

Much of the market's attention has understandably been fixed on the closure of the Strait of Hormuz (the Strait) and the immediate consequences for *force majeure* and nondelivery.

The next phase, however, may prove no less contentious. When operations resume, the question will not simply be whether LNG can move again, but which cargoes move first, for whom, and on what contractual basis. In that sense, the reopening of the Strait may mark not the end of the present disruption, but the beginning of a different and potentially more complicated contractual and operational problem.

Reopening Does Not Restore the Pre-disruption Position

The reopening of a disrupted shipping route does not restore the pre-disruption contractual position. Rather, it may trigger a difficult operational and legal exercise in which annual delivery programmes (ADPs), quarterly scheduling arrangements, vessel availability, short-term and spot cargo loading windows, and competing buyer entitlements come under immediate pressure. If the Strait reopens intermittently, that pressure will intensify further. Sellers managing multiple relationships may find themselves facing serious volume and slot allocation issues.

In practical terms, slot availability and vessel positioning may be uneven, scheduling assumptions may need reworking, and cargo timing may no longer map neatly onto existing ADPs. What follows may therefore be less a matter of restoring the preexisting delivery pattern and more a matter of deciding how potentially reduced, delayed or unevenly restored capacity should be sequenced across a contractual portfolio.

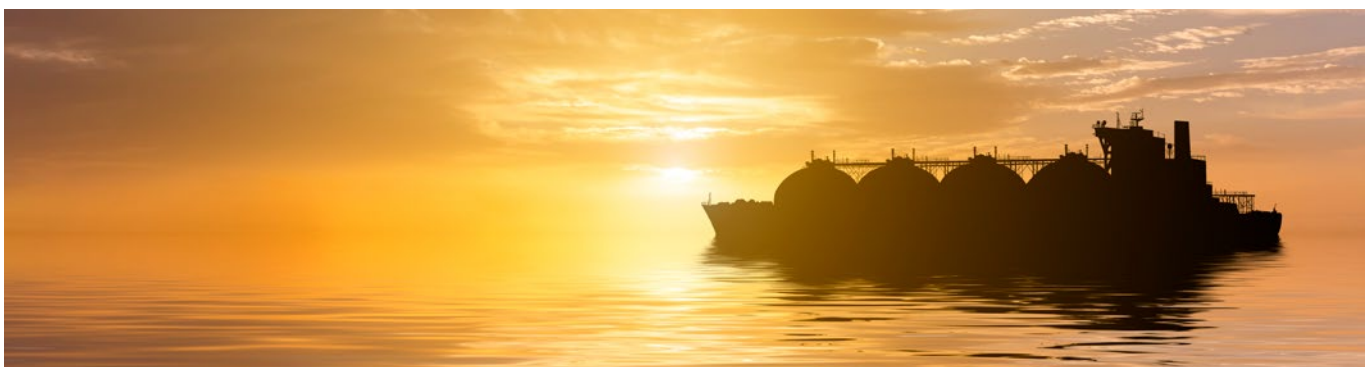
The answer will depend first and foremost on the contractual structure of the relevant sale and purchase agreement (SPA), master sales agreement (MSA) or confirmation notice (CN) (considered in detail below). However, alongside the formal contractual analysis, there is likely to be a parallel portfolio and relational management exercise. Sellers and market participants may seek to manage the disruption through the application of contractual club or allocation rules, reallocations, swaps, replacement purchases and other forms of commercial optimisation.

Contractual Provisions Will Shape the Answer

The starting point is the structure of the contract in question. In practical terms, the answer may differ materially depending on whether the contract and the corresponding volumes are tied to a specific train or source, or whether they are framed as broader multitrain, portfolio or multisource supply arrangements. This distinction is already central to the current *force majeure* debate, and it is likely to remain just as important when the focus shifts from nonperformance to resumed performance and allocation.

Where an LNG supply contract is train-dedicated, the legal and commercial consequences of infrastructure damage at a specific facility may fall more heavily on the buyers contractually linked to the affected trains. Those buyers may have a stronger *force majeure* defence against downstream claims, but also a weaker claim to secure replacement cargoes from unaffected trains or other sources not contractually committed to them. The disruption may therefore be more directly borne by the subset of buyers tied to the affected train.

By contrast, portfolio-based SPAs may allow the seller to source LNG from a broader pool of supply, across the same supply source, as well as from multiple export and loading facilities and third-party purchases. This potentially widens the seller's ability to perform. However, it may also complicate any argument that *force majeure* affecting specific assets excuses nonperformance altogether. In a portfolio arrangement, therefore, the contractual issue is less likely to stop at whether a specific train has been impacted and more likely to focus on what the seller was still able, or required, to do elsewhere in its portfolio.





