Abstract

This Article is a detailed assessment of the role of, and parties’ obligations in, CIF insurance under Incoterms and common law jurisdictions. One of the CIF seller’s key obligations is to insure goods in transit against risks of loss, damage and rejection or non-payment by buyer. The insurance obligation is so crucial that in international business transactions, no bank would agree to finance a CIF buyer or seller’s transactions without proof of insurance. The full extent of those insurance duties result from the nature, history and development of the CIF commercial terms compared to the FOB. The duties, governed by Incoterms, have been interpreted by courts in Anglo-America and other common law jurisdictions both before and after the first Incoterms in 1936. Common law cases on the subject are complemented by customs and usages, various Commodity Trade Standard Rules and the Institute Cargo Clauses. Because of their common heritage, with few modifications, parties’ CIF insurance obligations are the same in all Anglo-American and other common law jurisdictions. Although at first those obligations may appear straightforward in a written contract, however, in practice and detailed examination, they turn out to be much more complex. Accordingly, traditional assumptions on the ease and apparent simplicity of the obligations can be misleading. Following earlier similar coverage of FOB insurance elsewhere (Ademuni-Odeke, 2007), this Article scrutinizes parties’ CIF insurance obligations under Incoterms as applied under Anglo-American and other common law jurisdictions, compares it with FOB insurance on the one hand and with CIF insurance practice in selected civil law and other non-common law jurisdictions on the other. The Article, therefore, challenges traditional assumptions, provides an in-depth analysis of the nature and full extent of the duties, prescribes practical solutions where there are lacunae and concludes that there are far more attention and careful consideration required for parties’ CIF insurance considerations than is contained in a written contract and/or is apparent in existing literature. The Article argues that, all factors considered, CIF parties should view their contractual undertaking, common law principles and Incoterms provisions only as prima facie and minimum guidelines.

Keywords: Sale of Goods, Marine Cargo Policy, CIF and FOB Contracts, Anglo-American Law, Common Law, Incoterms 2010, Institute Cargo Clauses and UCP 600

1. INTRODUCTION

The CIF is one of the two principal Incoterms used in domestic and international sales’ transactions; the other being the FOB. The two have different histories, variations and characteristics. Among the differences are their distinct characteristics and manner of performance while amongst their similarities are the points of passage of property and risks, recent convergence in the practice of tendering documents for
payments and other contemporary practices. The FOB is thought to be the older of the two although now the less popular, accounting for about 40% compared to 60% for CIF, in volume and value of especially global sales’ transactions traded under them. For purposes of this Article, the principle difference between them is the parties’ insurance obligations and the emphasis therein in each. For instance, except for FOB, ‘with additional duties’ or Extended FOB, the usual (Classic or Strict) FOB does not include freight and insurance obligations (Sassoon, 1967, 32; Woolridge, 1973, 383; Davis, 1956; Sassoon, 1981, 50; Evans, 1993, 844; Gower, 1956, 417), whereas those functions are essential aspects of the CIF sellers’ duties.

This Article analyses insurance of CIF and CIF-related contracts under Anglo-American and other common law jurisdictions, compares it with equivalent insurance obligation in FOB contracts also under common law jurisdictions, and with equivalent situation in selected civil and other non-common law jurisdictions. The need for the Article arose from a realisation of apparent lack of in-depth treatment of the subject in existing literature. To the best of the author’s experience, even the most eminent English and other common law scholars and jurists such as Sassoon (Sassoon, 1995; Lorenzo, 2012), Benjamin (Benjamin, 2014), Schmitthoff (Schmitthoff, 2012), Chuah (Chuah, 2013) and Birds (Birds, Wright, et al, 2013) treat the subject in existing literature only either in casual manner or as part of the general marine insurance issue. Furthermore, even the closest treatment of the subject matter at international level by Crockford (Crockford, 2013), relates only to regulatory rather than substantive aspects of the subject. Additionally, a literature review revealed only a superficial coverage of the subject. Consultation with colleagues in the Australian (Dunt, 2012, Chapter 7), Hong Kong (Dunt, 2012, Chapter 4), Singapore (Dunt, 2012, Chapter 5), South African (Dunt, 2012, Chapter 14), US (Dunt, 2012, Chapter 8; Sassoon, 1981) and other leading common law jurisdictions, revealed a parity of practice in all major common law countries; hence the expanded title and the aims and objectives of the Article. Further revelations include the apparent dominance of interpretation, practice and universal application of common law principles on the subject.

This Article follows previous works and compares it with earlier similar treatment of FOB (Ademuni-Odeke, 2007, 425-462) insurance. However, unlike those preceding works (Ademuni-Odeke, 1995), the Article focuses on CIF and its related contracts, where insurance is a factor in the contract, and on changes introduced to earlier Incoterms editions by the latest Incoterms 2010. For instance in incorporated changes introduced by the amendments to the Institute Cargo Clauses. It concedes that the CIF common law obligations may at times differ from those under Incoterms 2010, UCP 600, Institute Cargo Clauses and Commodity Trade Contracts. It is also apparent that, although, unlike in FOB, in theory, the CIF insurance requirements may appear straightforward, this is not borne out by practical reality. The Article is, therefore, an attempt to question those long-held assumptions and to consolidate comprehensive treatment of insurance aspects of the CIF and CIF-related contracts and in a manner and extent never attempted before in existing literature.

For those reasons, the Article details CIF insurance requirements in a new approach, supported by case
The Article's overall objectives are, therefore, to: continue questioning the perceived wisdom that insurance in CIF contracts is very straightforward and easy to understand, an approach started in the second in-put of earlier works (Ademuni-Odeke, 2007); restate the common law aspects of insurance of CIF insurance and CIF-related Incoterms such as the CIF\textsuperscript{14}, CFR\textsuperscript{15} and C&F\textsuperscript{16}; farther the understanding of the subject; provide the reader with valuable materials that had never before been consolidated; and fill the lacunae on available literature\textsuperscript{17}. Accordingly, the Article could be of interest to all those involved in international business transactions, insurance, legal practice and academia who might find it useful.

