



SIASSI • McCUNN • BUSSARD • CAMPBELL

Dispute Resolution Mechanisms in Commodities and Shipping Transactions

A Presentation to the AIBL – Association of International Business Lawyers

By

Cyrus Siassi

Founding Partner, SMBC Law

Solicitor of the Senior Courts of England and Wales

Attorney at Law, Geneva Bar

Chartered International Arbitrator (FCIArb) and Accredited Mediator



SIASSI • McCUNN • BUSSARD • CAMPBELL

Commodities Transactions

- Energy (oil, gas, petroleum)
- Metals & Minerals (iron ore, copper, gold)
- Agricultural & Soft Commodities (coffee, wheat, soybeans)

Global trade is predominantly conducted by sea, with maritime transportation playing a central role in the execution of transactions



SMBC
LAW

SIASSI • McCUNN • BUSSARD • CAMPBELL

General Description of Activities Performed by Commodity Trading Companies



1 Buying

Purchasing commodities from suppliers

(state-owned enterprises or private companies, other traders or commodities exchanges)



2 Transporting

Moving commodities from point of purchase to multiple locations

(by sea, road, rail, river, pipeline etc)



3 Storing

Accumulating and maintaining purchased commodities for later sale or use

(storage on land, on vessels etc)



4 Transforming

Blending, crushing, mixing or otherwise changing commodities for further use

(in wet or dry storage facilities, refineries, smelters or other facilities etc)



5 Selling

Transferring ownership of commodities to other actors within the supply chain

Key Legal Features

Commodities transactions typically involve:

- Multiple contracts across jurisdictions – purchase & sale, storage, transportation, insurance covers; titles (bills of lading) and receipts; documentary credits (letters of credit, guarantees, letters of indemnity); banking contractual documentation, General Conditions.
- Parallel obligations involving different parties
- Potential conflicts of laws and jurisdictions

Transfer of Risk and Title

- The transfer of risk does not necessarily coincide with the transfer of ownership.
- Under commonly used Incoterms:
- Risk may pass at shipment, while title may pass at a different stage. Terms such as FOB and CIF must be interpreted within their contractual context.
- Standard industry contracts (e.g. The Grain and Feed Trade Association – GAFTA, The Federation of Oils, Seeds and Fats Association – FOSFA, the London Metal exchange - LME , may attribute different meaning to similar terms.



SIASSI • McCUNN • BUSSARD • CAMPBELL

Applicable Laws and Contracts

- Commodities disputes may be governed by:
 - The United Nations Convention on Contracts for the International Sale of Goods (CISG)
 - English Sale of Goods Act 1979
 - Domestic laws of relevant jurisdictions
 - In practice, many transactions rely on standardized industry contracts, including but not limited to GAFTA, FOSFA, LME



SIASSI • McCUNN • BUSSARD • CAMPBELL

Transportation Framework

- Transportation is typically governed by:
 - Charterparties (voyage, time charter, offshore contracts)
 - Contracts of carriage under bills of lading or waybills

Multimodal transport may also involve rail, road, or air carriage, adding further complexity (Railway Bills, Transport Bills, Airway Bills).



Why Do Disputes Arise?

- High-value cargo and tight margins
- Complex multi-jurisdictional structures
- Market volatility and regulatory changes

Operational issues frequently lead to disputes including:

- Delivery delays
- Quality and quantity discrepancies
- Contractual non-performance (non or partial deliveries; non or partial payment)
- Fraud



SIASSI • McCUNN • BUSSARD • CAMPBELL

Multi-Party Structure

Commodities transactions often involve multiple actors:

- Buyer and seller
- Shipowner and (sub) charterers
- Banks, insurers, transporters, storage facilities and Inspection Companies

These structures create overlapping obligations and increase the likelihood of disputes across different contractual layers.



Dispute Resolution Mechanisms

- **Negotiation:** direct and flexible, often the first step
- **Mediation:** facilitated settlement with a neutral third party
- **Litigation:** public proceedings before national courts
- **Arbitration:** private, specialized, and widely enforceable

Selecting the appropriate mechanism requires strategic consideration of the dispute's complexity and commercial objectives.

Arbitration the Preferred Mechanism

- **Why Arbitration?**
 - Confidential, flexible, specialized, enforceable
- **Key Arbitration Institutions:**
 - Swiss Arbitration Center (SAC)
 - Singapore International Arbitration Centre (SIAC)
 - International Commercial Court of Arbitration (ICC)
 - The London Court of International Arbitration (LCIA)

Arbitration in Shipping Disputes

The London Maritime Arbitrators Association (the LMAA)

Singapore Chamber of Maritime Arbitration (SCMA)

Typically ad hoc proceedings conducted by industry specialists

Common Features:

- Flexible procedures
- Small Claims Procedures (SCP); Intermediate Claims Procedure (ICP)
- Only 3-5% of cases go to hearings, mostly on paper



SIASSI • McCUNN • BUSSARD • CAMPBELL

Arbitration in Commodities Disputes: Key Commodities Associations

- **The Grain and Feed Trade Association (GAFTA):** Standard contracts provides for the application of English law and seat of arbitration in London, UK.
- **The Federation of Oils, Seeds and Fats Associations (FOSFA)**
- **The Federation of Cocoa Commerce (FCC)**
- **The London Metal Exchange (LME)**
- **Other Trade Associations:** Nut & Dried Fruit Trade Association (NDFTA); Refined Sugar Association (RSA) and the Sugar Association of London (SAL); International Cotton Association (ICA)

