

Guide to Marine Cargo Insurance



दि न्यू इन्डिया एश्योरन्स कंपनी लिमिटेड
भारत की प्रमुख साधारण बीमा कंपनी
The New India Assurance Co. Ltd
India's Premier General Insurance Company

Guide to Marine Cargo Insurance

Marine Cargo Technical Department
The New India Assurance Co. Ltd

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Foreword

Dear Readers,

Welcome to the world of Marine Cargo Insurance!

Marine is perhaps the oldest form of insurance and over the centuries it has developed its own vocabulary. To the uninitiated, understanding terms like average, particular average, constructive total loss, sue and labour, abandonment, notice of abandonment, etc., must be a daunting task indeed!

While it is not possible in a small publication to do justice to a vast and somewhat complex subject, we hope that it will nevertheless give you some of the necessary information and tools to examine your policy critically and see if it is tailored to your requirements and provides contract certainty.

It would also help you to negotiate proper terms and conditions by providing the broker or the insurer with all relevant information pertinent to your business. Unless the customer provides detailed information about his business, it is difficult to devise a bespoke solution.

New India has built a vast repertoire of knowledge over the last several decades. We have a team of very experienced underwriters and claims adjusters who can offer you a tailored solution for even the most complex of risks. We have a very broad underwriting appetite and are able to write almost any risk for our customers who have a culture of risk management in their organization. We do believe our policies are value for money. We believe in competing for quality, which alone can ensure a long-term sustainable relationship between the customer and the insurer.

We believe this guide will go a long way to help you in making informed decisions about your Marine Cargo Insurance requirements. We would appreciate your feedback so that your suggestions can be taken care of in a future edition of this publication.

With best wishes!

G. Srinivasan
Chairman-Cum-Managing Director

1

Marine Cargo Insurance - An Introduction

What Is Marine Cargo Insurance?

Marine cargo insurance relates to insurance of cargoes while they are being transported (with incidental storage) not only by water (sea/river) but also when they are being transported by air, road/rail, post parcel, courier or any combination of the above. In a way the word 'marine' is a misnomer.

Origin of Marine Insurance

Marine insurance is one of the oldest forms of insurance. However marine insurance as we know it today had a humble origin. Today the word 'Lloyds' is a household name but the story of Lloyds began in the most unlikely of places, a coffee house in Tower Street, London! Edward Lloyd's coffee house around 1688 was a favourite meeting place for ship captains, shipowners and traders and soon became a place for not only coffee but also a source of shipping news and after some time marine insurance! By 1691 Edward Lloyd developed a network of correspondents at main ports allowing him to get information on movement of vessels quickly.

Vocabulary of Marine Insurance

Over the centuries, many technical terms peculiar to marine insurance have evolved such as average, particular average, general average, sue and labour, salvage and salvage charges, constructive total loss, etc., and to the uninitiated these terms can be quite daunting. While it is beyond the scope of this publication to explain these terms in detail, an attempt has been made to explain them in simple terms and demystify marine insurance to the extent possible.

The Law Governing Marine Insurance

The Marine Insurance Act 1906 of UK (MIA 1906) was adopted in India and the Indian Act of 1963 is a replica of the UK Act barring some very minor differences.

What Does Marine Cargo Insurance Cover?

The subject-matter insured in a cargo policy is goods

and/or merchandise incidental to your business, which are owned by you and/or for which you are responsible (or have received instructions) to arrange insurance on behalf of someone else and/or have insurable interest under the Terms of Sale.

The Schedule to the MIA 1906 defines 'goods'¹ and this definition does not include goods on deck (unless customary). Special terms would need to be added to the policy in the case of deck cargoes.

It is a rule of thumb in the marine insurance market that 'packing' too does not form part of 'goods' unless there is a need to insure packing materials, in which case a special clause needs to be added to the policy.

Institute and Non-Institute Cargo Clauses

There is a wide variety of clauses in marine insurance. However the Institute² Cargo Clauses and the associated War and Strike clauses form the basis on which coverage is provided. Though not stated explicitly it is only the *physical* loss or damage to the goods which is generally the subject-matter of insurance.

A wide variety of non-Institute wordings and clauses too are available as discussed in Chapter 8.

Insurable Interest

The assured must demonstrate that he had insurable interest. The MIA 1906 defines insurable interest and in particular section 5(2) provides that a person has insurable interest wherein he may benefit by the safety or due arrival of insurable property or may be prejudiced by its loss or damage. Chapter 2 provides the details.

Unlike other branches of insurance, in the case of marine insurance, insurable interest must exist *at the time of loss* even though it may not necessarily have been present earlier (MIA 6.1). The act then goes on to say (6.2) that where the assured has no interest at the time of loss, he cannot acquire interest by any act or election after he is aware of the loss.

¹17 Goods : The term 'goods' means goods in the nature of merchandise, and does not include personal effects or provisions and stores for use on board. In the absence of any usage to the contrary, deck cargo and living animals must be insured specifically, and not under the general denomination of goods.

²The word Institute is derived from Institute of London Underwriters (ILU) which is now called Lloyd's Market Association.

Who Requires Marine Cargo Insurance?

Buyers, sellers, import/export merchants, buying agents, contractors, banks, in fact anyone engaged in movement of goods requires marine cargo insurance.

Who is responsible in a contract of sale to arrange marine insurance (the seller or the buyer or both) would depend on the Terms of Sale (Incoterms 2000 or 2010, for example). However note that only in Incoterms Rules CIF and CIP there is a *contractual obligation* to insure. For other terms, such as FOB, there is only a *commercial need* to insure and it is entirely up to sellers and buyers to arrange insurance. This is explained in detail in Chapter 2 on Insurable Interest.

The section on FAQs discusses the pros and cons of being 'self-insured'.

How Is Sum Insured Determined?

It is a basic principle of insurance law that the assured can only recover from his insurers the loss he suffered: the assured can neither profit from the loss nor be in a worse position than he was before the loss occurred. This compensation or reimbursement is called indemnity. Marine policies do not result in perfect indemnity and in fact valued policies are a departure from this basic principle of insurance law.

One of the unique features of marine insurance is that, with rare exceptions, policies are almost always on 'agreed value' basis (also called '*valued*' policies). This means that the valuation (sum insured) is conclusive and cannot be questioned or 'opened' unless there is evidence of fraud or the valuation is so excessive as to make it speculative in nature.

The most popular basis of valuation is CIF + 10%.

There is often a misconception even among practitioners as to what this markup is intended for. Unlike unvalued policies, valued policies (as are most marine policies) allow for an element of profit. Insurers have done well by popularizing a markup such as 10%, which is just enough to cover certain incidental charges and the buyer's profit margin, thereby eliminating the scope for excessive valuation. A marine certificate/policy is often assigned by the CIF/CIP seller to an overseas buyer. Including a profit

margin also enables the seller to sell on high-sea basis.³

Increased Value

The CIF/CIP seller no doubt includes a markup of 10% over the CIF/CIP price to include the 'notional' or 'average' profit of the buyer; the buyer may find this inadequate. For instance, some commodities are subject to drastic price fluctuations during the voyage and the price of the insured cargo might have increased (sometimes dramatically) during the course the voyage. Similarly price differentials between countries may trigger a resale several times during the course of the voyage. Each price differential may be endorsed on the original certificate or insured under a separate policy and claused 'pay as cargo'.⁴ More such examples can be given. For instance, a trader might buy goods when the prices are low and a need may arise for him to replace the goods upon loss at a much higher price (replacement cost).

Increased value insurance provides coverage in such cases. It is not necessary that if the sum insured in the marine insurance provided by the seller is inadequate, increased value insurance is with the same insurer. In fact the buyer may not want the seller to know that he has taken additional insurance and might therefore choose another insurance company to insure his increased value.

Assignment of Marine Certificates/Policies

A marine policy is assignable. Thus a CIF/CIP seller would obtain marine insurance and assign it to the overseas buyer, enabling the latter to claim for any loss or damage directly. The assignment can be by way of a blank endorsement or may be endorsed to a specific party (such as to a bank or a buyer).

Types of Losses

During the course of the transit of goods from one place/country to another place/country, the goods are exposed to a variety of perils that can lead to a total loss or a partial loss. There could also be expenses incurred to avoid or mitigate a loss from happening. Thus, you may have the following categories of claims/expenses:

- Total loss

³ Amount of the insurance cover: The amount of the insurance cover should correspond to the price provided in the contract, plus 10%. The additional 10% is intended to cover the average profit that buyers of goods expect from the sale'. (page 201 of The International Chamber of Commerce Guide to Incoterms 2010 edited by Prof. Jan Ranberg)

⁴ This means the terms and conditions provided in the original policy are followed.

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- Constructive total loss
- Particular average (partial loss)
- General average
- Salvage charges
- Sue and labour

The MIA 1906 contains several provisions which explain how various types of losses are to be dealt with.

Impact of Agreed Value on Indemnity

Another peculiarity of marine insurance is that it does not always offer a perfect indemnity in view of the 'agreed value' concept. Thus there may be circumstances when an assured can get less or more than his loss.

Let us assume a bulk cargo on a voyage from Canada to India and insured for INR 1,000,000.00 arrives in a damaged condition. Table 1.1 examines three scenarios of a rising, stable and a falling mark.

Implication of an Agreed Valuation in the Policy

It will be readily seen that marine cargo insurance is not an example of perfect indemnity. Depending on market conditions and the sum insured, the assured may be indemnified (i.e. compensated for the loss) for an amount which may be equal, less or even more than the loss

suffered. In Table 1.1, the insurer cannot argue that since the assured would have been able to sell the damaged cargo at INR 1,000,000 (equal to the sum insured) despite the damage sustained (due to rising market condition), no claim is payable. The insurer in fact must pay him INR 500,000.00 in a rising market.

Table 1.1: Particular Average Method of MIA 1906

	Stable	Rising	Falling
Gross Sound Value	1,000,000.00	2,000,000.00	500,000.00
Gross Damaged Value	500,000.00	1,000,000.00	250,000.00
Loss	500,000.00	1,000,000.00	250,000.00
Depreciation	50.00%	50.00%	50.00%
Claim payable (depreciation % applied on sum insured)	500,000.00	500,000.00	500,000.00
	Perfect indemnity since sum insured was equal to GSV on arrival	Receives an amount less than the loss since the sum insured was less than GSV on arrival	More than the loss since the sum insured was greater than the GSV on arrival

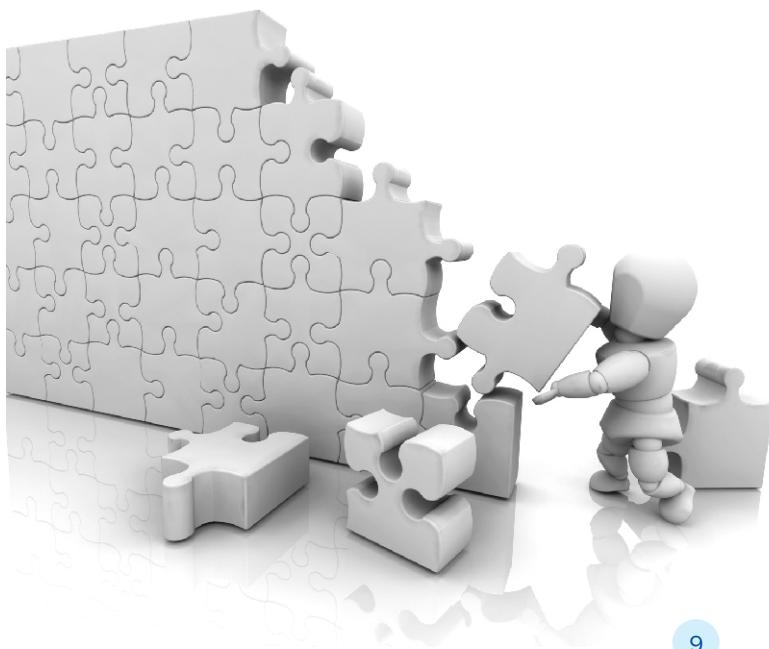
Note:

The above formula is enshrined in Section 71(3) MIA 1906.

This formula ensures that insurers do not participate in price fluctuations

It is to be noted that irrespective of whether it is a stable, rising or falling market, the depreciation percentage is constant at 50% (the situation would be different if instead of 'gross', 'net' values were adopted since certain charges like freight would be not vary in stable, rising or falling markets).

For machinery claims the MIA 1906 formula is displaced by the Institute Replacement Clause



2

Insurable Interest

Meaning of Insurable Interest

One of the fundamental principles of insurance, including marine cargo insurance, is insurable interest. However in the case of marine cargo insurance, the claimant must have insurable interest at the time of loss: he need not necessarily have had insurable interest when the policy was issued.

Insurable interest is a complex subject and a detailed treatment of the topic is beyond the scope of this publication. However Incoterms published by the International Chamber of Commerce (ICC) could be the basis to determine which party has insurable interest for a particular leg of transit.

Responsibility for Arranging Insurance

Who arranges insurance – the buyer or the seller? Or do both need some protection for certain legs of transit? The answer depends on the Term of Sale chosen.

Incoterms serve as a good guide in this regard as they spell out the ‘critical point’ during transit which determines the passing of risk (of loss or damage to the goods) from the seller to the buyer.

Incoterms

Incoterms is the abbreviation for International Commercial Terms. The ICC, head-quartered in Paris, first published Incoterms in 1936. Later editions were introduced in 1953, 1967, 1976, 1980, 1990, 2000 and 2010. Among other

reasons for so many editions, the container revolution was a major one: this was when the traditional critical point (ship’s rail) shifted inland to a container terminal due to multi-modal transportation.

‘Incoterms provide a set of international rules for the interpretation of the most commonly used trade terms in domestic/foreign trade’.

The key benefit of Incoterms is that they are of international standard and universally recognized. Their use therefore reduces uncertainty and ‘interpretation slippage’ as they enable parties to know each other’s rights and obligations.

During transportation of goods, especially from one country to another, the seller and the buyer require clarity regarding their respective obligations in respect of loading, domestic(local) transportation in the seller’s country, custom / security clearance, main international transportation, domestic / local transportation in buyer’s country, import clearance etc. Incoterms provide clarity on seller’s and buyer’s rights, obligation, risk and cost.

The present edition (2010) came into effect from 1.1.2011 and contains 11 terms.

Each rule is represented by 3 letters (e.g. EXW, CIF, DDP) and the mere mention of the 3-letter term in the sale contract eliminates the need to reproduce the entire rules in the contract.

Each term has the following sections using the ‘mirror’ method:

Table 2.1 Obligations of Parties

Seller’s Obligation	Buyer’s Obligation
A1. General obligations of the seller	B1. General obligations of the buyer
A2. Licences, authorizations, clearances and other formalities	B2. Licences, authorizations, clearances and other formalities
A3. Contracts of carriage and insurance	B3. Contracts of carriage and insurance
A4. Delivery	B4. Delivery
A5. Transfer of risk	B5. Transfer of risk
A6. Allocation of costs	B6. Allocation of costs
A7. Notice to the buyer	B7. Notice to the seller
A8. Delivery document	B8. Proof of delivery
A9. Checking, packing and marking	B9. Inspection of goods
A10. Assistance with information and related costs	B10. Assistance with information and related costs

Tips for Using Incoterms Correctly

Particular attention must be paid to the following:

- Incoterms do not deal with or transfer of ownership/title to the goods.
- Incoterms do not deal with payment terms or payment methods.
- Incoterms do not replace Contract of Sale: *they can be made part of Contract of Sale by express incorporation.*
- Use the term appropriate to the goods.
- Use the term appropriate to the transport required (e.g. term suitable for airfreight).
- Decide who will organize transport (e.g. domestic transportation in seller's and buyer's country, international [main] voyage).
- Specify the agreed place as precisely as possible: Point/Port/Place to be described precisely, e.g. 'FCA ICD Pragati Maidan, New Delhi, India, Incoterms ® 2010'.
- Bear in mind that some terms do not fit in with Documentary Credit System (LC)/other payment systems.⁵
- Bear in mind that some terms are not appropriate for containerized goods.

Passing of title (ownership or property in goods) is a complex subject and depends on, among other things, 'national' laws: it is for this reason that Incoterms deal with 'risk' rather than 'title' issues leaving the latter to be dealt with in the Contract of Sale.

Why New Incoterms (2010 Edition)?

- Need to respond to current trading practices/global trends
- Feedback from users of Incoterms
- Changes in US Legislations

The important changes in Incoterms 2010 can be summarized as under:

- 1 The concept of goods crossing ship's rail has been removed.⁶ Now in FOB, CFR and CIF terms, goods have to be loaded on board. Now it is truly free on board rather than free on rails!
- 2 The 2010 edition only mentions clearing for import/export is required 'where applicable'. Due to development of inter-European trade and Customs Free Zones such as EEU, either custom procedure was not required or customs boundary between member nations did not exist and therefore Incoterms were needed to reflect this development.
- 3 Electronic Data Interchange (EDI): Incoterms 2000 dealt with it but a decade ago, EDI was costly and used by only large corporations. Today EDI is commonplace.
- 4 While the 2000 edition was intended for international trade, the 2010 terms are applicable for both domestic and international trade.
- 5 Due to the events of September 11 and other subsequent ones, it was recognized that stringent actions against terrorist groups were needed during transportation of goods across border. Incoterms 2010 make one of the parties to a sale contract responsible for adequate documentation, providing information in advance: this could include matters such as inspection, analysis and scanning of goods/containers.
- 6 String Sales: The new Incoterms 2010 recognizes that during high-sea sale, goods change hands. A CIF seller in the middle of a string cannot be under a 'duty to ship' goods already shipped by another seller upstream or to make a contract of carriage already concluded by an earlier (upstream) seller! Incoterms 2010 has addressed these issues: rather than be responsible to ship goods and make a carriage contract, the seller in a string can 'procure' goods and carriage contract in high seas and yet be able to fulfill his obligation to the subsequent buyer downstream.⁷
- 7 2010 edition has introduced two new terms (DAT and DAP) in recognition of the growing trend towards D-

⁵ Some Incoterms do not fit in with some of the 'usual' clauses in Documentary Credits (Lcs). For example:

Cash against Documents (CAD) does not work with FCA or EXW as there is no transport document representing title to the goods to hold for ransom against payment.

'Shipment By' date in LC, whereas in CPT, FCA, FAS the seller has no control over shipment date.

Similarly, LC may require warehouse to warehouse cover whereas the CIF seller is required to procure marine insurance only up to the port of discharge.

⁶ Only the most enthusiastic lawyer could watch with satisfaction the spectacle of liabilities shifting uneasily as the cargo sways at the end of a derrick across a notional perpendicular projecting from the ship's rail' (Pyrene v Scindia Navigation [1954] QB 402 at page 419.

⁷ Should Shipping Lawyers Care about Incoterms 2010 by Prof Charles Debattista – Lloyd's List on 2 February 2011.

terms (delivery terms) instead of maritime terms for manufactured goods.

- Companies with large annual turnover prefer to use the services of a logistics provider who, acting under their instructions, would carry goods to various parts of the globe.
- Such companies are also in a better position to bargain a cheaper freight and control quality of carriers.

