictions.

⁸ The Baltic and International Marine Council (BIMCO).

⁹ The ASEAN Council on Petroleum (ASCOPE).

(d) *“Trends and Issues” Approach*

29. A different approach would be to focus on current and emerging industry trends, identify common points of contention between sellers and buyers, and recommend standard provisions (rather than an entire LNG SPA) to address these issues. This approach is not without merit, and is used in other industry groups relevant to the LNG market. As noted above, one such example is the role taken by BIMCO in its development of many types of standard form shipping contracts - such as time charterparties, voyage charterparties (to name only two of many), as well as standard form clauses to address specific, relevant issues - such as “piracy”.
30. This, more limited, approach where selected model provisions (and not the entire LNG SPA) are provided would likely assist the parties in concluding transactions more readily, on generally accepted/market terms, and eliminate the risks associated with developing and negotiating such provisions anew in each contract. It may also represent the first steps in developing a complete model LNG SPA, or provide the basis for the alternate and optional language in such model LNG SPA.
31. One issue to be considered in relation to this approach is the nature and membership of the relevant industry group developing the model provisions. Where the members of a particular trade group or similar association are predominantly from one sector of the industry, its positions may not be readily accepted by the other sectors of the industry.

(e) *“By Popular Vote” Approach*

32. There, are of course, many different approaches that could be taken to developing a standardised LNG SPA or specific provisions thereof. However, for the purpose of this review, one final approach would be to poll relevant industry groups to determine the approach they would prefer to take. This need not be by “majority” vote, and could instead be guided by significant players or on a “groundswell” of views. Such an approach could be taken in relation to an entire standardised LNG SPA or certain provisions thereof - adopting any one of the above or other alternative approaches.

3. Suggested Focus for LNG SPA Standardisation

33. Based on responses to date on this Initial Review from various trade organisations, academic bodies, industry participants and consultants, including those participating at the Energy Charter workshop on 29 September 2017, there is a general consensus that an attempt to standardise a full LNG SPA is not feasible or warranted at this time. This is partly due to the complexities involved in doing so (as noted above) and the fact that several generic full LNG SPAs are currently in existence (for example, the GIIGNL Master Agreements) or potentially under development (for example, the proposed ASCOPE model LNG SPA).
34. Further, it is generally considered that a more beneficial use of resources at this stage would be to adopt the “trends and issues” approach and to consider certain key areas

for potential standardisation. This would potentially allow for the development of a full LNG SPA in the future, if and when considered appropriate. If this approach is followed, part of the exercise would be to determine which issues or clauses should be focused on for potential standardisation. The below list of current trends may be useful in that regard.

3.1 Current Trends

35. According to the GIIGNL Annual Report 2017, “...[i]n order to respond to market changes and cope with uncertainty of future supply and demand, LNG contracting strategies have grown in importance. In this respect, most buyers pay particular attention to flexibility - in terms of destination as well as off-take obligations - and price competitiveness.¹⁰”

36. As noted in 1.3(a) and (b) above, these and related issues were identified in the Tokyo Declaration and by the G7 Rome Energy Ministerial Meeting as important industry issues. Further, as noted in 1.3(c) above, a stated objective of the Memorandum of Cooperation between the European Council and the Ministry of Economy, Trade and Industry of Japan (METI) is “supporting and strengthening the cooperation between Participants to establish a liquid, flexible and transparent global LNG market”.

(a) *Destination Flexibility and Diversion of Cargoes*

37. The current “number 1” industry issue appears to be contract and destination flexibility, and related cargo diversion issues. Potentially relevant to these issues, there has been significant and recent developments in Japan and between Japan, Korea and China, including the following:

- (i) the creation of JERA - an alliance between Chubu and TEPCO that accounts for 43% of Japan’s LNG imports. JERA’s stated strategy is to lower the Japan LNG Cocktail price and to bring its long term offtake commitments down from 30 - 35 mtpa in 2014 to 15 mtpa in 2030.¹¹
- (ii) the review and report by the JFTC on LNG Trades, which focuses on the use of destination clauses, diversion clauses, and profit share mechanisms in LNG SPAs in relation to Japan’s competition rules.

The JFTC report may result in the renegotiation of LNG SPAs, and impact the renewal of LNG SPAs expiring in the near future and the negotiation of new LNG SPAs. In addition, the JFTC may trigger price review procedures or other dispute resolution mechanisms generally included in LNG SPAs. The Japanese Antimonopoly Law provides the JFTC with powers to impose administrative sanctions on the parties to anti-competitive agreements.¹²

¹⁰ GIIGNL Annual Report 2017, Editorial comment.

¹¹ Established Asian markets for LNG – Japan, Korea, Taiwan, FGE, The 16th Pacific Gas Insiders 2016.

¹² Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade Law, Law No. 54 of 1947.

