



ADDIS ABABA UNIVERSITY
COLLEGE OF LAW AND GOVERNANCE STUDIES
LL.M PROGRAM IN BUSINESS LAW

**THE LAW AND PRACTICE OF WAREHOUSE TO
WAREHOUSE MARINE INSURANCE IN ETHIOPIA**

BY: HABTAMU SIRAJ MOHAMMED

ADVISOR: PROFESSOR TILAHUN TESHOME

**A Paper Submitted in Partial Fulfilment for the Degree of Master of
Laws (LL.M)**

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Declaration

I, the undersigned, declare that this thesis is my original work and has not been presented for a degree in any other university and the materials used are duly acknowledged.

Declared By:

Name: Habtamu Siraj

Signature: _____

Date: _____

Confirmed by: Prof. Tilahun Teshome

Signature: _____

Date: _____

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(Approval Sheet)

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BY: HABTAMU SIRAJ MOHAMMED

APPROVED BY:

Advisor's

signature

Examiner's/Reader's Name

Signature

Examiner's/Reader's Name

Signature

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ABSTRACT

In international trade supplier and importer conclude sale contract. The movement or transit of goods from supplier's country to buyer's country automatically raises different questions. These are who cover cost of transportation? Who is responsible to arrange marine cargo cover? Who is responsible to arrange carriage and who is responsible to fulfill various documents? These questions can be answered by agreed INCOTERM under the sale contract. The adoption or recognition of any of INCOTERM by any country has its own effect on macroeconomic and micro economic policy of a given state. Because, foreign exchange, marine cargo insurance underwriting by domestic insurer and protection of national carrier is determined by the INCOTERM a country adopts.

In an attempt to address proposed research questions the research employed both doctrinal and non-doctrinal approach. Specifically the research has employed review of literature, interview and case study as a methodology.

The research has found out that from imperial regime onwards with view to protect domestic insurance companies Ethiopia recognized FOB INCOTERM implicitly as freight control mechanism. However, there is interruption in adhering to FOB INCOTERM during change of governments. During EPRDF regimes from transitional period up to 1990's importers were not adhere to FOB delivery term. However, from 1990 onwards Ethiopia adopted FOB sea transport policy and directives with waiver directives of ESLSE. However, Air transport Ethiopia was liberalized without recognition of any INCOTERM. But this FOB policy and directives of the country is not yet fully appreciated by its stakeholders (importers, underwriting companies and other stake holders). It is also hardly possible to hold that Ethiopia has adequate formal laws and policy guide lines in relation to adoption of any of the INCOTERMS.

When parties to international sale agreed FOB INCOTERM risk of loss or damage to goods transferred from supplier to importer when the goods passes the ships rail. In such case importers have insurable interest to insure their goods from port of loading to final destination warehouse. However, there is a practice of marine cargo underwriting from warehouse or from named country of supplier (e.g. from china, Italy and India etc) to named dry port or final destination warehouse. This practice of marine cargo underwriting is incompatible with adopted FOB marine carriage policy of Ethiopia. On top of this, this research reveals that there is a disparity on use of either of the two version ICC (A, B and C) 1/1/1982 or 1/1/2009 among underwriting companies in Ethiopia. Therefore, the absence of clear and detail policy framework on recognition and adoption of INCOTERMS and ICC highly affects the process of marine cargo underwriting, marine cargo claims and recoveries, which has adverse effect on growth and development of insurance industry in Ethiopia.

Keywords: INCOTERMS, ICC (A, B and C).

LIST OF ABBREVIATIONS

AFIC	Africa Insurance Company
AIC	Awash Insurance Company
BIC	Berhan Insurance Company
EXW	Ex works
DAF	Delivered at Frontier
DAP	Delivered at Place
DAT	Delivered at Terminal
DES	Delivered ex Ship
DDP	Delivered duty Paid
DEQ	Delivered ex Quay
DDU	Delivered duty unpaid
CFR	Cost and Freight
CIF	Cost, Insurance and Freight
CIP	Carriage and Insurance Paid to
CPT	Carriage Paid to
EIC	Ethiopian Insurance Corporation
ESLSE	Ethiopian Shipping and Logistic Service Enterprise
FAS	Free alongside ship
FCA	Free Carrier
FOB	Free on Board
ICC	Institute Cargo Clause

ICOC	International chamber of commerce
INCOTERM	International Commercial Terms
ILU	Institute of London Underwriters
LIC	Lucy Insurance Company
MIA	Marine Insurance Act
NBE	National Bank of Ethiopia
NIC	Nib Insurance company
NILIC	Nile Insurance Company
UNIC	United Insurance Company
YAR	York-Antwerp Rules

List of Annexes

1. Directive or Circular of FDRE MOFED ቁጥር ፲/ኢ/ል/ሚ/1/53/4 በቀን 29/07/2003.
2. Directive or circular written to NBE on FOB import on 06/መስከ/1990.
3. Directive or circular to Ethiopian shipping line on FOB import ጥቅምት 15/1992.
4. Directive or Circular to concerned body 16 ግንቦት 1992.
5. Sample ICC (A, B & C) of 1982.
6. Sample Research Questions.
7. Waiver directive of ESLSE.

INTRODUCTION

International trade is recognized as the most significant determinants of economic development of a country, all over the world. The foreign trade of a country consists of inward and outward movement of goods and services, which results into outflow and inflow of foreign exchange. Parties to international trade conclude contract of sale for purchase of goods. Once the sale contract is concluded in effect brings other contracts such as contract of carriage, contract of payment and contract of marine insurance. The recognition of any INCOTERM as import carriage policy has its own significant effect on protection of the development of domestic insurance companies, saving of foreign currency and protection of national carriers. Many developing countries recognized FOB INCOTERM to control over inflated freight and to arrange marine cargo cover for ocean transit and destination country inland risks. However, underwriters" underwrite marine cargo cover from warehouse of supplier (seller"s country risk) to final destination warehouse for FOB import. This study mainly focuses on insurance industry practice on the law and practice of warehouse to warehouse marine insurance.

This research consists of five chapters. The first chapter consists of background of the study, statement of the problem, literature review, and objectives of the study, significance of the study, scope of the study, methodology of the study and limitations of the study. The second chapter, deals about conceptual underpinnings of international trade and international commercial terms. The third chapter, deals about conceptual framework of marine insurance. The fourth chapter, deals about the law and practice of warehouse to warehouse marine insurance in Ethiopia. Finally chapter five devotes to conclusions and recommendations.

CHAPTER ONE

1. INTRODUCTION

1.1 Background of the Study

International trade creates an opportunity to any country to import and export goods and services. Such trade possesses international character where: the transaction involves the carriage of goods from one country to another and the transaction is entered into between parties who are situated in different countries.¹ Accordingly, transportation of goods from the seller's country to the buyer's country is an important part of international sale contract.² By its very nature international trade in goods involves at least three independent contracts such as: contract of sale, contract of carriage and contract of marine insurance.

The 1979 UK sale of goods Act defines a contract of sale under section 2(1) as "a contract by which the seller transfer or agrees to transfer the property in goods to the buyer for a money consideration called price."³ Many jurisdictions recognize standardized trade usages in contract for sale of goods.⁴ These standardized trade terms are called INCOTERMS. Broadly, these terms define the obligation of the seller and the buyer as regards the point of delivery, procurement of transport documents, contract of insurance, and other documents necessary for export and import cargo. If the parties to the sale contract incorporate a particular INCOTERM, the INCOTERM code which contains a detailed statement of what each trade usage mean, can be referred for a detailed interpretation of the rights and obligations created as between the parties.⁵ The latest version was published in 2010, updating and consolidating the rules so as to cope up with the modern commercial practice.⁶

¹ Jason C.T. Chuah, *Law of International Trade: Cross-Border Commercial Transaction* (4th edn, Sweet and Maxwell, 2009)23.

² Indra Carr, *International Trade Law* (5th edn, Routledge, 2014)149.

³ J.C.T Chuah, *Law of International Trade* (Sweet and Maxwell, 1998)50.

⁴ Gabriel Moens and Peter Gillies, *International Trade and Business: Law, Policy and Ethics* (Cavendish, 2000)121.

⁵ *ibid.*

⁶ INCOTERM were first published in 1936 by international chamber of commerce (ICC), the amendments and additions were later made in 1953, 1967, 1976, 1980, 2000 and the latest 2010. The lists of INCOTERMS 2010 are: EXW, FCA, FAS, FOB, CFR, CIF, CPT, CIP, DAT, DAD and DDP. The official title of INCOTERMS is international rules for interpretation of trade terms.

The research focuses on INCOTERM EXW and FOB which are more pertinent to the concept of warehouse to warehouse marine insurance. Where EXW is agreed in the sale contract, it is the most favorable trade term for the seller. The seller only undertakes to make the goods available for collection by the buyer at his/her premise, warehouse, factory or mining place. The cost of transportation and risk of loss or damage to goods passes to the buyer up on delivery at warehouse, factory or mine of the seller. Thus, the buyer has to buy marine cargo cover from the warehouse of supplier up to buyer's warehouse.

On the other hand, when parties agreed for FOB in their sale of goods contract, cost of transportation and risk of loss or damage to goods passes from the seller to the buyer the moment the goods pass the ships rail at the port of loading. Supplier is duty bound to insure its country risk up to port of loading. The buyer needs to insure the cargo ocean main carriage and incidental country risk.

In international trade once the movement of goods is insured, in the event of loss or damage due to peril insured against, the insured is able, depending on the terms of the insurance policy, recover his losses from the underwriter.⁷ The subject of maritime insurance is one of the most important aspects of commercial maritime law. Marine cargo insurance underwriting from the warehouse of seller, land transit, sea voyage, including land risk incidental to sea voyage is known as warehouse to warehouse marine insurance or transit insurance. Thus, save the agreed INCOTERM by contracting parties, institute cargo clause (A, B and C) envisages this by setting out transit clause under clause "8". Transit clause of marine cargo policy is commonly known as a warehouse to warehouse clause or transit clause.⁸

Historically, during Imperial and Derg regimes to encourage domestic insurance market development and national carriers the Ethiopia adopted FOB INCOTERM.⁹ During EPRDF regime from transitional period up to 1990's there is no strict adherence to FOB and many traders using the existing loopholes they were contracting sale contract on CIF or C and F terms. However, after 1990 E.C on wards the EPRDF government developed a sketchy directive which

⁷ Carr (n2)402.

⁸ ICC (A), 1/1/82 and 1/1/09.

⁹ Interview with Ato Mitiku Abdissa, Insurance Expert and Authorized (NBE) Insurance Trainer in Ethiopia (Addis Ababa, Ethiopia, 25 December 2017).

obliges all importers to buy goods on FOB basis.¹⁰ But, the Directive issued by ESLSE gives an option to importers to enjoy waiver of FOB under exceptional circumstance. Importers may only resort to waiver of FOB provided that it is approved by ESLSE's shipping service sector Deputy CEO.¹¹

Though, Ethiopia has adopted FOB import cargo policy, insurance companies underwrite warehouse to warehouse or from named country to final destination marine cargo insurance in the absence of waiver clause. Hence, identifying the underlying reasons why underwriting companies underwrite warehouse to warehouse marine cargo cover as opposed to FOB carriage policy of Ethiopia is the central theme of this study.

The research analyzed conceptual underpinnings of marine cargo insurance and the incompatibility of FOB import policy of Ethiopia vis-à-vis the practice of warehouse to warehouse marine cargo insurance underwriting in Ethiopia.

1.2 Statement of the Problem

The center piece of international trade is the sale of goods contract. Traders in order to achieve their economic goals usually speak in a common language. A manifestation of this common language is the use of standard trade terms in cross-border trade.¹² The standard trade terms are often referred to as INCOTERMES. These terms where they are made part of the sales contract govern carriage, risk and cost transfer point and specify the responsibility of the buyer and seller. The general question who will arrange and pay freight, other transport charges, marine insurance, duties and taxes are answered by agreed INCOTERM.¹³ In classic FOB agreement the seller delivers the goods when the goods pass the ship's rail at the named port of shipment. Traders in accordance with their specific needs opt for variants of FOB terms like FOB stowed (FOBS), FOB trimmed (FOBT) and FOB stowed and trimmed (FOBST).¹⁴

¹⁰ Directive or circular issued by Prime Minister Office by no. ጠ-ሐ3/01/01 in may 16/ 1992 E.C and Directive or circular issued by Ministry of Finance and Economic Development by no ገ/ኢ/ል/ሚ/1/53/4 in 29/07/2003.

¹¹ These circumstances stipulated under waiver permit directive no. ቁጥረ/003/2005 issued by ESLSE.

¹² Carr (n2) 6.

¹³ *ibid.*

¹⁴ *ibid* 44.

In Ethiopia with policy objective geared towards encouraging national carrier, local insurance companies and save foreign currency earnings the directive or circular issued by the Prime Minister office and the Ministry of Finance and Economic Development obliges all importers to buy goods on FOB.¹⁵ When the goods passes the ships rail or loaded on board ship risk of loss or damage to goods passes from the seller to the buyer. In such case, the buyer has an insurable interest to buy marine cargo insurance from port of loading onwards.¹⁶

Warehouse to warehouse marine cargo insurance underwriting presupposes EXW delivery term. Hence, during FOB sale contract writing marine insurance for risk of loss or damage to goods from warehouse of seller up to port of loading is without any legal basis or is insuring the risk of seller. Therefore, the gap between the law and practice needs further investigation to identify the problems of marine insurance underwriting and claims in Ethiopia. In order to further elucidate the matter the research intends to address the following generic research questions.

1.3 Research Questions

1. Does Ethiopia have adequate import policy or laws in relation to INCOTERMS?
2. Is FOB the only INCOTERM adopted by Ethiopia in import trade?
3. If so why insurance companies in Ethiopia underwrite marine cargo insurance from warehouse of seller up to warehouse of buyer?
4. What are the legal and practical problems of marine cargo insurance underwriting and claims in Ethiopia?
5. Do cargo importers have adequate knowledge on import policy of Ethiopia in relation to INCOTERMS, marine cargo underwriting and claims process?
6. In case of FOB sale contract can we say cargo importers have insurable interest to insure risks attached to goods while on land transit up to port of loading and until the goods loaded on board vessel?
7. How the principle of double insurance seen in light of FOB INCOTERM and warehouse to warehouse marine cargo insurance?

¹⁵ Directive or circular (n 11).

¹⁶ Chuah (n 1)36.

1.4 Literature Review

International sale contracts commonly contain abbreviation of international commercial terms.¹⁷ When standard trade terms agreed up on by the parties, these rules and their latest version must always be referred to in the sale contract and in all related documentation. The basic purpose of these rules is to define how each standard trade term, as agreed in the sales contract, should be dealt with in terms of delivery, risks and costs, and specify the responsibility of the buyer and seller.¹⁸

In international sales, goods are normally insured against the hazards they are likely to encounter during the voyage from the seller country to the buyers country.¹⁹ The term marine insurance is somewhat misleading because the contract of marine insurance by the agreement of the parties or custom of trade is extended so as to protect the insured against losses on inland waters or land which is incidental to the sea voyage.²⁰ Though, the name suggests it is limited to sea transport only through trade practice it transcends to inland water and land transport as well.²¹

Concomitantly, ocean marine insurance covers the perils of the sea, whereas, inland marine insurance is related to the inland risks. The very essence of contract of marine insurance is that of indemnity. This necessarily means that an assured, who has no insurable interest in the subject matter insured, as defined in s 5(2) of MIA, would not be able to show that he has suffered loss.²²

Under title VII Maritime code of Ethiopia there are four chapters dealing on marine insurance.²³ The code did not clearly define the term marine insurance. However, under Art. 288 Mar. Code it stipulates extent of applications of rules of marine insurance. As per the code marine insurance defined indirectly as:

¹⁷ Carr (n2) 6.

¹⁸ Anders Grath, *the Handbook of International Trade and Finance* (Nordica Publishing, 2008)12.

¹⁹ Carr (n2) 402.

²⁰ *ibid.*

²¹ Howard Bennet, *the Marine Insurance Act of 1906* (2006). See also, s, 2 (1) of 1906 Marine Insurance Act.

²² Susan Hodges, *The Law of Marine Insurance* (1st edn, Cavendish, 1996)5.

²³ Maritime Code of Ethiopia 1960, from Art. 288 up to 356.

“Any policy of insurance having as its principal object to guarantee a marine risks, including collateral risks, shall be subject to the provisions of this title”.²⁴ From this definition we can infer that the maritime code incorporates both ocean marine insurance which covers the perils of the sea and inland marine insurance which covers the inland risks on the land.

In Ethiopia there is no comprehensive literature and research on marine insurance in general and specifically on the law and practice of warehouse to warehouse marine cargo insurance. However, there is one LLB thesis written by Alem Wolde Aregay in May 1989 on general concept of marine insurance.²⁵ She generally dealt about historical development, nature, subject matter, scope of marine insurance and about marine insurance cover and exclusions in general. The study of Alem, concludes that the concept of marine insurance was alien to Ethiopian people. Her study recommended the amendment of maritime code part governing marine insurance in line with UK 1906 marine insurance Act and upgrading of the qualification of personnel engaged in marine insurance business. However, this research tries to address issues of marine cargo insurance and INCOTERMS not sufficiently explored by Alem research. These issues are the general effects of INCOTERMS on marine underwriting and carriage policy of Ethiopia, the incompatibility of FOB import policy and warehouse to warehouse marine cargo insurance underwriting in Ethiopia and the law and practice of marine cargo insurance underwriting, claims and recoveries in Ethiopia.

1.5 Objectives of the study

1.5.1 General objective of the study

The main objective of the study is to examine the law and practice of warehouse to warehouse marine insurance underwriting and claims in Ethiopia in a way to find answer to the research questions. In addition, the study aims to scrutinize the concept of INCOTERMS and institute cargo clauses (standard marine cargo policies) the case of Ethiopian marine cargo insurance underwriting and claims. The study aims to scrutinize and evaluate problems associated with the law and practice of marine cargo underwriting and claims and recommend their solutions.

²⁴ *ibid* Art. 288.

²⁵ Alem Wolde Aregay, *„Marine Insurance Law and Practice in General With an Appraisal or Assessment of the Ethiopian Market in Particular’* (LLB thesis, Addis Ababa University, 1989)

1.5.2 Specific objectives of the study

Specifically, the research is intended to address the following objectives:

- To examine import policy of Ethiopia in relation to INCOTERMS.
- To analyze the link between INCOTERMS vis-à-vis warehouse to warehouse marine cargo underwriting and claims.
- To explain risks covered and excluded under standard marine cargo policies ICC (A, B and C).
- To evaluate the problems and challenges of marine cargo underwriting and claims in Ethiopia and its way forward.
- To shed light or contribute noble concepts on law and practice of marine cargo insurance underwriting and claims for rectification of practical problems.

1.6 Significance of the study

This study will have important contribution for underwriting companies, for importers of cargo, different stake holders and policy makers in Ethiopia. For underwriting companies the research tries to show how to assess risks and the point at which risk of loss or damage to goods passes from seller to buyer as per the agreed INCOTERM in line with the import carriage policy of the country. Broadly speaking, the study will have its own paramount importance for marine cargo underwriting companies and different stakeholders about marine cargo insurance, carriage policy of the country, types of marine policies and their scope of cover, types of INCOTERMS and their risk, carriage and cost transfer point. Moreover, the study will have its own academic and legal significance for different stake holders. Finally, the study will initiate further research on unexplored area of marine cargo insurance underwriting and claims.

