Coursework: International Trade Law

by (Name)

The Name of the Class (Course)

Professor (Tutor)

The Name of the School (University)

The City and State where it is located

The Date

Coursework: International Trade Law

English Biscuits Manufacturers is a huge brand which is entering into a contract with Marriott Hotel, Lagos, Nigeria for providing a consignment of one thousand cartons of English Tea Biscuits. The sale process is relatively new for the company and requires expert opinion regarding the consignment through which the goods can be shipped. The focus of this report is to understand the alternatives available with the company and the practices which can be used for shipping FOB or CIF. It is essential that the method which is selected is secure and transparent payment processes can be initiated. The objective of this report is to understand the comparison between FOB and CIF contracts of carriage based on which recommendations can be provided about the most suitable method[1]. An evaluation of the scenario is done by assessing the case note of Hamzeh Malas & Sons v. British Imex Industries Limited 1958.

Question # 1: Memo Comparing Between FOB and CIF Contracts of Carriage

To: Senior Partner, English Biscuits Manufacturer

From: Students Name

Subject: Comparison between FOB and CIF Contracts of Carriage

Date: August 7, 2019

Introduction

The concepts of CIF and FOB are used readily when handling international shipping agreements. The Cost, Insurance, and Freight are commonly referred to as CIF whereas Free on Board is

[1] Lorenzon, F. and Baatz, Y., *Sassoon on CIF and FOB Contracts*. (Sweet & Maxwell 2016).

commonly referred to as FOB. The objective of these contracts is to provide transportation of goods between the buyer and seller. The terminology is highly prominent internationally as it provides commerce-based solutions across the globe which are established by the International Chamber of Commerce in 1936[2]. The definition of the terminologies varies based on the changing territorial priorities which specify destination information and the rules which prevail in the region. The classification and determination of the liability begin and ends based on the destination where the law is being practiced. The buyers and sellers hold a specific set of responsibilities against each other's which are classified on the basis of these factors. The major distinction between the methods of CIF and FOB is associated with the responsibility which is held by the seller and the buyer[3]. In CIF the major responsibility of the cargo which is being sent is with the seller based on which the entire responsibility of the cost is held with the seller till the time the buyer receives the cargo. In FOB the responsibility of the cargo is with the buyer and not the seller which increases the cost and responsibility of the goods which are being shipped.

Cost, Insurance and Freight (CIF)

CIF is considerably the cost which is bored by the seller for the cargo which is being sent. The liability of the firm increases if any form of damage is incurred by the organization during the delivery process. CIF is considered as being highly expensive for the seller as the entire risk of the stock is bestowed on the seller and not on the buyer[4]. The role of the forwarding agent, in this case, is significantly important as they charge the end customers with an additional cost based on

[2] Hu, J., Wood, R., Tukker, A., Boonman, H., & de Boer, B., Global transport emissions in the Swedish carbon footprint. (*Journal of Cleaner Production*, *226*, 210-220, 2019).
[3] Soyer, B. and Tettenborn, A., What is a reasonable contract of carriage for CIF/CIP purposes?–section 32 (2) of the Sale of Goods Act 1979. In *International Trade and Carriage of Goods* (pp. 43-54). (Informa Law from Routledge 2016).
[4] Lista, A., *International Commercial Sales: The Sale of Goods on Shipment Terms*. (Informa Law from Routledge 2016).

which the profits can be increased for the organization. The other aspect which increases the difficulty for the seller as the buyers and associated persons is communication. The teams are often required to pay an additional cost or fees at the port which can assist with the docking fees and custom clearance processes required for handling the cargo. The communication process is considered as being difficult as the buyer is fairly new with the agents hired by the seller for handling the package[5]. The clearance process of the goods is also associated with numerous factors which determine the aspects through which additional fees can be paid for handling the products being shipped.