The Article opens with an examination of the extent of parties' general insurance responsibilities in CIF contracts under Anglo-American and other common law jurisdictions\textsuperscript{18}. Coverage extends to its treatment under the UCP 600 and in other jurisdictions but not under Incoterms 2000\textsuperscript{19} now superseded by Incoterms 2010. However, coverage of the subject in the Article is limited to CIF buyers and sellers' respective insurance obligations rather than all their other duties. Also excluded are discussions on the requirements and other formalities for effecting a CIF policy such as: the sources of insurance, procedures involved in obtaining a policy, the loss and claims' process and the general insurance principles and doctrines applicable to insurance of CIF and CIF-related Incoterms employed in international sales transactions such as the requirements for insurable interests, principles of utmost good faith and subrogation.

Before embarking on detailed treatment of insurance aspects, the Article provides an abstract and a prerequisite background on the nature, passage and transfer of property and risks in CIF contracts. It is divided into two parts with 5 paragraphs each and a conclusion. Part I opens with the Introduction (Para.1); summarises the role of insurance in international business transactions (Para 2); details the nature and parties' general duties related to the contract at common law (Para.3); compares the position under US common law as codified under Federal and State legislation with English common law (Para 4) and details general duties under common law and Incoterms (Para 5). Part II continues and completes Para 5 and then: continues with the presentation of the CIF policy and related documents at common law and under UCP 600 (Para.6); focuses on commodity trade variations of Incoterms and common law (Para.7), includes practical additional insurance that reasonable buyers and sellers should consider (Para.8); compares insurance of CIF-related commercial terms under common law and Incoterms (Para.9); recasts the treatment of CIF insurance in selected civil and other non-common law jurisdictions (Para.10); and closes with the concluding remarks (Para.11).

2. ROLE OF INSURANCE IN CIF AND INTERNATIONAL SALES

2.1. Insurance-luxury or international trade necessity?

There is no compulsion under Anglo-American, other common law or any other jurisdictions for a seller or buyer to insure goods in transit. However, commercial risks' often compel arrangement of insurance. Only an uninformed party would proceed without insurance. Besides, it would appear common prudence for the party to insure goods while in transit. These considerations become more relevant where and when credit is sought from banks or other financiers. In

\textsuperscript{14} CIF the seller contract goods delivers to the carrier or other person nominated by the seller at an agreed place, contracts for and pays for carriage necessary to bring the goods to the name destination and contracts for insurance against the buyer's risk of loss or damage during transit. Its insurance obligations are identical to CIF as provided in Article A3(b); see Incoterms 2010, pp.41-51 at 46.

\textsuperscript{15} CFR the seller delivers contract goods on board a vessel or procures goods (afloat) already delivered, contracts for costs and pays freight to deliver goods at named port of destination. Unlike CIF and CIF, he is not responsible for buyer's insurance; see Incoterms 2010 at pp.95-103.

\textsuperscript{16} C&F is an older discontinued Incoterms version of its replacement (CFR) where the 'FR' has replaced '&F'. It is still use in the English, US UCC and other common law jurisdictions (Schmitthoff, 2012, 50-51).

\textsuperscript{17} A quite separate, but related, aim of the article is to make available to other scholars, researchers and teachers of international trade law materials that they can use and probably expand on.

\textsuperscript{18} Common law jurisdictions includes the English, American, Australian, Canadian and all English Commonwealth countries in Africa, Asia, the Caribbean and the Pacific that inherited their legal tradition from English common law. Available at: http://en.wikipedia.org/wiki/Common_law (19 July 2016); for a full list see: http://www.electoralcommission.org.uk/__data/assets/electoral_commission_pdf_file/0009/79515/List-of-eligible-countries.pdf (20 July 2016).

\textsuperscript{19} Rules for the use of domestic and international trade terms (Incoterms) of the ICC is published and revised around every 10 years, the latest being Incoterms 2010; for Incoterms 2000, see ICC Publications No. 560 ("Incoterms 2000"). Also published with it is a commentary (Ramberg, 2010; Debattista, 2007, 329-354).
those circumstances, insurance would be one of the pre-
conditions for the credit. The insurance policy would be
essential tender for receipt of payments from the
buyer's bank. Furthermore, without insurance, it would be
necessary for parties to set aside large sums of money
to cover possible losses, which money would be better
employed in their other business. It would be pointless
to hold such large sums in reserve against possible
losses when, for a relatively small outlay (premium),
protection would be available through insurance. Thus,
insurance, a scheme where payment of a tiny fraction
of the shipment value makes full compensation in the
event of a loss or damage is unparalleled and makes
sense. Equally, carriers, freight forwarders and other
stakeholders, in order to protect their interests against
liability to cargo-owners, would advise parties to insure
their goods while in transit.

Insurance is, therefore, an essential element of
not only domestic commerce but also more so of
international business transactions, where the risks
involved are far greater. Therefore, since the CIF
term is closely linked to banking and credits systems
and its essence underpinned by the insurance policy,
CIF parties would find it almost impossible to obtain
finance for their commercial transactions without
insurance coverage. Indeed no one in their right mind
would trade without insurance, for without it the
alternative would be financial ruin and commercial
recklessness. For those reasons the insurance policy
has been, and remains, an essential part of not only the
CIF commercial terms but of all international business
transactions.

2.2. Comparison of CIF and FOB Insurances

Although it is pivotal in both, a comparison
between the CIF and FOB is necessary here and is
used throughout the Article to highlight prominence
of insurance in the former. To achieve this, it further
necessary to recourse to a brief history to appreciate
the different insurance approaches in CIF and FOB
contracts. It is reiterated that, of the two, the parties'
insurance obligations are quite explicit and detailed
in CIF, where insurance features prominently in the
short designation of the contract (CIF), compared to
those in FOB. However, and for those reasons, there
has been a tendency for those involved with the export
process to assume that of the two, the fulfilment of the
parties’ insurance obligations is easier in FOB than in
CIF contracts. This assumption is fallacious and can
lead to unfortunate consequences. Reasons for this out
dated assumptions are partly historic. First, at the FOB
inception, the ship-owner was also the carrier, importer,
insurance and that the seller’s only duty is to give such notice to the buyer as may enable him to insure goods during their (sea) transit. Incoterms indorsed that position in providing “No obligation” under the FOB seller’s insurance duties in its Article A3 (b). However, on closer examination, the difference between CIF and FOB may not be as clear-cut as it first appears, because with modern developments in finance, insurance and especially transport technology, those differences between CIF and FOB performances either have narrowed or are disappeared altogether. This is now reflected in Article A3 (b) of CIF Incoterms 2010, which counsels caution. It, therefore, follows that continued assumptions regarding parties’ corresponding insurance duties can no longer be taken for granted, need challenging and, perhaps, restating. This Article argues that the hitherto orthodox purely contractual interpretation should be viewed with caution and only as a general rule subject to exceptions. With technological and other developments, these differences are soon disappearing and the manner of performances of both contracts converging.

