

Discussion on CIF: Contract Transaction or Document Transaction

Discussão sobre CIF:
Transação Contratual ou Transação Documental

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ABSTRACT

With the flourishing development of economic globalization and the expansion of international trade, the utilization of Incoterms has gained widespread acceptance and application. A pertinent question arises: Should CIF (Cost, Insurance, and Freight) contracts be primarily construed as document transactions, in accordance with the principle of document autonomy, or as contract transactions? Fundamentally, this research endeavors to contend that, based on a review of several case studies and the practical application of CIF in real-world scenarios, CIF transactions are predominantly characterized as document transactions. But CIF contracts are not purely document transactions, they are still contract transactions (goods transactions) in essence. This study delves deeply into the legal ramifications of interpreting CIF contracts as either contract transactions or document transactions, employing perspectives from both common law and the United Nations Convention on Contracts for the International Sale of Goods (CISG). By doing so, it offers a more lucid normative position on the future evolution of CIF rules. Furthermore, the research examines the role of digital documentation, specifically electronic bills of lading, and proposes a series of practical dispute resolution mechanisms.

Keywords: CIF; Transaction; CISG; International trade; Incoterms

RESUMO

Com o crescente desenvolvimento da globalização econômica e a expansão do comércio internacional, a utilização dos Incoterms ganhou ampla aceitação e aplicação. Surge uma questão pertinente: os contratos CIF (Custo, Seguro e Frete) devem ser interpretados principalmente como transações documentais, de acordo com o princípio da autonomia documental, ou como transações contratuais? Fundamentalmente, esta pesquisa se esforça para argumentar que, com base na revisão de vários estudos de caso e na aplicação prática do CIF em cenários do mundo real, as transações CIF são predominantemente caracterizadas como transações documentais. Mas os contratos CIF não são

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puramente transações documentais; eles ainda são transações contratuais (transações de mercadorias) em essência. Este estudo se aprofunda nas ramificações legais da interpretação de contratos CIF como transações contratuais ou transações documentais, empregando perspectivas tanto do direito consuetudinário quanto da Convenção das Nações Unidas sobre Contratos de Compra e Venda Internacional de Mercadorias (CISG). Ao fazer isso, oferece uma posição normativa mais lúcida sobre a evolução futura das regras CIF. Além disso, a pesquisa examina o papel da documentação digital, especificamente dos conhecimentos de embarque eletrônicos, e propõe uma série de mecanismos práticos de resolução de disputas.

Palavras-chave: CIF; Transação; CISG; Comércio internacional; Incoterms

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1. INTRODUCTION OF CIF

INCOTERMS is now a well-established set of rules used in international trade (Michael Joachim Bonell, 2008). The main purpose of the INCOTERMS rules is to define the mutual roles, duties, responsibilities and transfer of risks (Schaffer et al. 2014). At present, there are a total of 11 trade clauses in Incoterms 2020 divided for any mode of transport (EXW, FCA, CPT, CIP, DAP, DPU, DDP) and for sea or inland waterway transport (FAS, FOB, CFR, CIF) .

1.1. OBLIGATION ASSIGNMENT OF CIF

In Incoterms 2020, the full name of CIF is Cost, Insurance and Freight (...named port of destination), which only applies to carriage by sea or inland waterway. CIF means that delivery has been completed and the risk of loss or damage of the goods has been passed when the seller carries the goods on board. The seller must conclude a contract for the delivery of the goods to the named port of destination, pay the costs and freight, take out a minimum insurance against the risk of loss or

damage to the buyer's goods in transit, and bear the costs of chartering and booking of space, discharging fees and customs duties payable at the time of export clearance. The division point of cargo risk is on the container ship at the port of departure, that is, the goods enter the cabin and after that the seller completes the delivery, so the risk is transferred to the buyer. Any costs incurred between the shipment of the goods and the arrival of the goods are the responsibility of the domestic seller.

