

**ADVOCATING FOR A FAVOURABLE TERMS  
OF TRADE: FROM FOB TO CIF FOR PUBLIC  
SECTOR CARGO**

**BY**

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## **INTRODUCTION**

Thousands of Commercial vessels sail daily across the oceans, operated by Companies incorporated in different jurisdictions, under charter parties and bills of lading, imposing duties and liabilities on all parties concerned. These vessels are built by hundreds of ship building facilities and have to comply with a multitude of International, regional and national regulations in order to call safely at a world wide network of commercial ports.

- Shipping is international in nature, hence, it is controlled by international laws, rules and conventions.
- The real purpose of the entire commercial shipping industry and its regulatory and contractual framework is to make international trade possible, safe and efficient.
- I will however focus briefly on the basic concepts of international commercial sales on shipment terms in order to provide us with a better understanding on why we are advocating for a favourable Terms of Trade: FOB to CIF for Public Sector Cargo and crude oil.



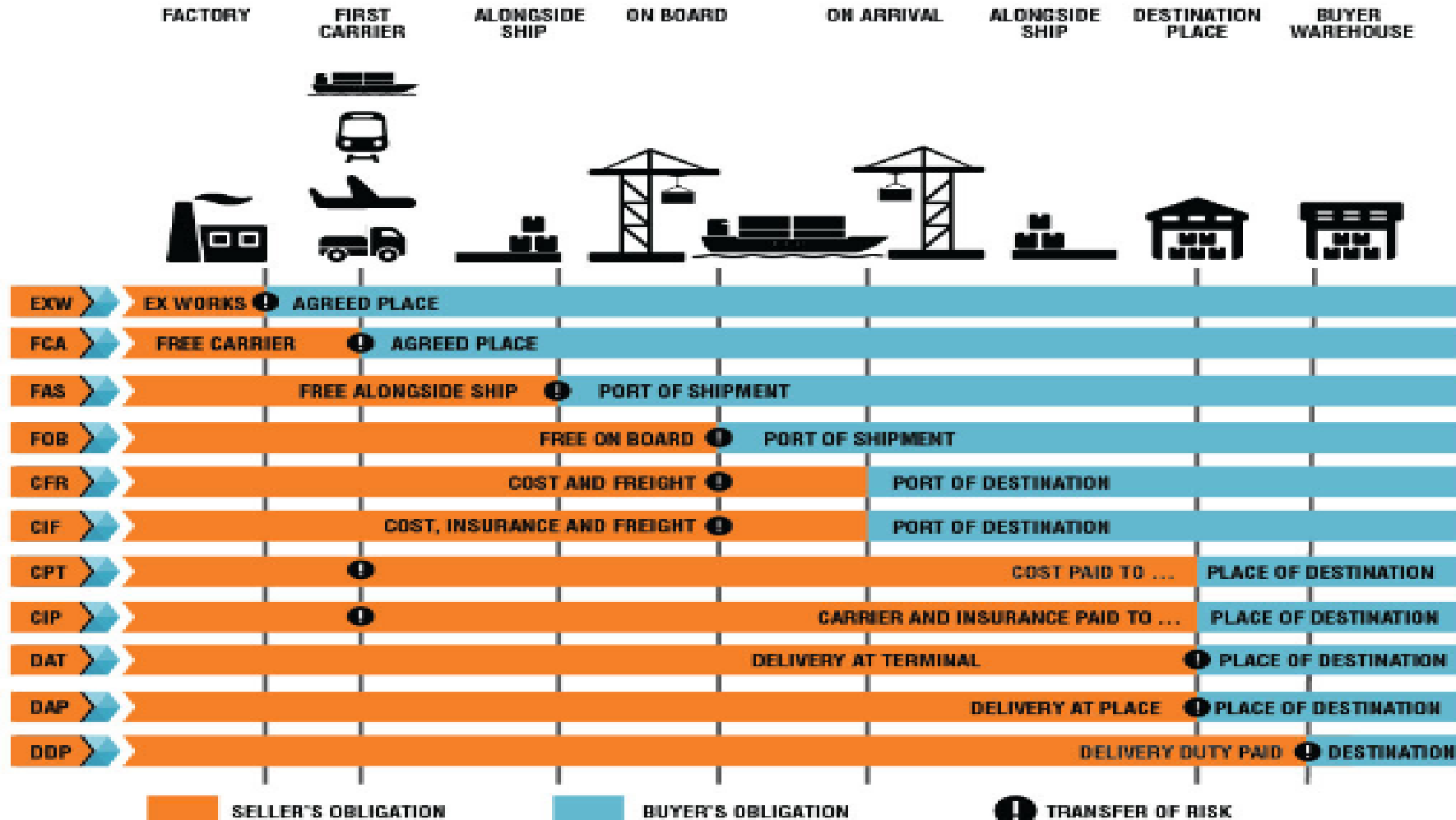
## SHIPMENT TERMS

- International Trade Law deals with the sale of goods for Commercial purposes. Contracts for the Sale of goods may be further divided into three main groups ( E terms, D Terms or Shipment Terms) depending on the mode and place of delivery of the consignment sold. For this purpose, we will focus on delivery on board a vessel at the loading port in Shipment Terms.

- This therefore brings me to the Incorporation of International Chamber of Commerce's (ICC) Official Rules for the Interpretation of Trade Terms more commonly known as Incoterms. These are not international conventions but standard forms that guide International Trade contracts and are agreed to by Parties.
- These trade terms enable parties to understand themselves in international and local trade agreements. Prominently, the trade terms are used to define responsibilities and liabilities of contracting parties in international and domestic trade.

# INTERNATIONAL COMMERCIAL TERMS OF TRADE SHOWING LIMITS OF RESPONSIBILITIES

## INCOTERMS® 2010





## **CARRIAGE ARRANGEMENTS**

- Once the terms and conditions of the arrangement between the parties are identified it is now necessary to illustrate the main features of commercial sales on shipment terms.
