

THE RIGHT TO REJECT THE DOCUMENTS AND GOODS IN CIF CONTRACTS

A CIF contract, which stands for cost, insurance and freight, represents one major commerce terms (INCOTERMS) adopted by the International Chamber of Commerce. Each INCOTERMS envisages different rights and obligations for buyers and sellers. In a CIF agreement, the seller sells the good for a price including the cost, insurance and freight. CIF contracts are different from other INCOTERMS especially from FOB (Free on Board) in certain respects. One of the distinct feature of CIF contracts is that the buyer is required to pay against the tender of documents listed in the sale contract. In other words, the buyer cannot in principle reject the payment of the contract price conditional on the actual delivery of the goods. The seller, on the other hand, is obliged to ship the goods as described in the sale contract and to tender to the buyers the bill of lading, insurance policy, invoice, and any other documents that may be required necessary by the sale contract.

The aforementioned apportionment of responsibility between the seller and the buyer may raise in practice considerable disputes between the parties. There may be instances where for example the documents tendered by the seller contain inaccurate information regarding the date and place of the shipment or the description (including the shipment period as well) and quality of the goods may be found at the discharge different from those laid down in the sale contract. The latter scenario will involve further complexity if a “quality final at loading” clause has been inserted in the sale contract in question. Since situations of this kind in fact take place very widely, the prominently resulting question is when and under what circumstances the buyer can reject the document or goods not conforming to the requirements of the sale contract.

In CIF contracts, the buyer enjoys two separate and independent rights of rejecting documents and goods. That is to say, the fact that the buyer has accepted the documents does not affect its right to reject the goods on arrival. However, where the defects in the documents are so obvious (e.g., the date on the bill of lading is incorrect and the seller has nothing to do with this through fraud or likewise) and the buyer has paid against them, the right to reject the goods will be lost. Yet, despite such a loss of the right of rejection, the buyer is entitled to

claim actual damages (the difference between the contract price and market price at the time of delivery) stemming from the tender of defective documents by the seller.

Regards must also be had in relation to the foregoing to the question how the buyer's right to rejection of the goods is affected by the inclusion of a "quality final at loading" clause into the sale contract. The mere existence of such a clause should not necessarily lead to the conclusion that the buyer is bound at all circumstances and therefore cannot reject the goods upon arrival. The way in which the "quality final at loading port" clause is devised in the sale contract is crucial to the assessment of whether and to what extent the buyer's right to reject the goods remains intact. If the sale contract stipulates the certificate at the loading final for both the description and quality of the goods, then the buyer will be estopped from rejecting the goods. If the wording refers only to the quality, then it should be found out whether the difference between the certificate at loading and the analysis at the discharge relates to "quality" or "description" of the goods under the contract. The appraisal will be made according to the laws (such as GAFTA or FOSFA contracts) incorporated in the sale contract. Consequently, if the non-conformity relates only to the "quality", the right to rejection of the goods will be lost at buyer's end. Otherwise, so long as the difference goes to "description" of the goods, and since the seller is under an obligation to ship the goods as described in the sale contract, the buyer will be able to reject the goods or claim damages or (if possible) request allowance accordingly. Having said that, one of the best way to avoid disputes relating to the rejection of the goods due to a problem in the contractual quality is to draft the sale contract with a view to such trade world realities.