Table 1: The Obligation of the Seller and Buyer in CIF

Seller	Buyer
Delivery and Transfer of Risk	Payment
Export Clearance	Import Clearance and Taxes:
Transportation and Insurance	Taking Delivery
Documents	Inspection and Acceptance
Notification	Notification

1.2. ADVANTAGE OF CIF

1.2.1. *Comparison between FOB and CIF*

Although FOB takes advantage of ease and convenience to save exporters' worry and effort, exporters are often still worried about problems such as non-invoice delivery and shipping fraud (Hu Yong, 2020). On the contrary, CIF has become more popular within exporters in recent years (Alan Branch, 2010).

First, by means of CIF, the seller chooses the freight forwarder, shipping company and insurance company, which can better grasp the connection between the ship and the cargo, and greatly avoid the joint collusion between foreign companies and their designated freight forwarders to defraud the seller, so as to grasp their own risk control to a certain extent. Second, the price of CIF is complicated, including freight and insurance, etc., as a result, CIF price is higher than that of FOB, which not only can earn more foreign exchange, but also increase the business income of domestic

insurance and transportation companies. For exporters, the use of CIF can take the initiative in the international trade of goods.

1.2.2. *Characteristic of CIF: Symbolic Delivery*

The most typical feature of CIF contract is symbolic delivery. It means the seller must be consistent with the contract and documents. It refers to the delivery method in which the seller delivers the goods to the buyer or his agent with documents indicating ownership of the goods in lieu of the actual delivery of the goods, which means the seller delivers the goods against documents and the buyer pays against documents. As long as the seller submits the full set of qualified documents stipulated in the contract to the buyer on time, the buyer must accept the relevant documents and fulfill the payment obligation even if the goods are damaged or lost in transit. On the contrary, if the documents submitted by the seller do not meet the requirements, even if the goods arrive at the destination in good condition, the buyer still has the right to refuse payment.

2. IS CIF REALLY DOCUMENT TRANSACTION?

In the *Biddell Brothers v. E. Clemens Horst Co.*² case, the judge did not support the buyer's claim that they could pay after they had an opportunity of examining the one hundred bales of hops bought from the seller. If there is a duty on the vendor to tender the bill of lading, there must be a corresponding duty on the part of the purchaser to pay when such tender is made. As the bill of lading with its accompanying documents comes forward by mail, the purchaser obtains the privilege of profitably dealing with the goods days or weeks. Under a CIF sales contract, the buyer has no right to inspect the goods, but is obligated to pay upon the presentation of the proper documents.

English jurisprudence generally assumes that the documentary obligations under a CIF contract must be strictly observed (Zhang Yan, 2006). This also means that under a CIF contract, the buyer's examination of the documents submitted by the seller is usually the same as the bank's examination of the documents in the legal relationship of the letter of credit, which implements the principle of independent review and strict compliance (Yan Weijun&Liu Haitong, 2013). According

² *Biddell Brothers v. E. Clemens Horst Co.* King's Bench 934(1911) Court of Appeal. In <https://www.quimbee.com/cases/biddell-brothers-v-e-clemens-horst-company>. Last access: May 5, 2025.

to these authoritative statements, the documents under the CIF contract have become the symbol of the object of the transaction itself rather than the goods.

2.1. FLAWS OF THE DOCUMENT-TRANSACTION THEORY

First of all, the arriving time of the goods is not exactly sure. The goods generally arrive at the buyer's hands later than the documents, but may also reach the buyer before the documents in some occasion.

Second, the assumption that the goods are consistent with the documents may also be wrong. It is true that the bill of lading is issued on the basis of the delivery of the goods by the seller. The certificate of origin can reflect the condition of the goods delivered by the seller, while documents such as the packing list and insurance policy can reflect the performance of the contract from another perspective. However, we should also acknowledge that the documents may also be intentionally or unintentionally altered by the seller or its issuer. In this case, they do not truly reflect the condition of the goods and the actual performance of the contract. For example, the documents reflect that the goods are defective, but in fact the goods fully comply with the provisions of the contract; The bill of lading indicates that the goods were shipped in February, when in fact they may have been shipped in January as stipulated in the contract. As a result, the documents should no longer be the only evidence to judge whether the seller have fully performed their duties.

