

THE MYTH OF LIBERALIZATION: THE 2013 CHANGES IN THE RUSSIAN LNG EXPORT REGIME

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Synopsis: Many energy experts were quick to label the 2013 amendments to two Russian statutes governing exports of liquefied natural gas as liberalization. Although the LNG Export Amendments effectively ended Gazprom’s monopoly on LNG export, they failed to truly liberalize the LNG sector. This article analyzes the text of the amendments, as well as their legislative history and the applicable legal and policy framework. The article takes the position that the degree of the Russian government’s involvement and control, and not the mere number of actors allowed to participate in an oil and gas-related activity, should serve as the main criteria for determining the liberalization effect of a particular legislation. The article ultimately concludes that the LNG Export Amendments were enacted to serve the companies that the Russian government controls via ownership and/or personal connections. Therefore, the LNG Export Amendments failed to meet this liberalization criterion, leaving the Russian LNG export sector under heavy government control.

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I. INTRODUCTION

The events in Ukraine this spring reminded the world of Russia’s role as an energy superpower. With twelve European Union (E.U.) nations having more than half of their natural gas supply coming from Russia, the E.U. struggled to

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reach a coherent and unified decision on how to respond to the Kremlin's actions.¹ However, anxiety over the dependence was also felt on the other end of the pipeline. That is why many Russian media outlets rejoiced after Gazprom and the China National Petroleum Corporation (CNPC) reached a \$400 billion deal over thirty years for the supply of Russian natural gas.² One outlet went as far as to call the deal "Europe's nightmare."³

In light of these geopolitical events, the recent legislative amendments that effectively stripped Gazprom of the exclusive right to export liquefied natural gas (LNG Export Amendments)⁴ might not have been the optimal idea. Based on this fact alone, the effect of the LNG Export Amendments conceivably lessened the Russian government's control over the oil and gas sector, logically raising doubts about Russia's ability to muster a decisive response to future geopolitical challenges.

The fact that the word "liberalization" dominated the press coverage of the LNG Export Amendments did not encourage anyone to think otherwise.⁵ Most commentators in both the Russian- and English-speaking press⁶ focused on the effect of the LNG Export Amendments yet hardly anyone supported his or her

1. Indira A.R. Lakshmanan & Ewa Krukowska, *Russian Gas Reliance in Europe Skewing Sanctions Debate*, BLOOMBERG (May 27, 2014, 9:07 PM), <http://www.bloomberg.com/news/2014-05-26/a-europe-hooked-on-russian-gas-debates-imposing-sanctions.html>.

2. See generally Yuriy Baranchik, *Rossijsko-kitajskaya Pobeda i Predlozhenie Evrope* [*Russo-Chinese Victory and Offer to Europe*], KM.RU (May 22, 2014, 6:39 PM), <http://www.km.ru/economics/2014/05/22/gazprom/740651-rossijsko-kitajskaya-pobeda-i-predlozhenie-evrope>; Andrey Kolesnikov, *Kontrakt Mnogorazovogo Ispol'zovaniya* [*Reusable Contract*], KOMMERSANT.RU (May 22, 2014, 00:00 AM), <http://kommersant.ru/doc/2476209?isSearch=True>; *Rossija Prorubila "Gazovoe Okno" v Azii – Blagodarya, no ne Nazlo Evrope* [*Russia Cut Out a "Gas Window" to Asia but not in Spite of Europe*], RIA NOVOSTI (May 21, 2014, 7:17 PM), <http://ria.ru/economy/20140521/1008746496.html>.

3. "Koshmar dlya Evropy: "Kto Vyjraet ot Gazovoj Megadelki Rossii i Kitaya ["Nightmare for Europe": Who Will Win as a Result of Russia-China Gas Megadeal], RBK (May 21, 2014), <http://top.rbc.ru/economics/21/05/2014/925362.shtml>.

4. Poyasnitelnaya Zapiska k Proektu Federal'nogo Zakona O Vnesenii Izmenenij v Stat'i 13 i 24 Federal'nogo Zakona "Ob Osnovah Gosudarstvennogo Regulirovaniya Vneshtorgovoj Deyatel'nosti" i Stat'i 1 i 3 Federal'nogo Zakona "Ob Eksporte Gaza" [Explanatory Note to the Proposed Bill On Amending Articles 13 and 24 of the Federal Statute 'On the Foundations of State Regulation of Foreign Commerce' and Articles 1 and 3 of the Federal Statute 'On Exports of Natural Gas.']. Nov. 6, 2013, available at [http://asozd2.duma.gov.ru/main.nsf/\(SpravkaNew\)?OpenAgent&RN=378656-6&02](http://asozd2.duma.gov.ru/main.nsf/(SpravkaNew)?OpenAgent&RN=378656-6&02) [hereinafter 2013 Explanatory Note].

5. See, e.g., Sergej Vetchenin, *Dolgozhdannaya Liberalizatsiya Eksporta Rynka SPG ili . . . Banal'nyj Peredel Sobstvenosti?* [*Long-awaited Liberalization of the LNG Market or ... Trivial Redistribution of Property?*], ECHO MOSKVY (Oct. 31, 2013, 8:08 PM), <http://echo.msk.ru/blog/servet55/1188808-echo/>; *Putin Podpisal Zakon o Liberalizatsii Eksporta SPG* [*Putin Signed the LNG Export Liberalization Bill*], GAZETA.RU (Dec. 2, 2013, 10:51 AM), http://www.gazeta.ru/business/news/2013/12/02/n_5786037.shtml; Farit Ishmukhametov, *SPG Razreshili Vyezd* [*LNG Received Permission to Exit*], Kommersant.ru (Dec. 2, 2013, 11:38 AM), <http://www.kommersant.ru/doc/2358069>; *Putin Podpisal Zakon o Liberalizatsii Eksporta SPG* [*Putin Signed the LNG Export Liberalization Bill*], RBK (Dec. 2, 2013, 10:25 AM), <http://www.rbc.ru/rbcfreeneews/20131202102526.shtml>.

6. See, e.g., Anna Shiryayevskaya, *Russia Liberalized LNG Exports Move Closer After Putin Orders*, BLOOMBERG (Oct. 21, 2013, 1:49 PM), <http://www.bloomberg.com/news/2013-10-21/russia-liberalized-lng-exports-move-closer-after-putin-orders.html>; Kathrin Hille, *Russia Paves Way for Limited Liberalisation of LNG Exports*, FINANCIAL TIMES (Nov. 22, 2013, 11:38 PM), <http://www.ft.com/cms/s/0/810adb6e-539c-11e3-b425-00144feabdc0.html#axzz33n0pWrq6>; *Russia Passed LNG Export Liberalization Law*, NATURAL GAS EUROPE (Dec. 2, 2013), <http://www.naturalgaseurope.com/russia-lng-export-liberalization-law-backdated>.

opinion with an in-depth analysis.⁷ This should not be viewed as criticism – most of the coverage was a rapid reaction to the then-upcoming and now-enacted legislation. Several months and geopolitical events later, we are in a much better position to conduct such an analysis. Yet before we submerge into the world of Russian energy law and policy, we need to deconstruct the word “liberalization.” Merriam-Webster’s Dictionary defines the verb “liberalize” as “to make (something) less strict or more liberal.”⁸ In terms of economic policies, “[e]conomic liberalization encompasses the processes, including government policies, that promote free trade, deregulation, elimination of subsidies, price controls and rationing systems, and often, the downsizing or privatization of public services.”⁹ Even though these instances of liberalization vary in their qualitative approach, they have a common vector—decrease in government involvement and control. Therefore, for the purposes of this article, I use the degree of government involvement and control as the ultimate criteria for evaluating the LNG Export Amendments as a liberalization measure.

Some commentators referred to the LNG Export Amendments as “long coming,” suggesting *inter alia* that the need for the legislation had been recognized for some time.¹⁰ In her report entitled *Russian LNG: The Long Road to Export*, Tatiana Mitrova, the head of the Oil and Gas Department at the Energy Research Institute of the Russian Academy of Sciences, attributes a series of failed attempts to develop LNG projects over almost twenty-five years not only to the lack of appropriate technologies but also to deficiencies in the “oversight and regulatory systems.”¹¹ Thus, according to Mitrova, to capitalize on the still favorable but deteriorating market conditions, or as she puts it, “to make the train before it leaves the station,”¹² the Russian government did what “seemed unfeasible not so long ago”¹³—liberalize the LNG market. Mitrova clearly differentiates between the government’s goal—increasing LNG exports and the means of achieving this goal, which would be the introduction of new actors or liberalization.¹⁴ She acknowledges the limited liberalization effect of the LNG Export Amendments¹⁵ and points to the high level of government involvement throughout the legislative process.¹⁶ However, Mitrova fails to elaborate on what these factors mean for the very essence of the LNG Export Amendments or, in other words, whether they actually amounted to liberalization.

