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Introduction

Oil Trade Review is a publication in which shipping and contractual matters relevant to the international oil trade are reviewed. In this issue, the Editor reviews the following topics:

- **How The Oil Traders May Preserve The Right To Claim Damages In FOB, CFR And CIF Sale Contracts In The Event Of Cargo's Non-Compliance With The Contract Quality Specifications**
- **Buyer's Rights In The Event Of Cargo's Non-Compliance With The Contract Quality Specifications**
- **Who Bears The Risks For Blending On Board In FOB Sale Contracts**
- **Who Bears The Risks For Blending On Board In DAP Sale Contracts**

If you have any comments about the matters reviewed in this edition, please address them to editor@commoditylaw.eu

How The Oil Traders May Preserve The Right To Claim Damages In FOB, CFR And CIF Sale Contracts In The Event Of Cargo's Non-Compliance With The Contract Quality Specifications



by Vlad Cioarec, International Trade Consultant

In the English contract law, the case **Toepfer v. Continental Grain Co.**¹ set the rule that if the sale contract provides that the quality certificate issued at loading port shall be final and binding on both seller and buyer, no other subsequent evidence in relation to the matters certified may be relied on by the buyers to challenge the evidentiary value of the quality certificate.

This rule is relevant in FOB, CFR and CIF sale contracts where the quality has to be determined at loading port and it means that even if the cargo is tested at discharge port and found to be off-specification and the quality certificate issued at loading port is arguably inaccurate, as in *Exxonmobil Sales and Supply Corporation v. Texaco Ltd*², *KG Bominflot Bunkergesellschaft Für Mineralöle mbh & Co Kg v. Petroplus Marketing AG*³ and *Septo Trading Inc v. Tintrade Ltd*⁴, the quality determined at loading port will bind, in the absence of fraud or manifest error, if the sale contract provides that the quality certificate issued at loading port shall be final and binding⁵.

This means that the buyers cannot reject the cargo nor claim damages for the breach of contractual specifications if the quality certificate issued at loading port evidenced that the cargo was on-specification.

This is the reason why in FOB, CFR and CIF sale transactions the sellers seek to impose a quality determination clause providing that the quality certificate issued at loading port shall be final and binding for all purposes on the contracting parties.

The buyers should avoid clauses with such provisions and rely instead on BP or Shell's General Terms and Conditions for Sales and Purchases of Crude Oil and Petroleum Products which provide that the quality determined at loading port shall constitute evidence of quality for invoicing and payment purposes only. BP and Shell Terms limiting the effect of the quality certificate issued at loading port to invoicing and payment purposes oblige the buyer to pay the contract price based on the documents provided by the seller, including the quality certificate, but it also give the buyer the right to claim damages in the event that the cargo is subsequently found off-specification.

In case of quality disputes, the English Courts will take into consideration BP/Shell provisions limiting the effect of the quality certificate issued at loading port only if they are not inconsistent with what the contracting parties expressly agreed in the sale terms recap or in any subsequent agreement⁶. Therefore, the buyers should avoid clauses with final certificate provisions whether in sale terms recap or in any subsequent agreement.

An example of how the buyers can avoid such clauses is provided in the English law case **BP Oil International Ltd v. Glencore Energy UK Ltd**⁷. The case was a claim for the breach of a contract quality specification under a contract for the sale of a cargo of Russian Export Blend Crude Oil.

The sale contract was evidenced by the sale transaction recap (buyer's email confirmation of the parties' transaction) which provided that BP General Terms and Conditions for Sales and Purchases of Crude Oil were expressly incorporated.

1 [1974] 1 Lloyd's Rep. 11

2 [2003] EWHC 1964 (Comm)

3 [2010] EWCA Civ 1145

4 [2021] EWCA Civ 718

5 See *AIC Ltd. v. ITS Testing Services (UK) Ltd. (The "Kriti Palm")*, [2006] EWCA Civ. 1601; [2007] 1 Lloyd's Rep. 555.

6 *Septo Trading Inc. v. Tintrade Ltd.*, [2021] EWCA Civ 718

7 [2022] EWHC 499 (Comm)

One question in dispute was whether the original sale terms evidenced in the sale transaction recap were varied by the additional clauses subsequently proposed by the seller.

