



สมาคมประกันวินาศภัยไทย
Thai General Insurance Association



MILC

Marine Insurance and Logistics Club

เอกสารประกอบการสัมมนา
เรื่อง “Incoterms 2010 สำคัญอย่างไร
กับการประกันภัยขนส่งสินค้าระหว่างประเทศ”

ในหัวข้อ “แนวโน้มการเปลี่ยนแปลง Incoterms 2010”

จัดโดย

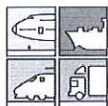
คณะกรรมการชมรมประกันภัยทางทะเลและโลจิสติกส์
สมาคมประกันวินาศภัยไทย

วันพฤหัสบดีที่ 24 สิงหาคม 2560

ณ ห้องประชุม 221 ชั้น 2 อาคาร 2

สมาคมประกันวินาศภัยไทย

เอกสารประกอบการสัมมนา
คุณสาวตรี รัตนจันทร์



Incoterms® 2010
by the International Chamber of Commerce (ICC)

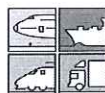
Revising **Incoterms® 2010** rules

by
Sawitree Ratanachand
ICC Thailand
24 August 2017



International Chamber of Commerce
The world business organization

Agenda



Incoterms® 2010
by the International Chamber of Commerce (ICC)

- Copyright Notice
- Four contracts in International Trade
- Introduction to Incoterms® rules
- Cautions in using Incoterms® rules
- Incoterms® 2010 and Insurance
- Revising Incoterms® 2010 rules
- Q&A



Copyright Notice

Copyright Notice

•“Incoterms” is a registered trademark of the International Chamber of Commerce (ICC).

“Incoterms” เป็นเครื่องหมายการค้าจดทะเบียนของหอการค้า
นานาชาติ (ICC)

Rules of the usage of 'Incoterms' trademark

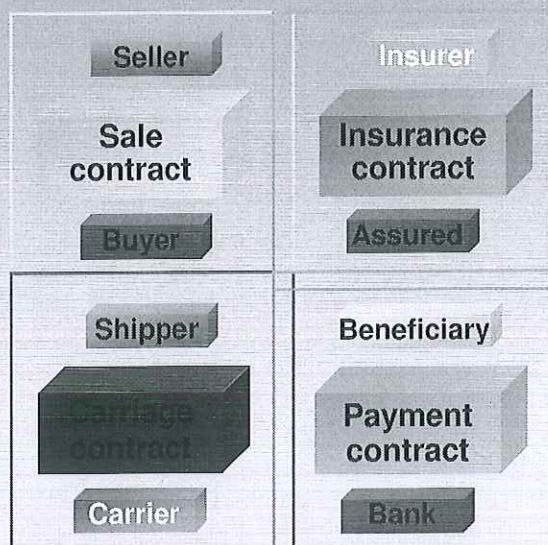
- Use the trademark "*Incoterms*" to refer only to ICC's *Incoterms® rules* and other *Incoterms® products and services* from ICC.
- In text, use "*Incoterms*" as an adjective, not a noun.
- Do not use "*Incoterms*" without the initial letter as a capital letter.
- ใช้เครื่องหมายการค้า "*Incoterms*" เพื่ออ้างถึงกฎ *Incoterms®* ของหอการค้านานาชาติรวมทั้งสินค้าและบริการเกี่ยวกับ *Incoterms®* อื่นๆ ของหอการค้านานาชาติเท่านั้น
- ในเอกสาร ให้ใช้ "*Incoterms*" ในรูปคำคุณศัพท์ไม่ใช่คำนาม
- ไม่ใช่ "*Incoterms*" โดยตัวอักษรตัวแรกไม่เป็นตัวพิมพ์ใหญ่

Rules of the usage of 'Incoterms' trademark

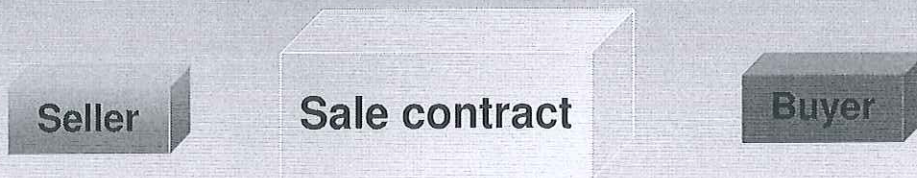
- Do not use "*Incoterm*" (without the final "s"). An individual term from the *Incoterms® rules* should be referred to as an *Incoterms® rule*, and never as an "*Incoterm*".
- Use the registered trademark symbol ® next to the trademark "*Incoterms*".
- Any use of the trademark "*Incoterms*" in association with products and services not from ICC requires a licence from ICC.
- ไม่ใช่ "*Incoterm*" (โดยไม่มี "s" เป็นตัวอักษรตัวสุดท้าย) แต่จะเงื่อนไขของกฎ *Incoterms®* ควรจะถูกอ้างถึงว่าเป็นกฎ *Incoterms®* หนึ่งๆ โดยไม่ใช่คำว่า "*Incoterm*"
- ใช้สัญลักษณ์เครื่องหมายการค้าจดทะเบียน ® ต่อจากเครื่องหมายการค้า "*Incoterms*"
- การใช้เครื่องหมายการค้า "*Incoterms*" ร่วมกับสินค้าและบริการที่มีชื่อของหอการค้านานาชาติ จะต้องได้รับการอนุญาตจากหอการค้านานาชาติ



