

Managing the contractual risks in the agri trading business

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Who are Gafta?

International Trade Association

- 1800+ members
- 95 countries

Locations

- Headquarters: London
- Offices: Beijing, Geneva, Kiev & Singapore

Contracts (key service)

- 80+ standard form contracts
- Estimated 80% global trade in grain is shipped on Gafta contracts

Aims

- Promote free trade & protect the interests of members in Agri-trade

Key services

- Contracts
- Arbitration
- Trade Policy
- Events & Training

Arbitration (key service)

- International service
- 80+ Arbitrators based worldwide
- Handles trade disputes arising under Gafta contracts

Contractual risk

Financial

Legal

Focus will be on **legal** risks

Legal risks (1)

Lack of certainty over contractual terms?

- Sale of Goods Act 1979 – contract can be verbal or written, part verbal and part written
- Proof – balance of probabilities

Was there a contract?

- Key contractual element missing?
- Void for uncertainty?
- No 'meeting of minds'?

What was breached?

- Condition? Warranty? Intermediate term?
- Making the wrong call – consequences?

Was there any loss?

- **Bunge v Nidera 2015**

Legal risks (2)

Notice clause

- Consequence of getting it wrong

Anticipatory breach

- Are you 'jumping the gun'?

Naming the wrong party?

- Complexity of corporate structures

Jurisdiction

- Enforcement of arbitration awards
- Gafta Defaulters procedure

Certificate Final

- Meaning
- Effect (no claim for damages after shipment)

Trends (1)

Description/quality of goods

Defaults (market-driven)

Tariffs

Force Majeure

Trends (2)

Description/quality of goods

- Sale of Goods Act 1979
- Description (Section 13)
- Description v Quality
- Quality/fitness (section 14)
- Certificate Final

Trends (3)

PRICE

- Global commodity price changes

MARKET

- Small shift in market leads to considerable loss/profit

CONTRACT

- Long-term sale contract – gap between agreed contractual price and more favourable spot deal

CHALLENGE

- Buyer looks to challenge contract – genuine or constructed
- Contractual obligation to perform?
- Force Majeure?
- Nature of breach – condition, warranty or intermediate term?

GAFTA

- Gafta default clause
- **Bunge v Nidera 2015**

Trends (4)

Tariffs

- | | |
|---|--|
| <ul style="list-style-type: none">• US/China• Duties – India: Raised import tax on some pulses to 50% - cut imports• Increase in tariffs/duties = increase in cost and market volatility• Contracts may become less profitable or unprofitable – increased risk of defaults constructed (e.g. claim that commodity is defective) | <ul style="list-style-type: none">• Price review claims<ul style="list-style-type: none">○ Mechanism to renegotiate• Force Majeure or Frustration<ul style="list-style-type: none">○ Still possible to perform, only more expensive• Gafta clause<ul style="list-style-type: none">○ Force Majeure |
|---|--|

Trends (5)

Force Majeure (FM)

- | | |
|--|---|
| <ul style="list-style-type: none">• Prevention of performance• Creature of contract• Only FM if falls within contractual definition• Gafta clause | <ul style="list-style-type: none">• Increase in FM claims:<ul style="list-style-type: none">○ Sanctions○ Tariffs○ Climate change○ 'Get out of jail free' |
|--|---|

Litigation risk



INCREASED
AWARENESS OF
RISK: **MITIGATE**



KNOW YOUR
COUNTER
PARTY:
**FINANCIAL/LEG
AL DUE
DILIGENCE**



INDUSTRY-
STANDARD
CONTRACTS:
**TRIED AND
TESTED**



ENFORCEMENT

Gafta perspective

Risk management for the trade



Gafta professional
development (GPD)
training



Know Your Gafta
Contracts seminar



Industry-standard
contracts: Tried and
tested



Defaulters process:
List, suspension
/termination of
membership

Alternative dispute resolution

Arbitration

Gafta 125

- 2-tier
- Right of appeal

Gafta 126

- Expedited procedure
- No appeal

and

Gafta 128

- Mediation

Gafta Arbitration (1)

Gafta Arbitration clause is in all Gafta contracts

- This means party must go to Arbitration NOT courts

Domicile clause: English Law

Over 550 Arbitration cases per year

Trade Arbitration: 'For the Trade, by the Trade'

Gafta qualified arbitrators must have 10+ year's trade experience

Gafta Arbitration (2)

Quicker, more cost-effective than courts

Award is binding and enforceable

- New York Convention 1958

Gafta Defaulters process

Appeal to courts

- Arbitration Act 1996
- Statistically unlikely

Any questions?



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