IV.5.6 - Rights and duties of the parties under "FOB" and "CIF"

If the parties have agreed on a sale "FOB" or "CIF", the respective rights and duties of the parties under the contract are to be determined according to the latest version of the International Commercial Terms (INCOTERMS®) issued by the International Chamber of Commerce (ICC) unless the parties have indicated that a different meaning is to be attributed to the term used.

Commentary:

1. The INCOTERMS® (International Commercial Terms) are a universally recognized set of definitions of international trade terms developed, formulated and published by the International Chamber of Commerce (ICC) in Paris, France. The ICC holds the Trademark to the INCOTERMS® and the Copyright to its publications related to the INCOTERMS®. The INCOTERMS® define the responsibilities and liabilities of buyer and seller. While not all of the INCOTERMS® have assumed the quality of transnational law, the FOB and CIF terms can be qualified as such due to their worldwide use and recognition in international trade and transport. Even for domestic shipments in the USA, where a different understanding of FOB has prevailed so far, reference is now made to the INCOTERMS®. The content of each clause of the INCOTERMS® is determined exclusively by the latest version of the INCOTERMS®, published by the ICC (see Incoterms 2010, ICC Publication 715), unless the parties have indicated that a different meaning is to be attributed to the term used. It must be noted that the following overview is not intended to be used alone, and should always be used in conjunction with the INCOTERMS® 2010 rule book.

2. Pursuant to the Guidance Notes published by the ICC in ICC Publication No. 715, the rights and duties of the parties under a FOB ("Free on Board" named port of shipment) contract are as follows:

   "This rule is to be used only for sea or inland waterway transport. 'Free on Board' means that the seller delivers the goods on board the vessel nominated by the buyer at the named port of shipment or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel, and the buyer bears all costs from that moment onwards. The seller is required either to deliver the goods on board the vessel or to procure goods already so delivered for shipment. The reference to 'procure' here caters for multiple sales down a chain ('string sales'), particularly common in the commodity trades. FOB may not be appropriate where goods are handed over to the carrier before they are on board the vessel, for example goods in containers, which are typically delivered at a terminal. In such situations, the FCA rule should be used. FOB requires the seller to clear the goods for export, where applicable. However, the seller has no obligation to clear the goods for import, pay any import duty or carry out any import customs formalities."

3. Pursuant to the Guidance Notes published by the ICC in ICC Publication No. 715, the rights and duties of the parties under a CIF ("Cost, Insurance and Freight", named port of destination) contract are as follows:

   "This rule is to be used only for sea or inland waterway transport. 'Cost, Insurance and Freight' means that the seller delivers the goods on board the vessel or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel. The seller must contract for and pay the costs and freight necessary to bring the goods to the named port of destination. When CPT, CIP, CFR, or CIF are used, the seller fulfils its obligation to deliver when it hands the goods over to the carrier in the manner specified in the chosen rule and not when the goods reach the place of destination. This rule has two critical points, because risk passes and costs are transferred at different places. While the
contract will always specify a destination port, it might not specify the port of shipment, which is where risk passes to the buyer. If the shipment port is of particular interest to the buyer, the parties are well advised to identify it as precisely as possible in the contract. The parties are well advised to identify as precisely as possible the point at the agreed port of destination, as the costs to that point are for the account of the seller. The seller is advised to procure contracts of carriage that match this choice precisely. If the seller incurs costs under its contract of carriage related to unloading at the specified point at the port of destination, the seller is not entitled to recover such costs from the buyer unless otherwise agreed between the parties.

The seller is required either to deliver the goods on board the vessel or to procure goods already so delivered for shipment to the destination. In addition the seller is required either to make a contract of carriage or to procure such a contract. The reference to ‘procure’ here caters for multiple sales down a chain (‘string sales’), particularly common in the commodity trades.

CIF may not be appropriate where goods are handed over to the carrier before they are on board the vessel, for example goods in containers, which are typically delivered at a terminal. In such circumstances, the CIP rule should be used.

CIF requires the seller to clear the goods for export, where applicable. However, the seller has no obligation to clear the goods for import, pay any import duty or carry out any import customs formalities."