Four Main Contracts in International Trade



Four Main Contracts in International Trade



- can be as simple as offers and conforming acceptances (usually come in the form of purchase order)
- should specify the sales terms and payment terms
- should indicate how and by whom the documents should be prepared

Four Contracts

3

Four Main Contracts in International Trade

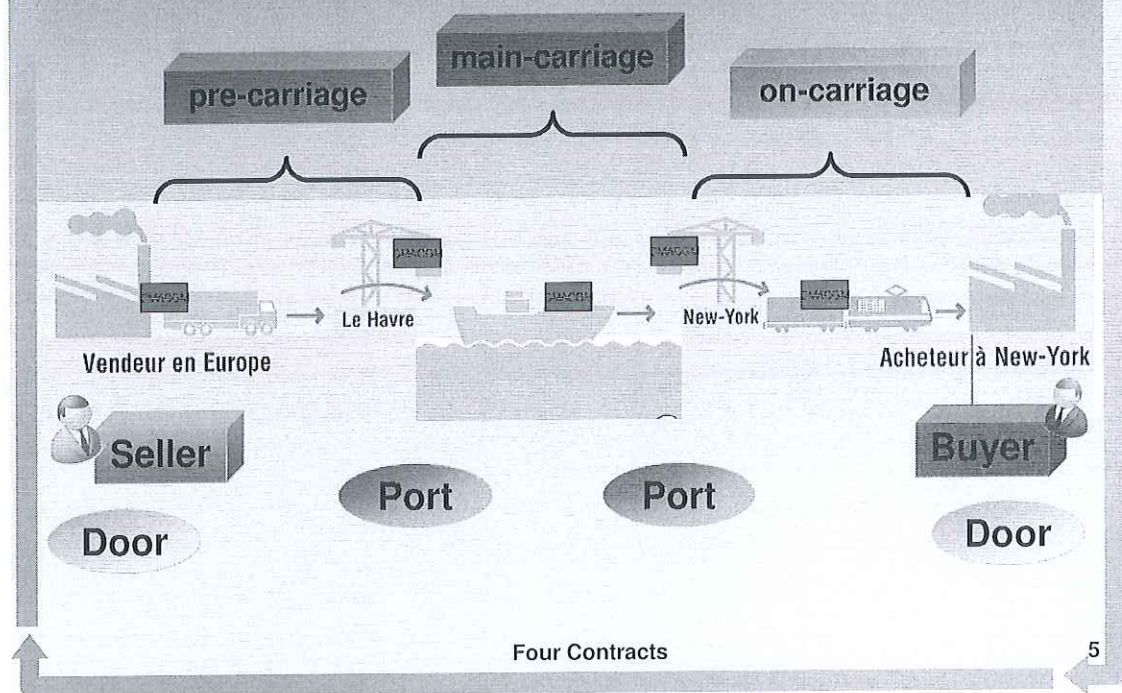


- Shipper hands over goods to carrier for transportation
- Carrier transports the shipment in return for compensation (freight charge) which is either paid by the seller (prepaid) or to be paid by the buyer (collect)

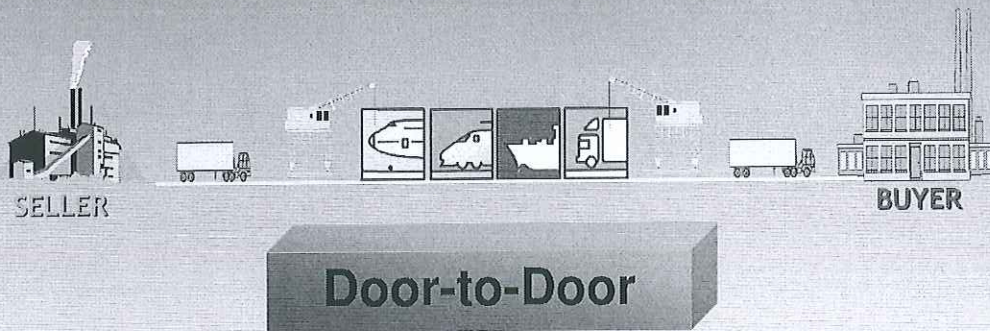
Four Contracts

4

UNDERSTANDING THE TRANSPORT CHAIN ...