1.7 Scope of the study

The study mainly focuses on the law and practice of warehouse to warehouse marine cargo insurance underwriting in line with FOB import policy of Ethiopia. The study analyzed the practice of marine cargo insurance underwriting and claims in Ethiopia.

In Ethiopia, when this study is done there are 17 insurance companies²⁶ operating general insurance business and underwriting marine cargo insurance as one of their insurance product. The study focuses on underwriting main branch, legal department and claim department of 5 (five) insurance companies having experience of marine insurance underwriting above 10 years by random selection including EIC and 2 (two) from insurance companies established recently or having less 10 years of establishment by random selection. In addition, the study focuses on ESLSE, department of shipping service sector and Ethiopian Maritime Affairs Authority. Finally, the study includes 4 importers in Addis Ababa by random selection and expert in the area of marine insurance to assess the issue under study.

1.8 Methodology of the study

To answer the proposed research questions the study employed both doctrinal and non-doctrinal research approach. The author also employed qualitative approach.²⁷ To this end, the following methods of data collections are used in this research.

A. **Review of literature:** both primary and secondary data sources such as books, journals, marine insurance Act of England 1906, internationally accepted trade customs (such as INCOTERMS) and standard marine policies are used accordingly. In addition, review of maritime code of 1960, proclamation on licensing and supervision of insurance business, NBE directives on insurance business and foreign currency, ESSLE directive for granting of waiver of FOB import, Directive issued by Prime Minister Office in 1990 and 1992 and directive issued by Ministry of Finance and Economic Development in 29/07/2003 about FOB importation of goods. (**See the attached documents**), sample Performa invoice or commercial invoice negotiated by Ethiopian importers and other relevant laws of Ethiopia. Review of these secondary sources has relevance to understand the existing concepts or theories and the prevailing global marine cargo insurance underwriting and claims process.

B. Interview method

²⁶ These are: EIC, AFI (S.C), NIC (S.C), UNIC (S.C), NYIC (S.C), AIC (S.C), NYIC (S.C), NICE (S.C), ABYI (S.C), ELGIC (S.C), BI (S.C), LUIC (S.C), OIC (S.C), TIC (S.C), LIC (S.C), GIC (S.C) and BIC (S.C).

²⁷ The author employed this approach since it is suitable to answer the proposed questions. This approach allows the author to acquire deep answer about the law and practice of marine insurance in Ethiopia. The flexibility of the approach allows the author to use open ended questions or interview to gather necessary data.

Semi-structured interview method was used to scrutinize the law and practice of warehouse to warehouse marine cargo insurance underwriting and claims in Ethiopia.²⁸ Purposive interview of experts of in the area of marine law and marine insurance was used to generate the qualitative data. In this study's context experts are those who have long experience on the subject matter of study due to their professional engagement. The author conducted interview of the legal department, underwriting branch and claims department of 7 (seven) insurance companies as indicated under the scope of the study section. In addition, the author interviewed from ELSE Deputy CEO, shipping service sector and senior legal officer at ESLE legal department, and policy research and legal affairs director of Ethiopian Maritime Affairs Authority. Furthermore, the author conducted interview with 4 importers who insure their goods by local insurance companies.

C. The author used accessible court cases²⁹ and marine insurance cases settled by claim department of insurance companies selected for interview. Finally, the data collected based on the abovementioned methods were analyzed by rules of reasoning and interpretation. After data is analyzed, it was interpreted qualitatively with narrative technique.

1.9 Limitations of the study

In conducting the study, it is obvious that limitations are encountered. In addition to time and financial challenges, unwillingness of many interviewees to give the requested information and documents was the major limitation. Furthermore, the availability of limited literature on the issue under study and hence difficulties to draw necessary background reference materials was one of the challenges. Lack of court cases on marine insurance in Ethiopia was among the great challenges of the study. But, the study was accomplished by using extra working time and by creating useful networks with the experts having the data on the issue; by using data from foreign literature and conceptualizing to Ethiopian context; and using the accessible court cases.

²⁸ Semi-structured interview is one type of qualitative research interviews. The author chooses this interview method due to the complexity of the subject matter of marine insurance. Hence, this method is useful to define the area to be explored and helps to acquire deeper information about the law and practice of marine insurance.

²⁹ To understand the prevailing practice of courts in entertaining marine insurance cases the author used cases decided by FFIC, FHC, FSC and FSC cassation bench decisions.

CHAPTER TWO

2. INTERNATIONAL SALE OF GOODS AND INCOTERMS

2.1 An Overview of International Sale Contracts

Foreign trade is recognized as the most significant determinants of economic development of any country. International trade, no matter how straightforward it may seem at the start, it is complicated until delivery has taken place.³⁰ After the conclusion of the contract the respective obligations of the buyer and the seller are determined by agreed standard trade terms.

The standard rules of reference for the interpretation of the most commonly used trade terms in international trade are INCOTERMS. The basic purpose of these rules is to define how each INCOTERM, as agreed in the sales contract, should be dealt with in terms of delivery, risk and cost transfer, and specify the responsibilities of the buyer and seller. For example, who should arrange and pay freight, other transport charges, insurance premium, duties and taxes. These aspects are often referred to as the critical points in international trade, detailing at what point the risk is transferred from the seller to the buyer and how the costs involved should be split between the parties.³¹

INCOTERMS are designed primarily to define the method of delivery of the goods sold, but are also used to indicate the calculation of the purchase price. Delivery in the INCOTERMS means when the risk of loss or damage to the goods is transferred from the seller to buyer.³² The type of international contract of sale depends on the basis of agreed price quotation. Mainly, there are three types of contracts, which are often used in international market. Such as; Ex Works Contract, Free on Board (FOB) contract and CIF contract.³³ But this doesn't mean there are no other types of sale contracts.

International trade contracts are private contracts and State does not interfere with them so long as the provisions of the contract do not go against the provisions of various laws, which have

³⁰ Grath (n 18)2.

³¹ *ibid* 12.

³² *ibid*.

³³ Moens and Gillies (n 4) 122.

been enacted for the export-import business contracts of any country.³⁴ Moreover, the INCOTERMS do not possess the status of law. Rather, they are a standardized, published and widely known code which is available for incorporation in international sale contracts at the option of the parties.³⁵

Carriage of Goods by sea constitutes important elements of international trade transactions, with the bulk of world trade involving sea transit. Historically, carriage of goods by sea constitutes one of the oldest forms of transportation in international commercial transactions. From a legal perspective sea born trade is regulated by the branch of maritime law known as shipping law. The legal document through which the contract of carriage of goods by sea is effected is called bill of lading. Technically bill of lading is the focal point of international contract of sale and it serves as a receipt, title deed and evidence of contract of carriage.³⁶

2.2 Origin and Development of INCOTERMS

The history and development of trade terms reflect the history and development of international trade generally. Their evolution is not a purely legal matter, but has been shaped by economic, political and technological factors as well as developments in transportation techniques, containerization and the movement towards paperless trading.³⁷ Mercantile custom plays an important role in international commerce.³⁸ INCOTERMS represent a codification of international mercantile customs and usages, which have been formulated in an effort to provide a standardized interpretation for trade terms.³⁹

Trade terms reflect mercantile customs and usages which developed over a long time in order to simplify the trade in goods that are transported from one place to the other.⁴⁰ Thus, parties to a

³⁴ C. Rama Gopal, *Export Import Procedures: Documentation and Logistics* (New Age International (p) Ltd Publisher, 2008)36.

³⁵ Moens and Gillies (n 4) 123.

³⁶ Schmitthoff, *Export Trade: the Law and Practice of International Trade* (10th edn, Sweet and Maxwell, 2000)2.

³⁷ Juana Coetzee, *INCOTERMS as a Form of Standardization in International Sales Law: an Analysis of the Interplay Between Mercantile Custom and Substantive Sales Law with Specific Reference to the Passing of Risk* (PHD thesis, Stellenbosch University 2010) <www.scholar.sun.ac.za/bitstream/handle/10019.1/5222/Coetzee-incoterms-2010>, „accessed,15 June 2017“

³⁸ *ibid.*

³⁹ *ibid.*

⁴⁰ *ibid.*

contract are un aware of the different trading practices in their respective countries. This can give rise to misunderstandings, disputes and litigation, with all the waste of time and money that it entails. In order to remedy these problems, the International Chamber of Commerce based in Paris first published in 1936 a set of international rules for the interpretation of trade terms. These rules were known as “INCOTERMS 1936”.⁴¹ As of then, traders could refer to the interpretation provided by the INCOTERMS when inserting a trade term in their contract of sale.

To keep pace with the rapid growth of international trade and globalization, INCOTERMS rules are reviewed every 10 years. Therefore, INCOTERMS to be adapted to the evolving commercial and logistical practices, amendments and additions were made in 1953, 1967, 1976, 1980, 1990, and 2000 and presently in 2010.⁴²

The International Chamber of Commerce has periodically introduced new terms and reviewed existing trade terms to accommodate a new mode of transport and emerging trade practices, such as electronic transmission of transport documents. By now, the INCOTERMS are used all over the world and have become the international standard for the interpretation of trade terms.⁴³ Throughout, the past revisions, new terms have been introduced and other terms have disappeared. The latest version INCOTERMS 2010 introduced two new terms (DAT and DAP), and eliminated four previous terms (DEQ, DES, DDU and DAF), to end up with standard interpretation rules for 11 (eleven) trade terms.⁴⁴ However, the preceding INCOTERMS 2000 introduced 13 trade terms.⁴⁵ Presently, INCOTERMS 2000 do not apply unless parties incorporate into contract of sale as a delivery term.

⁴¹ *ibid.*

⁴² *ibid.*

⁴³ Jonas Malfliet, *INCOTERMS 2010 and the mode of transport: how to choose the right term*, <www.cutn.sk/library/proceedings/mch-2011/editovan.../malfliet-163-179>, „accessed 15 June 2017“.

⁴⁴ *ibid.*

⁴⁵ These trade terms are: EXW, FCA, FAS, FOB, CFR, CIF, CPT, CIP, DAF, DES, DEQ, DDU and DDP.

2.2 Incorporation of INCOTERMS into Sale of Goods Contracts

The parties⁴⁶ who want to enter into a international sale contract need to have a general understanding of the transport obligations, costs and risks before they start contractual negotiations and decide on which INCOTERM to use.⁴⁶

The terms of sale are the starting point of all international movements of cargo. The sale of goods in the international market normally brings together two or more individuals who do not know one another, who speak different languages, and who have different customs and currencies. Moreover, INCOTERMS recognize the important principles of freedom of contract and party autonomy.⁴⁷ In order to overcome these differences and to encourage world trade a set of standard definitions, known as the “INCOTERMS”, were established. INCOTERMS do not apply automatically. They only apply if expressly incorporated into contracts of sale, i.e. by stating the term, the version of INCOTERMS used and naming the appropriate location. These terms legally outline the obligations and responsibilities of buyers and sellers. But it is important not to assume that INCOTERMS regulate all aspects of the transaction such as transfer of title, terms of payment, price and intellectual property.

In principle INCOTERMs reflect the policy considerations underlying international trade.⁴⁸ That means, which INCOTERM will apply to a particular trade transaction, is a matter of negotiation between a seller and a buyer. In addition, inclusion of the appropriate term in sales quotations is crucial to determine the responsibilities of each party in the contract of sale. Every INCOTERM is accompanied by a named place or port.⁴⁹ That means, a preferred INCOTERM will be incorporated into a contract by reference to it: e.g. „FOB (...named port of shipment, INCOTERM 2010).

The choice of INCOTERMS is only „right“ if it is in harmony with the other contracts (contract of carriage, of insurance, L/C, etc.).⁵⁰ Choosing the „right“ INCOTERM requires the parties

⁴⁶ Coetzee (n 37).

⁴⁷ *ibid.*

⁴⁸ Malfliet, (n 43).

⁴⁹ J. Mark Rowbotham, *Introduction to Marine Cargo Management* (2nd edn, Informal Law from Routledge, 2014)142.

⁵⁰ *ibid.*

to a contract of sale to consider, amongst others; the nature of the goods (containerized, manufactured goods, bulk or break bulk goods), the means of transport (maritime, non-maritime or multimodal), the conditions of payment and the documentary requirements imposed by these conditions, and the capabilities of and the efficiency with which the seller or the buyer can perform the obligation to deliver the contracted goods. In general, INCOTERMS delivery conditions play a vital role in concluding contracts between parties from different countries, having an important role in the ongoing international transactions.⁵¹

2.3 The Structure and Functions of International Commercial Terms

As reflected above, the INCOTERMS identify standard trade usages (which in turn reflect standardized trade practices or customs) and provide a detailed statement of what each term requires the parties to do. Accordingly, the purpose of „INCOTERMS“ is to provide a set of international rules for the interpretation of the most common trade terms in foreign trade. The uncertainties of different interpretations of such terms in different countries can be avoided or at least reduced to a considerable degree. As mentioned, the INCOTERMS, like other standard trade terms, facilitate international trade by giving contracting parties the option of incorporating detailed regimes of rights and obligations, by the simple use of a shorthand expression or standard term.⁵²

Moreover, trade terms function both as price terms and delivery terms. As price terms they indicate that certain aspects of a contract of sale, such as cost of transportation of goods. In addition, they serve as delivery terms, indicating where delivery takes place, and thus when costs and risks are transferred to the buyer.⁵³ The point at which responsibility passes from one party in a transaction to another is known as the "liability point".

In short, each INCOTERM will define the liability point for three main activities:

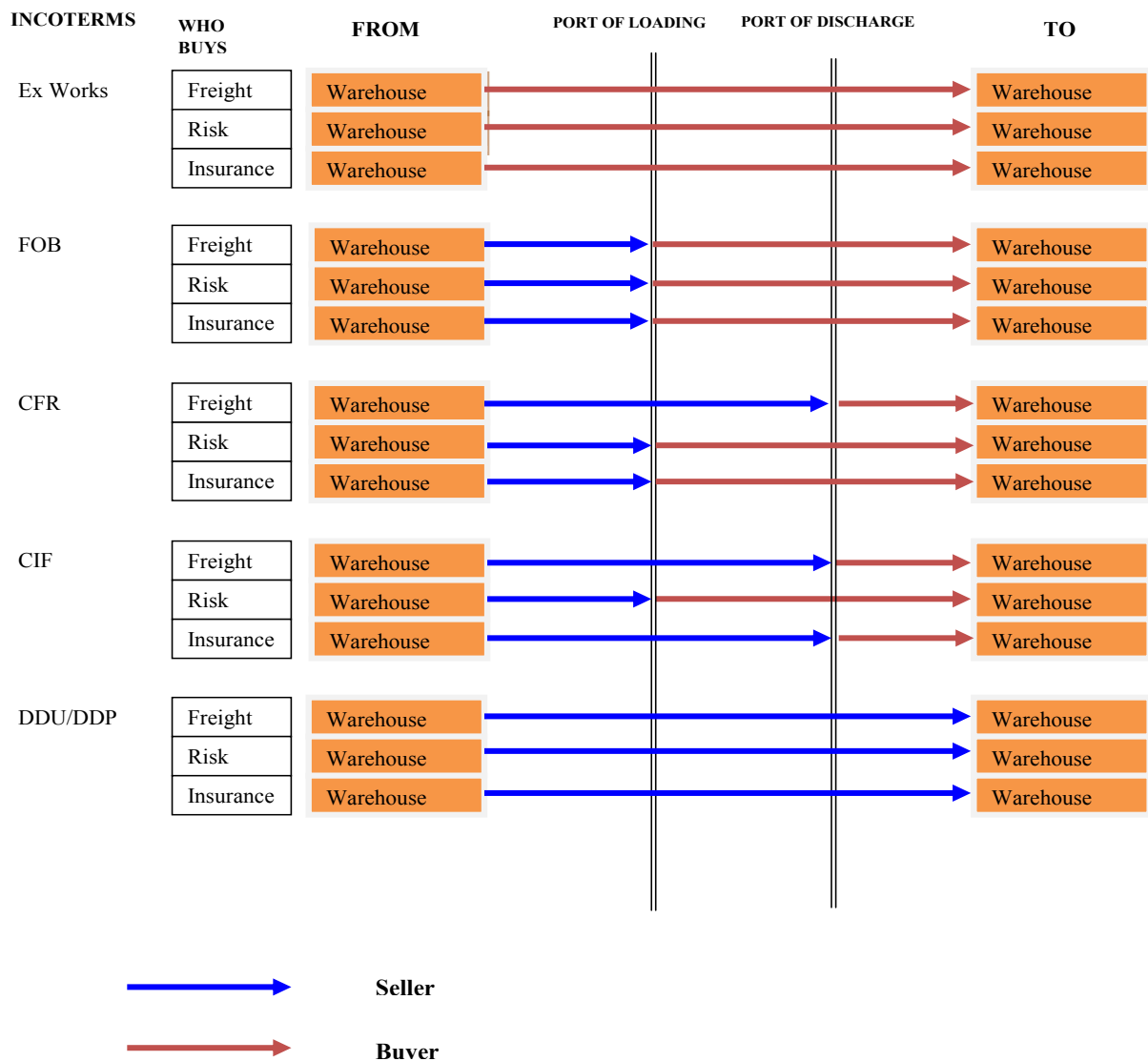
- ✓ **Carriage:** the INCOTERM will identify which party is responsible for arranging carriage of the goods.

⁵¹ *ibid.*

⁵² Moens and Gillies (n4) 122.

⁵³ Coetzee (n 37).

- ✓ **Risk:** the INCOTERM will identify the point along the journey where responsibility for risk to the goods will pass from the seller to the buyer.
- ✓ **Cost:** the INCOTERM will identify the point at which cost transfers from the seller to the buyer.



Note:
 EXW, DDU and DDP are commonly used for any mode of transportation.
 FOB, CFR, CIF are used for sea and inland waterway

⁵⁴ Trans Ocean Marine Cargo Transit Insurance <www.tunihuile.com/pdf/TOD-insura> ,accessed 21 May 2017". This diagram explains in short at what point risk, carriage and cost passes from seller (exporter) to buyer (importer).

CHAPTER THREE

3. CONCEPTUAL FRAMEWORK OF MARINE INSURANCE

3.1 Origin and Development of Marine Insurance

Marine insurance is an institution of great antiquity and oldest form of insurance.⁵⁵ Many scholars argue that marine insurance and general average was the earliest type of insurance, with its origin in the Greek and Roman maritime loan.⁵⁶ But also, non-marine insurance and reinsurance grew out of marine insurance.⁵⁷ The island of Rhodes in the eastern Mediterranean rose to prominence as a center of maritime commerce in the latter part of Greek Era.⁵⁸ The Rhodians were accomplished seafarers and traders. The prominence of Rhodian's was further strengthened by the famous expression of Emperor Antonius. The emperor, in response to a petition to regarding the plundering of a wrecked ship declared that:-

“I, indeed, am lord of the world, but the law is lord of the sea. Let it be judged by the Rhodian law, prescribed concerning nautical matters, so far as no one of our law is opposed”.⁵⁹ This speech of the emperor reveals the contributions of Rhodian for development of marine insurance and marine law.