Congruently, the central question that this article aims to answer is: what do the LNG Export Amendments mean in terms of government control over the oil

7. One of the exceptions is Tatiana Mitrova’s report. See generally IFRI RUSSIA/NIS CENTER, TATIANA MITROVA, *RUSSIAN LNG: THE LONG ROAD TO EXPORT* (DEC. 2013).

8. *Liberalize* Definition, MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/liberalize> (last visited June 5, 2014).

9. UNITED NATIONS, REPORT ON THE WORLD SOCIAL SITUATION 2010: RETHINKING POVERTY 97 (2010), available at <http://www.un.org/esa/socdev/rwss/docs/2010/chapter6.pdf>.

10. See, e.g., Vetchenin, *supra* note 5.

11. Mitrova, *supra* note 7, at 5.

12. *Id.* at 6.

13. *Id.* at 3.

14. *Id.* at 6.

15. *Id.* at 4.

16. See generally *id.*

and gas sector? To answer this question I employ the so-called functional method. Usually utilized by comparative legal scholars, the functional method focuses not on rules and doctrinal structures but on their effects.¹⁷ The object of the study (in this case, the LNG Export Amendments) is evaluated in terms of this function in society.¹⁸ Thus, for example, laws are deemed comparable if they are functionally equivalent, meaning that functionality is used as the primary basis for evaluation.¹⁹

Even though this article does not compare laws from different national regimes, it analyzes a Russian statute for a predominately American audience. We would be hard pressed to find many Western legal scholars and practicing attorneys who find the Russian legal and regulatory regime straightforward and otherwise easy to understand. It is not always clear, especially in the Russian energy sector, where personalities end and policies begin. However, even the most convoluted legal structures make more sense when they are analyzed based on the function they perform in the legal and regulatory system. The importance of examining the practical effect of a law or regulation governing oil and gas sector activities in the Russian Federation is especially critical because many of such laws or regulations have targeted effects.

One of the pitfalls of the functional method is a temptation to cast a judgment regarding the value of the study object for a particular segment of society or for society as a whole. It is easy to put a negative label on a concept if it is structurally different and leads to fundamentally divergent results than its U.S. counterpart. Albeit it is quite possible that the tight government control over the oil and gas sector does not affect the lives of most Russian citizens in a positive way, it does not mean that the tight government control *automatically* has such an effect. This issue has been front and center in many studies and publications, but this article is not one of them.²⁰ Thus, this article seeks to avoid the trap of legal Orientalism, a concept that interprets the lack of a matching formal equivalent in a non-Western legal system as the inadequacy of the entire system.²¹

This article starts with an analysis of the text of the LNG Export Amendments, the legislative history, and the applicable legal framework. Following is a discussion of the practical effect of the LNG Export Amendments and their meaning in light of Russia's energy policy. Finally, this article concludes with an examination of the proposed new round of amendments.

II. UNPACKING THE LNG EXPORT AMENDMENTS

A. *The LNG Export Amendments as Enacted*

The LNG Export Amendments were enacted in the form of a federal statute entitled *On Amending Articles 13 and 24 of the Federal Statute 'On the*

17. Ralf Michaels, *The Functional Method of Comparative Law*, THE OXFORD HANDBOOK OF COMPARATIVE LAW 340 (Mathias Reimann & Beinhart Zimmermann eds., 2006).

18. *Id.*

19. *Id.*

20. *See, e.g.*, MARSHALL GOLDMAN, PETROSTATE: PUTIN, POWER, AND THE NEW RUSSIA (Oxford Univ. Press 2010); RUSSIA'S OIL AND NATURAL GAS: BONANZA OR CURSE? (Michael Ellman ed., Anthem Press 2006); RESOURCE CURSE AND POST-SOVIET EURASIA: OIL, GAS, AND MODERNIZATION (Vladimir Gelman & Otar Marganiya eds., Lexington Books 2010).

21. *See generally* Teemu Ruskola, *Legal Orientalism*, 101 MICH. L. REV. 179, 181 (2002).

Foundations of the State Regulation of Foreign Commerce and Articles 1 and 3 of the Federal Statute ‘On Exports of Natural Gas’.²² As the title suggests, the extent of the legislative changes was the modification of two federal statutes, the more general, *On the Foundations of the State Regulation of Foreign Commerce* (Foreign Commerce)²³ and the more specific *On Exports of Natural Gas* (Exports of Natural Gas).²⁴

The LNG Export Amendments affirmed the right of the “carryover” entity to export LNG whilst expanding it to two new categories of actors.²⁵ As noted above, prior to the enactment of the LNG Export Amendments, the exclusive right to export LNG belonged to open joint stock company, Gazprom.²⁶ Gazprom, whose legal entity form an American audience would recognize as public corporation or publically held corporation, and *functional* legal entity form as public-service corporation,²⁷ is not referred to in the amending and amended statutes by its name.²⁸ Rather, Exports of Natural Gas affirms “the owner of the unified gas supply system or its wholly owned subsidiary” as an entity having the right to export LNG.²⁹ Thus, such rights belong to Gazprom by virtue of being the owner of the Unified Gas Supply System of Russia, the world’s largest natural gas transmission network.³⁰

The second group of actors consists of entities whose subsoil use license complies with the following criteria.³¹ First, the license must cover deposits of “federal significance.”³² Second, the license must allow construction of a natural

22. Federal’nyj Zakon Rossijskoj Federatsii O Vnesenii Izmenenij v Stat’i 13 i 24 Federal’nogo Zakona “Ob Osnovah Gosudarstvennogo Regulirovaniya Vneshtorgovoj Deyatel’nosti” i Stat’i 1 i 3 Federal’nogo Zakona ‘Ob Eksporte Gaza’” [Federal Statute of the Russian Federation On Amending Articles 13 and 24 of the Federal Statute ‘On the Foundations of State Regulation of Foreign Commerce’ and Articles 1 and 3 of the Federal Statute ‘On Exports of Natural Gas.’], ROSSIISKAYA GAZETA, [ROS. GAZ.] Dec. 4, 2013 [hereinafter LNG Export Amendments].

23. Federal’nyj Zakon Rossijskoj Federatsii Ob Osnovah Gosudarstvennogo Regulirovaniya Vneshnetorgovoj Deyatel’nosti [Federal Statute of the Russian Federation on the Foundations of the State Regulation of Foreign Commerce], ROSSIISKAYA GAZETA, [ROS. GAZ.] Dec. 18, 2003 [hereinafter On Foreign Commerce].

24. Federal’nyj Zakon Rossijskoj Federatsii Ob Eksporte Gaza [Federal Statute of the Russian Federation On Exports of Natural Gas], ROSSIISKAYA GAZETA, [ROS. GAZ.] July 20, 2006 [hereinafter On Exports of Natural Gas].

25. LNG Export Amendments, *supra* note 22, art. 2.

26. 2013 Explanatory Note, *supra* note 4, at 1.

27. Black’s Law Dictionary defines public corporation as “[a] corporation whose shares are traded to and among the general public. It defines public-service corporation as “[a] corporation whose operations serve a need of the general public, such as public transportation, communications, gas, water, or electricity.” BLACK’S LAW DICTIONARY (9th ed. 2009).

28. LNG Export Amendments, *supra* note 22, art. 2; On Exports of Natural Gas, *supra* note 24, art. 3.

29. On Exports of Natural Gas, *supra* note 24, art. 3.

30. *About Gazprom*, GAZPROM, <http://www.gazprom.com/about/> (last visited June 5, 2014).

31. LNG Export Amendments, *supra* note 22, art. 2. “Use” or “*pol’zovanie*” is the word widely employed by the Federal Statute *On Subsoil Resources*, the principal statute governing oil and gas resource use in the Russian Federation. For example, it is one of two words that form the term “*nedropol’zovanie*” (literally meaning the use of subsoil deposits). Accordingly, a mineral license is known as a “subsoil use license.” Thus, license holders are known as “subsoil users” or “users of subsoil deposits” (*nedropol’zovateli* or *pol’zovateli nedr*, respectively). See generally Federal’nyi Zakon RF o Nedrah [Federal Statute of the Russian Federation on Subsoil Resources], ROSSIISKAYA GAZETA [ROS. GAZ.], Mar. 15, 1995 [hereinafter On Subsoil Resources].

