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RUSSIA'S NEW LAND LEGISLATION

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Executive Summary

During the past two years, Russia has adopted two significant pieces of land legislation. In the fall of 2001, the long-awaited Land Code was finally approved by both chambers and signed into law. In mid-2002, a law on the turnover of agricultural land was approved and signed by President Putin. These legislative acts were much anticipated and were expected to expose the rural sector to true transformative processes by placing land relations on a market basis. In the aftermath of the adoption of these long-awaited laws, the critical question is: will these new laws unleash the "miracle of the market"? The answer, at least in the opinion of this paper is no. There is very little "free market" economics in these laws, and very much state regulation. The purpose of this paper is to present a short history of each piece of legislation, and then analyze some of the most salient points about each.

Overall, the study concludes that the two pieces of legislation represent conservative approaches to land reform. Although the principles and rights that each law entails were fought over for many years, the results are disappointing if one expected market economics to be the guiding principle. The Land Code is a bland document which fails to break new ground in any significant way. The law on the turnover of agricultural land is even worse because it is a conceptually flawed document. It stultifies market forces by making local governments the intermediary. The obligatory involvement of local governments brings the inherent inefficiencies of bureaucracies and the complexities of their processes, a cumbersome sales procedure, and exposes the entire process to abuse and corruption.

Introduction

During the past two years, Russia has adopted two significant pieces of land legislation. In the fall of 2001, the long-awaited Land Code was finally approved by both chambers and signed into law. In mid-2002, a law on the turnover of agricultural land was approved and signed by President Putin. These legislative acts were much anticipated and were expected to expose the rural sector to true transformative processes by placing land relations on a market basis. In the aftermath of the adoption of these long-awaited laws, the critical question is: will these new laws unleash the "miracle of the market"?

The answer, at least in the opinion of this paper, is no. There is very little "free market" economics in these laws, and very much state regulation. As such, both laws represent a conservative approach to Russia's land question. The nature of Russian land reform, relative to the reform strategies it had to choose from, means that Russia will remain among the most conservative states compared to the experiences of other post-Soviet states. The purpose of this article is to present a short history of each piece of legislation, and then analyze some of the most salient points about each.

The Land Code

The Land Code was one of the most contentious issues in executive-legislative relations during the 1990s. The central issues of disagreement which delayed passage of a post-Soviet Land Code were over the rights of buying and selling land, in particular agricultural land, and whether once purchased, if agricultural land could be converted into urban-use land. Prolonged disagreement meant that at the end of the 1990s Russia was without a new Land Code, and the 1991 version (which allowed leasing and ownership but not land sales) remained in effect.

During 1994-1998, debates on a new Land Code occurred in 14 plenary sessions of the State Duma. On three occasions, a Duma-sponsored version was passed, only to be rejected either by the Federation Council or the President (Wegren and Belen'kiy, 2002, chap. 4). Owing to the lack of a post-Soviet Land Code, land ownership was regulated by the 1993 Constitution (Article 27) and 1994 Civil Code (Articles 260 and 261), the latter explicitly permitted the ownership of land (Lerman and Brooks,

1996, pp. 48-58). In addition, Presidential decrees issued in October 1993 and March 1996 regulated land transactions and the right to buy and sell agricultural land (though with restrictions).

In July 1998, a Presidential version of the Land Code was submitted to the Duma. This version was discussed, and amendments debated, for more than two years. Finally, a compromise was reached in which it was agreed that major elements of the 1998 presidential draft would be accepted if purchases and uses of agricultural land would be treated separately in a different law. The exclusion of the sale of agricultural land was an important breakthrough which allowed the new version to move forward. In exchange for this exclusion, the government indicated it would submit a separate bill which would govern agricultural land sales, following the passage of the Land Code.

In early 2001, an entirely new version of the Land Code, which excluded the sale of agricultural land, was drafted by the Putin government (*Krest'yanskiye vedomosti*, nos. 3-4, 2001, p. 2).¹ In April 2001, the new version of the Land Code was signed by Prime Minister Kasyanov and submitted to the Duma, passing in its first reading in June 2001 by a vote of 251-22. In July 2001, the draft Land Code passed its second reading by a vote of 253-153 (*Sel'skaya zhizn'*, July 17, 2001, p. 1). This vote essentially defined what the Code would contain since parliamentary rules allow only editorial changes to be made in the third reading. On September 28, 2001, the Duma passed the third reading of the Land Code by a vote of 257-130 (*Krest'yanskaya Rossiya*, no. 40, 2001, p. 2).

On October 10, 2001, the Federation Council approved the draft Code by a vote of 103-29, and forwarded the draft to President Putin for his signature. Finally, on October 25, 2001, President Vladimir Putin signed the Land Code into law, thus ending eight years of controversy ("*O vvedenii v deystviye Zemel'nogo kodeksa Rossiyskoy Federatsii*," 2001, pp. 9236-9241). Russia finally had a legal document which regulates the buying and selling of non-agricultural land.²

¹ The Putin government was actually working on more than one front, indicated by the fact that in March 2001, Chapter 17 of the Civil Code was amended (by a vote in the Duma) allowing the buying and selling of non-agricultural land. *RFE/RL Political Weekly*, vol. 1, no. 10, March 26, 2001.

