The ICC Model International Sale Contract and CIF Contract based on the Letter of Credit Dealings

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Contents

Preface

In the international trade dealings of present, as for the settlement between general enterprises, the Letter of Credit (L/C) is used except between affiliates.

The Letter of Credit dealings have the character of the document dealings. CIF terms also has the character of the sale of documents. Therefore, the L/C dealings and CIF terms are organically related. The greater part of trade contracts are accomplished by this method. When the export company secures the capital, this L/C dealings are convenient. It is thought that various settlements become possible along with financial liberalization. However, the L/C dealings will not disappear as long as "Netting" is not possible.

ICC announced International Sale Contract Model in 1997.(1) As for this ICC Model, The Manufactured goods is required. In this ICC Model, CIF terms which uses transferable transport document is assumed no recommendation. It seems that there is a problem about this respect when the financial institution makes the negotiation.

Then, I want to reconsider CIF terms which uses the bill of lading from the standpoint of maintenance of the mortgage of the financial institution in this text.

I. CIF contract based on the Letter of Credit Dealings

The method of collection of bills which has been most generally used in CIF transaction on the international trade is the Letter of Credit dealings. The flow is as follows.

(1) International sale contract is concluded between seller and buyer. In the contract, it provided that the method of payment depends on the L/C.

(2) The buyer applies for the issuance of the L/C by which seller is assumed to be beneficiary to self's correspondent bank.

(3) The seller concludes contract of carriage by sea with the ship company based on contract. Moreover, the contract of marine insurance is concluded with the insurance company.

(4) The seller loads the goods on board the vessel based on the L/C.

(5) The seller collects the shipping documents demanded by the L/C such as Bill of Lading. After that, the Documentary Draft is drawn, the L/C is affixed, and seller presents them to the bank.

(6) The bank which receives the presentation confirms that all documents provided in the L/C have fulfilled the L/C. The confirmation is done by the L/C and UCP.(2) The bank negotiates the Documentary Draft on that, and the seller receives the proceeds, the net value of the Bill of Exchange.

Moreover, negotiating bank dispatches the Bill of Exchange and shipping documents to L/C issuing bank.

(7) L/C issuing bank confirms the content of the presented shipping documents. And, it makes a reimbursement to negotiating bank.

(8) The buyer obtains the Bill of Lading etc. from issuing bank for the acceptance of documentary draft sent to L/C issuing bank or payment.

(9) The buyer presents the bill of lading to the ship company, and acquired the goods in exchange for it.

Next, I want to describe the time of property transfer of the goods in CIF transaction.

It is necessary to specify the goods based on sales contract in principle. And, the property of goods transfers when seller fulfills shipment based on the trade terms in the contract.(3) However, the holder of a negotiable bill of lading will generally maintain the property of goods in Documentary Draft dealings based on the Letter of Credit like the abovementioned.(4) The negotiating bank negotiates Documentary Draft. And, it becomes the right person of the mortgage, and acquires the title. When the buyer accepts the bill of lading from L/C issuing bank, the buyer acquires the property of goods. However, the property of the goods belongs to the issuing bank until buyer repays the debt according to sales money of the goods when buyer receives measures of Trust Receipt (T/R)(5) of goods from the issuing bank.(6)

The role of the B/L is very important in dealings by Documentary Draft based on the L/C from the reason for the maintenance of the mortgage of the financial institution like this.

II. ICC Model and CIF terms

International Chamber of Commerce announced International Sale

Contract Model in 1997.[7] This ICC Model supposes a sale of manufactured goods. Moreover, this is applied to the sale of manufactured goods intended for resale.[8]

This Model consists of two called Part A and Part B.

In Part A, the person concerned can fill in the name of seller/buyer, goods, and terms, etc. according to individual transaction, and they can be selected.

Part B is General Conditions of Sale.