32. LNG Export Amendments, *supra* note 22, art. 2.

gas liquefaction plant or transmission of the extracted natural gas to a natural gas liquefaction plant.³³ Third, and most importantly for the purposes of the ensuing discussion, such a license must have had this provision before January 1, 2013.³⁴

Entities that have the right to use offshore subsoil resources form the third group.³⁵ As explained below, this group is already small in number. Yet the legislators set forth additional qualifying criteria, creating the following two subgroups. The first subgroup consists of users of offshore³⁶ subsoil resources that produce LNG from the gas that they extract or the gas extracted pursuant to production sharing agreements (PSAs). However, the government of the Russian Federation must own more than 50% of such an entity's common stock and/or control more than 50% of the voting stock.³⁷ The second subgroup consists of subsidiaries of the members of the first subgroup that produce LNG from the gas extracted pursuant to PSAs. In addition, an entity from the first subgroup must own more than 50% of the subsidiary's voting stock. Pursuant to Article 3 of the LNG Export Amendments, all entities that have the right to export LNG are required disclose the information about the exports to "the federal agency responsible for the development and implementation of government policies and regulation of the energy sector."³⁸

In comparison to the changes in Exports of Natural Gas, the changes in Foreign Commerce were of secondary importance. The law, the principal goal of which is "provision of favorable conditions for foreign commerce and protection of economic and political interests of the Russian Federation,"³⁹ was amended to exclude licensing of LNG import-export activities from the purview of the agency responsible for the oversight of other import-export activities.⁴⁰ To be more specific, the LNG Export Amendments named "the federal agency responsible for the development and implementation of government policies in and regulation of the energy sector" as the licensing body.⁴¹ It is hardly a secret that this federal agency is the Ministry of Energy.⁴² However, as of the time of the writing of this article, the decree setting forth the jurisdiction and responsibilities of the ministry

33. *Id.*

34. *Id.*

35. *Id.*

36. For the purposes of the LNG Export Amendments, offshore areas include internal seas, territorial seas, the continental shelf of the Russian Federation, and the Black and Azov seas. LNG Export Amendments, *supra* note 22, art. 2.

37. *Id.*

38. LNG Export Amendments, *supra* note 22, art. 3.

39. On Foreign Commerce, *supra* note 23, art. 1.

40. *Id.* art. 13; LNG Export Amendments, *supra* note 22, art 1.

41. LNG Export Amendments, *supra* note 22, art 1. This is a common technique used by Russian legislators. Instead of specifying the implementing agency by its name, a law states its level (e.g., federal) and the general area of expertise (e.g., oversight of the energy sector). Because the structure and names of government agencies in the Russian Federation have been changing rather frequently, this technique prevents a great deal of confusion. On the other hand, locating the right agency is often a herculean task because a researcher needs to sift through a number of the so-called "sub-statutory acts," such as decrees, regulations, and orders, to find the answer.

42. Lyudmila Podobedova, *Vedomstvo Poluchit Novye Polnomochiya do Kontsa Goda [The Agency Will be Given New Powers Until the Year's End]*, IZVESTIYA (Oct. 21, 2013, 1:33 PM), <http://izvestia.ru/news/559192>.

has not been amended to include LNG export licensing.⁴³ Interestingly, a similar jurisdiction and responsibility setting decree in regards to the Ministry of Industry and Trade, which is the agency charged with issuing export licenses for other commodities, goods, and services, was amended in April 2014.⁴⁴ The amendment specifically excluded issuance of licenses for LNG import and export from the jurisdiction of the ministry.⁴⁵

B. LNG Export Amendments as Part of the Overarching Legal Framework

It would be an understatement to say that the requirements for the second and third group of actors allowed to export LNG are not straightforward. To untangle this yarn ball of conditionality, I turn to the legislative history of the LNG Export Amendments and the relevant legal framework, including the Constitution of the Russian Federation and the Federal Statutes *On Subsoil Resources* (Subsoil Resources), *On Production Sharing Agreements* (Sharing Agreements), and *On the Continental Shelf of the Russian Federation* (Continental Shelf).⁴⁶

A logical place to start would be the designation of deposits as “of federal significance.” According to Subsoil Resources, such designation is made for “the purposes of defense and security of the state.”⁴⁷ It is important to note that the Russian Constitution assigns the matters of ownership, management, and use of mineral resources to the joint jurisdiction of the Russian Federation and *subjekty federatsii*, its constituent entities (states).⁴⁸ The Constitution does not directly define the meaning of joint jurisdiction. Rather, it establishes the supremacy of federal law over any state law governing a matter that falls under the joint jurisdiction.⁴⁹ This effectively means that the federal government exercises ultimate control over activities in the oil and gas sector as it can preempt any legislative initiative with which it disagrees.

Whether a hydrocarbon deposit belongs to the category of federal significance is determined on its size and location. This group contains: (1) all deposits “containing” seventy and more million tons (Mt) of oil or fifty and more

43. Postanovlenie Pravitel'stva RF ot 28.05.2008 N. 400 (v. red. ot 17.02.2014) “O Ministerstve Energetiki Rossijskoj Federatsii” [Decree of the RF Government Dated as of May 28, 2008 (amended as of Feb. 17, 2014) “On the Ministry of Energy of the Russian Federation”] Ch. 2, available at <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=159308>.

44. See generally Postanovlenie Pravitel'stva RF ot 05.06.2008 N. 438 (v. red. ot 12.04.2014) “O Ministerstve Promyshlennosti i Torgovli Rossijskoj Federatsii” [Decree of the RF Government Dated as of May 5, 2008 (amended as of Apr. 12, 2014) “On the Ministry of Industry and Trade of the Russian Federation”] available at <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=161985>.

45. *Id.* art. 5.8.12.

46. See generally KONSTITUTSIIA ROSSISKOI FEDERATSII [KONST. RF] [CONSTITUTION] (RUSS.); On Subsoil Resources, *supra* note 31; Federal'nyi Zakon RF o Soglasheniyah o Razdele Produktzii [Federal Statute of the Russian Federation on Production Sharing Agreements], ROSSIISKAYA GAZETA [ROS. GAZ.] July 1, 1999 [hereinafter On Production Sharing Agreements]; Federal'nyi Zakon RF o Kontinental'nom Shel'fe Rossijskoj Federatsii [Federal Statute of the Russian Federation on the Continental Shelf of the Russian Federation], ROSSIISKAYA GAZETA [ROS. GAZ.] Nov. 8, 2006 [hereinafter On Continental Shelf].

47. On Subsoil Resources, *supra* note 31, art. 2.1.

48. KONSTITUTSIIA ROSSISKOI FEDERATSII [KONST. RF] [CONSTITUTION] ART. 72.C (RUSS.).

49. *Id.* art. 76.5.

billion cubic meters (bcm) of natural gas deemed of federal significance;⁵⁰ and (2) all deposits, regardless of their size, located on the territory of internal sea waters, territorial sea, and the continental shelf.⁵¹

Subsoil Resources gives the executive branch of the federal government broad discretion regarding the access to and management of deposits of federal significance. All users must be entities formed under the Laws of the Russian Federation.⁵² The Government of the Russian Federation (the RF Government)⁵³ may restrict access to licensing auctions to entities with foreign ownership.⁵⁴ Usually, the right to use an onshore subsoil deposit of federal significance is bestowed by the RF Government pursuant to the results of an auction.⁵⁵ However, the RF Government may forego licensing auctions with respect to any deposit of federal significance.⁵⁶ In this case, the right to use such deposits is bestowed by the RF Government on an *ad hoc* basis.⁵⁷

A license for the use of subsoil deposits serves as the document that formalizes the right to use subsoil deposits in the Russian Federation.⁵⁸ A branch of the Ministry of Natural Resources and the Environment, the Federal Subsoil Use Agency, commonly known as *Rosnedra*, acts on behalf of the government.⁵⁹ A license could be amended, provided both the licensee and the government agree.⁶⁰ As mentioned above, the second group consists of entities whose subsoil use license allowed construction of a natural gas liquefaction plant or transmission of the extracted natural gas to a natural gas liquefaction plant as of January 1, 2013. The introductory note accompanying the LNG Export Amendments bill states that temporal and other restrictions were a subject of discussion at several RF Government and Presidential Administration meetings.⁶¹ Moreover, the restrictions were discussed with the President of the Russian Federation.⁶²

50. On Subsoil Resources, *supra* note 31, art. 2.1. Paradoxically, the statute does not use the term “reserves” to set this threshold. Instead, it refers to the government mineral resource registry pursuant to which the “contents” of a deposit is determined. *Id.*

51. *Id.*

52. On Subsoil Resources, *supra* note 31, art. 9.

53. The Government of the Russian Federation or *Pravitel'stvo Rossijskoj Federatsii* resembles a mega-agency that consists of many sub-agencies. To avoid confusion, for the purposes of this article the term “RF Government” refers to this mega-agency. For the structure of the RF government, see generally *The Russian Government, Structure*, GOVERNMENT.RU, <http://government.ru/en/gov/> (last visited June 5, 2014).