Historically, all trade operations of any nature, until 17th century, had been operated by sea transport from one port to another port. However, when transport facilities were gradually developed, the other modes of conveyances like road, rail, and air were utilized.⁶⁰ Due to this, in the early days of international trade it was common for cargo to be lost when vessels run into trouble with sandbars, storms, or pirates.⁶¹ Nevertheless, ships' captains began sitting in Lloyd's

⁵⁵ Hoff's (n 36)393.

⁵⁶ *ibid.*

⁵⁷ *ibid.*

⁵⁸ Robert D Benedict, „*The Historical Position of the Rhodian Law*“ (1909) Yale Law Journal 223 <[www.https://archive.org/details/jstor-785136](https://archive.org/details/jstor-785136)>, „accessed 15 August 2017“

⁵⁹ *ibid.*

⁶⁰ *Origin and Development of Marine Insurance* <www.nicoa.in/wp-content/uploads/2016/04>, „accessed 21 April 2017“.

⁶¹ *ibid.*

coffeehouse in London, asking wealthy patrons to accept (for a small fee) the responsibility of repaying shippers when losses occurred.⁶²

Gradually, at the end of the 17th c, London's growing importance as a centre for trade increased the demand for marine insurance. In the late 1680s, Edward Lloyd opened a coffee house on Tower Street in London.⁶³ It soon became a popular haunt for ship owners, merchants, and ships' captains, and thereby a reliable source of the latest shipping news.⁶⁴ Due to this, Lloyd's coffee house began to develop as a growing reputation as a maritime commercial meeting place or maritime commercial power house.

In different literature, Lloyd's coffee house was considered as the first marine insurance market in UK.⁶⁵ It became the meeting place for parties in the shipping industry wishing to insure cargoes and ships, and those willing to underwrite such ventures. These informal beginnings led to the establishment of the insurance market at Lloyd's of London and several related shipping and insurance business.⁶⁶

The participating members of the insurance arrangement eventually formed a committee and moved to the Royal Exchange on Cornhill as the society of Lloyd's.⁶⁷ The establishment of insurance companies, a developing infrastructure of specialists (such as shipbrokers, admiralty lawyers, bankers, surveyors, loss adjusters, general average adjustors etc), and the growth of the British Empire gave English law a prominence in this area which it largely maintains and forms the basis of all modern practice.⁶⁸

Lord Mansfield, Lord Chief Justice in the mid-eighteenth century, began merging law of merchant and common law principles.⁶⁹ Then, the growth of the London insurance market led to the standardization of marine insurance policies and judicial precedent further developed marine

⁶² Kenneth D. Weiss, *Building an Import/Export Business* (4th edn, John Wiley and Sons Inc, 2008)153.

⁶³ *ibid.*

⁶⁴ *Wikipedia, History of Marine Insurance* <[www.https://en.wikipedia.org/wiki/marine-insurance](https://en.wikipedia.org/wiki/marine-insurance)>, „accessed 21 April 2017“

⁶⁵ *ibid.*

⁶⁶ *ibid.*

⁶⁷ *ibid.*

⁶⁸ *ibid.*

⁶⁹ *ibid.*

insurance law.⁷⁰ The law relating to marine insurance is codified in the marine insurance Act of 1906, the schedule to which contains the standard form of policy known as the Lloyd's S.G. policy.⁷¹ The Act codified the previous common law and it is both an extremely thorough and concise piece of work.

In 1970, British parliament enacted the “the bubble Act”, which had drastic effects up on the British marine insurance market and inadvertently established Lloyd's of London as “the great center and strong hold of marine insurance”.⁷² The Act officially established two chartered corporations, the Royal Exchange Assurance Corporation and the London Assurance Corporation, who underwrite marine insurance.⁷³ Accordingly, the Act prohibited the insurance of ships at sea by any other partnership or firm.⁷⁴

In the 19th c, Lloyd's and the ILU (a grouping of London company insurers) developed between them standardized clauses for the use of marine insurance by replacing the old S.G. policy.⁷⁵ These clauses are known as the Institute Clauses, because the ILU covered the cost of their publication. The three most important sets of clauses are known as clause A, B and C of 1/1/1982 and the latest version of clause 1/1/2009.

Moreover, in international trade, the terms of contract of sale normally provide whether the costs of marine insurance shall be borne by the seller or buyer.⁷⁶ Then the party who is obliged to insure the cargo will choose any of the above clauses as agreed between them. Nowadays, marine insurance is often grouped with Aviation and Transit (cargo) risks. This form of marine insurance is known by the acronym 'MAT'.⁷⁷ MAT includes ICC for marine insurance proper or coverage of risks to cargo over blue water and incidental land transit and ICC (Air) coverage of risks for cargo transported by air transport.

⁷⁰ *ibid.*

⁷¹ Hoff's (n 36)393.

⁷² Jermy A. Herschaft, “Average Coffee shop: Lloyd's of London a 20 1st c Primer on the History, Structure, and Future of the Backbone of Marine insurance”, [2009], Vol. 29, *Tulane Maritime Law Journal*, 169 <www.uniset.ca/lloyddata>29TulaneMaritime>, „accessed 26 May 2017“.

⁷³ *ibid.*

⁷⁴ *ibid.*

⁷⁵ Hoff's (n 36)393.

⁷⁶ *ibid* 394.

⁷⁷ Marine Insurance <www.niilmunivesty.in/coursepack>Marine>, „accessed 24 June 2017“. MAT means marine insurance aviation and transit (cargo).

3.2 Background of Marine Cargo Insurance

Parties to international trade may suffer financial loss if goods are damaged during transportation from seller's warehouse up to buyer's warehouse. To avoid loss or damage of their cargoes, importers or exporters may have to buy marine insurance policy. This is known as „cargo insurance“.⁷⁸ Many scholars, considered marine insurance as the lynch-pin of international trade.⁷⁹ In simple terms, marine insurance is all about the traders' aversion of risk of loss or damage to cargos whilst on transit.⁸⁰

Generally speaking, in marine insurance, insured risks on cargo may be divided into two broad categories, namely, marine risks and war and strike risks.⁸¹ Traders need marine insurance cover for two reasons. These are: legal and commercial. Legal liability of the intermediaries is limited. Intermediaries include clearing and forwarding agents, carriers, port and customs authorities etc. that handle the goods at various stages. They do not incur any liability, if the damage is due to circumstances beyond their control or if the loss is caused despite reasonable care taken by them.⁸² As and when post-shipment finance is made, banks will insist for insurance coverage for cargo to protect their financial interests or for commercial considerations.⁸³ Commercial banks in Ethiopia finance import trade through letter of credit. Due to this fact these banks have interest for safe arrival of goods.

3.2.1 Definition of Marine Insurance

Black's Law Dictionary defines marine insurance as: - “An agreement to indemnify against injury to a ship, cargo, or profits involved in a certain voyage or for specific vessel during a fixed period, or to protect other marine interests”.⁸⁴

The definition of marine insurance has international in its conception. The laws of marine insurance in many countries defined marine insurance from UK MIA of 1906, which is the

⁷⁸ Gopal, (n 34) 83.

⁷⁹ Marc D. Isaacs, INCOTERMS 2010 CBMU Annual Conference <<https://www.Cbmu.com>>PDF-Nov30-2010>/, accessed on: 22June 2017“.

⁸⁰ Chuah (n 1)403.

⁸¹ Hodges (n22)173.

⁸² Gopal, (n 34) 84.

⁸³ *ibid.*

⁸⁴ Bryan A. Garner, *Black's Law Dictionary* (8th edn, Thomson Business, 2004)818.

mother of all marine insurance laws.⁸⁵ Accordingly, Marine insurance Act of 1906⁸⁶ under section 1 defines “marine insurance” as follows:

A contract of Marine Insurance is a **“contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure.”**

Theoretically speaking, the term „marine insurance“ is somewhat misleading because it seems to cover only ocean or water risks. However, the contract of marine insurance by agreement of parties or custom of trade is extended so as to protect the assured against losses on inland waters or land (before port of loading or after port of discharge) which are incidental to the sea voyage.⁸⁷

Thus, every lawful marine adventure may be the subject of a contract of marine insurance when insurable property is exposed to maritime perils.⁸⁸ Maritime perils, means the perils consequent on, or incidental to, the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints and detentions of princes and peoples, jettisons, barratry, and any other perils, either of the like kind or which may be designated by the policy.⁸⁹ In short, peril insured against may be any peril in respect of which the insured seeks and the insurer is willing to give protection.⁹⁰ Moreover, under Ethiopian maritime code, the term marine insurance is defined as:

“Any policy of insurance having as its principal object to guarantee a maritime risk, including collateral risks, shall be subject to the provisions of title VII.”⁹¹

⁸⁵ The UK Marine Insurance Act 1906 (MIA 1906), called the mother of all marine insurance statutes. Marine Insurance is a legal theory essentially a contract of indemnity and this feature accounts for its distinctive characteristics.

⁸⁶ *ibid.*

⁸⁷ *ibid.*, s 2(1). Under this article it is stipulated that :- a contract of marine insurance may by its express terms or by trade usage be extended to protect the assured against losses on inland waters or any land risk which may be incidental to the sea voyage.

⁸⁸ *ibid.*, s 3.

⁸⁹ Chuah (n 1)

⁹⁰ *ibid.*

⁹¹ Maritime code (n 23) Art. 288.

However, the code unlike the MIA of 1906 defined marine insurance as marine policy having its principal object to guarantee maritime risks and collateral risk. But, the term maritime risk and collateral risk is not defined under the code.

The term „marine risk“ is a handy expression commonly used to refer to any of risk other than war and strike risk.⁹² The author thinks the term collateral risk under Art. 288 of Mar. Code, seems to incorporate coverage of marine insurance for land transit incidental to the sea voyage (land transit before or after any port). Therefore, we can conclude that definition of marine insurance provided under the Maritime Code of Ethiopia is confusing.

The confusion on the definition part was clearly seen from Federal High Court case between EIC vs. ESLSE. In this case EIC underwrote marine cover, for insured Meta Abo Brewery (s.co) and CBE steam boiler voyage from Italian port up to Sebeta warehouse. The insured property however, was damaged during land transit from port of Djibouti to Addis Ababa. The decision of court in this regard is illustrated as follows.

“ በባህር ህጉ አንቀጽ 288 ላይ እንደተደነገገው በባህር የሚደርሰውን አደጋ ወይም ከዚህ ጋር ተጨማሪ የሆኑትን አደጋዎች (collateral risks) ማለቱ በባህር ጉዞው ላይ ለደረሰ ጉዳት እና ከዚህ በተጨማሪም ዕቃው ከመርከብ ላይ ተራግፎ በወደብ ላይ ባለበት ጊዜ ሁሉ የባህር ህጉ ተፈጻሚ ሊሆን እንደሚገባው የሚያስገነዝብ ነው። ከዚህ ውጪ ከወደብ ወጥቶና በመኪና በመሬት ላይ በሚደረግ ማገገሚያ ጉዳት ቢደርስ የባህር ህጉ ተፈጻሚ እንዲሆን የባህር ህጉ አይደነግግም።⁹³

The court further argues that since the damage occurs during land transit the case is governed by the provisions of Commercial Code Art. 655(1). But also, the court decided that the plaintiff cannot issue marine cover for land transit incidental to sea voyage (transit from port of discharge Djibouti to final destination warehouse). However, the FSC cassation bench reversed the decision of lower courts and decided that it is possible to underwrite marine cargo cover for ocean transit and land transit incidental to sea voyage.⁹⁴

⁹² Hodges (n22)173.

⁹³ EIC vs. ESLSE (three defendants) / [2000]/Federal High Court/68475/, [2000].

⁹⁴ Applicant EIC vs. respondent ESLSE (two respondents) / [2004]/ FSC Cassation bench/ 65422/, [2004].

3.2.2 Subject matter insured

Marine insurance covers loss or damage of ships, cargo, freight, port terminals, and any transport or cargo by which property is transferred, acquired, or held between the points of arrival to final destination.⁹⁵ Marine cargo policy protects goods in transit by sea, air or land against loss of or damage caused by wide range of perils in onshore and offshore of exposed property.⁹⁶

Under the Ethiopian Maritime Code subject matter which may be insured is stipulated as; anything which can be valued in money's worth and which is exposed to maritime risk for lawful purpose. It further stipulates no person may claim under the policy unless he has suffered damage as a result of the causality.⁹⁷ As per this stipulation of the Maritime Code any property exposed to maritime risks and collateral risk is subject to marine insurance coverage. Hence, cargo whilst in transit is one of the subject matter insured by any company underwriting marine insurance in Ethiopia.

3.3 Nature and Scope of marine cargo insurance

A distinctive feature of marine insurance is the degree to which it is international in scope. Most cargo insurance is inherently international since the coverage of goods transported by sea usually involves transport from one country to another. To meet modern commercial requirements marine insurance was extended to cover risks on inland water ways, or on land in conjunction with the sea voyage. Thus, the scope of the marine insurance contract is not restricted to the risk of the sea but also include the risk over land incidental to the sea voyage.⁹⁸

The nature and scope of marine insurance is determined by reference to s. 6 of the MIA and by the definitions of "marine adventure" and "maritime perils".⁹⁹ Marine insurance policies are

⁹⁵ Christopher J. Giaschi, Marine Insurance <www.admiraltylaw.com/papers/marine-insurance-outline.pdf>, accessed 21 April 2017"

⁹⁶ *ibid.*

⁹⁷ Maritime code (n 23), Art. 292.

⁹⁸ Mukul Sharma & Abinas Agrawal, *Marine Insurance: the Legal Instruments Guiding it in the Economic Market*, International Journal of law and legal jurisprudence studies, vol. 1, Issue 8 <www.ij/js.in/uploads/2014/12>, accessed May 20/2017".

⁹⁹ Giaschi, (n 95).

applicable to losses suffered against the marine adventure.¹⁰⁰ Moreover, the scope of cargo insurance policy depends on the risk it covers. Here, risks are termed as perils. Perils are referred to as causes of events.¹⁰¹ There are different kinds of perils. These are:

- ✓ Maritime perils: - these are events which are created by God or manmade.¹⁰²
- ✓ Extraneous perils: - these are incidental perils. They are caused due to faults in loading, carrying and unloading.¹⁰³
- ✓ War perils: - perils relate to loss due to war including civil war, revolution, rebellion and detainment of the carrier.¹⁰⁴
- ✓ Strike Perils: - this means damage due to lockouts, strikes and civil commotion.¹⁰⁵

3.4 Basic Principles of Marine Insurance

3.4.1 Principle of Insurable Interest

Any person has an insurable interest where he/she stand in any legal or equitable relation to marine adventure or any insurable property placed at risk in a marine adventure.¹⁰⁶ The insured has insurable interest when he benefits by the safe or due arrival of insurable property and be prejudiced by its loss or damage of insurable property.¹⁰⁷ The insured may not have an insurable interest at the time of acquiring a marine insurance policy, but he should have a reasonable, expectation of acquiring such interest. The insured must have insurable interest **at the time of loss or damage**; otherwise he will not be able to claim compensation.¹⁰⁸ This is because the owner the goods can sell the insured property to another whilst they are in transit on the high sea. In marine insurance, it is common practice for the title in the goods to pass from the

¹⁰⁰ *ibid.*

¹⁰¹ Gopal (n 34)87.

¹⁰² *ibid.*

¹⁰³ *ibid.*

¹⁰⁴ *ibid.*

¹⁰⁵ *ibid.*

¹⁰⁶ N.C. Proctor, „*Marine Insurance, Marine policy and Management*’, *The Flagship Journal of International Shipping and port research*, 61-69 <<http://dx.doi.org/10.1080/030888385000000020>>, „accessed 20 August 2017”.

¹⁰⁷ *ibid.*

¹⁰⁸ Principles of Marine Insurance -CII <www.cii.co.uk/syllabus-770-2011>, „accessed 05 August 2017”.

seller to the buyer at any stage of transit by any mode of conveyance.¹⁰⁹ In order for a marine insurance contract to be valid, the insured must have an insurable interest.¹¹⁰

As an example, the following parties may be said to have insurable interest: cargo owners (shipper and consignee) on their cargo to be shipped, ship owner on his ship, shipping company on their freight receivable.¹¹¹ Some countries with the view to encourage local insurance companies may require that the import and/or export shipments be insured with their national insurance companies.¹¹² This is similar with the law and practice of our country.

3.4.2 Principle of utmost good faith

The principle of utmost good faith is indispensable in any insurance contract.¹¹³ This principle has always been the crown field of marine insurance law.¹¹⁴ A contract of insurance requires both the insured and the insurer to exercise utmost good faith in their negotiations. The burden of this principle is more on the insured than on the underwriter. The insured should give full information about the subject to the insured. This principle was clearly stated by Lord Mansfield in *Carter v. Boehm* case (1766).¹¹⁵

According to this doctrine an underwriter is presumed to act on the belief that the party who has applied for insurance has disclosed all facts material to the risk.¹¹⁶ A material fact is a fact which would influence the mind of a prudent insurer in deciding whether to accept a risk for insurance,

¹⁰⁹ *ibid.*

¹¹⁰ Robert Force, *Admiralty and Maritime Law*, (Federal Judicial Center 2004)184 <<https://public.resource.org/scrbed>>, accessed 20 May 2017".

¹¹¹Fundamental principles of marine insurance <www.insuranceloans29.blogspot.com/2015/12/MARINEINSURANCE>, accessed 21 June 2017".

¹¹² *ibid.*

¹¹³ *ibid.*

¹¹⁴ Shi Feng, Utmost Good Faith in Marine Insurance: comparative Study of English and Chinese Law (*Plymouth Law Review* (2008)) <<http://pearl.plymouth.ac.uk/.../%5B2013%Bshi%5D%5B10171424%5D5BPHD>>, accessed 29/03/2017".

¹¹⁵ *ibid.*

¹¹⁶ *ibid.*

and on what terms.¹¹⁷ If an applicant fails to reveal material facts known to the applicant or presumed to be known, the insurer may avoid the contract. The same is true with respect to material misrepresentations.¹¹⁸

3.4.3 Principle of Indemnity

The ordinary meaning of indemnity is „compensation for loss or injury sustained“ and all contracts of property insurance are contract of indemnity.¹¹⁹ Cargo insurance is a contract of indemnity, that is, to compensate for the loss or damage in terms of the value of the insured goods. The amount insured as agreed between the insurer and the assured forms the basis of indemnity. That is why a contract of marine insurance considered as contract of indemnity.¹²⁰ In a contract of indemnity, only loss is made good. However, a marine insurance is commercial indemnity, so even the reasonable anticipated profit (CIF value of goods +10% profit margins agreed) is also made good.¹²¹

The principle of indemnity in insurance law holds that an insured is entitled to receive a full indemnity for his or her loss, no more and no less. The object of indemnity is simply to put the insured in the position they would have been had the loss not occurred.¹²²

3.4.4 Principle of Proximate Cause

The term *causa proxima* is a Latin word which means the nearest or proximate cause. It is a prerequisite to the liability of the underwriter, under any of the clauses, that the loss be “proximately caused” by the peril insured against and claimed under.¹²³ Where the loss is the necessary consequence of the insured peril or, in other words, where, had the insured peril not occurred, the loss not have happened, the insured peril is, for the purpose of the policy, the cause

¹¹⁷ The marine insurance Act 1906 s. 18(2) states that “every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium or determining whether he will take the risk “.