² Which is not to say it is without criticism. The new Land Code has been criticized as not well conceptualized, written in haste by inexperienced authors, and contradictory or confusing in terminology and what it covers. Moreover, Article 2, point 1, of the Land Code states that future land relations may be governed by Presidential decrees, as long as they do not contradict the Land Code. Likewise, points 3 and 4 of Article 2 allow regional executive organs and organs of local government to issue legal acts which support existing land law.

For all its controversy, the new Land Code is hardly a revolutionary document, nor is it particularly remarkable (hereafter referred to as "Code") ("*Zemel'nyy kodeks Rossiyskoy Federatsii*," 2001, pp. 9175-9236). Once the issue of agricultural land sales was removed, one might even say the document is mundane. Much of what the Code regulates has been previously legislated or existed in reality. The new Code is a long document, spanning 18 chapters and 103 articles.³ It would be impossible, and tedious, to summarize the entire document, so the purpose here is to focus on a few important issues in the new Code. There are several subjects in particular worth discussing.

Land Privatization and Ownership

As indicated above, the right of private land ownership was codified in the 1993 Constitution. Article 2 of the Code states that it acts in accordance with the Constitution. Chapter 3 of the Code regulates land ownership and stipulates that land may be privately owned by Russian citizens and businesses. Article 15, point 2, indicates that state and municipal land may also be converted to privately owned land, providing it is not land that is prohibited from private ownership by Federal law and the Code (such as national parks, cultural monuments, military facilities, state security facilities, police facilities, atomic energy plants, state forestry lands, etc).

What is notable are two articles that in effect allow a degree of "re-privatization." Article 20, point 5, and Article 21, point 3, allow citizens who have use rights for a land plot with either unlimited duration (*postoyannoe pol'zovaniye*) or lifetime use with rights of inheritance (*pozhitzennoye nasleduyemoye vladeniye*), to acquire that land plot in ownership. Each person is allowed a one time opportunity to

³ The chapters and corresponding articles are as follows: Chapter 1: General Conditions, articles 1-11; Chapter 2: Land Protection, articles 12-14; Chapter 3: Ownership of Land, articles 15-19; Chapter 4: Unlimited Use, Use with Inheritance Rights, Limited Use, Lease Land, and Free, Limited Use, articles 20-24; Chapter 5: Origin of Land Rights, articles 25-39; Chapter 6: Rights and Responsibilities of Land Owners, Land Users, Land Lessors and Leasees, articles 40-43; Chapter 7: Revocations and Limitations on Land Rights, articles 44-56; Chapter 8: Compensation of Losses of Agricultural Production and Forestry upon Withdrawal of Land for State and Municipal Needs, articles 57-58; Chapter 9: Defense of Rights and Adjudication of Land Disagreements, articles 59-64; Chapter 10: Payment for Land and Land Value, articles 65-66; Chapter 11: Monitoring of Land, Land Tenure, and State Land Cadastre, articles 67-70; Chapter 12: Control over the Observation of Land Legislation, Protection and Use of Land, articles 71-73; Chapter 13: Responsibility for Violation of Land Protection and Land Use, articles 74-76; Chapter 14: Land for Agricultural Purposes, articles 77-82; Chapter 15: Settlement Land, articles 83-86; Chapter 16: Industrial, Energy, Transportation, Communication, Radio, Television, and Information, Land for Satellite Transmission, Defense Land, Security Land, and Other Special Purposes, articles 87-93; Chapter 17: Territories and Objects of Land with Special Protection, articles 94-100; Chapter 18: Forestry, Waterways, and Reserve Land, articles 101-103.

convert such land plots to their ownership free of charge (except for a document preparation fee) ("Zemel'nyy kodeks Rossiyskoy Federatsii," 2001, p. 9185). Unlike previous land norms, the size of the plot to be converted to private property is not limited (*Sel'skaya zhizn'*, April 30, 2002, p. 3).

Moreover, the time period during which land plots can be converted to private ownership is not limited for citizens (*Sel'skaya zhizn'*, May 14, 2002, p. 3).⁴ According to one legal analyst, a person who has two land plots, one with unlimited use and the other with lifetime use with rights of inheritance, may privatize both of the plots free of charge because they are considered different types of land plots (*Sel'skaya zhizn'*, April 30, 2002, p. 3). This issue is not entirely clear, as a decree by Moscow Mayor Luzhkov in May 2002 prohibits the privatization of more than one land plot.

The intent of these changes is to move to a simplified land relations system, whereby private individuals, private enterprises and companies should lease or own land, while state organs and organizations are granted use rights with unlimited duration (bessrochnoye pol'zovaniye). Citizens and private enterprises and companies will no longer be assigned use rights to land plots with unlimited duration (*Sel'skaya zhizn'*, May 14, 2002, p. 3). This is seen, for example, by Article 20, point 2, which says that municipal and state enterprises may use state and municipal land with unlimited duration, as can organs of state power and local governments, but individuals (citizens) can not. Point 3 of the same article restricts the rights of unlimited use for state and municipal land which was assigned to individuals and private enterprises prior to the introduction of the new Code.

