

THE MAIN DIFFERENCES BETWEEN CIF AND FOB CONTRACTS UNDER ENGLISH LAW

CIF contract is that when the seller has delivered the goods or provides them afloat. He has to perform the contract by tendering conforming documents to the buyer. The significant feature of a CIF contract is that performance of bargain is to be fulfilled by delivery of documents and not by actual physical delivery of goods by the seller.¹

FOB contract can be described as a flexible instrument.² Because, the buyer has to nominate a ship and the seller has to put the goods on board of vessel for account of the buyer and procuring a bill of lading.

The important differences between FOB and CIF contract is that, FOB contract specifies the port of loading, however CIF contract specifies the port of arrival.

A) The Right and Duties of Seller and Buyer

Seller's Rights and Duties

1. The main duty of the seller under the FOB contract is loading. The seller must deliver the goods on board the vessel, at a place where the buyer has already identified as the port of loading and within the period of shipment which the parties indicated in the contract of sale. Name of the port in a FOB contract is a condition.

For instance, the seller sends the goods to the other port from the port where it has been identified in the contract of sale. The seller commits a breach of a condition, so the buyer is entitled to refuse the delivery of the goods.¹

¹ Manbre S. Co. Ltd. v Corn p. Co. Ltd. [1915] 1 KB 198

² Wimble ,Sons&co v Rosenburg& sons [1913] 3 KB 743

Under the CIF contract, the seller is required to deliver the goods on board of the vessel at the agreed port of delivery. However, in contrast to an FOB contract, the seller can also procure the goods afloat which are already shipped.

2. Under the FOB contract, the seller has to bear all cost such as the payment of handling, transferring the goods to the ship and loading. Furthermore the seller has to make all necessary arrangements for the buyer's account such as making a contract of carriage by sea and insuring the goods under an insurance contract. Moreover, the seller is not responsible to pay the freight and cannot be forced to provide "freight pre-paid bill of lading" from the carrier. This is because; the contract of carriage and the freight are made between the carrier and the buyer.

According to the CIF contract, the seller has to bear all costs relating to the goods until delivery of the goods on board the vessel. However, under the CIF contract, the seller's duty to provide a contract of carriage and has to insure the goods under the insurance contract. Moreover, the insurance policy has to protect to the buyer. Otherwise, the seller commits to breach of the contract².

3. Under the English Law, there is no general rule to obtain an export licence. It depends on the contract, which the party, who has the best position to obtain it. According to Brandt & co. case is that, "..... both seller and buyer were British traders albeit that the buyer was securing goods from an overseas merchant so he has to apply for the export licence, because he alone knows full facts regarding the destination of the goods."³ On the other hand, if the seller is in a better position than the buyer, he is responsible to provide a licence.

Under the CIF contract, it is also seller's responsibility to provide an export licence.

¹Petrograde Inc. v Stinnes G. [1995] 1 Lloyd's Rep.142.

²Hickox v Adams [1876] 34 L.T.404.

³ Brandt & co. v Morris &co. Ltd. [1917] 2 K.B. 784

4. Under the FOB contract, unless otherwise agreed, the seller has to provide the documents such as bills of lading, which is necessary for the buyer to obtain a possession of the goods. These documents have to deliver to the buyer in return for payment.

Compared with the FOB contract, CIF seller has to provide a commercial invoice in order to get a payment. These documents must include the full description of the goods, the parties, price, shipping mark and numbers, the part of loading, route, and the port of discharging. The seller must tender the documents to the buyer.

5. The seller must give notice to the buyer that this notice may enable him insure the goods during the sea transit.¹ The notice must be given without delay. Any fail to give notice, makes the seller still liable on the goods during the sea transit.

According to the CIF contract, the seller has also to give the buyer sufficient notice that the goods have been delivered on board the vessel.

Buyer's Rights and Duties

1. Under the FOB contract, the buyer's duty is identify to the port of shipment. If it is not clean in the contract of sale, three different alternatives can be choose: First, the seller can choose the port of shipment, second the buyer can choose it, and third the contract is left for ambiguously.²

The buyer has also provided a suitable ship for loading. He has to determine a shipping period, place and also must give notice to the buyer of readiness to the vessel.

³Nomination of vessel is a condition of the contract. When the seller failure to nominate vessel, the buyer can refuse the contract and claim damages. Unless otherwise agreed, the buyer can also make a second nomination within a shipment period, if the first one is insufficient.