For instance, documentary credit is now applicable to both contracts.

Consequently, although on its face value insurance requirement does not seem to feature prominently in FOB, compared to CIF or CIP contracts, the nature and extent of the risks involved in both contracts are, and have always been almost the same, and are of equal importance. Equally, all factors considered, and Incoterms requirements apart, parties’ insurance responsibilities in both CIF and FOB contracts would on the surface and in practice appear to be the same, subject to retention of the fundamental distinction between the two that the CIF requires the seller to contract for insurance. However, as demonstrated, upon closer analysis, the exact nature of the parties’ general and insurance obligations may be more complicated, and more demanding in even FOB contract. This is so considering that the FOB contract is further divided into at least three categories—classical or strict, simple and extended (with additional duties) (Davis 1956; Schmitthoff, 2012, 19-22). Their details are farther summarised in paragraph 3 below and by Sassoon (Sassoon, 1995, 12-19).25

2.4. Passage of Property and Risks in CIF Contracts

Insurance is intended to protect against risks to property in the goods and is therefore related to passage of property and risks. Pyrene v Scindia24 determined passage of property and, unless stated, therefore, risks in all international business transactions and shipping contracts. However, in especially CIF contracts passage of risks has specific rules and requirements of passage of property and risks such as in unconditional appropriation of goods and tender of documents for lost or damaged property (Halsbury’s Laws of England, 2012, para. 357). Subject to the distinction between the passage of ownership and the passage of risks, the essence CIF can be summarised as follows:

(i) Risks pass to the buyer as from shipment;
(ii) Buyer of goods damaged before discharge can sue carrier where the goods are damages by the carrier;
(iii) Buyer of goods damaged before receipt of bill of lading also sues the carrier in tort;
(iv) Seller does not warrant existence of goods at time of tender;
(v) Goods can be shipped as per contract or bought and resold afloat;
(vi) Most important function is tender of shipping documents (bill of lading, invoice and insurance documents rather than goods;
(vii) For above reasons, the CIF is sometimes treated as sale of documents rather than goods; and

25 Sassoon here discusses passage of risks and property in both contracts.


26 E. Clemens Horst v Biddell Bros [1912] AC 18 HL, reversing SC sub nom Biddell Bros v E Clemens Horst [1911] KB934 CA; The Julia [1949] 1 All ER 269; The Galatia [1980] 1 All ER 501;


29 Groom (c) v Barber [1915] 1 KB 316; Re Weis & Co Ltd & Credit Colonial et Commercial, Antwerp [1916] 1 KB 346.
(viii) Also for the above reasons, tender of the shipping documents with knowledge of lost goods is good tender.

The bases for the above characteristics are that any damage or loss is underpinned by insurance policy to compensate the buyer, subsequent buyers (afloat) and any other bona fide purchaser in the chain that suffers such loss or damages.

2.5. CIF Insurance part of Marine Transportation Cargo Insurance

As indicated above, insurance against perils is an important aspect of international commercial transactions. In the event of loss or damage to cargo due to hazards during voyage, an insured party will be able to recover losses from the insurer. The type of insurance required depends inter alia on the modes of transport agreed between parties to deliver the cargo. As such, insurance required may include marine, aviation, land and property. The category of insurance contract may also further depend on the common law influence or application, Incoterms, commodity trades, UCP and the Institute Cargo Clauses adopted by the parties in a particular sales’ contract. A CIF contract requires the seller to obtain insurance cover for the voyage. FOB contract however places no obligation on the buyer or seller to obtain insurance, although it is prudent for the buyer to protect against potential losses or may be requested by the buyer to do so. It is, therefore, not unusual for the FOB buyer to request the seller to arrange insurance on an understanding that they will reimburse the insurance costs incurred. Indeed Incoterms 2010 now provides so. It will be apparent ahead that in both contracts the insurance obtained must cover only those goods that are being sold and as stipulated in the shipping documents.

Furthermore, the insurance must also cover the entire voyage of the sales contract. Where it covers only part of the transit, the buyer will be able to reject the documents upon tender. Marine insurance contracts, the mainstay of export-import insurance, is divided into hull (carrier’s insurance) or goods (seller’s and buyer's cargo insurance) both of which affect export trade insurance. Aviation and other export transportation modes use the marine insurance principles and documentation. That is why aviation, road, rail and multimodal transport (principal CIF conveyors) insurance contracts all include marine cargo insurance principles and policy format. Although the various transport modes each apply own international conventions, large segments of all these transportation modes involve water and are therefore exposed to marine risks. These conventions together provide further guidance to domestic and international export insurance ranging from FOB, CIF and related contracts. The insurance may be issued to individual sellers and buyers or to those transacting on commodity trade rules. Although the United Nations Conference on Trade and Development (UNCTAD) attempted to introduce one (UNCTAD Secretariat Report, 1982), there is no uniform law or international marine or cargo - insurance convention (Schoenbaum, 1999). However, commercial customs, usage and practices in international marine cargo insurance have played a significant role in regulating marine insurance internationally. Furthermore, the marine insurance contract, forming the basis of FOB and CIF insurances models, is subject to both general principles of contract and MIA 1906 and other relevant domestic marine insurance laws.

2.6. The dominance of marine insurance principles to CIF and related policies

Under English and most common law jurisdictions, the export policy is governed by the principles of the Marine Insurance Act 1906 (MIA 1906) either in its original form or as modified. The MIA1906, versions of which have been enacted not only in common law countries but almost universally, applies to CIF insurance. Those principles dominate insurance principles of aviation, land, rail, multimodal and other transport modes concerning with the delivery of international business sales. As such, the CIF policy is subject to all the principles, doctrines and rules contained in the Act. For instance, both parties in the CIF should have insurable interests in the subject matter insured, capacity to contract and make marine insurance contracts. They are also bound by the utmost good faith duties of disclosure and non-disclosure, representations and misrepresentations, proximate cause, conditions and warranties, payment of premium, types and rules as to policies, types and rules as to losses, abandonment and subrogation doctrines in claims process and related disputes. The dominance of the Lloyds insurance and London


market has led to the *Lloyds Marine Policy*, Companies *Marine Policy*, London Underwriters’ *Institute Clauses* and even English law being applied in fact or spirit by other common law, civil and other non-common law jurisdictions. Detailed discussions of their application to the CIF are beyond the remits of this Article. The rest of the Article is devoted to CIF insurance and case law relating thereto.