Freight on Board (FOB)

The most beneficial aspect of FOB is that the seller is relieved from shipping the cargo to the buyer and the responsibilities are tackled mainly by the buyer. The goods which are being shipped are required to be handled by the buyer in this case which technically frees the seller from all associated responsibilities. The loading of the goods is considered for having the delivery in control of the buyer once the shipping process begins[6]. In this case, the buyer can aim at finding a cheaper service through which the cost of a shipment can be reduced. The international traders aim at maximizing the profits to a certain level through buying FOB and selling CIF. All these aspects of FOB make the buyer bound of the contracts of carriage and perform the delivery and shipment of the goods using a method which is highly convenient and effective.

[5] Miao, G. and Fortanier, F., Estimating CIF-FOB margins on international merchandise trade flows. (*OECD, STD/CSSP7WPTGS (2016), 8*, p.26 2016).
[6] CHOI, M.K., A Study on the Laytime and Demurrage Clauses (LD Clauses) in Contracts for the International Sale of Goods. *The Korean Research Institute of International Commerce and Law*, (*69*, pp.85-105 2016).

Comparison and Differences between CIF and FOB

The major distinctive factors based on which the two methods of shipping are assessed is based on methods through which the responsibility for the goods is tackled. The CIF agreement is the method in which the seller takes the complete responsibility and the FOB is a method through which the buyer takes the complete responsibility[7]. The liability and the cost which is incurred is managed by the seller in the case of CIF whereas the buyer handles the cost and liability in the case of FOB. In the case of CIF, the major responsibility lies with the seller who transports the goods to the nearest port and loads the material on a vessel as a shipment. The charges of insurance and freight are all tackled by the seller which are later paid by the buyer. The major factor which is the hassle of handling lies with the seller and the cost incurred is bored by the buyer[8]. The change in terms and processes are observed which shows that goods are not considered to be delivered till the time they have reached the possession of the buyer. In other situations, the goods are considered to be delivered when the vessel reaches the destination of the port.

The associated advantages and disadvantages are numerous which are faced by the buyer and seller differently in different situations. The selection of the method is preferable based on the involvement and handling which needs to be done by the buyer and seller which shipping the container. The formation of trade agreements is designed for a similar purpose through which the most convenient method is adopted[9]. The buyers and the sellers mutually evaluate their positions and decide on the method which shall be adopted through trade agreements signed with the

[7] Schoenaker, N. and Delahaye, R., *Environmental Input-output Analyses for the Netherlands*. (Statistics Netherlands 2017).
[8] Fortanier, F. and Miao, G., *Estimating CIF-FOB margins on international merchandise trade flows'*. (OECD STD/CSSP/WPTGS 2016).
[9] Marini, M., Dippelsman, R.J. and Stanger, M., (New estimates for direction of trade statistics 2018).

contract. The situations and preferences of the buyers and seller vary on the region in which the shipment is being sent and the nature of products which are being sent through the shipment. In some of the cases, the stronger companies are left liable for handling the process assuming liability[10]. The lower cost can be accomplished through implementing this method which enables the companies to have a special awareness of customs and traditions which encourages the buyer to accept or reject the offer which has been made. The assessment of taxes along with particular shipping agreements is critical for finalizing the most suitable option available for shipping the products.

Recommendations

The recommendations which can be made for English Biscuits Manufacturers based on an assessment of CIF and FOB principles shows that the selection of the best international shipping method shall be done. The benefit of the agreement shall be evaluated and a method shall be proposed which reflects the most benefit for the buyer and the seller at the same time. The trade agreements which are developed between the buyer and seller are linked with consideration of increased profitability either for the seller or the buyer. The awareness of the parties with the dynamics of the region in which the shipments are required to be made is highly critical for the process[11]. The process of CIF is more expensive for the buyer of goods whereas the risk is

[10] Keeney, R., Narayanan, B. and Valenzuela, E. eds., The Global Trade Analysis Project's (GTAP's) Database and CGE Model as a Tool for Agricultural and Environmental Economic Analysis. (In *WORLD SCIENTIFIC REFERENCE ON NATURAL RESOURCES AND ENVIRONMENTAL POLICY IN THE ERA OF GLOBAL CHANGE: Volume 3: Computable General Equilibrium Models* (pp. 31-56) 2017).