After the sale transaction was agreed, the seller (Glencore) sent its contractual clauses (Glencore Sales Contract) to buyer (BP Oil International Ltd.).

The buyer refused to accept some of the clauses proposed by the seller including a quality determination clause with final certificate provisions.

The seller's failure to reach an agreement with the buyer over the additional clauses meant that the sale contract remained that evidenced by the sale terms recap including BP General Terms and Conditions for Sales and Purchases of Crude Oil.

The English Commercial Court held that unless and until the negotiations for concluding a formal sales contract have reached the parties' agreement on the terms proposed by the seller, it cannot be said that a formal sales contract is concluded. A stalemate situation in reaching an agreement on the additional clauses proposed by the seller meant that the contract was that evidenced by the sale terms recap including BP General Terms and Conditions for Sales and Purchases of Crude Oil.

This enabled the buyer (BP Oil International Ltd.) to rely on BP Terms limiting the effect of the quality certificate issued at loading port and challenge the evidentiary value of the quality certificate issued at loading port in respect of the level of organic chlorides in the cargo based on the results of subsequent analysis of cargo samples.

Buyer's Rights In The Event Of Cargo's Non-Compliance With The Contract Quality Specifications



by Vlad Cioarec, International Trade Consultant

The English Courts make a distinction between the situation when the goods supplied do not correspond with the description in the sale contract and the situation when there is only a difference in quality.

If the goods supplied do not correspond with the contractual description, the buyer shall be entitled to reject them. In the commodity sale contracts concluded subject to English law there is a condition implied under the Sale of Goods Act 1979 that the goods must correspond with the contractual description¹. Therefore, in the event that the seller delivers a different grade of oil than that stipulated in the sale contract, the buyer shall be entitled to reject the cargo.

In the event of a breach of the contract quality specifications, the buyer's rights will depend on the contract terms, the severity of the breach (i.e. the extent of deviation from the quality specifications), the commodity sold and the possibility to upgrade the cargo characteristics within larger blends.

Contract Terms

If a quality specification is part of the description of goods in a sale by description, the goods' compliance with that specification is an express condition of contract.

An example of such case was the English law case **Mena Energy DMCC v. Hascol Petroleum Ltd.**². The case was a dispute under a contract for the sale of a cargo of "HSFO 125 cSt" (high viscosity fuel oil with a maximum viscosity of 125 centistokes) to be delivered at the port of Karachi in Pakistan on CFR terms and outturn quality basis within a date range of 5 – 10 November 2014.

The seller Mena Energy shipped separately on board the carrying vessel three oil parcels: a parcel of fuel oil with a viscosity of 280 cSt, a parcel of gas oil and a parcel of cutter stock and instructed the Master to blend them on board the vessel after the completion of loading.

Before loading, the samples drawn in correct proportions from each of the three parcels were blended by hand and the analysis of the hand-blend sample indicated that the cargo had a viscosity of 101.6 cSt, that was below the contractual specification of 125 cSt. No other sample was drawn from the cargo for further analysis after the blending of the three oil parcels on board the vessel.

The sale contract provided that the cargo's compliance with the contract quality specifications was to be determined by the laboratory analysis of the composite sample obtained from the samples to be drawn from the vessel's cargo tanks at the port of discharge prior to the commencement of discharge.

Upon the arrival of the vessel carrying the cargo at the discharge port, the cargo was sampled and the laboratory analysis showed that the cargo had a viscosity of 192.92 cSt that was much higher than the contract viscosity specification. On receipt of these results, the buyer Hascol Petroleum Ltd. rejected the cargo arguing that the viscosity specification formed part of the description of the commodity in the sale contract and therefore, the fuel oil cargo was required to comply with the commodity description in the sale contract, i.e. "HSFO 125 cSt".