54. On Subsoil Resources, *supra* note 31, art. 9.

55. *Id.* art. 10.1. The other circumstances include: (1) upon discovery of hydrocarbons; (2) once the exploration completed as part of the so-called combined license; (3) according to a production sharing agreement; and (4) as a result of the transfer of a license pursuant to Article 17 of On Subsoil Resources. *Id.*

56. *Id.* art. 10.1.

57. *Id.*

58. *Id.* art. 11. For more information about the types of subsoil licenses, see generally BETSY BAKER ET AL., ARCTIC OFFSHORE OIL & GAS GUIDELINES WHITE PAPER NO. 5: THE ARCTIC OFFSHORE OIL & GAS GUIDELINES IN GREENLAND & THE RUSSIAN FEDERATION at 51-56 (Feb. 2011), available at http://vls.vermontlaw.edu/Documents/IEE/20110215_IEEBakerWP5.pdf.

59. *Federalnoe Aгенство po Nedropol'zovaniy-Rosnedra, Ob Aгенstve* [*Federal Subsoil Use Agency-Rosnedra, About the Agency*], ROSNEDRA.GOV.RU, <http://www.rosnedra.gov.ru/article/135.html> (last visited June 5, 2014).

60. On Subsoil Resources, *supra* note 31, art. 12.

61. 2013 Explanatory Note, *supra* note 4, at 1.

62. *Id.*

According to the note, it was decided that not all otherwise qualified subsoil users would obtain the right to export automatically due to “among other things, concerns over the gas supply for domestic market.”⁶³

Pursuant to Article 71 of the Constitution, the federal government has jurisdiction over all offshore resources, including those located in the territorial seas, the exclusive economic zone, and the continental shelf of the Russian Federation.⁶⁴ Accordingly, the federal government exercises near absolute control over oil and gas exploration and extraction on the Russian continental shelf. Unlike deposits of federal significance not located on the continental shelf that *could* be exempt from licensing auctions, deposits located on the continental shelf *are* exempt from them.⁶⁵ The decision of *who* gets to explore, develop, and extract oil and gas on the Russian continental shelf, as well as *where* such activities are to take place, rests with the RF Government.⁶⁶ Thus, Subsoil Resources and Continental Shelf limit the scope of actors who have access to hydrocarbon resources on the Russian continental shelf and effectively to whom the RF Government can bestow the right to use the resources. To have the right to use offshore deposits, an entity must meet the following criteria: (1) it must be formed under the laws of the Russian Federation; (2) have no less than five years of exploration and development experience on the Russian continental shelf; and (3) the government of the Russian Federation must own more than 50% of such an entity’s common stock and/or control more than 50% of the voting stock.⁶⁷

These requirements are substantially similar to those of the LNG Export Amendments, with two notable exceptions. First, Subsoil Resources and Continental Shelf add a five-year exploration and development experience requirement.⁶⁸ Second, the LNG Export Amendments put all offshore deposits into the same group, contrary to their divergent status under Russian law.⁶⁹

Because the requirements reviewed in the two preceding paragraphs do not apply to deposits developed under PSAs, the Federal Statute *On Production Sharing Agreements* is at odds with the rest of the legal and regulatory framework, as it reduces the degree of governmental control once a PSA is signed.⁷⁰ In fact, a PSA sets forth the terms and conditions under which an oil or gas field is to be developed, whereas the license simply affirms the right to use the subsoil deposit.⁷¹ At the end of 2011, only three PSAs had been entered into⁷² and all

63. *Id.* at 1-2.

64. KONSTITUTSIYA ROSSIYSKOI FEDERATSII [KONST. RF] [CONSTITUTION] ART. 71 (RUSS.).

65. On Subsoil Resources, *supra* note 31, art.10.1; On Continental Shelf, *supra* note 46, art. 7.

66. On Subsoil Resources, *supra* note 31, art. 10.1; On Continental Shelf, *supra* note 46, art. 7.

67. On Subsoil Resources, *supra* note 31, art. 9.

68. LNG Export Amendments, *supra* note 22, art. 2; On Subsoil Resources, *supra* note 31, art. 10.1; On Continental Shelf, *supra* note 46, art. 7.

69. LNG Export Amendments, *supra* note 22, art. 2; On Subsoil Resources, *supra* note 31, art. 9; On Continental Shelf, *supra* note 46, art. 1.

70. On Production Sharing Agreements, *supra* note 46.

71. *Id.* art. 11.

72. *Minenergo Rossii: Itogi Realizatsii Deystvujuschih Proektov SRP in 2011 Svidetelstvuyt ob ih Effektivnosti i Znachitelnom Vklade v Razvitie Ekonomiki RF* [The Ministry of Energy of the Russian Federation the PSA Project Performance Results for 2011 Illustrate Their Effectiveness and Contribution to the Development of the Russian Economy], THE MINISTRY OF ENERGY OF THE RUSSIAN FEDERATION (Dec. 29, 2011), http://minenergo.gov.ru/press/min_news/10423.html.

three had been signed prior to the enactment of the statute.⁷³ Whilst remaining largely dormant, Sharing Agreements has been amended several times since it was enacted to reflect changes in the related legislation (last amended in July 2011).⁷⁴ The LNG Export Amendments restrict what appears to be the only scenario in which the Russian government does not exercise near absolute control by adding one significant requirement: only the entities in which the government owns more than 50% of the stock and subsidiaries, with such entity participation of more than 50%, received the right to export LNG.⁷⁵

C. The Practical Effect of the LNG Export Amendments

The attempt to decipher the meaning of the LNG Export Amendments made in the previous section leads to the following two important conclusions. First, the LNG Export Amendments expanded the right to export LNG in relation to the entities that the federal government directly controls by virtue of ownership interests in them. Second, the LNG Export Amendments also expanded such a right to the entities that the federal government can control indirectly because of the legal nature of the subsoil deposits at issue. Yet the examination of the LNG Export Amendments' legal text, their legislative history, and the relevant legal framework does not fully explain the elaborate bundle of requirements that the LNG Export Amendments created. This section examines the practical effect of the legislation by matching each category of actors created by the statute with the company that qualifies under it.

In 2013, Russia was the second-largest dry natural gas producer in the world.⁷⁶ As illustrated below in Table 1,⁷⁷ Gazprom dominated the upstream sector with 75% of the market share in 2012. Novatek, the second largest producer, captured a distant 8.5% of the market.

73. Mazkov Evgenij Yuirievich, *Pravovoe Regulirovanie Geologicheskogo Izucheniya i Dobychi Nefti i Gaza na Kontinental'nom Shel'fe Rossijskoj Federatsii* [Legal Regulation of Geological Exploration and Extraction of Oil and Gas in the Continental Shelf of the Russian Federation] at 66, (2008) (unpublished candidate of legal studies dissertation, Moscow State Law Academy) (on file with author).

74. Yet, there is little indication whether the statute will play more significant role in the future despite a relative consensus within the Russian legal academic community that PSAs should be employed more widely. *Id.* at 123-40.

75. LNG Export Amendments, *supra* note 22, art 3.

76. *Russia*, U.S. ENERGY INFO. ADMIN., <http://www.eia.gov/countries/cab.cfm?fips=RS> (last visited June 5, 2014) [hereinafter EIA RUSSIA].

77. *Id.*

Company	Production Bcf/d
Gazprom	47.1
Novatek	5.5
PSA operators	2.6
LUKoil	1.6
TNK-BP	1.3
Rosneft	1.2
Surgutneftegaz	1.2
ITERA	1.2
Others	1.6
Total	63.4

Table 1: Natural Gas Production in Russia in 2012.⁷⁸

In 2012, with 7,372 bcf, Russia was the world's largest dry gas exporter by a large margin.⁷⁹ Oil and gas exports play a critical role in the Russian economy, amounting to 52% of federal budget revenues and over 70% of total exports.⁸⁰ The vast majority of Russian gas reaches its foreign customers via pipelines.⁸¹

However, according to President Putin, Russia's share in global LNG exports amounts to "only 3.6%."⁸² Currently, the country's LNG exports come from its only LNG plant, which is part of the Sakhalin II project, better known in the West as the Sakhalin Energy LNG plant (Sakhalin LNG).⁸³ The project is operated by Sakhalin Energy Investment Company Ltd. (Sakhalin Energy) and is located in the country's Far East region.⁸⁴ Sakhalin LNG, the first PSA-based project in Russia, serves the South Asian market with Japan, South Korea, and China being the top customers.⁸⁵ In 2013, Sakhalin LNG produced 10.8 Mt, the equivalent of

78. *Id.* (Source: Eastern Bloc Energy).

79. *International Energy Statistics-Natural Gas*, U.S. ENERGY INFO. ADMIN., <http://www.eia.gov/cfapps/ipdbproject/IEDIndex3.cfm?tid=3&pid=26&aid=4> (last visited June 5, 2014).