3. PARTIES’ GENERAL OBLIGATIONS INCIF AND RELATED CONTRACTS

3.1. Nature of CIF under English and other common law obligations

The CIF names the port of destination and the price quoted by the seller include cost of the goods [represented by ‘C’], insurance [represented by ‘I’] and freight [represented by ‘F’]. The seller’s principal common law obligations are to ship, or buy goods of the contract description. If they are unascertained goods, sellers must normally give notice of appropriation. On or after shipment, he must obtain a proper bill of lading and insurance policy or equivalent documents. The seller performs the contract by transferring the shipping documents – bill of lading, insurance policy and invoice- to the buyer on the ‘prompt’ date fixed for payment through assignments. In *Re Denbigh Cowan & Co & R Archery & Co*[^32], following the landmark case of *The Julia*[^33], Lord Banks LJ[^34] at the Appellate Court re-emphasizes the sellers’ common law obligation to provide and tender insurance documents under CIF contract without which buyers can refuse to take delivery of goods. The purpose of the CIF contract is to enable dealing with goods already sold and shipped (‘goods afloat’). If payment is to be made by letters of credit, the shipping documents will in practice be tendered to a bank making the payment on the buyer’s behalf. The special feature of the CIF contract is the importance attached to the documents[^35]. To emphasize the importance of the policy, if insurance is not effected the buyer may reject the goods even though they arrive safely and the buyer has suffered neither loss nor damage[^36]. Furthermore, and on the contrary, if proper documents (including the policy or equivalent) are presented, the buyer must accept and pay for them even though the goods are damaged or lost after shipment (Treitel, 1984, 565).[^37]

It is reiterated that these traditional emphases on documents rather than goods in CIF characteristics have led to the suggestion that a CIF contract is a sale of documents rather than of goods. Therefore, the alternative is that it should be a contract of sale of goods (Ademuni-Odeke, 1993) to be performed by delivery of documents, since a contract for the sale of specific goods CIF would be void if at the time of sale the goods had perished even though a policy relating to them was in existence.[^38] However, the goods must have existed and been shipped. Accordingly, when sellers bought what they believed were goods afloat covered by regular documents and re-sold them it was held they did not fulfil the contract by handing over an apparently regular set of shipping documents when the goods had never existed (Treitel, 1984; Treitel, 1984, 457).[^39] In contrast, the FOB was traditionally associated with the physical delivery of goods on board a vessel rather than the documents. There are two separate CIF buyer’s rights, one to reject documents and the other to reject goods if they are not in conformity with the contract.[^40] That notwithstanding, if the buyers take up, without objecting to, documents which do not conform to the contract and/or letters of credit, they will be precluded from rejecting them later.[^41] Thus, the lynchpin in the whole CIF characteristic and process is the insurance policy, which underpins such eventualities of loss, damage and buyer’s rejection.

3.2. Statutory obligations: application of the *UK Sale of Goods Act 1979*[^42] to the CIF

The above case law based-common law might differ from statutory common law. For instance, since under s.28 of the English *Sale of Goods Act 1979* (SOGA 1979), payment and delivery are concurrent conditions.

[^32]: 125 LT 388, [1921] All ER Rep 245 CA; 90 LKB 836.
[^34]: Lords s Scrutton LJ and Atkin LJ concurring, at 390, reversing the judgment of Rowlett J.
[^35]: Smyth v Bailey [1940] 3 All ER 60; See also: Ademuni-Odeke, 1993, 158-176.
[^36]: Orient Co. v Bekke and Howlid [1913] KB531.
[^38]: Couturier v Hastie (1856) HLC 673.
[^40]: Kwei Tek Chao v British Traders [1954] 2 QB 459
[^42]: Although the principles of the MIA 1906 and the SOGA 1979, as amended, apply to CIF policies, there is no specific English statute applicable to CIF contracts. The only such a statute in the common law jurisdictions is the US UCC. The new English *Insurance Act 2015* has not made any difference to the MIA 1906 in this respect.
and delivery in a CIF contract means delivery of shipping documents, the buyer (unless there is contrary agreement) cannot refuse to pay until he is able to examine the goods, thereby excluding s. 34, which requires concurrent delivery and payments. However, the loss of right to withhold payment does not exclude the buyer’s right to reject the goods if they do not conform to the contract on arrival. Consequently, s.32 (1), providing that delivery to a carrier is prima facie delivery to the buyer, does not apply to FOB as it does CIF; nor does s. 32 (3) requiring seller to notify the buyer for insurance purposes, as there are always terms as to insurance; although s. 32 (2) requiring a seller to make a reasonable contract with a carrier, does apply. In addition, as in the FOB a contract, property normally passes on delivery of the shipping documents, but in special circumstances, this presumption may be displaced. Risk also normally passes on shipment or as from shipment so that s. 20, presuming linking passage of property to passage of risk, may also be displaced. The bill of lading must normally: be transferable, cover the voyage continuously over an agreed or customary route; state the goods are shipped and not merely received for shipment; be genuine in stating correct dates and not containing forgery; cover only the contract goods; be valid and effective; and be ‘clean’, that is not contain any adverse comment on the good order or condition of the goods.

Among other things, the insurance policy must be assignable (Halsbury’s Laws of England, 2012), legally effective (not an honour policy), cover only the contract goods continuously over the route and be usual in the trade or as specified in the contract. Unless otherwise usual in a particular trade, provided or requested by the buyers, sellers will not be in breach if they fail to cover other risks, e.g. war risks (Halsbury’s Laws of England, 2012). The invoice must at least enable the buyer to relate it to the contract but more detail may be required by the contract; the requirements as to documents may be modified by the contract, e.g. allowing a delivery order on the ship of a ‘received for shipment’ bill of lading or a certificate of insurance instead of a policy. The contract may also require other documents such as certificates of origin, pre-shipment, quality, testing and the like. Furthermore, the contract may require the seller to give notice of appropriation of goods to the contract or to ‘declare’ a shipment within a given time and these documents may be added to the shipping documents. Such notice transforms hitherto unascertained goods into specific goods, and the contract binding. These modifications do not, however, affect the fundamental nature of the CIF contract so long its distinctive difference with FOB is retained. However, although this Article is on CIF rather than FOB, there has been necessary to compare it with the FOB contract and therefore the insurance requirements in the FOB. This is because otherwise the various FOB classifications (below) might confuse blur the insurance distinction between the CIF and FOB.