The English High Court held that the buyer had the right to reject the cargo because the viscosity specification was not only a quality specification but also part of the description of the commodity

1 See the Section 13(1) of the Sale of Goods Act 1979.

2 [2017] EWHC 262 (Comm).

in the sale contract and the fuel oil cargo was required to comply with the commodity description in the sale contract.

Extent Of Deviation From The Contractual Quality Specifications

If there is a significant difference between the cargo quality characteristics and the contractual quality specifications that amounts to a non-compliance with the contract description of goods, the buyer would be entitled to reject the goods. If there is only a minor breach of contract quality specifications, the buyer would only be entitled to claim damages.

Case Study: Choil Trading S.A. v. Sahara Energy Resources Ltd.³

The case was a dispute under a contract for the sale of a cargo of naphtha delivered FOB basis from the Port Harcourt in Nigeria. The cargo was on-sold by FOB buyer on CFR terms.

The contractual quality was stated as “PHRC naphtha quality”/“Naphtha of normal running production as produced by Port Harcourt Refining Company (PHRC)” based on the specifications determined at the loading port following the analysis of samples drawn from the shore tanks at the time of concluding the contract.

The respective analysis results showed that the quality characteristics of the naphtha cargo were within the normal range of naphtha produced by Port Harcourt Refining Company.

However, the analysis results of the composite samples drawn a month later from the shore tanks before loading and subsequently from the ship's tanks after loading revealed that the cargo was off-specification in respect of colour and that it contained an abnormally high quantity of Methyl Tertiary Butyl Ether (MTBE), a man made substance which is not a by-product of the production of naphtha and therefore, it could not have originated from Port Harcourt Refinery.

It was later found out that the high levels of MTBE were the result of contamination of cargo in the shore tanks from a previous cargo of gasoline.

As a result of the contamination, the cargo could no longer be used as a petrochemical feedstock in a refinery, which was the purpose for which was bought. Consequently, upon receiving the analysis results the end buyer (CFR buyer) rejected the cargo due to the excessive MTBE content. In turn, the FOB buyer reserved its right to reject the cargo. It eventually made a salvage sale and subsequently brought a claim in the English Commercial Court to recover the financial losses incurred due to the FOB seller's failure to deliver a cargo conforming with the contractual description.

In the Court proceedings the question in dispute was whether there was any contractual warranty as to the quality of the naphtha cargo.

The FOB seller contended that the contractual quality term “PHRC naphtha quality” or “Naphtha of normal running production as produced by Port Harcourt Refining Company” should be interpreted as meaning a sale without any warranty as to quality at all.

The Court held that although the FOB sales of Nigerian naphtha were often made without warranty (warranted specifications), the term "Quality: PHRC naphtha quality" should not have been interpreted as if it said or meant that there was literally no term as to quality of any kind. The inclusion of a "Quality" term was inconsistent with this.

The relevant paragraphs of the Court decision are quoted below:

“Choil was, bound to accept naphtha, whatever its characteristics, provided it was "PHRC naphtha quality". But it was not that obliged to accept a cargo which was heavily contaminated by a substance which was not the result of naphtha production and which is not normally present in naphtha produced by PHRC. [...]

3 [2010] EWHC 374 (Comm)

The naphtha supplied did not conform to the contractual standard. MTBE is not a by product of naphtha production (either by PHRC or anyone else) and MTBE on this scale (between 650 ppm and 2300 ppm) was grossly abnormal. 50 ppm is the maximum that is tolerated.

In providing this naphtha Sahara was in breach of the implied condition that the cargo would comply with its description viz "PHRC naphtha quality"/"Naphtha of normal running production as produced by Port Harcourt Refining Company" and of the implied term that it should be of satisfactory quality."

Commodity Sold

In the event of a breach of the contract quality specifications, the buyer's rights will also depend on the commodity sold and the possibility to upgrade the cargo characteristics within larger blends.