Foreign Land Ownership and Use

In addition to Chapter 3, other articles in the Code regulate the rights of foreigners regarding land ownership and use.⁵ In general, foreigners have the right of land ownership and land use in Russia, with restrictions. Article 15, point 3 says that foreigners may not own land from a list of border areas of Russia established by the President; and Article 28, point 5 stipulates that foreigners may purchase state or

⁴ Private enterprises which have unlimited use of state or municipal land may purchase the land, but must do so by January 1, 2004 (*Sel'skaya zhizn'*, May 14, 2002, p. 3). For example, an industrial enterprise which previously privatized its buildings and the business ownership, now has the opportunity to purchase the land on which it sits, something that was not possible before.

⁵ Article 5, point 2 says that the rights of land ownership for foreigners are defined in the Code.

municipal land, up to sizes established by the Code.⁶ Article 35, point 5, allows the President of Russia to establish a list of buildings and structures from which foreigners and non-citizens are not permitted to purchase or lease the land under them. Article 22, point 1, allows foreigners to lease land, excluding Federal land plots which may not be leased (see list above, and Article 27, point 4 for full list).

Revocation of Land Ownership and Use

Chapter 7 of the Code regulates the conditions under which land rights may be revoked or land taken away. Article 44 of the Land Code stipulates that the right to private ownership of land may be terminated in accordance with the relevant sections of the Civil Code.⁷ The Land Code essentially defers to the Civil Code on this issue. The Civil Code indicates that if the state needs the land, it must petition a court for a decision, and assuming a positive reply, may purchase the land from the owner. The owner may also lose his rights to private agricultural land: (1) if he does not use it during a three year period; (2) if the land plot is not used for its intended purposes or is used in a way that changes the category of land use; and (3) if the use leads to a reduction of fertility in the case of agricultural land, or a significant degradation of its ecological condition. Article 50 of the Land Code also stipulates that if land is used to commit a crime it may be confiscated upon the decision of a court.

Privately-owned land may also be temporarily requisitioned by the state to meet extraordinary circumstances such as a sudden disaster, accidents, epidemics, or other extreme conditions, with the intent to protect the interests of citizens, society, and the state. Once the conditions which necessitated requisition have ended, the owner has the right to demand the return of his land plot. If the land plot cannot subsequently be returned, the owner is entitled to monetary compensation at prevailing market value, or to be assigned a land plot of equal value (Article 51, points 1, 3, 4).

Other rights of land use may also be revoked, including lifetime inheritable use, unlimited use, lease rights, and free limited use. The conditions under which use rights may be terminated are specified in

⁶ Article 33 stipulates that maximum and minimum land plot sizes for defined uses of land are established by local organs of government.

⁷ Articles 278-287 of the Civil Code discuss the reasons and procedures by which privately owned land may be withdrawn from its owner.

Articles 45-48. In general, the main reasons for revocation include: misuse of land, non-use of land, use which harms the fertility or ecology of the land, using prohibited land, non-payment of taxes, withdrawal of rights due to state need, and requisition of land due to extraordinary circumstances.

Effect on the Land Market

Although passage of the new Code was necessary to regulate land sales, in fact a Russian land market has existed for several years. From 1994 through 2000, the Russian land market registered several million land transactions annually, most of which were lease transactions. For example, in 2000, there was a total of 5.2 million land transactions registered. As the 1990s wore on, purchase transactions accounted for a larger percentage of the total number of transactions (Wegren and Belen'kiy, 2002, chap. 4). A substantial percentage of land transactions occur in urban locations. In 2000, urban purchase transactions of land accounted for about 40 percent of all land purchases, rural land transactions about 42 percent, and transactions outside population settlements the remainder.⁸

The new Code regulates the procedure for the purchase and sale of land (Article 37). The sale and purchase of agricultural land is not included in the new Code.⁹ By implication, therefore, the Code governs only the sale of urban land, which has been estimated to account for only two percent of Russia's land. A main characteristic of the Russian land market are transactions involving small land plots, and this is true in the urban and rural spheres. In urban locales for example, in 2000 the mean size of a private land sale was .1 hectare (100 sotki, or 10 square meters).¹⁰ The leasing of state and municipal land in urban locales involved relatively larger land plots--a mean of .28 hectare per transaction--but still were not large in a general sense.¹¹

⁸ Author's calculations from *Gosudarstvennyy (natsional'nyy) доклад*, 2001, p. 121.

⁹ Chapter 14 of the Code concerns agricultural land, but regulates land use, not the sale of such land.

¹⁰ Author's calculations from *Gosudarstvennyy (natsional'nyy) доклад*, 2001, p. 121.

¹¹ Author's calculations from *Gosudarstvennyy (natsional'nyy) доклад*, 2001, p. 113.