2.2. CHARACTERISTICS OF THE BILL OF LADING

A bill of lading has three characteristics, namely, a receipt issued by the carrier to the shipper indicating that the goods have been received; proof of the contract of carriage of goods between the carrier and the shipper; and documents of title (Xiao Zehua, 2023). As a document of title, the bill of lading means that the transfer of the bill of lading will lead to the transfer of possession of the goods, and may also mean the transfer of ownership of the goods.

As the English Court held in *Lickbarrow v. Mason*,³ a holder of a bill of lading may transfer title to the goods to the transferee of the bill of lading by transferring the bill of lading. This property feature of bill of lading is the basis for the buyer under CIF contract to resell the goods against the document, which is also one of the reasons for the formation of the principle of document autonomy. Title to the goods is transferred with the pass of the bill of lading only if the parties so intend. Title to the goods under a CIF contract may be transferred when the goods are shipped, when the goods are allocated under the contract, or in conjunction with the transfer of documents, or even when payment is made. These common law principles are now recognized by the Sale of Goods Act 1979.⁴ The Act provides for the principle that “ownership [of goods] is transferred when [the party] intends to transfer it”.

As a document of title, the bill of lading represents only the possession and control of the goods, and the ownership of the goods is transferred only when the original owner intends to transfer, along with the transfer of the bill of lading. Therefore, the circulation transfer of the bill of lading does not necessarily mean the transfer of ownership of the goods (Bonell, 2008). Since the contract for the sale of goods not only requires the seller to transfer the possession and control of the goods to the buyer, but also to transfer the ownership of the goods, it further shows that the documents cannot be sanctified on the grounds of the functions of the documents under CIF contract (Sven Schilf, 1999), such as the means for the seller to transfer the right of delivery and the right of claim to the buyer and the means for the buyer to resell the goods.

2.3. THE RELATIONSHIP BETWEEN DOCUMENT AND CONTRACT

The seller, the original holder or endorser of the bill of lading, and not the carrier, shall be responsible for any defects in the goods to the holder of the bill of lading who last took delivery of the goods.

Therefore, whatever the marketability of a bill of lading may mean, neither the original seller of the goods nor the seller of the documents can relieve himself of his liability under the contract of

³ *Lickbarrow v Mason* (1787) 2 T.R. 63 (KB); (1790) H. BI 357 (EC); (1793) IV Brown 57 (HL). In <https://charterpartycases.com/case/233-lickbarrow-v-mason-1787-2-t-r-63-kb-1790-h-bi-357-ec-1793-iv-brown-57-hl>. Last access: May 5, 2025.

⁴ In <https://www.legislation.gov.uk/ukpga/1979/54/contents>. Last access: April 26, 2025.

sale of goods by transferring the bill of lading to the buyer of the goods. The transfer of documents shall have the effect only of the transfer of the rights contained in the documents and shall not have the effect of the transfer of other rights of the buyer against the seller under a CIF contract (Yan Weijun&Liu Haihong, 2013).

As a document of rights, the negotiable nature of a bill of lading is different from the negotiable nature of an instrument. The assignment of the bill of lading is subordinate to, but not independent of the sale of the goods. Although the holder of the bill of lading may acquire the right to demand delivery from the carrier and if the party intend to transfer the goods to others, the bill of lading does not release himself from his obligations under the contract of sale of the goods by endorsing and delivering a bill of lading representing the goods.

Therefore, when the ownership of the goods is separated from the bill of lading, the negotiability of the bill of lading merely means the transfer of rights and obligations under the contract of sale. It can be said that possession and control of the goods can be transferred by the transfer of documents, while the ownership of the goods may not be affected.