The Central Issue Will Be the Order of Priority and the (Re)scheduling Process

Once reduced or ceased production is resumed, and shipping channels are reopened, the central issue will be allocation – essentially, who gets what volume, in what amount and when? This is a critical issue in the current market where numerous contracts are colliding in their allocation of capacity to a broad spectrum of long- and short-term buyers. As such, how will available LNG be allocated among competing buyers in circumstances where Middle Eastern sellers, for example, may be contractually obliged to offer (i) makeup quantities, *force majeure* restoration volumes and rescheduled cargoes, to make good cargoes dropped; and (ii) new contractual quantities for spot sale, strips and ADPs moving forward?

The answer will depend on the wording of the relevant SPA/MSA/CN, including any provisions dealing with reduced production, allocation of supply, pro rata sharing, club rules, fair and equitable allocation, and any obligations to source from alternative sources. Some contracts may require the effects of *force majeure* to be allocated rateably among all buyers, so that the burden does not fall entirely on one buyer alone, while other contracts may contain allocation or club rules governing how scarce supply is to be shared between long-term and short-term customers.

However, what happens where the contract in question is unclear or ambiguous in handling this issue? Where the contract leaves room for seller discretion, will commercial and relational considerations materially influence how volumes are allocated? Will the contracts of larger scale and value be given priority over smaller or shorter-term contracts? We do not know. However, the order of restoration of volumes may be contentious if contracts are not followed, and relationships are subjectively prioritised in a black box approach.

A further question is how volumes are ranked within the contractual relationship itself once deliveries resume. Does the seller first restore current base volumes under the ADP, or do makeup or other deferred quantities compete for the same volumes?

As a matter of commercial logic, one might expect the immediate focus on reopening to be the reinstatement of current scheduled deliveries and the stabilisation of the existing ADP. However, the position of accrued makeup volumes or other deferred quantities – which may be contractually valuable and time sensitive – remains unresolved. If those entitlements have already accrued during the disruption, they may quickly come into conflict with the effort to reestablish the delivery of base volumes.

A related issue here is whether any available alternative supply must be used to support performance under long-term SPAs. In other words, if the seller can source LNG elsewhere, is it contractually obliged to do so? In a [recent piece](#), the authors actively consider the scope, meaning and effect of the reasonable endeavours duty to mitigate obligation. Since then, events in the market have provoked an attention shift from Ras Laffan to the US. Many in the market are currently speculating about the role of the Exxon Mobil/QatarEnergy Golden Pass project in mitigating the current volume shortfalls. With the first cargo loaded last week, time will tell whether those sellers use this facility and its volumes as a source of alternative mitigation supply under other agreements. Ultimately however, whether Exxon or QatarEnergy will be obliged to do this is a question of contract.

A Shadow Cast Over Next Year's ADPs

The uncertainty does not stop with the current cycle. It is against this same background that sellers will shortly be required to set their ADPs for next year, with many contractual negotiation windows scheduled to open at the end of the summer. The lack of clarity over which quantities are genuinely available – and which are not – is likely to engender a cautious approach among sellers to the issue of committing volumes. That caution may, in turn, depress next year's ADP quantities and constrain sellers' ability or willingness to programme makeup or restoration volumes alongside base commitments. The result is something of a feedback loop: the present disruption shapes next year's outlook, which then prolongs the climate of legal and commercial uncertainty into a further cycle.

The Reopening of the Strait May Generate the Next Wave of Disputes

Needless to say, it is unlikely that all parties will accept the allocation and scheduling decisions made by sellers without challenge. On the contrary, the reopening phase may prove fertile ground for the next wave of LNG disputes.

Potential disputes may concern the validity and duration of *force majeure* declarations, failures to comply with ADPs and rescheduling obligations, contested allocation decisions, disputed attribution of quantities, failures to deliver and contested diversions.

These disputes may also be unusually time sensitive. In an LNG chain, a disputed missed or delayed cargo can quickly generate downstream exposure, replacement cost claims and pressure across related sale arrangements. Given the timelines involved, parties may in suitable cases wish to consider whether [expedited arbitration procedures](#), where available contractually or by agreement, offer a more commercially useful route to dispute resolution.

Potential Practical Steps Buyers Can Take Now

If you are affected by the current disruption on a short-term trading or long-term supply basis, we recommend assessing your volume exposure and contractual position before commencing dialogue with your contractual counterparts sooner rather than later. That dialogue would serve several purposes.

1. First, it would allow you to ascertain the seller's plans for addressing re-scheduling issues once their facilities fully reopen.
2. Second, it would provide an opportunity to highlight your contractual entitlements and put the seller on notice of their potential exposure and liability should they seek to adopt a black box approach to future re-scheduling decisions – *i.e.*, by subjectively prioritising certain relationships over others, without explanation, dialogue and potentially in conflict with contractual entitlements.
3. And third, it could form part of your *force majeure* correspondence strategy designed to record your position on the scope and duration of the *force majeure* event, including any restoration, makeup and pro-rata allocation obligations that you expect the seller to honour as part of the continuing duty to mitigate, and following the resumption of production and loading.

Taken together, these steps may put affected parties in a stronger position to influence – rather than simply react to – the allocation decisions that sellers will shortly be making.



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