¹ SGA[1979]s.32.3

² David t. Boyd & Co. Ltd. v Louis Louca [1973]1 Llyod's Rep. 209

³ Bunse Corporation v Tradax Export SA. [1918] 2 ALL ER

By comparison with the FOB contract, under the CIF contract the buyer has no under obligation to procure a ship, place, and shipping time. On the other hand, the buyer main duty is to accept the documents, which will be explained in detail later, if these documents are in conformity with the contract of sale.

2. The buyer's duty under the FOB contract, to pay the price is determined by the contract. However, there is no such a time in the contract; the buyer must pay the price in due as soon as the seller delivered the goods according to the contract.

In contrast to the FOB contract, when a CIF buyer has accepted the documents; he must pay the full price of the goods. Furthermore, the buyer must take delivery of the goods at the agreed destination and has to bear all unloading costs.

3. Under the FOB contract, the buyers must pay all cost to the goods, when the goods passed the ship's rail.

According to the CIF contract, the buyer has only to pay any customs or other duties, which may impose in a CIF contract. For instance, payment of the freight is the buyer's duty and also it is a condition of the contract.

A) PASSING OF TITLE AND PASSING OF RISK

PASSING OF TITLE

Under the FOB contract, when the goods are placed on board the vessel, the buyer has a title of the goods, because property in goods passes at the same time. Another reason of this, he becomes a shipper of the goods after shipment and he has a contractual relationship with the carrier. However, the problem may arise when property in goods were supposed to pass on shipment. This could be leave the seller exposed to the risk of

not to paid the balance of the full price. So property in goods will not pass until the full price is paid and bill of lading is delivered to the buyer.¹

Under the CIF contract, the documents play a very important role. When the buyer has received the documents, he has a title on the goods. After receiving documents, he can demand to delivery of the goods at the port of the arrival and also can sue if there is any damage or loses in the goods. That is to say, the general presumption is that the property in goods pass to the buyer, when the documents is delivered to him, but the buyer, at the same time, has to do payment.² Shortly, the buyer takes responsibilities from the seller which is the whole rights and liabilities in the commercial contract.

However, his responsibility occurs if only tendered documents such as the bill of lading, policy insurance, and the commercial invoice, are in conformity with the contract.

The essential feature of an ordinary CIF contract is that, performance of the bargain is to be fulfilled by delivery of documents and not by the physical delivery of the goods.³

Moreover, when the buyer received both the documents and the goods, he has a right o reject them. If the documents are not in conformity with the contract, he may reject them. However, the seller has an opportunity to remedy the defect by a new and conforming tender of documents, if he has got enough time to do. Having accepted the documents, if the buyer found any nonconformity on the goods with the contract, he can still reject the goods. This rule is applied by a FOB contract as well.

PASSING OF RISK

Under the FOB contract, risk passes on shipment. When the seller delivered the goods on a ship's rail, he will not be responsible of any damages or loses after that. It is presumed

¹ Mitsui &Co. ltd. v Flota Mercante Grancolumbiana SA. [1989] 1 ALL ER 951

² Ginz v Barrow Haemetite Steel Co. [1966] 1 Lloyd's Rep 343

³ Manbre Sacchrie Co. Ltd. v Corn Products Co. Ltd. [1919] 1KB 198

that property in goods passed at the same time. However, the passing of property has been delayed as a result of the failure of the parties; this will not affect the passing of risk.¹

Under the CIF contract, risk passes on shipment to the buyer while property in them passed,² or as from shipment. This rule indicates two different methods of passing of risk under the CIF contract. First one is that, when the seller completed his contractual duty on CIF terms and delivered the goods on board the vessel, and then risk passes to the buyer on shipment. Second one is that, the seller bought the goods which are already afloat; he thereupon can make the goods subject of the contract with the buyer, then the risk passed “as from shipment.” In this sense, it can be said that risk passed before the shipment, because of the intention of the parties.³

Another important thing of the passing of risk is that when the seller delivered the goods on board the vessel, he has to give notice to the buyer, which the buyer may insure the goods during the sea transit. If he seller fails to notify him, the goods will be at his own risk during the sea transit.⁴

In conclusion, CIF and FOB contracts are the most important contracts in the field of International Trade. Both of them resemble each other. However, CIF contract has a very significant difference from FOB contract. Mainly, under the CIF contract, the parties have to deal with delivery of documents and not actual physical delivery of goods by the seller. As a matter of fact, FOB contract is known as a flexible instrument which could be useful to International Trade companies while on the other hand, CIF contract is in demand much more than FOB contracts by companies in the field of International Trade.

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¹ Inglis v Stock [1885] 10 App. Cas. 263.

² Tregelles v Sewell [1862] 7 H. & N. 575 ER. 600.

³ Wiebe v Dennis Bros [1913] 29 TLR. 250.

⁴ SGA [1979]s 32.3