¹¹⁸ Feng (n 114)

¹¹⁹ *ibid.*

¹²⁰ Hodges (n 22) 2.

¹²¹ Gopal (n 34) 84.

¹²² *ibid.*

¹²³ *ibid.*

of the loss.¹²⁴ This principle helps in deciding the actual cause of loss when a number of causes have contributed to the loss. The immediate cause of loss should be determined to fix the responsibility of the insurer. The remote cause for a loss is not important in determining the liability. If the proximate cause is insured against, the insurer will indemnify the loss.¹²⁵

Generally, the connection between the insured peril and the loss is clear but in some cases there may be intervening factors which obscure the chain of causation so that there may arise doubt as to the proximate cause of the loss.¹²⁶

3.4.5 The principle of subrogation

The principle of subrogation is an integral part of the principle of indemnity and prime corollary of the indemnity principle.¹²⁷ This right is implied in all contracts of indemnity. The real meaning of the principle of subrogation is much further than transferring of rights.¹²⁸

The aim of doctrine of the subrogation is that the insured should not get more than the actual loss or damage. After payment of the loss, the insurer gets the right to receive compensation or any sum from the third party from whom the assured is entitled to get the amount of compensation. The justification for subrogation can be explained by the premise that a recovery upon a contract of insurance does not alter the position between the assured and the third party.¹²⁹

3.5 Classification of Marine Cargo Policies

There are different kinds of marine policies according to the manner in which they are executed or the risks which they are intended to cover.¹³⁰

¹²⁴ *ibid.*

¹²⁵ *ibid.*

¹²⁶ Hodges (n 22)7. In the words, Lord of Justice Brett in *Castellian vs. Preston*, decided as subrogation is a corollary of the great principle of indemnity.

¹²⁷ *ibid.*

¹²⁸ *ibid.*

¹²⁹ *ibid.*

¹³⁰ Hoff's (n 36)399.

3.5.1 Voyage policies and Time policies

A marine policy may be a voyage or time policy.¹³¹ When a policy includes word like “at and from” or “from” a particular place to another place it is a voyage policy.¹³² Importers or exporters have to arrange insurance prior to every vessel leaving port of loading.¹³³ The marine specific voyage policy insures cargo against risks involved in a specific voyage. A voyage policy comes to an end at the conclusion of the voyage.¹³⁴

It is the norm for goods to be insured for a particular sea voyage, but in light of multimodal transport or combined transport traders will often take a mixed land- sea policy to cover the land leg of the voyage.¹³⁵ In general goods are almost invariably insured for a voyage in a policy incorporating the ICC A, B and C.¹³⁶

Time policy will specify the period of cover for a definite period of time.¹³⁷ This policy comes to an end upon the expiry of the specified time. It is possible to provide marine cover on the basis of a mixed policy (both voyage and time). In such case, the underwriter will be liable where the loss or damage of cargo occurred during specified time and contemplated voyage.¹³⁸

3.5.2 Valued and Unvalued policies

A marine policy may be a valued or unvalued policy. A valued policy is one which specifies the agreed value of the subject matter insured. In the event of a total loss under a valued policy, the amount of the indemnity is the agreed value.¹³⁹ In the case of cargo, the indemnity is the prime cost of the goods, plus shipping and insurance expenses.¹⁴⁰ A valued policy is a policy which specifies the agreed value, not necessarily the actual value of the goods insured.¹⁴¹ If the goods prove to be overvalued, the insured is entitled, at the time of claim settlement, to

¹³¹ *ibid.*

¹³² *ibid.*

¹³³ Corinne Campbell, Comprehensive Import/Export Manual (Australian Version) <www.xdoc.com.au/ComplmpExManu14>, accessed 22 June 2017.”

¹³⁴ Giaschi (n 95) Marine Insurance <www.admiraltylaw.com/papers/marine-insurance-outline.pdf>.

¹³⁵ Chuah (n 3)265.

¹³⁶ *ibid.*

¹³⁷ Marine Insurance Act of 1906, s 25.

¹³⁸ Chuah (n3)265.

¹³⁹ Giaschi (n 95).

¹⁴⁰ *ibid.*

¹⁴¹ Hoff’s (n 36)398

a refund of a proportionate part of the premium paid, but no amount against anticipated profit is to be included in the claim.¹⁴² The agreed value of the subject matter insured in a valued policy is conclusive for all purposes relating to the insurable value of the subject matter insured.

On the other hand, an unvalued policy is one which does not specify the value of the subject matter insured but subject to the limit of the sum insured, leaves the insurable value to be determined if and when the claim arises.¹⁴³ If it does not specify the agreed value but instead provides a limit of the sum insured it is an unvalued policy.¹⁴⁴ In our country marine insurance marine underwriting valued policy were very common as compared to unvalued policies.¹⁴⁵

3.5.3 Floating and Open policies

A marine policy may be a floating policy. A floating policy is one which leaves the name of the ship or other particulars to be provided at a later time by declaration or endorsement.¹⁴⁶ Floating policies are frequently used by shippers who routinely ship cargo. Floating policies avoid a shipper having to negotiate a new policy for every shipment. The shipper must declare all of the goods that are covered by the policy and their value.¹⁴⁷ The floating policy is ideal for traders with regular sending because it sets down the details in general terms of the traders total requirements and then allows him to declare actual sending,,s against it as they occur.¹⁴⁸ Automatically covers every shipment that you have within the terms and limits of the policy.¹⁴⁹

Open policies are issued in the form of a framework contract and then individual cargoes are declared to the insurers as and when the details become known.¹⁵⁰ Open covers were not in existence at the time of the MIA 1906.¹⁵¹ A marine open cover is a permanent facility that allows you to automatically insure every shipment within pre-defined parameters.¹⁵² It is worded in general terms and is issued to cover all dispatches / sending's coming within its scope and

¹⁴² *ibid.*

¹⁴³ *ibid.*

¹⁴⁴ *ibid.*

¹⁴⁵ Interview with Ato Mitiku Abdissa (n 9).

¹⁴⁶ Yvonne Baatz, *Maritime Law*, (3rd edn, Routledge, 2014) 454

¹⁴⁷ *ibid.*

¹⁴⁸ *ibid.*

¹⁴⁹ Campbell, (n 133)

¹⁵⁰ *ibid.*

¹⁵¹ Baatz (n 146) 454.

¹⁵² *ibid.*

sent/received during the Policy period.¹⁵³ In a marine open cover policy for exports/imports, every transit is declared to the insurer and a marine certificate is issued by the insurer after debiting the deposit premium account maintained by the insured with the insurer.¹⁵⁴

Moreover, the open cover is designed to avoid the inconvenience of negotiating the insured's consent for each transaction.¹⁵⁵ The open cover agreement generally specifies limitation clause per bottom, per place clauses etc. restricting the liability of the insurance company to a specific amount.¹⁵⁶ The per bottom clause places a limit on the value of goods to be carried in one carrier and per place clause on the value of goods at a particular place (it sets an upper limit to the accumulations of cargoes at port/transporters godowns /railway yards).¹⁵⁷

3.6 Conceptual Underpinning of ICC

In maritime scope the ICC are internationally recognized insurance policies.¹⁵⁸ ICC are a set of terms for marine cargo insurance policies adopted as standard terms by many international marine cargo insurance underwriting companies.¹⁵⁹ Nowadays, two thirds of the world's countries marine cargo insurance companies make use of the ICC.¹⁶⁰ A typical marine cargo policy, underwritten on the terms of the institute cargo clauses, is primarily concerned with physical loss or damage to the cargo, not financial loss or expenses. However, cover extends to reimbursement of the liability for two well recognized categories of marine expense connected with the carriage of cargo by sea, general average and salvage.¹⁶¹

In general, ICC is a set of standard clauses adopted in three versions which are mostly identical, but the ICC (A) clauses, which are on "all risks" terms, provide a more comprehensive cover than the (B) clauses or the (C) clauses, which cover nine and seven named perils respectively.¹⁶²

¹⁵³ *ibid.*

¹⁵⁴ *ibid.*

¹⁵⁵ Hoff's (n 36)403.

¹⁵⁶ *ibid.*

¹⁵⁷ *ibid.*

¹⁵⁸ Institute Cargo Clauses <www.https://um.es/mageorts/miwikilib/.../fetch.php/id...institute-cargo-clauses>, accessed 15/10/2017".

¹⁵⁹ *ibid.*

¹⁶⁰ *ibid.*

¹⁶¹ Wikipedia, History of Marine Insurance, (n 64)

¹⁶² Baatz, (n 146) 454.

3.6.1 Historical Development of ICC

The ILU issued the first ICC in 1912 after the loss of the Titanic.¹⁶³ The standard clauses, which covered named perils, were actively updated throughout the early 20thc and standard all risks clauses, the ICC (All Risks), were introduced on 1 January 1951.¹⁶⁴ Then the ICC were reissued in 1963 and radically revised in 1982 when the MAR form was introduced as a substitute for the SG Policy Form. The MAR form is simply a general statement of insurance while the Institute Cargo Clauses are used to set out the details of the insurance cover. The revision of the ICC is carried out under the auspices of the joint cargo committee (“JCC”), which was established in 1942.¹⁶⁵ The ICC 1/1/82 are referred to as the “1982 Clauses” and the ICC 1/1/09 are described as the recently “revised Clauses”.

3.6.2 Classification of ICC

In case of marine cargo underwriting ICC attached to the marine insurance contract which specifies what risks are covered should there be damage or loss to the goods. Here, it is important to distinguish between marine policies that are specified perils v. all risks.¹⁶⁶

A specified perils policy is one in which the insurer agrees to indemnify the assured for losses caused by specific perils that are identified in the policy. A loss must be caused by one of the specified perils in order for it to be covered by the policy. Most hull and machinery policies on commercial vessels are insured on a specified or named perils basis.¹⁶⁷

An all risks policy, on the other hand, provides much broader coverage. An all risks policy is one in which the insurer agrees to indemnify the assured “against all risks of loss or damage”. Things that are not covered by an all risks policy need to be specifically excluded.¹⁶⁸ The most common Institute Clauses include the ICC, Institute War Clauses, Institute Strike Clauses, and Institute Air Cargo Clauses. The cargo clauses use the word risks instead of perils, and the principal clause is clause 1.

¹⁶³ John Dunt, *Marine Cargo Insurance*, (2nd edn, Informal Law from Routledge, 2016) 5.

¹⁶⁴ *ibid.*

¹⁶⁵ *ibid.*

¹⁶⁶ *ibid.*

¹⁶⁷ *ibid.*

¹⁶⁸ Hoff's (n 36)417.

3.6.2.1 Institute cargo clause (A) or All Risk Cover

ICC (A) provides cover for the following risks:

- ✓ Cover against all risks of loss or damage to the subject matter insured, except as excluded by the provisions clauses 4, 5 and 7.¹⁶⁹
- ✓ Cover for general average and salvage charges (adjusted or determined according to the contract of carriage and/or the governing law and practice).
- ✓ Cover against any liability incurred under any both to blame collusion clause in the contract of carriage (in the bill of lading).¹⁷⁰

ICC „A“ was introduced into the cargo insurance world as a result of the need to have standardized “all risks” clauses after World War II.¹⁷¹ Subject to the policy exclusions and warranties the (A) clauses provide the widest of all three covers and are generally summed up as all risks of loss or damage to the subject matter insured.¹⁷²

The leading case on the meaning of “all risks” is *British and Foreign Marine Insurance Company Limited v Gaunt*, [1921] A.C.41. In this case the House of Lords held that the words “all risks” do not cover all damage however caused and specifically held that the words would not cover damage caused by wear and tear, inevitable deterioration or inherent vice. The court further held that “All Risks” policies cover only damage caused by an accident or due to some fortuitous circumstance or casualty.

In modern marine cargo underwriting in any country in the world including in our country Ethiopia, there are necessary limits to policies covering all risks. Since, risk is not certainty ICC (A) covers only a risk, not certainty.¹⁷³ Unfortunately, where the loss or damage is a certainty from the outset, there can be no insurable risk. The advantage of using institute clauses in case of marine cargo underwriting is that they are recognized throughout the world. Due to this fact,

¹⁶⁹ Hodges (n22)194.

¹⁷⁰ Cover stipulated under any standard ICC (A) policy of 1982 or 2009. For further understanding referring the attached ICC (A) is advised by the author.

¹⁷¹ Michael Igbokwe, *Cargo Perils Insurance and Cargo Exclusions* (2002) <www.mikiigbokwe.com/new1/cargo> ,accessed 18 July 2017“.

¹⁷² *ibid.*

¹⁷³ *Marine Insurance Act 1906* <www.legislation.gov.uk/ukpgd...data> ,accessed 15 August 2017“.

merely by mentioning the title of the clause traders around the world immediately know the terms and scope of cover provided. But also most of the words and phrases of the institute clauses have been elucidated by the courts so their meaning has been clarified.¹⁷⁴

3.6.2.2 Institute cargo clause (B) or Intermediate standard cover

An Assured who wishes to insure against serious events only may, for a cheaper premium, opt for the restricted cover that is provided in the (B). Subject to the policy exclusions and warranties the (B) clauses provide all the cover under (C) and also cover loss of or damage to the subject matter insured reasonably attributable to:

- ✚ Fire or explosion.
 - ✚ Vessel or craft being stranded, grounded, sunk or capsized.
 - ✚ Overturning or derailment of land conveyance.
 - ✚ Collision or contact of vessel, craft or conveyance with any external object other than water.
 - ✚ Discharge of cargo at a port of distress.
 - ✚ Earthquake, volcanic eruption or lightning and
 - ✚ Water damage by entry of sea/river water (excluding rainwater).
 - ✚ Total loss of package lost overboard.
 - ✚ Total loss of package dropped during loading and unloading. If it is reasonable to attribute the loss or damage to one of the listed perils then it falls within the policy.
- The insurance also covers loss or damage to the subject matter insured caused by:
- ✚ General average sacrifice and Jettison or washing overboard.¹⁷⁵

3.6.2.3 Institute cargo clause (C) or Basic Cover

The (C) clauses provide major casualty coverage during the land or sea transit and tend to be used for cargoes that are not easily damaged e.g. scrap steel, coal, used cars etc. Subject to the policy exclusions and warranties the (C) clauses cover loss or damage to the subject matter insured reasonably attributable to

¹⁷⁴ Marine Insurance (n 77).

¹⁷⁵ Cover stipulated under any standard ICC (B) policy of 1982 or 2009. For further understanding referring the attached ICC (B) is advised by the author.

- ✚ Fire or Explosion.
- ✚ Standing, Grounding, Sinking or Capsizing.
- ✚ Overturning or Derailment.
- ✚ Collision or contact of vessel craft or conveyance with any external objects other than water.
- ✚ Discharge of cargo at point of distress.
- ✚ General Average and Jettison.¹⁷⁶

3.6.2.4 Institute cargo clause (Air)

The term „Cargo Insurance“ is used in case of air shipment. The ICC (Air) provides „All Risks“ cover and are closely modeled on the ICC (A). Coverage remains on a „warehouse to warehouse“ basis, the only difference being that the main part of the voyage is on board an aircraft rather than an ocean-going vessel.¹⁷⁷

However, in practice, both the terms are interchangeably used and their regulations are also common.¹⁷⁸ ICC (Air) follows the wording of the ICC (A). The only difference are the reference to aircraft and the reduction of the maximum number of days contained in the duration clause to 30, compared to the 60days in the ICC (A) clauses.

3.6.3 Fundamental marine cargo insurance exclusions

Normally, underwriters will indemnify a cargo owner against certain occurrences. In a named perils policy (such as a marine insurance policy intended to provide coverage against perils of the sea), as opposed to an all-risks policy, the insured bears the burden of proving that the loss was proximately caused by the named peril. If the insured discharges this burden, the burden shifts then to the insurer to prove that the loss falls within an exclusion.¹⁷⁹ Major exclusions include:

¹⁷⁶ Cover stipulated under any standard ICC (C) policy of 1982 or 2009. For further understanding referring the attached ICC (C) is advised by the author.

¹⁷⁷ Gopal (n34) 83.

¹⁷⁸ *ibid*

¹⁷⁹ W. Harry Thurlow and Richard W. Norman, Understanding the Five Fundamental Marine Insurance Exclusions, June 17/2016, <www.Cmla.org/papers/FiveFundame>, „accessed 20 May 2017“.

- ✚ Willful Misconduct of the assured. The exception reinforces the general requirement that the loss or damage fortuitous. No man is entitled to benefit from his own wrong.¹⁸⁰
- ✚ Condition of the subject matter insured. Clause 4.2 of ICC (A) provides that there shall be no cover for ordinary leakage or loss in weight, wear and tear.¹⁸¹
- ✚ Losses caused by ordinary wear and tear, ordinary leakage or breakage or inherent vice. Such losses are not fortuitous. They are expected in the ordinary course of things and for this reason is not properly the subject of insurance.¹⁸²
- ✚ Insufficiency or unsuitability of packing or preparation.
- ✚ Delays, losses caused by delay are excluded from coverage even if the delay is caused by a peril that is insured against.
- ✚ Wars and nuclear weapons of war.
- ✚ Strikes, riots and civil commotions.
- ✚ Insolvency of ship owners.
- ✚ Unseaworthiness or unfitness of vessel, container or conveyance.
- ✚ Radioactive contamination arising from, for example, nuclear fuel or nuclear waste, or any weapon of war employing atomic or nuclear fission.¹⁸³

3.6.4 Marine cargo insurance warranties

There are certain terms in a policy that are not perils or exclusions but have a serious impact on whether a claim might be covered or not. These are known as warranties. Moreover, insurance contract terms may be classified as warranties and conditions.¹⁸⁴ While in general contract law conditions are fundamental and warranties are trivial, in insurance law warranties are regarded as fundamental.¹⁸⁵ A warranty requires strict compliance. Section 34(2) of the MIA 1906 provides:

“Where a warranty is broken, the assured cannot avail himself of the defense that the breach has been remedied, and the warranty complied with, before loss.”

¹⁸⁰ Chuah (n 3)449.

¹⁸¹ *ibid* 452.

¹⁸² Giaschi (n 95)

¹⁸³ Hodges (n22)222.

¹⁸⁴ *ibid* 239.

¹⁸⁵ Baatz (n 146) 440.

Breach of warranty terminates the risk automatically. The risk terminates but not the policy, therefore the assured's obligation to pay the premium survives. Upon breach the insurer is discharged from liability automatically.¹⁸⁶ To be discharged from liability the insurer is not required to prove the chain of causation between the breach and the loss. All the insurer has to prove is that the assured is in breach of a warranty.¹⁸⁷

The parties are free to incorporate any warranty expressly into their policy, subject only to the requirement that they be lawful terms. There are two types of warranties. These are:

A. Express Warranties:

Express warranties may be created by the use of the word "warranty" or "it is warranted". Express warranties are those warranties which are expressly included or incorporated in the policy by reference.¹⁸⁸

B. Implied Warranties:

These are not mentioned in the policy at all but are tacitly understood by the parties to the contract and are as fully binding as express warranties. In marine insurance, implied warranties are Seaworthiness of Ship, Legality of venture, Non-deviation.¹⁸⁹

3.7 Classification of Marine Cargo Losses

To recover under a marine cargo insurance policy, it is essential that the loss was fortuitous, which means that it must not be inevitable or intentional. In the absence of fortuity, there is no valid loss under a marine insurance policy.