[11] Özkan, Ö. and Özçelik, O., Recommendations for Foreign Trade Companies Established in Turkey on Making Charter Party Marine Bills of Lading in Accordance with Letter of Credit-L/C Method. (*Journal of International Trade, Logistics and Law*, *1*(2), pp.67-74 2016).

mainly on the seller. The contracts developed on FOB are based on seller responsibility through which a cheaper deal can be initiated.

The evaluation of specific characteristics based on which a selection is made for English Biscuits Manufacturers is the Freight on Board (FOB) method. This method is beneficial for the Marriott Hotel, Lagos, Nigeria because this method is cheap and shall enable the hotel to arrange the shipment in the best possible manner[12]. The entire cost of shipment and insurance, in this case, shall be bored by Marriott Hotel which shall reduce the risk of product for English Biscuits Manufacturers. Besides this, the other benefits which are subjective with FOB are that the liability of the brand shall reduce when the shipment process shall be handled by the hotel itself. The relationship which shall be developed in the long run shall also be strong enabling both the buyer and seller to agree on trade terms which create a win-win situation[13]. The main duty of the seller, in this case, shall be the loading of the shipment and the remaining process shall be handled by the buyer.

The selection of CIF method shall not be lucrative for English Biscuits Manufacturers because this process shall increase the liability for the company to deliver the shipment to the premises of the client. The CIF method shall also not be lucrative for Marriott Hotel as Nigeria as a region is new for English Biscuits Manufacturers and they may end up hiring a costly shipping method which shall enhance the end cost for Marriott Hotel. The benefit of both the parties is to use the FOB method which shall reduce the cost for Marriott Hotel and shall transfer the liability for handling the shipment by them[14]. Using this situation is beneficial for both the buyer and seller

[12] Demir, B. and Javorcik, B., Don't throw in the towel, throw in trade credit!. (*Journal of International Economics*, *111*, pp.177-189 2018).
[13] Caballero, J., Candelaria, C. and Hale, G., Bank linkages and international trade. (*Journal of International Economics*, *115*, pp.30-47 2018.
[14] Bellucci, M. and McCluskey, J., *The LSTA's complete credit agreement guide*. (McGraw Hill Professional 2016).

which shall enhance the long term outcomes of the trade agreement. The advice which shall be weighed by the buyer and the seller shall be based on selecting the FOB method through which cost-effectiveness and shipping efficiency can both be accomplished.

Question # 2: Hamzeh Malas & Sons v. British Imex Industries Limited [1958]

Case Note

Hamzeh Malas & Sons is a Jordanian firm which contracted to purchase from British Imex Industries Limited. The case was brought up when Hamzeh Malas, the buyer decided to buy a huge lot of steel reinforcing rod. The trade agreement which was made between the parties was to deliver the quantity in two installments. The payment terms of the agreement were predetermined which was based on two letters of credit which were to be paid against the delivery for each installment. The seller of the steel reinforcing rod made with British Imex Industries Limited shipped the first installment[15]. The first credit installment associated with the delivery of the first installment was made after which it was discovered that the goods provided were defective. Hamzeh Malas injunct Imex from claiming the second letter of credit which was a result of the defective goods which were delivered.