The question is what effect, if any, will the new Code have on the land market? The best guess is that it may increase the number of transactions, but it is unlikely to increase significantly the mean size of private land plots being purchased. The basis for this reasoning is twofold: first, urban and suburban land tracts are limited in size and themselves are not large. Second, urban land prices are quite high relative to average incomes. The first deputy mayor of Moscow, Oleg Tolkachev, indicated that in locations considered remote and inconvenient from Moscow, land prices range from 100,000-300,000 euro per hectare. However, in the center of the city, reaching to the Sadovyy ring, land prices can reach 7-7.5 million euro per hectare (*Sel'skaya zhizn'*, April 25-May 1, 2002, p. 3). Moscow is, of course, not typical and is the most expensive city in Russia. However, the point still remains that urban land prices are quite high relative to mean household incomes.

The Law of Turnover of Agricultural Land

Disagreement over agricultural land sales was the key issue that delayed the adoption of a new Land Code for so many years. The politics behind the issue were largely misunderstood in the West, especially in the media, which portrayed the whole of society in favor of an unregulated agricultural land market, opposed by a small but strong minority of conservatives. In fact, the opposite was true. There was very, very limited support for an unregulated rural land market among political parties and blocs in Russia. Only the small, and largely disfavored, far right favored an unregulated land market. President Yeltsin was on record as favoring a regulated agricultural land market. Vladimir Bashmachnikov, President of the Private Farmers Association (AKKOR), favored a regulated land market. Boris Nemtsov, former governor of Nizhnii Novgorod oblast, and leader of the liberal Duma fraction called the Union of Right Forces, stated that "we are for a law on land, but we are for strict state regulation in two aspects. The goal of land use: land should be used for its purpose. And we are against monopolization and reselling, against latidundia... We insist that the government introduce a law on turnover of agricultural land with strict state regulation. I want to emphasize this another time" (*Sel'skaya zhizn'*, March 7-14, 2001, p. 3). Thus, three important "pre-reform" leaders spoke out in favor of a regulated rural land market in which the interests of those who work the land would be protected.

Moreover, there is strong evidence that a regulated rural land market was the preferred option among the population as well. A large survey taken in 1997-1998 by the Institute of Sociology in Kaluga and the Institute on Land Relations in Moscow interviewed a total of 5,608 persons, including 135 rural experts.¹² According to the survey, there was very little support for an unregulated rural land market, and the overwhelming preference was for a rural land market with restrictions, supported by 76 percent of respondents. Only about one in five (17.5 percent) answered that a rural land market was not needed at all. Elite preferences reflected the entrenched feeling that land should belong to those who work it, and that agricultural land should remain in agricultural use.

Thus, instead of viewing the prohibition on rural land sales as a result of conservative resistance, a more accurate view would see a consensus among parties, elites, and the population that favored a land market, but not an unregulated one for agricultural land. With the nature of these social forces in mind, the final content of the law becomes easier to understand.

Once the Land Code was adopted, the Putin government turned its attention to a law regulating agricultural land sales, and was able to complete in a few short months a process that had held up adoption of the Land Code for years. In February 2002, a draft law on turnover of agricultural land was submitted by the government to the Duma.¹³ In March 2002, a draft of the law was published and began to be debated (see *Sel'skaya zhizn'*, March 19, 2002, pp. 1-2). During April 2002, as Russia's regions were discussing the law, a sharp debate occurred over whether foreigners would be allowed to buy agricultural land, and if so, how much. Numerous articles appeared in the agricultural press by regional leaders, academics, and ordinary people on the issue of sales to foreigners, as well as the maximum size of land holdings and the reasons land may be taken from its owner. On more than one occasion in April, President Putin voiced his opinion that land sales to foreigners was not something that should be rushed into, and he urged a cautious approach.¹⁴

¹² The survey was carried out in eight regions: Voronezh, Volgograd, Ivanovo, Kaluga, Novgorod, Perm, Moscow, and Tula. For methodology and analysis, see Wegren and Belen'kiy, 1998.

¹³ The title of the law is "Ob oborote zemel' sel'skokhozyaystvennogo naznacheniya."

¹⁴ See Johnson's Russia List, no. 6201, April 22, 2002; *RFE/RL Newslines*, vol. 6, no. 75, part 1, April 22, 2002; and *RFE/RL Newslines*, vol. 6, no. 76, part 1, April 23, 2002.

After a few weeks of discussion and debate, on May 16, 2002 the Duma considered seven different bills on the turnover of agricultural land. The government's version of the law prohibited foreign ownership in border regions, according to a list established by the President (*Krest'yanskaya Rossiya*, no. 18, 2002, p. 8). The government's bill was the only one which received the necessary number of votes, gathering 256 "yes" votes. In second place, but falling short of the required 226 votes to pass, was the version backed by the Duma deputies in the Agroindustrial group, which received 146 votes (*Sel'skaya zhizn'*, May 21, 2002, p. 1). Thus, the Duma, not wanting a conflict with the Kremlin, passed the government's version in the first reading.

For the next month, the content of the government's bill was again discussed and debated. The press coverage was very interesting and served a variety of functions. One function was simply to provide information, as the law and some of its key points were explained (see *Sel'skaya zhizn'*, May 23-29, 2002, p. 3).¹⁵ A column called "Arguments about Land" appeared in *Sel'skaya zhizn'* which provided a forum for personal opinion. Academics and agricultural leaders could weigh in with their arguments over different parts of the bill.