Multi-modal transport



- One carrier undertakes all transportation responsibility from the seller's door to the buyer's door
- This contract of carriage includes pre-carriage, main-carriage and on-carriage

Four Contracts

6

Four Main Contracts in International Trade

Insurer

Insurance contract

Assured

- A contract between a party purchasing protection (the assured) and an insurance company (the insurer)
- The insurer, the party who receives the premium and promises to pay for the loss
- The assured, who pays the premium and whose loss, if any, shall be paid by the insurer

Four Contracts

7

Four Main Contracts in International Trade

Bank

Payment contract

Beneficiary

- Sales contract often specify letter of credit (L/C) payment terms
- L/C is a contract undertaking by a financial institution (usually a commercial bank) to a named party called the beneficiary (usually the seller)
- In the L/C, the bank promises to pay the beneficiary a stipulated amount of money at a stipulated time, provided the beneficiary submits documents conforming to the L/C terms and conditions

Four Contracts

8

Introduction

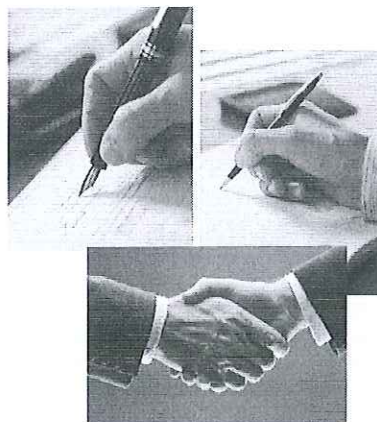
1



Incoterms® 2010
by the International Chamber of Commerce (ICC)

1 Definition

Incoterms -- an acronym for International Commercial Terms – are a series of 11 trade terms used in international sales contracts to clearly divide the risks and responsibilities of buyers and sellers with regard to the movement of goods between both parties.



2



1 Definition

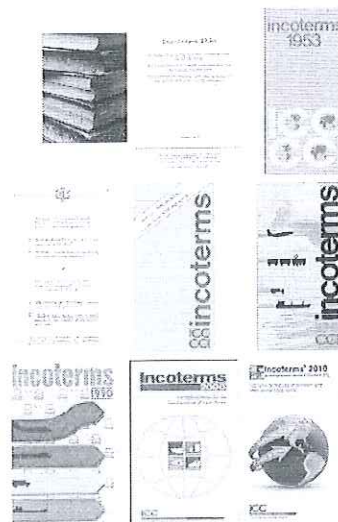
Who does what?

- international transport,
- insurance responsibilities and
- customs formalities



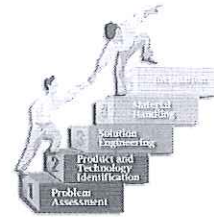
2 How were Incoterms rules developed ?

- ICC derived Incoterms rules from studies of prevailing international trade practices, publishing the first version of Incoterms rules in 1936. Subsequent revisions were published in 1953, 1967, 1976, 1980, 1990 and 2000
- The new version is Incoterms® 2010 which has been effective since 1 January 2011



3 How are they used ?

- There are 11 Incoterms rules which can be thought of as representing a stepladder of increasing responsibility from the seller's premises to buyer's premises

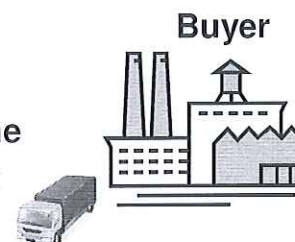


- EXW, involving the delivery at the seller's factory or warehouse, represents the minimum responsibility for the seller



3 How are they used ?

- At the other extreme, DDP, represents maximum responsibilities on the part of the seller, with delivery generally at the buyer's premises



- In between these two extremes, there are 9 other Incoterms rules, representing a range of options for the division of costs / risks between the parties

EXW FCA FAS FOB **CAR** CIF CPT CIP DAT DAP DDP

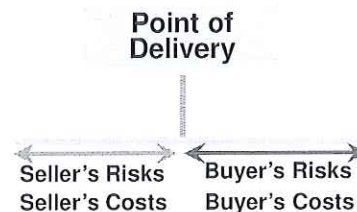
4 Are Incoterms the law ?

Although the ICC is not the government, the Incoterms rules are recognized globally by courts, governments, banks, insurance companies and other authorities and are in constant daily used by most companies through out the world which are successfully engaged in exporting and importing.



5 Scope of Incoterms Rules

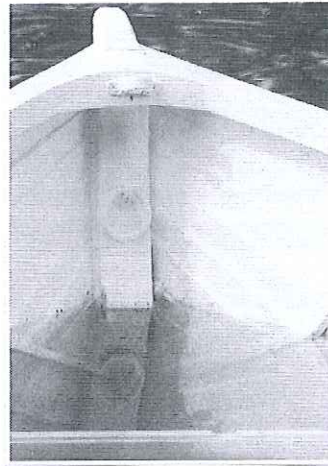
- the transferring of risk
 - the point at which risk of loss will be transferred from seller to buyer
- the responsibilities for costs
 - the transport costs that the seller will cover;
 - who must handle customs formalities and pay duties; and
 - in the case of CIF and CIP, the seller's responsibilities to provide insurance cover
- the documents to be provided to the buyer by the seller



6 Remember that Incoterms rules do not give you a complete contract of sale

Incoterms rules, say *nothing* about

- the *price* to be paid or
- the method of its *payment* or
- the transfer of *ownership* of the goods, or
- the consequences of a *breach of contract*



7 Insurance Cover

The Incoterms® 2010 rules are

- the first version of the Incoterms rules since the revision of the *Institute Cargo Clauses* and take account of alterations made to those clauses.
- place information duties relating to insurance in articles A3/B3, which deal with *contracts of carriage and insurance* (have been moved from articles A10/B10 of the Incoterms 2000 rules).





