STEPHENSON HARWOOD

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GAFTA FORCE MAJEURE: WHAT "UNFORESEEABLE" MEANS, AND TIMELY NOTICE AS A CONDITION PRECEDENT

ADM INDUSTRIES CENTERS LTD V INERCO TRADE SA [2026] EWHC 1873 (COMM), PAUL STANLEY KC, 23 JULY 2026

The Commercial Court has decided two points of law on the force majeure clause in GAFTA Form 48: (i) the meaning of "unforeseeable" in clause 20(k); and (ii) whether serving a force majeure notice in time is a condition precedent to relying on clause 20. Upholding the GAFTA Board of Appeal on the first point, the Court held that "unforeseeable" means "of negligible probability". Reversing the Board on the second, the Court held that timely notice is a condition precedent. As a result, the Court remitted the award to the Board on a single point: whether the seller's notice of 16 May 2023 was in time, which depends on whether the force majeure event began before 9 May 2023.

FACTUAL BACKGROUND

Inerco Trade SA (the "**Seller**") agreed on 10 February 2023 to sell Ukrainian corn to ADM Israel (the "**Buyer**"), for shipment between 15 April and 15 May 2023. The contract incorporated GAFTA Form 48 (GAFTA 48).

Russian inspectors under the Black Sea Grain Initiative stopped inspecting inbound non-Russian ships from 7 May until around 18 May 2023, while the Seller's ship was waiting. The Seller gave force majeure notice under clause 20 of GAFTA 48 on 16 May. The Buyer rejected it, maintaining that shipment had been due by 15 May. The Seller accepted this as a renunciation and resold the cargo.

The first-tier GAFTA tribunal found for the Buyer. The GAFTA Board of Appeal (the "**Board**") reversed that decision and awarded the Seller USD 3.12 million. The Buyer appealed to the Commercial Court on three questions of law.

THE PROVISIONS OF GAFTA 48

Clause 20 ("Prevention of Shipment"), effectively a force majeure clause, covers at (k) "*unforeseeable and unavoidable impediments to transportation or navigation*". Clause 20 suspends performance while a force majeure event lasts, but only "*provided that*" the seller serves notice within 7 days of the occurrence, the deadline that applied here. Clause 20 also extends the shipment period once the event ends.

1. WHAT DOES "UNFORESEEABLE" MEAN?

The Court agreed with the Board that "*unforeseeable*" in clause 20(k) means "*of negligible probability*", judged when the contract was made. In reaching that conclusion, the Court rejected the Buyer's argument that only far-fetched risks are unforeseeable, and the Seller's argument that a merely unlikely event is unforeseeable. The Court also held that foreseeability must be assessed in the context of the particular disruption in question. The Board was entitled to distinguish between the one- or two-day inspection delays that had previously occurred and a stoppage lasting more than two days. The relevant question was, accordingly, not whether inspection delays generally were foreseeable, but whether a stoppage lasting more than two days was of negligible probability.

2. IS TIMELY NOTICE A CONDITION PRECEDENT?

The Court held that timely notice is a condition precedent to relying on clause 20, so a late notice is fatal even if the buyer suffers no prejudice. The Court held that the Board was wrong to apply a prejudice test, because the words "*provided that*" are, in the context of clause 20, "*unmistakeably*" the language of a condition precedent and nothing in the clause supports such a test. This is more emphatic than the word "shall", whose effect depends on the true construction of the particular contractual provision (*Mamidoil-Jetoil Greek Petroleum Company SA v Okta Crude Oil Refinery AD [2002] EWHC 2210 (Comm)*. The Court added that the requirement is not onerous and lets the buyer know where it stands.

3. CAN THE TWO EXTENSIONS BE COMBINED?

The Court also decided a third question, relevant only to damages: whether the clause 10 extension (up to 8 extra days, available to a seller that serves notice by the next business day after the "originally stipulated period" ends) can be added to a clause 20 extension. Deciding the point only as argued, the Court held that the "originally stipulated period" includes any clause 20 extension, so the Board's finding that the Seller would have shipped in time stands.

CURRENT POSITION

The parties agreed that the 7 days for serving the clause 20 notice ran from when the stoppage became force majeure. Accordingly, the Seller's notice of 16 May was only in time if the stoppage became force majeure on or after 9 May.

The Court held that the award did not decide whether the stoppage became force majeure before 9 May and sent the question back to the Board to determine this factual point:

+ If the Board finds that the stoppage became force majeure before 9 May, the notice was late, so the Seller's claim fails.
+ If the Board finds that it did not, the rest of the award stands, including the damages.

TAKEAWAYS

+ "Unforeseeable" in clause 20(k) means that, when the contract was made, the probability of the event occurring and affecting performance was negligible. It is not enough that the event was unlikely, but the clause is not confined to far-fetched risks. Foreseeability is judged against the particular disruption. A familiar kind of disruption may therefore still be unforeseeable if its scale was of negligible probability.
+ Timely notice under clause 20 is a condition precedent: a late notice prevents reliance on the clause, even if the buyer suffers no prejudice. The 7 days run from when the disruption becomes force majeure, which may not always be clear at the time. Parties giving or receiving a force majeure notice may therefore wish to review the clause's requirements as to the contents and timing of notices, and any interconnected rights and notice requirements.

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