

Circular № 2-17-23-10

Re: COMMINGLING & BLENDING OF OIL CARGOES: HAZARDS, PRECAUTIONS & LEGAL CONSIDERATIONS

After several approaches from the assureds on different issues regarding commingling & blending of oil cargoes Ingosstrakh wishes to inform the shipowners about some practical clarifications/advice. As consequence the circular letter was drawn up.

Introduction

The common practices of commingling and blending of cargo are not to be confused as the same process. They are in fact two very different methods of mixing cargo.

Commingling cargo involves the loading of multiple parcels of identical (same spec) cargo in the same hold but from different sources, such as from different ports and/or shippers/suppliers. This does not entail any additional operations to the loaded cargo which would maintain the same characteristic and specifications after mixing. The specific cargo remains unaltered but it is thereafter impossible to identify and separate the commingled cargo from each different port/supplier within the greater bulk. However, it is to be noted that cargo from the same supplier, even if loaded from separate tanks ashore, is not commingling.

Whereas blending cargo on the other hand, involves the mixing on board of two or more parcels of cargo with different specifications which are internally circulated using the vessel's pumps and pipelines resulting in a cargo with a different cargo specification and designation. Essentially the blended cargo no longer bears the same characteristics and specifications as it did before the blending process. The process of blending is done to produce a pre-defined product from different constituent parts of cargo.

Mr Justice Moore-Bick distinguishes the two processes in the case of *Glencore International AG v Metro Trading International Inc (No 2) [2001] 1 Lloyd's Rep 284*, where he stated that "*the essential distinction between blending and commingling is that where blending has taken place the resultant product is different in nature from both its original constituents*".

By Whom

Generally, the request to blend or commingle cargoes will come from the charterers and/or the shippers. A charterer or shipper has no right to require commingling or blending, unless this has been agreed in the charterparty pursuant to an express provision. A carrier who is either obliged pursuant to a charterparty provision, or elects for commercial reasons, to comply with a request from a charterer to commingle or blend on board will be best advised to consider some of the precautionary measures referred to below, especially noting that these procedures do not come without risk but in reality may expose carriers to various cargo claims which may not be covered under their P&I. Commingling or blending operations are outside the normal scope of the carrier's obligations under the Hague/Hague-Visby Rules and as such it will most likely affect the P&I cover for any liability which may arise as a consequence.

Additionally, and depending on the terms of P&I cover, a carrier will generally not be covered in circumstances where a vessel is employed in an unlawful, unsafe and / or unduly hazardous trade or voyage. Moreover, there is no P&I cover for any claim for cargo mis-described in the bills of lading nor for any cargo contamination due to intentional mixing of cargo that does not meet the bill of lading cargo description. Both processes, commingling and blending, involve the contamination of one cargo with another and thus give rise to many risks in consequence including possible documentary misrepresentation, off-specification cargoes and possible stability and other risks to the vessel herself, noting the blended cargo may have a different density to that originally loaded and thus resulting in different trim and draught.

Precautionary measures and protection

When a carrier is faced with a request or pressure to commingle or blend cargo, there are certain precautionary measures that can be taken despite the fact that commingling and blending of cargo may prejudice P&I cover:

1. Check the charterparty terms. Is commingling or blending of cargo permitted under the terms of the charter? Even if there is or there is not an express right to commingle or blend cargo, a carrier would be well-advised to consider all the listed precautionary measures.
2. Check with your Flag State and local port authorities. It may be prohibited by the flag depending on the type of vessel or configuration. Also port authorities may define when and where any such blending operations may take place. Therefore, a check with the port authorities must be made prior to undertaking blending operations.
3. Obtain a Letter of Indemnity from the charterers and / or the shippers. However, the security of a Letter of Indemnity should always be considered with care as a Letter of Indemnity is only as strong as the creditworthiness (and trustworthiness) of the party providing it.
4. Ensure that the master of the vessel accurately describes the cargo in the bills of lading. However, in circumstances where bills of lading have already been issued for part of the cargo on board, the master should ensure these are surrendered and rendered null and void before any new bills of lading are issued.
5. Any and all movements of oil cargo are to be recorded in the Oil Record Book in accordance with Regulation 20 of Annex 1 of MARPOL 73/78.
6. Take samples, where appropriate, of the cargo to safeguard for potential claims for off-spec cargo by receivers.
7. Appoint experts/specialists if in doubt as to the specifications (and pour point and cloud point) of the cargo. The master and crew of a vessel often have very limited scientific