There are two kinds of marine losses. These are total loss and average loss.¹⁹⁰

¹⁸⁶ Baatz (n 146) 447.

¹⁸⁷ *ibid.*

¹⁸⁸ *ibid.*

¹⁸⁹ *ibid.*

¹⁹⁰ Gopal (n 34) 88.

3.7.1 Total loss

It means loss arising out of the destruction of the subject insured or when the insured is irretrievably deprived thereof. A total loss may be actual or constructive.¹⁹¹ An actual total loss is a loss which happens under circumstances beyond control, while a constructive total loss refers to a complete loss due to high cost of repairing, salvaging and /conveying to destination.¹⁹²

Actual total loss: An actual total loss occurs when the insured property is physically destroyed such that there is no possibility of salvage or recovery of cargoes.¹⁹³ The insured cargo is damaged that it ceases to be thing or the cargo is irretrievably lost.¹⁹⁴ For example, when the ship sinks, the cargo can be retrieved only after a long time and the salvaged goods cannot be of any value to the insured.

Constructive total loss: In majority of cases the distinction between actual total loss and constructive total loss corresponds with the distinction which has been drawn between physical impossibility and business impossibility (uneconomical).¹⁹⁵ The constructive total loss clause in the Institute Cargo Clauses 1/1/82 or 1/1/2009 reads; no claim for constructive total loss shall be recoverable hereunder unless the subject matter insured reasonably abandoned either on account of its actual total loss appearing to be unavoidable or because the cost of recovering, reconditioning and forwarding the subject matter to the destination to which it is insured would exceed its value on arrival.¹⁹⁶ Thus, this clause affirms business impossibility than physical distraction or disappearance of cargoes.¹⁹⁷

3.7.2 Average loss

In marine insurance the term average considered as loss. If loss is less than total, it is called average loss.¹⁹⁸ The word average comes from French term "avarie" which means loss. In any

¹⁹¹ *ibid.*

¹⁹² *ibid.*

¹⁹³ *ibid.*

¹⁹⁴ *ibid.*

¹⁹⁵ Marine Insurance Act 1906, (n 173).

¹⁹⁶ *ibid.*

¹⁹⁷ *ibid.*

¹⁹⁸ Aleka Mandaraka-Sheppard, *Modern Maritime Law, Volume 2: Managing Risks and Liabilities*, (3rd edn, Routledge, 2013)653.

marine adventure loss or damage to marine property (ship, freight and cargo) can be either particular average or general average.¹⁹⁹

3.7.2.1 Principle of Particular Average (PA)

PA loss is a partial loss of the subject-matter insured, caused by a peril insured against, and which is not a GA loss.²⁰⁰ PA is average resulting from an accidental partial loss or damage which is borne solely by person who suffered the loss. This means **losses lie where they fall**.²⁰¹ A PA loss affects only a particular interest whose property sustains the loss, such as the ship-owner for damage to the ship through heavy sea waves breaking over her; or the shipper for damage of the cargo through the stowage giving way in heavy weather, or damage to the cargo through sea-water entering the hold containing it, or accident during the process of unloading, etc. Most of the time, particular average losses are much more common than general average losses.²⁰² That is why majority of marine claims for marine insurance underwriters any were in the world but also in Ethiopia is PA claims.

3.7.2.2 Principle of General Average (GA)

The concept of GA is very ancient, having its roots in Rhodian law and having been adopted into the „Digest of Justinian“, and it is said that its origins date back to at least 1000 BC.²⁰³ The ancient law of GA was incorporated into a number of national legal systems.²⁰⁴ There is no international convention dealing with GA. GA involves an intentional and extraordinary sacrifice of an interest in a ship or cargo carried on board to avert a danger threatening the common adventure and it is done for the benefit of all interests.²⁰⁵ The loss incurred by the sacrifice is not left on the interest, upon which it has fallen, but all interests – for whose benefit the sacrifice has

¹⁹⁹ *ibid.*

²⁰⁰ *Origin and Development of Marine Insurance (n 60).*

²⁰¹ *ibid.*

²⁰² *ibid.*

²⁰³ Principle of General Average <<http://www.lloydslistintelligence.com/llint/print-article.htm?document>>, „accessed 18 July 2017“.

²⁰⁴ *ibid.*

²⁰⁵ *ibid.*

been made – contribute, rateably, in proportion to the saved values, as they are assessed at the place and time the adventure ends.²⁰⁶ The YAR define a GA act in rule A uniformly as:

“There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure”.²⁰⁷

The principle of GA dictates the notion of common justice, equity, as well as mercantile custom, public policy and natural justice.²⁰⁸ There is GA when the ship, cargo and freight are exposed to the same marine risks, one of them makes sacrifice to avoid the imminent danger they encounter or incur extraordinary expenses for general safety. When the venture is successful the loss or expenses incurred would be assessed up on ship, cargo and freight in proportion to the share of each in the adventure.²⁰⁹ When GA Act declared the extraordinary expense and sacrifice incurred are adjusted according to the interpretation of York-Antwerp rules. These rules are lettered rules from (A to G) and numbered rules from (I-XXIII) which qualify the general principles.²¹⁰

The YAR of GA being a private agreement were first developed in 1890 and to adapt the changing situations it have been amended in 1924, 1974, 1994 and 2004. These amendments are the result of conferences of the representatives of mercantile interests from many nations in the world. These rules are as private agreements are legally binding by way of incorporation into national law, charter party agreements and bill of lading issued.²¹¹

Most GA adjustments are today drawn up on the basis of the YAR.²¹² The most recent set of rules dated, 2004, were the result of pressures imposed by cargo insurers. The fact that a GA act can occur in any international waters, or on the high seas, raises the question of which law and jurisdiction should apply to the GA adjustments.²¹³ But, if the rules are incorporated in to the bill

²⁰⁶ Chuah (n 1)487.

²⁰⁷ Rule 1 of York Antwerp rule of 1994.

²⁰⁸ Principle of General Average (n 203)

²⁰⁹ *ibid.*

²¹⁰ *ibid.*

²¹¹ *ibid.*

²¹² *ibid.*

²¹³ Principle of General Average (n 203).

of lading, they will govern the adjustment of general average.²¹⁴ The principle of GA also incorporated under maritime of code Ethiopia in its Art. 251 and defines a General Average act as: “There is a GA act when and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.” This definition is similar with „Rule A“ of 1924 York-Antwerp rules. In addition, the principle of GA incorporated under clause 16 of bill of lading issued by Ethiopian shipping and logistics service enterprise.²¹⁵

²¹⁴ *ibid.*

²¹⁵ It is incorporated on bill of lading issued by ESLSE.

CHAPTER FOUR

4. THE LAW AND PRACTICE OF WAREHOUSE TO WAREHOUSE MARINE CARGO INSURANCE IN ETHIOPIA

4.1 Origin and Development of Marine Insurance in Ethiopia

The emergence of insurance business (general insurance) in Ethiopia was closely linked to foreigners and foreign companies.²¹⁶ Foreign insurance company agents and banks were underwriting in insurance for domestic business men or companies or foreign companies working in Ethiopia. The development of modern insurance in Ethiopia is traced to the bank of Abyssinia which was established in 1906. The bank had been acting as an agent for a foreign insurance company to underwrite fire and marine policies.²¹⁷

During imperial regime the first domestic insurance company, namely, Imperial Insurance Company of Ethiopia Ltd was established in 1951. Its shareholders were some Ethiopians and a British group of companies.²¹⁸ This insurance company and other agents of foreign companies were underwriting marine insurance as one of their insurance products.²¹⁹ In June 30, 1954 there were 17 foreign insurance companies operating insurance business through agents which reached in 1970s to 15 domestic and 33 foreign insurance companies which were operating in fire, marine, life, and accident insurance business.²²⁰

The Derg regime, which followed the path of command economy, nationalized all private insurance companies. The Provisional Military Administration Council (PMAC) issued Proclamation No. 26/1975, which was cited as the “Government Ownership and Control of the Means of Production”. Under this Proclamation, banking and insurance were categorized as business to be undertaken exclusively by the government. Consequently, thirteen private

²¹⁶ Hailu Zeleke, Insurance in Ethiopia: Historical Development, Present Status and Future challenges (August 2007)41.

²¹⁷ *ibid.*

²¹⁸ *ibid.*

²¹⁹ *ibid* 44.

²²⁰ *ibid.*

insurance companies that were operating insurance business at that time were nationalized.²²¹ The nationalized companies were merged into one government-owned company, i.e. the Ethiopian Insurance Corporation (EIC). EIC was established effective from January 1, 1976, by Proclamation no. 68/1975. Hence, EIC monopolized Ethiopian insurance market until 1994.²²² The corporation was selling various general insurance products, of which marine insurance was one.

After the liberalization of the financial sector in 1994, the Ethiopian insurance market has been opened up to local investors. During the EPRDF regime, with the path of market economy, issuance of Proc. 86/1994 permitted the establishment of private insurance companies in the country. As per the Proclamation, investment in insurance business has been restricted to domestic investors only. After liberalization of financial sector Universal Insurance Company was the first insurance company established in August 1994. But this company later on was closed down as a result of supervisory measures.²²³ Then Lion insurance company was established in October 1998, which later merged with United Insurance Company (S.C) in October 2000. This merger constituted the first voluntary merger of insurance companies in the history of the Ethiopian insurance industry.²²⁴ During 1994 National Insurance Company of Ethiopia, AIC, AFIC, NILIC and Nyala Insurance S.C. were established. Currently, there are 17 insurance companies operating insurance business in Ethiopia. Among non-life insurance business all insurance companies underwrite marine cargo insurance cover from warehouse (named country), port of loading, and port of discharge to final destination (warehouse or dry port).

Practically, there is simple procedure to request marine cargo cover for imported cargoes. Underwriting companies require cargo owners first to fill marine cargo proposal form, about type of cover, means of transport (sea or air), voyage from (more commonly port of loading or named country), nature of packing and nature of cargoes.²²⁵ In addition, cargo owners are required to

²²¹ *ibid* 73.

²²² *ibid* 74.

²²³ *ibid* 91.

²²⁴ *ibid*.

²²⁵ Interview with, Bethlehem Mekbib, Director, Underwriting and Technical Services, UNIC (S.C), (Addis Ababa, Ethiopia, 26 July 2017) and Interview with, Serkalem Bekele, Main Branch Manager, NIC (S.C), (Addis Ababa, Ethiopia, 15 May 2017)

bring sale contract or Performa invoice or commercial invoice to determine the value or sum insured of their cargos.²²⁶ Then underwriting companies issue marine cargo cover based on chosen ICC (A, B and C) 1/1/82 or 1/1/2009. In practice dominantly underwriting companies issue marine cargo cover based on ICC A (all risk) of any version commonly and ICC (C) issued occasionally for imported used cars, metals, coal and other goods which are not susceptible to high marine risks. Underwriters of the companies consider port of loading stipulated under Performa or commercial invoice rather than agreed INCOTERM.²²⁷ Any marine insurance policy must specify the following save annex of any institute cargo clause with its version:

- ✚ Name of the assured or person who affect the insurance on his behalf.
- ✚ Subject matter (goods) insured. Anything which can be valued in money's worth and which is exposed to maritime risk for lawful purpose may be insured.
- ✚ Risk insured against and voyage or period or both covered by the insurance.
- ✚ Sum(s) insured or invoice value and Name(s) of insurer(s).²²⁸

4.2 Maritime Transport Policy and Laws of Ethiopia

4.2.1 Conceptual Underpinning of Transport policy of Ethiopia

Ethiopia is a land locked country which is found in the horn of Africa. The Ethio-Djibouti corridor serves as the main gate for transit of import and export trade of the vast Ethiopian hinterland. The corridor facilitates the transit of import and export trade.²²⁹ In general, more than 80 percent of the import and export of goods to and from Ethiopia is carried by marine transport.²³⁰ In relation to INCOTERM most of the bulk cargo is imported on CIF basis whereas, general cargo is transported according to liner terms and on FOB basis. According to some ESLSE reports, FOB transactions account for about 60% and above of the total general cargo

²²⁶ *ibid.*

²²⁷ Interview with, Ato Megbaru Abera, Oppression Officer, EIC Central Addis District, (Addis Ababa, Ethiopia, 20 June 2017), Interview with, Ato Hermon Tamru, Underwriting Officer II , AIC (S.C) Main Branch, (Addis Ababa, Ethiopia, 28 December 2017) and Interview with, W/ro Kalkidan Melkamu, Branch Operation Division Head, NILI C (S.C), (Addis Ababa, Ethiopia, 15 December 2017).

²²⁸ Maritime Code (n 23) Art. 292.

²²⁹ Alemu Ambaye Sebhatu, *An Analysis of the Import Trade Logistics Service Trough the Ethio-Djibouti corridor* (MASTER OF SCIENCE in Maritime Affairs, Dissertation, World Maritime University 2005) <www.Commons.WMU.se/cgi/viewcontent>, „accessed 20 October 2017“.

²³⁰ Abebe Tefera, *An appraisal of the Need of Ethiopia to Adopt the Rotterdam Rules* (Lap Lambert Academic Publishing, 2017)29.

imports.²³¹ Maritime transport as an industry and as a subject of the maritime sector has global dimensions and does not render itself to full national policy frame work without being circumscribed by multilateral instruments and considerations.²³²

Many developing countries are net importers of goods and services as opposed to their export trade. Similarly, our country Ethiopia as a developing country is net importer of goods and services having few export trade. When countries are dominantly importers or exporters of goods they have their own import carriage policy that protects their economy better. That means the agreement of suppliers and importers in relation to INCOTERM highly affect the overall economy of a given state. Hence, buyers and sellers need to understand the trade terms and they have to ensure that they are using appropriate trade terms best situated to their respective obligations.²³³

Apparently, terms of trade exercise have a considerable influence over the benefits the country receives from the maritime industry. Buying FOB and selling CIF allows the trader to nominate the carrier of their choice.²³⁴ The carriage policy of any state is all about clear and implicit recognition of INCOTERMS by making their national carrier the only actual carrier of imported goods.²³⁵ Hence, many developing countries in order to protect their national carrier (shipping industry) and in order to encourage their local insurance companies they recognize FOB delivery term as opposed to CIF or other INCOTERMS during sea born trade.²³⁶

In international trade many developed countries are dominant exporters of goods or suppliers of goods for developing countries. Thus, exporting countries developed legal framework for freight control mechanism than implicit recognition of any of INCOTREMS.²³⁷

Generally, the recognition of any of the INCOTERMS as marine transport policy has its own impact on the macro economy of any state. It has cost (high freight), foreign currency (saving of

²³¹ Alemu Ambaye (n 229).

²³² Abebe Tefera (n230).

²³³ Principle of Marine Insurance –CCI (n 108)

²³⁴ *ibid.*

²³⁵ *ibid.*

²³⁶ Interview with Ato Asfaw Siyoum, Senior Legal Officer, ESLSE, (Addis, Ethiopia, 27 June 2017).

²³⁷ Interview with Chief Eng. Alemu Ambaye, Deputy CEO, Shipping Service Sector, ESLSE, (Addis Ababa, Ethiopia, 27 June 2017).

foreign currency), income (from national carriers and local underwriting companies), transparency (avoiding negotiation of high freight cost through underground mechanism) and security impact on import cargos during international trade in goods.

4.2.2 Advantages of FOB Sea carriage policy of Ethiopia

The advantages of FOB for import trade and CIF for export trade is driving need for any country in the world to choose any of the INCOTERM as macroeconomic policy. The following are justifications of recognitions of FOB marine import policy.

- a. Freight control:** - If parties to international sale conclude FOB the choice of carrier is left to buyer. The buyer will choose national carrier for main carriage (sea carriage and land transit) and marine insurance from local insurance companies. In FOB sale contract freight cost for main carriage and insurance premium is not added to invoice value of goods as opposed to CIF contract. Due to this fact FOB purchase of goods will avoid extra tariff or freight through underground agreement between supplier and buyer in cross border trade.²³⁸
- b. To check seaworthiness of foreign vessel:-** Under general maritime law, a vessel owner owes an absolute duty to a seaman to provide a seaworthy vessel which withstand ordinary vagaries of the sea and reasonably fit for its intended use, and that duty cannot be delegated to anyone else. The seaworthiness duty to the entire period of the voyage was justified by the developments in safe shipping requirement in line with the ISM code which puts in place the procedures for management and operations of ships.²³⁹ In short, a vessel is seaworthy when it withstands ordinary vagaries of the sea (tides, storm etc).
- c. Saving of foreign currency:** - If parties to international trade agree on a FOB terms the cost of main carriage and insurance is arranged in local currencies.²⁴⁰ This means, payment of ocean freight and insurance premium is paid in local currency (birr). This in effect reduces the cost of goods in foreign currency.

²³⁸ Interview with Ato Abebe Tefera Tebeje, Policy Research and Legal Affairs Directorate Director, Ethiopian Maritime Affairs Authority, (Addis Ababa, Ethiopia, 16 December 2017).

²³⁹ *ibid.*

²⁴⁰ *ibid.*

d. Protection of national carriers: - ESLSE vessels cannot compete with vessels of maritime nations (panama flag state, Liberia flag state, France, England and Netherlands etc). Many of liner shipping of maritime nations may offer low freight rate because they can get profit from bulk carriage. However, liner vessels of ESLSE with limited port of call and low freight will not survive in shipping industry by competing with vessels of marine nations. Hence, to protect domestic carriers our country recognized FOB import policy which gives ESLSE monopoly of import carriage.

Ato Abebe Tebeje stated that the monopoly of maritime sea carriage by ESLSE has its own disadvantages. These are:

- **Absence of better freight cost:** - Ethiopian importers may get low freight cost of carriage when the import is open for choice of foreign vessels. However, practically ESLSE is collecting high freight cost by mechanism of slot chartering of foreign ships. On the other hand, since ESLSE monopolized the import carriage the enterprise has set its own freight tariff for slot chartering and for its own vessels without any competition. This privilege increased the profitability of the enterprise.
- **Inefficiency of ESLSE:** - The number, structure and tonnage of Ethiopian ships this day cannot accommodate goods imported in Ethiopia. Turn key projects and industrial parks in Ethiopia needs importation of unusual machines and raw materials which are beyond the efficiency of Ethiopian vessels. To accommodate this problem the ESLSE enacted waiver directive which allow importers to choose foreign vessel. However, to accommodate the problem waiver directive is not sufficient. The author believes the federal government to consider the issue and design policy and law which make marine transport competitive.

4.3 Legal Regimes Governing FOB INCOTERM in Ethiopia

In a contract for the sale and transportation of goods, a buyer's responsibilities begin at the point where seller's responsibilities end. A good rule of thumb when doing business in international trade is that you should buy FOB and sell CIF.²⁴¹ Why is this good rule to follow? The reason is

²⁴¹ Should I Buy CIF or FOB?-More than Shipping < <https://www.morethanshipping.com>>, „accessed 20 September 2017“.

very obvious. When you sell CIF you can make a slightly higher profit and when you buy FOB you can save on costs. Importers generally buy CIF if they are new in international trade or they have very small cargo. When you buy CIF you might end up paying duty on the freight and insurance charges your supplier adding on. The freight and insurance charges are not deductible because it is very difficult to separate those from the actual invoice value of goods.