80. EIA RUSSIA, *supra* note 76. This figure represents an increase in the Russian State's dependence on oil and gas revenues. For example, in 2010 its share was 63.5%. KEUN-WOOK PAIK, SINO-RUSSIAN OIL AND GAS COOPERATION: THE REALITY AND IMPLICATIONS at 21 (2012).

81. EIA RUSSIA, *supra* note 76.

82. Stenogramma: Zasedaniye Komissii po Voprosam Strategii Razvitiya TEK i Ekologicheskoy Bezopasnosti [Meeting Transcript of the Commission on the Strategic Development of the Energy Sector and Environmental Security], KREMLIN.RU (Feb. 13, 2013, 6:00 PM Moscow Region, Novo-Ogarevo), *available at* <http://news.kremlin.ru/news/17511/print> [hereinafter Commission Meeting Transcript].

83. *About Gazprom: LNG Projects*, GAZPROM, <http://www.gazprom.com/about/production/projects/lng/> (last visited June 5, 2014) [hereinafter GAZPROM LNG PROJECTS]; *About Gazprom: LNG Projects-Sakhalin II*, GAZPROM, <http://www.gazprom.com/about/production/projects/lng/sakhalin2/> (last visited June 5, 2014) [hereinafter GAZPROM SAKHALIN II].

84. GAZPROM SAKHALIN II, *supra* note 83.

85. EIA RUSSIA, *supra* note 76. For example, in 2012, Japan received 76%, South Korea 20%, China 3.5%, and Taiwan 0.6% of the LNG exported by Sakhalin LNG. *Id.*

14.9 billion cubic meters or 526.2 MMcf of natural gas.⁸⁶ Started in 1994 as a joint venture of Royal Dutch Shell, PLC, Mitsui and Co., Ltd., and Mitsubishi Corporation to develop the Piltun-Astokhskoye and the Lunskeye fields, the project underwent significant restructuring in 2006 when Gazprom joined it as a majority shareholder.⁸⁷ Currently, as Table 2 depicts, Sakhalin Energy's ownership structure is as follows:

Shareholder	Parent Company	Percentage of Ownership
Gazprom Sakhalin Holdings B.V.	Gazprom	50% + 1 share
Shell Sakhalin Holdings B.V.	Royal Dutch Shell, PLC.	27.50%
Mitsui Sakhalin Holdings B.V.	Mitsui and Co., Ltd.	12.50%
Diamond Gas Sakhalin B.V.	Mitsubishi Corporation	10%

Table 2: Ownership Structure of Sakhalin LNG.⁸⁸

Gazprom is in the process of discussing the expansion of the Sakhalin LNG with Royal Dutch Shell.⁸⁹ The expansion plans include adding an additional train to the existing two and connecting the plant to the Kirinskoye Block in Sakhalin III, which is currently in the development stage.⁹⁰ Gazprom does not appear to be satisfied with Sakhalin LNG and its expansion. The Company is currently working on two LNG export projects: Vladivostok LNG and Baltic LNG.⁹¹ According to Gazprom, the projects are to have the annual capacity of 15 and 10 Mt (731 and 487 MMcf of natural gas), respectively.⁹²

Sakhalin LNG meets the requirements of the provision of the LNG Export Amendments referring to subsidiaries of companies that have the right to use offshore resources as if the provision was specifically written for it. First, its parent, Gazprom, is one of the two entities that have the right to use mineral

86. *About the Company*, SAKHALINENERGY.COM, <http://www.sakhalinenergy.com/en/company/overview.wbp> (last visited June 5, 2014). The annual capacity of Sakhalin LNG is unclear. The EIA lists it at 788 MMcf, Gazprom at 9.6 tons, and Royal Dutch Shell at 9.6 tonnes. Assuming that Gazprom and Shell use the measurement of metric ton (despite the spelling), both companies list the capacity at 468 MMcf, which is lower than its reported output in 2013. EIA RUSSIA, *supra* note 76; GAZPROM LNG PROJECTS, *supra* note 83; *Securing LNG Supplies*, SHELL, <http://www.shell.com/global/aboutshell/major-projects-2/sakhalin/lng.html> (last visited June 5, 2014).

87. GAZPROM SAKHALIN II, *supra* note 83.

88. *Id.* (Source: Gazprom).

89. *Gazprom and Shell Look at Possible Expansion of Cooperation within Sakhalin II*, GAZPROM (May 23, 2014, 12:35 PM), <http://www.gazprom.com/press/news/2014/may/article191710/>.

90. EIA RUSSIA, *supra* note 76; *Kirinskoye Field*, GAZPROM, <http://www.gazprom.com/about/production/projects/deposits/sakhalin3/kirinskoye/> (last visited June 5, 2014).

91. GAZPROM LNG PROJECTS, *supra* note 83.

92. *Id.*

deposits located on the Russian continental shelf. The government owns 50.23% of its stock and it has at least five years of experience working on the Russian continental shelf.⁹³ Second, Sakhalin LNG is operating pursuant to a PSA and Gazprom owns more than half of the project. Thus, unsurprisingly, the note accompanying the LNG Export Amendments states, “the bill proposes to expand the right to export LNG to companies other than Gazprom and its subsidiary.”⁹⁴

The LNG Export Amendments cover Gazprom’s Vladivostok LNG by virtue of the company being the owner of the Unified Gas Supply System of the Russian Federation.⁹⁵ Should the Shtokman project in the Barents Sea ever get off the ground, Shtokman Development AG, the project operator, will be in a position to obtain an LNG export license, as Gazprom owns 75% of its stock.⁹⁶ It is premature to discuss the eligibility of Baltic LNG under the LNG Export Amendments, as the project is currently in the preliminary development phase.⁹⁷

The second entity that received the right to export LNG was Rosneft, the only other company allowed to use hydrocarbon deposits on the Russian continental shelf.⁹⁸ The company actively lobbied for the enactment of the LNG Export Amendments.⁹⁹ Some commentators believe that President Putin took on the idea during the formal meeting on the issues related to the energy sector that took place in February 2013.¹⁰⁰ In this meeting, Igor Sechin, the head of Rosneft, asked the President to consider expanding the right to export natural gas to companies that have access to hydrocarbon resources located on the Russian continental shelf:

Taking into account . . . also the fact that Article 23 of the statute “On Subsoil Resources” requiring comprehensive development of oil and gas deposits located on the continental shelf, we are asking to consider liberalizing gas exports. What is meant here is only liquefied gas. The timing of these decisions is of strategic importance as they need to be made in response to the opportunities presented by the global markets and the development of the global economy. Creating economic and

93. The government owns Gazprom’s stock through the following entities: the Federal Agency for State Property Management (38.37%), OAO Rosneftegaz (10.97%), and OAO Rosgazifikatsiya (0.89%). *Equity Capital Structure*, GAZPROM, <http://www.gazprom.com/investors/stock/structure/> (last visited June 5, 2014) [hereinafter GAZPROM CAPITAL STRUCTURE].

94. 2013 Explanatory Note, *supra* note 4, at 1. The practical implication of this provision of the LNG Export Amendments is that Sakhalin Energy does not have to go through OOO Gazprom Export, the export branch of the Russian natural gas giant. This may be attractive to potential Sakhalin II investors, as the joint venture has the right to export LNG directly. *Company’s Activity*, GAZPROMEXPORT.RU, <http://www.gazpromexport.ru/en/about/activity/> (last visited June 5, 2014).

95. *Vladivostok LNG Project*, GAZPROM, <http://www.gazprom.com/about/production/projects/lng/vladivostok-lng/> (last visited June 5, 2014).

96. *About the Company*, SHTOKMAN.RU, <http://www.shtokman.ru/en/about/> (last visited June 5, 2014). Interestingly, Gazprom no longer lists Shtokman among its LNG projects, yet the project description on Gazprom’s website discusses building of a LNG terminal. *Shtokman*, GAZPROM, <http://www.gazprom.com/about/production/projects/deposits/shp/> (last visited June 5, 2014).

97. *Baltic LNG*, GAZPROM, <http://www.gazprom.com/about/production/projects/lng/baltic-lng/> (last visited June 5, 2014).

98. ERNST & YOUNG, ARCTIC OIL AND GAS at 7, (2012). The Russian government owns 69.5% of Rosneft’s stock through OJSC Rosneftegaz, which is 100% state owned. British Petroleum owns 19.75% of Rosneft’s stock with the remaining 10.75% publically traded. *Rosneft at a Glance*, ROSNEFT, <http://www.rosneft.com/about/Glance/> (last visited June 5, 2014).

99. Yuriy Barsukov, Kirill Melnikov & Anna Solodovnikova, *Rosneft Perechitaet Novatek* [*Rosneft Will Override Novatek*], KOMMERSANT.RU (Nov. 20, 2013, 12:00 AM), <http://www.kommersant.ru/Doc/2347649>.

