

CIF:-Cost, Insurance & Freight

This is the most recognizable term associated with the export trade which the custom of the merchants has evolved. Lord Wright' observed that the term CIF ("Cost, Insurance, Freight") is a type of contract which is more widely and more frequently in use than any other contract used for purposes of seaborne commerce.

Definition

From the business point of view, it has been said that the purpose of the CIF contract is not a sale of goods themselves but a sale of the documents relating to the goods. It is not a contract that goods shall arrive, but a contract to ship goods complying with the contract of *sale*, to obtain, unless the contract otherwise provides, the ordinary contract of *carriage* to the place of destination, and the ordinary contract of insurance of the goods on that voyage, and to tender these documents against payment of the contract *price*.

The buyer's aim is to obtain, as early as possible, the right of disposal of the goods in order to resell them or secure a bank advance on them. If the buyer wishes to take physical delivery of the goods he would require, if they are lost, the insurance money. The seller's aim is to accommodate the buyer by providing carriage and insurance cover. The seller would wish to part with the right of disposal of the goods only against payment of the purchase price and not to be answerable for loss of or damage to the goods during the voyage. The aims of both parties are most conveniently achieved when the buyer — or a banker nominated in the contract if the contract so provides effects payment in the stipulated manner against delivery of *the* documents relating to the goods. The *fact* that the delivery of the shipping documents is, in a business sense, the equivalent of the goods, is of great importance when the goods are lost in transit but the shipping documents have been delivered to the buyer or can still be delivered to him.

From the legal point of view, the choice of the CIF term raises complex issues because of the CIF transaction embodies, by necessity, elements of three contracts; the contract of sale; the contract of carriage by sea and the contract of marine insurance.

Obligations and Responsibilities of parties

The **seller's obligations** under a CIF contract may be summarized as follows:

1. To ship goods of the description contained in the contract and clear the goods for export or to buy conforming goods afloat;
2. If the goods are not bought afloat, to procure a contract of carriage by sea under which the goods will be delivered at the destination agreed by the contract and obtain the bill of lading as evidence of having done so;

3. To arrange, if this has not already been done, insurance on terms current in the trade which will be available for the benefit of the buyer and provide a policy or insurance document which entitles the buyer to make a claim against the insurer;
4. To make out an invoice which normally will debit the buyer with the agreed price, or the actual cost, commission charges, freight, and insurance premium, and credit him for the amount of the freight which he will have to pay to the ship-owner on delivery of the goods at the port of the destination.
5. To tender these documents in the manner agreed whether by presentation directly, transmission by electronic means or otherwise; the bill of lading, insurance policy and invoice to the buyer, together with any other documents which may be agreed between the parties and/or might be required by the customs of the trade so that he may obtain delivery of the goods or recover for their loss, if they are lost on the voyage, and know what freight he has to pay.

The **buyer's obligations** under a CIF contract may be summarized as follows:

- 1) To accept the documents when tendered by the seller, if they are in conformity with the contract of sale, and pay the contract price;
- 2) To receive the goods at the agreed port of destination and bear, with the exception of the freight and marine insurance, all costs and charges incurred in respect of the goods in the course of their transit by sea until their arrival at the port of destination, as well as unloading costs, including lighterage and wharfage charges, unless such costs and charges have been included in the freight or collected by the carrying company at the time freight was paid;
- 3) If war insurance is to be provided, to bear the cost;
- 4) To bear all risks of the goods from the time when they shall have effectively passed the ship's rail at the port of shipment;
- 5) If the buyer has reserved to himself the right to determine the period within which the goods are to be shipped and/or the right to choose the port of destination, and he fails to give instructions in time, he must bear the additional costs incurred as a result and all risks of the goods from the date of the expiry of the period fixed for shipment, provided always that the goods have been appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods;
- 6) To pay the costs and charges incurred in obtaining the certificate of origin and consular documents;
- 7) To pay all Customs duties as well as any other duties and taxes payable consequent upon the importation;
- 8) To obtain and provide at his own risk and expense any import licence or permit or the like which he may require for the importation of the goods at destination.

If the goods are sold "CIF landed", unloading costs, including lighterage and wharfage charges, are borne by the seller. Traders will adapt these obligations to the particular transaction which they wish to carry out, and will vary and supplement them whenever necessary.