Cautions in using Incoterms® 2010 rules in International Trade

1



International Chamber of Commerce
The world business organization

1 Loading obligation - the most common practice - EXW

- ✦ the seller has no obligation for loading
- ✦ however, in practice, the seller assists the buyer with loading operations, either by bringing the goods on to the ramp for loading or by bringing the goods on to the buyer's collecting vehicle



2



International Chamber of Commerce
The world business organization

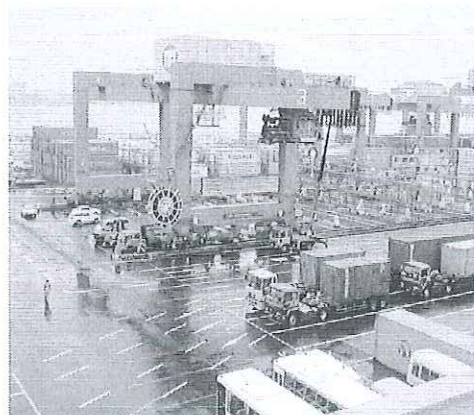
1 Loading obligation - the most common practice - FCA

- ✦ if delivery occurs at the seller's premises → the seller has to load the goods on to the buyer's collecting vehicle

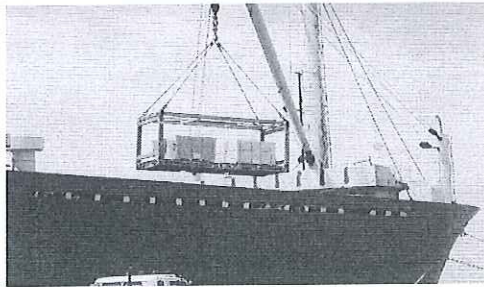
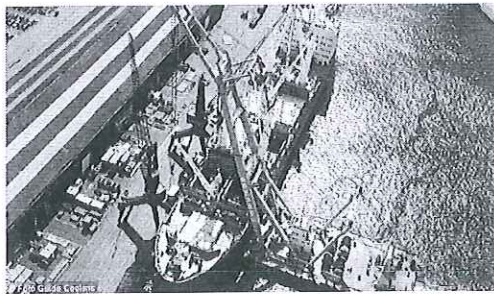


1 Loading obligation - the most common practice - FCA

- ✦ if delivery occurs elsewhere → the seller is not responsible for unloading



2 Containerization



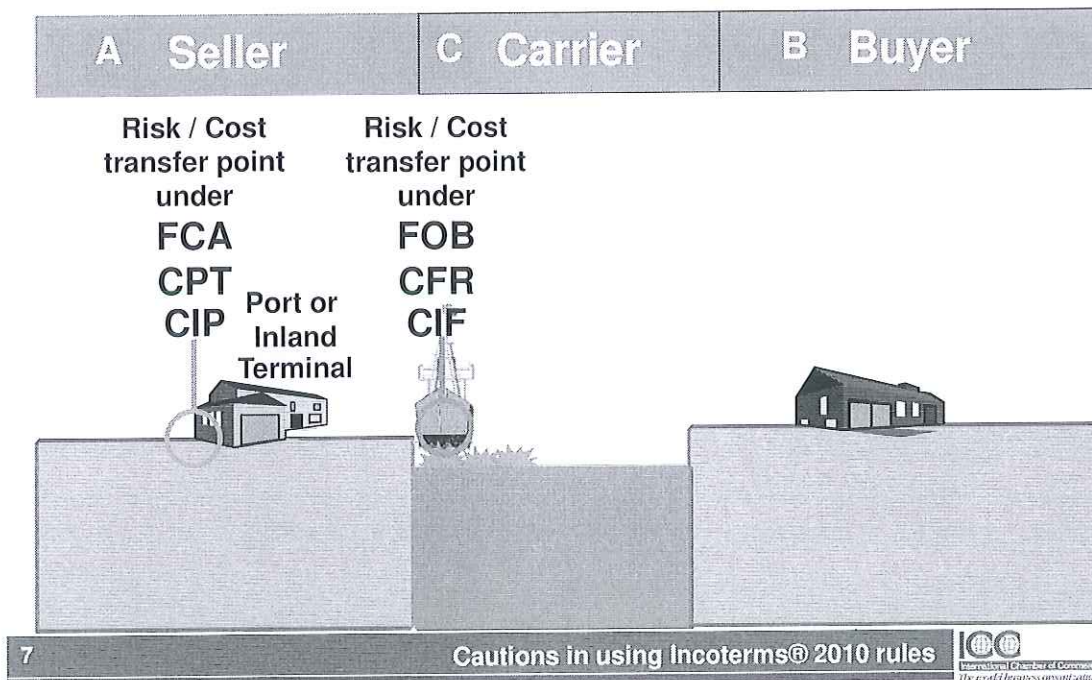
✦ FOB, CFR and CIF are appropriate only when goods are placed on board the vessel, which simply does not take place when the goods are containerized