A reputed car manufacturer reportedly said 'Although I may be relieved of the risk of damage to my cars sold under an FOB contract, I am not pleased to see how they are being damaged when hopeless efforts are made to squeeze them into a cargo hold of a wholly inappropriate ship'⁸

Structure of Incoterms 2010

Incoterms 2010 are divided into two categories:

- (1) Omni modal (7 rules: for any mode) and
- (2) Maritime rules (only for port to port shipments)

Table 2.2 Structure of Incoterms

Rules for ANY Mode (or Modes) of Transport (OMNI MODAL RULES)	Rules for Sea and Inland Waterway Transport Only (MARITIME RULE for port to port shipments)
1. CIP: Carriage and Insurance Paid	8. CFR: Cost and Freight
2. CPT: Carriage Paid to	9. CIF: Cost, Insurance and Freight
3. DAP: Delivered at Place	10. FAS: Free Alongside Ship
4. DAT: Delivered at Terminal	11. FOB: Free on Board
5. DDP: Delivered Duty Paid	
6. ExW: Ex Works	
7. FCA: Free carrier	

The word 'risk' in Incoterms refers to the risk of loss or damage to goods, not any other form of risk. The word 'delivery' in Incoterms is used to indicate where the risk of loss or damage to goods passes from sellers to the buyer. In all these terms, the risk of loss or damage passes from seller to buyer when the seller completes his delivery obligation.

Using Maritime Terms for Containerized Goods

- ❖ FAS, FOB, CFR and CIF (maritime terms) require delivery of goods on board the vessel (in FOB the vessel

is nominated by the buyer) or alongside the vessel (FAS). In LCL movements, the seller loses control over goods once the goods are handed over to a container packing yard or terminal. In FCL, once the container is handed over to the first carrier the seller may again lose all control over further transportation. The seller loses care, control and custody of the container after such delivery and may incur unforeseen expenses between delivery to carrier/container station and loading on board vessel.

- ❖ Seller may not be able to obtain On Board B/L in containerized cargo.

According to a clarification issued by ICC, Paris,

'Containerized goods can be sold on an FOB basis. However, the seller needs to be aware that it takes a risk as seller will have lost control of the goods (as usually delivered into custody of the carrier prior to loading) but will still retain legal risk for loss of or damage to the goods'.

During the Japanese tsunami in March 2011, the entire Sendai container terminal was wrecked. All the goods awaiting loading on board ocean-going vessels were damaged, Japanese exporters using incorrect Incoterms found themselves responsible for these losses.

To summarize, FAS/FOB, CFR and CIF can be replaced by FCA, CPT and CIP when container transport is involved.

Which Incoterms to Select?

This depends on a variety of factors such as those listed below:

- The seller's and buyer's bargaining strengths
- Who is placed in a better position to get attractive freight terms
- Availability of national shipping lines
- Countries involved, ease of import/export and custom clearance
- Whether string sales is a possibility

Passing of Risk of Loss or Damage to Goods from Seller to Buyer

Now that we have examined the basic structure of

⁸ Guide to Incoterms, page 57 (ICC)

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Incoterms, let us look at the passing of risk (of loss or damage to goods) during transit from seller to buyer closely. What is the 'critical point' during the entire transit from seller's premises to buyer's premises when the risk transfer takes place? The answer to this determines who will need to insure his goods and during which leg of the transit.

Incoterms and Insurance

It is important to bear in mind that while insuring goods is a sound commercial practice, there are only two Incoterms Rules which directly require insurance cover to be provided by the seller viz., CIP and CIF. In all other terms, the seller has to provide information to the buyer that would enable the latter to procure insurance at his risk and expense.

From Figure B it can be readily seen that both the seller and

the buyer may have to insure for the respective leg of transit which is at their risk. Thus in FOB, the seller ought to insure the goods from the time the goods leave his warehouse until they are loaded on board the overseas vessel. Thereafter the buyer should arrange insurance. Similarly in the case of FCA Incoterm, the seller should insure until delivery to the carrier at named place.

It is very important to bear in mind that in CIP and CIF Incoterms state that the seller is only obliged to provide for minimum terms such as ICC (C). He is not obliged to provide an all-risks cover such as ICC A. Nor is he under an obligation to provide War and Strikes cover. Similarly the marine policy arranged by the seller need not be on a warehouse to warehouse basis. He needs to only ensure that the duration of cover provided is up to the arrival at the port of discharge.

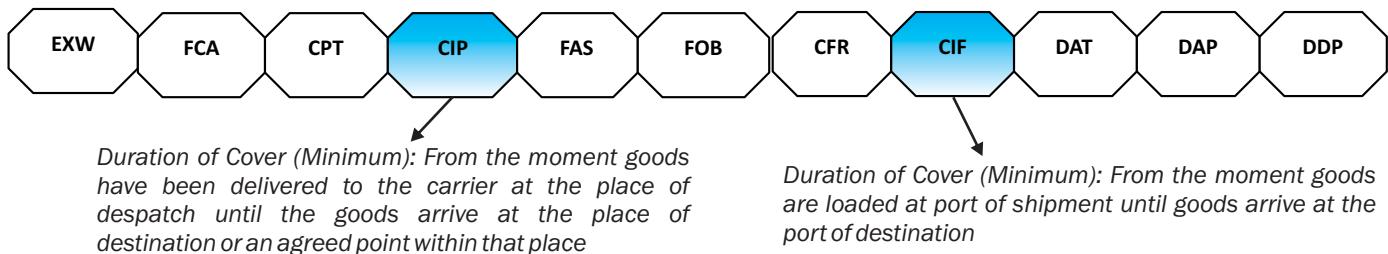


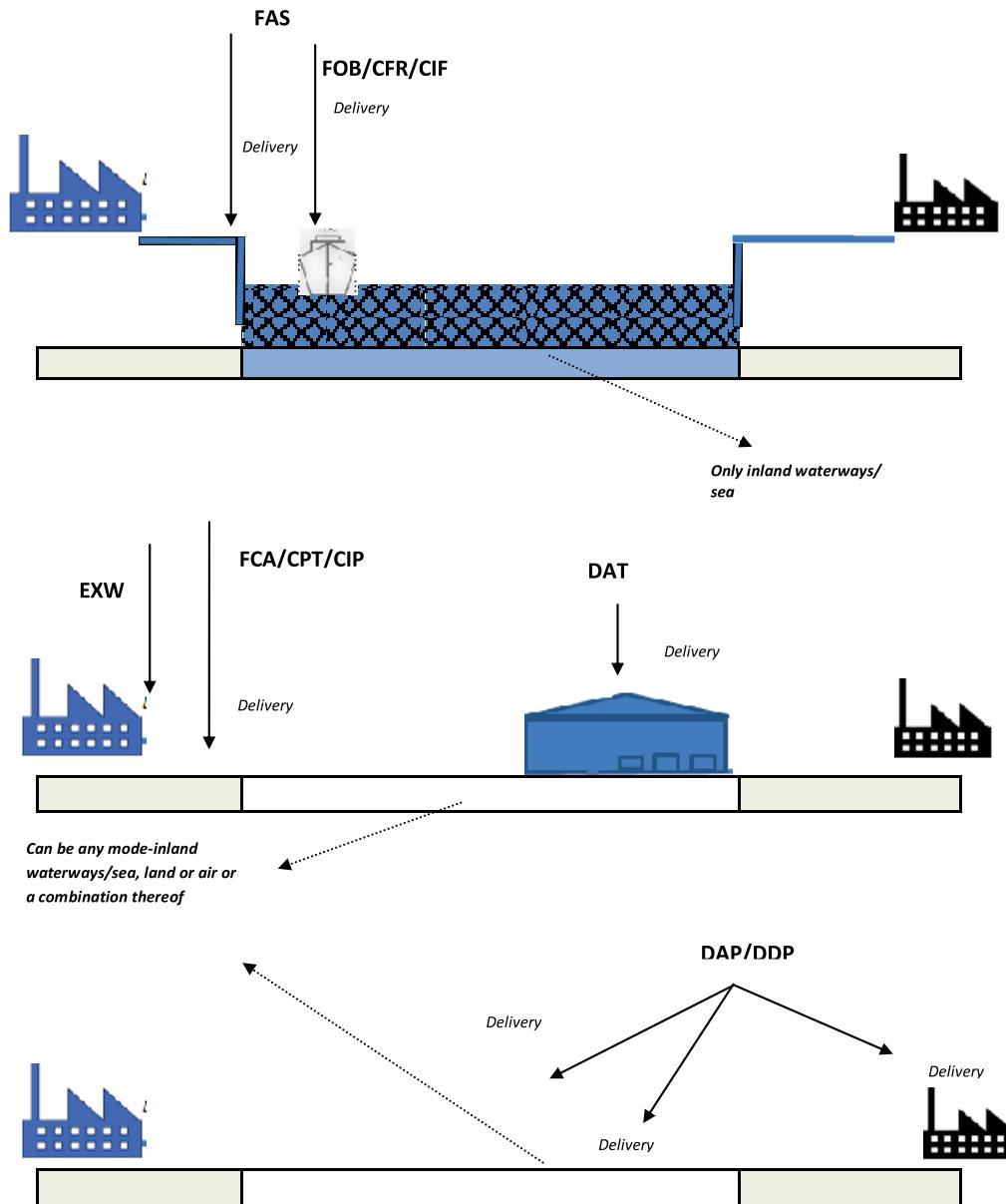
Figure A

Cover should be for contract price plus 10%. Sum insured should be in the same currency as in the terms of sale or LC.

Avoid gaps in insurance:

- CIF imports whereby your seller arranges marine insurance. Invariably the cover might cease at the port of discharge whereas your own cover under your open policy will attach only when goods leave the port after Customs' clearance. You are uninsured during the entire duration your goods are in port premises.
- When will cover under the overseas policy terminate? Assuming the certificate mentions, for example, Antwerp to Chennai port, cover would terminate when goods are discharged on the wharf. Would cover continue if from the wharf the goods have to be taken to a designated place for Customs' inspection? Debatable.
- Tail-end risks run the risk of concealed damage. Pre-acceptance surveys, besides being cumbersome and expensive, cannot detect such losses if packing is robust or goods are inside a container.

Figure B Critical Point determining passing of risk



Note: Maritime Rules (FAS/FOB/CFR/CIF) involve only sea or inland waterways for the main voyage but Omni Modal Rules (EXW, FCA, CPT, CIP, DAT, DAP and DDP) may involve any mode (waterways/sea/land/air)

3

Contingency Insurable Interest

Consider the following:

1. FOB sale whereby the assured buyer has no insurable interest during the pre-FOB transit in the seller's country. Yet he might have paid for the goods and/or taken up the title documents in good faith only to find later that the loss or damage to the goods had occurred during the transit from seller's warehouse to FOB point.
2. The CIF/CIP seller was responsible for arranging insurance but either he failed to arrange insurance or the terms/duration of cover was restricted such that the buyer is unable to recover his loss. (Buyer's Contingency/Difference in Conditions)
3. The CIF/CIP seller effects insurance, which is rendered inoperative later by circumstances beyond the control of the assured. (Buyer's Contingency)
4. The seller's insurance fails to pay for loss or damage for some reason. (Buyer's Contingency/Difference in Conditions)
5. Similarly the EXW, FCA, CPT, FAS, FOB or CFR seller is not responsible for arranging insurance for the international voyage but due to a loss or damage to the goods, the overseas buyer rescinds on the contract of sale so that the seller remains an unpaid vendor. (Seller's Contingency)

MIA 1906 recognizes contingent insurable interest too and hence can be insured. There are various versions of buyers' and sellers' interest (or contingency) covers but the following serves as an example:

Buyers' and/or Sellers' Contingent Interest

This policy extends to cover the assured's contingent financial interest in any goods where the assured has no responsibility to insure under the Terms of Sale or where the cover provided is more restrictive than that afforded under this policy.

Where interest in the goods reverts to the assured for any reason during transit, such goods shall be covered continuously during any reasonable period whilst awaiting resale or return including any additional transit resultant

upon such resale or return.

The cover provided is however limited to loss and/or damage which would otherwise be recoverable under the terms and conditions of this policy but only up to the extent that the assured is unable to recover such loss and/or damage under the insurance effected by the buyer or seller as may be applicable.

Provided that:

- a) *The existence of this extension is not to be disclosed to any other parties interested in the shipment(s).*
- b) *Immediate notice must be given to the company of any known loss of or damage to the goods covered under this extension or any known circumstances which may render this extension operative.*
- c) *The assured must in the first instance take all reasonable steps to invoke the terms of the contract of sale and obtain reimbursement from the buyers and/or sellers and/or any other interested parties.*
- d) *In the event of any claim settlement under this extension, all the assured's rights of recovery against buyers and/or sellers and/or any other interested parties will be subrogated to the company.*

This extension is not to be deemed a double insurance.

Please note the following:

- There is a secrecy clause whereby the assured cannot disclose the existence of such contingency covers to the other party.
- An immediate notice should be sent to the insurer if there is any event or circumstance where a potential claim under the extension may exist.
- The assured must in the first instance take reasonable steps to recover the loss from the other party under the terms of the sale.
- This policy cannot be assigned.

- The insurer would be entitled to sue the seller or buyer, as the case may be under subrogation.
- Upon payment of a claim the other party's insurer cannot seek contribution from the contingency insurer: in other words, this extension would not be deemed a double insurance.
- This clause combines all three forms of contingent interest (sellers'/buyers'/DIC).

The intention of such contingency covers is to protect the

innocent assured in the event the trading partner (seller or buyer) fails to provide the appropriate protection.

It is submitted that such covers have not received the careful attention and scrutiny they deserve. Further there are a number of versions of buyers' and sellers' interest covers in vogue. Considerable care and attention is therefore required to choose the correct version based on the customer's needs.



Documentary collections (as opposed to documentary credits) pose a higher risk of non-payment of invoice price by the buyer.

4

Marine Open Policy

What Is an Open Policy?

An open policy⁹ is an undertaking to cover all shipments that will be made during the year.

Features of an Open Policy

At inception the insurer will not have details of the cargoes, sum insured, voyages and the quality of vessels that will be used. The insurers protect their interest by incorporating the following key elements in the open policy:

- ❖ **Cargo:** The open policy would either list down all the names of cargoes that can be insured or describe them in general terms (such as '*goods incidental to assured's business*') or might provide a list of cargoes that would be excluded or require prior intimation to insurer and their agreement in writing at an additional premium (if required) or restrictions in coverage.
- ❖ **Voyages:** These may be worldwide to worldwide. Some open policies would exclude certain countries or require prior notice with provision for an additional premium or restriction in coverage or duration.

If you have cross-voyages (where neither the country of shipment nor the destination is India), these have to be disclosed beforehand to insurers.¹⁰

Currently in every marine open policy, you will have a Sanction and Limitation Clause.¹¹ This is found in all open policies and has to be strictly complied with. A breach of the Sanctions Clause (which pertains to economic and trade sanctions) will prejudice any claim on shipments that come within the scope of this clause. No reinsurer will honour such claims either.

- ❖ **Premium Rate(s):** The schedule to the open policy will

provide the details of rate(s) of premium.

- ❖ **Declaration/Bordereau**

Please see specimen below. Each month (or as agreed) kindly record details of all transits during the relevant period. When the insurer receives the bordereau, they will account for the premium.

Goods (give quantity/weight)	BL/AWB No	Date of shipment	Voyage From	Voyage To	Name of Conveyance	Sum Insured	Rate	Premium

- ❖ **Certificate:** A system of marine certificate issuance is provided for in open policies. As and when individual voyages take place, a certificate of marine insurance is issued which can be assigned to the overseas buyer (subject to sale contract provision) enabling the latter to claim directly from the insurer or insurer's overseas claim settling agent mentioned in the certificate. See Chapter 6 for guidelines regarding completion of certificates.
- ❖ No certificate is required for domestic transits within India. Instead a 'Declaration Form' is completed by the assured. Each transit (or alternatively all the transits during a month) can be listed in this document with relevant details and sent to the insurer who will account them under the open policy
- ❖ **Conveyance:** Usually all kinds of conveyances (vessel, courier, etc.) and mode of transit (sea, air, land) would be included but barge movements, for instance, may have some restrictions. Similarly chartered vessels may need special agreement with insurers.

⁹ In this chapter the term 'open policy' has been used in a generic sense and is interchangeable with open cover. Both have identical features except that in the case of open cover there is no sum insured but only a per bottom Limit. In view of cash before cover provision in India, open covers are issued but with sufficient deposit premium with insurer.

¹⁰ FEMA rules will need to be complied with

¹¹ Sanction Limitation and Exclusion Clause No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America. (JC2010/014)

The insurer will incorporate Institute Classification Clause in order to ensure that vessels will conform to some minimum standards.



Logos of some of the Classification Societies who are members of the International Association of Classification Societies Ltd (IACS)¹²

- ❖ Basis of Valuation: Typically CIF + 10% or 15%. Higher markups would require you to justify the request.
- ❖ A 10% markup is valid for CIF or CIP exports. However if it is an FOB/CFR (or similar) export, there is no need to have such a markup unless there is some justification for the same, because a policy issued to an FOB (or similar) seller is not for the buyer's benefit. The invoice would already include the seller's profit.
- ❖ Similarly inter-depot or inter-company transfers may not necessarily require a markup. Depending on the type of cargo (raw material, intermediate or final product), the basis of valuation has to be defined carefully. For instance, one could have a valuation based on the market value of a final product on the day of loss but less all unincurred expenses, or simply provide for cost of replacement of lost goods or preferably prime cost at the commencement of transit plus incidental expenses paid or incurred till the time of loss.
- ❖ Limits of Liability:
 - Per bottom limit (sea)
 - Per conveyance limit (international airfreight)
 - Sub-limits for rail, road, courier, etc.
 - Location limit

A detailed commentary on some of these terms is given

below:

Limit of Liability

This is the maximum liability of the insurer for any one conveyance or location.

You must determine your maximum shipment size (keeping in view currency fluctuations, increase in price of goods during the year, seasonal nature of trade, size of your business, nature of goods, frequency of shipments etc.) before advising these limits. While higher limits generally attract higher premium rate, it is better to err on the side of caution.

Attention should be paid to the location limit you want. For instance, if two vessels discharge at the same time there would be accumulation at the port. However a location limit twice the per bottom limit is generally acceptable to the insurer.

There is also a clause called the Accumulation Clause or the 200% Accumulation Clause discussed in Chapter 8.

Terms and Conditions

These would consist of Institute Cargo Clauses and associated War and Strikes Clauses, appropriate clauses for domestic transits such as ITC (A)-Rail/Road, Courier Clause etc. Additionally there might be a set of non-Institute clauses to widen the scope of cover.

Sometimes there might be conditions called 'warranties'. For example, warranted machinery carried on a low-bed multi-axle trailer, warranted new jute bags, warranted supervision of loading and unloading by approved surveyor etc. *In marine insurance, a warranty has to be strictly complied with.*

Additionally every open policy would contain a Cancellation Clause (which can be invoked either by the assured or the insurer) and a Classification Clause. It is outside the scope of this publication to discuss the Classification Clause in detail, but please note that the clause requires vessels to be classed with Classification Societies who are members/associate members of the IACS. Further there are restrictions on the age of the vessel.

While there is a 'held covered' provision within the Institute

¹² Logos reproduced with kind permission of Classification Societies concerned.

Classification Clause, not all breaches are automatically held covered. For instance, if the vessel concerned is not classed or classed with a society not recognized by the Institute Classification Clause, continuation of cover would depend on whether cover would have been available at a reasonable commercial market rate on reasonable commercial market terms.