Any questions relating to this contract which are not expressly or implicitly settled by the provisions contained in the contract itself shall be governed by the United Nations Convention on Contracts for the International Sale of Goods.[9]

To the extent that such questions are not covered by CISG, they shall be governed by reference to the law of the country where the Seller has his place of business.[10]

In this ICC Model, CIF terms has been excluded from "Recommended Terms". The Delivery Terms in the ICC Model is as follows.[11]

Recommended terms (according to Incoterms 1990): see Introduction, §5

☐	**EXW**	EX Works	named place
☐	**FCA**	Free Carrier	named place
☐	**CPT**	Carriage Paid To	named place of destination
☐	**CIP**	Carriage and Insurance Paid To	named place of destination
☐	**DAF**	Delivered At Frontier	named place
☐	**DDU**	Delivered Duty Unpaid	named place of destination
☐	**DDP**	Delivered Duty Paid	named place of destination

Other terms (according to Incoterms 1990): see Introduction, §5

☐	**FAS**	Free Alongside Ship	named port of shipment
☐	**FOB**	Free On Board	named port of shipment

☐	**CFR**	Cost and Freight	named port of destination
☐	**CIF**	Cost Insurance and Freight	named port of destination
☐	**DES**	Delivered Ex Ship	named port of destination
☐	**DEQ**	Delivered Ex Quay (duty paid)	named port of destination

The reason why ICC Model does not recommend CIF terms like this is that it uses the transferable transport document. However, the Letter of Credit dealings need the transferable transport document.[12]

This L/C is a letter of guarantee to the payment of import money which the correspondent bank on the importer side issues. Both parties should provide this issuing with sale contract beforehand. The exporter can certainly collect export proceed by this L/C dealings.

The exporter draws the bill of exchange for the collection of export proceed as shown in the foregoing paragraph. And the exporter affixes the shipping documents to the bill of exchange and demands the negotiation in his correspondent bank. These shipping documents contain the bill of lading, the insurance policy, and the invoice, etc. according to the demand of the L/C. The exporter can collect export proceed early by the negotiation of this Documentary Draft.

The Letter of Credit dealings are operated in every country in the world according to "Uniform Customs and Practice for Documentary Credits" which ICC made. However, There is no reliability of the L/C when there is a risk in issuing bank or country. Therefore, it might be difficult to have dealings over the L/C.

In general, these L/C dealings are very convenient methods from the viewpoint which is that the export company secures the collection of export proceed. Therefore, L/C dealings will continue as long as the "netting"[13] is not possible in the future.

When the financial institution negotiates the Documentary Draft under the stipulation of the present L/C dealings, the incidental freight and attached documents are supposed to be transferred as a security.(14)

The Sea Waybill is not suitable concerning this respect as the transfer mortgage. Sea Waybills are not negotiable and, although accepted by banks for documentary credit, they do not afford the security that traditional bills of lading provides.(15)

On the other hand, the bill of lading has the following merit. The advantages of the bills of lading pertain to the function of the bill of lading as negotiable commercial paper that makes the transfer of rights in the goods easy, especially by endorsement and delivery of the bill of lading.(16)

The B/L is organically related to CIF terms. CIF contract has the character named a symbolic delivery by this B/L.

ICC Model is made on the assumption of 'United Nations Convention on Contracts for the International Sale of Goods: CISG'. Article 34 of this CISG is concerned in the documents relating to the goods, and provided for "If the seller is bound to hand over documents relating to the goods, he must hand them over at the time and place and in the form required by the contract." It is thought that CISG contains B/L which is negotiable instruments of title naturally in documents like this.

In addition, Article 67 (1) provides that "The fact that the seller is authorized to retain documents controlling the disposition of the goods does not affect the passage of the risk."(17) These documents controlling the disposition of the goods will show the negotiable instruments of title. That is, it is thought that they show the documents which symbolize the handing over claim based on the carriage contract of the goods.

Because CIF terms uses transferable transport documents like B/L, ICC Model does not recommend CIF terms. I think that I have the problem by this.

In present international trade transaction, the goods arrive earlier than the documents, and it is a problem. However, the trade transaction will be made EDI in the future, and the Electronic Bill of Lading will be registered in the Central Registry. As a result, this problem will be solved.