However, buying FOB simply has two major benefits over CIF. You have a better control of the freight and the freight cost. The cost is always important and you will have better chance of gaining a more competitive freight rate.²⁴²

In Ethiopia there are many foreign exchange regulations or directives issued by NBE which implicitly incorporate FOB importation of goods.²⁴³ These foreign exchange directives clearly show the policy choice of federal government towards saving of foreign currency in import trade. One of my interviewees from NBE foreign exchange directorate explains that due to shortage of foreign exchange in Ethiopia importers are allowed foreign currency for FOB value of goods.²⁴⁴ During Imperial and Derg regimes with policy objective to encourage the development of domestic insurance companies import trade was agreed up on FOB dominantly and CIF rarely.²⁴⁵ Though there is interruption of using FOB delivery term during change of government, FOB sale contract recognized as business culture in Ethiopia.²⁴⁶

During EPRDF regime from transitional period up to 1990 E.C Ethiopia has no marine transport directive or circular which clearly oblige importers to negotiate FOB or to nominate national carrier. Hence, during this period majority of goods are imported in Ethiopia under CIF or C & F delivery term dominantly and FOB arrangement occasionally.²⁴⁷ CIF import gives a right to suppliers to nominate their own vessels for ocean carriage up to port of Djibouti. During this

²⁴² *ibid.*

²⁴³ These are FXD No. 1/1977 under Art. 49 (4) stated that producing adequate insurance coverage from EIC is condition precedent to get foreign exchange, Foreign Exchange Amendment 3, Notice no. 1/1977 and Notice no. 5/1982 stipulated that importer under LC required to produce adequate insurance cover from any insurance company duly licensed to operate in Ethiopia, Directive no. FXD/07/1998 under Art. 5 (1) (d) stipulated that importer under LC is required to submit insurance certificate from licensed local insurance company, Licensing and Supervision of Insurance Business Directive no. SIB /17/98 defined marine insurance and stated that marine insurance is issued “up on goods, merchandise or property of any description on board vessel.”

²⁴⁴ Interview with Anonymous person, NBE (Addis Ababa, Ethiopia, 27 June /2017)

²⁴⁵ Interview with Ato Mitiku Abdissa (n 9).

²⁴⁶ *ibid.*

²⁴⁷ Interview with Chief Eng. Alemu Ambaye, (n 237).

time since Ethiopian shipping line (the current ESLSE) is not in a position to compete with foreign vessel in terms of freight and speed the enterprise sustained loss.

Accordingly, during 1990 the research made by Ethiopian shipping line and which is presented for Prime Minister Office for policy choice reveals that CIF import has huge impact on overall economy of Ethiopia especially on failure of Ethiopian shipping line.²⁴⁸

The research reveals also in CIF contract since the seller has the opportunity choose his own carrier; our country is losing foreign currency through non-transparent and inflated freight system by foreign carrier.²⁴⁹

In addition, to protect infant transport industries (ESLSE) from other liner shipping companies (because they offer lower freight rate) recognition of FOB import policy is highly recommended.²⁵⁰

Generally, FOB import policy provides greater control over shipping process, related shipping costs and overall cost of goods.

Globally, there are two prevailing mechanisms of solving the above problems.

A. Establishing legal frame work for freight control mechanism

This mechanism is a system used by developed world to control freight in international trade especially import trade. Among developed world USA and many of European countries follow this approach to control no-transparent and inflated freight during importation of goods. Moreover, Chief Eng. Alemu Ambaye explained that this mechanism requires international capacity. These countries mostly have strong and well regulated antitrust law. This approach requires well organized and developed internal capacity to control abuse of foreign currency under the guise of inflated and abused freight cost.

B. Implicit freight control mechanism

If any country obliges importers to negotiate FOB delivery term since the buyer nominate national carrier, the country implicitly control inflated freight cost agreed between supplier and buyer. This approach was followed by many developing countries including Ethiopia. From 1992

²⁴⁸ *ibid.*

²⁴⁹ *ibid.*

²⁵⁰ Interview with, Ato Abebe Tefera Tebeje (n 238).

E.C Ethiopia recognized indirect freight controlling mechanism.²⁵¹ The CIF delivery term was susceptible to non-transparent and over inflated freight.

To overcome the above problems, in 1990, 1992 and 2003 the Prime Minister's Office, Public Enterprise Supervision Authority and Ministry of Finance and Economic Development issued letters/circulars which obliges FOB importation of goods for marine transport.²⁵² These circulars clearly show the policy choice of the country in relation to INCOTERMS.

However, without any legislation (proclamation, regulation or directive) by concerned organ it is very difficult to say Ethiopia has adequate legal frame work on adoption of FOB INCOTERM. But it is possible to say these letters/ circular shows the policy choice of Ethiopia on restriction of sea born trade carriage by recognizing FOB import trade. However, it very difficult to say Ethiopia has consolidated policy frame work on choice of INCOTERM for import trade.

Save the adequacy and publicity of FOB marine transport policy of Ethiopia, FOB purchase of goods obliges Ethiopian importer to arrange marine cargo insurance from locally established insurance companies from port of loading up final destination warehouse of buyer or named place.²⁵³ The arrangement of marine cargo cover by local insurance companies contributes a lot for growth and development of local underwriting companies.

As opposed to marine transport, Air cargo transport is liberalized in Ethiopia. Ethiopian Civil Aviation Authority issued a circular on March 6/2002, no. 05/2002 on "**liberalization of Air transport with respect cargo operations**". This circular eliminated the need for Ethiopian Air Line waiver in regards to cargo and charter operations. In addition, all charter company has to use Ethiopian Air lines" ground handling crew.²⁵⁴ That is why in air cargo transportation Saudi

²⁵¹ Interview with Chief Eng. Alemu Ambaye (n 237).

²⁵² Directive issued by public enterprise supervision Authority No. መደ1-811/4 ጥቅምት 15/1992 ዓ.ም፣ Directive issued by D/Prime Minister Office No፣ ጠ80-ሐ3/01/01, ግንቦት 16/1992 ዓ.ም and Directive No. ጠም-አጠ74/01/01 መስከረም 06/1990 ዓ.ም. Under the directive Ethiopian shipping and logistic enterprise recognized as an actual sea carrier by incorporating FOB importation of goods. This directive recognized indirect freight controlling mechanisms. In addition the directive become a source for NBE to issue directive on foreign currency permit and Ethiopian shipping and logistics enterprise to issue directive on waiver of Ethiopian shipping and logistics enterprise. (All documents attached)

²⁵³ Import and Export Procedures in Ethiopia <<https://www.2mercato.com>>articles>24>, „Accessed 29 June 2017“.

²⁵⁴ Bemnet Aschenaki, Transport Costs in Ethiopia: An Impediment to Exports? <www.siteresources.worldbank.org>, „Accessed 22/06/2017“.

Arabian Air Line, Emirate Air Line and other air line participate in cargo transportations in Ethiopia.

From neighboring countries, in Kenya the most commonly used INCOTERM is CIF for imports which entail the seller paying for insurance and freight from port of departure to port of destination and FOB for exports which implies that the buyer pays and arranges for insurance and shipment from the port of loading to the port of discharge. As a result of this practice the country losses foreign currency, revenue via taxes on transport and insurance, employment opportunities for its citizens. The development of the local transport and insurance sectors is also adversely affected.²⁵⁵

4.4 Waiver of FOB INCOTERM in Ethiopia

The Ethiopian government recognized FOB INCOTERM as nationwide import policy. However, due to different reasons under exceptional circumstance waiver of FOB is given to importers by ESLSE. The preamble of waiver directive incorporated the following policy guide lines of the Ethiopian government. (**Document attached**).

- ✓ The government believes that leaving choice of carrier to foreign exporting company in import export trade is disadvantageous to the country. Because if our country adopts FOB delivery term the choice of carrier is up on Ethiopian importer.²⁵⁶
- ✓ Since the country has limited foreign currency with regard to fright cost, it will reduce wastage of foreign currency through non-transparent working procedure.
- ✓ Due to the above reasons the Prime Minister Office and Ministry of Finance and Economic Development issued circular or directive which obliged all importers to use Ethiopian vessel unless the ESLSE allows waiver of FOB.²⁵⁷ The ESLSE will give waiver permission to importers in the following cases.

²⁵⁵ Hand Book on Importing and Export in Kenya <<https://www.kenyaembassy.com>>, „accessed 29 June 2017“.

²⁵⁶ Directive issued by ESLSE, **ዌይቨር ፈቃድ አሰጣጥ መመሪያ ቁጥር ዋ/ሥክ/003/2005.**

²⁵⁷ **የኢ.ፌ.ዴ.ሪ የጠቅላይ ሚኒስትር ጽ/ቤት በቀን 16 ግንቦት 1992 እና የገንዘብና የኢኮኖሚ ልማት ሚኒስትር በቁጥር ገ/ኢ/ል/ሚ/1/53/4 በቀን 29/07/2003 ያወጡት መመሪያ።**

1. When it is proved that ESLSE vessels or chartered vessel did not give service in such country or port of call (North/South America, Australia, Yemen, Israel, Lebanon etc.).
2. When ESLSE vessel container carriage service and cargo provided for carriage is less than 20 FT container.
3. When ESLSE vessel has container carriage service only and bulk cargo provided for carriage.
4. Unusual or irregular cargo or out of gauge cargo. ESLSE has no heavy lift vessel which carries unusual cargo. Heavy lift vessels are quite amazing vessels, built to load, carry and discharge large, unusual shaped cargoes that will simply not fit inside the holds of conventional vessels.
5. Cargoes imported to the country by loan or aid (donors) up to turn key projects.
6. When cargoes are needed for country development in emergency situation and the ESLES vessel schedule is busy.
7. When it is proved that due to fault of suppliers the cargo is loaded by other country ships.
8. When the buyer unknowingly concludes sale contract on C&F or CIF. On the other hand, the directive stipulated conditions fulfilled to get waiver permit, power of granting waiver permit and exceptional situations waiver can be granted without evidence.²⁵⁸ Generally, unless the above conditions are fulfilled in principle Ethiopian importers are required to buy cargoes on FOB terms and nominate national carrier (ESLSE).

4.5 Conceptual Framework of Warehouse to Warehouse Marine Cargo Cover

Marine cargo insurance involves foreign trade across oceans, but the cargo may also be transported within a nation or between nations on inland water ways. In case of warehouse to warehouse marine cargo cover insurance attach to the cargo from the time it leaves the warehouse or place where it is stored and named in the policy and commences its voyage till it

²⁵⁸ Directive of waiver (n 256) Art. 6. This waiver permit is granted when the law of export country recognized CIF import and when importer purchase goods based on Franco Valuata and Cash against Document (CAD).

reaches the warehouse at the port of destination mentioned in the policy. Literally, warehouse to warehouse marine cargo cover means marine cover issued to cover risk of loss or damage to goods from the seller's warehouse to the buyer's warehouse and includes risk occur during land transit to port of loading, main (ocean) carriage and consignee's country risk occur during land transit incidental to sea voyage. MIA of 1906 goes on to consider mixed sea and land risks in which connection it is provided in section 2(1) as follows:

“A contract of marine insurance may, by its express terms, or by usage of trade, is extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage.”

This sub-section does not define a “contract of marine insurance” but it states that, where such a contract is already in existence it may be “extended” so as to protect the assured against losses on any land risk which may be incidental to any sea voyage. The provisions of section 2(1) of the Act opt to cover a traditional marine cargo insurance written on a warehouse-to-warehouse basis including land risks incidental to sea voyages and were no doubt drafted with such insurances in mind. The critical issue for this sub-section to apply is the extent to which there is significant exposure to maritime perils.²⁵⁹

When cargo is insured for a transit which include a sea voyage for the greater part of the journey that constitute “marine insurance” as there is sufficient exposure to maritime perils. For example, in *Leon v. Casey*, in connection with an order for ship's papers, it was held that a policy on warehouse-to-warehouse terms, and institute clauses, for a journey from Cairo to Alexandria and then by sea to Jaffa, was a marine risk. In such circumstances, the “adventure” includes “both the adventure by sea and upon land” so the provisions of the 1906 Act, including, for example, the requirement for reasonable dispatch under section 48, will apply to the land journey as well as the sea voyage.²⁶⁰

In addition, the scope of the marine insurance contract is not restricted to the risk of the sea but also include the risk over land. The Honble Supreme Court in *New India Assurance Co. Ltd v. Hira Lal Ramesh Chand*, held that when a marine insurance contract includes warehouse to

²⁵⁹ Dunt (163)11.

²⁶⁰ *ibid*,

warehouse delivery then such contracts includes risk of inland transit also as they are incidental to the voyage of sea.²⁶¹ This case deals about warehouse to warehouse marine cargo cover issued by underwriting companies.

4.5.1 Transit or duration of warehouse to warehouse marine cargo insurance

The UK MIA of 1906 incorporates marine cargo insurance from port of loading to port of discharge (port to port marine cover). This reflected under rule 4 of the Act as: “where goods or other movables are insured from the loading thereof, the risk does not attach until such goods or movables are actually on board, and the insurer is not liable for them while in transit from the shore to ships.” The phrase from the loading thereof may be particularly pertinent to insurable interest in goods purchased on FOB terms.²⁶²

However, the modern institute cargo clauses have a wider scope adapted to modern transport practices. The 1982 and 2009 ICC (A, B and C) incorporate marine cargo covers from warehouse to warehouse. That is from the moment the goods left the warehouse until they arrived at destination warehouse.²⁶³ The duration clause defined the point at which the risks are the responsibility of the insurer and the point at which the insurer is then relieved of responsibility for the risk.²⁶⁴

Clause 8.1 of ICC (A) first provides that the risk attaches, or in other words, the policy incept, when the goods are first moved in the warehouse for the purpose of transport. This means that the land transit to the port where the ship will sail from is also covered, unlike in the MIA 1906. An insured that does not possess an insurable interest for this part of the voyage will still be covered according to clause 11.2. The cover continues “during the ordinary course of transit”. What is the ordinary course of transit will be a question of what was planned or reasonable in the individual case.²⁶⁵ The term „ordinary“ is deemed to embrace the customary method of carriage relevant to the type of goods and the most direct route to the destination. It includes:

²⁶¹ Sharma and Agrawal (n 98).

²⁶² Dunt (163)12.

²⁶³ Baaz (n 146) 458

²⁶⁴ *ibid.*

²⁶⁵ *ibid.*

- ✓ Delays during which the goods are held up pending inspection by the customs or similar authorities and awaiting arrival of the onward carrying conveyance or vessel.
- ✓ Any customary form of transport incidental to the overseas shipment of the goods, including land, river and canal conveyances (e.g. rail, road transport, barge, lighter).
- ✓ Carriage by air when this is incidental to a shipment by sea.²⁶⁶

4.5.2 Termination of Transit in Warehouse to Warehouse Marine Cargo Insurance

The Institute Cargo Clause (A, B and C) offer three options for termination of marine cover under clause 8.1.1 to 8.1.2:

1. On delivery to the consignees“ or other final warehouse or place of storage at the destination named in the policy. Under Clause 8.1.1 marine cover terminate up on completion of unloading from the carrying vehicle or other conveyance in or at final warehouse or place of storage at the destination named in the contract of insurance.
2. On delivery to any other warehouse or place of storage used for storage other than in the ordinary course of transit or for allocation or distribution. Under clause 8.1.2 and 8.1.3 marine cover terminate up on completion of unloading from the carrying vehicle or other conveyance in or at any other warehouse or place of storage, weather prior to or at the destination named in the contract of insurance, which the assured or their employees elect to use either for storage other than in the ordinary course of transit or for allocation or distribution. When the assured or their employee elect to use any carrying vehicle or other conveyance or any container for storage other than in the ordinary course of transit.
3. On the expiry of 60 days after the completion of discharge over side of vessel at the final port of discharge. Termination is a question of fact determined by „whichever shall first occur“ and not a choice exercised by the insured. The time limit of 60 days is prescribed to ensure early clearance of goods by consignee. Insures extend the time limit, at extra premium, in genuine circumstances causing delay in clearance.

²⁶⁶ *ibid.*

The term over side vessel creates difficulty in case of multimodal transport of goods; weather 60 days is counted from discharge of goods at the port of Djibouti or dry port (Mojo, comet or Galan dry port). The term over side vessel seems to refer Djibouti port or any port of discharge. May interviewee also shares the difficulty of the term over side vessel as the commencement date of 60 days transit clause in case of multimodal transport.²⁶⁷ He further stated that the term over side vessel seems to incorporate port to port shipment. Ato Bayeh Kifle, argues that transit clause of 60 days accounted from the day goods discharged from over side vessel (from Djibouti port) to final destination even during multimodal transportation of goods.²⁶⁸ He strongly argue that by referring to vessel arrival notification document, if 60 days transit days are lapsed unless the marine cover is extended for additional days the contract of marine insurance automatically terminated. However, Ato Mitiku Abdissa²⁶⁹ and Ato Belete Getachew,²⁷⁰ stated that the stipulations of clause 8.1.1 of ICC 60 day transit clause should be interpreted by harmonizing the uni-modal and multimodal transport. They argues that in multimodal transport the ordinary course of transit of goods over in dry ports (Humberg rules) and in uni-modal transport ordinary transit of goods over at port of discharge (Hegue rules). Therefore they conclude that 60 days transit clause should be interpreted in case of uni-modal transport from port of discharge and incase of multimodal transport from dry ports as a derived need.

4.6 Legal Regime Governing Marine Cargo Insurance in Ethiopia

Marine insurance is an important component of international trade and commerce and subject to international regulations in every stage of its operations. There is no any international convention on marine insurance. Various institute clauses formulated by the Institute of London Underwriters (ILU) and INCOTERMS may be applied to domestic marine insurance cases reflecting international *lex mercatoria*.²⁷¹ In different literature UK is recognized internationally as being expert in the field of marine insurance.²⁷² Due to this fact the laws and practice of marine insurance in Ethiopia developed from international conventions (Hague

²⁶⁷ Interview with, Ato Ayu Alemu, A/Manager of Litigation and Intervention in AIC (S.C) (Addis Ababa, Ethiopia, December 12/2017)

²⁶⁸ Interview with, Ato Bayeh Kifle, Claims Officer in AFIC (S.C) (Addis Ababa, Ethiopia, December 20/2017).

²⁶⁹ Interview with Ato Mitiku Abdissa (n 9).

²⁷⁰ Interview with Ato Belete Getachew, Director of Central Addis District, EIC (Addis Ababa, Ethiopia, 27 December 2017).

²⁷¹ Marine Insurance (n 77).