3.3. Comparisons with FOB Insurance

3.3.1. In Classic or Strict and Simple FOB Contracts

In terms of their nature, CIF or CIP, which also require sellers to take out insurance, are both different from the FOB. This is due to explanations above that historically the FOB was the first of the two commercial terms and developed when there were no separate and independent insurance, shipping and banking institutions or facilities. Hence, at the time, the FOB buyer was the ship-owner, self-financed and self-insured. He paid for the goods in cash himself, was responsible for the freight and took upon himself the risks involved. It follows, therefore, that both the seller’s freight and insurance obligations to the buyer duties were irrelevant. This is the strict or Simple—also known as ‘buyer contracting with carrier’ FOB, which unlike FOB with additional duties (Extended FOB) differs from both the CIF and CIP for insurance purposes. Apart from a few difference in the “Classic FOB” and “Extended FOB”, regarding shipping duties, those principal duties remain basically the same. That is in the normal FOB Classic, such as one contained in the Incoterms 2010, where the seller does not have to take out either the shipping or the insurance contracts (Davis, 1956;
3.3.2. In Extended FOB Contracts

On the other hand, the “FOB with additional duties” or the "Extended FOB", where both insurance and freight form part of the additional duties, all but resembles the CIF or CIP contracts. However, certain fundamental differences between CIF and FOB remain such as the CIF’s unique characteristics of almost being a 'contract for sale of documents rather than a sale of goods' (Crawford, 1955, 396; Ademuni-Odeke, 1993, 158-176). The emphasis on delivery of documents rather than physical delivery of the goods and the availability of separate and independent remedies for rejection of goods and rejection of documents, being the other distinguishing factors. There are many other ways by which especially the CIF differs from the FOB but these are beyond the purposes of this Article and have been covered elsewhere (Ademuni-Odeke, 2007). However, where only two additional duties (carriage and insurance) are involved then the FOB contract with additional duties would bear resemblance to CIP contract, save that the seller in that FOB contract would be the buyer’s agent but not party to the insurance contract for insurance purposes. Nevertheless, it is similarly possible that these additional duties could also be part of the FOB classic. These too are covered elsewhere under discussions on “Extended” or “Additional Duties”.

That Extended FOB where the additional duties include freight and insurance nearly resembles those of the CIF contract (Ademuni-Odeke, 2007, 440-449), but with the provison that the seller would be the buyer’s insurance agent by inserting the buyer’s name in the policy. He can add the insurance premium charges (with or without commission) in the same invoice or as a separate charge. However, he could also take out the policy in his own name and then transfer it to the buyer by indorsement the policy or through the tender of the documents for payment. The agency relationship might cause conflict of interest and other problems where the seller is in breach of the secondary (insurance) obligations, since he is also party to the main sales contract. Otherwise when undertaken, the additional insurance obligation is binding on the seller like any of his principle obligation to provide contractual goods and/or ship them where applicable. However, it maintains the subtle legal distinction between the CIF and the FOB albeit with additional (insurance) duties.

4. AMERICAN CIF INSURANCE POLICY

OBLIGATIONS UNDER THE UCC

4.1. Parties’ General Obligations at the Federal Level

The US law and practice are not very different from the English common law except for the former’s: codification into the Uniform Commercial Code (UCC), the lack of distinction between the CIF on the one hand; and the C&F (Costen and Freight) on the other. For instance, s 2-30(1) of the UCC provides that:

“(1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. & F. or C.F. means that the price also includes cost and freight to the named destination”.

Apart from those minor differences, this definition is fundamentally the same as under English common law. Equally the duties imposed on the US contractual parties are basically in line with practice under both Incoterms, English and other common law jurisdictions, namely that:

“(2) The seller must:
(a) (omitted);
(b) (omitted);
(c) (omitted);
(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and
(e) forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer’s rights.
(3) Omitted
(4) Under the term C.I.F. or C. & F. unless otherwise agreed the buyer must make payment against tender

49 C&F (Cost and Freight) where the seller provided and charged for the goods and contracted for freight was [is] an old Incoterms ever since omitted from the official Incoterms but still used under English common law and the US UCC. It has been replaced in the [new] Incoterms 2010 at pp.95-104 by CIF. Although he has no insurance obligations, the seller must however give notice to the buyer to enable him take out the insurance (Incoterms 2010, Art A3(b).
of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents”.

The UCC section also captures the essence of the English common law and Incoterms’ provisions on the nature, insurance, payments, documentation and tender in CIF contracts.

4.2. Parties’ Insurance Obligations at the Federal Level

With specific reference to insurance s.2-30(2) of the UUC, once more closely follows English common law practice, regarding the policy and its tender, in providing that:

“(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to:

(a) Omitted;
(b) Omitted; and
(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance” (emphasis added)

The only difference with English common law in the above provision is the inclusion of the highlighted text, which expressly allows for the tender of the certificate of insurance and addition of war risks to the seller’s possible duties. The provision is also now in with Article A3 (b) of Incoterms 2010 where war risks is optional and at the buyers request and expenses. Most US States have adopted the Federal Code. One particular State legislative example, which will be used for guidance in this Article for its clarity and similarity to the federal legislation, is that of the Ohio State Revised Code 2006.

4.3. Parties’ General and Insurance Obligations at State Level

The Ohio State Revised Code’s general obligations and insurance provision are essentially the same as that at Federal level51. This in turn also largely mirrors the position below under English common law and practice and Incoterms with regard to the: seller’s obligations; role of the policy and certificate of insurance; extent of the war risk insurance; terms current at port of shipment; currency of the policy; limitation of the policy to only contractual goods; minimum nature of the seller’s coverage; and buyers’ costs for war and any other additional insurance. However, the Commentary to the Ohio State Revised Code also demonstrates some important aspects in which the US law might differ from the English common law especially in relation to minimum cover and ‘All Risks’ policies. The difference hinges on the use of ‘All Risks and ‘almost all risks’. This position is supported by Reynolds, who is of the view that the US All Risks” is an insurance term which should in his view probably be called “almost all risk” as it typically does not cover war or strikes, riot or civil commotion perils. He instead equates it to the London Underwriter’s Institute Clauses A (Reynolds, Smith, 2006, 18) which, although regarded as an All Risks policy, actually excludes those listed risks. Is the difference simply terminological or more fundamental?

