

Incoterms 2010

CBMU Annual Conference

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New Incoterms 2010

New terms come into effect on January 1, 2011

- Are you ready?
- What does it mean?

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Incoterms – Why do we care?

- Marine insurance is the lynch-pin of international trade
- Buyers and sellers are each trying to protect themselves in an international sale of goods transaction.
 - Buyer does not want to release funds until it is assured that the goods have been shipped. Seller does not want to release goods until it is assured that payment has been made.
 - Thus, the development of bills of lading and documentary title and credits.
- Marine insurance protects against casualties for the time in between

What are the Incoterms?

- “Incoterms” is the short form for International Commercial Terms
- Published by the International Chamber of Commerce (ICC) and widely used in international commercial transactions
- The first version was published in 1936
 - Around same time as the U.S. adopted COGSA and the Hague Rules became the world standard for maritime commerce

What are the Incoterms?

- A series of internationally recognized sale terms, which clarify the tasks, costs and risks involved in the delivery of goods from sellers to buyers.
- Determines who is responsible for arranging transportation, insurance and who bears the risk of damage during transit
- Not the sale contract itself, but a term of the sale contract

INCO Terms

- Ranges from **All Risk on Buyer** to **All Risk on Seller**
- EXW - “Ex Works”
 - Buyer bears most responsibility and costs as soon as cargo leaves seller’s location

To

- DDP – “Delivery Duty Paid”
 - Seller bears most responsibility and costs until delivery at Buyer’s location

Tasks, Costs & Risks

- Tasks:
 - Who is responsible for preparing goods for transport?
 - Who arranges the carriage?
 - Who does the paperwork?
- Costs:
 - Who pays for carriage?
 - Who pays for the packing?
- Risks:
 - Who bears the risk of transit damage and the cost of insuring the goods?

Revisions to the Incoterms

- Every 10 years or so, the ICC reviews the INCOTERMS to adapt to changes in global trade practices
- Incoterms 2010 come into effect January 1, 2011
- This presentation will focus on the change from the last version, Incoterms 2000, to INCOTERMS 2010

Why Changes?

- Development of customs free zones
- Use of electronic data interchange methods
- Changes to transport practices and multimodalism
- Security for the movement of goods and clearance requirements
- Simplicity and clarity
- Removal of redundant and obsolete terms

INCOTERMS 2000

13 Terms divided into 4 categories:

- Group E – Departure
- Group F – Main Carriage Unpaid
- Group C – Main Carriage Paid
- Group D – Arrival

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Group E - Departure

- EXW
 - “Ex Works”
 - Buyer has ownership as soon as leaves Seller’s loading dock
- Buyer must arrange transport, load goods, insure the cargo etc.
 - Send a truck to the factory and take it from there.
- Simplest from seller’s perspective; most onerous from Buyer’s.

Group F – Main Carriage Unpaid

- FCA – Free Carrier (Named place)
 - Seller hands over goods to the buyer at first carrier
- FAS – Free Alongside Ship (Named loading port)
 - Seller arranges to get to port and ready to load
- FOB – Free On Board (Named loading port)
 - Seller loads goods on to ship nominated by buyer

Group F – Main Carriage Unpaid

- Buyer arranges and pays for the transportation
- Seller has responsibilities to get it to the carrier, but it ends there
- Must identify point of origin
 - i.e. “FOB Taipei”

Group C – Main Carriage Paid

- CFR – Cost and Freight (destination port)
 - Seller arranges transport to destination port. No Insurance. Risk on Buyer.
- CIF – Cost, Insurance, Freight (destination port)
 - Seller arranges transport to destination port plus insurance. Risk on Buyer.

Group C – Main Carriage Paid

- CPT – Carriage Paid To (destination place)
 - Seller arranges transport to destination place. No Insurance.
- CIP – Cost Insurance Paid To (destination place)
 - Seller arranges transport to destination place with insurance.
- Seller is arranging the transportation and the insurance for the benefit of the buyer.
- Must indentify point of destination
 - i.e “CIP Toronto”

Group D – Arrival

- DAF – Delivered at Frontier (named place)
- DES – Delivered Ex Ship (named port)
- DEQ – Delivered Ex Quay (named port)
- DDU – Delivered Duty Unpaid (named destination)
- DDP – Delivered Duty Paid (named destination)
- Seller bears costs and risks to the nominated point of destination.
 - Seller must arrange, transportation, loading, unloading, insurance, etc.

INCO Terms

- Most commonly used terms are:

- F.O.B.** – “Free On Board”

Seller must deliver the goods to the ship nominated by the buyer. Risk and title to the goods pass to the buyer once in the goods “pass the ship’s rail” . The buyer arranges the transportation and should arrange for the transit insurance.

- C.I.F.** – “Cost, Insurance, Freight”

The sale price includes the cost of the goods, the insurance of goods while in transit and the costs of shipping (freight). The Seller arranges transportation and should arrange for the transit insurance.

INCO Terms

- Under both **FOB** and **CIF** terms the buyer is the owner (and at risk) when the goods are in transit.
- The obligation to place insurance on the cargo is different.
 - FOB on the buyer
 - CIF on the Seller
- The insurance is the same – marine cargo insurance

Terminology change

- “over the ship’s rail” now “on board”
- Serves as a reference point in FOB, CFR, CIF and similar terms for when risk passes.