²⁷² *ibid*.

convention) and Lloyds of London marine insurance market. Marine insurance covering an international transaction may be arranged by either the exporter or importer, depending upon the terms of sale. The terms of sale are all important in the placing of marine insurance.²⁷³

Generally speaking, legal regime governing marine insurance in Ethiopia is internationally recognized marine insurance policies and clauses (ICC A, B and C 1/1/82 or 1/1/2009) and practices, INCOTERMS, provisions of Maritime Code,²⁷⁴ directives/circulars on carriage policy of Ethiopia, Federal Supreme Court Cassation decision if any, Insurance Business Proclamation 746/2012 and NBE directives on insurance business and other relevant laws of Ethiopia.²⁷⁵ In principle, marine cargo cover is issued from warehouse of suppliers to warehouse of buyers commonly. However, who has an obligation to insure the movement of goods from supplier's warehouse to final destination warehouse will be determined by agreed INCOTERM. Marine cargos cover from warehouse of seller, port of loading and inland marine cover subject to internationally recognized laws, principles, insurance policies and domestic laws and regulations. However, there is no international convention on marine insurance.

4.7 Warehouse to Warehouse Marine Cargo Insurance Underwriting in General

In the context of globalization, maritime transport is the backbone of international trade. Major percentage of world merchandise trade by volume is transported by sea.²⁷⁶ International trade involves transportation of goods from one country to another country by ships, rail, trucks and airplane.²⁷⁷ During this long journey from supplier's country to consignee country there are many perils or dangers the cargo encounters. Traders who import goods insure their goods for their safe arrival as per the agreed upon INCOTERM. Marine insurance contract does not only

²⁷³ *ibid.*

²⁷⁴ Maritime code (n 23), Art. 288 to 356.

²⁷⁵ Other proclamations such as: Multimodal transport of goods proclamation no.548/2007 and Proclamation to amend carriage of goods by land no.547/2007.

²⁷⁶ Hodges (n 22)66.

²⁷⁷ RC Agarwal, Marine Insurance: Nature, Subject Matter and Principles <www.Yourarticlelibrary.com/insurance>, accessed 22 August 2017".

cover maritime perils, it's an insurance contract which covers the liability of consignment from warehouse to warehouse.²⁷⁸

4.7.1 Warehouse to Warehouse Marine Cargo Insurance Underwriting Considerations

In marine insurance, the main risk elements are loss or damage to insured cargo due to various mishaps resulting in the partial or total loss claims. It is important to make sure that the quality of risk and previous experience (loss and insurance history) of clients are given due considerations while pricing and deciding the scope of cover and terms.²⁷⁹

Rate making or insurance pricing, is the determination of rates charged by insurance companies. Generally, premium can be ascertained in marine underwriting either by numerical rating system or by judgment method. The numerical rating system evaluates each and every item and marks are assigned to them according to their merits and degree of influencing risk. Since marine perils are varied, the only numerical rating system cannot be successfully utilized.²⁸⁰ Maritime perils are perils consequent on, or incidental to, the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints and detainments of princes and peoples, jettisons, barratry, and any other perils, either of the like kind or which may be designated by the policy.²⁸¹ Therefore, the varieties of marine perils create difficulty to employ numerical rating system only to calculate premium.

However, tabulations of statistical experience on many risks can serve the purpose as a basis of supplementary factors for the underwriter's judgment. Marine insurance grants protection against a large number of perils which are viewed in relation to the inherent character of a large variety of subject matter of insurance, the effects of seasons, adverse physical forces and trade customs, and the policy conditions. Individual insurance account is used for personal valuation by a leading underwriter who inter into the making of marine insurance rates vary materially. The

²⁷⁸ Sharma and Agrawal (n 98).

²⁷⁹ Marine Cargo Insurance Underwriting <www.interfima.org/publications/underwriting>, „accessed 18 September 2017“.

²⁸⁰ Factors Influencing Rate Making in Marine Insurance <<https://edunote.com/factors-influence/>>, „accessed 20 September 2017“.

²⁸¹ Dunt (163)10.

judgment and personal evaluation is very vital in rate making. There are different marine cargo insurance underwriting considerations.²⁸²

1. **Ownership:** It may happen that two separate ownerships of the same kind of cargo, carried on the same ship and to the same place will command different premium rates. Proper packing, profitable accounts and previous refusal of insurance may determine the rate.
2. **Nature of the cargo:** The type of the cargo, whether it's finished goods, refrigerated goods, pharmaceuticals or machinery makes difference in the underwriting. The difference in hazard between various kinds of commodities, different forms of the same commodities, different shipments, and different types of packing and durability of the commodity may influence the premium rates.
3. **Hazards and Customs:** weather is always a potential hazard at sea, so marine cargo underwriters always consider the seasonal weather along the route of the shipment.²⁸³ The natural forces and topography of the sailing route should be considered. Some natural hazards are permanent while others are of seasonal dangers. References are made to storms, shifting sand bars, shallow water, ice, tides and seaquakes. But also the season or climate at the port of destination may influence the risk. In a certain season the port is busy with a particular cargo. Varying trade customs associated with different commercial routs will influence cargo rates materially. The moral hazard is greater on a certain routes.
4. **Quality and Suitability of the vessel used as a carrier:** The underwriters take into account the fitness of the vessel to carry the particular cargo. The premiums are higher in the case of ship with slower speed due to longer exposure of the cargo. In case of highly perishable goods, moving in large quantities, special types of vessels have been designed to carry such commodities.
5. **Duration of voyage and policy conditions:** Underwriters take into account the length of time. Sometimes, the loading or unloading of cargoes on or from board vessels and protection of the goods while on the dock are considered in calculation of the premium.

²⁸² *ibid.*

²⁸³ Fundamental Factor When Underwriting Marine Cargo Insurance
<<https://yourbusiness.a2central.com/Smallbusiness/Operatingabusiness>>, „accessed 05/11/2017“.

6. **Agreed INCOTERMS:** when parties to international sale contract choose any of INCOTERM, it defines cost, carriage and risk transfer point. Either the buyer or seller will ensure their cargoes as per the agreed INCOTEM. Parties to sale contract insert the agreed delivery term under Performa or commercial invoice and sometimes in packing list.
7. **Miscellaneous Factor:** The operating efficiency or proved experience of ship may affect the risk on the cargo. The method of handling and stowing, trimming of cargo and the regularity of the service, etc., are among various factors to influence the calculation of premium rates. These underwriting considerations taken to consideration by underwriters for warehouse to warehouse, port to port, inland transit before port of loading and after port of discharge as the case may be.

4.7.2 Practical Underwriting considerations in Ethiopia.

Theoretically, there are several underwriting considerations for marine cargo cover as indicated above. Thus, developed countries or marine power countries adhere to the above marine cargo underwriting considerations. However, when we come to marine cargo underwriting considerations in Ethiopia, Bethlehem Mekbib²⁸⁴ and Ato Megbaru Abera²⁸⁵ stated that during marine cargo underwriting there is no detail underwriting consideration in fixing rate or calculation of premium. They further explained that, in practice for marine cargo underwriting an importer brings only Performa or supplier invoice to request the underwriter for marine cargo cover for banks LC requirement. Then cargo owner fills the types of cargo, voyage or conveyance and agreed value or sum insured on marine declaration form or proposal.

They explained that, lack of competitive rate and poor consideration of risks and lack of awareness on type and nature of packing of cargoes stated on the Performa invoice are some of the challenges for marine cargo underwriting in Ethiopia. Further, they stated that many importers consider marine transport as less risky. Due to this perception of importers practically it is very difficult for underwriter to issue marine cover by competitive premium by employing detail underwriting considerations.

²⁸⁴ Interview with, Bethlehem Mekbib, Director, Underwriting and Technical Services, UNIC (S.C), (Addis Ababa, Ethiopia, 26 July 2017).

²⁸⁵ Interview with, Ato Megbaru Abera, Oppression Officer, EIC Central Addis District, (Addis Ababa, Ethiopia, 20 June 2017).

In addition, Ato Hermon Tamru,²⁸⁶ W/ro Kalkidan Melkamu²⁸⁷ and Ato Sisay Dejene²⁸⁸ agree on the relevancy of INCOTERMS for marine cargo underwriting from warehouse to warehouse, port to port, land transit before and after sea voyage. But they stated that, practically they are not familiar with all INCOTERMS and with their risk transfer point in case of marine cargo underwriting except FOB and CIF.

On the other hand, when we come to cargo owners, Ato Addis G/hiwot,²⁸⁹ and W/rit Meareg Hadush,²⁹⁰ explained that in international trade Performa invoice is the beginning of sale contract and a document which is useful to request marine cargo insurance. They also stated that except FOB and CIF INCOTERM they are not familiar with other INCOTERMS with their functions and versions. Moreover, they explained that they are not familiar with directive or circular and the general policy of the country which obliges FOB importations of goods during sea born trade. They also disclosed that they are not familiar with marine cargo policy ICC (A, B and C) with its scope of cover and versions.

The biggest Toyota car importer and authorized economic operator in Ethiopia MOENCO (s.c) is the major marine cargo cover buyer in Ethiopia. Ato Endalafir Yinberber²⁹¹ stated that almost 100% of sea carriage is arranged based on FOB delivery term. He explained that though majority of import is arranged based on FOB delivery term, he is not familiar with import carriage policy of the country in relation to INCOTERM. He further explained that sometimes there is CIF import of goods in case of francovaluta purchase of goods by NGO's and Embassies. In relation to marine cargo insurance the company arranges cover from local insurance companies.

An employee from Sugar Corporation foreign purchase stated that the majority of foreign purchase is effected on FOB basis.²⁹² He further explains CFR and CIF purchase are arranged occasionally. He stated also dominantly marine cargo insurance is also arranged by EIC. He

²⁸⁶ Interview with, Ato Hermon Tamru, Underwriting Officer II , AIC (S.C) Main Branch, (Addis Ababa, Ethiopia, 28 December 2017).

²⁸⁷ Interview with, W/ro Kalkidan Melkamu, Branch Operation Division Head, NILI C (S.C), (Addis Ababa, Ethiopia, 15 December 2017).

²⁸⁸ Interview with, Ato Sisay Dejene , Junior underwriter, AFIC (S.C), (Addis Ababa, Ethiopia, 25 November 2017).

²⁸⁹ Interview with, Ato Addis G/hiwot, Transistor, Labora International PLC (Addis Ababa, Ethiopia, 11 December 2017).

²⁹⁰ Interview with, W/rt Meareg Hadush, Office Manager, Classic Import and Export (Addis Ababa, Ethiopia, 07 December 2017).

²⁹¹ Interview with, Ato Endalafir Yinberber, A/ Manager of Import and Clearance Division, MOENCO (Addis Ababa, Ethiopia, 11 December 2017).

²⁹² His name is not stated based on his consent.

further stated that the type of cover incorporated in ICC (A, B and C) is not known by employees of the corporation in detail including INCOTERMS.

4.8 The Law and Practice of Warehouse to Warehouse Marine Cargo Insurance Underwriting in Ethiopia

Marine insurance is concerned with overseas trade. International trade involves transportation of goods from warehouse of supplier to warehouse of buyer. There are many dangers during the transshipment. The term warehouse to warehouse clause is defined as: “Coverage of marine insurance attaches when the cargo leaves the warehouse at the place named in the policy, and continues during the ordinary course of transit after discharge at the final destination.”²⁹³ This warehouse to warehouse clause is enshrined under clause „8“ of ICC (A, B and C). This warehouse to warehouse marine cargo cover presupposes EXW delivery term. In this delivery term the buyer collects the goods bought in the warehouse and factory of supplier. Thus, in EXW delivery term risk, cost and carriage passes to the buyer at the warehouse of supplier.

Marine cargo insurance underwriting can be port to port, warehouse to warehouse (supplier’s country risk, sea carriage and buyer’s country risk coverage) or combination of the two. Warehouse-to-warehouse policies cover the goods from the time they leave the exporter’s premises, warehouse or factory until they reach the importer’s premises. They are becoming increasingly common because it is simpler to buy one policy than to concern yourself with insurance on every carrier.²⁹⁴ What determines who must buy the insurance? It is the shipping term that is agreed upon. The definition of each INCOTERM says who is responsible for insuring the cargo. As explained under this chapter the carriage import policy of Ethiopia is FOB, unless waiver of FOB given to cargo importers. Sales contract arranged based on FOB delivery term the consignee has insurable interest to insure the movement of goods from port of loading to port of discharge (in case of unimodal transport) or up to final destination dry port or warehouse (in case of multimodal or combined transport).

Under Mar. Code of Ethiopia the underwriter covers “damage to and loss of things insured resulting from storm, shipwreck, stranding, collision, jettison, fire, explosion and in general

²⁹³ Glossary of Marine Insurance and Shipping <www.risk-management-arim-studiu> ,accessed 18 July 2017“.

²⁹⁴ Weiss (n 62)154.

arising out of all perils of the sea and force majeure are at the risk of the underwriter".²⁹⁵ The code seems to incorporate all risk cover ICC (A, B and C). Exclusions/exceptions of all risk cover stipulated under the code as exclusions of ICC (A) marine cover.²⁹⁶ It obvious that the code and ICC incorporated marine cargo cover from warehouse of supplier, port of loading, main carriage (ocean carriage) port of discharge (land transit) to final destination (warehouse or dry port) save the agreed INCOTERM.

As explained above, Ethiopia adopted for FOB term of delivery for sea born trade. If this is the case why underwriting companies in Ethiopia underwrite marine cargo cover from warehouse of seller to warehouse of buyer is central theme of the study. W/rit Meseret Tilahun,²⁹⁷ stated that there practice of marine cover from warehouse of suppliers to warehouse of buyer (warehouse to warehouse marine cover) as opposed to FOB carriage policy. She believes that the practice of issuing warehouse to warehouse marine cover developed in Ethiopia due to different reasons:-

- a. Importers demand of warehouse to warehouse marine cargo cover.** Some importers need their cargo to be insured from warehouse or factory of suppliers up to final destination warehouse. If cargo is damaged before port of loading even though cargo is under suppliers risk cargo insurer need to be compensated by local underwriting companies than claiming foreign suppliers under international law and international forum.
- b. Market situations of underwriting companies.** In Ethiopia the absence of minimum premium rate set by supervisory organ makes competition among underwriting companies" lower premium rates. This market situations forces underwriting companies to write marine cover from warehouse of supplier to final destination warehouse up on choice of cargo owners without consideration of INCOTERMS. The author of thesis observed that some insurance companies underwrite marine cargo insurance from named country to final destination (from China, Italy, Japan and India via Djibouti Mojo/Comet/Galan dry port or named place warehouse). This type of marine insurance underwriting can be termed as warehouse to warehouse marine cover. Underwriting

²⁹⁵ Maritime code (n 23) Art. 303.

²⁹⁶ ibid Art. 309 to 312.

²⁹⁷ Interview with, W/rit Meseret Tilahun, DGM operations in NIC (S,C), (Addis Ababa, Ethiopia, 27 June 2017).

without stating name of port of loading amounts the cover extends for transit of cargo before port of loading.

W/rt Meseret Tilahun, W/ro Meskerem Nigatu,²⁹⁸ Ato Sisay Dejene and Ato Solomon Oli,²⁹⁹ agree on the assertion of W/rt Meseret Tilahun. They stated that they underwrite marine cover from warehouse of suppliers or named country (from Italy, India etc) without consideration of INCOTERMS. In addition, Ato Yasabu Garedeu³⁰⁰ stated that underwriters of insurance companies issue marine cover from named country to final destination though Performa or commercial invoice incorporate FOB delivery term. He illustrates this fact by raising marine policy as example. The company issued marine cover for pipes and fittings bought from china under commercial invoice no: XDIP16026 transported by sea freight voyage from china to Addis Ababa via Djibouti. Under commercial invoice delivery terms is FOB China Sea port. The insured item damaged before port of loading however, the company entertained the claim.

c. Purchase of goods under invoice. Ato Solomon Oli, stated that the since many importer buy goods under invoice (sum insured is less than actual purchase price of goods) due to shortage of foreign currency provided by NBE. In this case when insured goods sustained damage or loss in transit importers opt to repair the damage by their own cost than instituting a claim for the underwriter because the value or sum insured of goods on marine policy is less than the actual price of goods purchased from any country. This practical reality makes the underwriter reluctant to strictly underwrite marine cover based on agreed INCOTERM. Thus, underwriters issue warehouse to warehouse marine cover without considerations of FOB delivery term. He also argues that except few importers majority of individual importers insure their goods only as a fulfillment of LC or foreign currency permit.

Ato Mitiku Abdissa³⁰¹ and Ato Belete Getachew³⁰² stated that warehouse to warehouse marine cargo cover is standard marine cover save the agreed INCOTERM. They further strongly argue that during FOB sales contract supplier's country risk is the responsibility of suppliers whereas,

²⁹⁸ Interview with W/ro Meskerem Nigatu, Underwriting Supervisor in BIC (S, C), (Addis Ababa, Ethiopia, October 20/2017).

²⁹⁹ Interview with Ato Solomon Oli, Main Branch Manager in BIC (S.C), (Addis Ababa, Ethiopia, 22 December 2017).

³⁰⁰ Interview with, Ato Yasabu Garedeu, Non Motor Claims Division Manager, NIC (S.C), (Addis Ababa, Ethiopia, 14 June 2017).

³⁰¹ Interview with Ato Mitiku Abdissa (n 9).

³⁰² Interview with Ato Belete Getachew (n 270).

ocean carriage and buyers country risk is the responsibility of buyer. They firmly conclude that warehouse to warehouse marine cargo cover is incompatible with FOB import cargo policy of the country. On the other hand, underwriting warehouse to warehouse marine cover for goods imported under FOB delivery term creates double insurance. In case of FOB sales contract the transit of goods from warehouse of suppliers to port of loading should be insured by supplier's insurer or the risk is under buyer responsibility. To elaborate the issue of insurable interest for goods imported under FOB INCOTERM the *NWS leather Co Pty Ltd v Vanguard Insurance Co Ltd* case can be seen as an example.

The NSW Leather Co Pty Ltd v Vanguard Insurance Co Ltd is often referred to as illustrating the requirement for an insurable interest in marine insurance law. In *NSW Leather* the insured had an insurance policy, stated to be insurance lost or not lost for consignments of leather that it had purchased FOB Rio Grande from various Brazilian suppliers. The insurance policy contained a warehouse to warehouse or transit clause in the terms of the Institute Cargo Clauses (A) clause 8.³⁰³

„This insurance attaches from the time the goods leave the warehouse or place of storage at the place named in the policy for the commencement of transit, continues during the ordinary course of transit and terminates [on delivery]“.

In *NSW Leather* the goods were loaded in containers but were stolen before the containers were loaded on board the ship. The insurers denied the claim on the grounds that the insured did not have an insurable interest at the time of loss. Under a standard FOB contract, the risk in respect of goods loaded in a sealed container does not pass to the buyer until the container has passed the ship's rail. In the Supreme Court of New South Wales, Justice Caruthers confirmed the rule that an insured purchaser FOB does not have an insurable interest in goods during transit from the seller's warehouse to crossing the ship's rail. The judge held that the transit clause could not operate to extend the cover to an earlier point in time in the absence of an insurable interest.³⁰⁴ This case clearly shows the cargo owner hasn't insurable interest to claim marine cargo cover from warehouse of seller to port loading for goods purchased under FOB term. Again, from this

³⁰³ Daryl Williams, Review of the Marine Insurance Act 1909 (p241). Available at: <https://www.alrc.gov.au/report-91>, Accessed on: 15 November 2017.

