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Legal Significance of CIF and FOB Contracts in International Sales of Goods Agreement

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Abstract

This article deals with the legal significance of FOB and CIF which are two special types of Sales of Goods agreement used mainly by parties indulged in cross border trade and commerce. This article focuses on the English law dealing with the topic and several case laws from the English courts have also been referred hereby.

Keywords: Contracts, sales , goods , international , seller , buyer.

Introduction

One of the main features of globalization is the existence of cross border trade and business. With trade becoming cross border , delivery of goods taking much more time than before and the arising of factor of security of goods while in transit via ship , CIF and FOB contracts came into being . Such contracts are entered into frequently by people from countries extensively involved in trade and commerce like the United Kingdom. A CIF contract (Cost, Insurance and Freight) is a sales of goods contract whereby the amount which is to be paid covers the insurance, freight and invoice figure of the goods .[1] In CIF contract, the seller is supposed to perform the contract by tendering conforming documents to the buyer. A CIF contract is significant as the performance of the same is to be fulfilled by delivery of documents and not by physical delivery of goods by the seller.[2] Meanwhile, an FOB contract is a term deployed in international contracts which depicts that the delivery of goods is deemed to be completed when the goods have been loaded free on boards. FOB is much famous as a flexible instrument.[3]

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

Differences between CIF and FOB

There are a number of parameters on which CIF and FOB differ. Some of the important ones have been discussed below:

1. Rights and Liabilities of the Seller

(a) In case of FOB, it is the responsibility of the seller to deliver the required goods on board the vessel at the place within the time period previously decided by the parties as the port of loading. It is thus a mandatory condition to include the name of port in an FOB contract. However in CIF contract, it is the seller's duty to deliver the goods on board the vessel to the port of delivery as decided in the contract.

(b) In FOB, the seller bears the cost of handling, transferring of goods, etc. He is responsible to make all important arrangements for the account of the buyer like insuring the goods, making carriage contracts, etc. In Hickox v Adams[4], it was held that under CIF, the seller has to bear all costs relating to the goods till delivery of the goods on board the vessel has been made but it is not his responsibility to insure the goods or make any carriage contracts; in other words the seller is not responsible to make arrangements for the buyer's account.

(c) In FIB contracts, the documents which are necessary to get the goods' possession have to be given to the buyer unless otherwise has been agreed upon. On the other hand in CIF contracts, the seller has compulsorily provided a commercial invoice (documents) to receive the payment.

2. Rights and Liabilities of the Buyer

(a) In FOB contracts, it is a matter of buyer's obligation to decide and identify the shipment port, including the ship on which the goods are to be loaded. In CIF contracts, it is not the work of the buyer to decide the port of shipment or the ship on which the goods are to be boarded.

(b) Under FOB contracts, there is no time fixed for the execution of the buyer's duty to make the payment. The same is to be done as soon as possible after the seller has delivered the goods. However in CIF contracts, the payment is to be made by the buyer in time as laid after he has accepted the documents.

(c) The buyer is responsible for paying all costs related to the goods after they have been loaded in the ship in case of FOB. However under CIF contracts, the buyer has to pay only the relevant duties as in the contract.

[4] [1876] 34 L.T.404.

3. Passing Of Title

Under FOB contracts when the goods are placed on the vessel's board, the buyer gets the title of the goods, because property in goods passes at the same time. Also, he becomes the goods' shipper after shipment and there is a contractual relationship of the buyer with the carrier . In cases of CIF contracts, the buyer gets the title of the goods when the requisite documents have been received by him.

4. Passing of Risk

In FOB contracts, the risk passes on shipment of goods. As soon as the goods have been delivered on the rail of the ship, the seller is no more responsible for any future damage to the goods as the title now rests with the buyer .In *Stock* v *Inglis*[5], it was said that when the passing of property is delayed due to the parties' failure, the passing of risk won't be impacted by it. In CIF contracts, risk passes on shipment to the buyer while property in them passed,[6] or "as from shipment". This depicts that there are two methods by which risk can be passed off in CIF contracts. The first one is when the seller completes his contractual duty and delivers the goods on the board of the vessel. Hereby, the risk passes on to the buyer once the shipment is done. The second one is when the sellers buys the goods already afloat and then makes a contract with the buyer with the aforesaid goods as its subject matter. In the second case, it is said that the risk passed before the shipment because of the parties' intention.[7]

Important Judicial Pronouncements

The English courts have from time to time dealt with issues and questions regarding CIF and FOB and have thus elaborated the law on this matter.

In *Wimble, Sons & Co* v *Rosenburg & sons*[8], a classic FOB had been described.

In *Pyrene* v. *Scindia Navigation Co. Ltd*[9], Honorable Devlin J recognized the variations in FOB contracts which are Classic, Strict, FOB with additional services, etc .

In *Stock* v *Inglis*[10], the basic features of FOB contract had been discussed in detail. Some of the basic characteristics are that it is the seller's duty to make the payments and get the goods loaded on the ship, the seller must bear full liability for the cost of the goods until they pass

[5] [1885] 10 App. Cas. 263.
[6] Tregelles v Sewell [1862] 7 H. & N. 575 ER. 600.
[7] Wiebe v Dennis Bros [1913] 29 TLR. 250.
[8] [1913] 3 KB 743.
[9] [1954] 2 QB 402, 424.
[10][1984] 12 Q.B.D. 564.

over the ship's rail; and delivery is then completed, while the risk in the goods then transferred to the buyer .[11]

In *Arnold Karberg and Co.* v *Blythe, Green, Jourdain and Co*[12], the court had with respect to CIF contracts stated that it is not a contract of sales of goods but is rather a contract of sale of documents which are linked to goods.[13] This argument was further supported by the House of Lords in *Couturier* v. *Hastie*[14].

In *Pacific Molasses Co. Ltd.* v. *Entre Rios Cia Naviera SA (The San Nicholas)*[15], it was clarified that the property passes on a later date on the transfer of the bill of lading.

In *Martineau* v. *Kitching*[16], the Court stated that to determine as to when the passes, the point of passing of properties and the intention of the parties involved is to be essentially considered.

Conclusion

In the current era when the world has turned into a global village because of better methods of transportation and communication, trade and commerce between different countries has increased. It is thus obvious that the parties from such countries would be frequently entering into sales of goods agreement to facilitate trade. Hence, as per the needs of international trade, CIF and FOB were developed. The United Kingdom being a hub for trade and commerce, the courts hereby have expanded these concepts by way of judicial pronouncements. The two types of sales of goods contract have be found to be similar to each other but they have certain significant differences between each other. Under CIF, the parties have to deal with delivery of documents and not goods while in FOB the case is opposite. In light of the risks involved in delivery of goods from one country to another especially by way of sea route , CIF is much more common than FOB in companies dealing with International trade and commerce .

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