- Both C.I.F (Cost Insurance and Freight) and F.O.B (Free on Board) sales are shipment contracts where the duty of the seller as to the delivery of the cargo is fulfilled by shipping goods on board a vessel or procuring goods shipped on board a vessel rather than by handling them over to the buyer at the port of discharge.

- Whereas the duty to procure the cargo rests always with the seller, the duty to fix a vessel suitable to carry the cargo from the port of loading to the port of discharge does not always follow.
- Generally speaking in C.I.F ( or C.& F.) agreements, it is the seller who is under an obligation to fix the vessel whereas in straight F.O.B sales such duty falls on the buyer.



## **i. FREE ON BOARD (FOB)**

- Under FOB arrangement, the seller takes responsibility and liability for the cargo from source till it is placed onboard the ship.
- The buyer assumes responsibility for carriage, freight payment, insurance etc.
- In effect, the seller has no business in who carries, insures and undertakes other responsibilities for the cargo.
- Seller collects the value/payment for the cargo before the voyage.

## ii. **COST, INSURANCE AND FREIGHT (CIF)**

- The seller nominates the ship that will carry the goods/cargoes
- He takes responsibility and liability for the cargo till it is delivered to the buyer.
- The seller has full control over the carriers, insurers and pays freight for the cargo.

## **COST AND FREIGHT**

- ❑ Cost and Freight Trade Term are used for situations where the seller has direct access to the vessel for loading, or nominate ship to carry the cargo.
- ❑ The seller arranges and pays for transportation to named port. He delivers goods, cleared for export, loaded on board the vessel.
- ❑ However, risk (insurance undertakings) transfers from seller to buyer once the goods have been loaded on board, i.e. before the main carriage takes place.



## **WHY THE NEED FOR AN APPROPRIATE TERMS OF TRADE FROM FOB TO CIF**

- To fully stimulate local participation in Nigeria's Coastal trade – Coastal and Inland Shipping (Cabotage) Act 2003
- To give effect to the NIMASA Act 2007 on carriage of public sector Cargo and involvement of indigenous Companies in the affreightment of crude oil and petroleum products
- To bolster the Nigerian Oil and Gas Industry Content Development Act of 2010
- To grow indigenous shipping through fleet expansion and vessel acquisition.
- Support Governments effort towards economic diversification
- For our National Security



Since the terms of trade determine the extent of risks or responsibilities and consequent benefits to the trading partners, cargo owning nations easily settle for the terms of trade that would support their economic direction and developmental trajectory.