Due to the “intermediate clause” nature of the seller’s documentary obligations under CIF contract, the importance of the documents under CIF contract should not be overemphasized. The performance of the seller under a CIF contract cannot be evaluated only from the perspective of consistency and integrity of documents. In the absence of an explicit agreement to the contrary in the contract, the buyer is obliged to accept defective documents, or to accept delivery of goods conforming to the contract by the seller in lieu of delivery of defective documents, and to pay for the goods, provided that doing so does not cause material harm to the buyer. The buyer’s right to reject documents shall be limited to the extent that defects in such documents actually affect the buyer’s rights, whether they have already done so or may in the future. The buyer under a CIF contract does not have the natural right to reject defective documents submitted by the seller completely unchallenged (Liu Xiaotang, 2015).

3. MANIFESTATION OF THE NATURE OF CONTRACT TRANSACTION UNDER EBL

In *AG v. MSC*,⁵ the court examined whether an eBL issued via the ESS-Databridge system satisfied the "documentary delivery" requirement under CIF. The court held that the eBL, under INCOTERMS 2020, was equivalent to a paper bill of lading, fulfilling the seller's obligation to tender conforming documents. The CIF e-contract specified conflict dispute resolution clauses between English laws and CISG. CISG Article 7⁶ is applied to harmonize interpretations, prioritizing digital intent over textual ambiguity.

The case studies and empirical evidence underscore a critical observation: even amidst the escalating integration of electronic systems, automated processes, and transactions within international trade frameworks, the inherent characteristics and legal obligations embedded within CIF contracts retain their pivotal importance. These cases vividly illustrate that while technological advancements streamline logistical coordination, payment mechanisms, and documentation procedures, they do not obviate the necessity for stakeholders to meticulously observe the stipulations governing risk allocation, responsibility for cargo insurance, and the transfer of ownership from exporters to importers—all hallmarks of the CIF trade term. Consequently, as businesses and governments worldwide navigate the complexities of a borderless digital economy, there exists an imperative need to harmonize technological innovation with a nuanced understanding of traditional trade terminologies like CIF, ensuring that the core principles underpinning global supply chains remain resilient, transparent, and legally enforceable in an increasingly virtualized trading environment.

3.1 CHARACTERISTICS OF THE eBL

Regarding the endorsement transfer rules, the laws of various countries adopt a consistent approach, believing that endorsement includes written and signed rules. In addition to clarifying the parties' intentions, the endorsement rules also have the function of instructing the publicity of bill of lading rights. Therefore, in the future legislation process of electronic bills of lading, in addition to

⁵ *Glencore International AG v. MSC Mediterranean Shipping Company SA* [2020] EWHC 3312 (Comm). In <https://www.casemine.com/judgement/uk/5a8ff72360d03e7f57ea85a9>. Last access: May 5, 2025.

⁶ In <https://cisg-online.org/Text-of-the-Convention>. Last access: May 5, 2025.

considering the satisfaction of written and signed rules, it should also be considered whether the rights publicity function of endorsement can be realized under a specific system. In addition, the interchangeability of electronic bills of lading and paper bills of lading can ensure that market participants can achieve a smooth transition to electronic bills of lading. On the other hand, the contradiction between the global characteristics of bill of lading circulation and the differences in the degree of recognition of electronic bills of lading in different countries requires the interchange rules between electronic bills of lading and paper bills of lading to truly promote the process of electronic bills of lading.

3.2 PROMOTE "ONE BILL SYSTEM"

For the nation to thrive in an era of intensifying global economic integration and supply chain digitization, it is imperative to adopt a proactive, forward-looking strategy that aligns domestic trade infrastructure with international best practices (Dennis, 2014). This requires the country to systematically benchmark its legal, regulatory, and operational frameworks against globally recognized standards, particularly those established by key multilateral bodies. By fostering sustained dialogue and collaborative partnerships with these institutions, the country can leverage their expertise to co-develop frameworks that address the evolving complexities of cross-border commerce.

A cornerstone of this effort should be the exploration and establishment of unified international and domestic standards for eBL. Such standards are critical to harmonizing the disparate digital systems employed by shipping lines, rail operators, logistics providers, and customs authorities. By prioritizing interoperability, the country can unlock the full potential of emerging infrastructure corridors, such as the New Land-Sea Corridor (NLSC), which serves as a strategic bridge connecting inland regions to global markets. This initiative necessitates the development of open, secure, and scalable business systems that enable seamless data exchange and real-time visibility across the entire multimodal transport chain—spanning domestic and international road, rail, maritime, and inland waterway networks.