Procedural Particularities

- **Tribunal Composition:** traders, not just lawyers
- **Time limits:** short deadlines, failure bars claims
- **Appeal procedure:** multi-tier appeals, new submissions and hearings
- **No lawyer:** some rules prohibits lawyer representation
- **String Arbitration:** dispute resolved between the first and last buyer, binding all parties
- **Appeals in String Contracts:** all parties entitled to appeal

Prevalence of English Law

- **Commercial Jurisdiction:** key for international commercial disputes, even for parties with no UK connection
- **Specialized:** commodities, energy, shipping (Admiralty Court) and insurance
- **Support for arbitration:** 25% of the cases involve arbitration matters
- **International Focus:** 75% of the cases are international (20+ years)
- **Experienced judges**
- **UNCITRAL Model Law**



SMBC
LAW

SIASSI • McCUNN • BUSSARD • CAMPBELL

Shipping Disputes in National Courts

- Ship arrest is a key tool to secure maritime claims
 - Local courts can detain the vessel until the dispute is resolved or security (bond, guarantee, P&I Indemnity letter, escrow) is provided
 - Governed by international conventions, such as the Arrest Convention 1952 or 1999
 - Under the Arrest Convention 1999 a claim must qualify as a maritime claim (art. 2), and jurisdiction is linked to the place of arrest (arts. 1, 3)



SIASSI • McCUNN • BUSSARD • CAMPBELL

Security Instruments

- **Protection and Indemnity (P&I) insurance** is a form of mutual, non-profit marine insurance providing coverage for third-party liabilities, rather than physical damage to the ship itself. It covers risks such as personal injury/loss of life (crew/passengers), pollution, wreck removal, and cargo damage. P&I Clubs cover over 87% of ocean-going tonnage.
- P & I Indemnity Letters
- **First demand guarantees**

Swiss Law and Jurisdiction

A documentary credit is **separate** and **independent** from the underlying contract. The bank has an independent obligation and must pay based on the terms of the credit and upon presentation of conforming documents.

Specific Interim Measures: Stop payments applied for and issued against issuing banks of irrevocable documentary credits/First Demand Guarantees /Stand-by letters of Credits.

Swiss Law and Jurisdiction

- Temporary Injunction and **Irreparable Harm** (Art. 261(1)(b) SCCP)
 - To request a temporary injunction, **the applicant must demonstrate irreparable harm** if the bank honors the letter of credit or bank guarantee
 - The financial impact alone, or the need to litigate to recover the payment, is generally not considered irreparable harm
 - **“Pay first, sue later”** applies

Swiss Law and Jurisdiction

- Swiss Courts and documentary credits
 - Swiss Courts **will not** interfere with a bank's obligation to pay unless issues unrelated to credit arise.
 - **Fraud Exception:** Courts may intervene in cases of fraud regarding the documents or issuance of the credit.
 - **Abusive Call:** The applicant must show, prima facie, that the beneficiary is abusing the letter of credit or guarantee.

Swiss Law and Jurisdiction

Recognition and Enforcement of Foreign Decisions

Legal Framework:

- Switzerland follows international and domestic rules for enforcement
- Key international instruments:
 - Lugano Convention, for judgements from EU/EFTA States;
 - Swiss Private International Law Act (PILA), for non-LC judgements
 - New York Convention, for arbitral awards



Conclusion

- Commodity and shipping disputes arise from complex, multi-layered transactions
- Arbitration remains the preferred mechanism due to its flexibility and enforceability
- Jurisdictional choices, particularly English and Swiss frameworks, play a decisive role in dispute resolution strategy



SMBC
LAW

SIASSI • McCUNN • BUSSARD • CAMPBELL

Q&A

Cyrus Siassi

Solicitor of the Senior Courts of England & Wales -Attorney at Law, admitted to the Geneva Bar

29, Avenue de Champel - 1206 Geneva, Switzerland

T. +41 22 705 10 40 / M. +41 79 597 88 30

E. cs@smbcclaw.ch - W. <https://www.smbclaw.ch>

Founding Partner of **SMBC Law** in Geneva

In association with **Hill Dickinson** - www.hilldickinson.com

Swiss qualified lawyer, admitted to the Geneva Bar, Switzerland

Solicitor of the Senior Courts of England & Wales, member of the Law Society of England & Wales, registered with the Solicitors Regulation Authority (SRA number 482333) - Higher Rights of Audience

Admitted at the DIFC Courts (Registration No :6151B)

Lloyds Maritime Institute - Certified in Maritime Law & Shipping Contracts

Grain and Feed Trade Association (GAFTA) - Certified in Gafta Trade Foundation Course, Contract Terms and Approved Registers, Commodity Shipping, Commodity Dispute Resolution

Arbitration Practitioner – Swiss Arbitration Academy

Diploma in International Maritime Arbitration

Global Diploma in International Commercial Arbitration (Oxford - CIARB)

Fellow of the Chartered Institute of Arbitrators (FCI Arb)

Accredited Civil and Commercial Mediator (CIARB) & (SCCM)

Lecturer at the Finance & Banking Institute of, in Geneva, in the fields of international commodities and shipping transactions, Anti-Money Laundering/Corruption and International Embargos/Sanctions, Trade and Export Control Restrictions.

Acts in a broad range of contractual, financial transactions, pre-contentious and contentious matters, international and cross-border complex transactions.

Specialized in International commercial legal and regulatory matters, both under advisory, mediation and (pre) litigation matters, including as Counsel in major international mediations and arbitration matters (SAC, ICC, LCIA, SIAC, LMAA, SCMA, GAFTA, FOSFA), with a focus on commodities (soft, oil, metal) and shipping transactions.