INCOTERMS 2010

The FOUR previous categories are reduced TWO

- 4 terms are deleted
- 2 new terms are added

- More reflective of modern multi-modalism
- Categories now addressed by means of transport rather than stages of transport.
- These changes require parties to (hopefully) focus more clearly on mode of transport used

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Reduction in Categories

INCOTERMS 2010 only has TWO categories:

- **Category 1: Rules for ANY mode of transport (i.e. sea, air, road, rail)**
 - EXW
 - FCA
 - CIP
 - CPT
 - DAP*
 - DAT*
 - DDP

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Reduction in Categories

- **Category 2: Rules for Sea and Inland Waterway transport**
 - FAS
 - FOB
 - CFR
 - CIF

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Deletions and Additions

- Deleted 4 terms:
 - DAF – Delivered At Frontier
 - DES – Delivered Ex Ship
 - DEQ – Delivered Ex Quay
 - DDU – Delivered Duty Unpaid
- Added 2 new terms:
 - DAP (named place) – Delivered at Place
 - DAT (named terminal) – Delivered at Terminal

Scale of Tasks, Costs & Risks

- The Incoterms 2010 still present a sliding scale of tasks, costs and risks as between buyer and seller.
- The Incoterms 2010 can still be considered in the framework of the 4 earlier categories (i.e. stages)
- Again, will depend on the commercial intentions and terms between the parties

Departure

- EXW “Ex Works”
- All risks on buyer
- Buyer has ownership as soon as cargo leaves seller’s loading dock
- No real change

Main Carriage Unpaid

Seller delivers goods to carrier appointed by
buyer

- FCA “Free Carrier”
 - Seller gets the goods (or container) to the truck (hired by the buyer) which will take it to the ship
- FAS “Free Alongside Ship”
 - To be used in maritime transport, only. Seller delivers to the port and alongside the ship in “tackle ready” condition

Main Carriage Unpaid

- FOB “Free on Board”
 - seller must deliver the goods to the ship as specified by the buyer. Risk and title to the goods pass to the buyer once the goods are onboard the vessel, meaning the whole consignment has been loaded. If half a consignment is loaded, and the ship sinks, then complete loading has not occurred and the risk has not transferred to the buyer.
 - This is in contrast to the risk transferring when goods “pass the ship’s rail” in the old Incoterms. The Buyer arranges transport and should arrange for the transit insurance.

Main Carriage Unpaid

- Seller has to contract for carriage **WITHOUT** assuming risk of loss after shipment
- CFR – Cost and Freight
- CIF – Cost, Insurance and Freight
 - sale price includes the cost of goods, insurance of goods while in transit and the costs of shipping. The seller arranges for transport and should arrange for transit insurance.
- CPT – Carriage Paid To
- CIP – Carriage and Insurance Paid

Arrival

Seller bears all tasks, costs and risks needed to bring goods to the place of destination

- DDP – Delivered Duty Paid
 - All responsibilities and risks are on seller
 - Seller has ownership (usually) until delivery by seller to buyer at buyer's location

Arrival

- DAP – Delivered at Place
 - Replaces DES, DAF, DDU
 - Seller retains all risks until delivered, but unlike DAT, the unloading of goods from arriving vehicle is responsibility of the buyer.
 - Delivery to buyer’s premises or port, but not unloaded or cleared
 - Requires seller to SPECIFY place of delivery.
- DAT – Delivered at Terminal
 - Replaces DEQ
 - Seller retains all risk of goods until they are delivered, that is, until the goods are unloaded from the arriving vehicle and placed at the disposal of the buyer at the agreed named terminal in destination country.
 - Requires seller to SPECIFY terminal of delivery.

Insurance Obligations

- **Only two terms make procurement of transit insurance an obligation:**
 - CIF: Cost, Insurance and Freight
 - CIP: Carriage and Insurance Paid
- For both CIF and CIP, the seller is only required to obtain cargo insurance complying with the minimum cover provided by Clauses (C) of the Institute Cargo Clauses.
 - This is the minimum level of insurance and covers only major casualties, such as total loss of cargo.

Insurance Obligations

- Therefore, in many cases, the buyer will want to include in the contract an express requirement for the more extensive Institute Cargo Clauses (A).
 - This would be part of the sale terms, not the Incoterms
- For other Incoterms, the buyer must now provide the seller (upon request), with any information necessary for the seller to procure any additional insurance as requested by the buyer and the seller must provide the buyer with the insurance policy or other evidence of insurance cover, as well as any information that the buyer needs to procure any additional insurance.
- DDP, DAP and DAT terms still make it advisable for seller to procure insurance for its own risk of loss

Other Important Points:

- Important to note that Incoterms are not a contract
 - They are a term of a contract designed to simplify / clarify who does what and which party's cost
- Incoterms also do not regulate transfer of ownership, the payment process, applicable law and jurisdiction – these are important aspects of the contract which the Incoterms do not address
- Incoterms exist to further the contractual obligations of buyer and seller in fulfilling the transportation end of a sale of goods contract

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Other Important Points:

- The Incoterm(s) chosen should reflect what is in the contract (i.e. choose Incoterm which best describes the agreement)
 - Tasks – those of the seller, buyer. Who is supposed to do what to get the goods from A to B.
 - Costs – what does the sale price include?
 - Risk – defines where risk starts ends
- Use the appropriate terms for the transportation required – some terms are for sea and inland waterway transport ONLY
 - E.g. FOB – is often erroneously used to indicate any point of delivery. FOB is meant to be used solely for sea and inland waterway transport
- For the terms where insurance is not obligated, insurance is still recommended – buyers and sellers should clearly set out insurance issues and obligations in the contract

Reflections and Prognostications

- The changes are not major.
- Still important to properly specify ports and places of destination and for buyers and sellers to put their mind to the issues and use the terms correctly
- Takes into account modern transportation and reality of door to door multi-modalism
- Sets up next round of revisions in 2020
 - Rotterdam rules
 - Extinction of water only terms and use of multi-modal only?

For More Information:

- <http://www.iccwbo.org/incoterms>
- International Chamber of Commerce

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