2 Containerization

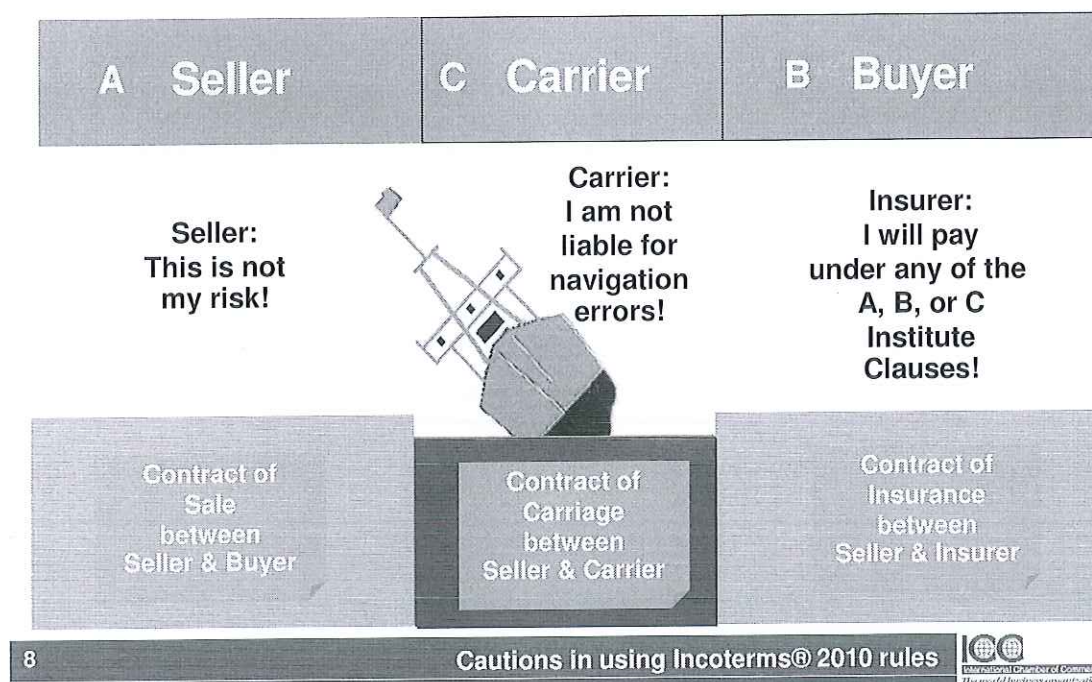
✦ To avoid being at risk after handing over the goods for carriage until the loading on board the ship, the seller should refrain from using CFR or CIF and instead use CPT or CIP, where the risk passes upon the handing over to the carrier.



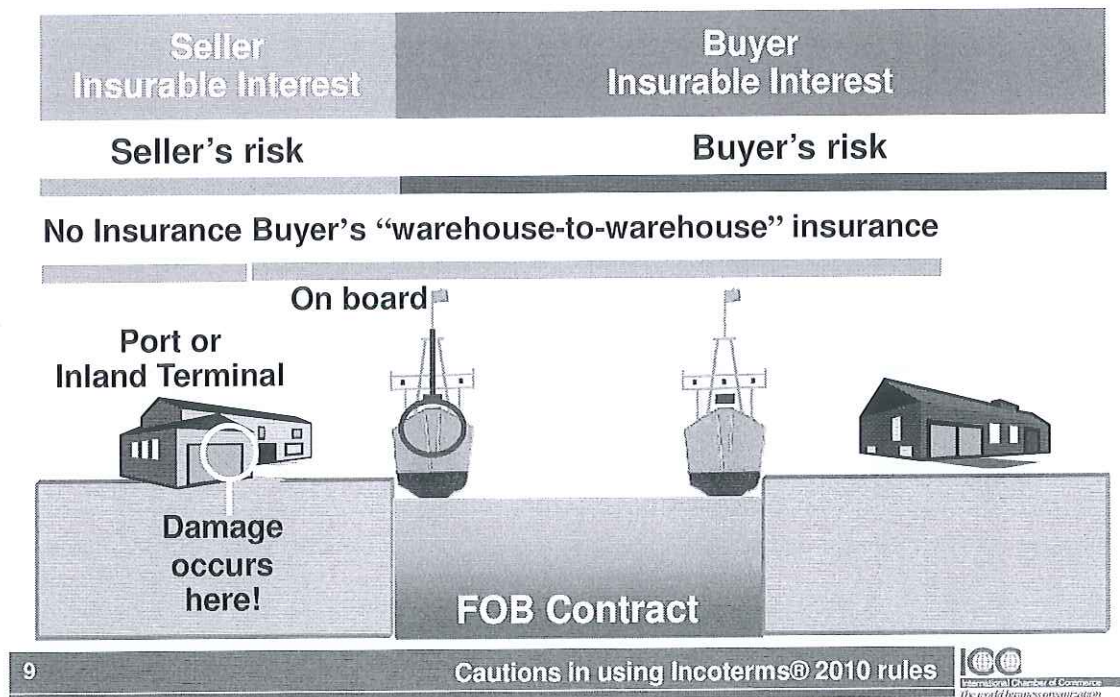
3 How the goods are handed over for carriage