The proceedings which were held at the court suggested that the injunction was refused. The contract which was developed for the sale of steel reinforcing rod showed that it was a separate contract which was executed between the bank and the seller. The terms of the credit showed that it was decided between the bank and the seller to pay the money when the compliant documents were received. The contractual requirements of the goods being inadequate condition

[15] Prahathi, S.S. and Lakshmi, G.M., Garment exporter view on letter of credit. (*International research journal of management, IT and social sciences*, *6*(1), pp.27-32 2019).

were not mentioned in the clause. The goods which had been delivered required the injunction to be made using which the obligations could be fulfilled[16]. The comments which were presented by the court against the happening of the events showed that the application in the case was designed to evade authorities who blamed the bank for being unjust with not releasing the payments. The case was presented in a manner that the seller is [17]dependent on the payment for completion of future contracts which in this case implied on the completion of the remaining part of the installment. The role of the bank is to be assured that the payment shall be used for completion of remaining part of the deal. This is the reason that credible paymasters are held as intermediaries for advancing the funds through which the seller can finance the purchases. The final comments suggested that the practice was required to be impaired and that the process of assurance of payment could hinder the process. The practicality of blocking the payment was non-existent and the banks were bound to make the payment against the promise of delivery when the terms of the contract were being decided.

Importance of the Case

The discussion which is posed from the evaluation of the case clearly shows that the deal made between the parties which are Hamzeh Malas & Sons v. British Imex Industries Limited in the year 1958 shows that the bank put a stop to the payment based on the trade agreement. The happening of the process of cancellation of payment was linked with failure to deliver the goods which were an inaccurate condition in the agreement of steel reinforcing rod. The evaluation of the case shows that the role of the bank in this scenario is critically important as the payment was

[16] Li, V.H., *Law and politics in China's foreign trade*. (University of Washington Press 2018).
[17] Afesorgbor, S.K., The impact of economic sanctions on international trade: How do threatened sanctions compare with imposed sanctions?. (*European Journal of Political Economy*, *56*, pp.11-26 2019).

not made to the seller once confirmation was received that the products which were delivered were not as per the quality decided. The solidarity of the contracts is based on understanding that pre-decided paperwork and finalization of trade agreements are critical for the organizations through which a specific set of rules can be created and dominated. The case is an example which reflects the lack of tools through which the seller arranges the payment are not backed by the specific set of rule clarified in the trade agreement[18]. The bank blocked the payment under similar conditions through which it was unclear that whether the quality of products delivered was a factor for which the payment should and should not be made. The case holds significant importance in the link of events through which an understanding can be classified that the trade agreement is critical for the smooth functioning of the businesses through which foundations can be developed and outcomes can be lured.

Discussion for English Biscuits Manufacturer

The seller in many cases opts towards making the payments using the documentary letters of credit. It is clear from the sellers perspective that the terms of trade and payments are pre-determined through which the rights of both the buyers and sellers can be protected. The foundations which are evaluated in the light of the case of Hamzeh Malas & Sons v. British Imex Industries Limited [1958] shows that modern-day businesses also seek processes which cannot be tampered. This is the reason, the businesses focus on enhancing the transparency of the trade terms and operate with the set of rules through which the business performance can be amplified. The payment which shall be made by the buyers shall be supported under the specific set of rules

[18] Alavi, H., Documentary Letters of Credit, Legal Nature and Sources of Law. (*Journal of legal studies*, *17*(31), pp.106-121 2016).

through which the bank can be instructed about the terms essential for making the payment[19]. The best interest of English Biscuits Manufacturers is that a discussion is made with the clients which in this case is Marriott Hotel and the payment terms are specified. This shall enhance the outreach of the business which shall safeguard the rights of both the parties aiming to pursue a long term business relationship.

The significance of the trade agreement is highly critical for the success of the business as it provides clarity in the terms of agreement which can assist the member to decide the aspect which is liable for this action. The trade agreements are highly critical for both English Biscuits Manufacturer and Marriott Hotel, Nigeria for determining the aspects through which the payment shall be released or not. The suggestion of shipment, in this case, is made based on FOB contract which requires that the buyer be held responsible for the shipment[20]. The product quality which is enclosed in the shipment shall be accurate as per the quality which has been agreed by both the parties. The liability of the company which is this case is English Biscuits Manufacturers ends at the point of shipping. A specific tool shall be devised through which quality check can be created at the point where the shipment is being made which shall free the seller from any sort of liability against the contract. The payment shall be released by the bank once the quality check has been performed which can enhance the security for the company[21]. The formation of the trade agreements is critical for the business safety and security through which the payment terms are predefined and the company can protect itself when the obligations have been completed.