An example of such case was the English law case **Galtrade Limited v. BP Oil International Limited**⁴. The case was a dispute under a contract for the sale of four cargoes of low sulphur straight run fuel oil (SRFO). The fuel oil cargoes had to be delivered on FOB terms at the port of Taman on the Black Sea coast.

Pursuant to the sale contract terms, the quality determination was made based on the ship's composite sample taken after loading and thus the sample analysis results were not available until after the ship carrying the cargo sailed away from the port of loading.

The first cargo was off-specification for viscosity (415.6 cSt against a specification of 400 cSt) and sulphur (1.39% against a specification of 1.30%). Accordingly, the seller agreed to buy back the cargo for delivery at its refinery in Castellon.

The second cargo was also off-specification this time for sulphur (1.48% against the guarantee of 1.30%) and vanadium (56 mg/kg against the guarantee of 50 mg/kg). The seller offered a price discount and the buyer agreed to accept the cargo on the new price terms.

The third cargo was again off-specification in respect of sulphur (1.53% against a specification of maximum 1.30%). This time the FOB buyer rejected the cargo upon receiving the analysis results on the grounds that *"this is a huge difference from the contractual specification that makes this cargo drastically different from what Galtrade contracted for."*

The seller was not the end supplier of fuel oil cargoes and sought initially to negotiate a price discount of about USD 10.50 MT. When the buyer refused to pay for the cargo, the seller agreed to take back the cargo by ship to ship transfer off Malta.

The buyer brought a claim in the English Commercial Court to recover the financial losses incurred due to the seller's failure to deliver a cargo conforming with the contract quality specifications, including the freight for the carriage of cargo from the port of Taman to Malta, the vessel demurrage incurred after loading pending an agreement between the buyer and seller over the cargo loaded on board the vessel. The buyer contended that it was entitled to reject the cargo because the SRFO with a sulphur level of 1.53% was a different product than the SRFO with a sulphur level of 1.30%.

The seller argued that the excess in sulphur content was not drastically different from the sulphur specification in the sale contract and that the fuel oil cargo remained marketable as a blendstock at an appropriate price. The industry accepted specification for sulphur level is 1% in low sulphur fuel oil and 3.5% for high sulphur fuel oil. Therefore 1.30% sulphur level is viewed as an intermediate sulphur level, just as 1.53% sulphur level, rather than as a low sulphur level.

As regards the financial losses claimed by the buyer, the seller contended that they were caused by the buyer's wrongful rejection.

The English Commercial Court rejected the buyer's claim and held that the breach of sulphur specification was not so serious to entitle the buyer to reject the cargo. Since the difference between

4 [2021] EWHC 1796 (Comm)

1.30% sulphur level and 1.53% sulphur level was considered marginal, SRFO with 1.53% sulphur level was not a substantively different product than SRFO with 1.30% sulphur level.

SRFO is used by oil refineries as a feedstock for secondary refining processes. The greater the level of sulphur and other pollutants, the less desirable or valuable is the SRFO as a feedstock to oil refineries. But a fuel oil parcel with a higher level of sulphur may be blended with oil parcels with lower sulphur concentrations in order to meet the quality specifications of the oil refineries. The upgrading and downgrading of fuel oil parcels within larger blends is a common part of the oil traders' business. In this regard the judge said that:

“the market in which the parties operate can accommodate product of different specifications, whether directly into refineries, for blending or for consumption. At the very least, this shows that it could never be said with certainty that every deviation from specification would cause any, let alone substantial prejudice, to the buyer.”

Who Bears The Risks For Blending On Board In FOB Sale Contracts

by Vlad Cioarec, International Trade Consultant



The fuel oil blends (i.e. the blend components and their ratio in the blend product) are designed by the oil traders by mathematical calculation.

