BLACK SEA & WORLDWIDE

INTERNATIONAL TRADE

Interlegal digest

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FOSFA e-Seal for Certificates of Analysis

The Federation of Oilseeds, Seeds and Fats Trade Associations (FOSFA) has made it easier to obtain FOSFA International official seal, without which a laboratory or survey company certificate may be recognized as null and void.

As we mentioned earlier, certificates of quality/analysis issued by FOSFA accredited laboratories or survey companies should bear official seal of FOSFA International.

Certificates of quality

FOSFA Seal certifies that the analysis whereto it relates was performed by an accredited FOSFA Analyst in accordance with FOSFA Standard Methods of Analysis.

As for certificates in paper form, everything was clear, they were actively attached to Certificate of Analysis (CoA) by member analysts after analysis of the goods had been completed.

However, for a long time, traders had a question concerning e-certificates, since this issue was not regulated by FOSFA. Although there were no fixed procedures for use of e-Certificates, there was also no prohibition to use them.

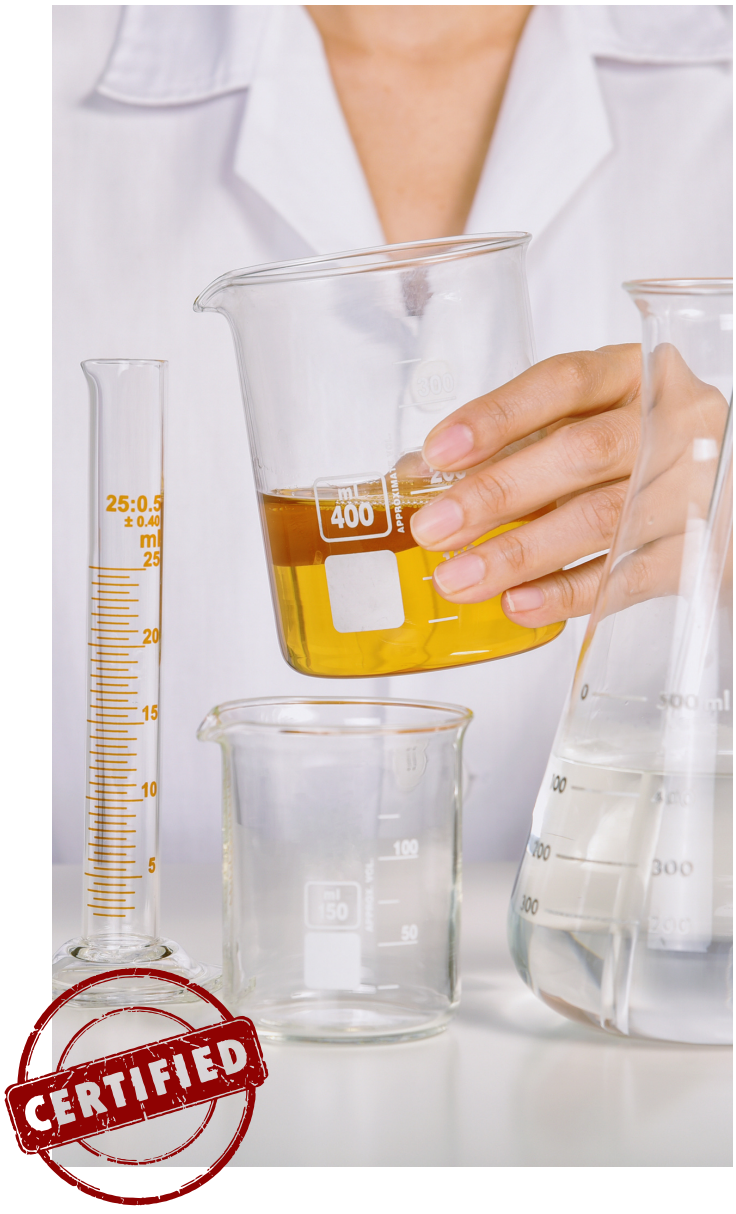
However, recently FOSFA has indicated an option to use a new electronic seal (e-Seal). Such e-Seal will contain the Analyst membership number, the FOSFA International logo and the year of membership. Color of e-Seal will change with each year of release. The new e-Seal will be attached in the form of soft copy to Certificate of Analysis and will also allow analysts to issue e-Certificates easily.