[19] Alavi, H., Mitigating the risk of fraud in documentary letters of credit. (*Baltic Journal of European Studies*, *6*(1), pp.139-156 2016).
[20] George, S., *Faith and credit: the World Bank's secular empire*. (Routledge 2019).
[21] Vaubourg, A.G., Finance and international trade: A review of the literature. (*Revue d'économie politique*, *126*(1), pp.57-87 2016).

Documentary Letter of Credit

The purpose of a documentary letter of credit is to develop an undertaking of the bank based on which the letter of credit is opened on the credit of the buyer. The objective of this letter is to pay the amount to the seller and specify the provisions based on which the conditions of the letter can be confirmed on the basis of the shipment of commodities. The purpose of the provision is to develop the clauses for releasing the payment under specific conditions at a specific time. The use of the letter of credit is developed at the times when the parties are not certain about the certainty of solvency. The performance and obligation of the quantity and quality which is delivered is a major aspect based on which the letter of credit is developed[22]. The trade-credit is developed through this letter which assists the individuals for acquiring a specific set of down payment against the valuables which are supposed to be supplied. The foundations of the counterparty are developed for the settlement amongst the parties through the letter of credit.

The use of the letter of credit under a specific situation is associated with numerous benefits. The seller is highly inclined towards the elimination of the credit risk based on which an undertaking can be acquired from a bank. The payment of commodities is supplied against the services provided showing that the seller lacks information about the financial standing of the company. The letter of credit is an effective tool through which credit relationship can be developed. The formation of trade agreements and offering letter of credit benefits the elimination of risk of counterfeiting which ate the same time rectifies the risk of non-payment[23]. The time intervals are reduced through which risk can be eliminated on abandonment. Through the letter of credit, the

[22] Lorenzon, F. and Baatz, Y., *Sassoon on CIF and FOB Contracts*. (Sweet & Maxwell 2016).
[23] Hu, J., Wood, R., Tukker, A., Boonman, H., & de Boer, B., Global transport emissions in the Swedish carbon footprint. (*Journal of Cleaner Production*, *226*, 210-220, 2019).

organizations seek to acquire short term funding's which increase the possibility of sales volumes in a new and competitive market acquiring the competitive edge. Similarly, the letter of credit is beneficial for the buyers to curtail the expenses and pledge collaterals which shall come in handy while performing the business. The buyers at times can withhold the payment based on the documentary confirmation through which quality requirement and accomplishment of the specified destination can be delivered. The buyer specific payments are developed along with a list of a document through which the buyer limits in specified time frames for the provision of documents and good delivery are designed benefitting the organizations which act as buyers or sellers.

Conclusion

The assessment of the case of English Biscuits Manufacturers and the assessment of the cases through which the organization decides whether the delivery of the products is done CIF or FOB is evaluated. The fundamentals of the concepts are studied in depth which enables understanding the distinction of the concepts through which a new perspective and imagery are developed. The role of the organizations is to adapt a method which is most effective and can connect the methods which benefit both the buyer and the seller. In some of the cases, the buyers benefit and in some of the cases the seller's benefit which connects the usage of the applied methods[24]. The assessment of the case provides a conclusion that the FOB method shall be highly preferable for English Biscuits Manufacturer as the liability shall be on the buyer. The payment methods which are applied must also be designed for safeguarding the buyer and the seller. The role of the trade

[24] Soyer, B. and Tettenborn, A., What is a reasonable contract of carriage for CIF/CIP purposes?–section 32 (2) of the Sale of Goods Act 1979. In *International Trade and Carriage of Goods* (pp. 43-54). (Informa Law from Routledge 2016).

agreements and forming the letter of credit are critical portions of the study which shall enable understanding the role of banks and the methods which can be applied for safety and security. The evaluation of the concept of the trade agreement and the letter of credit is done in the light of the case of Hamzeh Malas & Sons v. British Imex Industries Limited [1958] which assists in understanding the significance of classifying the terms of trade beforehand.