The global rule of the thumb is for the cargo owning nation to opt for the terms of trade that will favour its economic development agenda.

## WHY THE QUEST?

- Nigeria is one of the major exporters of oil and gas resources in the world ranking 9 out of 14 OPEC member states.
- She has estimated 37.062 billion barrels of crude oil reserve-OPEC; and gas reserve of over 188 trillion cubic feet (tcf)-DPR.
- Average output of 1.92million barrels of crude oil per day as at 30<sup>th</sup> September, 2017. (ycharts.com)
- The volume of petroleum export from Nigeria generate huge freight for the carriers besides other economic benefits within the cargo affreightment value chain.



- Regrettably, indigenous shipping operators have insignificant share of the freight earned from the carriage of Nigeria's crude oil and other public sector cargoes compared to their foreign counterparts largely due to the prevailing FOB Terms of Trade
- FOB Terms of Trade has resulted in Foreign operators' domination.

## ANALYSIS OF FREIGHT ELEMENT IN CRUDE OIL LIFTING

With an average crude output of 1.92mbpd (million barrel per day) and Average Admin/freight cost of about \$3.0 per barrel

i. Daily Admin/freight earnable from crude oil lifting  
= \$5, 760,000 (~~₦~~1,756,800,000)

ii. Monthly (30 day) freight earnable from crude oil lifting  
=\$172,800,000 (~~₦~~52,704,000,000)

iii. Yearly freight earnable from crude lifting  
=\$2,073,600,000 (~~₦~~632,448,000,000)

@#305/USD



## ANALYSIS OF FREIGHT ELEMENT...

A yearly injection and retention of about **\$2,073,600,000** (₦ **632,448,000,000**) from freight element (excluding insurance, bunkering, chandelling etc.) into the Nigerian economy will:

- ✓ Significantly improve Nigeria's Balance of Payments position with trading partners
- ✓ Improve Foreign Exchange liquidity and stability
- ✓ Lead to wealth creation and improved well being for the citizens.



## IMPACT ON HUMAN CAPACITY AND JOB CREATION

Given an average monthly crude lifting vessels of 60 and a minimum crew number of 25 persons and 4 cadets on mandatory sea time experience per VLCC:

- The minimum estimated direct seafaring jobs to be created would be 1,500
- The estimated number of cadets on sea time training would be 240 cadets yearly with in- country retention of emoluments from seafarers
- There will be more in-country bunkering/chandling services
- A lot of other administrative, banking, agency, ship brokerage and chartering services would be created for Nigerians.



## EXTANT PRACTICE IN OTHER JURISDICTIONS

- In the US in 2017, a bipartisan bill was brought before the Congress and was aimed at strengthening indigenous participation in shipping in the USA.
- The Bill sought to allow US flagged vessels carry up to 30% of the US LNG as a matter of both economic importance and security concerns.
- It will be useful to emulate the US and create enabling atmosphere for indigenous participation in crude oil lifting in Nigeria through the change of terms of trade to CIF.

- OPEC nations such as Iran, Indonesia, Algeria, Kuwait, Angola, UAE and Libya encourage indigenous operators to participate in the affreightment of their crude oil. This has enabled them build the right capacity over time.
- With the right policies and support, Nigeria can build its own shipping capacity.
- Shipping is critical to economic diversification with Nigeria's comparative advantage in petroleum cargoes and non oil export/import cargoes
- The irony is that Nigeria sells its crude oil on FOB but imports products on CIF putting indigenous operators and the nation at a disadvantage.
- With this structure in place, Nigeria's balance of payments with trading partners will remain in deficit.





## ADVANTAGES OF CIF TRADE TERMS OVER FOB

CIF will revitalize the entire cargo affreightment value chain of Nigeria because:

- It will give the nation control of the cargo affreightment value chain up to the port of discharge (In-country value addition)
- Nigerian Carriers/Ships will have more opportunities of being nominated to lift public sector cargo
- In cases of established lack of shipping capacities, indigenous operators can still participate by entering into charter party agreements with foreign tanker operators.
- Indigenous operators would build their capacities for self sufficiency over time.