4 Risk Distribution under CIF



5 Incoterms and Insurance

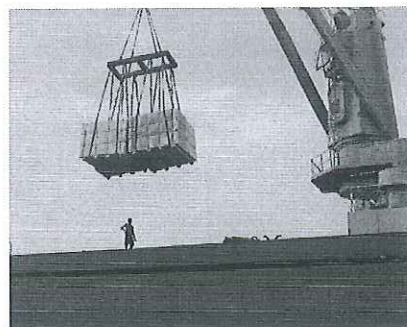


5 Incoterms and Insurance

⊕ A seller who fails to cover himself adequately in these situations will not normally benefit from the buyer's insurance.

The reasons are :

- the FOB-seller is not a contracting party to the FOB-buyer's insurance contract
- the FOB-buyer has no insurable interest before the goods have placed on board the vessel



6 Incoterms rules vs Risk and Costs

Goods moving at buyer's risk and costs:

EXW

FAS

FOB

FCA

Goods moving at buyer's risk and seller's cost:

CFR

CIF

CPT

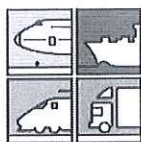
CIP

Goods moving at seller's risks and costs:

DAT

DAP

DDP



Incoterms® 2010
by the International Chamber of Commerce (ICC)

Incoterms® 2010 rules and **Insurance**



1



International Chamber of Commerce
The world business organization

Carrier's liability

- The carrier is in principle responsible for the *arrival of the goods at their destination at normal speed, undamaged and without losses.*
- However this *liability is limited* through international conventions and through national legislations and regulations.



2

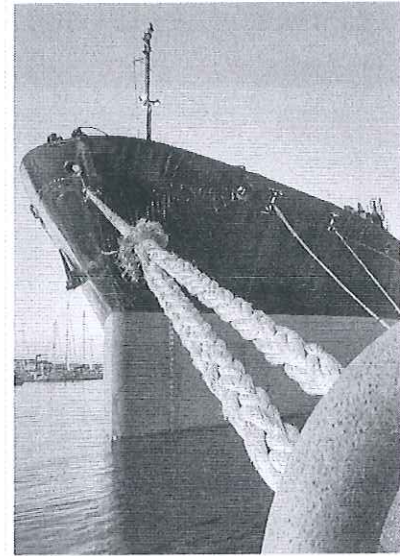
Incoterms® 2010 rules and Insurance



International Chamber of Commerce
The world business organization

Carrier's liability

- The principal rule is that *carriers are responsible for loss caused by negligence.*
- Because of problems related to the *burden of proof*, this responsibility is sometimes considerably reduced.
- It is also *very limited in terms of money.*



Carrier's liability

- Many owners of goods are under the delusion that if goods are lost or damaged during transport, this will be made up or dealt with by the carrier.
- Because of insufficient knowledge of these aspects *too often goods are sent uninsured.*



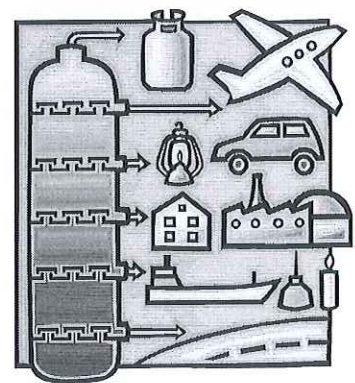
Risks and insured interest

- The most opportune solution is to agree that *one of the parties to the contract insures the entire transport* with one insurer from the place of commencement of the carriage to the final place of delivery, where it ends.
- When each party to a contract insures only its own interest for its leg of transport, it could be often *difficult, if not impossible, to prove when and where the loss of or damage to the goods occurred* and which insurer has to indemnify for it.



Institute Cargo Clauses

- Institute Cargo Clauses (A)
- Institute Cargo Clauses (B)
- Institute Cargo Clauses (C)
- The (A) clauses are most comprehensive while (C) is regarded as minimum cover.
- The (A) (B) and (C) clauses exclude loss and damage due to wars, strikes, riots and civil commotion. These have to be covered separately.



INCOTERMS 2010 Insurance

- Similarly as in Incoterms 2000, in the new edition 2010, there are only two terms which deal with insurance, namely *CIF* and *CIP*.