Bibliography

Afesorgbor, S.K., The impact of economic sanctions on international trade: How do threatened sanctions compare with imposed sanctions?. (*European Journal of Political Economy*, *56*, pp.11-26 2019).

Alavi, H., Documentary Letters of Credit, Legal Nature and Sources of Law. (*Journal of legal studies*, *17*(31), pp.106-121 2016).

Alavi, H., Mitigating the risk of fraud in documentary letters of credit. (*Baltic Journal of European Studies*, *6*(1), pp.139-156 2016).

Bellucci, M. and McCluskey, J., *The LSTA's complete credit agreement guide*. (McGraw Hill Professional 2016).

Caballero, J., Candelaria, C. and Hale, G., Bank linkages and international trade. (*Journal of International Economics*, *115*, pp.30-47 2018.

CHOI, M.K., A Study on the Laytime and Demurrage Clauses (LD Clauses) in Contracts for the International Sale of Goods. *The Korean Research Institute of International Commerce and Law*, (*69*, pp.85-105 2016).

Demir, B. and Javorcik, B., Don't throw in the towel, throw in trade credit!. (*Journal of International Economics*, *111*, pp.177-189 2018).

Fortanier, F. and Miao, G., *Estimating CIF-FOB margins on international merchandise trade flows'*. (OECD STD/CSSP/WPTGS 2016).

George, S., *Faith and credit: the World Bank's secular empire*. (Routledge 2019).

Hu, J., Wood, R., Tukker, A., Boonman, H., & de Boer, B., Global transport emissions in the Swedish carbon footprint. (*Journal of Cleaner Production*, *226*, 210-220, 2019).

Keeney, R., Narayanan, B. and Valenzuela, E. eds., The Global Trade Analysis Project's (GTAP's) Database and CGE Model as a Tool for Agricultural and Environmental Economic Analysis. (In *WORLD SCIENTIFIC REFERENCE ON NATURAL RESOURCES AND ENVIRONMENTAL POLICY IN THE ERA OF GLOBAL CHANGE: Volume 3: Computable General Equilibrium Models* (pp. 31-56) 2017).

Li, V.H., *Law and politics in China's foreign trade*. (University of Washington Press 2018).

Lista, A., *International Commercial Sales: The Sale of Goods on Shipment Terms*. (Informa Law from Routledge 2016).

Lorenzon, F. and Baatz, Y., *Sassoon on CIF and FOB Contracts*. (Sweet & Maxwell 2016).

Marini, M., Dippelsman, R.J. and Stanger, M., (New estimates for direction of trade statistics 2018).

Miao, G. and Fortanier, F., Estimating CIF-FOB margins on international merchandise trade flows. (*OECD, STD/CSSP7WPTGS (2016)*, *8*, p.26 2016).

Özkan, Ö. and Özçelik, O., Recommendations for Foreign Trade Companies Established in Turkey on Making Charter Party Marine Bills of Lading in Accordance with Letter of Credit-L/C Method. (*Journal of International Trade, Logistics and Law*, *1*(2), pp.67-74 2016).

Prahathi, S.S. and Lakshmi, G.M., Garment exporter view on letter of credit. (*International research journal of management, IT and social sciences*, *6*(1), pp.27-32 2019).

Schoenaker, N. and Delahaye, R., *Environmental Input-output Analyses for the Netherlands*. (Statistics Netherlands 2017).

Soyer, B. and Tettenborn, A., What is a reasonable contract of carriage for CIF/CIP purposes?–section 32 (2) of the Sale of Goods Act 1979. In *International Trade and Carriage of Goods* (pp. 43-54). (Informa Law from Routledge 2016).

Vaubourg, A.G., Finance and international trade: A review of the literature. (*Revue d'économie politique*, *126*(1), pp.57-87 2016).