INSTITUTE CLASSIFICATION CLAUSE 01/01/2001 QUALIFYING VESSELS

This insurance and the marine transit rates as agreed in the policy or open cover apply only to cargoes and/or interests carried by mechanically self-propelled vessels of steel construction classed with a Classification Society which is:

- 1.1 a Member or Associate Member of the International Association of Classification Societies (IACS*), or
- 1.2 a National Flag Society as defined in Clause 4 below, but only where the vessel is engaged exclusively in the coastal trading of that nation (including trading on an inter-island route within an archipelago of which that nation forms part). Cargoes and/or interests carried by vessels not classed as above must be notified promptly to underwriters for rates and conditions to be agreed. Should a loss occur prior to such agreement being obtained cover may be provided but only if cover would have been available at a reasonable commercial market rate on reasonable commercial market terms.

AGE LIMITATION

2. Cargoes and/or interests carried by Qualifying Vessels (as defined above) which exceed the following age limits will be insured on the policy or open cover conditions subject to an additional premium to be agreed.
Bulk or combination carriers over 10 years of age or other vessels over 15 years of age unless they
 - 2.1 have been used for the carriage of general cargo on an established and regular pattern of trading between a range of specified ports, and do not exceed 25 years of age, or
 - 2.2 were constructed as containerships, vehicle carriers

or double-skin open-hatch gantry crane vessels (OHGCs) and have been continuously used as such on an established and regular pattern of trading between a range of specified ports, and do not exceed 30 years of age.

CRAFT CLAUSE

3. The requirements of this Clause do not apply to any craft used to load or unload the vessel within the port area.

NATIONAL FLAG SOCIETY

4. A National Flag Society is a Classification Society which is domiciled in the same country as the owner of the vessel in question which must also operate under the flag of that country.

PROMPT NOTICE

5. Where this insurance requires the assured to give prompt notice to the Underwriters, the right to cover is dependent upon compliance with that obligation.

LAW AND PRACTICE

6. This insurance is subject to English law and practice. For a current list of IACS Members and Associate Members please refer to the IACS website at www.iacs.org.uk

CL354-2001

Information Required

The following is a list of information¹³ that must be provided to the broker/insurer:

1. A detailed profile of your company and its activities
2. A list of goods involved
3. Details of packing¹⁴
4. Estimated Annual Sums Insured (based on previous year's actual and projections for the ensuing year) and a break-up thereof into
 - Countries (or at least the continents) exported / imported
 - Domestic movements
 - Bulk, containerized, etc.
 - Conveyances (sea/air/land)
 - Incoterms

¹³ More detailed information is generally required for large companies and/or certain industries such as pharmaceutical or high-tech industries.

¹⁴ Kindly provide details of both inner and outer packing. Loose comments such as 'international packing' or 'customary packing' are best avoided.

Guide to Marine Cargo Insurance

5. Both average value per shipment and per bottom limit with sub-limits for air, rail/road etc along with the location limit.
6. Details of multi-transits and how they arise
7. If there are any storage covers required, details thereof including average/maximum period of storage and value
8. Claims Details:

Policy Year	Premium	No. of claims	Claims Paid	Claims out-standing	Total Claims (paid + out-standing)	Loss Ratio (Total Claims *100/Premium)
Year 1						
Year 2						
Year 3						
Current Year (mention inception date of policy)						
Total						

Some details of major claims during the past 3 to 4 years, details of why claims are outstanding, declined claims and nature of frequently occurring claims are information that will enable your broker/insurer to examine your portfolio and suggest improvements either in terms of policy wording and/or loss prevention.

Utmost Good Faith

It is important that quality information is provided to the broker /insurer bearing in mind the principle of utmost good faith.

The Marine Insurance Act provides as under:

18. Disclosure by assured.

1. Subject to the provisions of this section, the assured must disclose to the insurer, before the contract is concluded, every material circumstance which is known

to the assured, and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by him. If the assured fails to make such disclosure, the insurer may avoid the contract.

2. 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.

In **WISE Ltd versus Grupo National Provisional**,¹⁵ a container of goods was stolen and out of a claim of \$800,000, \$700,000 related to Rolex watches. It was held that description of high-value branded goods like Rolex watches as 'clocks' was a failure to disclose material fact and that the intention to ship high-value branded watches should have been disclosed to insurers.

It is important that you explain your business/trade to the broker/insurer so that the open policy can be tailored to your specific requirements to the extent possible. By the same token, you must ask the insurer/broker to explain the terms or the policy to you and most importantly you must examine the policy thoroughly. These steps are a prerequisite to achieve contract certainty.

*"Not without considerable hesitation, I find that I must accept the least unacceptable interpretation as being another manifestation of the illogical and absurd results which arise when the Court is asked to construe an ill-drafted contract."*¹⁶



¹⁵ 2004) EWCA Civ 962,

¹⁶ Court of Appeal in The 'Alexion Hope' [1986]

5

Annual Turnover Policy

Annual Turnover Policy

An Annual Turnover Policy (ATOP)¹⁷ has become very popular in India. This is no different from any open policy except that the rate of premium is charged only on the sales turnover (and any other components not captured by the term ‘sales turnover’)

Unless there are valid reasons, the previous year’s audited gross sales figure is taken as the basis of the proposed sum insured under ATOP subject to adjustment (quarterly/end of year) when audited figures are available, though only downward adjustment is allowed.

Rating Methodology

In ATOP the premium rate is applied on the *sales turnover* but all the *underlying* transits of (imports/domestic purchases) of raw materials including inter-depot transfers/,multi-transits are automatically covered, the logic being that the finished goods¹⁸ turnover includes the cost of raw materials.

The insurer of course does not give a free cover for transit of raw materials! There is a rate for each leg of transit viz., exports, imports, domestic purchases as well as a loading for multi-transit, storage (if any) inter-company / stock movements, etc., but the assured is charged a single rate (weighted average of various rates for each transit exposure)¹⁹ on the sales turnover.

It is essential to grasp this principle that *underlying* transits (of raw materials etc.) can be covered only if the sales turnover figure includes these costs. Accordingly if a company has cross-voyages which are not captured by the term ‘sales turnover’, then the total annual sums insured of such cross-voyages have to be declared separately. More such examples can be provided.

The following would serve as an example of how insurers have individual rates for various components (both purchases and sales including multi-transit exposures) but apply a single rate on sales turnover:

Table 5.1 Rating of ATOP

Type of Transaction	Turnover	Rate (%)	Premium
Output:			
Exports	200,000,000.00	0.03%	60,000.00
Domestic	50,000,000.00	0.03%	15,000.00
Total Sales Turnover	250,000,000.00		75,000.00
Underlying transit exposures:			
Input:			
Import:	80,000,000.00	0.03%	24,000.00
Customs Duty:	24,000,000.00	0.02%	4,800.00
Domestic Purchases	26,000,000.00	0.03%	7,800.00
Total Input Cost	130,000,000.00		36,600.00
Loading for multi-transits on inland transits	50,000,000.00	0.01%	5,000.00
		Total Premium	116,600.00
Single ATOP rate applied on	250,000,000.00		0.047%
Premium on 110% of sales turnover	275,000,000.00		128,260.00

Advantages

In ATOP since there is an advance payment of premium on turnover, there is no need to make monthly declarations to insurers. You do not therefore run the risk of forfeiting insurance cover on account of omission to send one or a bunch of declarations (of shipments) to the insurers.

There is great saving in your administrative cost besides premium spend.

In a single ATOP policy, you can cover the following transits:

- ❖ Imports
- ❖ Exports
- ❖ Domestic Transits (purchase/sale) including multi-transits
- ❖ Inter-company/inter-depot transits
- ❖ Stock transfers
- ❖ Transits to and fro to job workers/loan licensee/s

¹⁷ Also called Sales Turnover Policy (STOP)

¹⁸ Sometimes there is a sale of raw materials also; so sales turnover as opposed to a finished goods sales turnover is a better expression.

¹⁹ It is a different matter though that due to competition, the marine underwriter hardly ever gets a technical premium to cover the exposures involved and build premium reserves over a few years to be able to pay for a stray large loss!

Widening the Scope

There are a number of add-on covers (some of which are discussed in Chapter 8) including to and fro transits to repairers, return transits, inclusion of capital equipments (other than project cargo), etc., that could be added to your ATOP.

Other Features

The insurers expect the customer to have an IT system in place to show information such as the sales figures (export/indigenous) at any point of time and they reserve their right to have access to such a system.

Capital goods (other than project cargo): Sum insured should be separately indicated such that in a single ATOP, capital goods and equipments too can be insured instead of insuring them separately. This has to be agreed beforehand with insurers as the term 'sales turnover' does not obviously include capex

Frequently Asked Questions

1. Is excise duty included in the term 'Sales Turnover'?

Answer: The gross sales turnover includes excise duty.

Most Profit & Loss Account/Statement show as under:

Gross Sales Turnover: INR _____

Less Excise Duty: INR _____

Net Sales Turnover: INR _____

The gross sales turnover is the basis for ATOP

2. Are export incentives included in the term 'sales turnover'?

Answer: While practices vary, generally incentives are shown in the Profit & Loss Account/Statement under 'Other Operating Income' (or a similar head).

There are many companies for whom customs duties are waived for items that would go into production of exportable goods. In case of a failure to meet export obligation (due to an insured peril), such companies would incur the cost of customs duty besides other taxes. Similarly various forms of export incentives would be lost if there is a failure to export. It is advisable, in such instances, to include a cover for contingent duty/taxes in ATOP

3. Should sales turnover of only the finished goods be captured?

Answer: No! While the principle is the sales turnover would include all the costs of materials that go into production of the final product, some companies also sell raw materials along with their usual finished products. For example, a zinc manufacturer will sell zinc cathodes but might also sell zinc concentrates, which is a raw material from his captive mines.

4. How are premiums paid/declarations made?

Answer: You can either make a declaration of estimated sales turnover at the beginning of the policy period or on a quarterly basis, but in either case premium is paid upfront for the entire year/quarterly in advance, as applicable. At the end of each quarter, you can (if you are a listed company) send the insurer a copy of quarterly results containing the actual turnover of the quarter that you file with the Stock Exchange. These results are reviewed by statutory auditors, taken on record by the Board of Directors and then filed with stock exchanges. Unlisted companies can send their audited accounts.

5. Are capital goods other than project cargo included in ATOP?

Answer: There is a very fine balance between inputs (raw materials) and output (finished goods) in premium computation of ATOP.

Capital Equipments: Capital goods are not charged to revenue and you cannot directly link this in the short run at least to the finished product. However since the intention is not to have too many policies, insurers will include these transits in the ATOP itself if a separate sum insured is declared before inception of cover.

Spares and Consumables: There are two types of assets, fixed and current. Capital equipments are fixed assets to be used for a long period of time. They are capitalized in the books of account.

Spares, on the other hand, are current assets to be used up in production. Items like felts, cables, electrical / electronic modules, PCB's, belts, bearings, electrical copper coils for motor winding, etc., are small parts in machinery which get worn out during operation and an inventory of spares has to be maintained by the plant as replacement for the smooth running and maintenance of the plant and machinery in working order. Spares thus are those items expected to get consumed in the normal course of business to maintain productivity of assets in working condition. Spares are not

capitalized and are treated as revenue expenditure.

It is possible that you charge spares to the revenue account only as and when used. Even assuming they are only used as and when required and some spares are kept in storage, *eventually* these are charged to the P&L account. The ATOP would generally cover such spares and consumables but it is advisable to disclose to the insurer an estimated turnover for such items separately.

6. Should insurers really attempt to 'match' the sales turnover (the sum insured under ATOP) with Basis of Valuation/Claim Settlement?

Answer: We recommend that gross sales turnover is used as a base to 'build value' should the turnover not capture certain exposures or values. For example taxes, 10% markup, cross voyages, deemed duty etc., constitute a significant percentage of the overall claims cost and the insurer is justified in asking for addition of these figures to the sales turnover.

While insurers agree to cover all *underlying* transits once premium on sales turnover is paid, one must bear in mind that if the turnover does not include certain transactions or cost, the insurer cannot cover these. Just as a separate sum insured has to be mentioned for capital equipments, such charges/transactions too need to be included separately.

While it is understood that the premium is on the sales

turnover (along with other components, if required, such as taxes/VAT, 10% markup etc), the insurer would like to know the various exposures that he will be insuring. Thus your proposal should include details of not only export/domestic sales turnover but also estimated turnover of imports, customs duty, total domestic purchases, inter-company / depot or stock transfers, job workers / loan licensees, total spares and consumable and the like.

A proper disclosure and representation to the insurer goes a long way in achieving contract certainty in the policy.

7. Do you have a proposal form that can capture the essential details of ATOP exposure?

Answer: Yes. New India would be pleased to send you a detailed proposal form which would capture your exposure in ATOP.



NOTE : As explained in the section on Rating Methodology, the insurer is expected to capture all transits (of raw materials as well as finished goods) and apply a weighted average rate of premium on the sales turnover figure. We also mentioned that the sales turnover should only be used as a base to 'build value' should the term (*sales turnover*) not include other exposures/various additional dimensions in a company's annual transits. This will enable the insurer to weigh each of the factors or types of transits and materials involved.

However, in practice, this rating methodology is seldom applied due to intense competition in the general insurance industry. In order to avoid a situation that a claim is declined on the ground that the item in question was not included in the term *sales turnover*, it is advisable that you exercise caution, and include a detailed note / declaration (along with the proposal form) listing those items/ transits that may not normally be held / deemed covered in ATOP (such as traded goods, speculative purchases normally not forming a part of the annual business plan to take advantage of availability and/or prices, capital goods etc), and obtain written confirmation from the insurer that these are indeed covered.

Similarly written clarification should be obtained from the insurer regarding transit of spares and consumables –a note from you on how these are captured in your Profit and Loss Statement along with the estimated sum insured for such items would assist. This is the only fool-proof way of ensuring that all types of transits are covered, and there is no ambiguity or dispute at a later stage during the policy period or in the event of a claim.

6

How to Complete a Certificate

Consider the following sample certificate of marine insurance:

ORIGINAL

The New India Assurance Co Ltd

Marine Insurance Certificate

Insured: 1		10		Receipt No.	
Policy No:				No:	
Survey: In the event of loss or damage which may involve claim under this certificate, notice of loss or damage should be given to:				Certificate No 2	
Insured		3		B/L /AWB No Shipment Date 4	
From		5			
Ocean Vessel Voy No		Port of Loading		Insured Value 6	
Port of Discharge		Place of Delivery		IMPORTANT	
Marks & Nos		No & kinds of package		Description of Good	
		7		8	

This is to certify that insurance of the above mentioned goods has been effected with this company as per details specified in the Schedule herein above, subject to the terms of the relative Open Policy/Cover Note

Issue Date: 11

9

Authorized Signatory 12

Guide to Marine Cargo Insurance

Completion of Marine Certificates

New India will provide you with E-marine facility for issuance of certificates.

The certificates are usually in triplicate/quadruplicate. The first one is the original and is negotiable and will be transmitted along with other title documents such as the invoice, packing list and the Bill of Lading/Airway Bill etc., to the buyer/bank. It is only upon the presentation of the original certificate of insurance, duly assigned, that claims will become payable to the assignee (usually the buyer).

The last copy of the certificate is for the insurer's own records.

While E-Marine would ensure certificates are generated without any error, the following commentary would still be useful.

It is important that marine certificates are completed accurately to ensure that claims are handled in an efficient manner with the minimum of delay and banks or your overseas buyer have no cause for complaint.

Familiarizing yourself with the following notes will help in the correct preparation of these certificates.

Each box in the certificate have been numbered in the sample certificate as 1, 2, 3 etc. The following notes refer to the corresponding numbers on the sample certificate given above.

Please ensure that all certificates are typed.

1. Open Policy No: This will be system generated. The number does not change during the policy period.
2. Certificate No: This will be system generated
3. Insured: The name of your company should be inserted. Where a bank or similar organization requests their interest to be shown you can complete this field as under:
'The ABC Company &/or the XYZ Bank'
4. B/L No and shipment date: Self-explanatory.
5. Voyage from/to and via: In this column, write the vessel name and voyage number, place of loading, place of

discharge, place of delivery etc. See example below.

From

Show place of origin, for example:

'Warehouse-Pune, India'

To

Show the final destination, for example:

'Warehouse-New York, USA'

Via²⁰

Please note that if you write 'From Hong Kong to Chennai' then it would be assumed that the cover is from a warehouse in Hong Kong to the final warehouse within the municipal limits of Chennai. If cover is required, say, up to Puducherry, then this has to be stated clearly in the certificate. However kindly refer to your open policy since for some destinations; it is possible that the insurer has not agreed to cover beyond the port/airport limits.

6. Sum Insured²¹: The insured value should be calculated in accordance with the agreed basis of valuation in the policy unless agreed otherwise with the insurer. Kindly check that the insured value does not exceed the Limit of Liability (per bottom limit) for any one vessel or conveyance. The sum insured should be stated both in figures and in words, stating the currency as under:
Rs 150,000 (Rupees One lac and fifty thousand only)
7. Interest (i.e. subject-matter insured) & Marks and Numbers:

Please complete with full description of subject-matter insured and all shipping marks, including type of packing and number of packages along with any other information such as

'Shipped on Deck'; 'Full Container Load' (FCL)

Identification of postal packages may be shown as 'fully addressed'.

Where a documentary credit (LC) is involved banks will state the precise words which they require to be shown on the certificate. The description of the subject-matter

²⁰ If known, this should be completed. This is of particular importance if transshipment is involved.

²¹ In respect of exports from India, the RBI permits sum insured to be in a foreign currency provided the exporter gives a declaration that the entire invoice proceeds including the insurance premium would be received in foreign currency.

insured and the marks and numbers should be copied exactly.

8. In this box, any additional terms/warranties and/or address of overseas settling agent (apart from the address of the survey agent at destination port [box 10], or sum insured in the currency of the invoice or LC can be inserted.²²
9. Conditions of Insurance:²³ This box is usually pre-printed with applicable clauses such as ICC(A), War & SRCC Institute Replacement Clause etc.

However if there are any restrictions in the open policy then the same should be mentioned in the certificates (which is eventually going to be endorsed in favour of an overseas buyer who is not privy to the open policy terms). Thus if unpacked goods contain the following clause, then the same needs to be reproduced in the certificate:

‘Excluding:

- Rust, oxidation, discolouration and/or corrosion
- Scratching, denting, bruising, chipping and cost of repainting
- Twisting, bending and distortion

Unless attributable to the carrying conveyance being involved in an accident or casualty’.

Similarly any policy deductible (excess) ought to be mentioned in the certificate.

Without our prior agreement kindly do not use

clauses/terms and conditions on a certificate other than those shown in your open policy. If you are in any doubt regarding a particular LC requirement(s), please contact us. For instance, the LC may require a ‘warehouse to warehouse’ policy for a shipment to Nepal but the insurer’s open policy may provide cover only upto Nepal Customs.

10. Survey Agent: Insert the contact details of the survey agent from the insurer’s worldwide directory containing a list of their agents in various ports of the world. This will enable the overseas buyer to contact the agent promptly in case of a claim.
11. Date issued: This is the date when the certificate is completed. Some LCs require that the date of issuance of the certificate should not be later than the date of the Bill of Lading, but refer also to the provision of article 28(e) of UCP 600.²⁴
12. Countersigned: Some banks insist that the certificate should be counter-signed by the assured. In such cases, the certificate is not valid unless signed by an authorized signatory of the assured’s company. This should be over stamped with the company name.

Note:

- A. Premium: Usually our customers do not prefer to give details of premium, discounts and service tax. However at the top of the certificate Receipt No is mentioned which confirms premium has been paid.