- Under these terms the *seller is obliged to procure insurance for the benefit of the buyer*, whilst in cases of other terms, it is for the parties themselves to decide whether and to what extent they want to cover themselves by insurance.



CIP and CIF Insurance (Cont'd)

- The seller must obtain at its own expense cargo insurance complying *at least with the minimum cover as provided by Clause C of the Institute Cargo Clauses (LMA/IUA) or any similar clauses.*



- The insurance shall be contracted with the underwriters or an insurance company of good repute and *entitle the buyer, or any other person having an insurable interest in the goods, to claim directly from the insurer.*

CIP and CIF Insurance (Cont'd)

- The insurance shall cover, at a minimum, *the price provided in the contract plus 10 percent (i.e. 110 %)* and shall be *in the currency of the contract*.
- The insurance shall cover the goods *from the point of delivery set out in A4 and A5 to at least the named place of destination*.
- The seller must provide the buyer with the insurance policy or other evidence of insurance cover.
- Moreover, the seller must provide the buyer, *at the buyer's request, risk and expense (if any)*, with information that the buyer needs to procure *any additional insurance*.



CIP and CIF Insurance (Cont'd)

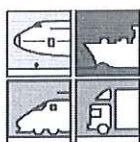
- When deciding on clauses, it is important to consider, what damage may occur to the goods during the transport. One can say, that *processed and manufactured goods*, where the risk of theft, pilferage, improper handling or custody of goods, should have the best insurance cover available under *Clause A*, while in transport of *raw materials*, which can stand more stress the less comprehensive *clauses B or C* could be used.
- It is up to the buyer to observe this and should he require additional cover, he should agree with the seller to take out additional insurance or alternatively, arrange for extended insurance cover himself.



Cargo Insurance against Liability Insurance

- Owners of goods often refuse the cargo insurance considering it's unnecessary, assuming that the risk of loss or damage to the goods is sufficiently covered by the insurance cover of the carrier or forwarder.
- They do not know or realize that this kind of insurance covers the liability of the carrier or forwarder and that they have the chance *to obtain remedy for the cargo lost or damaged if they are able to proof the failure or negligence of the carrier or forwarder* in casual relation with caused loss or damage.
- This is the basic difference between the *cargo insurance* in which case the mere fact of *loss or damage to the goods entitles the insured to the compensation*.

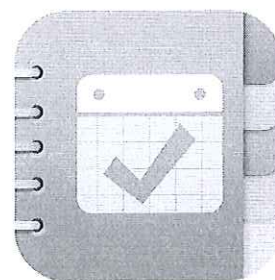
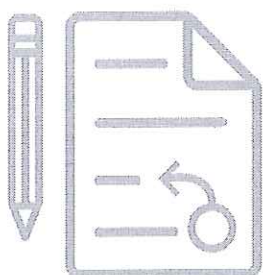




Incoterms® 2010

by the International Chamber of Commerce (ICC)

Revising Incoterms® 2010 rules



1



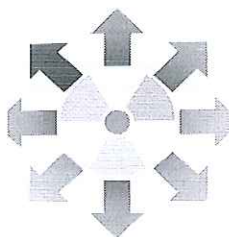
International Chamber of Commerce
The world business organization

1

Objectives



To improve the accurate use of the rules by making Incoterms® 2020 clearer and more accessible than the current version.



To increase global use of the rules by holding a consultation open meetings and considering innovative formats (such as an app), lower pricing, and a range of training offerings.

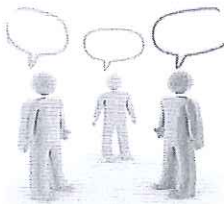
2



International Chamber of Commerce
The world business organization



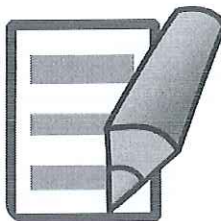
ICC Secretariat reported in March 2016 that there are plans to create an Incoterms® 2020, to be released in 2019 as part of the ICC centennial festivities, with an effective date of 1 January 2020.



Drafting Group: Incoterms® 2020 Drafting Group held its first meeting on 13 October to discuss the process and working method for preparing the Incoterms® 2020 rules. The goal is to reflect global market practice as closely as possible, and make the rules as easy to understand and use as possible.



Questionnaire: A questionnaire sent in early November to (i) the CLP Commission, (ii) the Customs and Trade Facilitation Commission, and (iii) NCs. Responses from NCs was due in mid-late January 2017.