Further insight is discernible from Incoterms for Americans, a guideline to American Incoterms practice. The author is unaware of any American or English case law that might clarify the status of tendering such a policy as an ‘All Risk’ under English common law.

4.4. CIF Concepts under “Incoterms for Americans”

As indicated immediately, above US law and practice under the UCC (Reynolds, Smith, 2006, 18), regarding delivery obligations and risks, is also not very different from English law. Equally, it would be fair to assume that even the US CIF insurance obligations under ‘US INCOTERMS’is also almost the same as in both English law and other major jurisdictions’ practice above (Reynolds, 2010, 80)52. However, in his explanations, Reynolds introduces the need for seller and buyer’s interest or contingency insurance53 in addition to Incoterms All Risks requirements. He explains that:

“Insurance is a seller obligation under CIF. However, the Incoterm requires only minimum cover (commonly known as ‘free of particular average’. Since this is inadequate in most situations, the buyer and seller should agree to additional coverage outside the Incoterm”54

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51 The Ohio Revised Code 2006 – 1302.32.
52 See also: Ribe, S. United States’ Law and Practice, Chapter 8 in: Dunt, 2012.
53 The All Risks in Incoterms is discussed in paragraph 5 immediately below and seller and under buyer’s interest insurance in Part II of this.
54 For what insurance documents under UCP 600 see p.18; for insurance certificates and what constitutes minimum coverage see p.34 and for the marine policy see p.78 of Reynolds,
I both seller and buyer have insurance in place to cover their respective pre-carriage and on-carriage risks, a form of 'with average' insurance covering main-carriage only may be sufficient. However, this is risky in that one or the other party may slip up.

“All Risk” coverage provides excellent coverage. It is usually written warehouse to Warehouse (pre-carriage, main-carriage, and on-carriage). However, it should be called “almost all risks” since it usually does not cover war or strikes and civil commotion. Both of this supplemental coverage is available, usually at a very modest additional cost. The amount of should be 110% of the CIF value, unless both parties agree to a different amount” (Condon, 1986, 484; Sturley, 1999, 167-180).

Thus, apart from the subtle differences, it is also reasonable to assume that the above Anglo-American position is applicable to all the other common law jurisdictions. It is also largely reflected in Article A3 (b) of Incoterms 2010 below to which it should be compared.

5. ENGLISH COMMON LAW AND INCOTERMS’ OBLIGATIONS IN CIF AND RELATED CONTRACTS

5.1. Extent of the Common Law Insurance Obligations

According to Sassoon, the fullest extent of CIF insurance should be considered against 5 criteria:

(i) Seller’s express contractual obligations (Sassoon, 1995, 161-162);55

(ii) Seller’s implied contractual obligations (Sassoon, 1995, 163-174);56

(iii) Amount of cover (Sassoon, 1995, 175-179);57

(iv) Terms of the policy (Sassoon, 1995, 179-182);58

Smith, 2006. For the general English and American approach, see: (Condon, 1986, 484).

55 Including cover as per contract, requirements under Incoterms 2010, conflicts between Incoterm Rules 2010 and other forms, and the duty under UCP 600.

56 Including necessity of insurance policy, effect of customs and usages, consequences of failure to insure and/or tender policy, relation of certificates to policy, need for stating policy terms, indemnity in lieu of policy, role of broker’s cover note and c and f insurance.

57 Covering judicial approach, minimum amount under Incoterms 2010/UCP 600, implied amount, minimum amount (110%), sufficient amount, and freight considerations.

58 Covering trade and customs, meaning of ordinary policy, policy terms under Incoterms 2010, relevance of ICC definition, and policy terms under UCP 600.

(v) War Risks Cover (Sassoon, 1995, 182-186);59 and (vi) All Risks Cover (Sassoon, 1995, 186-202).60

The rest of the Article will summarise and focus only on a few of those ahead.

5.2. Summary of common law interpretation of Incoterms Article A3 (b)

The seller’s common law obligations consist mainly of case61 law and statutes as outlined below. This has, however, been influenced by and now ‘codified’ into Incoterms since its introduction in 1957, latest being Article A3 (b) of CIF and CIP Incoterms 2010, providing that:

“The Seller must obtain at his own expense cargo insurance complying at least with the minimum cover as provided by Clauses (C) of the Institute Cargo Clauses (LMA/IUA) or similar clauses. The insurance shall be contracted with underwriters or an insurance company of good repute and entitle the buyer, or any other person having an insurable interest in the goods, to claim directly from the insurer.

When required by the buyer, the seller shall, subject to the buyer providing any necessary information requested by the seller, provide at the buyer’s expense any additional cover, if procurable, such as cover provided by Clause (A) or (B) of the Institute Cargo Clauses (LMA/IUA) or any similar clauses, and/or cover complying with the Institute War Clauses and/or Institute Strikes Clauses (LMA/IUA) or any similar clauses.

The insurance shall cover, at a minimum, the price provided in the contract plus 10% (i.e., 110%) and shall be in the currency of the contract.

The insurance shall cover the goods from the point of delivery set out in A4 and A5 to at least the named place of destination.

59 Covering excluded war risks, institute war risks clauses, express stipulations as to, free of war risks, and responsible part.

60 Covering express stipulations on, meaning of, certainties, customary exclusions, meaning and exclusion of inherent vice, attachment or risks, particular contractual stipulations, notice for additional insurance and shipment, confinement to contractual goods, coverage of entire transit, transit clause, effect s.44 MIA 1906, loss between warehouse & ships rail, buyers and sellers insurable interests, tender of foreign policy, effect of statements in certificate, policy for buyer’s benefit, validity of policy, other policy forms, assured’s identity, insurers insolvency, right to excess insurance, increased value policy, and effect of failure to insure.

