

Member Update

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TOPIC: Force Majeure Clause Guidance in Current Geopolitical Environment (US-Iran Conflict)

DISTRIBUTION: GTA Members – primary contact list. Please circulate to all appropriate internal parties.

1. Purpose

To provide Members with guidance on the application of Force Majeure Clause (Rule 21.0 under GTA Trade Rules) in light of recent market enquiries linked to the US-Iran conflict and associated geopolitical tensions.

2. Background

GTA has received enquiries regarding whether current geopolitical developments, including the US-Iran conflict, constitute Force Majeure under GTA contracts.

GTA notes:

- GTA cannot declare or determine Force Majeure under any contract.
- The application of Rule 21.0 is contract-specific and ultimately determined by a GTA Arbitration Tribunal based on the facts presented.
- Any interpretation depends on whether the circumstances meet the requirements set out in the GTA Trade Rules.

3. Guidance to members

Under Rule 21.0 of GTA Trade Rules, Force Majeure is defined as follows:

Force Majeure may include events such as war, embargo, or acts of government, provided they are beyond the control of the parties and not due to their own acts or negligence.

However, Members should be aware:

a) Causation is critical

- Force Majeure applies only where the event directly causes a delay in delivery or shipment.
- A general reference to geopolitical tensions or market disruption is not sufficient.
- The invoking party must demonstrate a clear link between the event and the delay.

b) Commercial impacts not Force Majeure

- Price movements, margin pressure, or adverse market conditions do not constitute Force Majeure.
- The clause is not a mechanism to exit contracts only where performance has become more costly.

c) Notice and evidence requirements apply under Rule 21.2

- Strict notice must be issued within required timeframes, and
- The invoking party must provide evidence and demonstrate best endeavours to perform.

d) Effect of invoking Force Majeure

- The clause provides for a temporary extension of performance (up to 60 days), not automatic termination.
- If performance remains prevented after this period, default provisions apply.

4. Key messages to market participants

GTA is aware of reports suggesting Force Majeure is being cited in current trading conditions. Members are reminded:

- Force Majeure is a high threshold provision, not a general risk management tool.
- Each case needs to be assessed on its specific facts, contractual terms, and evidence.
- Improper reliance on Force Majeure may expose parties to default and damages under GTA Trade Rule 17.0 and subsequently lead to an arbitration.

5. Recommended Actions

GTA encourages Members to:

- Review their contracts and GTA Trade Rule 21.0 obligations carefully
- Act in good faith and pursue commercial solutions where possible
- Ensure strict compliance with notice and evidence requirements
- Maintain clear written records of all communications and events
- Seek legal advice where necessary.

6. Further information

For further information, please contact GTA at admin@graintrade.org.au