²² Claims are paid in the currency of the policy. Thus if sum insured is mentioned in INR, then we pay claims in INR. If the overseas buyer wants claims to be paid in (say) US dollar, then the policy currency of INR is exchanged at the prevailing exchange rate on the date of settlement. If the currency of sum insured is in (say) US dollars, then claims will be paid in US dollars. However when both INR and an overseas currency are mentioned, there could be confusion as to the currency of the policy (certificate).

²³ **For sendings by water and/or road and/or rail conveyances:**

Institute Cargo Clauses (A)

Institute War Clauses (Cargo)

Institute Strikes Clauses (Cargo)

Institute Classification Clause

Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons Exclusion Clause 10/11/03 (CL.370)

For sendings by air

Institute Cargo Clauses (Air) (excluding sendings by Post)

Institute War Clauses (Air Cargo) (excluding sendings by Post)

Institute Strikes Clauses (Air Cargo)

Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons Exclusion Clause 10/11/03 (CL.370)

For sendings by post

Institute Cargo Clauses (A)

Institute War Clauses (sendings by Post)

Institute Strikes Clauses (Cargo) or Institute Strikes Clauses (Air Cargo) as appropriate

Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons Exclusion Clause 10/11/03 (CL.370)

²⁴ UCP provides in Article 28(e) Insurance Documents

‘The date of the insurance document must be no later than the date of shipment, unless it appears from the insurance document that the cover is effective from a date not later than the date of shipment’.

Thus if a certificate mentions that the cover attaches from the assured’s warehouse, obviously this has to be prior to date of shipment.

- B. Usually the policy issuing office will settle claims. Some LCs however require claims to be payable at destination. In such a case, you could use the empty box (No. 8) to state 'claims payable at.... (mention the name of port/place overseas)'. If required you could mention the name/address of the overseas claim settling agent in this box. In fact the surveyors in various ports are the agents of our overseas claim settling agent.

Assignment of Certificate

The certificate can be assigned in blank in conformity with the terms of sale simply sign and place your company's stamp on the reverse of the certificate. This will enable the assignee of the certificate to pursue his claim

If, on the other hand, you wish to assign the certificate to a named party, sign on the reverse but also state the name of the person/company to whom the certificate is to be assigned, e.g., 'This certificate is assigned to ABC Company, Sydney, Australia'.

Lost Certificate Receipt:

To: Name of Insurance Company

Re: Vessel/Bill of Lading No & Date/Voyage/Cargo.
Certificate No

In consideration of our settling the claim in favour of (claimant's name) under Certificate No.....without production of the above captioned original certificate of insurance, we hereby undertake to hold you harmless for any consequences which may arise through your so doing. We also undertake to reimburse to you within 15 days of

your demand any amount you have paid as a liability in consequence of the above.

CHECKLIST FOR CERTIFICATES

1. The sum insured must be in the currency required by the Term of Sale or LC.
2. The sum insured must cover the required markup over the invoice/CIF value as given in Term of Sale or LC.
3. If the Term of Sale or LC requires claims to be settled directly with the buyer at destination, then the certificate must reflect insurer's agreement in this regard by clausing the certificate 'claims payable at destination'.
4. Cover should be identical to LC terms and if the latter terms are wider than the open policy, kindly contact us.
5. The duration of cover in the certificate should match the Term of Sale or L/C. For instance if cover required is 'warehouse to warehouse' but the open policy mentions that the cover ceases at the port of discharge, then contact us.
6. Certificate should be consistent with the other documents in its identification of the voyage and description of the goods.
7. Particular attention should be paid to the date of certificate: it should be in accordance with that in the LC.
8. Wherever possible, mention the container as well as the seal numbers in the invoice and the certificate and ensure the same match those mentioned in the bill of lading.

Institute Cargo Clauses A, B and C

There are a number of Institute Clauses such as Institute Cargo Clauses (A, B and C), associated Clauses for War and SRCC, Institute Timber Trade Federation Clauses, Institute Clauses for frozen food and meat, Institute Commodity Clauses, Institute Bulk Oil Clauses, to name a few. In this publication we concentrate only on Institute Cargo Clauses A, B and C.



ICC A is an all risks form whereas B and C are on named-perils basis. All three contain exclusions.

Does an All-Risks Policy Really Cover All Risks?

ICC A no doubt mentions 'all risks' but this does not mean 'all losses'. The emphasis is on 'risk' i.e., a loss or damage must have arisen from a 'fortuitous' event. A fortuity is an 'accident or any loss or damage which is not an inevitable'.

Feuiltault Solution Systems Inc. versus Zurich Canada (hereinafter Feuiltault)²⁵ involved a case of rust damage to steel equipment shipped in containers. The assured 'Feuiltault' used a large number of wood pieces as

dunnage to prevent the machines from shifting in stow during the voyage from Montreal to Germany. The machines were incidentally unwrapped.

At the end of the voyage (which was uneventful), the containers were destuffed by the buyer who found all the units rusted to various degrees. The insurer declined the claim on the ground that loss was attributable to inherent humidity/moisture content of the timber used to secure the machines to the container.

The court held that the packaging was insufficient in the absence of a corrosion inhibitor or other wrapping material to protect the goods from condensation/sweat. The court held sweating damage as unrecoverable. It also ruled out any fortuity during the voyage as there was no untoward or unusual event of any kind during the voyage (such as ingress of water from outside the containers) that could have caused the condensation inside the container.

Burden of Proof

The initial burden in all three (A, B and C) of proving a loss by a fortuity is in the first instance on the assured. However this burden is more onerous in the case of named peril clauses such as B and C.

The assured must prove, on a balance of probabilities, that accidental or fortuitous loss or damage has occurred during the period of transit covered by the policy. However in an all-risk form such as ICC A, the assured does not have to prove the exact nature of the peril that caused his loss.

Under the named-perils form such as ICC B and C the assured is required to prove on a balance of probabilities that the loss was reasonably attributable to (clause 1.1) or caused by (clause 1.2) one of the listed perils (compare this with the position in ICC A clauses).

Once the assured overcomes the initial hurdle of establishing a fortuity (A) or occurrence of a named peril (B and C), the burden shifts to the insurer to prove exclusion.

In practical terms, the assured who has an all-risks

²⁵ 2011 FC 260

insurance (ICC A) discharges his burden of proof by means of documentation viz., a clean B/L and a damage/shortage report at destination.

All three (A, B and C) cover general average and salvage besides covering liability under Both to Blame Collision Clause.

Comparison of ICC B and C Clauses

Clause No	ICC B	ICC C
1.1	<i>Loss of or damage to the subject-matter insured reasonably attributable to</i>	
1.1.1	Fire, explosion	Covered
1.1.2	Vessel or craft being stranded, grounded, sunk or capsized	Covered
1.1.3	Overturning or derailment of land conveyances	Covered
1.1.4	Collision or contact of vessel craft or conveyance with any external object other than water	Covered
1.1.5	Discharge of cargo at a port of distress	Covered
1.1.6	Earthquake, volcanic eruption or lightning	Not covered
1.2	<i>Loss of or damage to the subject-matter insured caused by</i>	
1.2.1	General average sacrifice	Covered
1.2.2	Jettison or washing overboard	Only jettison covered
1.2.3	Entry of sea, lake or river water into vessel craft hold, conveyance, container or place of storage	Not covered
1.3	Total loss of any package lost overboard or dropped while loading onto or unloading from vessel or craft	Not covered

Type of Losses covered by A, B and C Clauses

All risks forms (such as ICC A) do not list each and every risk or peril that they cover. ICC A would obviously cover all the perils mentioned in ICC B and would in addition cover, subject to any exclusions, any loss or damage due to a fortuity.

It is important to note that ICC B and C are not total loss covers as wrongly assumed by some. All three cover **(applicable to both 1982 and 2009 editions)** the following:

1. Actual Total Loss
2. Constructive Total Loss²⁶ (CTL)
3. Particular Average, i.e., partial loss to the cargo by an insured peril in case of B and C and by any fortuity/accidental cause(s) in the case of ICC A
4. General Average Sacrifice
5. General Average and Salvage Contributions
6. Collision Liability (Both to Blame Collision clause)
7. Expenses such as
 - Survey fee and reconditioning costs

²⁶ A CTL occurs where the subject-matter insured is so damaged that (a) either its actual total loss appears to be unavoidable, or (b) in order to prevent it from becoming a total loss, expenditure greater than its value when preserved would have to be incurred. This is simply a commercial total loss. The goods may still be available in specie but the cost of repair or reconditioning or recovery may exceed the value upon arrival.

- Sue and labour expenses (those incurred to prevent/minimize a loss)²⁷
- Forwarding expenses (when transit is terminated short of destination due to an insured peril)

Though not mentioned explicitly all these clauses only cover physical loss of or damage to goods. For example, claim on account of goods (otherwise in a sound condition) arriving late and missing the Christmas sales will not be admissible under these clauses (exclusion 4.5).

Exclusions

In ICC A the following are the exclusions:

- 4.1 Wilful misconduct of the assured
- 4.2 Ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear
- 4.3 Insufficiency of packing/unsuitability of packing or preparation of the cargo (including stowage in a container if carried out prior to attachment of the insurance by the assured or his servants)



- 4.4 Loss damage or expense caused by inherent vice or nature of the subject-matter insured
- 4.5 Loss damage or expense proximately caused by delay even though the delay be caused by a risk insured against(except expenses payable under Clause 2 above)

- 4.6 Loss damage or expense arising from insolvency or financial default of the owners managers charterers or operators of the vessel
- 4.7 Nuclear etc. exclusion
- 5.0 Unseaworthiness / Unfitness of vessel craft conveyance container etc.
- 6.0 War exclusion
- 7.0 Strikes exclusion

There are add-on clauses to displace or modify some of these exclusions for customers with a good track record (see Chapter 8).

Exclusions 6 and 7 relate to war and strikes. There is a separate war and strikes clause available at an additional premium. It should be noted that Institute War Clauses do not override all the perils excluded in no 6 above.

The above exclusions are common to A, B and C clauses but B and C clauses, in addition, contain the following exclusions:

- **4.7 deliberate damage to or deliberate destruction of the subject-matter insured or any part thereof by the wrongful act of any person or persons**
Thus if a vessel is deliberately scuttled, then the resultant total loss of claim will not be admissible even if the assured was not privy to the scuttling of the vessel.
- **Piracy is excluded in ICC B and C-physical loss/damage to goods due to actions of pirates as well as piratical ransoms under GA**



²⁷ This is embodied as Duty of Assured Clause in the Institute Cargo Clauses. These are expenses to avert or minimize a loss from an insured peril incurred by the assured or their employees or agents short of destination.

Duration (1982 Edition)

Duration of Cover

- 8.8.1 This insurance attaches from the time the goods leave the warehouse or place of storage at the place named herein for the commencement of the transit, continues during the ordinary course of transit and terminates either
- 8.1.1 on delivery to the Consignees' or other final warehouse or place of storage at the destination named herein,
- 8.1.2 on delivery to any other warehouse or place of storage, whether prior to or at the destination named herein, which the Assured elect to use either
- 8.1.2.1 for storage other than in the ordinary course of transit or
- 8.1.2.2 for allocation or distribution,
- or
- 8.1.3 on the expiry of 60 days after completion of discharge overseas of the goods hereby insured from the overseas vessel at the final port of discharge, whichever shall first occur.
- 8.2 If, after discharge overseas from the overseas vessel at the final port of discharge, but prior to termination of this insurance, the goods are to be forwarded to a destination other than that to which they are insured hereunder, this insurance, whilst remaining subject to termination as provided for above, shall not extend beyond the commencement of transit to such other destination.
- 8.3 This insurance shall remain in force (subject to termination as provided for above and to the provisions of Clause 9 below) during delay beyond the control of the Assured, any deviation, forced discharge, re-shipment or transshipment and during any variation of the adventure arising from the exercise of a liberty granted to shipowners or charterers under the contract of affreightment.

Explanation

When does the cover attach?



This happens when *goods leave the warehouse/place of storage for commencement of transit*. If the lorry carrying the goods gets engulfed by fire within the warehouse complex, there is no cover since the goods have to leave the gate of the factory or the warehouse (the 'threshold test'). Loading onto the vehicle parked outside the gate is covered provided the vehicle embarks on the voyage immediately upon loading.

When does the cover terminate?

Clause 8 provides for a number of situations when cover might terminate:

- *When goods are delivered to the consignee's warehouse or any place of storage:* thus if goods are unloaded at port of discharge but the assured decides to put the goods in a bonded warehouse for his convenience (e.g. lack of storage space in his warehouse/factory), cover terminates when goods enter the bonded warehouse even though it is not the final intended warehouse or 60 days are still not over.



The general consensus among practitioners of marine cargo insurance is unloading risks are not covered in the 1982 edition of Institute Cargo Clauses. The Loading and Unloading Clause, if added to the policy, would provide clarity (see Chapter 8)

- *If the assured decides to store the goods in any warehouse for the purpose of allocation/distribution of his goods or simply for storage:* again the cover terminates even before reaching the final intended warehouse.
- *If the assured decides to change the original destination:* cover ceases (8.2) when goods leave the port for commencement of transit to the new destination. In such cases the assured should request the insurer to hold him covered.
- *60 days limit:* Finally there is a cap of 60 days from date of discharge from oversea vessel. However these 60 days are only a limit. For example if on the 15th day, the assured decides to bond the goods in a bonded warehouse, cover terminates.

The duration clause also uses a phrase 'ordinary course of transit'. What does this phrase mean? In marine cargo insurance it is recognized that during the transportation of goods there would be incidental storages, which are in the ordinary course of transit. So long as the goods are in their ordinary course of transit, cover continues. A good example of a storage which is not in the ordinary course of transit is storage for the convenience of the assured.

The duration clause adds comforting held covered provisions in section 8.3 : any delay beyond the control of the assured, deviation, transshipment, etc., does not terminate the cover.

To understand the duration of cover, Clause 8 should be read along with Clauses 9 and 10.

Though all the three Clauses viz. A, B and C provide for warehouse to warehouse cover, this is to be read along with the insurable interest clause. Thus if the assured is an FOB seller, he does not automatically get the benefit of the warehouse to warehouse clause in ICC, i.e., the risk would cease when he loads the cargo on board the oversea vessel. Sometimes insurers modify the duration of cover in ICC by restricting (in the certificate) cover only up to port of

discharge and excluding inland transit to final destination. In other words the duration stated in the certificate would override the printed Institute Cargo and War/Strikes Clauses.

Institute Cargo Clauses (2009 Edition)

The Institute Cargo Clauses have undergone constant review resulting in many amendments since they were introduced in 1912.

In 1981 there was a major review of these clauses which led to radical changes in the 1982 edition.

In 2007 the Joint Cargo Committee (JCC), acting on behalf of the Lloyd's Market Association (LMA) and the International Underwriters Association of London (IUA), distributed a questionnaire to brokers, insurers and other interested parties. This was to assess whether the clauses were still appropriate in the modern business world and to identify areas where they may be improved and enhanced.

As a result of this enquiry JCC had proposed a number of changes. There was a strong desire to make the clauses more accessible to overseas markets and several of the changes reflect this. Thus, the new Institute Cargo Clauses and associated War and SRCC clauses were introduced (edition 2009). Some of the changes in the 2009 edition are as under:

- There are several minor modifications to modernize the language. For instance 'carriage' replaces 'affreightment', 'insurer' replaces 'underwriter' and 'employees' replaces 'servants'.
- References to cargo, goods, interest, insured interest, subject-matter are replaced with the single term 'subject-matter insured'.
- The side headings have been removed and replaced with headings in the body of the wording as appropriate.
- The relatively more important changes are as listed below:
 - *Definition of terrorism has been incorporated*
 - *Revised packing exclusion*
 - *Revised insolvency of shipowners etc., exclusion*
 - *New duration clause*
 - *Neutralizing the effect of S.44 of MIA (phantom ships)*
 - *Changes to 'held covered' language*

Let us discuss these important changes:

1. The clause now includes a definition of terrorism which includes other motives such as ideological and religious motives.
2. The packing exclusion 4.3 now identifies the purpose for which the packing must be sufficient or suitable (*this is to withstand the ordinary incidents of the voyage*). Changes appear to be cosmetic and the exclusion is as stringent as the 1982 version. In deserving cases, insurers can consider a non-Institute wording to dilute the effect of this exclusion (see Chapter 8).
3. The word ‘proximately’ is deleted from the delay exclusion and there appears to be a dilution of causation principle: this exclusion (probably) is slightly more stringent than before.
4. The insolvency exclusion clause has diluted the exclusion in favour of the assured. Now the exclusion can be invoked only if the assured was aware of insolvency of shipowners *at the time of loading*. Further this exclusion does not apply under the new edition to any party who has bought the goods or agreed to buy the goods in good faith under a binding contract. This protects the innocent assignee (usually the overseas buyer).
5. Duration: Changes were made to reflect modern broking practice and now include loading and unloading. Cover now attaches inside the warehouse.

Unlike the 1982 edition of ICC, transit now commences within the warehouse/place of storage when goods are first moved, for the purpose of immediate loading into/onto carrying conveyance. According to JCC *‘this connects the first movement of the goods closely in time to the loading of the goods into conveyance’*.

Transit now terminates within the warehouse at destination on ‘completion of unloading’. The term delivery has been replaced with unloading. Thus both loading and unloading are covered in ICC A,B and C 2009.

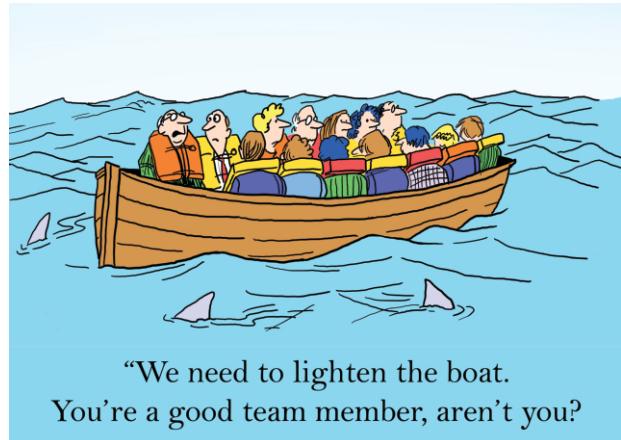
6. In *The “Prestrioka” (Nima SARL v Deves Insurance)*²⁸ the Court of Appeal considered the effect of S.44 of MIA 1906 on the transit clause in ICC. S44 of MIA 1906 states:
“Sailing for Different Destination : ‘where the

destination is specified in the policy, and the ship, instead of sailing for that destination, sails for any other destination, the risk does not attach’.

A consignment of rice was insured from Kohnsichang in Thailand to Dakar in Senegal on vessel Prestrioka. The cargo was loaded on this vessel, but instead of sailing to Dakar simply disappeared. The cargo interest argued that the cover attached when goods left the warehouse and thereafter could not ‘unattach’ just because the vessel sailed to a different destination without the assured’s knowledge. However Justice Potter ruled that the fundamental nature of marine policy was to define two termini. The implication of the judgment was that there would now be no cover for goods on a phantom vessel or for goods stolen by shipowners in a pre-planned manner.

This judgment was severely criticized. JCC took note of this and restored cover in the 2009 version of ICC.

7. Reference to ‘held covered’ provision in ICC is removed in line with the change to the classification clause in 2001. The replacement wording refers to cover being *provided if a loss occurs prior to agreement being obtained only if the cover would have been available at a reasonable market rate on reasonable market terms* (see Clause 1 of Institute Classification Clause CL 354 01.01.2001).



ICC A, B and C cover jettison²⁹

²⁸ Insurance [2002] EWCA Civ 1132

²⁹ The voluntary act of throwing overboard cargo: generally this arises as a GA sacrifice in an attempt to remedy a situation which endangers the adventure.

