

# Blending versus commingling



**James Bean**  
Managing Director, Standard Europe  
+44 203 320 8811  
james.bean@ctplc.com

On 1 January 2014, an amendment to SOLAS Chapter VI on the Carriage of Cargoes and Oil Fuels came into force, prohibiting the blending of bulk liquid cargoes and production processes on board ships during the sea voyage. As SOLAS does not define the meaning of 'sea voyage', this ambiguity has led to a number of questions from members about these amendments to Chapter VI and regarding blending/commingling generally.

## Definitions

Blending is defined by SOLAS as follows:

*'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.'*

Commingling on the other hand means the operation of loading in the same cargo space on board a ship parcels of the same product/bulk cargo (usually liquid) with the same specification from different sources such as different shippers or ports, but without taking any other steps in relation to the product/bulk cargo other than to carry and discharge and deliver it.

Loading of the same product with the same specification from different shore tanks, barges or trucks, etc. from the same port or the same single terminal does not constitute commingling (or blending). The 'same product' does not mean identical products as it is appreciated that chemical composition, including water, cat fines, etc. might vary slightly. However, the product variation must fall within acceptable limits for the cargo to retain the same cargo categorisation.

## Cargo operations in practice

Blending and commingling constitute intentional contamination of one cargo with another; so charterers/shippers/receivers should bear the risk of the cargo not being mixed to form a homogenous product.

The master should be given specific instructions prior to loading to assess whether the multiple grades can be safely loaded in the specific cargo tanks without any risk of tank overflow or pollution. It is also recommended, if possible, to get the chemical analysis of the final product done prior to loading to check on the physical and chemical characteristics of the cargo, especially the pour point, cloud point and if there is going to be any wax formation which might lead to excessive cargo remaining on board on discharge.

When agreeing to blending or commingling cargoes, the master should also consider the overall effect on the ship's stability. The blended density will be different to that of the originally loaded cargo and this may have a direct effect on the ship physically, including trim and draught. Also, when blending or commingling crude oil cargoes, significant wax drop-out can occur, which will result in difficulties in discharging and significant cleaning costs.

# Blending versus commingling continued

## Bills of lading and LOIs

It is important that the exact cargo description and the exact operation are clearly defined in the bill of lading to avoid falling foul of the provisions to the cargo rules regarding description. The bill should show:

- quantity;
- cargo type;
- loading port; and
- date

for all the blended or commingled cargoes.

Where bills of lading have already been issued for part of the cargo on board, the master should ensure that these are surrendered and cancelled before any new bills, which cover the final product, are issued.

Where commingling (or blending) is requested by cargo interests, it is recommended that a letter of indemnity is sought. Of course, an indemnity is only as good as the creditworthiness of the party granting it, so before going ahead, members should ensure that they are fully satisfied with the financial standing of the indemnifiers. An LOL is not enforceable if the underlying transaction is intended to defraud a third party, for example, where it is received in return for misdescribed cargo.

## Club cover Commingling

Claims arising out of commingling are generally accepted as poolable.

In so far as a cargo claim does arise, it is essential for poolable cover that the bill of lading properly reflects the cargo on board as set out above. Failing which, members will fall foul of provisos (7) and (8) to the cargo rules regarding description.

Provided the bills of lading properly reflect the cargo on board, P&I cover will be operative in the usual way.

## Blending

In relation to blending operations, there is currently no express exclusion in the Pooling Agreement. However, given the specialist nature of the blending operation, which is comparable to using the ship as a floating chemical laboratory, to the extent that liability arising from a blending operation could be considered imprudent, unsafe, unduly hazardous or improper, this may trigger the hazardous trade exclusion, which would render any *claim discretionary under rule 4.8*.

In reviewing such a claim, the board will take into consideration whether the recent changes to SOLAS Chapter VI have been complied with. The same provisos with respect to issuing bills of lading would also apply.

## SOLAS

1 January 2014 saw the entry into force of a number of amendments to SOLAS. Amongst these, the changes to *SOLAS Chapter VI – Carriage of Cargoes, Regulation 5.2*, have a particular significance for the conduct of cargo operations on board tankers. Regulation 5.2 now prohibits the practice of physical blending of bulk liquid cargoes during sea voyages.

For the purpose of the SOLAS amendments, physical blending operations have been defined as:

*‘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’.*

The regulation goes on to state that:

*‘any production process on board a ship during sea voyages is prohibited’.*

It should be noted, however, that this regulation:

*'does not preclude the master from undertaking cargo transfers for the safety of the ship or protection of the marine environment'.*

The regulations do 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.

Likewise, where a cargo becomes homogeneously mixed simply by discharging it ashore alongside a terminal using the ship's pumps, this will not fall foul of the new SOLAS regulations. The same would be true where the operation takes place by STS operations either within port limits or STS operations at sea.

If the ship alone was blending cargo on board by recirculation between tanks during a sea voyage, this would clearly be in breach of the new regulations. The same would arguably be true if the ship was blending at a designated site offshore. We say 'arguably' because SOLAS does not define the meaning of 'sea voyage' and this ambiguity has led to a number of questions from members. That said, although SOLAS does not define the meaning of 'sea voyage', the intention of the regulation would appear to prohibit the physical blending of bulk liquid cargoes using the ship's cargo pumps and pipelines outside port limits, whether at anchor or not.

If a member intends to undertake physical blending operations within port limits, whether at anchor or moored, authorisation should first be sought from the local port state administration in order to ensure that the local interpretations of Regulation 5.2 are understood and complied with.

Whether blending is permitted if a ship is at anchor outside port limits is still open for discussion and will depend upon the flag state and local authority's interpretation of 'sea voyage'.

#### **Conclusion**

Each instance of commingling and blending will need to be considered on its own facts so that the club can determine whether there are any cover issues which might arise from the cargo operation in question. The above is therefore only for general guidance, and members and brokers should speak to their usual club contact should they have any questions.