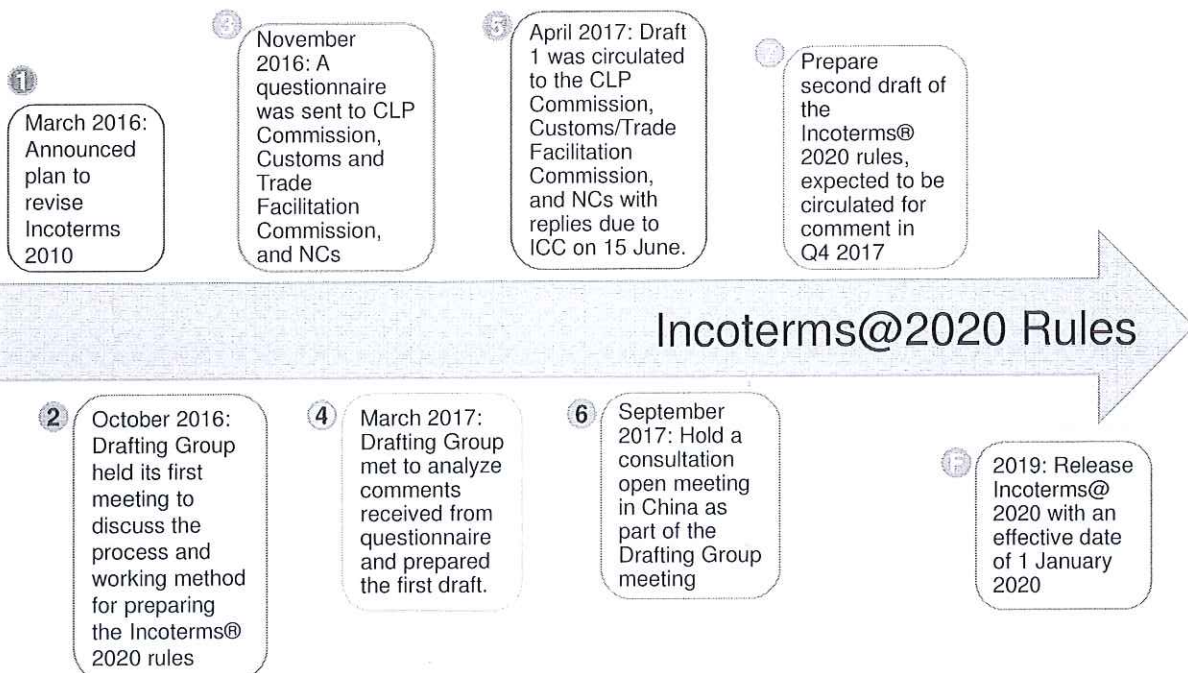
Drafts: The Drafting Group met in March 2017 to prepare a first draft of Incoterms® 2020 based on the feedback received from the questionnaire. The first draft was sent for comments, and responses received on the first draft was set the stage for the Drafting Group to prepare a second draft, which will also be sent for comments. Comments on the second draft will inform the preparation of the final text by the Drafting Group.

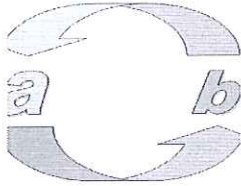


Open meetings: The Drafting Group will hold a couple of open meetings – in Asia and the Americas – in which local stakeholders can engage directly with the Drafting Group.

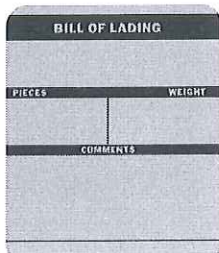


National Committee (NC) consultative groups: NCs are encouraged to create consultative groups with an interest in the rules, including bankers, transporters, freight forwarders, insurers, customs experts, national/local compliance associations, national/local commodities associations, etc.





Reordering of Articles to make them easier to understand for the users.



FCA – Bills of Lading : As many sellers (wrongly) use FOB for goods in containers because they need an onboard bill of lading. Draft 1 addresses the problem by amending FCA to include an option for sellers to obtain an onboard BL.



Insurance: In CIF and CIP of Incoterms® 2010, the seller is required to arrange a low level of insurance – Clauses C of the Institute Cargo Clauses. The Drafting Group is proposing changing this to Clauses A – a higher level of insurance more appropriate for manufactured goods. However it made clear that this is "unless customary in the particular trade".



‘Arranging’ for transport: B3 of FCA and A3 of DAT, DAP and DDP now allow the party responsible for transport to contract ‘or arrange’ for transport. The responsible party may use its own means of transport and thus would not need to ‘contract’ for transport.

Areas the Drafting Group decided against change:



- Abolition of Ex Works and DDP
- Abolition of FAS
- Additional Incoterms rules for delivery in space
Evidence needed from users (i) of the need for an Incoterms rule, for such deliveries to be a significant part of Planet Earth deliveries, and (ii) that the existing multimodal delivery terms are inadequate for space delivery.
- Make Ex Works loaded

Areas the Drafting Group decided against change:



- VGM (requires a maritime carrier to ensure it has accurate cargo weights and there is a cost and risk for the parties to obtaining and providing that information):
Redraft was done on the cargo security and information requirements to make them clearer.
- Parcel delivery and business to consumer deliveries:
Incoterms rules should retain focus on business-to-business deliveries of larger items by bulk or by container. It could not see that the Incoterms rules could bring value to parcel deliveries.
- Title:
The Incoterms rules do not deal with title/ownership of goods.