Under the CIF term, the seller's responsibility for the goods ends when he delivers them at the port of shipment on board ship; the goods travel at the buyer's risk although the seller is responsible for the payment of the freight and the marine insurance. The risk passes to the buyer on shipment, but the property in the goods sold does not normally pass on shipment. The property usually passes when the bill of lading is delivered to the buyer or to the bank, if payment is arranged under a letter of credit and the buyer hereby acquires the right of disposal of the goods. Normally, however, he acquires only conditional property, which means property subject to the condition subsequent that the goods shall revert to the seller if, upon examination, they are found to be not in accordance with the contract.

The shipping documents

An examination of the shipping documents is central to any examination of the performance of the CIF transaction. The shipping documents consist of the following:

- a) The Bill of Lading;
- b) The Insurance Document;
- c) The Invoice; and
- d) Other Documents

The bill of lading, which the seller has to procure, must be a clean bill, that is a bill which has no qualification and state that the goods are shipped in apparent good order and condition. It evidences a contract of carriage by sea providing continuous cover to the agreed place of destination.

The marine insurance policy or certificate, which the seller has to tender to the buyer, should provide cover against the risks which it is customary in the particular trade to cover with respect to the cargo and voyage in question and any additional risks.

The invoice must be completed in strict agreement with the terms of the contract. Even the slightest variation may cause difficulties, in particular with bank which may be reluctant to make available finance under the letter of credit.

The parties may further agree that, in addition to the three principal documents, other documents shall be included in the shipping documents, such as certificates of origin, or quality, or of inspection. Failure to tender these documents in the proper form will normally have the same consequences as a failure to tender the appropriate principal documents.

The right to reject the documents and the right to reject the goods

The buyer has two separate and independent rights of rejection.

- a) Rejection of discrepant documents.
- b) Rejection of non-conforming goods.

In a CIF contract the right to reject the documents is distinct from the right to reject the goods. The right to reject the documents arises when the documents are tendered, and the right to reject the goods arises when they are landed and when after examination they are not found to be in conformity with the contract.

When the goods or the documents are rejected on valid grounds and the seller is not able to cure the defect, the buyer can treat the contract as repudiated and claim damages for non-delivery. However, the buyer must be aware that the right to reject the documents is lost when he or the bank which advises a letter of credit takes up the documents, even if inaccurate, and pays against them without objection. The documents are inaccurate if they disclose a defect to a person who reads them or could have read them. Hence by taking up the documents and paying for them, they are precluded afterwards from complaining of the late shipment or of a defect in the bill of lading.

The particular qualities of the CIF contract do not prevent the buyer from rejecting the goods when, on delivery and inspection, he finds that they are not in accordance with the terms of the contract. The payment of the purchase price on delivery of the shipping documents is subject to the condition subsequent that the goods are in accordance with the terms of the contract of sale. If they fall short in that respect, the condition is discharged and the position is the same as in every other contract of sale. If the agreement of the parties as to the quality of the goods was a condition of the contract of sale and not merely a warranty, the buyer may terminate the contract and recover the purchase price. The buyer's has a right to inspect and examine the goods.

It must be noted, however, that the loss of the right to reject the documents does not mean that the buyer has lost the right to reject the goods after their arrival on the ground that they do not conform to the specification in the contract. The exercise of the right to

reject the goods is one which the buyer is entitled to postpone until the goods arrive. He can make up his mind then to exercise the right as it suits him best. He may lose his right meanwhile if he deals with the goods or documents so as to disable himself from restoring title or by actual waiver.

The rejection must be "clear and unequivocal" it must indicate that the buyer wants to have nothing to do with the documents or goods. If it is couched in ambiguous terms or the buyer engages in contradictory action, such as the resale of goods, it is ineffective.

Payment of price

Unless contrary arrangements have been made, payment under CIF contract will be due on valid tender of documents. This is regardless whether the goods arrive or are lost at sea. The contract price covers the goods including export packaging, all the arrangements for carriage, insurance and export clearance. Where freight is not prepaid in full, the seller will have to discount purchase price for amount of freight due on arrival.