One such extreme example was an academic who argued the law was merely a continuation of the economic reform program published in Washington in 1991 and pushed onto Russia and the CIS by the World Bank and the International Monetary Fund. This reform program viewed land "not as a natural resource, as a main base for production and societal enrichment...but as property, a common good, which is subject to any kind of manipulation and speculation" (*Sel'skaya zhizn'*, June 4, 2002, p. 2).

Prior to a scheduled plenary meeting on June 19, 2002, a working group of Duma deputies from the Agrarian Committee was successful in convincing the government to revise its position on the maximum amount of land that could be owned by an individual (*Sel'skaya zhizn'*, June 11, 2002, p. 1).¹⁶ On the eve of the plenary meeting, the Duma fraction "People's Deputy" announced that it would only support the draft law if land sales to foreigners were forbidden (*Sel'skaya zhizn'*, June 20-26, 2002, p. 2).

¹⁵ An interview with the First Vice Speaker of the Duma, Lyubov' Sliska.

¹⁶ The compromise reduced the amount of land that could be owned by one person, or his family, or his company (if he owned a controlling share) from 35 percent of a raion's agricultural land to ten percent.

On June 19, 2002, a Duma plenary meeting was held to finalize the amendments suggested by Duma deputies, Duma fractions, and regional governments. Special attention was paid to the maximum size land plot one person could own, the right to receive land shares as land in-kind,¹⁷ and the right of foreigners to purchase agricultural land.¹⁸

On June 21, 2002 the second reading of the government's bill passed by a vote of 245 to 150, with three abstentions. This version of the bill banned agricultural land sales to foreigners and to firms in which foreigners hold a majority stake, instead, allowing foreigners to lease land for up to 49 years.¹⁹ A few days later, on June 26, 2002, the government's bill passed its third and final reading by a vote of 258-149, with five abstentions (*Krest'yanskaya rossiya*, no. 28, 2002, p. 2).²⁰ The final version approved by the Duma was sent to the Federation Council, where it passed on July 10, 2002. President Putin signed the bill into law on July 25, 2002. With the stroke of a pen, Putin introduced the first law since 1917 allowing the sale of agricultural land in Russia.

Notable Aspects of the Law

The law consists of four chapters and 20 articles.²¹ For all of the extended controversy surrounding agricultural land sales, this law is similar to the Land Code in that it is not a revolutionary document. In fact, one is struck by the law's conservative nature, reflected by the fact that it explicitly is intended to keep agricultural land in agricultural use (Article 1, point 3, subpoint 1). The law is even more regulatory than earlier media coverage had suggested, with considerable government involvement not only in land registration, but also in processes that should be market-based. In the afterglow of victory, the Russian government praised the law and expressed the hope that it would attract investment into rural

¹⁷ The government insisted that land shares be allocated as land in-kind, not paper shares.

¹⁸ Two ideas were considered. The first would allow regions to decide whether to allow land sales to foreigners. The second was to allow foreigners only to lease agricultural land.

¹⁹ *RFE/RL Newslines*, vol. 6, no. 117, part 1, June 24, 2002.

²⁰ And see the coverage in *RFE/RL Newslines*, vol. 6, no. 119, part 1, June 26, 2002.

²¹ The full text of the law is found in *Sel'skaya zhizn'*, August 1-7, 2002, pp. 8-9.

areas. The benefit would appear to be largely psychological by lending an aura of stability and predictability.

In reality, it is hard to see how this law will radically transform either rural society or the rural land market, how it will facilitate the transfer of land to the most productive users, or how it will aid in the resolution of the unprofitable farm problem. The law creates possibilities of bureaucratic inconsistencies, creates government intervention which removes direct contact between buyer and seller, and diminishes the role of supply and demand. Rather than analyze each article of the law, we will concentrate on a few of the most important aspects of the law.

Land Ownership by Foreigners

As established in the Land Code and elsewhere, Russian citizens, firms, companies, enterprises, etc., have the right to own land. In the law on agricultural land turnover, Article 3 regulates foreign ownership of land. The final version of the law prohibits agricultural land sales to foreigners, foreign firms, persons without Russian citizenship, and Russian firms in which foreigners hold a majority stake. Foreigners have the right to lease agricultural land. Article 9, point 3 states that agricultural land may be leased for a term not to exceed ten years.

Maximum Size of Land Holdings

Article 4 governs the maximum size land holdings that may be owned by a citizen, his family, or a company in which he controls a majority stake. The article states that a citizen, his close relatives, or a company in which the citizen or he and his close relatives own 50 percent or more of the shares, may not own more land totaling than ten percent of the total agricultural area in a given administrative region (raion).²² For instance, if a given raion had 100,000 hectares of agricultural land, an individual, his family,

²² The final version of the law thus reduces the maximum size of land that can be owned from 35 percent, representing a concession by the Putin government.

or their company could not own more than 10,000 hectares in that raion. This article does not limit the size of agricultural enterprises unless an individual (or he and his relatives) owns a controlling share of the farm.

