

EXPORT OF OIL AND GAS FROM CASPIAN REGION: END-USERS AND TRANSITERS LEGAL ASPECTS

24 April 2018

BM Morrison Partners

Caspian Basin Hydrocarbons

□ Crude Oil

- 48 billion barrels (US EIA estimates, proved and probable)
- 2.9 million barrels/day, 2017 production, excludes all of Iran's and most of Russia's production

□ Natural Gas

- 8 trillion m³ (US EIA estimates, proved and probable)
- 67.3 billion m³/year, 2016 production, excludes all of Iran's and most of Russia's production

Caspian Basin Hydrocarbons

- Percentage of World Total, Proved Reserves
 - Crude oil
 - <3 per cent
 - Natural gas
 - >4 per cent
- Percentage of World Total, Production
 - Crude oil
 - 2.98 per cent, excludes all of Iran's and most of Russia's production
 - Natural gas
 - 1.89 per cent, excludes all or Iran's and most of Russia's production

Caspian Sea Importance to Oil and Gas

- Unique Basin
 - Largest inland water body
 - Accumulates estimated 40 per cent of world inland waters
 - Sea or lake
- Abscon as Cradle of Oil Production
 - Early in history, oil and gas discharge to surface
 - Baku – capital of world oil production at turn of 20th century

Caspian Sea Importance to Oil and Gas

- Unique Oil and Gas Reservoir
 - Importance rising over time
 - rise of supply
 - proximity to producing countries
 - proximity to consuming regions
 - political considerations
- Mix of unique issues/considerations
 - Legal (five littoral states, unresolved status of water surface)
 - Economic (wealth of recoverable reserves)
 - Political (non-OPEC)

Caspian Oil and Gas Infrastructure

- Production (Processing, Local Consumption)
- Oil and Gas Pipelines
- Marine Oil Tankers (Land-Locked, <30,000 Tonne DWT, Russian Canals)
- Ports and Coastal Terminals (Transshipment Facilities)
- Railroad Coverage
- Ferries
- Availability of Insurance (Protection and Indemnity Insurance of International Group of P&I Clubs Member), Independent Inspections

Legal Considerations

- Status
 - Flagging
 - Local or foreign registration for commercial shipping
 - Are there international waters – is title transfer in international waters possible
 - Documents accompanying cargo (marine bill of lading or waybills)
 - Applicability of IMO practices and standards
 - Third party liability regime (do international conventions apply)
 - Protection of environment

Existing Agreements

□ Multilateral

- Agreement of Friendship of 1921 between Persia and RSFSR
- Agreement on Trade and Shipping of 1940 between Iran and USSR
- Framework Convention for Protection of Marine Environment of 4 November 2003 and Protocol Concerning Regional Preparedness, Response and Co-operation in Combating Oil Pollution Incidents of 12 August 2011
- Tehran Declaration of 16 October 2007 – reconfirms restriction on non-littoral state flags

Existing Agreements

- Multilateral (continued):
 - Baku Declaration of 18 November 2010 – agreement to agree to limit national sea sectors by 24-25 nautical miles
 - Agreement on Cooperation to Prevent and Eliminate Emergencies at Caspian Sea of 29 September 2014
 - TRACECA
- Bilateral:
 - Seabed delimitation agreements between Azerbaijan and Kazakhstan and Russia and between Kazakhstan and Russia
 - Free trade agreements

Exports

- ≈ 82 per cent of produced crude oil and ≈ 33 per cent of produced natural gas exported, most outside CIS
- Percentage is higher if values of sales (exports) are considered
- Existing infrastructure facilitates crude exports
- Most sales to end-users outside region
- Can transitters (transporters) become end-users (resellers)

Crude Oil Sale Terms

- Cross-border and international
- Standard terms by oil majors (BP Oil, Shell)
- Incoterms – no particular preference (buy FOB, sell CIF?)
- Governing law – English (England and Wales), Dutch, German
- Common law (English) or civil law (Swiss)?
- UN CISG 1980 excluded

Crude Oil Sale Terms

- Dispute resolution – arbitration – LCIA (UNCITRAL Rules also considered)
- Arbitration in civil law country (Switzerland, Sweden?)
- English courts
- Court of US excluded?

Case Study

- Crude oil producer from CIS
- Purchaser from Azerbaijan
- Export duty free sale
 - applicability of free trade agreement
 - rules of origin applicable to free trade agreement differ from those most recent
 - approved by agreement of 20 November 2009 among Governments of CIS – ownership in goods must belong to resident of contracting state

Case Study

- Indemnity by purchaser in case of assessment of export duty
- Enforcement

THANK YOU

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