³⁰⁴ *ibid.*

case we can infer that FOB delivery term is not compatible with warehouse to warehouse marine cargo cover.

4.9 The Practice of Warehouse to Warehouse Marine Cargo Claims and procedures in Ethiopia

4.9.1 Marine cargo claims

Once underwriting companies issued warehouse to warehouse or port to port or port to final destination warehouse or inland transit (before or after port) marine cargo cover at the time of loss or damage to goods whilst transit the insured institute marine claim against the underwriter. Under the MIA of 1906 to claim successfully under a policy, the seller (consignor) or buyer (consignee) must prove an insurable interest in the goods at the time of loss.³⁰⁵ The purpose of cargo insurance is to indemnify the cargo owner in the event of losses proximately caused by a peril insured against. To get the compensation under marine insurance the owner must inform the insurance company immediately so that the insurance company can take necessary steps to determine the loss.³⁰⁶ Institute cargo clause (A, B and C) under clause 11(1 and 2) regulate marine cargo claims. To make a claim under a marine insurance contract, an insured has the burden to prove:

- ✓ The loss was caused by a peril which was insured against in the contract, and
- ✓ That the alleged cause of loss was the proximate cause.

4.9.2 Cargo claims procedures

In the event of a loss or damage to goods insured under warehouse to warehouse, port to final destination dry port or warehouse, port to port and land transit before and after sea carriage marine cargo cover, the insured is required to follow and fulfill the following procedure and documents case by case basis:-

1. **Inspection at the time of delivery.** Upon delivery, immediately inspect the package in the event that there is physical damage to the package. Any loss or damage found at the

³⁰⁵ Marine Cargo Claims and Recoveries <<https://www.lloyds.com/-/media/...to.../cargoclaims-recoveries-module-3pdf>>, “accessed 20 May 2017”

³⁰⁶ *ibid.*

time of delivery must be recorded on the delivery receipt as an exception. You should set forth the condition of the consignment as specifically as possible. Be sure to keep a copy of the delivery receipt for your own claim file.

2. **Claim Notification to underwriter.** Any loss or damage must be promptly reported to the closest authorized representative of the insurance company so that a surveyor may be promptly dispatched or other appropriate action taken. In the case of occurrences likely to give rise to claims against the underwriter, the assured shall give notice to the underwriter within three working days of his becoming aware of such occurrences.³⁰⁷
3. **Reservation or protest against all carriers in the occurrence of damage or loss.** You must also immediately file a **written** claim against all other carriers that may be potentially responsible for the loss or damage (e.g., truck – railroad – air – ocean). A separate claim should be filed against each such carrier to preserve your rights against those potentially responsible carriers. The written claim should set forth the loss or damage and demand that the carrier pay for such loss or damage.
4. **Documentation required**
 - 4.1. **Original insurance policy.** In case cargo importer institute marine cargo claim, return of marine original policy is necessary.
 - 4.2. **Suppliers invoice(s):** to support the values and also indicate terms of sale.
 - 4.3. **Packing list or weight notes** (where applicable).
 - 4.4. **Delivery order:** this document evidenced by warehouse receipt in port area and truck waybill.
 - 4.5. **Vessel arrival notification:** this document is required from ESLSE in case of unimodal transport (port to port shipment). However, in case of multimodal transportation of goods multimodal transport operator discharge the goods at dry ports. Due to this fact ESLSE prohibit vessel arrival notification as required document for claim process.³⁰⁸
 - 4.6. **Cargo outturn report:** during cargo discharge operation from oversea vessel before shore handling cargo will be tallied by ship agent, stevedore and port authority. Then cargo outturn report will be issued. This document clearly shows whether or not the cargo is discharged from over sea vessel in good condition. This document also available

³⁰⁷ Maritime code (n 23) Art. 320.

³⁰⁸ ESLSE circular wrote to all underwriting companies in Ethiopia by ቁጥር፡ ኮሚሽን/አይ/መስ/0215/2008 ፣ የካቲት 10 ቀን 2008 ዓ.ም.

during port to port shipment. In case of multimodal transport it is very difficult to get this document from multimodal transport operator (ESLSE).

4.7. **Final short land certificate:** When cargo is short landed, short land certificate shall be signed and issued by the master of the ship or by a person duly authorized. Before the final short land certificate is issued, it is customary that provisional short land certificate shall be issued. From the date of discharge of cargo over sea vessel at the port of discharge, if the short landed cargo not be traced within six month, final short land certificate shall be issued by carrier. This certificate will be given to cargo owner from ocean carrier in case of port to port shipment. After this document is provided to cargo underwriter will pay the agreed compensation to the insured.

The case between plaintiff Lion insurance company and ESLSE will illustrate about the effect of short land certificate for marine cargo recoveries.³⁰⁹ In this case the plaintiff insured reinforcing deformed steel bars which is property of Mr Fisseha H/Michael by marine open cover from port of Turkish via Djibouti Addis Ababa warehouse. The insured item (451 bundle metal) when transported by ESLSE vessel from Turkish port to Djibouti port 21 bundles were short landed. Plaintiff after paying birr 429,808.01 to the insured Mr. Fisseha H/Michael instituted a case against ESLSE using its subrogation right. The defendant raised limitation of liability pursuant to Art. 198 (1) of Mar. Code claiming the liability of the carrier is 500 birr per package or bundles. However, the court decided against limitation of liability of the carrier (ESLSE) pursuant to Art. 198 (3) of Mar. Code. To clearly state the decision of the court the study extracted the Amharic argument of the court:-

“በተያዘው ጉዳይ ኮሚሽኒያል ኢንሹራንስ ቁጥር 2105-2 እንዲሁም በእሽግ ዝርዝር ላይ የእቃዎቹ ብዛት እና ዋጋ ተገልጾ ይገኛል። ተከላሽ እነዚህ ሰነዶች አልተሰጡም የሚል መከራከሪያን እስካላነሳ እና ሰነዶቹም ለአንጓዙ እንደሚሰጡ የሚቀርቡን ከመሆኑ አንፃር ተከላሽ የእቃዎችን ዋጋ ያወቃል። ስለሆነም የተከላሽ መከራከሪያ የህግ መሰረት ያለው ሆኖ አልተገኘም። ከላሽ ለደንበኛው የከፈለውን ካሳ ያለ ኃላፊነት ገደብ ተከላሽ ሊከፍል ይገባል በማለት ወስኗል”።

However, the author of this study disagrees with the argument of the court rejecting limitation of liability raised by the carrier. The stipulation of Article 198 (3) of Mar. Code is “The statutory

³⁰⁹ Lion Insurance Company vs. ESLSE / [2009]/Federal First Instance Court/239002/, [2009].

limitation may not be set up against the shipper where the nature and value of the goods have been declared by the shipper before shipment, and such declaration has been inserted in the bill of lading.” Pursuant to Article 193 (3) of Mar. code the carrier cannot raise limitation of liability when the value and nature of the goods have been declared by shipper inserted on bill of lading and special freight paid to the carrier. But the mere fact that the value and nature of goods carried stated under commercial invoice and packing list without declaring on bill of lading does not preclude the carrier from raising limitation of liability.

4.8 Survey report (by independent surveyor or joint survey) if applicable. This survey report can be report given by international marine surveyors, loss adjustors and domestic loss assessors.

4.9 Any other documentation not detailed above relevant to the shipment and the loss.

However, there are many practical problems of marine cargo claims and documentations in any type of marine cargo cover. My interviewees Ato Fasil Asnake,³¹⁰ Ato Birhanu Taddese³¹¹, Ato Shiferaw Lencho,³¹² W/ro Alemgenet Yalew,³¹³ and Ato Taddele Tegenye,³¹⁴ explain practical problems of proper marine cargo claims documentations, difficulty of fulfilling original claim documents, lack of awareness of the scope of cover of ICC (A, B and C) and buying of marine cargo insurance as a fulfillment of LC among cargo importers. They further argue that, practically it is very difficult on the part of the assured to prove by loss assessors the place where (the point at which) or under whose responsibility cargo is damaged during the whole transit of goods from suppliers country to buyers country.

Ato Semahagn Adamu³¹⁵, Ato Yasabu Garadew³¹⁶, Ato Robel Girma,³¹⁷ Ato Tesfahun Shibru³¹⁸ and Ato Tabor Shiferew,³¹⁹ strengthen the above argument. They argue that during

³¹⁰ Interview with, Ato Fasil Asnake, Present Practicing Lawyer, (Addis Ababa, Ethiopia, 04 December 2017).

³¹¹ Interview with Ato Birhanu Taddese, Manager of Legal Service, AFIC (S.C), (Addis Ababa, Ethiopia, 18 December 2017).

³¹² Interview with Ato Shiferaw Lencho, Principal Attorney, EIC, (Addis Ababa, Ethiopia, 27 December 2017).

³¹³ Interview with, Wro Alemgenet Yalew, Senior Legal Officer, BIC (S.C), (Addis Ababa, Ethiopia, 22 December 2017).

³¹⁴ Interview with, Ato Taddele Tegenye, Mnager of Legal Service, NLIC (S.C), (Addis Ababa, Ethiopia, 15 December 2017).

³¹⁵ Interview with, Ato Semahegn Adamu, Claim officer, UNIC (S.C), (Addis Ababa, Ethiopia, December 04/2017).

³¹⁶ Interview with, Ato Yasabu Garede (n 300).

³¹⁷ Interview with, Ato Robel Girma, Claim Supervisor in LIC (S.C), (Addis Ababa, Ethiopia, 22 December 2017).

³¹⁸ Interview with, Ato Tesfahun Shibru, A/legal service manager in NIC (S.C), (Addis Ababa, Ethiopia, 04 December 2017).

marine cargo claims process there is problem of under insurance through mechanism of under invoicing. The value of insured cargo is less than actual value of insured cargo at the time of loss. This fact has its own impact on marine cargo claim process handling and recoveries.

Wro Alemtsehay Taddese,³²⁰ and Ato Getachew Tekle,³²¹ explained that though underwriter issued port to final destination warehouse or port to port marine cover the difficulty of ascertaining the place where or the point at which risk occurs create de facto warehouse to warehouse marine cover in case of cargo damage or loss. This means underwriters entertain marine cargo claims even for those damages occur before port of loading in case of FCL (full container load) container carriage. They further explained the inadequacy of professional marine cargo loss adjusters in Ethiopia creates difficulty of identifying weather risk of loss or damage to goods occurs when the goods are in transit from suppliers warehouse up to port of loading or during loading or unloading of goods on or from board vessel (stevedoring service) or during sea carriage or during land transit (inland carrier) from port of discharge to final destination warehouse. In such case the underwriting companies are paying claims for damage of goods even for damage that occur during loading, packing in warehouse or land transit from warehouse of suppliers to port of loading without rejecting the claim. When, subject matter insured is stowed in FCL container and transported by multimodal system unless, there is preliminary survey report of subject matter insured at the port of loading, damage or loss of goods claimed or detected when the container is opened in dry port by customs authority or at final destination warehouse. This fact strengthens the difficulty of detecting the place where damage to goods occurs during transit of cargo.

³¹⁹ Interview with, Ato Tabor Shiferaw, Legal Service Manager in LIC (S.C), (Addis Ababa, Ethiopia, December 10/2017).

³²⁰ Interview with W/ro Alemtsehay Taddese, Senior Claim Officer in NILIC (S, C), (Addis Ababa, Ethiopia, 21 December 2017).

³²¹ Interview with Ato Getachew Tekle, Claim Section Head in LIC (S.C), (Addis Ababa, Ethiopia, 21 December 2017).

CHAPTER FIVE

5. CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

Technological improvements in communications and transportations continue to make the world smaller and create a climate that is ripe for international trade. The contract for the sale of goods determines when title to the goods passes from the seller to buyer and when the risk of loss or damage to the goods passes from the seller to buyer. The passage of ownership and risk are critical in the insurance context as they determine who insures the goods. The marine insurance policy has a major role to play in international trade-along with the contract of sale and contract of carriage; it is one of the three primary documents required when cargoes are traded internationally. Goods voyaging from one country to another are almost always being sold by party (exporter or consignor) to another (importer or consignee).

To adapt the changing situations of communication and transport system of the world the ICC developed INCOTERMS and they are amended several time. Any agreed INCOTERM in international trade implicitly explains cost (freight), risk (marine cargo insurance) and carriage (who have a right to nominate carrier) transfer point from supplier country to buyer country. Due to this fact the choice of any INCOTERM has its own benefit on saving of foreign currency, protection of national carriers (ocean vessel or airplane) and protection of domestic underwriters. Thus, to achieve the benefit of choice of INCOTERM many developed countries use freight control mechanism and developing countries implicitly incorporate any of INCOTERM dominantly FOB for import cargo and CIF for export cargo.

Ethiopia recognized FOB delivery term in away to encourage the development of domestic insurance market and as a business culture during the imperial and Derg regimes. The EPRDF government implicitly recognized FOB importation of goods by different circulars written to different stakeholders 1990, 1992 and 2003 E.C. These circular issued by Prime Minister Office to NBE and public enterprise supervision authority to other stake holders shows the policy inclination of the country in relation of INCOTERM for import trade. In practice these FOB

letters are not known by different stakeholders (importers, underwriting companies and other interested parties) Therefore, the absence of published legislation and consolidated policy framework in relation to recognition FOB import trade create doubt on the adequacy of these circulars.

On the other hand, in case of marine cargo underwriting ICC (A, B and C) under clause „8“ covers risk of loss or damage to goods from warehouse to warehouse. But, during marine cargo underwriting the beginning and end risk of loss or damage to goods is determined by agreed INCOTERM. This study reveals that relevance of INCOTERMS for carriage of goods and marine cargo underwriting is not known as such by underwriters and importers in Ethiopia.

Moreover, the finding of this thesis reveals that there are practical incompatibility between FOB import policy of Ethiopia and warehouse to warehouse marine cargo underwriting. Some underwriting companies underwrite marine cargo cover from warehouse of seller to warehouse of buyer or from named country without stating warehouse of seller (china, India, Italy etc.) to final destination warehouse. In addition shortage of foreign currency in Ethiopia forces importers to open LC on under invoice basis. This problem of foreign currency obliges importer to purchase marine cargo cover without stating the actual value of goods only for fulfillment of LC or access to foreign currency. In such case if insured goods sustained damage or loss during transit importer opts to repair the damage by their own rather than claiming the underwriter. This practical reality opens a door for the underwriting companies to underwrite marine cargo cover from warehouse of suppliers to warehouse of importers without consideration of INCOTERMS. On the other hand, the absence of profession marine cargo surveyors in Ethiopia create significant problem in identifying where did risk of loss or damage to goods occur along the transit of goods from warehouse of suppliers to final destination warehouse by many conveyances. This problem in effect brings defacto warehouse to warehouse marine cargo cover during marine cargo claim settlement.

On the other hand, majority of underwriting companies in Ethiopia underwrite marine cover from named port or any port of suppliers country simply by looking into the name port of loading stated under Performa or suppliers invoice without consideration of agreed INCOTERM. In addition, underwriting companies in our country did not uniformly adopt either ICC (A, B and C) 1/1/1982 version or ICC (A, B and C) 1/1/2009 version which have differences in adapting

the development of marine cargo policies. Again the findings of the study shows that importers who insure their cargo is not designate the version of ICC (A, B and C) and risks covered by ICC (A or B or C) when they buy marine cargo cover.

5.2 Recommendations

Based on the major findings of this research, the following conclusions are drawn:

5.2.1. The findings of the research reveals that warehouse to warehouse marine cargo cover is incompatible with FOB import policy of Ethiopia. Therefore, the research recommends, the underwriting companies in Ethiopia to issue marine cargo cover from port of loading to final destination (warehouse or dry port) for goods imported under FOB delivery term unless there is waiver of FOB by ESLSE.

5.2.2. In cross border trade INCOTERMS determines cost, carriage and risk transfer point from supplier's side to buyer's side. Accordingly, INCOTERMS are recognized as linchpin of international trade. Hence, recognition of any INCOTERM as import carriage policy has its own impacts on saving of foreign currency, protection of national sea or air carrier, protection of local underwriting companies. But also it protects the country from loosing revenue via taxes on transport and insurance, creation of employment opportunities for its citizen.

Accordingly, the finding of this research reveals that from 1990 and 1992 Ethiopia implicitly recognized FOB import policy by different circular/letters written to Ethiopian shipping line, NBE and other To Whom It May Concern. However, the finding of this research reveals that underwriting companies, importers and other stakeholders are not familiar with FOB import policy and laws of Ethiopia. But also it is very difficult to conclude Ethiopia has comprehensive law and policy in relation to recognition of any INCOTERMS.

Therefore, the research recommends, Ethiopia needs to adopt a detailed policy and law on the recognition of INCOTERM by taking into account the experience of other countries with similar economic standing and its particular needs.

5.1.3 In any marine cargo underwriting ICC are a set of terms for marine cargo insurance policies adopted as standard terms by many international marine cargo insurance

underwriting companies. Nowadays, two thirds of the world's countries marine cargo insurance companies make use of the institute cargo clauses. In case of marine cargo underwriting agreed ICC „A“ or „B“ or „C“ attached to the marine insurance contract which specifies risk insured against. ILU enacted ICC's from 1951. These clauses however, are amended several times to accommodate the existing trade and underwriting situations and technological development. The existing version of ICC is ICC „A, B and C“ 1/1/1982 and 1/1/2009.

However, the finding of this research reveals that lack of uniformity in using the two version of ICC (A, B and C) 1982 or 2009 among underwriting companies in Ethiopia. But also some of the underwriting companies' officers in Ethiopia are not aware of the version of ICC either 1/1/82 or 1/1/2009 with their risk covered and excluded. Moreover, some of underwriting companies are not attached agreed ICC (A, B and C) to marine cargo policy certificates. Even majority of cargo owner, importers and other stake holders are not familiar with ICC „A, B and C“ with their version.

Therefore, the research recommends Ethiopia needs the adoption of the recent version of ICC (A, B and C) 1/1/2009 and educate the stakeholders (cargo importers, marine underwriters and other stakeholders etc.) about institute cargo clauses.

- 5.1.4 As opposed to other insurance products marine cargo underwriting, claims and recoveries require skilled and trained professional. Global nature of international trade and marine insurance leads to the development of international rules and practice. The complexity of ICC (A, B and C), INCOTERMS and other marine underwriting and marine transport documents requires special training and knowledge to officers of underwriting companies, cargo importers and other stake holders.

Therefore, this research recommends underwriting companies, importers and other stake holders to train their officers to fill the knowledge gap in marine cargo underwriting, claims and recoveries and import cargo procedures and documentations.

5.1.5 This day international trade, shipping and marine cargo cover were highly modernized to adapt the changing situation of modern technology and infrastructure. To accommodate this changing situations of international trade many countries enacted modern maritime code and other logistics and marine laws. However, the maritime code of Ethiopia which is enacted in 1960 during the codification many major laws in Ethiopia. The research revealed that the provisions marine insurance on maritime code is outdated to govern the current marine cargo underwriting, claims and recoveries in Ethiopia.

Therefore, the research recommends the amendment of the provisions of marine insurance (Art 288 to 356) of Maritime Code of 1960 in order to make it compatible to the current realty of global marine insurance market.

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