This aspect of the law is actually a more conservative variant than that which existed previously under presidential decree. Before, only the amount of land that could be received in ownership for free was limited, but the overall quantity of land that could be owned was not restricted.²³ The restriction on the size of land holdings is the result of years of lobbying against so-called "latifundia," --large concentrations of land owned by one person--which was supported by virtually all political parties and Duma fractions except the far right. This restriction seems more symbolic than meaningful, as it is unlikely that in the near-to-mid-term any one person or family, or even company, would have the desire to purchase thousands, and potentially tens of thousands, of hectares of agricultural land.²⁴

The Sale of Farm Land

The sale of agricultural land is governed by Article 8. This article regulates the sale of land that is owned and physically possessed by members of large farms and private farmers.²⁵ According to this article, organs of local government (raion or village administrations) have the primary right to buy agricultural land. The seller of the land is required to submit a written letter, or notification (*izveshcheniye*) to the regional government, or in certain cases, to the raion administration, of his intent to sell his land. This notification should indicate the price of the land and other components of the transaction.

²³ The restrictions were implicit, not explicit: economic ability and the unattractiveness of rural land ownership.

²⁴ See Paul Starobin, "Russia's New Wealth," *Business Week*, August 5, 2002, as reproduced in Johnson's Russia List, no. 6373, July 27, 2002, which discusses investments in land versus agribusiness.

²⁵ The sales process described in the article does not apply to agricultural land owned by citizens who use it for individual housing, construction of garages, to conduct subsidiary and dacha agricultural production, collective gardens and orchards, and also assorted buildings. It should be noted that these types of land plots--which tend to be very small--comprise the bulk of purchase transactions among individuals, so this submarket will remain unregulated.

The regional government has one month, from the date of receipt of the notification, to exercise its right to purchase the land. If the regional government does not exercise its right to purchase the land, or fails to inform the seller of its intent to acquire the land plot, then the seller has one year to sell the land to a third party at a price not lower than that which was indicated in the letter of intent submitted to the regional government. The one year term starts with the submission of the letter of intent to the regional government.

The selling process is iterative and has indirect negotiation over price. If the seller decides to sell the land plot at a price lower than that which was indicated in the original letter, or if terms of the transaction change, the seller is obligated to submit a new *izveshcheniye*, and again the local administration has a month to exercise its right of first refusal. To illustrate, say a person wanted to sell his land plot for price "A." The local government has one month to exercise its right of first refusal at the stated price. If it does not want the land at that price, then the seller can try to sell it someone else for up to a year, but not at a lower price than indicated in the notification. If the land does not sell, the seller can lower the price to price "B", and again the local government has one month to exercise its right of first refusal at the new, lower price. It is not stated in the law, but presumably the seller does not have to wait a year before withdrawing the land plot from the open "market," but can change the price and offer it to the local government at any point prior to the expiration of a year.²⁶

This cumbersome process is used for all agricultural land sales, except those categories excluded in Article 1 (see note 25) and land sold in auction or competitive bidding (see below). Land sales that do not follow this process, in particular those which did not give right of first refusal to the regional government, are subject to enforcement through the courts within a year of the completion of the transaction. The implication is that the transaction which violated the process would be nullified.

²⁶ The law also does not state explicitly what would happen if a local government did not want the land and the owner could not sell it to a third party, at least at his asking price. Article 6, point 3, indicates that land must be used properly or it can be confiscated, so presumably this implies that the owner must continue to cultivate his land or risk losing it. Remember also that the Land Code stipulates that land not used for three years risks confiscation.

This law is an extremely conservative approach to the land market. Former President Yeltsin's October 1993 decree did not mandate that government organs have the right of first refusal. Yeltsin's decree required only that agricultural land had to be used for agricultural purposes after the sale.²⁷ In the case of land shares, other members of the collective were to be offered right of first refusal, but these were individuals, not government organs. This recent law requires significant government participation in the land market as an intermediary, something that did not exist before. The benefits of state involvement (from the perspective of the state) is the regulation of the market and preclusion of land speculation, revenue from transaction fees, profits from re-selling of land (see below), and full employment for land committees located in every raion in the nation. From an economic standpoint, however, it is hard to conclude that the process outlined in the law aids the development of a land market. Western enthusiasm for the law, therefore, would appear to be misguided (see *New York Times*, July 9, 2002, available at www.nytimes.com/2002/07/09/opinion/09TUE2.html).

State and Municipal Land

Article 10 regulates the sale or lease of state and municipal agricultural land. In general, some state and municipally owned land may be purchased or leased, while other categories of land can not (see Land Code above, Article 15, point 2).

One type of state or municipal land that is eligible for private ownership is the land purchased by a local government, under the conditions outlined above. Assuming a person or enterprise has sold his agricultural land to a regional or local government, it becomes state or municipal land. From that point, this state or municipal land will be resold through auctions or other forms of competitive bidding. Agricultural land may be obtained in private ownership by other persons through these means. If, during the sales process of state or municipal land, there is only one bidder for a given plot of land, the land may be leased, not purchased. There is another method to convert state or municipal land to ownership, which

²⁷ For a review of the Yeltsin decree, see Wegren, 1994.

is discussed in the next section. State and municipal land used as pasture for reindeer and other pasture lands in the Far North may only be leased, not purchased.