100. *Id.*

regulatory conditions for LNG exports from deposits located on the continental shelf is not only a question about the development of the natural gas industry; it is a question about the effectiveness and appropriateness of the continental shelf development. In the end, it is the question about the future of our energy industry and national economic development.¹⁰¹

Rosneft recently commenced work on the Dal'nevostochnyj SPG (Far Eastern LNG) project, with plans to start producing LNG in 2018.¹⁰²

As noted above, the January 1, 2013 cutoff date of the subsoil use license was placed predominately because of the concerns over the adequacy of domestic supply.¹⁰³ Even though this claim is rather puzzling, with state-controlled Gazprom occupying 75% of the downstream sector, it is not the most bewildering part of the statement. The note accompanying the LNG Export Amendments states that the government decided that not *all* qualified subsoil use license holders will receive the right to export LNG automatically.¹⁰⁴ Given that the RF Government introduced the LNG Export Amendment bill to the State Duma¹⁰⁵ on November 6, 2013, it was certainly known which entities had their licenses in order by January 1, 2013.¹⁰⁶ Yet "not *all* qualified entities" turned out to be just *one* company, Novatek.¹⁰⁷

Novatek is a 60% owner of OAO Yamal LNG, which holds the right to use the South-Tambeykoe Field, known as the Yamal LNG Project.¹⁰⁸ The remaining shareholders, Total and CNPC, each own 20% of the stock.¹⁰⁹ The LNG plant will consist of three trains with an annual capacity of 5.5 Mt each.¹¹⁰ The Yamal LNG project will serve both Asian and European customers.¹¹¹ As of July 2014, 93% of the future production had already been contracted.¹¹² The LNG Export Amendments certainly improved the project's outlook. Several lenders made financing contingent upon Novatek obtaining the right to export LNG.¹¹³

The discussion about the Yamal LNG project would not have been complete without mentioning Gennady Timchenko, Novatek's board member and the owner of 23.5% of the company's stock. Mr. Timchenko, whose fortune is estimated at

101. Commission Meeting Transcript, *supra* note 82.

102. *Gas Strategy*, ROSNEFT, <http://www.rosneft.com/Upstream/GasStrategy/> (last visited June 5, 2014).

103. 2013 Explanatory Note, *supra* note 4, at 1-2.

104. *Id.*

105. The State Duma is one of the two chambers of the Russian federal parliament. *Federalnoe Sobranie Rossiiskoi Federatsii* [*Federal Assembly of the Russian Federation*], GOV.RU, <http://www.gov.ru/main/page7.html> (last visited Sept. 17, 2014).

106. Letter from Dmitry Medvedev, the Prime Minister of the Russian Federation, to the State Duma, at 1 (Nov. 6, 2013) (Russ.), *available* at [http://asozd2.duma.gov.ru/main.nsf/\(SpravkaNew\)?OpenAgent&RN=378656-6&02](http://asozd2.duma.gov.ru/main.nsf/(SpravkaNew)?OpenAgent&RN=378656-6&02).

107. *See generally* Ishmukhametov, *supra* note 5.

108. *South-Tambeykoye Field (Yamal LNG Project)*, NOVATEK, <http://www.novatek.ru/en/business/yamal/southtambey/> (last visited June 5, 2014).

109. *Id.*

110. *Id.*

111. LARS PETTER LUNDEN & DANIEL FJAERTOF, SIGRA GROUP, GOVERNMENT SUPPORT TO UPSTREAM OIL & GAS IN RUSSIA: HOW SUBSIDIARIES INFLUENCE THE YAMAL LNG & PRIRAZLOMNOE PROJECTS 11 (July 2014) [hereinafter LUNDEN & FJAERTOF], *available* at http://www.iisd.org/gsi/sites/default/files/ffs_awc_russia_yamalprirazlomnoe_en.pdf.

112. *Id.* at 12.

113. EIA RUSSIA, *supra* note 76.

\$14.1 billion, is believed to have close personal and financial ties to President Putin.¹¹⁴ In fact, in the aftermath of the referendum held in Crimea in March of 2014, the United States Department of the Treasury designated Mr. Timchenko as the top member of the President's inner circle for the purposes of imposing economic sanctions on selected Russian companies and individuals.¹¹⁵ The agency explained its decision as follows:

Gennady Timchenko is one of the founders of Gunvor, one of the world's largest independent commodity trading companies involved in the oil and energy markets. Timchenko's activities in the energy sector have been directly linked to Putin. Putin has investments in Gunvor and may have access to Gunvor funds.¹¹⁶

Gunvor announced that Mr. Timchenko had sold his 43% share of the company a day before the sanctions were announced.¹¹⁷ Gunvor denied any connection to the Russian President as "fundamentally misinformed and outrageous," emphasizing that Vladimir Putin has never directly or indirectly been a beneficiary of Gunvor.¹¹⁸ It is unlikely that the link between the alleged President Putin-Gennady Timchenko connection and the provision tailored for Novatek will be established to a sufficient degree of certainty. However, the fact remains that the RF Government drafted and introduced the LNG Export Amendments bill pursuant to the President's directive following the official meeting on "implementing the project Yamal LNG" in September 2013.¹¹⁹

Based on the above analysis, it is reasonable to conclude that the LNG Export Amendments were crafted for the companies that the Russian government controls via ownership and/or personal connections. This explains why the State Duma rejected an amendment to the bill that would have brought another trusted private company, Lukoil, into the fold and also would have given other private companies the same right.¹²⁰

III. THE LNG EXPORT AMENDMENTS AS A REFLECTION OF THE RUSSIAN ENERGY POLICY

A. *Following the Leader*

In this section, I examine the LNG Export Amendments in light of Russian energy policy. I take the view that policy has been based on the vision of Russia's

114. *The World's Billionaires*, FORBES, <http://www.forbes.com/profile/gennady-timchenko/> (last visited Sept. 10, 2014).

115. Press Release, United States Department of the Treasury, Treasury Sanctions Russian Officials, Members Of The Russian Leadership's Inner Circle, and an Entity For Involvement In The Situation In Ukraine (Mar. 20, 2014), available at <http://www.treasury.gov/press-center/press-releases/Pages/j123331.aspx>.

116. *Id.*

117. Anna Dolgov, *Sanctioned Timchenko Sells Stake in Gunvor*, THE MOSCOW TIMES, (Mar. 24, 2014), <http://www.themoscowtimes.com/business/article/sanctioned-timchenko-sells-stake-in-gunvor/496611.html>.

118. *Id.*

119. *PerechenPoruchenij po Itogam Soveschaniya po Voprosu Realizatsii Proekta "Yamal SPG" [List of Assignments Following the Meeting on Implementation of the Yamal LNG project]*, KREMLIN.RU (Oct. 15, 2013) [hereinafter List of Assignments], <http://www.kremlin.ru/assignments/19437>.

120. Yuriy Barsukov, *Lukoil Natselisya na Eksport SPG [Lukoil Aims at LNG Exports]*, KOMMERSANT.RU (Nov. 20, 2013), <http://www.kommersant.ru/doc/2348143>.

current leader, President Putin, since he took over as Prime Minister in 1999.¹²¹ I argue that every perceived deviation from policy must be evaluated against the core principles of this vision in order to understand its meaning and future prospects.

In 1997, Vladimir Putin successfully defended his Candidate of Sciences¹²² in Economics dissertation entitled *Strategic Planning for the Regeneration of the Regional Mineral Resource Base during the Formation of Market Relations in St. Petersburg and Leningrad Region*.¹²³ According to its author, the main practical application of the dissertation was its ability to serve as the basis for designing policy recommendations for the creation of a strategic planning system.¹²⁴ Such a system could be utilized for achieving strategic goals for the development of the mineral resource sector.¹²⁵ The strategic planning that Mr. Putin referred to in his dissertation hardly resembled the Soviet-style five-year planning.¹²⁶ Rather, it is largely based on strategic planning theories and concepts applied in large Western companies and other organizations.¹²⁷

Some commentators consider Mr. Putin's dissertation a blueprint for Russia's economic policy.¹²⁸ It is hard to disagree with this assertion as Mr. Putin fleshed out some of its cornerstones—the utmost importance of mineral resources to economic development and systematic strategic planning in mineral resource development—in the dissertation.¹²⁹ However, it was not until 1999 that he applied the results of his work to Russia's economy as a whole.¹³⁰ In an article entitled *Mineral Resources in the Strategy for Development of the Russian Economy*, Putin—then a member of Boris Yeltsin's government—outlined the rationale, methodology, and recommendations that by and large have served as the foundation of Russia's policies until this day.¹³¹ The extractive sector is front and center in Mr. Putin's vision.¹³² It is the driving force of the Russian economy, the basis for the transition to a post-resource-based model, and the vehicle of Russia's

121. *Vladimir Putin-Biography*, KREMLIN.RU, <http://eng.putin.kremlin.ru/bio> (last visited June 5, 2014) [hereinafter BIOGRAPHY]. Vladimir Putin became Russia's President in 2000. *Id.*

122. The "Candidate of Sciences" degree awarded by Russian universities would fall between the master's and doctorate degrees awarded by Western universities.