While ICC A or ITC A provides a broad all-risk cover which has withstood the test of time, sometimes a variety of non-Institute (manuscript) clauses is added to the open policy. These clauses are used to widen the cover or provide clarity in case of a grey area or simply to shift the burden of proof to the insurer to prove an exclusion.

Some industries (e.g. pharmaceutical, mining or high-tech) too require bespoke policy wordings instead of standard off-the-shelf products.

Covers are also widened by addition of extraneous perils like heat sweat and/or spontaneous combustion, rust, oxidation, discolouration and/or corrosion, shortage and leakage risks howsoever caused, country damage, etc., but these extensions require additional premium and a willingness to take appropriate loss prevention measures.

Non-Institute Clauses

Accumulation Clause/200% Accumulation Clause – Joint Cargo Committee JC 2012/10 dated 21/12/2012

Should there be an accumulation of the subject-matter insured whilst in transit beyond the conveyance limits expressed in this insurance by reason of any interruption of the transit beyond the control of the insured and/or by reason of any casualty and/or at a transshipping point and/or on a connecting vessel or conveyance it is agreed that this insurance shall attach for the full amount at risk subject to insurers' liability being limited to a maximum of 200% of the relevant conveyance limit provided notice is given to insurers as soon as practicable by the insured of such accumulation.

Explanation: The per bottom and location limits are set based on the maximum foreseeable values of goods on one vessel and any one location (e.g. port of loading or discharge) respectively. However the accumulation clause is used to cover unforeseen accumulations at, for example, a port of discharge or transshipment port. While location limits refer to accumulation arising in the ordinary course of transit, the accumulation clause applies to unforeseen

buildup of stocks. Please note in the clause reproduced above, it is the conveyance limit that is doubled.

Aircraft Clause

It is hereby understood and agreed that wherever the words 'ship', 'vessel', 'seaworthiness', 'shipowner', or 'vessel owner' appear in this Policy they are deemed to include the words 'aircraft', 'airworthiness', and 'aircraft owner'.

Explanation: There are no Institute clauses equivalent to ICC B and C for air transits. There is only an all-risks version for air transits (Institute Cargo Clauses [Air]). If the insurer or the assured opt for a restricted cover for air transits, then this aircraft clause is used (along with ICC B or C) to avoid any possible argument that the insurer did not use appropriate clauses for air transits.

Airfreight Replacement Clause

In the event of damage covered under this policy insurers will pay reasonable costs incurred by the assured in airfreighting:

- a) the subject-matter insured and/or replacement parts for repair purposes and/or*
- b) the repaired or replacement subject-matter insured or parts to the original destination.*

Subject to a Sub-Limit of INR_____ (or equiv in other currencies)

Explanation: There are many versions of this clause (also called expediting expenses clause). Insurers agree to pay for air-freighting for repairs and return even though the original insured voyage was by sea-freight.

Brands Clause

In case of damage to property bearing a brand or trademark, the sale of which carries or implies a guarantee of the supplier or assured the salvage of such damaged property shall be determined after the removal of all brands or trademarks.

Explanation: The above is a very simple version of the brands clause. There are many other versions available

including those designed to address goods whose brand names, etc., cannot be removed (sometimes brand names/logos can be removed, sometimes they are 'within the works' and cannot be removed or erased). The brands clause severely impacts the loss ratio since the insurer is deprived of salvage sale to reduce the claim amount as well as the extent of recovery against third parties.

Concealed Damage Clause

It is agreed that any loss or damage discovered on opening containers, cases and/or packages shall be deemed to have occurred during the transit insured hereunder (and irrespective of attachment of assured's interest) and shall be paid for accordingly unless proof conclusive to the contrary be established, it being understood that any containers, cases and/or packages showing signs of damage are to be opened immediately on the cessation of risk hereunder.

This agreement shall, however, only apply where such loss or damage is discovered within 30 days of the cessation of risk hereunder.

Explanation: The need for the concealed damage clause (also called delayed discovery of loss clause) has arisen due to the fact that good packing technology and containerization have led to concealed damage that is discovered only when the insured transit is over. In the case of projects, a package is often opened only at the time of erection.

Container Clause

Where cargo, insured hereunder, is carried in containers, it is agreed, as between the assured and the insurer, that the fitness of the container is hereby admitted unless the assured or their employees are privy to such unfitness

Explanation: Often containers have holes and rust spots on the roofs. The entry of water into containers is a recurrent problem and can lead to substantial loss. Pre-shipment inspection of containers is suggested but when the turnover is substantial and/or the assured is a trader (and not the seller), such pre-shipment surveys become difficult to implement.

Container Demurrage Charges Clause

This policy shall cover demurrage charges and/or late

penalties assessed against, and paid by the assured for late return of containers when said containers are retained by the assured at the instruction of the insurers for inspection by the insurer's surveyor in investigation of loss or damage recoverable under this policy.

Explanation: This clause provides for demurrage charges to be reimbursed by insurers when a container cannot be sent back to the terminal before the agreed due date provided this delay was caused by an insured peril during the insured transit. See commentary provided in Chapter 9.

Cutting Clause

The cracked or broken portion of each pipe, sheet or tile to be cut. Insurers to pay proportionate value of the part cut off and to receive any salvage on such proportion.

Explanation: Again, a number of versions of this clause are available (for pipes, steel etc.). One has to be careful while using this clause (e.g. in project cargoes) where dedicated lengths/dimensions of pipes, etc., are required and any damage renders them unusable. Similarly some pipes have bevel ends, which if damaged may render them a total loss. The cutting clause therefore should be included only after agreement with the assured.

Debris Removal Clause

This insurance is extended to cover, in addition to any other amount recoverable under this insurance, extra expenses reasonably incurred by the assured for the removal and disposal of debris of the subject-matter insured, or part thereof, by reason of damage thereto caused by an insured risk, but excluding absolutely:

Any expenses incurred in consequence of or to prevent or mitigate pollution or contamination, or any threat or liability therefor

The cost of removal of cargo from any vessel or craft

In no case shall the insurers be liable under this clause for more than 10% of the insured value of the cargo covered hereunder

Explanation: There are a number of versions of this clause but most would exclude cost of debris removal from vessel or conveyance and exclude pollution liabilities and cost of preventing the same. A limit of liability such as 10% of the insured value is quite common.

Deck Cargo Clause

Insured goods carried in containers to be covered in a similar manner to under-deck cargo. Unless otherwise agreed all other deck cargo shall be subject to ICC (C) including the risk of jettison washing overboard of whole or part of the deck cargo.

Explanation: MIA 1906 of UK contains a schedule which provides a definition of goods. The term 'goods' does not include cargo stowed 'on deck' (unless otherwise specifically mentioned in the policy or a particular cargo is 'customarily' carried on deck).³⁰

It is therefore important that you inform the insurer of any cargo which will be on deck. Cover for deck cargo is generally restricted to ICC C including washing overboard. In certain cases ICC A cover is extended to deck cargo at an additional premium and/or subject to survey supervision of stowage of cargo on deck.

The above is a simple version of the deck cargo clause. There are other versions which refer to curtain-sided trailers and open-top containers stowed on deck and restrict cover for such containers.

One recurrent problem is stowage of cargo on deck but issuance of an under-deck Bill of Lading by the carrier. Some versions address this problem.

Sometimes insurers warrant under-deck stowage and this then would need to be complied with strictly.

Deductible Clause

In the event of a deductible or deductibles being incorporated under this policy, notwithstanding said deductible or deductibles, claims recoverable under the Institute Cargo Clauses (C) dated 1.1.82, the Institute War etc., and Strikes etc., coverage provided for hereunder, and General Average, Salvage and Sue and Labour Charges shall be payable in full.

Explanation: The purpose of a deductible is usually to eliminate smaller/attritional claims and not to penalize an assured when a claim is the result of a fortuitous circumstance beyond his control. The above clause provides that no deductible will be applicable in case a

claim would have been recoverable had an ICC C cover been provided (which covers major perils) and claim recoverable under war and strike clauses.

Difference in Conditions Clause

In respect of shipments which are purchased CIF or on similar terms and the insurance arranged by the supplier or seller is more restricted than the conditions of this policy, subject to declaration of values and payments of premium thereon if required, this insurance shall cover the difference in conditions between the insurance arranged by the supplier and/or seller and the conditions of this policy. All shipments insured under this clause shall be valued at the amount of the seller's insurance.

This insurance also guarantees the collection in full of all losses which otherwise would come within the terms of this policy, and insurers are to advance the amount to the insured as a loan repayable. This insurance is not to be deemed double insurance.

Explanation: In CIF/CIP Incoterms Rule, the seller has to offer only minimum cover (such as ICC [C]). DIC cover protects the buyer in such situations.

Errors and Omissions Clause

Assured shall not be prejudiced by any unintentional delay or omission in the reporting hereunder or any unintentional error in the amount or description of the interest, vessel or voyage, or if the subject-matter of the insurance be shipped by other vessel, if notice be given to insurers as soon as practicable after said facts become known to the assured and deficiency of premium if any, made good.

Explanation: This is a useful clause to have in an open policy though this is implied. This clause only provides that the assured is not prejudiced by an unintentional delay / omission, but the insurer might have other defences – e.g. vessel not conforming to the classification clause for instance.

FOB and FAS Purchases

Notwithstanding anything contained herein to the

³⁰ It is now recognized by insurers that with growing containerization, 'on deck' stowage of containers has become quite common. Insured goods carried in fully enclosed metal containers are covered in a similar manner to under-deck cargo.

contrary, cover commences from the time of leaving the supplier's factory, warehouse, store or mill, notwithstanding that the goods and/or interest may have been purchased on FOB or FAS terms-assured subrogating their rights of recourse against suppliers for any damage that may occur prior to delivery 'Free onboard' or 'Free alongside Steamer'. Goods are at the insurers' risk from the time of leaving the supplier's premises irrespective of the terms of the Contract of Sale and/or as if the Contract of Sale was ex the supplier's premises.

Explanation: An FOB or CFR (or similar) buyer might have paid for the goods in good faith but faced with a claim later which, upon investigation, turns out to be pre-FOB in origin when the buyer had insurable interest as the goods were at seller's risk. However such clauses are 'contingency' covers and it is implied that the assured would, in the first instance, make reasonable attempts to recover the claim from the seller.

General Average in Full Clause

Insurers agree that for the purpose of claims for GA Contributions and Salvage Charges recoverable hereunder the subject-matter is deemed to be insured for its full contributory value.

Explanation: Under-insurance is applicable if the contributory value of goods at the time of discharge is more than the sum insured. This sometimes occurs due to currency rate fluctuation for example.

Letter of Credit Clause

Where the assured is obliged to arrange insurance in accordance with any instructions contained in a Letter of Credit such cover is granted hereunder, provided it does not exceed the existing provisions of this contract wording.

Notwithstanding the above and irrespective of the Letter of Credit requirements the interest of the assured named herein shall always be protected hereunder against all the risks covered by this contract wording.

Explanation: Sometimes banks insist on a particular clause or term and do not accept the document if the certificate does not include such terms as required by the LC. Insurers would be happy to accommodate such requests so long as they are reasonable. For instance, if the banks want

American Institute Cargo Clauses, the insurer will accept this even though they might be more familiar with Institute Cargo Clauses of the London market. Institute Commodity Clauses instead of ICC A would again be acceptable. However certain terms can considerably widen the scope of cover: for instance, including leakage or breakage howsoever caused. Fortuitous leakage or breakage is anyway covered in ICC A, but addition of such terms could well be interpreted to mean non-fortuitous leakage or a breakage too is covered by the policy. Similarly a warehouse to warehouse provision might be required, whereas for certain countries the open policy was on 'no cover after discharge' terms or subject to an additional premium. Again, there are various versions of this clause but the one reproduced above is acceptable.

Loading and Unloading Clause

Including loss or damage to the goods as per the Institute Cargo Clauses mentioned above during loading onto carrying conveyance immediately prior to despatch and unloading from carrying conveyance immediately after arrival at the assured's or consignee's premises and in the case of containers, during the stuffing immediately prior to despatch and destuffing thereof immediately after arrival at the assured's or consignee's premises.

Explanation: Self-explanatory. ICC 2009 edition covers loading and unloading risks but this non-Institute clause is added when the open policy is based on ICC 1982.

Packers Clause

Cover under this policy shall include any insured goods at the risk of the assured in transit to the premises of any packer, whilst there being packed and awaiting shipment (upto a maximum of ----- days) and thence in transit to final destination

Explanation: Even under the warehouse to warehouse provision of Institute Cargo Clauses, a transit to packer's premises is not, it is submitted, within the 'ordinary course of transit'. If cargo is being packed by professional packers, then it is recommended that the transits to and from packer's premises are specifically covered.

Packing Clause

The exclusion relating to 'insufficiency or unsuitability of

packing or preparation' within the Institute Cargo Clauses shall not apply where such insufficiency or unsuitability arose without the assured's knowledge, privity or control.

Explanation: Both 1982 and 2009 editions contain Clause 4.3 excluding loss or damage due to insufficiency of packing or preparation of the subject-matter insured. The above clause is useful when the assured is an importer and is neither privy to packing nor in a position to influence the quality of packing.

Presentation Packing

The company agrees to pay the reasonable costs of repair or replacing of any presentation packing of goods lost or damaged provided that the presentation packing has been protected to withstand the normal rigours of the transit

Explanation: Insurers do not pay for damage to packing units. It is a rule of thumb in the London and other markets that packing is not part of the subject-matter insured. The above clause is included in policies if packing itself is required to be treated as part of the subject-matter insured. Perfumes in bottles is an example where packing is an intrinsic part of the cargo.

Repacking Clause

It is understood and agreed that should the packing be damaged from any cause which renders interest unfit for on-shipment or distribution, irrespective of final destination shown herein, insurers to pay the cost of reasonable repacking expenses, provided such damage occurred during the currency of this insurance.

Explanation: If goods reach the final premises without damage, insurers do not pay repacking expenses. However

if the goods were meant for onward sale, then repacking charges are payable provided the damage to the packing was due to an insured peril during insured transit.

Returned Shipments Clause

Shipments upon which delivery to the consignee cannot be accomplished because of refusal of acceptance and which are returned for this or any other reason are covered while at the risk of the assured until sold or otherwise disposed of, subject to cover terms and conditions.

Explanation: A returned shipment is not within the 'ordinary course of transit'. However insurers recognize that it is difficult to find another insurer who would agree to insure the returned goods after refusal by the buyer. Again, there are many versions: some warrant that returned shipments should be repacked to the same original standard.

Seals Clause

It is hereby noted and agreed that in respect of consignments shipped in containers or curtain sided trailers or full vehicle loads that claims in respect of Theft, Pilferage and Non-Delivery of a whole package will not be invalidated by the fact that the seals appear intact and that such claims will be settled in full on production of loading and discharge tally sheets. Insurers hereon to be subrogated to assured's rights against carriers and/or other bailees.

Explanation: Shortages from seal-intact containers is on the rise. The above clause is an acceptable version.

Step 1: Upon Receiving Intimation of Loss or Damage:

- Record the source of information (carrier/buyer etc) in your file.
- Ascertain exact spot/location of accident site/where cargo is lying.
- Inform insurers immediately (who may wish to depute a surveyor to be appointed at spot/location) and request for a claim number (quote claim number in all future correspondence). See Template D.
- Ask for a preliminary survey report, if a survey was done.
- Arrange final survey.
- Ensure correct estimate of claim is reflected in your and insurer's books.

There must be a record of your claim intimation to insurer and a confirmation in writing along with claim number from insurer. There have been instances where some insurers have refused to honour a claim on the ground that there is no record with them of claim intimation to them. Written documentation of all correspondence needs to be maintained: a verbal intimation to or advice received from the insurer should be followed up with a formal email confirming the discussion over phone.

It is important to give a reasonably accurate claim estimate (with a periodic revision); otherwise the books of account of insurer will show a very high loss ratio.

Step 2: Determining Stage of Claim

- Determine whether the claim has arisen (during the international leg of transit (by sea/air) or during inland leg of the transit (by rail/road/air/courier) and then follow the steps in the appropriate section summarized below.

1. Import/Export Claims by Sea/Air

Follow these steps (advise overseas buyer in case of exports) for a proper documentation of the claim:

Step 1: *Checking the incoming consignment/container*

from delivering carrier upon receipt of shipment at port/airport/your premises:

Non-Containerized Goods

- Compare the number of packages for delivery with the number stated in the bill of lading/airway bill/lorry receipt or similar.
- Count, weigh, tally and examine the cargo before you sign for it.
- Examine the packing units very carefully for any tell-tale signs of damage on the packing; in case packages are outwardly damaged take a photograph.

If possible immediately open the package in the presence of the carrier and if this is not possible, open the packages as soon as possible and examine the goods.

Containerized Goods

- Examine the container and record (and take photographs) details of damage or holes visible on container.
- On sealed shipments, examine and record the seal number. If the seal has been changed, is broken or missing, record this on the Delivery Receipt. Retain the seal in all cases.
- See whether seal number corresponds to the bill of lading or not.
- Careful check of securing mechanism on the door and other suspicious points.
- In case the seal is found damaged tampered and/or the seal number does not match with shipping documents or there are any other signs of foul play, please do not allow the seal to be cut and container opened for destuffing. Instead follow these steps:
Fax the carrier/shipping agent immediately in this regard.
Call the insurance company to appoint a surveyor urgently.
Take photograph of seal, door of the container, as applicable



Note:

When cargo is eventually destuffed, take a photograph of the container before de-stuffing operation commences (to create an early evidence of quality of stowage/stuffing)

Once the seal is cut, keep both parts of the seal in a sealed bag/envelop. Do not discard them in case of any loss/damage and hand over the same to surveyor. It is recommended that if upon opening the seal the container is empty or partially empty, the container should not be allowed to leave your premises till the surveyor appointed by the insurer has inspected the container. If this attracts a demurrage then insurer will reimburse you provided their prior approval is obtained.

Step 2. Taking an Exception

In case of any loss or damage or non-delivery, enter appropriate remarks in the delivery receipt/freight document (both carrier's copy as well as your (customer's) copy, noting the exact condition of goods/packing at time of arrival/delivery.

Your remarks should clearly indicate, for example, the following:

- number of missing/damaged packages,
- carton number type of damage (leakage, breakage, wet, torn etc.),
- cause of damage, if known
- along with date and your signature, counter-signed by the carrier

Never give a clean delivery receipt to the carrier without first examining the packages, even where the packages seem undamaged. You could qualify the Delivery Receipt or B/L or AWB etc as under 'Subject to Inspection'.

In case of non-delivery it is important to not only enter remarks as above but also to request a written confirmation from carriers that they are unable to trace the consignment and deliver.

In case of missing items from a seal-intact container, the seller should be contacted if there is any independent report of stuffing.

Concealed loss/damage: If shipment is delivered in apparent (outwardly) good order and loss/damage is discovered only at the time of opening the packages, then it is important to serve a written notice on the carrier(s)/bailee(s) and preserve the packing units for surveyor's inspection.

Step 3: Informing the Surveyor and Insurer

- Inform the surveyor/overseas settling agent of the insurer (mentioned in your certificate of insurance).
- Never invite a surveyor who is not approved by the insurer.
- Wherever possible ensure a joint survey where the insurer's agent, you and the delivering carrier or the offending bailee such as port/terminal are present.