It is thought that the electronic B/L can be transferred as a security when the financial institution negotiates the bill of exchange based on the L/C. As a result, the maintenance of the claim of the financial institution will be secured. On the other hand, it seems that the risk of the Electronic Sea Waybill in maintenance of the security of the financial institution is large. Therefore, the Electronic Sea Waybill will reduce the role by putting the Electronic B/L to practical use and it become the limited one.(18)

Conclusion

ICC Model does not recommend CIF terms because CIF terms uses the transferable transport document. This will move backward theoretically if the spread of the Electronic B/L is made assumption.

Notes

(1) International Chamber of Commerce, *ICC Model International Sale Contract,* ICC Publication No. 556. 1997.

(2) International Chamber of Commerce, *The Uniform Customs and Practice for Documentary Credits,* 1993 Revision, ICC Publication No. 500.

(3) Torizo Kosaka, *Boeki Kansyu,* Toyo Keizai Shinposya, 1962, P. 248.

(4) Sanders v. Maclean (1883) 11Q.B.D. 327 at P. 341 (C.A.) [David M. Sassoon & H. Orren Merren, *C.I.F. and F.O.B. Contracts,* Stevens & Sons Ltd., London, 1984, P. 5]

(5) The bank gives the debtor the right of disposal of the transfer mortgage. The debtor disposes of it by my name. That is, the debtor becomes seller and the debtor disposes of it.

(6) Karl Friedrich Erbach, *Betriebswirtshaftslehre,* Winklers Verlag, Darmstadt, 1997. P. 108～109.

(7) ICC, *The ICC Model International Sale Contract.*

(8) ICC, *Ibid.,* Introduction 2.

(9) ICC, *Ibid.,* Part B, 1. 2A.

(10) ICC, *Ibid.*, Part B, 1. 2B.
(11) ICC, *Ibid.*, Part A, A-3.
(12) ICC, *Ibid.*, Introduction 5.
(13) There are the bilateral netting and multilateral netting. The netting means the settlement between overseas affiliates by the difference counterbalance.
(14) *Shinyojo Torihiki Yakujosyo*, Article 3 (1).
(15) A.N. Yiannopoulos, *Ocean Bills of Lading: Traditional Forms, Substitutes, and EDI Systems*, Kluwer Law International, 1995. P. 19.
(16) Yiannopoulos, *Ibid.*, P. 17.
(17) *United Nations Convention on Contracts for the International Sale of Goods 1980*, Article 34.
(18) Kinyu Joho Shisutem Senta, *Kurosuboda Torihiki ni okeru Kinyu EDI ni kansuru Kenkyukai Hokokusyo*, 1998. P. 48.

Bibliography

- Akira Yao, *Kokusai Torihiki to Denshi Kettusai*, Tokyo Keizai Joho Syuppan, 1999.
- A.N. Yiannopoulos, *Ocean Bills of Lading: Traditional Forms, Substitutes, and EDI Systems*, Kluwer Law International, 1995.
- David M. Sassoon & H. Orren Merren, *C.I.F. and F.O.B. Contracts*, Stevens & Sons Ltd., London, 1984.
- International Chamber of Commerce, *The Uniform Customs and Practice for Documentary Credits*, 1993 Revision, ICC Publication No. 500.
- International Chamber of Commerce, *The ICC Model International Sale Contract*, ICC Publication No. 556, 1997.
- Karl Friedrich Erbach, *Betriebswirtshaftslehre*, Winklers Verlag, Darmstadt, 1997.
- Kurt Grönfors, *Towards Sea Waybills and Electronic Documents*; Gothenburg Maritime Law Association, 1991.
- Peter Schlechtriem, *Kokusai Toitu Baibai Ho*, Shoji Homu Kenkyu Kai, 1997.
- Satoshi Niibori, *Jittusen Boeki Torihiki*, Nippon Keizai Shinbun Sya, 1998.
- Toshimitu Kitagawa & Noboru Kashiwagi, *Kokusai Torihiki Ho*. Yuhikaku, 1999.
- Torizo Kosaka, *Boeki Kansyu*, Toyo Keizai Shinposya, 1962.