It should be noted that most FOSFA contracts contain the following phrase: “Certificate(s) of Analysis should bear FOSFA official seal”. That is, in case of a

dispute regarding quality of the goods, a certificate that does not contain FOSFA International official seal is likely to be recognized as null and void.

As we can see, FOSFA has implemented procedure for using e-Seal that will allow traders to exchange e-certificates, which in turn simplifies the procedure for obtaining certificates of analysis/quality and provides an option to save time.

It should be noted that FOSFA plans to completely switch to e-Seal in the nearest future. The seal on hard copies of certificates will be valid for a specific indefinite period.



How the war affects international trade

Our company was approached by a Turkish company, which is one of the largest producers of vegetable oils and biodiesel in Turkey. The request was that the client could not fulfill the foreign economic contract for the supply of vegetable oil from Turkey to Tunisia due to the introduction of a ban on exports from Turkey. The contract was subject to English law and incorporated one of the FOSFA standard pro forma.

Interlegal lawyers helped the client to strengthen his legal position in order to negotiate with his counterparty. Among other things, we helped to collect the necessary evidence and substantiated the client's position in terms of applicable English law and relevant precedents. Thus, the client was able to properly reject the unlawful claim of his counterparty, who so far has not been able to object to our client.

Leading lawyer Igor Kostov worked on the project under the guidance of Interlegal partner Alexey Remeslo

You can read more about the case on our website.

Read more

Vitol S.A. v JE Energy Ltd. [2022] EWHC 2494 (Comm)

This case background is the following: the Seller and the Buyer entered into contract on sale of 30,000 tons (+/- 10%) of fuel oil on FOB delivery in Tema, Ghana. The agreement also provided that:

- Laycan period has been set till December 23-24, 2019;
- Payment security under the contract should be carried out by means of documentary letter of credit;
- Pricing period is the fixed date range within December 20-30, 2019.

Following conclusion of the deal and agreement between the parties on terms of acceptable letter of credit, the Buyer actually did not have either a sub-buyer of the cargo or a vessel that should have been provided under the stipulated laycan.

However, the Seller continued to demand performance of the contract and, in order to protect its interests, began to “financially hold” the cargo until the financial security under the contract was fulfilled. Shortly after, when the letter of credit was issued on January 17, 2020, the document contained significant errors.

And since the ship was pulled from the berth due to delays in loading, the Seller requested that the deadline for shipment in the letter of credit be changed to January 31, 2020. As a result of the circumstances, the Buyer declared the contract "invalid", arguing that the Seller violated its contractual obligation to load the cargo before January 31, 2022, and the Seller, in turn, regarded such a notice as a waiver of the buyer's responsibility and as a violation, entailing the termination of the contract.

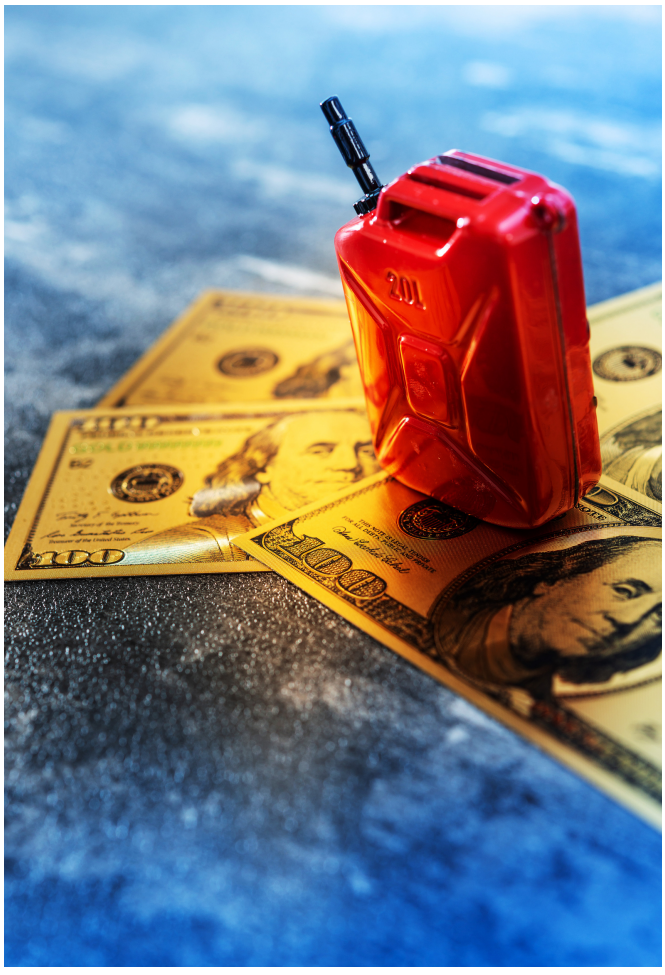
Soon the Seller filed a claim against the Buyer for damages, alleging that the Buyer had violated the contract, in particular:

- failed to nominate a vessel for arrival within the agreed period;
- was unable to open acceptable letter of credit; and
- declared the contract as null and void.

The Buyer counterclaimed the Seller for damages, stating that:

- laycan term in the contract simply meant the period of shipment or loading; and
- the Seller's request to change the date of shipment in the letter of credit to January 31, 2020, meant that the Seller agreed to ship the goods before January 31, 2020, while the fact that it had not been loaded by that time amounted to a breach by the seller of its obligations.

The court rejected the Buyer's counterclaim and confirmed that in a FOB sales contract, laycan term traditionally means that the seller has the right to terminate the contract if the vessel to be nominated by the buyer does not arrive at the port by the cancellation date.



The court also ruled that agreement to extend letter of credit is not treated as automatic extension/modification of the contract itself.

Based on the above, the Seller had the right to insist on letter of credit in the form agreed between the parties, while the Buyer, who was unable to issue letter of credit on satisfactory terms and declared the sale & purchase contract as invalid, shall be deemed as a party who violated such an agreement in full.

Based on the above, we may state that the mere fact that a party has violated its obligations shall not mean that this will be equivalent to repudiatory breach. Therefore, the innocent party should think twice before terminating the contract, because it may be found guilty of breaching the agreement.

LegalCare program:
a set of services for European trader

A European company engaged in trade of niche petroleum products filed a request to Interlegal for complex legal support aimed at standardization of its business processes.

Before providing personal assistance to the Client, Interlegal experts conducted due diligence of the company's commercial activity, resulting in KYC (Know Your Client) regulations in the framework of counteragent's due diligence prior to concluding the deal. Due to such due diligence, you may obtain true information about legal & financial status, with respect to feasibility of the deal and potential legal risks.

Also, having applied general principles and regulations of English law, Interlegal experts drafted Terms & Conditions, proformas of sale & purchase contracts on various supply basis, as well as loan agreement, online employment contract and many others.

Therefore, having trusted to high professional level and long-term experience of Interlegal law team, out Client obtained not only professionally drafted proformas of contracts, but also strong legal defense of domestic business processes and commercial activity in general.

This project is based on LegalCare – Interlegal unique product: Click here for details

Interlegal law team led the project, namely: associate attorney Igor Kostov, lawyer Ganna Domuschi & associate attorney Vitalii Tolstik, managed by partner Alexey Remeslo.

Alexey Remeslo

Igor Kostov

Vitalii Tolstik

Ganna Domuschi

Food security after the Russian invasion into Ukraine

The conflict between Ukraine and Russia has caused a new surge of global disruption in the supply chain, with serious implications for food security far beyond the conflict zone.

Ukraine is one of the key suppliers of basic food products at the international level. In recent years, record harvests of grain and oilseeds have been collected in Ukraine. Almost fifty countries rely on Ukraine for at least thirty percent of their wheat imports, as reported by the UN Food and Agriculture Organization (FAO).

The Russian Federation is also a major player in global food and agricultural trade. The critical role that Ukraine and the Russian Federation play in global agriculture is more evident in terms of international trade. Both countries are net exporters of agricultural products; both play a leading role in supplying world markets with food, for which exports are often concentrated in a few countries.

However, from the moment of invasion, Russia has blocked access to Black Sea ports of Ukraine, through which all the export goods passed. Ports have remained closed for several months and it had a significant impact on imports worldwide, having driven up prices and having raised serious concerns about food shortages in several parts of the world.