Step 4: Filing Written Notices

- File a statement of claim with the insurers or their local claim settling agent.
- File a written notice of loss with the carrier within stipulated time. Please refer to the note on time limits given in Annexure C and also the sample letters provided.

Notice should be sent by Registered Post A/D or hand delivered so as to provide documentary proof of delivery: notice by email does not give proof of receipt as mails can be lost or blocked (or deleted).

Carriers try to avoid liability for a claim on the basis that they were not informed of a claim in a timely manner (usually 3 days of the cargo arriving for seagoing cargo and 14 days for airfreight). In some cases recovery can be totally lost in case of failure to give timely notice. This in turn may prejudice your claim on the insurers.

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Step 5: Documentation

List of Documents required: ³⁴(English translation to be provided where applicable)

01	Original Certificate of Insurance
02	Original Invoice (not photocopy thereof)
03	Original Packing List/Weight List (not photocopy thereof)
04	One original (and not photocopy thereof) bill of lading (all originals in case of total non-delivery) /airway bill / postal receipt / other international carrier's receipt, as applicable
05	Original Exception Remarks or if this is not issued in your port then clausured carriers documents (not photocopy thereof) such as clausured Delivery Order/Waybills ³²
06	In some cases Master's Note of Protest, Extracts from Ship's Log and Master's Statement ³³
07	Ship's Outturn documents/ tally sheets / delivery receipts etc. as evidence of damage/loss
08	Triplicate copy of Bill of Entry ³⁴
09	First written notice of claim on carriers or haulers or the third party responsible for the loss/damage (e.g. port or terminal) and any subsequent correspondence (including a monetary claim notice on them) ³⁵
10	Port Trust's Shortlanding/Landed but Missing Certificate
11	Joint Survey (with carriers) Report or reason why no joint survey held ³⁶

12	In case the delivery receipt given against the bill of lading is clean, the claimants should produce the following additional documents: (i) Copy of the contract for inland forwarding services (ii) Copy of final delivery receipt (iii) First written notice of claim on the inland carriers and any subsequent correspondence
13	Analysis report from a laboratory approved by surveyor (in case of wetting or chemical damage), engineering reports from an engineer approved by surveyor (in case of serious mechanical damage) as well as estimates for repair and/or reconditioning ³⁷
14	Equipment Interchange Receipt (EIR) ³⁸
15	Documentary evidence clearly establishing that the ownership of cargo has passed to the claimant, including evidence of settlement of the invoice amount in favour of the overseas seller
16	Survey Report with colour photographs ³⁹
17	Following information (in case of containerized cargo) (i) (a) Who stuffed the container? (b) Where? (c) Date of stuffing (ii) Independent Loading/Stuffing Report ⁴⁰ (iii) (a) Date of commencement (b) Completion of destuffing at destination (c) Where and by whom done? (iv) Condition of seal at the time of discharge of container/destuffing-as applicable
18	Your statement of claim ⁴¹
19	Banker's Certificate confirming non-receipt of export proceeds ⁴²

³¹The insurer will advise which of these documents (or any other additional requirement) depending on the nature and size of claim, are required.

³²The document signed by the receiver on delivery by the road hauler: this should be clausured to provide evidence of shortage or damage to goods. Any non-delivery claims should be followed up with a Non-Delivery Certificate from the carrier after initial clausuring of delivery receipt.

³³In case of total loss claims (of part or entire shipment), in claims relating to water damage, in all large claims, in GA and salvage cases, these three documents should be requested from Sea Carrier.

³⁴For import claims, the triplicate copy of the B/E has to be provided in case loss of customs duty is part of your claim and/or to establish that there was no delay in clearance of cargo from port.

³⁵See sample letters.

³⁶It is good practice to invite port and/or shipping company for a joint survey at port before clearance. In case of refusal, record that the port trust and/or carrier and/or shipping agent refused to participate in a joint survey.

³⁷In case of wetting of goods, a silver nitrate test in a laboratory would establish whether the wetting was caused by sea or fresh water.

³⁸This is for containerized shipment: Equipment Interchange Report (EIR) is a document that is issued each time the container changes hands (from road or rail to terminal etc.). The EIR contains a sketch of the container and records any damage noted on the container. A specimen appears in Annexure A.

³⁹Avoid taking black and white photographs as they are not always good evidence against carriers.

⁴⁰In case of exports out of India, this would be the certification by Customs/Excise in whose presence the container is stuffed and sealed.

⁴¹This letter should describe the circumstances of the claim, an itemized description of the lost or damaged goods and cost of repair or replacement with repair bills and/or replacement invoices attached.

⁴²This is required along with a No Objection Certificate from overseas buyer where claim has to be settled in favour of exporter in respect of export shipments.

In case of shortage claims from seal-intact containers, provide evidence to show stuffing and sealing of the container was independently verified (e.g., by customs/excise officials).

Make a quick and reasonable decision regarding salvage disposal, if required, and get an agreement from the surveyor. In many cases, retaining the salvage at a reasonable allowance speeds up claim settlement. In case you want to sell the damaged goods, this should be undertaken with the consent of the surveyor.⁴³

In case of bulk cargo, provide draught survey report at load and discharge ports in case of shortage claims along with moisture analysis: insurers will only pay on net basis without considering loss of moisture.

2. Customs

As regards Customs, claim for abatement of duty on damaged or deteriorated goods, remission of duty on lost, destroyed or abandoned goods, or refund of export duty or import duty may arise as prescribed under Section 22, 23, 25, 26 and 27 of the Customs Act.

Assureds must make use of the appropriate forms prescribed by Customs authorities. Application for refund of duty should be made within 6 months from the date on which the appropriate officer makes an order for the clearance of the goods in respect of the export duty.

In respect of import duty, application for refund should be made before the expiry of six months from the date of payment of duty.

In case duty has been paid under protest, the period prescribed is inapplicable.

Customs documentation / time limit / procedures could be different in each port.

3. Railway Claims

Non-delivery of entire consignment after (say) two months from date of booking

- Make written enquiries with the destination station authorities and if necessary with the officials of the booking station by Registered Post A/D and follow up at intervals.
- Produce the original RR to destination station and get

the initials of the station authorities on the reverse to the effect that the consignment is not available for delivery.

- Intimate insurers to enable them to appoint Tracers in time.
- The consignor/consignee should send Registered Letter A/D notices to the General Managers of Railway Administration at forwarding and destination stations (see Template) with copies to Chief Commercial Superintendents at these stations to trace the consignment. This should be done within six months from the date of RR.
- If a consignment is not received within 2/3 months from the date of booking, write to Railways for issuance of a Non-Delivery Certificate. In any case, a Claim for Compensation, under Section 106 of the Railways Act, must be filed under Registered Post A/D on the General Managers of concerned Railways within six months from the date of RR. The original RR should not be surrendered to the Railways without the consent of the insurers.

Non-Delivery of part of the consignment

- Obtain a partial delivery certificate before accepting the remaining goods OR insert remarks in the Delivery Book recording non-receipt of part of the goods and obtain copy thereof from Railways.
- File a written claim as detailed above. See template provided.
- In case of delayed delivery, it is prudent to ask for Open Delivery/Open Assessment before clearance.

When loss or damage is apparent at time of receipt from Railways

- Demand in writing from the Station Master an Open Delivery/Open Assessment Delivery Certificate. A copy of the demand should be sent to the General Manager of the destination railway station.
- Retain the original Open Delivery/Open Assessment Delivery Certificate to be submitted to insurers
- If the assessment made by the Railways is not

⁴³There is a CVC guideline in India on salvage disposal which needs to be adhered to.

reasonable, the insurer should be informed so that a joint survey could be attempted before goods are cleared from Railways' custody.

The Railways Act provides that the consignee or endorsee of the RR can demand an Open Delivery. You are requested to examine packages carefully and demand an Open Delivery before delivery.

However, if Railways refuses to give Open Delivery/Open Assessment Delivery Certificate, insert appropriate remarks in the Delivery Book (or Complaints Book) regarding the damage and obtain a certified copy thereof from the Station Master.

- Within six months from RR, a Registered Letter A/D to destination railway should be sent. See template provided.

The above procedure should be followed in case of a full wagon (Wagon Load Consignment) when the wagon seals and labels are found to be tampered with.

The above procedure also applies when delivery is made at consignee's own Railway Siding. If any tampering of the wagon seals/labels is detected or suspected qualified delivery should be taken by inserting appropriate remarks in the OPT-18 receipt to the effect that 'wagons are received subject to inspection and checking at the siding in the presence of the railway staff'. Assessed delivery should be thereafter applied for within 24 hours of unloading.

In respect of open wagons, weighment delivery should be applied for and obtained.

4. Road

In case of door-delivery

- Remarks about damage should be endorsed on the reverse of the lorry receipt and should be countersigned by the person effecting delivery (who is invariably the driver).
- The next step is to write to the carrier immediately calling upon them to issue a certificate of shortage or damage as per the endorsement in the lorry receipt (see template provided).

- In addition to the above a licensed surveyor should be appointed and the carrier notified about the time and date of survey to ensure presence of their representative, failing which the findings of the surveyor should be made binding on the carrier (see template provided).⁴⁴

All letters should be sent by Registered Letter A/D.

In case of delivery at the carrier's branch or godown

- Damage/Shortage Certificate can be demanded if there is damage/shortage in the material.
- If the carrier refuses to issue a Damage or Shortage Certificate, such refusal should be recorded in writing and sent by Registered Letter A/D to the carrier followed by a preliminary survey in the carrier's godown or branch before taking delivery.

In case of Non-Delivery Claims

- Original consignee copy of LR against which delivery is given or Non-Delivery Certificate issued by road carriers (however it is preferable that a Non-Delivery Certificate is obtained instead of relying on submission of original LR to insurer).
- Written notice to carriers by Registered Post A/D within 180 days from the date of booking (see template provided).

The filing of such a notice is a prerequisite to filing a suit against carrier.

5. Air

Non-Delivery

Non-Delivery Certificate from carriers or original airway bill duly endorsed in respect of non-delivery.

Damage

Copy of the application to the air carriers within the prescribed period and coordinating a survey conducted in the presence of the International Air Port Authority / National Airport Authority as well as air carrier's representative.

⁴⁴Unless the insurer has waived survey for any claim not likely to exceed INR 20,000.

List of Documents for Rail/Road/Air/Courier Sendings within India

General Documents:

- 1) Claim Form of the insurer duly completed
- 2) Original policy or certificate or declaration form, as applicable
- 3) Original (or carbon copy) Invoice (for partial loss proforma invoice for the value lost or rectification charges for the items damaged)
- 4) Packing List/Weight List or Weight Specification
- 5) Letter of Subrogation cum Special Power of Attorney on the specific form prescribed by the insurer (if recovery is possible)
- 6) Claim Bill stating claim with computation of amount

Other Documents:

- 1) Original RR/LR (in case of non-delivery cases, otherwise carbon copy of RR/LR) along with any remarks noted on the RR/LR/Delivery Receipt at the time of delivery
- 2) Non-Delivery or Partial-Delivery Certificate from Railways/road carriers
- 3) Open Delivery/Open Assessment Certificate from rail/road carriers or in their absence certified copy of the remarks in the Railway Delivery Book (Railways)/Certified copy of the remarks in the Delivery Challan (Road)⁴⁵
- 4) Copy of notice of claim lodged on carriers along with acknowledgement together with any subsequent correspondence with carriers
- 5) Landing Remarks Certificate from port if transit originates from port of discharge in India
- 6) Survey report with photographs and all enclosures
- 7) In respect of salvage, proof of delivery to salvage buyers and payment particulars⁴⁶
- 8) Subrogation Letter cum Special Power of Attorney duly stamped and authenticated by a Notary Public or Magistrate

First Information Report (FIR): Usually it is the carrier who will file an FIR; a copy should be obtained.

Please keep a copy of the RC Book: insurers require this document to verify if there has been an over-loading of lorries.

Annexures:

Annexure A	Equipment Interchange Report (EIR, also called TIR)
Annexure B	A brief note on procedure/documentation to be followed in case of general average and/or salvage services under Lloyds' Open Form
Annexure C	Time lines for filing notice of claim on carriers/bailees
Annexure D	Format of Claim Intimation Letter to insurers
Annexure E	Sample letter (sea carriers): other than shortlanding claims (import to India)
Annexure F	Sample letter (sea carriers): for short-landing claims (import to India)
Annexure G	Sample letter (sea carriers): for all export claims
Annexure H	Sample letter (sea carriers): this is a 'follow up letter' after initial notice for exports / imports when full documentation is available
Annexure I	Sample letter to port trust (1)
Annexure J	Sample letter to port trust (2)
Annexure K	Sample letter (air carriers) (1)
Annexure L	Sample letter to air carriers: damage claims (2)
Annexure M	Sample letter to road carrier (1)
Annexure N	Sample letter to road carrier (2): giving a notice to comply with Section 16 of Carriage by Road Act 2007 of India
Annexure O	Sample letter to Railways

⁴⁵When request for Open Delivery is refused, then the following additional documentation is required: copy of application for open delivery, reply of Railways refusing open delivery, copy of letter of protest sent to Railways with the AD, report of insurance surveyor, certified extracts from Delivery Register/Complaints book.

⁴⁶Insurers have to follow CVC Guideline on salvage disposal which among other things requires E-Auctioning.

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Summary

- It is important that you as claimant gather all reasonable evidence to establish a loss or damage or non-delivery/shortlanding of your goods
- Never give clean delivery receipts to carriers in case of doubt
- Keep all packing units (inner as well as outer packing units) including dunnage, packing material and container seal for the examination of the insurance surveyor: do not discard them without their permission
- If the container is detained, then any charges / demurrage for late return of the container could be part of your claim on the insurers provided a prior approval is taken
- Survey fee will be reimbursed by the insurer. Some insurers take the stand that the survey will be reimbursed only if the claim is eventually found to be admissible.
- Concealed Loss: If shipment is delivered in an apparent (outwardly) good order and loss/damage is discovered upon opening the packages, then follow the procedures in this chapter and retain the packing units to enable the surveyor to examine them, inform the surveyor/settling agent of the insurer and write to the carrier with a monetary notice.
- Where practical any damaged cargo must be retained until an agreement has been reached between all the relevant parties as to its disposal.
- When a carrier/third party liability for loss is clearly involved they should be advised of the damage, preferably by telephone initially, but always in writing in addition to any claused consignment notes. It is essential that the actual carriers rather than freight forwarders alone are held responsible. The carriers should be invited to attend a joint survey. Such a joint survey will hopefully prevent disputes at a later stage regarding cause and extent of loss. On the other hand a

failure to take up your invitation to attend a joint survey can frequently place insurers in a better bargaining position when debating liability with the carriers at a later stage.

Annexure A: Equipment Interchange Report (EIR), also called TIR

CONTAINER MARKS				EXAMINER		DATE
PREFIX	NUMERALS	CI	<input type="checkbox"/> AVAILABLE <small>(With Postmark)</small>	<input type="checkbox"/> DAMAGED <small>(With Report)</small>	<input type="checkbox"/> OUT <small>(Default)</small>	MONTH DAY YEAR
SURVEY ORDERED BY			LEASING COMPANY		OUR REFERENCE	
CARRIERS NAME			LOCATION OF SURVEY		TIME OF SURVEY	
USE SYMBOL AT EXACT LOCATION ON DIAGRAMS BELOW						
<input type="checkbox"/> A/RUBISE	<input type="checkbox"/> C/CUT	<input type="checkbox"/> D/DENT	<input type="checkbox"/> H/HOLE	<input type="checkbox"/> K/KRACKED	<input type="checkbox"/> W/WISSING	<input type="checkbox"/> R/RHUST
<input type="checkbox"/> S/DISTORTED						

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Remarks:
 The probe given prior notice for inspection of the
 Here! bottom under structure not started
 LEFT SIDE: Normal wear & tear
 RIGHT SIDE: S.S. Panel dented
 FRONT:] Normal wear & tear
 REAR:] Normal wear & tear
 ROOF TOP: Trampolin of fire cord intake of roof bows not
 started.
 UNDER STRUCTURE:] Not sighted
 INTERIOR:]
 C.S.C. PARTICULARS: AEGP
 CONTAINER UNDER LOAD / Empty 30420
 319 2370

Annexure B: A note on procedure to be followed (and documentation) in respect of General Average (GA)

Typical procedure after a GA casualty (from cargo interests' perspective):

1. Declaration of GA

The Master of the ship will usually be the first to be aware of a casualty giving rise to a potential GA and will make a declaration. The shipowners will appoint an independent firm of GA Adjusters (also called Average Adjusters) who determine which interest (cargo, ship etc.) will contribute to what extent in case of GA.

The Adjuster will be responsible for collecting security and performing the adjustment.

Shipowners have a possessory lien over the cargo for GA. In other words they can refuse to deliver cargo that is subject to a GA claim without receiving security for GA claims

The procedure is as follows:

2. GA Security/Guarantee

1. The consignee will have to sign an **Average Bond**. This will be supplied by the carrier or the Average Adjuster. This should be signed (after getting the format of the bond confirmed by insurer) and sent to the Average Adjuster with a copy to the insurer.

The information required to complete this bond is usually available in the bill of lading and invoice.

A copy of the invoice should accompany this bond.

Sometimes a combined Average Bond and Guarantee is also issued by shipowners/Average Adjusters.

An Average Bond is a basic contract between the cargo owner and the shipowner whereby the cargo owner agrees to pay GA Contribution properly adjusted. It should be emphasized that an insurer's Average Guarantee is an alternative to cash deposit by cargo owners – it is not an alternative to the Average Bond. Both Average Bond and insurer's GA Guarantee are

required to be submitted.

2. A **GA guarantee** is also required. This is a document different from the GA Bond and guarantees the payment of GA contributions. This is generally provided by the cargo insurer.

The insurer will require a Counter Guarantee from the cargo assured in case the cargo sum insured turns out to be less than the contributory value, or (in rare cases) the cargo in question was not within the scope of the open policy.

The Adjuster will require a cash deposit or an insurer's GA Guarantee. Obviously a cash deposit should never be given. The guarantee amount is determined by the Average Adjuster based on the estimate of the general average (depends on the extent of damage and the expenses involved). This will then be expressed as a percentage of the CIF value of cargo.

Once the security is accepted, the cargo is released.

If there is any loss or damage at the time of discharge of cargo, a request in writing for a joint survey with carriers should be made immediately and the result of the report should be conveyed to the Average Adjuster with a copy to the insurer. The adjusters require particulars of the claims to arrive at a contributory value for that cargo. The contributory value of cargo is its CIF value but if damage has been sustained during the voyage the contributory value is reduced by the amount of that damage.

Salvage Services (LOF)

In case a vessel has received salvage services (typically under LOF i.e., the Lloyds Open Form), the salvors would demand a security (separate from guarantees given for GA) directly from the cargo owners. In such cases, the insurers would step in and provide a guarantee to the salvor.