The blend components can be mixed in the shore tanks or on board the carrying vessels at loading ports. When the blend components are mixed on board the carrying vessels at loading ports, they are delivered to the carrying vessels from different shore tanks. Samples of blend components are taken from the shore tanks prior to the delivery of these components on board the vessel and then they are proportionally blended in a composite sample which is then analysed at a loading port laboratory.

However, the laboratory tests of the hand-blended samples cannot always be relied on to predict the characteristics of the product resulting from blending on board the components.

The shippers expect that the mixing of the blend components on board the vessel will result in a cargo conforming with the cargo description and quality specifications in the sale contract. This is not always the case. It may happen that the blend components are not compatible making the blended cargo unstable with the consequence that the blended cargo does not comply with the contract quality specifications or does not even correspond with the cargo description in the sale contract.

An example of such case was presented in the English law case **Septo Trading Inc. v. Tintrade Ltd**¹. The case was a dispute under a contract for the sale of a fuel oil cargo delivered on FOB terms from the port of Ventspils.

The seller shipped separately on board the carrying vessel seven oil parcels of different grades that were afterwards blended in vessel's tanks. The seller expected that by blending on board the different oil grades the resulting product will meet the contractual quality specifications.

The oil parcels were stored separately before loading. SGS inspectors nominated to determine the quantity and quality of the cargo took separate samples from each shore tank where the individual oil parcels were stored before loading and the samples were proportionally blended by hand. Then SGS performed the laboratory analysis of the hand-blend sample and issued a quality certificate showing that the cargo was within the contractual quality specifications.

The cargo was transported from Ventspils to Gibraltar where it was found off-specification.

The cargo samples taken from the shore tanks at Ventspils by the SGS inspectors were subsequently analysed by another inspection company that found them off-specification.

It was later determined by experts that the reason why the fuel oil blend was off-specification was that the blend components were “fundamentally incompatible”. The fuel oil cargoes need to be homogenous in order to obtain a representative sample. If SGS inspector had checked the homogeneity of the individual cargo components, he would have discovered that they were not homogenous as required in the quality specifications. Thus the composite sample prepared by the SGS inspectors prior to loading was not representative for the product resulting from blending on board the seven oil parcels.

The buyer claimed damages for breach of contract specifications contending that:

- blending on board operation was a breach of sale contract because the seller had the obligation to deliver “a homogenous blend” at the ship's manifold, i.e. the point where the risks passed from the seller to buyer; and

1 [2021] EWCA Civ 718

- it could not be bound by the SGS determination of quality given that SGS inspectors had failed to take and test a representative composite sample.

The sale contract provided that all risks were to pass from the seller to buyer at the loading port at the time when the oil product passed the flange connection between the loading hoses and the vessel's permanent hoses.

When the seven oil parcels passed the ship's manifold they were incompatible with each other and as a consequence their subsequent blending on board the ship led to an off-specification cargo. This was sufficient to establish during the Court trial that when the cargo passed the ship's manifold, and before that, was not compliant with the contractual specifications.

Nonetheless, the English Court of Appeal rejected the buyer's claim on the grounds that:

- the quality determination clause agreed in the sale terms recap provided that the quality certificate issued by a mutually acceptable independent inspector at the loading port was to be binding on the contracting parties in the absence of fraud or manifest error;

- the failure by SGS inspectors to take and test a representative sample was not a case of “manifest error”;

- since the quality certificate showed that the cargo was on-specification, the buyer was precluded to bring a claim for breach of quality specifications.

The FOB buyers should avoid the quality determination clauses with final certificate provisions because as shown in **Septo Trading Inc. v. Tintrade Ltd.** and **KG Bominflot Bunkergesellschaft Für Mineralöle mbh & Co Kg v. Petroplus Marketing AG**² such provisions protect the sellers in the event that the fuel oil blend components are not compatible and the blend turns out to be unstable later. BP and Shell Sale Terms limiting the effect of the quality certificate for invoicing and payment purposes would enable the FOB buyers to recover the financial loss incurred in the event that the fuel oil blend is subsequently found off-specification or does not correspond with the contractual description.

