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Price Assessment, Contracts and Insurance
In International Trade

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\$1 billion

won for our
clients

**~50 Gafta cases
per year**

in which we took part
as
an advisor

90%

successful cases
in 15 years of
practice



Additional safeguards

General terms:

- ✓ **Payment terms and transfer of risk:** only after the vessel arrives in Turkish waters or passes the Bosphorus
- ✓ **Insurance:** coverage of war risks, otherwise – the seller bears all war risks during the entire voyage

Terms for specific voyages:

- ✓ **Grain deal:** terms of the contracts had to be adjusted to the rules of the grain deal
- ✓ **Danube ports:** passage through the Sulina Channel



Additional safeguards

- ✓ Sanctions clause:
 - **Sanctioned persons**: they usually extend to companies controlled by persons included in the sanctions lists
 - **Execution**: vessel, restricted destinations
 - **Remedies**: suspension/termination of the contract, rejection of the cargo/vessel, substitution of the goods/vessel, compensation of losses

- ✓ Guarantees as to origin of and title to the goods

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Case study: claim against seller or insurance company?



Facts

- Ukrainian company ('Seller') purchases **50,000 mt of Brazilian yellow soybeans**
- On 21 March 2021, around 50,000 mt of soybeans is **shipped** on the vessel in Barcarena, Brazil
- On 12 April 2021, the vessel **arrives in Ukraine**
- Ukrainian company is **not able to import soybeans into Ukraine** and the vessel is **idling in Ukrainian waters** for almost a month



Facts

- On 21-22 April 2021, Ukrainian company sells the cargo to **three Turkish companies** ('Buyers') on the following terms:
 - ✓ Delivery terms: CIFFO Izmir
 - ✓ Payment terms: CAD
 - ✓ Shipping documents: include "Marine insurance policy or certificate in duplicate covering %102 of the CIF value, covering all risk, FOSFA trade clause A, war clause (HSSC)"
 - ✓ Transfer of risk: passes on shipment



Facts

- After the contracts are concluded, **the vessel sails to Turkiye**
- The Seller sends the shipping documents for the entire cargo, including **the insurance certificate** covering the voyage from Barcarena, Brazil, to Izmir, Turkiye
- The Buyers **do not raise objections** to the content of the insurance certificates



Facts

- On 11 May 2021, after arrival in Izmir, General Survey and SGS reveal that the cargo completely deteriorated:

*“Our inspector determined that **moldy and lumpy commodity with heavy smell**. Also our inspectors have found **dead and alive insects**. Humidity value and temperature of the commodity is **very high**. The commodity is **not sound, loyal and merchantable**. Also the commodity is not free from alive insects and foreign smell. [...] we have **not observed seals on hatch covers**”*

- On 12 May 2021, the Seller denies liability for the deterioration:

*“Please note that we have tendered documents showing the goods shipped were **on specification at loading**. If any damage were to be found, it would fall under **post shipment damage**”*

- On 13 May 2021, the Seller **appropriates** the goods and **demands the payment**

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Facts

- First buyer: **rejects** the seller's payment demands because the goods deteriorated and starts **arbitration** for recovery of default damages of around 1 mln USD
- Two others buyers: **accept** the cargo, pay for the goods and file **the claim against the insurance company**

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Questions!

1. Whose strategy was correct? Were the buyers obliged to accept the goods?
2. Will the insurance company be obliged to compensate the buyers' losses? Why?
3. What will be decision of the arbitrators? Will they award damages to the first buyer?

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Award

1. The relevant voyage was from Ukraine (not Brazil) to Turkiye!!

*"Significantly, when the Additional Agreement was concluded on 4 May 2021, the shipment period for all three Contracts was agreed as 1 – 20 May 2021 in Sellers' option, both dates included. **That fact, in and of itself, confirmed that shipment was to be prompt from Pivdenniy and not, as Appellants submit, from Brazil in March 2021 on the [Vessel]"***



Award

2. The insurance did not cover the voyage from Ukraine to Turkiye!

*Following on from this, all related shipping documents took a similar form, **based solely on matters in Brazil**. One stand out element of Sellers' documentation was insurance. Insurance Certificates No. 00605-1/078 dated 19 March 2021 and Nos. 00605/079 & 00605/080 both dated 21 March 2021, were presented after the vessel had arrived at Aliaga. These documents stated that insurance under Allseeds' open cover policy had been declared for the goods **from Barcarena to Aliaga** that were shipped on the MV PAPA JOHN under Bills of Lading dated 19 and 21 March 2021. The insurance cover was from the dates stated on the certificates. "*



Award

3. The seller did not tender contractual shipping documents and was not entitled to payment!

*“It seemed to us that Sellers’ case was the sum of its contradictions. While [Sellers’ representative] submitted that there were **two separate voyages**, the Bills of Lading that Sellers produced to induce Buyers to accept, belied that submission. The Bills of Lading were all re-cut identifying **just one voyage from Barcarena to Aliaga** with the same dates of loading and date and place of signature. At the time of loading and shipment, the true destination was Pivdenniy not Aliaga.*”

*Sellers **did not in fact make a full presentation of the complete set of shipping documents for payment as required under the payment term of the Contracts.**”*



Award

*“WE AWARD that Buyers’ claim for default damages in the amount of **US\$922,500.00** (Nine Hundred and Twenty-Two Thousand, Five Hundred United States Dollars) SUCCEEDS.*

*WE AWARD that Buyers’ **reasonable legal costs and expenses** for Award SUCCEEDS and are to be agreed or assessed by the Board.*

*WE AWARD that the fees, costs and expenses of Award in the sum of **£31,717.00** (Thirty-One Thousand, Seven Hundred and Seventeen Pounds Sterling) shall be for Sellers’ account.”*



Conclusions

Under the CIF contract, the seller must tender insurance policy/certificate that:

- Covers **contract goods**
- Provide cover **from warehouse at loading to the warehouse at destination**
- Be **effective** = valid contract
- Be **assignable/transferable**
- Comply with **Gafta Insurance Rules No. 172**

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