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Annexure C: Time Lines for Serving Notice on Carriers/Bailees

Mode of Transit	Relevant Section	Relevant Section
Railway	Under Section 106, notice should be issued by a person entitled for compensation (who is a consignee according to Section 74)	This should be within 6 months (but for non-delivery monetary claim should be lodged within 90 days from date of despatch of cargo) from the date of booking, in writing and should be addressed to the General Manager or Chief Commercial Superintendent of the concerned Railway Administration. Should be addressed to them under Registered PostA/D
Road	Section 16 of the Carriage by Road Act 2007	Within 180 days from the date of booking. The person who is giving notice and the person filing a suit should be the same to overcome any technical defence by the carriers. For overseas claims, the buyer should give notice to road carriers/hauliers immediately but certainly not later than 7 days from the time of delivery if loss or damage is not apparent.
Sea	Hague/Hague Visby Rules, Rotterdam Rules, Carriage of Goods by Sea Act – as applicable	It is better to give notice and arrange a Steamer Survey/Joint Survey immediately. In case of loss or damage which is not apparent i.e., cargo looks apparently sound and is cleared from the port premises but loss or damage is noted after such removal, a notice is required to be made within 3 days from the date of removal. No notice is required if the cargo, at the time of receipt, was subject to a joint survey or inspection.
Multi-modal Transport Operator		Notice to the Multi-modal Transport Operator at the time of handing over the goods to the consignee. If the loss or damage is not apparent, notice should be given within 6 consecutive days after the day when the goods were handed over to the consignee. Proof of service of notice should be furnished.
Air – International Carriage	Rule 27(2), Chapter 3, Second Schedule of the Carriage of Air Act of 1972	Every complaint must be in writing upon the document of carriage or by a separate notice in writing despatched within the time mentioned. The person entitled to delivery must complain to the carriers forthwith after discovery of the damage and at the latest within 7 days from the date of receipt (baggage) and within 14 days from the date of receipt (cargo). There is no requirement for a notice in case of non-delivery if there is admission of the loss.
Air – Domestic	Notification dated 30 March, 1973 issued by the Ministry of Tourism and Civil Aviation	Same notice period as above.

Annexure D: Format of Claim Intimation Letter to Insurers

To, Insurance Company

Our Ref:

Date:

Dear Sir,

By email or courier or fax

We wish to inform you that our consignment has sustained a loss during transit, the details of which are as follows:

Transit:	From:	To:
Policy details	Open Policy No./Date	Declaration/Certificate No. and Date
Description of cargo including quantity		
Estimate of loss		
Nature of loss (shortage/damage/non-delivery)		
Date when cargo delivered to final premises		
Date of loss/date when loss detected		
Invoice No./date		
Name of carrier		
B/L, AWB, RR, LR details	No.:	Date:
Address where the damaged cargo is available for survey:	Name of contact person:	Address:
	Phone No.	

Kindly depute your surveyor under intimation to us. Please let us have your advices along with the Claim Number.

Yours faithfully

Annexure E: Sample Letter 1 (sea carriers)-Other than short-landing claims

Registered Post Acknowledgement Due

To
Carrier
Steamer Agent

Our Ref.
Date:

For claims
arising on
import voyage
to India

Sir,

Cargo of _____

Shipper _____

Port of Loading _____

Port of Discharge _____

B/L No. & date _____

Value of Invoice _____

Nature of Loss _____

Claim Amount _____

Name of Vessel & Voy. No

With reference to the subject shipment, please refer to our request for survey, which was granted and conducted.⁴⁷ The following copies of documents are enclosed in support of our claim:

1. Non-negotiable copy of the Bill of Lading
2. Invoice
3. Packing Specification
4. Bill of Entry
5. Landing Remarks
6. Survey Reports
7. Claim Bill

Please take notice that if you fail to settle the claim forthwith we will initiate legal action against you.

Yours faithfully,
Importer

⁴⁷Modify this sentence as applicable. For example if your request for survey was either denied or did not elicit a response then record the facts here.

**Annexure F: Sample Letter 1 (sea carriers) – for shortlanding claims
In case of shortlanding make use of this format:**

Registered Post Acknowledgement Due

For claims
arising on
import voyage
to India

Carrier
Steamer Agent

Our Ref
Date:

Sir,

Cargo of _____

Shipper _____

Port of Loading _____

Port of Discharge _____

B/L No & date _____

Value of Invoice _____

Nature of Loss _____

Claim Amount _____

Name of Vessel & Voy. No. _____

Sir,

Please take notice of claim in respect of cargo handled by you in your capacity as a carrier, the particulars of which are given below:

The Port Trust has issued a B (Shortlanding) Certificate, a copy of which is enclosed. You are therefore liable to make good the loss on account of shortlanding of _____ bags/packages/cartons/cases/containers, etc., valued at Rs. _____ (in words).

Kindly take notice that if you fail to settle the claim forthwith we will initiate legal action before the expiry of the period of one year from the date of discharge.

Yours faithfully,
Importer

Enc: Shortlanding Certificate

Annexure G: Sample Letter 1 (sea carriers)

Notice of claim

To: (insert name of shipowners/managers/agents)⁴⁸

Vessel: “”

Voyage:

B/L:

Cargo:

Nature of loss:

Amount of Loss:

We, (insert name of cargo interest) are the owners of the above cargo/holders of the bill of lading/receivers under the bill of lading (delete as appropriate).

We understand that regrettably our cargo has been damaged/will not be delivered to us because of (insert reason). We hereby place you on notice of the losses we have suffered as a result, including but not limited to the loss of the cargo.

We also place you on notice that we claim recovery of our losses against you. In this connection all our rights are reserved.

Yours faithfully

SIGNED

For and on behalf of

DATED

For use by overseas buyers-export claims

⁴⁸It is absolutely vital that such notices are sent as soon as possible after the damage is noted and if possible during actual discharge from the ship. Many recoveries are lost because this is not done. Also, it is very important that carriers are invited in writing to any surveys that take place.

Annexure H: Sample Letter (sea carriers): this can be the second letter to carriers after the first one when more details/documents are available

Sir, Carrier Steamer Agent	Date: <div style="border: 1px solid black; padding: 2px;">For both exports/imports</div> Our Ref Date:
Sir,	
Cargo of _____	
Shipper _____	
Port of Loading _____	
Port of Discharge _____	
B/L No. & date _____	
Value of Invoice _____	
Nature of Loss _____	
Claim Amount _____	
Name of Vessel & Voy. No. _____	

With reference to the subject shipment, please refer to our request for survey, which was granted and conducted.⁴⁹ The following copies of documents are enclosed in support of our claim:

2. Non-negotiable copy of the Bill of Lading
3. Invoice
4. Packing Specification
5. Bill of Entry
6. Landing Remarks/Exceptions Report
7. Survey Reports
8. Claim Bill
9. Equipment Interchange Report

Please take notice that if you fail to settle the claim forthwith we will initiate legal action against you.

Yours faithfully,

⁴⁹Modify this sentence as applicable. For example if your request for survey was either denied or did not elicit a response then record the facts here.

Annexure I: Sample Letter to Port Trust (1):

Non-Delivery or Landed but Missing cargo:

Registered Post with Acknowledgement Due

The Chairman,

Board of Trustees of.... Port

Our Ref:

Address

Date:

Sir,

Please take notice of claim in respect of cargo handled by your Trust in your capacity as a statutory bailee, the particulars of which are given hereunder:

Name of Vessel		Date of Arrival:	
Bill of Lading No.		From/To	From
			To
Details of cargo:		Date of discharge:	
IGM No.		Line No.	
Import Application No.			

We, the Importer/The Clearing & Forwarding Agents of the importer could not locate the cargo discharged into your custody. We have filed the necessary enquiry and hereby call upon you to expedite tracing operations and point out the cargo for clearance, failing which we hold you liable for compensation amounting to Rs-----/- (in words) being the value of the cargo.

Yours faithfully,

Importer

Annexure J: Sample Letter to Port Trust (2) – Damaged Cargo

Registered Post with Acknowledgement Due

For claim
against Indian
ports

Chairman,

Board of Trustees of.... Port

Address

Our Ref

Date:

Sir,

Please take notice of claim in respect of cargo handled by your Trust in your capacity as a statutory bailee, the particulars of which are given hereunder:

Name of Vessel		Date of Arrival	
Bill of Lading No.		From/To	From
			To:
Details of cargo		Date of discharge	
IGM No.		Line No.	
Import Application No.			

The said cargo is found damaged. It is proposed to conduct a survey onat.....hours by an independent licensed surveyor. Kindly depute your surveyor to be present to hold a joint survey. In case of absence of annotation at the time of discharge, you are liable for the loss or damage. Kindly disclose the nature of annotation, if any, made apart from conducting the joint survey applied for. A copy of this letter is being marked to the Steamer Agents for a joint survey.

Yours faithfully,

Importer/Clearing & Forwarding Agents

Copy to Steamer Agent:

for their information with a request to depute their surveyor for a joint survey on the date and hour mentioned herein above. They are further called upon to disclose the nature of landing remarks, if any, made by the Port Trust at the time of discharge.⁵⁰

⁵⁰In case it is established that the damage or loss took place after the Trust took custody, arrange to send a notice under Section 120 of the Major Port Trust Act by giving all the relevant particulars as above and add the following:
During the survey before removal from the port premises it was established that there was shortage/damage/deterioration/loss resulting in a pecuniary loss of Rs...../- (in words).
Kindly take notice that if you fail to pay the said sum of Rs...../- within one month from the date of receipt hereof, we shall be constrained to file a suit against you for recovery without further reference to you.

Annexure K: Sample Letter (Air Carriers) – Damage Claim⁵¹

[FOR BOTH DOMESTIC AND INTERNATIONAL CARRIAGE]

Registered Post Acknowledgment Due/Hand Delivery

To

Our ref:

Date:

Air Carriers

Sir,

Please take notice of claim in respect of cargo handled by you in your capacity as Air Carrier, the particulars of which are given hereunder:

Shipper		Consignee	
Airport of Shipment		Airport of Destination	
Place where shipment was delivered to Air Carrier		Date when shipment was delivered to Air Carrier	
House AWB	No. Date:	Gross Weight No. of Packages	
Master AWB	No. Date:	Date of Arrival	
Flight No.		Name of Carrier	
Details of shipment			

We, the consignee of the said cargo discovered on _____ (give the date) that the cargo is damaged. Kindly depute your surveyor to assess the loss on _____ at _____ hours when an independent licensed surveyor shall conduct a survey. You will be held responsible for the consequential loss, the details of which will be notified to you.

Yours faithfully (Consignee)

⁵¹The persons issuing the House Airway Bill and Master Airway Bill are jointly responsible and liable. Therefore, send notices of loss to both as per the above format.

Annexure L: Sample Letter to Air Carriers – Damage Claim

[FOR BOTH DOMESTIC AND INTERNATIONAL CARRIAGE]

Registered Post Acknowledgement Due

To

Date:

Air Carriers

Sir,

Please take notice of claim in respect of cargo handled by you in your capacity as Air Carrier, the particulars of which are given hereunder:

Shipper		Consignee	
Airport of Shipment		Airport of Destination	
House Airway Bill	No.:	Gross Weight	
	Date:		
Master Airway Bill	No:	Date of Arrival	
	Date:		
Details of Shipment			
Flight No.			

We, the consignee of the said cargo discovered on _____ (give the date) that the cargo is damaged. We hereby lodge our complaint as per Rule 27(2) of the Carriage by Air Act, 1972. Depute your surveyor to assess the loss on _____ at _____ hours when an independent licensed surveyor shall conduct a survey. You will be held responsible for the consequential loss, the details of which will be notified to you.

Yours faithfully,

(Consignee)

Cc: Airport Authority of India. Kindly disclose the nature of the receipt given to the Air Carriers. In case damage has taken place after custody was taken by you, you are liable for the loss. Hence depute your representative for joint survey.

Annexure M: Sample Letter to Road Carrier (1)⁵²

Sample Letter to carrier for requesting Damage or Shortage Certificate including invitation for a joint survey:

Address of Carriers

By Registered Letter A/D or hand delivery Date:

Re: Formal Notice of Claim:

Name of Consignor: Name of Consignee:

LR No./Date

Transit: From: To: Place and date of delivery:

Description of goods:

Estimated Value of Goods:

Dear Sir/Madam,

The above consignment has sustained loss during the course of transit and we hereby hold you, as Carriers, fully liable for the resultant financial loss. In this connection exceptions were noted on the Lorry Receipt duly counter-signed by your driver, a copy of which is attached.

We would request you to issue a Damage /Shortage Certificate reflecting the endorsements in LR.

We are arranging a survey at..... on..... You are requested to depute your representative to participate in the survey. In case of non-participation in the survey by your representative, the survey report will be binding on you.

Please return a signed copy of this notice to us, along with your company seal, acknowledging its receipt.

Yours faithfully,

⁵²After the survey and ascertainment of loss, send a demand letter along with a copy of the Survey Report lodging a monetary claim. In case of shortlanding, instead of Survey Report, send a Certificate of Shortlanding issued by the carrier and demand compensation.

For claim against Indian Road Carriers Annexure N: Sample Letter to Road Carrier (2)

[giving notice to comply with Section 16 of the Carriage by Road Act 2007]⁵³

Address of Carriers

By Regd Letter AD or Hand Delivery

Date:

Re: Formal Notice of Claim:

Name of Consignor:

Name of Consignee:

LR No./Date:

Transit: From:

To:

Place and date of delivery:

Description of goods:

Description of Damage/Shortage:

Estimated Value of Goods:

Estimate Claim Amount:

Dear Sir/Madam,

The above consignment has sustained loss during the course of transit when it was under your charge, custody and control and we hereby hold you, as Carriers, fully liable for the resultant financial loss under Section 16 of the Carriage by Road Act 2007.

In this connection we are enclosing the following:

1. A copy of the LR with remarks thereon in respect of Damage/Shortage duly counter-signed by your driver
2. A copy of the Damage/Shortage Certificate issued by you⁵⁴
3. Invoice
4. Packing List

This claim may be amended but at present, the estimated claim amount is as given above.

PLEASE TREAT THIS AS NOTICE REQUIRED UNDER SECTION 16 of the Carriage by Road Act 2007.

Thank you for your cooperation.

⁵³Note: Both sample letters 1 and 2 should be sent to the carrier

⁵⁴(if not issued, then to draw attention to the earlier letter wherein this request was made including invitation to participate in the survey)

Annexure O: Sample Letter to Railways For claim against Indian Railways⁵⁵

Registered Post Acknowledgment Due

To

1. The General Manager/Chief Commercial Superintendent: booking station administration (full address)
2. The General Manager/Chief Commercial Superintendent destination station administration (full address)

Consignor	
Consignee	
Booking Station	
Destination Station	
RR/PWB No.	
Particulars of Goods	
Nature of Loss/Damage/Deterioration/Non-Delivery/Short-Delivery	
Value of Goods Damaged/Lost/Non-Delivered/Deterioration:	

Sir,

We are enclosing the copies of the following relevant documents:

RR/PWB/Partial Delivery Certificate/Open Delivery Certificate

Both of you are jointly and severally liable in law to make good the loss. Hence you are called upon to effect payment forthwith.

Yours faithfully,

(Consignee)

⁵⁵Note: Under Section 108 of Railways Act payment of compensation to the consignee or endorsee of the railway freight is valid discharge of the railway's liability. If the consignor is the owner having title to the goods, ensure that claim under Section 106 is made by consignor and obtain a Power of Attorney from the consignee also in favour of the insurer apart from the Power of Attorney from assured/consignor to enable insurers to effectively pursue recovery.

In this chapter we try to create an awareness of the various risks that are ever present and the kind of losses that could take place. Such awareness would also enable you to take appropriate preventive measures.

1. Condition of transport vehicles/vessels
2. Condition of the route – roads, bridges and culverts – through which vehicles have to traverse
3. Condition of material handling equipment used in various stages of the transit (including hooks, slings and hoists)
4. Period of transit – the duration, time of travel, weather conditions etc
5. Handling/Impact Damage: The moment the goods leave the premises of the seller, it is handled at least five to six times during an international voyage. Packing units and containers can be dropped during loading/unloading and goods within may be damaged by this impact.
6. Accidents to carrying vehicle including collisions between conveyances
7. Overloading of road conveyances – rampant in India!
8. Claims arising from containerized goods: No doubt carriage by containers on FCL basis reduces claims but the following types of claims frequently occur:
 - Water ingress through holes/leaky joints
 - Sweat damage (without any ingress of water from an external source)
 - Damage arising out of improper stowage/stuffing of the container
 - Skilful pilferage leaving the seal of the container intact
 - Hijacking
9. Insufficiency of packing



10. Water damage:

- to cargo including project cargoes while they are awaiting loading or unloading at port / airport / railway terminals
- to deck cargo

- due to heavy weather during sea transits
- to cargo during monsoon months when tarpaulins over trucks are not sufficient

11. Bulk cargo (fertilizers, grains etc) and neo bulk (steel, coal, newsprints, metals, etc.):

- Shortage due to theft, pilferage
- Paper shortage due to scale errors, errors in draught surveys
- Moisture loss
- Co-mingled bulk with excess delivery to other receiver(s)
- Misdelivery due to obliteration of marks and numbers
- Contamination
- Water damage due to leaky hatch covers or internal leakage within the vessel

12. Contamination claims including infestation by vermin – both containerized and non-containerized goods due to contact with remnants of previous cargoes carried

13. Piracy claims (Gulf of Aden and now increasingly in Gulf of Guinea)

14. Deck cargoes: Jettison, washing overboard or lost overboard during heavy weather or simply due to poor lashing/securing

15. General average and salvage claims

Loss Prevention The good news is most claims are preventable in nature. New India can offer high-quality risk management advice to you.



Somali pirates holding rocket propelled grenades⁵⁶

⁵⁶ Photograph courtesy Captain P.Mukundan, Director, International Maritime Bureau

Frequently Asked Questions

Is self-insurance advisable?

Can a cargo owner decide not to insure his goods? Yes, he can to save on cost. But is it advisable?

Consider the following:

1. Recovery prospects from carriers are not a substitute for a marine insurance policy for the following reasons:
 - A. First it is a question of convenience. For example, if you get money from the insurer there is no cash flow interruption. Recovery claims against carriers are very time consuming as you know and this can impact you in case of a large claim.
 - B. Can the cargo owner rely solely on the carrier to make good his loss /damage? No. The carrier also has several defences. Here are a few:
 - * Errors of navigation
 - * Acts of God
 - * War and strikes
 - * Perils of the sea
 - * Fire unless there is evidence of carrier's privity or fault
 - C. The carrier will further limit his liability per package/per kilogram. For example if the Bill of Lading is governed by the Hague Visby Rules, the maximum liability of the carrier would be 2SDR per kilo or 667 SDR per package, whichever is greater. The cargo owner would then have to examine whether this is adequate or not. Further, what is a 'package' itself could be questioned. Is each box a package or each carton or even the container a package? In case of large casualty, there is also a Limitation Fund whereby the carrier will limit his total liability.
2. General average (GA) and salvage are two reasons why a trader should never resort to self-insurance. There have been instances where goods were not damaged but a GA was declared or salvage services received. In the case of GA a cargo owner will be required to give cash deposit in lieu of insurer's guarantee. This could

be a significant amount and not easy to recover! Further salvage services are, in a majority of cases, provided as per Lloyd's Open Form (No Cure, No Pay) and this requires a salvage security to be given by a company resident in UK which is recognized by Council of Lloyds. If you are insured, your insurer will ask their overseas claim settling agents to provide such a security on their behalf. Thus if there is no insurance, the cargo owner would have to give a cash deposit in lieu of insurer's guarantee or find someone who can provide a guarantee which is acceptable to the GA Adjuster or Salvor. There are cases where salvage security or cash deposit has been as high as 70% of the invoice value.

Second, when the insurer is involved, they also ensure that cargo interests are represented in arbitration proceedings to determine a fair and reasonable award to the salvors. In the case of GA they would have a recovery strategy in place against the shipowners if there is any ground to challenge the GA.

3. There have been cases where a number of individual shipments have accumulated due to reasons beyond cargo owner's control. A loss could therefore be beyond the capacity of a cargo owner to bear.