2 [2010] EWCA Civ 1145

Who Bears The Risks For Blending On Board In DAP Sale Contracts

by Vlad Cioarec, International Trade Consultant



The fuel oil blends (i.e. the blend components and their ratio in the blend product) are designed by the oil traders by mathematical calculation.

The blend components can be mixed in the shore tanks or on board the carrying vessels at loading ports. The oil traders require the mixing of blend components on board the carrying vessels due to the geographical distance between the locations of blend components and lack of storage facilities for blends at loading ports. When the blend components are mixed on board the carrying vessels at loading ports, they are delivered to the carrying vessels from different shore tanks. Samples of blend components are taken from the shore tanks prior to the delivery of these components on board the vessel and then they are proportionally blended in a composite sample which is then analysed at a loading port laboratory.

However, the laboratory tests of the hand-blended samples cannot always be relied on to predict the characteristics of the product resulting from blending on board the components.

The shippers expect that the mixing of the blend components on board the vessel will result in a cargo conforming with the cargo description and quality specifications in the sale contract. This is not always the case. It may happen that the blend components are not compatible making the blended cargo unstable with the consequence that the blended cargo does not comply with the contract quality specifications or does not even correspond with the cargo description in the sale contract.

Mixing the blend components on board the carrying vessel has the risk that the cargo may not be fully homogenized by the time of the vessel's arrival at the port of discharge, with the blend components forming strata in the vessel's tanks.

An example of such case was presented in the English law case **Mena Energy DMCC v. Hascol Petroleum Ltd.**¹. The case was a dispute under a contract for the sale of a cargo of "HSFO 125 cSt" (high viscosity fuel oil with a maximum viscosity of 125 centistokes) on CFR outturn quality terms (i.e. the quality of cargo had to be determined at the discharge port).

The cargo had to be delivered in Pakistan at the port of Karachi within a date range of 5 – 10 November 2014.

The cargo was loaded at the port of Fujairah.

The seller Mena Energy shipped separately on board the carrying vessel three oil parcels: a parcel of fuel oil with a viscosity of 280 cSt, a parcel of gas oil and a parcel of cutter stock and instructed the Master to blend them on board the vessel after the completion of loading.

Before loading, samples drawn in correct proportions from each of the three parcels were blended by hand and the analysis of the hand-blend sample indicated that the cargo had a viscosity of 101.6 cSt, that was below the contractual specification of 125 cSt. No other sample was drawn from the cargo for further analysis after the blending of the three oil parcels on board the vessel.

The sale contract provided that the cargo's compliance with the contract quality specifications was to be determined by the laboratory analysis of the composite sample obtained from the samples to be drawn from the vessel's cargo tanks at the port of discharge prior to the commencement of discharge. The results of the laboratory analysis performed by the discharge port authority, the Hydrocarbon Development Institute of Pakistan (HDIP), on the composite sample drawn from the vessel's tanks at the discharge port were to be final and binding on the contracting parties with regard to the quality of cargo.

¹ [2017] EWHC 262 (Comm).

When the vessel carrying the blended cargo arrived at the port of Karachi on 15 November 2014, spot samples² were drawn from the vessel's cargo tanks through the vessel's closed sampling system in the presence of SGS and HDIP representatives. The laboratory analysis of the cargo sample showed that the cargo had a viscosity of 192.92 cSt and therefore, did not comply with the contract viscosity specification. On receipt of these results, the buyer Hascol Petroleum Ltd. rejected the cargo.

The analysis of the spot samples also showed that in all but three tanks the cargo was stratified, with a viscosity ranged between 230 cSt and 286 cSt at the upper levels of the tanks. Therefore, the cargo was not homogenous.

On 21/22 November 2014, the contracting parties agreed for the vessel to return to the port of Fujairah to discharge there the cargo for further blending in the shore tanks and then reload the blended cargo and sail back to Karachi for a new analysis.