123. See generally Putin Vladimir Vladimirovich, *Strategicheskoe Planirovanie Vosproizvodstva Mineralno-Syrevoj Bazy Regiona v Usloviyah Formirovaniya Rynochnyh Otnoshenij Sankt-Peterburg i Leningradskaya Oblast* [Strategic Planning for the Regeneration of the Regional Mineral Resource Base During the Formation of Market Relations in St. Petersburg and Leningrad Region] (1997) (unpublished candidate of economics dissertation) (on file with author) [hereinafter Putin's Dissertation].

124. *Id.* at 175.

125. *Id.*

126. Clifford G. Gaddy & Andrew C. Kuchins, *Putin's Plan*, 31 THE WASHINGTON QUARTERLY 2, 117-118, (2008) available at https://muse.jhu.edu/journals/washington_quarterly/v031/31.2gaddy.pdf.

127. *Id.*

128. GOLDMAN, *supra* note 20, at 97.

129. Harley Balzer, *Vladimir Putin's Academic Writings and Russian Natural Resource Policy*, 53 PROBLEMS OF POST-COMMUNISM 1, 48 (Jan. 2006).

130. See generally Vladimir V. Putin, *Mineralno-Syreveye Resursy v Strategii Razvitiya Rossijskoj Ekonomiki* [Mineral Resources in the Strategy for Development of the Russian Economy], ROSSIYA V OKRUZHAYUSHEM MIRE: 2000 (ANALYTICHESKIJ EZHEGODNIK) [RUSSIA IN THE SURROUNDING WORLD: 2000 (ANALYTICAL YEARBOOK)] 1, available at <http://www.rus-stat.ru/eng/index.php?vid=1&year=2000&id=51>.

131. *Id.*

132. *Id.*

integration into the global economy.¹³³ Finally, government intervention, through strategic planning, financial and organizational support, participation in large vertically integrated enterprises, and heavy government regulation and oversight are key to Russia's economic success.¹³⁴

Based on the number of doctrines, strategies, and programs, the Russian government is working hard to implement the so-called "Putin's Plan."¹³⁵ Documents such as *The Energy Security Strategy of the Russian Federation*, *The Energy Strategy of the Russian Federation for the Period until 2030*, *The Program for the Development of the Unified System of Extraction, Transportation of Gas and Gas Supply for Potential Gas Exports to Chinese Markets and Markets of Other Countries of the Asia-Pacific Region*, and *The Comprehensive Scheme for the Development of the Gas Sector for the Period until 2030* are among many other programmatic, policy, and planning documents regularly promulgated and revised by the executive and legislative branches of the Russian government.¹³⁶ Doctrines, strategies, and programs specifically covering the energy sector often overlap with doctrines, strategies, and programs that apply to a specific region that also has an energy component. Examples of such overlapping documents include, *The Foundations of the National Policy of the Russian Federation in the Arctic for the Period Ending in 2020 and Beyond* and *The State Program of the Russian Federation 'Socio-Economic Development of the Arctic Zone of the Russian Federation for the Period until 2020'*.¹³⁷ Whilst the effectiveness of programmatic, policy, and planning documents remains an open question, one would be hard pressed to accuse the Russian government of a lack of planning.

Perhaps nothing illustrates the implementation of "Putin's Plan" better than Gazprom's ownership structure throughout the years. Established as "Gazprom State Gas Concern" as a result of the Union of Soviet Socialist Republics (USSR)

133. Mr. Putin projected that for the first half of the twenty-first century Russia would remain a resource-based economy. *Id.* at 2.

134. *See generally id.*

135. Gaddy & Kuchins, *supra* note 126, at 117–119. Boris Gryzlov, the former head of the "United Russia" party, coined this phrase in 2007. *Id.* at 117. According to Gaddy and Kuchins, the phrase refers to the methodology of governance heavily focused on strategic planning. *Id.* at 117–119.

136. *Energeticheskaya Strategiya Rossii na Period do 2030 Goda* [*The Energy Strategy of Russia for the Period Ending in 2030*], MINISTRY OF ENERGY OF THE RUSSIAN FEDERATION, at 42 (Nov. 13, 2009), <http://minenergo.gov.ru/aboutminenergo/energostrategy/>; *Programma Sozdaniya v Vostochnoj Sibiri i na Dalnem Vostoke Edinoj Sistemy Dobychi, Transportirovki Gaza i Gazosnabzheniya s Uchetom Vozmozhnogo Eksporta Gaza na Rynki Kitaya i Drugih Stran Aziatsko-Tikhoookeanskogo Regiona* [*The Program for the Development of the Unified System of Extraction, Transportation of Gas and Gas Supply for Potential Gas Exports to Chinese Markets and Markets of Other Countries of the Asia-Pacific Region in Eastern Siberia and the Far East*], CONSULTANT.RU (Sept. 3, 2007), www.consultant.ru; Generalnyaya Shema Razvitiya Gazovoj Otrastli na Period do 2030 Goda [*The Comprehensive Scheme for the Development of the Gas Sector for the Period until 2030*] 2008 (on file with author).

137. *Osnovy Gosudarstvennoj Politiki Rossijskoj Federatsii v Arktike na Period do 2020 goda i Dal'nejshujuy Perspektivy* [*The Foundations of the National Policy of the Russian Federation in the Arctic for the Period Ending in 2020 and Beyond*], THE SECURITY COUNCIL OF THE RUSSIAN FEDERATION, (Sept. 18, 2008), available at <http://www.scrf.gov.ru/documents/98.html>; *Postanovlenie Pravitelstva Rossijskoj Federatsii ot 21 Aprelya 2014 "Ob Utverzhenii Gosudarstvennoj Programmy Rossijskoj Federatsii na Period do 2020 Goda"* [*Decree of the RF Government Dated as of April 21, 2014 "On Affirmation of the State Program of the Russian Federation 'Socio-Economic Development of the Arctic Zone of the Russian Federation for the Period until 2020'"*] ROSSIISKAYA GAZETA [ROS. GAZ.] (Apr. 24, 2014).

Gas Industry Ministry in 1989,¹³⁸ the company eventually saw the majority of its stock go to private shareholders (see Table 3). In the beginning of Vladimir Putin's second presidential term, the government reclaimed a fifty-plus percentage share in the company.¹³⁹

Year	Percentage of Shares Owned by the Russian Federation
2013	50.23
2012	50.002
2011	50.002
2010	50.002
2009	50.002
2008	50.002
2007	50.002
2006	50.002
2005	50.002
2004	38.37
2003	38.37
2002	38.37
2001	38.37
2000	38.37
1999	38.37
1998	38.37
1997	40.87
1996	40.87

Table 3: Percentage of Government Ownership of Gazprom's Stock.¹⁴⁰

Support to the oil and gas sector from the Russian government comes in many forms. Yet tax incentives for the development of new production capacity take a special form of such support. The Russian government frequently employs *ad hoc* distribution of oil and gas tax subsidies.¹⁴¹ Yamal LNG, for example, is a beneficiary of this practice.¹⁴² As a result, what appears to be a marginally profitable project with an internal rate of return (IRR) under 5% transforms into a financially solid enterprise with the IRR hovering around 12%.¹⁴³ And in some

138. *History, Chronicle, 1989-1995*, GAZPROM, <http://www.gazprom.com/about/history/chronicle/1989-1995/> (last visited June 5, 2014).

139. BIOGRAPHY, *supra* note 121.

140. GAZPROM CAPITAL STRUCTURE, *supra* note 93.

141. LUNDEN & FJAERTOFT, *supra* note 111, at 8.

142. *Id.* at 23.

143. *Id.*

cases, even when preferential tax treatment is not project- or company-specific on its face, it nonetheless affects specific companies and projects. For example, the recent amendments to the Russian Tax Code provide vast tax incentives for the development of hydrocarbon resources located on the continental shelf.¹⁴⁴ However, for the aforementioned reasons, only two companies—Gazprom and Rosneft—can take advantage of them.