It makes sense to insure!

We always choose Incoterms such as EXW, FOB, FAS or FCA or CFR. We don't need marine insurance as our overseas buyer would be responsible for procuring marine cargo insurance for the main voyage.

Barring CIF and CIP, insurance is not mandatory in any of the Incoterms and hence your buyer is not responsible for insuring. As part of due diligence, it is good practice to ask the buyer about his insurance policy before despatching your goods. If there is a loss or damage to the goods, your buyer may simply refuse to take up the documents even if he has an insurance protection. The fact that you have legal recourse against the buyer in an overseas jurisdiction is no

consolation to you.

Further, you may need to insure your goods till they are loaded on board (FOB/CFR) or handed over to a carrier (FCA/CPT).

In addition it is advisable to have a Seller's Interest Extension in your open policy as explained in Chapter 3.

Our company always imports goods on CIF or CIP basis. Do we still require some form of marine cargo insurance?

It depends on a number of factors. Do you trust the reputation of the insurance company of your seller? Is the policy procured by your seller up to your warehouse or does it terminate⁵⁷ cover at port/airport of discharge leaving a substantial exposure without insurance: you will be uninsured during the period the goods are in the port/airport besides being uninsured for the tail-end transit. Does the insurance cover provided all-risks terms and is it for the right amount?

If the answer is in the negative then you need some kind of contingency covers.

Institute Cargo Clauses mention a warehouse to warehouse cover. Therefore irrespective of Term of Sale, do I have a warehouse to warehouse protection?

A warehouse to warehouse provision in ICC A, B and C is always subject to presence of insurable interest. For instance if you are an FOB exporter, you have no insurable interest once goods are on board the vessel. Similarly if you import on FOB basis, for example, you have no insurable interest during the transit from seller's warehouse till loading on board the vessel.

Further the individual certificate of marine insurance (issued off open policies for each shipment) will describe the insured voyage. For example, if a certificate mentions 'Anwerp to Mumbai' then cover terminates when it reaches the final intended warehouse within the municipal limits of Mumbai city. If the voyage is described as 'Antwerp to

Mumbai port', then notwithstanding a warehouse to warehouse cover in ICC A, B or C there will be no cover during the voyage from Mumbai Port to say Pune.

Are loading and unloading risks covered?

As regards the 1982 edition of Institute Cargo Clauses, the predominant view is that loading and unloading risks are not covered. The best solution is to clarify in the policy, with a 'loading/unloading clause'.

As regards the 2009 edition of ICC A, B and C, they cover loading and unloading risks.

Are storage risks covered under a standard marine policy?

Storage risks are covered so long as such storage is within the 'ordinary course of transit'.

For example, there is customary storage at port of destination for customs' examination, port clearance etc. This is within the 'ordinary course of transit' and this storage is covered subject to an overall limit of 60 days specified in the Institute Clauses.

However if storage is at the option of the assured or consignee, the cover ceases the moment goods enter the place of storage. For example, if goods are bonded in order to wait for a favourable exchange rate or due to space constraint in your warehouse, the cover terminates the moment the goods were placed inside the bonded warehouse even though this was not the final warehouse or the 60 days were not yet over.

Sometimes storage even if not within the 'ordinary course of transit' (such as storage in carriers' or customs bonded warehouse etc.) can be covered as a special extension of the marine policy at an additional premium.

Could you give a few examples of 'ordinary course of transit'?

Examples of 'ordinary course of transit' and delays within and beyond the control of the assured:

- Goods cannot be cleared since the original documents were not available due to genuine reasons.

⁵⁷ Overseas insurers seldom seem to extend their cover beyond the port/airport of discharge in India!

- Delay due to port congestion or custom's backlog.
- Customs insist on a laboratory test, which they usually do not ask for – cover continues
- If goods after leaving the manufacturer's premises go to a forwarder's or shipping company's yard for containerization, the storage threat is covered by the policy.
- Customary delays at port or customs for routine inspections before they are allowed to be loaded on board the vessel or aircraft.

Are the 60 days mentioned in the duration clause of ICC A, B and C automatically available?

It is true that the duration of cover clause (also called 'warehouse to warehouse' clause) in the Institute Cargo Clauses contain a 60 days' time limit from the date of discharge from overseas vessel. However these 60 days are not automatic and are subject, for example, to 'ordinary course of transit'.

Is a certificate acceptable to a bank?

Some banks do not accept a certificate and insist on a policy but such instances are very rare and their objections are generally easily overcome. Some banks accept a certificate if counter-signed by the assured or his authorized agent.

Is loss or damage to packing units such as cartons covered? In other words, can we claim for repacking costs?

There is a 'rule of thumb' (in the absence of clear words to describe the subject-matter of insurance) that packing will not form part of the subject-matter of insurance. The purpose of packing materials, such as cardboard cartons, cases, etc., is to protect the contents for the normal rigours of transit and if the packing arrives damaged but goods are sound, then the purpose has been achieved and there is no claim. However if packing is damaged prior to arrival, the cost of repacking is claimable as sue and labour expense.

There is a special non-Institute clause to meet the situation whereby the inner packing of branded goods (which is critical for onward sale) is deemed to be included in the

subject-matter of insurance.

Since we have a marine insurance policy, why should we bother to give notice of claim to the carriers and other third parties in the event of a loss or damage?

This is due to the principle of subrogation. Insurers are able to charge economical rates of premium in anticipation of a possible recovery from third parties such as carriers, port trust etc., and therefore if steps are not taken to protect rights of recoveries, then a claim could be prejudiced. After settlement of claim, the insurer would proceed against the offending third party on the strength of the subrogation given by the assured.

If a claim is delayed for some reason, the assured should obtain time extensions from the carriers to keep the claim against the latter alive. Please see Chapter 9 for time limits.

Please note however that Indian Courts do not recognize any extension given by the sea carrier and therefore a suit against them would have to be filed before the expiry of time limit.

Sometime we have shortages from seal-intact containers or sound packages which come to our notice only after the insured transit is over. Can we claim?

Unless there are compelling reasons to believe and some evidence to this effect available that this was a case of skilful pilferage, such claims are not payable. The burden of proof will be on you to prove that the loss complained of occurred during the insured period. The admissibility of claim for such seal-intact containers would also to some extent depend on whether the container was an FCL (CY) shipment whereby the container was stuffed by the shipper or an LCL (CFS) movement where the container was stuffed by the carriers themselves.

Please see Chapter 8 (Seals Clause).

Is on-deck stowage acceptable to an insurer?

The Schedule to MIA 1906 states that on-deck cargo is not within the scope of a marine policy unless such stowage is 'customary' (for e.g. timber logs) or the policy otherwise provides. See Chapter 8 for further details.

Guide to Marine Cargo Insurance

Are theft, pilferage and non-delivery (TPND) covered?

They are covered in ICC A and in fact there is no need to specifically include TPND in a certificate which mentions ICC A. However if your policy is subject to ICC B or C it is advisable to include a Institute Theft Pilferage and/or Non-Delivery Clause at an additional premium.

Is malicious damage, vandalism covered in marine insurance?

This is covered in ICC A but not in B and C clauses. It is advisable to include Institute Malicious Damage Clause in your policy.

What is a warranty and how does a breach of warranty impact our claim?

As per English law and practice (which we follow in India), a

warranty has to be strictly complied with and a breach of warranty can prejudice the claim even if there was no causal connection between the breach and the claim in question.

Examples of warranties: warranted professional packing, warranted full value declared to air carrier etc.

What information is required to obtain marine insurance?

Please refer Chapter 4.

To obtain covers tailor-made to suit your business, we strongly recommend that you provide full details of your business to enable the broker/insurer to assess your exposures and to suggest solutions.

Glossary of Terms

Abandonment

In order to claim a Constructive Total Loss (CTL), a condition precedent is to tender a Notice of Abandonment to the insurer. It is but rare that an insurer will accept such a notice but if he does, the assured would be entitled to abandon the subject-matter insured to the insurer and entitled to claim a CTL (as opposed to an Actual Total Loss) even if later enquiries establish that the loss was not caused by an insured peril.

Therefore, insurers would usually decline the Notice of Abandonment but would agree to place the assured in a position as though a writ has been issued against the insurer. 'This situation pertains until it has been proved that the loss is proximately caused by a peril insured against'.¹

Actual Total Loss

An actual total loss can arise in the following ways: when goods are completely destroyed, where the goods cease to be a thing of the kind insured (loss of specie²) and where the assured is irretrievably deprived of his goods although still in specie.

Adventure

The insured voyage

AP

Additional Premium charged during the currency of the policy especially when the 'held covered' provision of the open policy is invoked

Average

A marine insurance term for partial loss (e.g. particular average)

Average Adjuster

The person appointed to adjust or assess marine claims in relation to a loss (particularly GA claims adjustment)

Bill of Lading

Freight B/L: A contract of carriage between shipper and forwarder (usually an NVOCC). A Non-Negotiable B/L

Negotiable B/L (Order B/L): By endorsement, the shipper can transfer the title to goods to the bank representing the buyer or directly to the buyer. The buyer must pay and surrender the original B/L. A negotiable B/L gives control over the goods. The holder is entitled to take delivery of the goods. Being negotiable, B/L can be sold or transferred (negotiated). The goods can be sold many times over even while the cargo is in transit. A negotiable B/L is useful to banks as security. Under an Order B/L the shipper consigns the shipment to the 'to the order of' a named party who may be shipper himself, the buyer or a bank, depending on the level of trust existing between the parties and the bank. Disadvantages: The most common of these arises when the ship arrives at the port of discharge before the B/L. Because the B/L is negotiable, the carriers take a grave risk if they deliver to anyone other than the holder of an original B/L.

Another disadvantage is such a B/L is not suited for multimodal or combined transport, where the ocean transit is only one of the legs of the entire transport chain. Only a multimodal B/L can cover all the legs in a transport chain including land transit.

Non-negotiable B/L (Straight B/L): Often used in short voyages where goods arrive before the documents. No security value to the bank unless the bank is named as consignee and steps are taken to ensure this designation is irrevocable.

¹ R.H.Brown 'Dictionary of Marine Insurance Terms and Clauses', Witherby.

² Loss of specie means a cargo so damaged that it is no longer a thing of the kind insured: e.g. water-soaked cement

A Non-Negotiable B/L shows a specific identity to whom goods can be delivered. The buyer does not need an actual B/L and can obtain goods from carriers by showing proof of identity. Unless the choice of the consignee is irrevocable, the shipper remains free to change the consignee any time before the importer pays or accepts the obligation to pay. That is why such B/Ls do not provide banks with the security of an 'order' B/L for the purpose of documentary sales. Straight B/Ls are used when the shipper is confident that the buyer will pay, as in open account contexts, or when importer has already paid, as with cash in advance.

Multimodal B/L: The multimodal transport B/L is very similar to the marine B/L, except that the multimodal B/L is used for carriage whenever there are at least two different forms of transport. It is a receipt for goods but not necessarily evidence they have been shipped 'on board' an ocean-going vessel.

Break Bulk

Goods packed in units (e.g. bags, crates) and not shipped in bulk

Classification Clause

Insurers generally require the assured to agree to a classification clause that sets out the insurer's requirements in respect of the class and age of the carrying vessel. If these minimum requirements are not complied with by the assured, he may be held covered on terms and conditions to be agreed. In case a vessel is un-classed or classed with a non-IACS society, in certain circumstances insurers may decline to provide insurance.

Constructive Total Loss

Occurs where the subject-matter insured is so damaged that

- either its actual total loss appears to be unavoidable
- or, in order to prevent it from becoming a total loss, expenditure greater than its value when preserved would have to be incurred.

This is simply a commercial total loss. The goods may still be available in specie but the cost of repair or reconditioning or recovery may exceed the value upon arrival.

Council of Lloyd's

The body with overall control and responsibility for the disciplines and practices of Lloyd's insurance market. The Council was set up in accordance with the requirements of Lloyd's Act, 1982.

Cut Through Clause

This is a reinsurance clause. By virtue of this clause, the assured can directly claim from the reinsurer(s) though he had no privity of contract with the reinsurer(s). This clause is useful when the insurer becomes insolvent and the assured would like to claim for his loss from the reinsurer.

CY³ and CFS

CY: A container yard where full containers are delivered.

CFS: A container freight station (CFS), typically a consolidation point, where smaller cargo lots are collected and stuffed into containers. In some ports, the CFS may be a warehouse site within the CY.

³ If the seller or freight forwarder stuffs the container (so that the carriers then receive a fully stuffed and sealed container), this would be a CY. The deciding factor to determine whether it was a CY or CFS (or FCL or LCL) shipment is 'who stuffed the container'. It does not matter if the freight forwarder manifests many different cargo types intended for several consignees, from the load point perspective. It is still a CY. When a forwarder stuffs the container of one or more shippers, it is thus still a CY shipment.

You thus have following combinations: CY/CY (carrier not involved in stuffing/destuffing); CY/CFS (carrier not involved in stuffing but destuffs at destination); CFS/CFS (carrier is involved in both stuffing and destuffing); and CFS/CY (carrier involved in stuffing but not in destuffing).

Often forwarders have CY/CY Bills of Lading with the sea carrier and then issue their own house B/Ls on CFS/CFS basis. This means that the forwarder handles all loading and unloading at his own premises (typically a warehouse or other consolidation point), and hands over the full container to the shipping line. To the sea carrier, the shipper of all the cargo in various containers is the forwarder.

CFS is also used to describe less than container loads (LCL) as a definition of the terms of contract: e.g. a CFS/CY shipment would entail that the carrier undertakes the stuffing of the container at the port of origin, but not at the point of destination. A CY/CY shipment would entail that the carrier receives a container stuffed by the shipper, and as such the carrier will have no involvement or responsibility for the actual contents and safe packaging of the cargo in the container.

Difference in Conditions

If the buyer is not satisfied with the extent of insurance cover provided by the seller then the buyer may decide to arrange additional insurance to cover the difference between what the seller has provided and the level of cover available in his own open policy.

Sometimes the DIC clause also mentions 'difference in limits' (DIC/DIL)

Deductible/Excess

Expressed as a monetary amount or as a percentage either of the insured value or the quantity shipped, a deductible is, as the name suggests, deducted from the claim amount.

Double Insurance

Double insurance arises when two policies are issued covering the same goods and voyage so that the total sum insured exceeds the insurable value. This typically happens in CIF sale where both the seller and the overseas buyer have effected policies with their respective insurers. The MIA 1906 allows the assured to approach any of the insurance companies (obviously the assured or the claimant would approach the insurer whose sum insured is higher or deductible lower or terms wider). After settlement the insurers apportion the claim between themselves.

FCL

Full Container Load (see CY)

LCL

Less Than Container Load (see CFS)

General Average

When a ship and cargo are exposed to a common danger and some part of the ship and/or cargo is intentionally sacrificed or extra expenditure incurred to avoid or reduce that danger, then such loss ('sacrifice') or expense can be termed general average (GA), and might be recoverable in general average. ICC A, B and C provide for GA and salvage.

HAWB (issued by a forwarder)

House Airway Bill: Issued by the consolidator/freight forwarder to the shipper. The actual airline (carriers) in turn issues a MAWB to the consolidator/ freight forwarder.

Inherent Vice

A characteristic inherent in subject matter which produces damage to the cargo without the involvement of any outside agency but by its own action alone. The Marine Insurance Act as well the Institute Cargo Clauses exclude any loss or damage caused by inherent vice. For example fruits decay over time, coal can be subject to spontaneous combustion etc.

Jettison

The voluntary act of throwing overboard cargo: generally this arises as a GA sacrifice in an attempt to remedy a situation which endangers the adventure.

Lloyd's Open Form (LOF)

LOF is Lloyd's standard form of salvage agreement. This is an agreement between the Master of a vessel on behalf of the shipowner and the Salvor. The remuneration of the Salvor is based on the principle of 'no cure, no pay' and is decided by arbitration.

MAWB (issued by a Carrier)

Master Airway Bill (see House Airway Bill)

Multi-modal Transport Operator

Multi-modal Transport Operator (MTO) is anyone who undertakes to arrange for transport of goods using more than one mode of transport and who issues a transport document for the entire cargo journey. Often this is door to door transport.

With the growth of containerization, shipping lines have been assuming responsibility for the

Guide to Marine Cargo Insurance

cargo at an earlier stage instead of at the port of loading. The shipper now delivers the container at his own premises or delivers goods for containerization by carrier at a CFS. Incoterms like FCA, CPT and CIP recognize this development of shifting the critical point from the ship's rail to some place in the hinterland.

Non-Separation Agreement

When cargo and ship separate, the cargo owner cannot be called upon to pay his contribution to general average expenditure. This separation occurs when a vessel calls upon a port of refuge to effect repairs and the goods have to be unloaded and transshipped in another vessel. To protect himself, the carrier will insist on a Non-Separation Agreement.

Notice of Abandonment

See Abandonment.

NVOCC

Non-Vessel Owning Common Carriers. An NVOCC is a shipment consolidator or freight forwarder who does not own any vessel but functions as a carrier by issuing his own B/Ls or airway bills and assuming responsibility for the shipments. As someone has rightly said an NVOCC is a 'carrier to shippers and a shipper to carriers'.

Particular Average

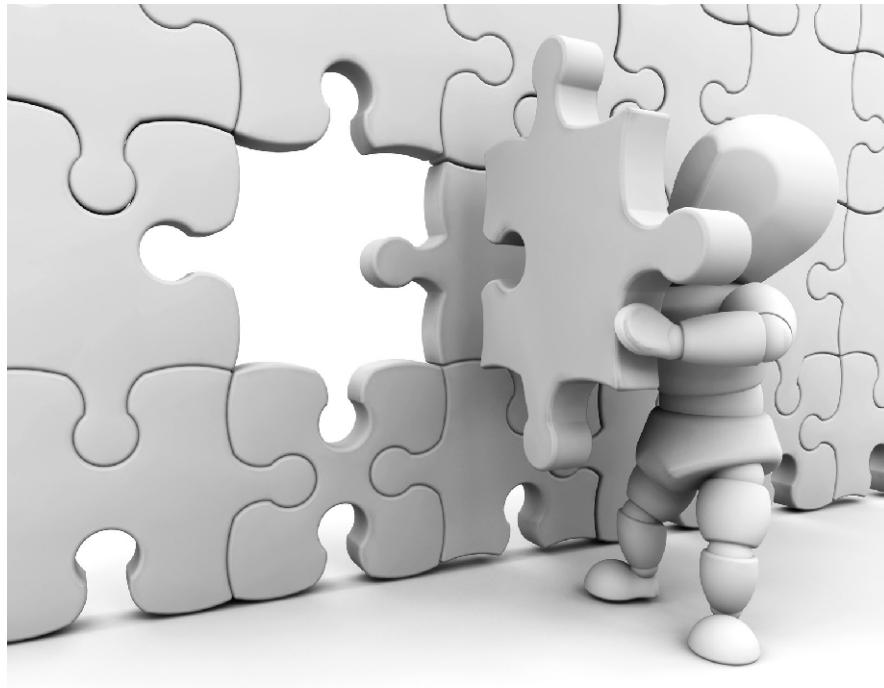
This simply means partial loss, i.e., loss which is not total.

Salvage Charges

This is the amount payable to the voluntary salvor (who acts independently of any contract) to preserve from an insured peril the property involved in an adventure (e.g. goods, ship).

Sue and Labour

This is embodied as Duty of Assured Clause in the Institute Cargo Clauses. These are expenses to avert or minimize a loss from an insured peril incurred by the assured or their employees or agents short of destination.



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