## **ADVANTAGES OF CIF OVER FOB...**

- Indigenous insurance companies will grow as they would have opportunity to assume greater risks which translates to greater earnings.
- They could also form partnerships/joint venture with well capitalized foreign underwriters
- It will lead to national fleet expansion over time
- It will enhance professionalism across the sub-sectors in the value chain

## **ADVANTAGES OF CIF OVER FOB...**

- It will lead to job creation
- Promote and strengthen national security
- Conserves foreign exchange outflows
- It will improve the capital base and earnings of indigenous operators
- Will improve Nigeria's balance of payments position



## **NIMASA'S ADVOCACY FOR A FAVOURABLE TERMS OF TRADE**

- The present Management Team of NIMASA in its strategic move to develop capacity in the maritime sector holistically looked at a number of issues militating development of the shipping sector before arriving at an all inclusive sectorial approach involving private sector stakeholders and the public sector
- In 2017 NIMASA began to engage the Management of Nigerian National Petroleum Corporation (NNPC) to advocate for change in Trade Terms from F.O.B to C.I.F. We had galvanized overwhelming private and public sector support and a Technical Committee was to be stirred by NNPC.



## **NIMASA'S ADVOCACY FOR A FAVOURABLE TERMS OF TRADE...**

- While still at that, in July/August 2018 we engaged the Central Bank of Nigeria (CBN) in the company of key stakeholders to advocate Special Funding Intervention to grow the Shipping Sector.
- To deepen our resolve to grow the sector we received the nod of the Federal Ministry of Transportation to approach the Office of the Vice President and the Economic Management Team to address the following key fiscal and monetary policies affecting shipping development in Nigeria:
  - a) Change of terms of trade

- b) Public Sector Cargo Support Initiative for indigenous operators
- c) Special Funding Intervention for the Indigenous Maritime Operators (Concessional Foreign Exchange Regimes and Single Digit Interest Rate)
- d) Favourable Tax Regime ( Tax Reliefs/Exemptions/Duties)

***Discussions are still on going.***

- Government has set up a Fleet Expansion Committee.
- We have become more strict in the enforcement and implementation of the Cabotage Act with the cessation of waiver on Manning



- We have strengthened our collaboration with Nigerian Content Development and Monitoring Board as we are jointly working on Harmonization of NCDMB Marine Vessels Categorization scheme and the Five (5) Year Vessel Demand Profile.
- We are building a Ship Registry that will have international recognition
- We have set up a 15 Man NIMASA/ Stakeholders Committee on cessation of Cabotage Waivers.
- We are currently reviewing our enabling Acts.

## THE OTHER SCHOOL OF THOUGHT

Those who strongly support FOB have argued that thinking otherwise will derail revenue earning projections for the country and that in any case Nigerians do not own the high index capacity vessels for international trade.

- We will not relent in our efforts until we begin to see Nigerians lift a significant proportion of our daily production of oil.
- Our position is that with a carriage right guaranteed, the Nigerian Shipowners could charter any class/specification of vessels for cargo affreightment
- We are confident that overtime, Nigerians will acquire vessels and become self reliant.



## RECAP

- ✓ Change of Trade Terms from F.o.B to C.I.F will meaningfully engage Nigerian indigenous shipping operators in the affreightment of the Nigerian cargo and grow our economy.
- ✓ Developed nations of the world understand the economic and security implications of having their indigenous operators participate in affreightment of their cargoes.
- ✓ Relevant Acts should define terms of trade to be used during review to enhance authority, implementation and enforcement
- ✓ To build indigenous capacities, policies must be consciously and strategically put in place and enforced



# CONCLUSION

It is a known fact that globally, government continues to assist indigenous companies build capacity and grow through a number of monetary and fiscal policies.

Capacity building and resource development in the maritime sector cannot be achieved if indigenous shipping companies are excluded from crude oil affreightment and carriage of public sector cargo. This is where we have comparative advantage and that is our collective goal.

**THANK YOU**