To achieve this vision, the country must champion the advancement of a “one-bill system” for international trade multimodal transport. This system would centralize the issuance, circulation, and settlement of e-MTB/Ls, eliminating redundancies and reducing transaction costs for exporters,

importers, and freight forwarders. Concurrently, the nation should take a leadership role in driving the formulation of global e-MTB/L standards, leveraging its growing influence in regional trade blocs and digital economy forums. By doing so, it can ensure that emerging technologies, such as blockchain and smart contracts, are integrated into the legal and operational fabric of multimodal transport, enhancing transparency, traceability, and trust.

Moreover, the country should pioneer the exploration of eBL as negotiable instruments with property rights certification capabilities. This innovation would enable them to function as enforceable titles to goods—similar to traditional paper bills—while retaining the efficiency benefits of digitalization. To operationalize this, the government must expedite the drafting of rules governing the transferability of multimodal transport documents, addressing critical issues such as title retention, third-party rights, and dispute resolution mechanisms. Collaborating with industry stakeholders, legal experts, and international partners will be essential to ensuring these rules are both legally robust and commercially viable.

Ultimately, by positioning itself as a vanguard of digital trade innovation, the country can not only streamline its own logistics ecosystem but also shape the future of global supply chains. This strategic alignment of domestic reforms with international norms will enhance its competitiveness in the digital economy, attract foreign investment in smart logistics, and reinforce its role as a trusted partner in the global trading community.

4. DISPUTE RESOLUTION

The WTO dispute settlement mechanism has been paralyzed since 2019 due to the US blocking the appointment of judges, and some member states have turned to the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) as an alternative, which is legally binding but its enforcement depends on the cooperation of member states and may face retaliatory measures (such as tariff countermeasures). The International Court of Justice (ICJ) handles legal disputes between states, but it requires the voluntary acceptance of jurisdiction by both parties and is rarely used in international trade cases.

There are also regional trade agreement (RTA) mechanisms. The USMCA (United States-Mexico-Canada Agreement) has established an independent expert group, allowing for rapid

retaliation. The Court of Justice of the European Union (CJEU) handles trade disputes within the EU, and its rulings are binding on member states.

Commercial arbitration is also a dispute resolution. The ICC International Court of Arbitration resolves cross-border contract disputes between enterprises, and its rulings are globally recognized in accordance with the New York Convention.⁷ Informal consultation and mediation: Bilateral consultations, and most disputes are resolved through diplomatic negotiations, such as the initial negotiations of the US-China trade war. WTO good offices and mediation: A voluntary procedure, with the Director-General or a third party assisting in reaching a settlement.

International trade dispute resolution presents a multi-level feature. Global mechanisms such as the WTO provide a framework but face deadlock, regional mechanisms enhance autonomy, arbitration leans towards efficiency, and political consultation remains a common choice for quick dispute resolution. Enterprises need to select the optimal path based on the terms of trade agreements and the nature of the dispute.

Revising the present approaches to address these disputes related to international trade would go a long way to creating a stable and legitimate trade and regulatory landscape (Kathleen Claussen, 2020).

5. CONCLUSION

CIF contracts are not purely document transactions, they are still contract transactions (goods transactions) in essence. The role of documents in the process of CIF buyers reselling goods by transferring documents is not decisive.

When all the foundations of the principle of document autonomy under CIF contracts, including those assumptions, the negotiability and title of bills of lading, are no longer the basis of this theory, it is easy to conclude that the principle of document autonomy under CIF contracts is misleading.

The evolution of Incoterms define the roles of the seller and the buyer more precisely to ensure that goods are moved smoothly (Andrzej Calus, 2003). New trade methods, communication protocols, and other changes have been regularly incorporated via periodic updates.

⁷ In <https://www.newyorkconvention.org/>. Last access: April 24, 2025.

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