The buyer's consent to that arrangement was subject to the condition that the carrying vessel would return to Karachi by 26 November 2014 in order to enable the buyer to deliver the cargo to its customers in Pakistan by 30 November 2014.

The vessel returned to Fujairah on 25 November 2014. When the vessel arrived at Fujairah, new samples, both spot and running samples, were drawn from the vessel's cargo tanks prior to the discharge of cargo in the shore tanks for blending. The analysis of the composite sample obtained from the spot samples indicated a viscosity of 159.1 cSt, while the analysis of the running samples showed a viscosity of 159.3 cSt.

After the blending of cargo in the shore tanks, the analysis of cargo sample indicated a viscosity of 95.25 cSt.

After the reloading of cargo on board the vessel, a new sample was taken from the cargo. This time the analysis of cargo sample showed a viscosity of 92.8 cSt.

On 26 November 2014, the vessel sailed back to Karachi where it arrived on 30 November 2014. This time the cargo was found to have a viscosity of 82.47 cSt.

Hascol Petroleum claimed damages for the late delivery of the fuel oil cargo contending that:

- the viscosity specification formed part of the description of the commodity in the sale contract;
- the cargo was required to comply with the commodity description in the sale contract "HSFO 125 cSt";
- the seller had the obligation to deliver a homogenous cargo and a cargo which was non-homogenous and stratified as shown by the samples drawn on 17 November 2014 could not properly be described as "HSFO 125 cSt".

The English High Court held that the viscosity specification was not only a quality specification but also part of the description of the commodity in the sale contract and the fuel oil cargo was required to comply with the commodity description in the sale contract.

All the trouble could have been avoided if the seller would have blended the three oil parcels in shore tanks from the very beginning in the early days of November 2014. The fact that the blend components had been loaded in the correct proportions did not necessarily mean that the cargo would have certainly complied with the commodity description and quality specifications from the sale contract.

If the sellers in DAP contracts or sellers in CFR/CIF contracts with outturn quality terms choose to blend different oil grades on board the carrying vessels rather than in shore tanks before loading, they are the ones who would bear the risks and costs arising therefrom until the blended cargo is certified as meeting the contract quality specifications³.

As regards the buyer's contention that the fuel oil cargo had to be homogenous at the time of delivery at discharge port in order to comply with the commodity description in the sale contract,

2 The spot samples are taken from specified heights in each cargo tank – upper, middle and lower spots.

3 See Qatar International Petroleum Marketing Company Ltd. (TASWEEQ) QJSC General Terms and Conditions For CFR/CIF Sales and Purchases of Bulk Oils.

the Court held that there was no such provision in the sale contract. However, the fuel oil blends should be homogenous at the time of delivery at discharge port in order to obtain a representative sample. Therefore, in the contracts for procurement of fuel oil cargoes on DAP or CFR/CIF Outturn Quality terms the cargo homogeneity should be an express requirement⁴.

In *Mena Energy DMCC v. Hascol Petroleum Ltd.*, the sale contract was drafted by the seller with no such provision, but it does not mean that it was not necessary for the cargo to be homogenous at the time of the vessel's arrival at the discharge port. As stated in SGS analysis report, the cargo had to be homogenous in order to obtain a representative sample.

The seller's failure to deliver a homogenous cargo within the date range of 5 – 10 November 2014 caused a financial loss to the buyer which had to deliver the fuel oil cargo to its customers in Pakistan by 30 November 2014 to avoid a financial loss. Therefore, the buyer's claim for late delivery was justified and should have been upheld.

4 In the US law case *Westport Petroleum Inc. v. M/V OSHIMA SPIRIT*, 111 F. Supp. 2d 427 (S.D.N.Y., Sept. 5, 2000), a contract for the procurement of a fuel oil cargo on CFR terms stipulated that it was permissible for the cargo to be a blend of different oil products provided that at the time of delivery at the discharge port the cargo was a homogenous mixture conforming to the contract quality specifications.