knowledge of the inherent characteristics of the cargo such as cargo consisting of chemicals and / or other oil products. It is therefore prudent where applicable to involve experts and specialists in the field during the loading operations to ensure the safe operation of commingling or blending of cargo. Certain cargoes may form a wax drop-out which could result in difficulties when discharging the cargo and cleaning costs of the tanks.

8. Any provision in a charterparty granting the charterers/shippers the right to instruct the master to conduct commingling or blending of cargo must always expressly and clearly state that any such process or operation shall be at the sole risk, expense and responsibility of the charterers and shippers without any responsibility of whatsoever nature on the part of the vessel, her master, owners, operators and managers. The provision should also make it clear that all time occupied or lost for such operations and/or for any matter that results from or arises due to, in consequence of or in connection with such operations shall be for the sole account of the charterers and shippers and all resultant costs and expenses shall be solely for their account.

Legal implications of commingling / blending

1. Cargo mis-description: the cargo description in the bill(s) of lading has to match the specifications of the cargo being carried. Otherwise a carrier may find itself in a situation where the cargo is being rejected by the cargo receivers at the discharge port, leading to the possible arrest of the vessel.
2. Quality issues: the cargo may be contaminated and/or result in out of specification during the process of commingling or blending. Again, this would lead to the cargo receivers rejecting the cargo on the grounds that it does not meet the contractual specifications agreed.

International Convention for the Safety of Life at Sea (SOLAS) 1974

By virtue of Resolution MSC.325(90), amendments were made to SOLAS which prohibited blending of bulk liquid cargoes on board vessels during the sea voyage. In this respect, as of 1st January 2014 Regulation 5.2 took effect which provided:

The physical blending of bulk liquid cargoes during sea voyages is prohibited. Physical blending refers to the process whereby the ship's cargo pumps and pipelines are used to internally circulate two or more different cargoes with the intent to achieve a cargo with a new product designation. This prohibition does not preclude the master from undertaking cargo transfers for the safety of the ship or protection of the marine environment.

That is not to say that all blending procedures are prohibited by SOLAS, but in fact only blending of cargos during the sea voyage. The wording “during sea voyages” has the meaning that the vessel has left the loadport and is en-route. This prohibition does not apply to the introduction of additives provided it does not cause a chemical reaction and / or involve the circulation of cargo using the vessel’s cargo pumps and lines. Additionally, the prohibition does not apply where cargo is

recirculated within its cargo tank or through an external heat exchanger during the voyage for the purpose of maintaining cargo homogeneity or temperature control, including when two or more different products have previously been loaded into the same cargo tank within port limits.

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Carriers should be advised that where they accept to commingle or blend the cargo in exchange for a Letter of Indemnity, this does not reinstate P&I cover for any claims that may not be covered (for example, if the event there is a mis-description of the cargo in the bills of lading), but the value of the Letter of Indemnity is only as strong as the creditworthiness and trustworthiness of the party providing it. Carriers are therefore strongly advised to evaluate the financial standing of the party offering it.

In circumstances where a Letter of Indemnity is issued to conceal and or mis-describe the cargo to a third party, such a Letter of Indemnity will be unenforceable (constituting a fraud on the third party) and the carrier will be left without any right of recourse. Whilst a First Class Charterer may be reluctant not to honour such an unenforceable Letter of Indemnity, that is not to say that such an option is not available to them and that they will not rely on its unenforceability, particularly when the size of the claim may be very high. Carriers will have no P&I cover in such circumstances where the bill of lading mis-describes any particulars of the cargo.

Best regards,
Ingosstrakh Insurance Company
P&I Department