The seller must provide the buyer with the insurance policy or other evidence of insurance cover. Moreover, the seller must provide the buyer, at the buyer's request, risk and expense (if any), with information that the buyer needs to procure any additional insurance. (Emphasis added to indicate changes introduce by Incoterms 2010 to Incoterms 2000)

With scant information on the history and development of Incoterms, it is fair to assume that common law jurists took part in the negotiations leading to and probably influenced the development and outcome of Incoterms. Common law FOB started in the 1200-1400 with the first reported case, Wackerbath v Masson, in 1812 and CIF about 1400-1600 with first reported case, Tregelles v Sewell, in 1862. On the other hand, Incoterms was not conceived until 1921 with the first draft published in 1923, second draft in 1928 and the first official edition in 1936. With 600-700 years' history behind them it is likely that that pre-1936 English common law decisions, as laid out below, influenced the development of Incoterms (Ramberg, 2010, 8-10). Furthermore, English case law post-1936 has largely interpreted Incoterms. It is also probable civil and other non-common law jurisdictions, most or all, applying Incoterms do indirectly, follow the common law. Since then Article A3 (b) of Incoterms has provided only the basic framework with the common law precedents filling in the gaps regarding especially what constitutes war risks, minimum cover, reputable insurance, notice and information to the buyer, and the policy and other insurance documents required. This is more so also considering the dominant global influence of the MIA 1906 on which the CIF policy principles are based.

5.3. The Nature and terms of CIF policy

Under English common law, the CIF policy should be those current in the particular trade. Justice Mathew, in Bothwicky Bank of New Zealand supports the supposition. This is so whether the contract is for either an 'All Risks' CIF policy or only covering war and other risks separately. Terms of the policy will also depend on a particular trade and current practice therein. However, on this point, Schmitthoff is of the view that: “The parties should not place too much reliance on the customs of trade, which sometimes varies at the ports of shipment and destination and may be interpreted differently by merchants and courts” (Schmitthoff, 2012, 37). Instead, he advises, that, “they should, in appropriate cases agree in the contract of sale on the nature of the insurance policy which the seller has to tender, for example whether the policy should be an all risks policy in the form of an Institute of Cargo Clauses to Lloyds Marine Policy or should cover war risks” (Schmitthoff, 2012, 37).

Thus, he cautions that there is marked difference between legal theory and practice. Furthermore, CIF insurance should of course be assignable (Halsbury’s Laws of England, 2012, para. 32).

5.4. The CIF and the ‘All Risks’ Policy

5.4.1. The extent of CIF “All-risks” policy

An ‘All Risks’ policy is neither the preserve of nor is it unique CIF contracts, a CIF ‘All Risks’ policy should therefore be part of the much wider “All risks insurance” a type of insurance designed to protect the insured against loss or damage however caused. In relation to CIF insurance contracts, in Groom(C) v Barber Lord Atkin agreed with the above definition and expanded on what constitutes the nature and terms of a policy constituting an “All Risks”. The next few paragraphs are devoted to various aspects of this type of CIF policy.

5.4.2. An “All Risks” CIF policy should be inclusive

As the title suggests, this type of policy should cover all risks, including war risks without any exceptions. Further judicial authority for this is Yuill 67 These types of policies are not restricted to export or CIF, but rather are used in general marine insurance, jewellery insurance, contractors’ insurance and cash or goods in transit policies insurance and cash or goods in transit policies.

68 [1915] 1 KB 316 (effect of validity of tender for goods lost in transit; however, distinguished in Arnold Karberg & Co v Blythe, Green, Jourdain and Co, Schneider & Co v Burgett & Newsman 1915 2KB379); see also Vincentelli Co v Rovelett & C0 1911)105 LT 411 on the extent of vendor’s obligations on All Risks Insurance.

69 Groom v Barber, Halsbury’s Laws Vol.91, per Lord Atkins, at 324-325.
& Co v Robson, in which Lord Alverston CJ, in turn upholding Justice Chanel's judgment, gave two guidelines as to "All Risks" policy. The case decided that inclusion of a "free from capture and seizure" (fc and s) clause in the "All Risks" CIF policy is a breach of such a policy. In the case, a contract was made at Buenos Aires for the sale and shipment of cattle from there to Durban at a price which included cost, freight, and insurance, the insurance to be 'against all risks,' The seller obtained and tendered an ordinary Lloyd's 'all risks livestock' policy, which contained the clause 'Warranted free of capture, seizure, and detention, and the consequences thereof.' During the voyage, foot and mouth disease broke out amongst the cattle, and the authorities at Durban refused to allow the vessel to enter the port, with the result that the cattle were slaughtered on board and sold at a considerable loss. The insurers refused to pay upon the policy, except for losses by death during the voyage, on the ground that they were protected by the "free of capture and seizure" clause. In an action by the buyers against the seller Justice Atkins held that the seller, in procuring an insurance which did not protect the purchaser against the risk of the landing of the cattle being prohibited by the authorities, had broken his contract to procure an insurance, 'against all-risks,' and was therefore liable for the loss. Besides, evidence was not admissible to show that a policy containing the "free of capture and seizure" clause was a performance of the contract to procure an insurance against all risks. Yuill was considered on this point, and in the same year, in Upjohn v Ford by Lord Warrington LJ and Lord Scrutton, affirming the decision of Roche J. Thus, where no "All Risks" policy is provided, the CIF seller provides only the 'minimum cover' under common law, Incoterms and all other rules. However, what constitutes 'minimum cover' in CIF policies?

5.4.3. Seller provides only the 'minimum cover'

Unless otherwise notified and requested by the buyer, the CIF seller is bound to provide a policy with only the minimum coverage. The minimum in Incoterms Article A3(b) above is at least Institute Cargo Clauses (C); Clauses (B) and (A) being additional. The obvious omission in the phrase is 'war risks'. Accordingly, it is up to the buyer to either provide extra coverage or request extra coverage at additional costs or provide one himself. However, this problem could be solved by a provision in the contract stipulating the nature of insurance, e.g., that the seller provides an All Risk Policy. This is also the case now with Incoterms and the UCC. Furthermore, what the buyer requests will depend on various factors including, but not necessarily limited to his circumstances, availability of insurance services at home and sometimes government regulations or state intervention requiring insurance with domestic insurance companies in what is known as policy considerations in or government regulation or interference with insurance. However, what exactly is the 'All Risks' policy especially in CIF contracts? Is it the same as an 'all causes' insurance?

However, first, what is the extent of the CIF seller's obligations in 'All Risk' policy; and secondly is 'the All Risks' policy synonymous with an 'all clauses' cover?'