Leased Land

Article 9 regulates the leasing of agricultural land. The amount of agricultural land that may be leased is not limited in size, however, the term of the lease may not exceed ten years. Point Two of the article states that land in the form of land shares may be leased, either from all the owners of the shares, or from one of them who has power of attorney to act on the others' behalf. Leased land may be converted to private ownership upon the expiration of the lease term, according to the process described above in Article 8. In the case of state or municipal land that has been leased, it may be converted to private ownership prior to the expiration of the agreement, in accordance with Article 10, point 4 (which allows the purchase of leased land after a three year period dating from the conclusion of the lease agreement). The lessee submits an application to the regional government or local administration, which makes a decision within a two week period whether or not to grant the request. If the decision is positive, the leased land may be purchased at the current market price.

Article 16 states that lease agreements which were concluded prior to the introduction of the new law should be brought into compliance with Article 9, point 2 within a two year period (by July 2004).

Land Shares

Much of the agricultural land privatization which occurred during the 1990s was in the form of land shares distributed to members of large farming enterprises. Land shares were basically land rights to *some land somewhere* on the territory of the large farm, but without specific demarcation of which land or where it was located. Land shares were assigned in equal allotments to each farm member, and were usually very small. Shares could be individually owned. In the case of a family they could be combined so that the shares were collectively owned. Most farm members either leased or sold their land share rights back to the farming enterprise. This present law is an attempt to allow land share holders to convert their land shares to actual land, and to dispose of the land as they please.

Article 12 of the law concerns the sale of land shares. This article is intended to apply to large farm enterprises where the total area of land is "owned" by farm members in the form of land shares. The owner of a land share is obligated inform other owners (members of the farm) of his intent to sell his land shares. The notification must be in the form of a letter, or published in a source of mass information, as defined by the regional authorities. The rest of the farm members have one month to exercise their right of first refusal. If the other members turn down the opportunity to purchase the land shares, then the owner who wishes to sell has to notify the regional or local administration of his intent to sell, to define the price, terms, conditions, etc.

In short, the same iterative process described above in Article 8 comes into play. If the local government declines to exercise its right of first refusal within a month, the owner of the land shares has a year to sell to a third party, but again at a price not lower than that which was indicated in the notification. Basically, a seller of land shares has to first offer it to other members of the farm, then to the local government, before he can sell to a third party.

The provision that the rest of the collective has right of first refusal is very similar to Yeltsin's October 1993 decree which gave other members of a farm the first opportunity to purchase the land shares of another member. Under those terms, if the other members of the collective declined, the owner was free to sell to a third party, who in turn had to continue to use the land for agricultural purposes. The main difference now is the role of the local government as buyer should the collective not exercise its right to purchase. The intent, as before, was to provide a mechanism by which large farms could stay intact.

Article 13 regulates the right of a land share owner to convert his land share into an actual land plot. The person wishing to receive a land allotment must inform the rest of the members of the collective, and this notification must be written, or published in a source of mass communication. The notification must propose a location for the land to be assigned, and compensation for the land to the rest of the collective.²⁸

²⁸ Compensation is due the other members of the collective if the market value of the allocated land plot exceeds the market value of the remaining portion of land.

There are two possible ways for a person wishing to convert his land share to land may not end up with land. The first situation is if the size of the land plot to be received is too small. Point 1 of Article 13 states that the location of the land plot must conform to the requirements of Article 4, point 1. That article in turn stipulates that regions themselves will define minimum sizes of land plots of agricultural land. Article 4 continues that land transactions (including conversion of land shares to land plots) will not be permitted if the resulting land plot is below the established regional minimum size. In addition, land allocations resulting from conversion of land shares will not be permitted for irrigated and reclaimed land if the size of the plot falls below the regional minimum. This provision of the law is clearly intended to keep large farms from being fractured into hundreds of small pieces.

The second way to delay receipt of land, or even preclude it, is if the members of the collective object to the terms proposed by the person who wants to convert his land shares into land. Members of the collective (other share owners) have one month to object to the proposed location and compensation. If no objections are raised within a month, then the proposal is considered accepted. Disagreements over location of the land to be allocated or size of compensation are to be resolved through mediation, procedures for which are being established by the Russian government. In the case that mediation is unsuccessful, the issue will be resolved in court. If the court decides against the petitioner, then he will not receive the land he desired.

Effect on the Land Market

During the 1990s, Russia developed a rural land market, but it was limited and rudimentary. Similar to the urban land market, the rural land market was dominated by transactions with very small mean sizes of land plots. In rural areas for example, in 2000 the mean size of a private land sale was .19 hectare.²⁹ The leasing of state and municipal land in rural areas involved relatively larger land plots--a mean of .59 hectare per transaction--which are not large in a general sense.³⁰

²⁹ Author's calculations from *Gosudarstvennyy (natsional'nyy) doklad*, 2001, p. 121.

