

# Recent Changes in the LNG Markets in Asia: Legal Perspective

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# Recent Market Changes

- US becoming an LNG exporter
  - New form of LNG SPAs
- Oversupply → Buyer's Market
- Over commitment by Buyers
  - need to find resale market new type of sellers
- New LNG Markets using new LNG pricing model
  - trigger price review → potential dispute

US LNG SPAs

# US LNG SPA

- New exporter
- Traditionally US does not have long term LNG contracts
- Based on US Gas Unbundled structure
- LNG Terminals are typically structured as a tolling project
- Different pricing structure - pass through structure using Henry Hub plus tolling fees, etc.

## Are US LNG SPAs attractive to Asian Offtakers?

Pros	Cons
Ability to diversify in terms of sellers, sources and indexes	Big impairment announced one after another due to write down on estimated gas reserves
No take or pay clause	Lack of expertise to manage feed gas arrangements and inability to rely on JV partner to source gas
No destination restriction	Arguably more exposure than traditional LNG SPA: <ul style="list-style-type: none"><li>- pass through structure seeks to pass on risks to offtakers</li><li>- bigger counterparty risks as fellow tollers interest do not align</li></ul>
Transparency of pricing structure	Small operator sensitive to oil price and unwilling to take active leader role
Securing capacity right (through tolling) plus access to U.S. spot market for gas sources means no fear of running out of gas	DOE problem (for Non-FTA countries)

Over Supply → Buyers'  
Market

# Shifting Bargaining Power

## Failure to Supply

- Buyer's market may put pressure to increase or remove Cap on damages that buyer can claim.

## Failure to Take

- Buyer's market plus new US contracts - decreased importance of Take or Pay model

## Commencement of Delivery

- Buyers' Market will put pressure on
  - > more certainty on start up date so that unexcused delay is a shortfall
  - > lower test for full commission (lower than 100%? - the higher the %, the easier for Seller)
  - > demand for liquidated damages for delay
  - > demand for sunset date to terminate the SPA
  - > demand Sellers to provide alternative supply source
  - > demand better terms for Early Cargo

## Flexibility

- Buyers seek increased flexibility include:
  - > right to cancel cargo (not just DQT) both before ADP and during the Contract Year
  - > right to divert (including cross border diversion)
  - > delayed timing to declare ship size for FOB contract
  - > put option to sell back to seller
  - > possible multiple port discharges
  - > expansion on definition of Buyer's Facilities in force majeure clause
  - > ability to swap cargoes to reduce shipping times and costs (e.g. US cargoes swap with European cargo coming to Asia) or to ease seasonal demand pressure

Over Commitment



# Buyers' Strategies to deal with Over Commitment

- Creation of resale market (FTC weigh in to probe resale restrictions)
- Traditional Buyers turn Sellers
- Many more cross border bi-directional MSPAs among end-users(i.e. Buyer/Seller plus FOB/DES)
- More MSPAs used as term contracts
- Traditional Buyers look for downstream investment opportunities
- positioning for LNG Trading

# New Pricing Options

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- Japanese buyers are aiming to achieve a portfolio of roughly 70% oil linked and 30% HH prices
- Portfolio mix helps to create “new market price” for Asia market
- Leads to possible argument of whether there are new LNG markets which parties must take into account under Price Review Clause in many existing long term SPAs



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# Contacts