- (iii) support by the Japanese Ministry of Economy, Trade and Industry of the gradual replacement of JCC-based pricing and the suggested establishment in Japan of an international LNG trading hub by the early 2020s.¹³
 - (iv) the signing of an MoU between JERA, KOGAS and CNOOC on 23 March 2017 concerning cooperation in the LNG business, including possible joint procurement, joint participation in upstream projects, and cooperation in relation to LNG shipping and storage.¹⁴
38. Further, it cannot be excluded that other antitrust enforcement agencies in the Asian region will follow the Japanese precedent and subject LNG SPAs in their jurisdictions to antitrust scrutiny as well.
39. In relation to Japan, it is estimated that 80% - 90% of contracts include destination restriction clauses, requiring the buyer to receive and regasify the cargo at the designated destination point.¹⁵
40. However this unfolds, it is clear that LNG buyers in Japan, Korea and China will negotiate in an attempt to remove destination restrictions in future and, possibly, current LNG SPAs.

(b) *Profit Sharing Mechanism*

41. The European Commission and now the JFTC have formulated positions or policies on profit sharing mechanisms in relation to destination flexibility and diversion of cargoes. These “profit sharing” issues are closely linked to destination flexibility and cargo diversion provisions under LNG SPAs, and will need to be considered in that context.

(c) *Buyer Volume Flexibility*

42. Certain LNG SPAs provide for buyer volume down-flex, typically by amounts limited to a certain percent of “annual contracted quantity”, and otherwise capped per contract year and/or for the base term of the contract. Often, any exercised volume down-flex is required to be made-good by the buyer prior to the end of the relevant contract year and/or the base term. From the seller’s perspective, long term contracts and revenues derived therefrom are fundamental to the viability of the LNG liquefaction project and (unless the market changes) the procuring all forms of project finance - hence the need to impose such limitations on volume down-flex.
43. Buyer volume flexibility is also closely linked with diversion and re-sale rights, such that increased flexibility in diversions and re-sale (where restrictions apply) may, as a commercial matter, increase buyer flexibility in relation to volume down-flex.

¹³ Japan plans to launch LNG trading hub by early 2020s, LNG World News, 2 May 2016 and Strategy for LNG market development. Creating flexible LNG market and developing an LNG trading hub in Japan, METI, May 2016, page 15.

¹⁴ JERA Website announcement.

¹⁵ LNG contracts in Japan, Credit Suisse, July 2016 and Japan said to review if LNG contracts barring resale violate law, Bloomberg, July 2016.

44. In other contexts, the need for LNG may be dependent on the season, or may need to be varied up or down intermittently depending on production from renewable energy sources. Similar issues may also arise in relation to “alternative” LNG demand, such as in relation to bulk-breaking for regional LNG supply, and other small scale applications, such as for transportation. This variability in demand could present challenges for sellers of LNG from a single liquefaction project. However, greater flexibility may be achievable where key LNG players aggregate supply and develop a “branded” LNG business - such that particular demand requirements could be managed on a portfolio basis. Accordingly, not all buyer volume flexibility requirements will necessarily require specific adjustments to LNG SPAs. Further, similar flexibility may be achievable on the demand side where buyers facing a potentially variable demand situation are able to manage that risk by being permitted to re-sell or trade volumes when required in order to balance their needs.

(c) *Price Review Clauses*

45. Some consider that parties to LNG SPAs are now less able to reach agreement on new LNG prices without protracted, high-value disputes than previously was the case, and that predictability of outcomes has declined. Part of the reason for this may be that legal provisions have proved inadequate to anticipate market changes and may allow for “gaming” by one or other parties. Whatever the reasons, price review mechanisms are often failing to serve the interests of both seller and buyer in allocating risk and ensuring a price that is within “market” for both parties, and reflective of the fundamental long-term bargain between the parties to an LNG SPA. For these reasons, sellers and buyers may benefit from a selection of standard form price review clauses that could form the basis of an agreement on this issue.

(d) *Trade Sanctions Provisions*

46. The increasing number of trade sanctions imposed by various governments and agencies throughout the world has led to some requesting a standard form trade sanctions provision. Given the range of sanctions and countries involved, a standard trade sanctions clause may not be feasible, but it is another area for potential consideration.

4. Summary of Discussion at the Energy Charter Workshop held in Brussels on 29 September 2017

47. The following is a select summary of the workshop discussions and views:

-) There was general consensus that this review should focus on certain provisions in medium and long term LNG SPAs, and not a full form LNG SPA, but that these provisions may also be relevant to certain “spot” contracts (MSAs).
-) It was generally considered that technical and operational matters should not be the focus of this potential standardisation exercise at this point in time.

- J It is important that a broad cross-section of LNG industry participants be involved in the process of working on the potential standardisation of LNG SPAs, without this, standard provisions are less likely to be generally accepted and adopted by the market.
- J The LNG market is maturing quickly, and is likely to experience further rapid development in the coming years. Referencing the pipeline gas market, it was considered that the LNG “spot” market may have a greater impact on the development of the LNG SPA market in the future than it has done in the past.
- J The views of those attending the workshop were generally aligned with the positions taken in this initial review.

5. Conclusions Regarding Initial Review

- 48. The development of a fully standardised LNG SPA for universal application is not currently feasible.
- 49. Certain key “trends and issues” could be addressed by standard provisions, rather than developing an entire model LNG SPA at this stage. These standard provisions could then form the basis of a model contract that is developed over time.

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