³⁰ Author's calculations from *Gosudarstvennyy (natsional'nyy) doklad*, 2001, p. 113.

The questions that this law raise are numerous and far outweigh the benefits of legalizing agricultural land sales. On what basis, for example, will a land owner define the selling price of his land? Absent of "market" information or information services, the list price is unlikely to reflect a market clearing price (which is to say it is likely to be either too high or too low). Subsequent sellers will adjust their listing prices, but the adjustment process will take time.

Will unscrupulous investors buy up underpriced land at the beginning for a fraction of its worth, just as investors did during industrial privatization? Or suppose a regional government purchased the land of a given unprofitable large farm. What happens to the workers? Do they become employees of the regional government? Does the farm continue to operate? What happens to the farm if there are no secondary buyers?

Second, the sales process is cumbersome and ripe for abuse. There is an enormous potential for bribery and corruption. It is not hard to imagine land committee officials, who are not well-paid, being approached (paid) to exercise the right of refusal of some land deemed desirable, but not other land, on behalf of hidden investors. The placement of land officials as an intermediary between buyer and seller makes the ways in which the system can be manipulated and abused too numerous to enumerate.

Third, a key question is where will local governments obtain the money to become involved in purchasing land? Most regional governments do have sufficient resources to support private farmers or pay for adequate social services. From where will money for land purchases come from? Is this an example of responsibility without funding?

A related problem is that some land which local governments purchase will be able to be resold, presumably at a modest profit since there will be competitive bidding. Other land will become "dead weight" upon regional budgets, and there is no indication in the law what local governments will do with land than cannot be sold. In either case, local governmental officials will need a keen sense of the land market and an accurate assessment of a land plot's value before deciding to exercise their right of first refusal. Where will that expertise come from in the regions? An alternative scenario is that local governments simply will not get involved in land purchases, which raises questions about why the law was configured in such a way.

A fourth problem is that a highly differentiated land market will emerge over the longer term, in which vast inter-and intra-regional differences will result between those with good quality land and those without; and between economically better off regions and poorer regions. The survey referred to above (see note 12) showed clearly that land buyers are acutely aware of the quality of land, of its proximity to transportation and urban centers, whether it has water and electricity available, and other amenities. Better endowed and higher quality land experiences more demand (people wanting to buy it) than supply (people willing to sell it) in rural areas, and this is true for both leased and purchased land. Less well-endowed land is not desired and has few buyers. Whether a highly differentiated regional land market corresponds to the inherent value of land or is distorted by extraneous factors is a key question, which only the future can answer.

Fifth, if the goal of a land market is to facilitate the transfer of land to the most productive users, it is not clear that this is the appropriate approach. There are the inherent problems of a corrupted process, as mentioned above. Equally important is that fact that the land market during the 1990s was a market of small users and small land plots. These types of users and plots have inherently less transformative powers, but these are exactly the land plots that will remain unregulated under the new law. The new law strictly regulates large users and large land tracts, which carry the most potential for social transformation.

Finally, the present economic incentive structures make land purchases almost an irrational act. Land leasing is much more economically advantageous than purchasing because land leasing rates cannot exceed the land tax. There is a reason that 90 percent of land transactions are lease agreements. Although the land tax has been indexed for inflation and has risen significantly since 1995, it still is quite inexpensive, making leased land considerably cheaper than a land purchase.

Conclusion

The two pieces of legislation analyzed herein represent conservative approaches to land reform. Although the principles and rights that each law entails were fought over for many years, the results are disappointing if one expected market economics to be the guiding principle. The Land Code is a bland document which fails to break new ground in any significant way. The law on the turnover of agricultural

land is even worse because it is a conceptually flawed document. It stultifies market forces by making local governments the intermediary. The obligatory involvement of local governments brings the inherent inefficiencies of bureaucracies and the complexities of their processes, a cumbersome sales procedure, and exposes the entire process to abuse and corruption.

Moreover, the law neither acts as a corrective to existing dysfunctional incentive structures, nor does it create incentive structures that will lead to a market based rural land market. With regard to the first point, at present economic conditions reinforce the predominance of land leasing and the exchange of small land plots. Concerning the second point, the new legislation does nothing to create preferences for land purchases, and unnecessarily complicates the land selling process. Working together, economic factors and conceptual shortcomings in the legislation are unlikely to transform rural Russia.

The law on agricultural land is further flawed in that it does not address the real problem. What is not needed is more bureaucratic meddling. Instead, a robust rural land market is more likely to emerge if the following conditions are fulfilled: (1) the rebuilding of rural infrastructure which would help make agricultural land attractive to potential users and investors; (2) improvement in standards of living and purchasing power of the population; and (3) the creation of a reliable credit and mortgage system.

Who is to blame? The responsibility has to rest on the shoulders of the Putin government. It had both the political support in the Duma and a public mandate which enabled it to get enacted any version of these laws it wanted. It opted for a conservative variant. This choice was politically astute in that it had political support among the population at large and most political elites. The problem is that this choice will carry heavy consequences for Russia's land market and rural sector for years to come.

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