In response, several countries have tried to secure food security for their peoples. Hungary, Egypt and Serbia have banned the export of various types of grain and other goods. India has banned the export of food wheat and Indonesia has banned the export of palm oil, trying to cope with rising prices. Although many of such measures have been taken from that moment, they only exacerbated the volatile international problem.

For traders, this was reflected in increasing the number of contract terminations and statements on force majeure under grain contracts. For example, Egypt canceled contracts on Ukrainian wheat supply in aggregate volume of 240,000 tons, as agreed by the state at the beginning of the year.

However, not all such statements on force majeure were successful, since grain was still transported by rail and by road from Ukraine, albeit at a much reduced rate and to fewer countries.

The situation has improved somewhat from the moment of launching grain agreement between Ukraine, Turkey and the UN on minimizing war impact on food security worldwide. This agreement was reached in order to resume the export of vital food products and fertilizers from Ukraine to other countries.

Since August 1, 2022, thanks to the agreement, food prices worldwide have decreased, while over 10 million tons of Ukrainian food products have been exported from Ukraine to the countries of Africa, Asia and Europe.

However, it will take some time for exports to reach at least an approximate level that was before the war. Also, it does not mean that there will be no further force majeure circumstances under sale & purchase contracts.

But despite this, traders need to keep a close eye on the situation in order to determine feasibility to perform any contracts that may be violated. For both sellers and buyers, contract performance can be secured through flexible contractual arrangements

EXTENSION CLAUSE DOES NOT ALWAYS GIVE THE RIGHT TO EXTEND THE DELIVERY TERM

Extension clause shall mean a clause that entitles a party to extend the term of the goods delivery. Such a clause is often used both in CIF and FOB contracts. In case of untimely contract performance in the absence of such a clause, the seller can be declared in default due to violation of the essential terms & conditions of the contract (condition).

The Parties often include an extension clause in their contracts, but they formulate it in such a way that it could be impossible to apply it further.

Extension clause is found in many GAFTA and FOSFA proforma contracts. For example, in FOSFA 26 and GAFTA 49.

Extension of Shipment as per FOSFA 26

Pursuant to Clause 9 of FOSFA 26, if the contractual delivery term does not exceed 31 calendar days, the seller has the right to extend the delivery term maximum by 8 calendar days. For this purpose, it shall send to the buyer a corresponding notice not later than the first business day upon completion of the delivery term. In such case, a discount will apply depending on actual number of the days of extension:

- from 1 to 4 days - 0.50%;
- from 5 to 6 days - 1%;
- from 7 to 8 days - 1.50%.

In order to extend the delivery term in accordance with Clause 9 of FOSFA 26, the seller is not required to request for the buyer's consent to extend the delivery term. The delivery term shall be extended unilaterally, provided that the seller sends to the buyer a notice in due time.

However, in case when delivery term under the contract exceeds 31 calendar days, the seller is not entitled to invoke Clause 9 of FOSFA 26.

Extension of Delivery as per GAFTA 49

Unlike the FOSFA 26 contract, Clause 8 of GAFTA 49 prescribes that the delivery term shall be extended for an additional period, but not more than 10 calendar days. For this purpose, the buyer should send a notice not later than the first business day upon completion of the delivery term. In such case, no discount is granted, while the goods shall be delivered at the buyer's expense, while all storage fees, interest, insurance and other transportation costs shall be also payable at the buyer's expense, unless the vessel is ready for loading within the contractual delivery term.

In order to extend the delivery term in accordance with GAFTA 49, the buyer is also not required to request for the seller's consent to extend the delivery term. However, unlike FOSFA 26, extension clause can apply regardless of the delivery term under the contract.

We recommend, while using GAFTA or FOSFA proforma contracts, to study carefully the extension clause. Since the delivery term under CIF and FOB contracts is an essential term (condition), incorrect extension of the delivery term may be regarded as violation of such a condition. This means that the party, instead of extending the delivery term, may receive a notice of default.

In case of self-drafting the contract, it is necessary to formulate correctly the extension clause in order for such a clause to be applicable and functioning.

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