As discussed in the previous section, the enactment of the LNG Export Amendments was in large part due to support from the RF Government and President Putin himself.¹⁴⁵ The President directed the Prime Minister to prepare the LNG Export Amendments bill, and the RF Government introduced it to the Duma six weeks later.¹⁴⁶ The introduced bill passed through both houses of the Russian Parliament without any substantive changes in twenty-one days.¹⁴⁷ It appears that the President was so confident about the prospects of the bill that he directed Prime Minister Dmitry Medvedev to give the Ministry of Energy jurisdiction over licensing of LNG exports six weeks before the bill was submitted to the State Duma.¹⁴⁸

Despite the limited scope of the LNG Export Amendments, some commentators, citing the newly introduced competition among the three companies, labeled their effect as liberalization.¹⁴⁹ Ultimately, the question about the degree of liberalization brought by the LNG Export Amendments rests on the very definition of this term. If a regime is liberalized merely because competition is introduced, then the LNG Export Amendments did in fact have a liberalization effect on the Russian natural gas sector. By the same token, breaking up a large industrial plant into three smaller ones during Soviet times would have been a sure sign of liberalization. However, if we are to emphasize the degree of government involvement and control as the principal elements of liberalization, then the effect of the LNG Export Amendments is not that clear. It might appear that the government's grip is at 100% when a government-controlled company is given an exclusive monopoly. However, the company may become too hard to control by becoming too large in size, unwieldy organization-wise, and extensive in terms of its geographic scale.¹⁵⁰ Creating a “club” of a few easily controlled actors and pitting their interests against one another might lead to a higher degree of control. The concept of *divide et impera* (divide and conquer) by which a dominant party

144. Federalny Zakon Rossijskoj Federatsii ot 30 Sentyabrya 2013 g. “O Vnesenii Izmenenij v Chasti Pervuyu i Vtoroyuy Kodeksa Rossijskoj Federatsii i Otdel'nye Zakonodatel'nye Akty Rossijskoj Federatsii v Svyazi s Osuschestvleniem Mer Nalogovogo i Tamozhenno-Tarifnogo Stimulirovaniya Deyeatel'nosti po Dobyche Uglevodorodnogo Syrjya na Kontinentalnom Shelfe Rossijskoj Federatsii” [Federal Statute of the Russian Federation Dated as of Sept. 30, 2013 “On Amending Parts One and Two of the Tax Code of the Russian Federation and Other Statutes of the Russian Federation Due to Implementation of Tax and Custom Tariff Stimulus Measures Directed at the Hydrocarbon Extraction Activities on the Continental Shelf of the Russian Federation”] ROSSIISKAYA GAZETA, [ROS. GAZ.], Oct. 4, 2013, arts. 2-3.

145. List of Assignments, *supra* note 119.

146. *Id.*

147. Dmitry Medvedev, *supra* note 106; LNG Export Amendments, *supra* note 22.

148. List of Assignments, *supra* note 119.

149. See, e.g., Mitrova, *supra* note 7, at 3, 5, 26.

150. *Russia's Wounded Giant*, ECONOMIST (Mar. 23, 2013), <http://www.economist.com/news/business/21573975-worlds-biggest-gas-producer-ailing-it-should-be-broken-up-russias-wounded-giant>.

gains more power by breaking up the dominated yet powerful single party into a few smaller units has been a successful strategy since the time of ancient Rome.¹⁵¹ Therefore, having more actors alone does not induce liberalization but rather creates its myth.

B. The Myth of the “Next Stage” of Liberalization

On May 26, 2014, a member of the State Duma, Valerij Yazev, introduced a bill amending Article 3 of *On Exports of Natural Gas*.¹⁵² The amendment would move the cutoff date of the subsoil use license from January 1, 2013 to July 1, 2014.¹⁵³ According to the bill’s sponsor, “the changes in natural gas markets and the territories through which natural gas is transmitted requires optimization of the number of entities allowed to export Russian natural gas”¹⁵⁴ Mr. Yazev also cited the need for greater flexibility in light of potential “political and economic restrictions” and “increasing competition” among top LNG exporters as additional reasons for enabling more companies to export LNG.¹⁵⁵

To illustrate his rationale for proposing the amendment, Mr. Yazev referred to the lack of political stability in Ukraine and potential interruptions of natural gas deliveries to Europe.¹⁵⁶ He also added the E.U. Third Package, the opposition to the South Stream project, and the shift of European customers to LNG as factors negatively impacting the economics of Russian gas exports to Europe.¹⁵⁷ Mr. Yazev emphasized the importance of government support, including a favorable regulatory regime as a competitive advantage of Russian exporters over their Middle Eastern, Asia-Pacific, and North American competitors.¹⁵⁸

The bill’s sponsor described the proposed extension of the temporal restriction as “a device for ‘soft’ tuning of the Russian export potential to the market conditions and political situation.”¹⁵⁹ In fact, Mr. Yazev labeled the bill “the next stage of LNG liberalization.”¹⁶⁰ Despite the eloquent description of the amendment, elaborate rationale for its adoption, and ambitious designation of its

151. See, e.g., FLAVIUS JOSEPHUS, THE WARS OF THE JEWS, 159-167 (WILLIAM WHISTON ET AL., EDs.), available at <http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.01.0148%3Abook%3D1%3Asection%3D159>.

152. Poyasnitelnaya Zapiska k Proektu Federal'nogo Zakona “O Vnesenii Izmenenij v Statju 3 Federal'nogo Zakona ‘Ob Eksporte Gaza’” [Explanatory Note to the Proposed Bill Amending Article 3 of the Federal Statute ‘On Exports of Natural Gas.’] May 26, 2013, available at <http://asozd2.duma.gov.ru/main.nsf/%28SpravkaNew%29?OpenAgent&RN=531218-6&02> [hereinafter 2014 Explanatory Note].

153. Proekt Federal'nogo Zakona “O Vnesenii Izmenenij v Statju 3 Federal'nogo Zakona ‘Ob Eksporte Gaza’” [Proposed Bill Amending Article 3 of the Federal Statute ‘On Exports of Natural Gas.’] May 26, 2013, art 1, available at <http://asozd2.duma.gov.ru/main.nsf/%28SpravkaNew%29?OpenAgent&RN=531218-6&02>.

154. 2014 Explanatory Note, *supra* note 152, at 2.

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. Timofei Dzyadko, “Pechoru SPG” Dopustyat k Eksporty [“Pechora LNG” Will Be Allowed to Export], RBK (May 27, 2014, 12:20 AM), <http://rbcdaily.ru/industry/562949991579130>.

regulatory impact, the real reason behind the amendment appears to be along the same lines as the LNG Export Amendments.

On May 23, 2014, Rosneft and ALLTEK entered a framework agreement for the purchase of a majority share in the Pechora LNG project.¹⁶¹ As a result of the deal, all ongoing LNG projects in Russia are currently controlled by state companies or investors who are close to the Russian leadership.¹⁶² In anticipation of the deal, Rosnedra amended ALLTEK's license to cover LNG-related activities.¹⁶³ Therefore, it is premature to talk about the next stage of LNG exports liberalization in Russia, as the "next stage" does not qualify as such and the current stage is yet to commence.

IV. CONCLUSION

In November 2011, I attended a luncheon lecture with a highly ranked Russian diplomat in Montreal. My expectations were rather low, as speakers at such events rarely offer anything other than a regurgitation of the official talking points. To my delight, the diplomat produced an intriguing, informative, and engaging lecture. He even managed to include a few jokes and anecdotes from his past as a Soviet intelligence officer. However, the most memorable part of the lecture was a statement about the social, political, and economic future of Russia, the full meaning of which did not sink in with me for some time. Turning to the topic of the Russian presidential elections, the diplomat offered his outlook: "The next President will be Putin. I wanted Medvedev because I think it is better to have someone who is younger, but it is ok. So tell your clients that if they want to do business in Russia, they will have to go through him. He is going to be there for a long time."

What I believe he meant was not necessarily Vladimir Putin himself but the model of governance that he had envisaged and implemented. Of course, revenue maximization and economic efficiency are important for the Russian government but not at the expense of losing control over strategically vital sectors. Therefore, any changes in the Russian oil and gas legal regime that bring quantitative diversity without quantitatively lowering the level of government control will not represent liberalization but rather its myth.

161. Press Release, Pechora SPG [Pechora LNG], Gruppy ALLTEK i OAO "NK 'Rosneft'" Podpisali Ramochnoe Soglashenie o Sotrudnichestve v Otnoshenii Proekta "Pechora SPG" [ALLTEK Group and OAO National Company "Rosneft" Signed a Framework Cooperation Agreement Regarding the Pechora LNG Project (May 23, 2014), available at <http://www.pechoralng.com/massmedia/news/264-2014-05-23.html>.

162. Yuriy Barsukov et al., Igor Sechin Vyshel k Barentsevomu Moriy [Igor Sechin Reached the Barents Sea], KOMMERSANT.RU (May 23, 2014, 12:00 AM), <http://www.kommersant.ru/doc/2476899>.

163. *Id.*