

**Fraud** in the seafood trade

# Pressing claims against dishonest suppliers

Faults and mistakes can happen in any business. Due to the variety of seafood species, different fishing and handling methods, ways of freezing and packing, product quality problems can arise from time to time with virtually any seafood exporter. Problems with quality or quantity can also sometimes be deliberately created by a fraudulent seller, or a deceitful buyer can send the supplier an unlawful claim.

When a problem with a consignment arises a prompt and correct reaction from both buyer and seller can assure that the issue will be successfully solved. The willingness to cooperate and the good will of both parties is the main guarantee that an acceptable solution will be found. However not all claims can be resolved successfully. This is especially the case when a dishonest buyer tries to avoid payment for the cargo received or wants a price deduction. Another situation is when a dishonest exporter intentionally breaches the contract and supplies sub quality or underweight product. In both situations the parties should be prepared for long arguments and must be able to provide evidence that proves their position.

## Design contracts to reduce risk of unfair complaints

Unjustified quality and quantity complaints is the easiest method to either reduce the purchasing price or completely avoid payment for the goods. This method works especially well when the product is sold on open credit or if the buyer used a bank guarantee as a payment instrument.

A seafood producer, company ABC Limited, sold several pallets of frozen fish fillets to an overseas importer, DEF Imports Ltd. Some days after the receipt of the cargo the buyer sent the producer a quality report where it was stated that the glazing percentage was several percent higher than agreed and the consignment had an excessive number of broken fillets. Because of that the buyer deducted a certain amount from the invoice. The producer was surprised as the quality was controlled during the production and packing. When he asked for an independent inspection of the fish the buyer told him that the whole lot had already been used in production and could not be inspected. The seller had no other option but to accept the deduction. The third time this happened ABC Limited decided not to dispute the results of the buyer's inspection. He immediately prohibited the buyer from touching the consignment and asked his freight forwarder to move the fish to another warehouse at the seller's expense. In a few days the producer managed to find another company which took all pallets from the stock and paid cash. No quality complaints were made and afterwards it the two companies started a fruitful cooperation between them.



Partners in a transaction should try to prevent situations arising where the counterpart can raise claims. Preventing conflicts from arising in the first place is usually easier than resolving them.

We see that DEF Imports Ltd. used the well-known trick of sending the claim only after the product was "sold" or "used in production" making it impossible for a third party to check its quality. We can say that ABC Limited could have avoided losing money from the very beginning of the story. The companies should have made a contract where it was stated that in case of any quality or quantity claim the buyer was prohibited from using the product by any means and an independent inspection should have been performed. The costs of the inspection should have been paid either by the buyer or the seller depending on the inspection results. The results of the independent survey should be final for both companies.

## Independent inspections can prevent conflicts

A trader XYZ Ltd. purchased a container with frozen fish from an overseas trading company JHG Limited. The firms made a proper contract where the time-frame of a possible quality and quantity complaint was agreed to five days after the arrival of the container to the port of destination. According to the contract the buyer paid in full for the product before it arrived. The container was received by XYZ Ltd and due to the lack of time and facilities was sent directly to their customer and no inspection was performed. But ten days later XYZ Ltd. received a serious quality claim from their buyer where it was stated that the product was

of very poor quality and it was almost impossible to use it in their production. XYZ Ltd. sent the complaint to JHG Limited but it was immediately rejected as the claim was made much later than was stated in the contract signed by the parties. After calculating the costs of the legal procedures against the supplier the importer preferred to write off the debt and compensate his customer for the loss.

We can see that XYZ Ltd. made several mistakes during the deal. First, they should have demanded an inspection report from an independent surveyor before the container left the port of loading. Second, the buyer should have stated a realistic time of the inspection upon arrival, and, most importantly, should have inspected the goods on receipt.

It is obvious that it is easier to avoid problems rather than trying to solve them later. Quality and quantity issues can be easily avoided by performing an independent pre-shipment inspection of the product. The inspection is especially important when the exporter and importer have no previous experience in doing business with each other. Independent surveyors can be found in almost any region and the cost of their services can be a small fraction of the possible loss. Buyers are advised to inspect upon arrival even if a pre-shipment inspection has been performed. This will assure that the product was not damaged during transport. The preliminary control can be done by the quality managers of the purchasing company; if any problem is found, an independent inspection should be made. It is important for both the buyer and seller to stipulate in the

contract the timeframe for submitting and handling a claim and this timeframe should be realistic. Usually the parties agree that the claim should be submitted in writing after, say, X days after the arrival of the cargo to the buyer's warehouse and if the seller does not react to the claim within the next X days the claim is considered to be accepted. If dealing with chilled or live seafood products the time for complaints should be minimised to several hours after the cargo receipt.

### What should a buyer do when he discovers problems with the consignment?

First, the buyer should inspect the received cargo as soon as possible and within the timeframes set by the contract. In many countries the incoming cargo is controlled by the local customs' authorities who will check the quantity of the incoming product. When the importer discovers the problem he should immediately inform the supplier about it. The claim should be made in writing not just over the phone. Make sure that the seller has received the claim. Call him, send several emails and demand confirmation of the receipt of the information. If the seller does not respond to your correspondence, continue sending the reminders and

necessary papers. Inform the seller about the consequences of his neglect. It is very unlikely that the seller will remain silent if the goods were supplied on open credit, but he could ignore your claim if you have prepaid the product. If the seller does not accept the claim the buyer should invite representatives of the local Chamber of Commerce or an internationally recognised independent inspector. The seller must be informed and he should be given an option to approve the surveyor and/or send his own representatives to be present during the inspection. If the supplier cannot or is not willing to send his representatives to participate during the inspection the control can be done without their presence. The buyer should remember that he cannot use any part of the product for production or sell it to other companies until the matter is settled with the supplier.

### All agreements should be in writing

Once the results of the inspection are ready the buyer will have a complete picture of the product's condition and can claim compensation from the seller. If the importer receives the seller's acceptance, he should insist on having it in writing. Acceptance over the phone is not enough as it is impossible to prove.

The letter of claim acceptance must include the following information:

- Exact date when the compensation will be paid and how it will be done: by issuing a credit note and debiting the account, by supplying extra quantity of goods or any other method;
- Acceptance or rejection of extra costs and charges occurred in connection with the claim, such as: customs duties, transportation costs, warehouse charges, inspection costs etc.

Importers should be aware of particular regulations valid in the country they are dealing with. China can be one example. If the supplier rejects all complaints and is unwilling to compensate the loss the only possibility for the buyer to receive his money back is to apply to the Chinese courts. These rely mostly on documentary evidence so the claimant must provide as much proof as possible (reports from the shipping line, coldstore, Chamber of Commerce, surveyor, customs, etc.). All documents must be translated into Chinese and it is advisable to notarise them in the local Chinese Embassy.

When the supplier receives a claim he should immediately act on it and complete it within the timeframe in the contract. Usually the results of an independent inspection can only prove problems with the quality of the product. Problems with the quantity are more difficult to handle once the goods have been taken from the customs zone and if no quantity control was performed there.

Our advice is simple. Try to avoid claims rather than trying to solve conflicts after the delivery.

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**Clients:** importers, exporters, traders, and manufacturers