5.4.4. The extent of the policy - "all risks" vs. "all causes" insurance

The extent of the seller's obligation in an all risks policy was also the subject of Vincentelli & Co v John Rowllett & Co, an earlier case involving a contract for the sale of goods on CIF terms, which contained the following words: 'insurance to be effected by (sellers) all-risks.' Justice Hamilton opined that on the construction of the contract, the sellers' obligation was to effect an insurance to cover all risks in the sense of the entire quantity of damage, and not to cover the assured against all causes of accident, e.g., damage done to the goods in consequence of the ship-owners committing a breach of the contract of carriage by improperly stowing them on deck instead of below deck. There remains a major difference between insurance against all risks

70 [1908] 1KB 270.
72 [1907] 1KB 685.
73 [1918] 2KB 48; sub nom see also Upjohn v Hitchens [1917-18] 24 TLR 412 alias Upjohn v Ford -although the policy was to do with exceptions of war risks in a Landlord and Tenant Aircraft Risks rather than CIF or international trade risks.
74 Lord Pickford J giving a separate judgment.
75 Ibid, 60 and 61.
76 [1918] 1KB 17.
77 See under War Risk Policy (Paras 5.4.6 -5.4.6 below).
78 See e.g. Articles A3(b) and B3(b) of CIF Incoterms 2010.
79 For the list of countries applying such policy, see: Winkler, Klaus B, Incoterms and Insurance, in: De Debattista, 1995, Chapter 5, 92-94.
80 Ibid; for policy considerations, see: Sassoon, 1967; De Battista, 1995, Chapter 5, 92-94 and 96.
81 Ibid, and Annex 2 at p. 96 for list of countries with compulsory national insurance (State Regulation of Export trade insurance).
82 (1911) 105 LT 411.
83 Ibid at 415.
and against all causes. Further unresolved questions are whether: (a) under such a contract of sale it is sufficient for the seller to procure protection for the buyer against all risks partly by means of the contract of carriage and partly under the contract of insurance, and (b) the relation and differences, if any, between ‘War Risks’ and ‘All Risks’ policies.

5.4.5. The General Nature of CIF “War Risks” Policy

The nature of CIF War risks policy was the subject of *Oulu Osakayeto of Oulu, Finland v Arnold Laver & Co Ltd*, an authority, which has best demonstrated this point. The Article will dwell at length on the case for the reason that goods being shipped in vessel of a belligerent probably further compounded the problem. In CIF contracts dated October 6 and 7, 1938, Finnish sellers contracted to sell to British buyers parcels of timber to be shipped in November 1938, from Pateniemi to Hull. Identical Clause 6 of the contracts provided that the sellers, ‘before or as soon as tonnage was secured’, were to insure the timber for the voyage to Hull ‘against (inter alia) war risks, and any increase in premium payable for covering those risks in respect of the country of destination in excess of the rates ruling at September 26, 1935, was to be for buyers’ account.’ The exchange rate premium on September 26, 1935, was 3d per £100. The sellers chartered a Spanish steamship to carry the timber, there was no evidence that any other suitable vessel was available.

At the contractual time the prevailing rate of war risks premium for all steamships other than those flying the Spanish or Greek flags was 2s 6d per £100, those for the Spanish and Greek ships being left to the discretion of individual underwriters. At the beginning of November 1938, due to Spanish civil war, the war risks premiums for cargo in Spanish ships rose abnormally and the sellers, fearing the rates would rise still higher as they in fact did, insured the timber with Lloyds’ underwriters at a premium of £5 per ton. They then claimed the difference between 3d and £5 per £100 from the buyers, who repudiated liability.

From Justice Atkinson’s judgment, Lord Justice Slesser had no difficulty concluding that the contract provided for a comparison being made between like and like, i.e., between the general market rate current at September 26, 1935 and the general market rate prevailing at the material date in 1938, and holding that the buyers were only liable for the difference between 3d and 2s 6d per £100. He agreed with the sellers that they (semble that) (the sellers) were entitled under the contract to charter a belligerent ship, but with a proviso that if they chose to do so they could not hold the buyers to account for the abnormal premiums asked in respect of such a vessel. Thus, under CIF the sellers are not only obliged to insure but should do so the war circumstances notwithstanding although they have discretion how they do it. How does this relate to the ‘War Risks’ and ‘All Risks’ CIF policies under the London Underwriters’ Institute Clauses?

5.4.6. CIF “War Risks” Policy under UK Institute Cargo Clauses

An all risks’ policy, whether CIF or otherwise, is best and is now effected under the Institute Cargo Clauses A. However, even then parties should be careful as the Institute Cargo Clauses A is not really a true “All Risks” policy since it has exclusions such as war, civil commotions and strikes, which are then covered by additional clauses separately accordingly. That notwithstanding, and as indicated above, unless otherwise provided the CIF seller’s common law duty and under Article A3 (b) of Incoterms 2010 is to provide a minimum cover which does not include war and/or strikes cover. A reasonable party should therefore add the Institute Cargo Clauses (War Risks) and the Institute Cargo Clauses (Strikes) and any other excluded risks, to ensure fulfilling obligation to provide a ‘War Risks’ and ‘All Risk’ policy under CIF. Otherwise a non-All Risks policy can also be contracted for instance through the Institute Cargo Clauses B and C both of which exclude war and related risks in their respective identical Article 6 thereof. Equivalent Institute Clauses exist in the US and in other common as well as civil law and

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81 For the minimum and maximum amounts in CIF policy see: Sassoon, 1995, 175-179.
83 [1940] 2 All ER 243; [1940] 1 KB 750; 109 LJKB 669; 162 LT 415; 56 TLR 545; 84 Sol. Jo 453; 45 Corn Cas 193, CA.
84 [1939] 4 All ER 88.
85 Ibid, at 246, Lord Justices Luxmore and Goddard concurring at p.247.
87 Such as Australia, Canada, New Zealand, South Africa, Singapore and Nigeria.
other non-common law jurisdictions\textsuperscript{91}. Policies under foreign Clauses would be acceptable under English law. With regard to CIF commodities policy, Article 20(h) of GAFTA, for instance, provides that the:

“Sellers’ obligation to provide War Risk Insurance shall be limited to the terms and conditions in force and generally obtainable in London at time of shipment”.

Other trades have their own rules and guidelines for and above common law, GAFTA and Incoterms.

REFERENCES


\textsuperscript{91} Such as the Norwegian Plan; France, Germany and Switzerland being the other leading Civil Law countries; see paragraph 10 in Part II of this paper.


