The Role of Incoterms Rules in International Trade

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Introduction

“Incoterms” is short for International Commercial Terms. It is at present a set of 11 individual rules, each rule clarifying the tasks, costs, and risks to be borne by buyers and sellers in international sale of goods. The International Chamber of Commerce (ICC) developed these rules in 1936 and revises them periodically to conform to changing commercial practices. The Incoterms rules were revised in 1953, 1967, 1976, 1980, 1990, 2000, and 2010, with the ninth version, Incoterms 2020, having come into effect on 1st January 2020.

In essence, Incoterms provide a shared language for traders worldwide. Incoterms rules are accepted by governments, legal authorities, and practitioners worldwide, and are regularly incorporated into contracts of sale worldwide. They are not mandatory rules: for legal effects they must be explicitly incorporated by the parties into their contracts of sale.

For example, if a contract of sale is said to be based on “FOB” terms, the parties’ responsibilities are automatically understood to be as follows: the seller’s responsibility is up to the loading of the goods on board the buyer’s nominated ship at the named port of shipment; delivery is deemed to have occurred when the goods are on board, at which point of time the risk of loss of/damage to the goods is transferred from the seller to the buyer; the seller will also clear the goods for export; and when the goods are on board the buyer’s responsibility begins, who will do everything else necessary to obtain his goods (ocean freight, insurance, import duties, inland transportation etc.).

If the parties want the Incoterms 2020 rules to apply to their contract, they should make that intention clear in their contract, for example, “CIF Chattogram Incoterms® 2020” will mean that the contract is based on CIF terms as described in Incoterms 2020, and the port of destination is Chattogram. Traders can still use Incoterms 2010, but both buyer and seller will need to agree to either the 2010 or 2020 Incoterms, agreeing in writing which version to use.

There are 11 such terms in Incoterms 2020, which will be explained in this essay. There were 13 terms in Incoterms 2000, but in Incoterms 2010 this number was brought down to 11. The terms DAF, DES, DEQ and DDU were replaced by two new terms: DAT (Delivered at Terminal) and DAP (Delivered at Place). In Incoterms 2020 the term DAT has been renamed DPU.

Classification of Incoterms

Upto Incoterms 2000 the terms were divided into four principal categories: E, F, C and D. This classification was based on the point of delivery.

Category E (Departure):	EXW (Ex Works)
Category F (Main Carriage Unpaid):	FCA (Free Carrier) FAS (Free Alongside Ship)

	FOB (Free on Board)
Category C (Main Carriage Paid):	CPT (Carriage paid to) CIP (Carriage and Insurance paid to) CFR (Cost and Freight) CIF (Cost, Insurance and Freight)
Category D (Arrival):	DAP (Delivered at Place) DPU (Delivered at Place Unloaded) DDP (Delivered Duty Paid)

However, since Incoterms 2010 the terms have been grouped according to the means of transport used:

- Incoterms for any mode of transport (multi-modal Incoterms): EXW, FCA, CPT, CIP, DPU, DAP and DDP; and
- Incoterms only for sea and inland waterway transport (maritime Incoterms): FAS, FOB, CFR and CIF

However, as Incoterms 2020 itself states, the old groupings are still helpful in understanding the point of delivery. In all Incoterms rules except the C rules, the named place indicates where the goods are delivered, i.e. where risk transfers from seller to buyer. In the D rules, the named place is the place of delivery and also the place of destination and the seller must organize carriage to that point. In the C rules the named place indicates the destination to which the seller must organize and pay for the carriage of the goods, which is not, however, the place or port of delivery.

The four so-called “maritime” Incoterms rules are intended for use where the seller places the goods on board (or in FAS alongside) a vessel at a sea or river port. It is at this point that the seller delivers the goods to the buyer. When these rules are used, the risk of loss of or damage to those goods is on the buyer’s shoulders from that port.

EXW | Ex Works

Format: “EXW (named place of delivery) Incoterms 2020”. This Incoterm can be used in any mode of transportation, e.g. road, rail, air or water.

Under EXW terms the seller delivers the goods to the buyer when it places the goods at the disposal of the buyer at a named place. This named place of delivery is written after the term, e.g. “EXW No.123 ABC Street, Singapore Incoterms 2020”. The named place may or may not be the seller’s premises, though it is usually the seller’s factory or warehouse. The seller fulfills its obligations by having the goods available for the buyer to pick up at the named place – he does not have to load the goods on any collecting vehicle, or clear the goods for export, or make a contract of carriage for the buyer or procure any marine insurance cover for the goods. Delivery happens, and risk transfers, when the goods are placed, not loaded, at the buyer’s disposal. Once delivery is complete in this way, the buyer bears all risks and costs until the products are delivered to his own location.

EXW is the Incoterms rule which imposes the least set of obligations on the seller. It is the only Incoterm that makes export clearance the responsibility of the buyer. It has been suggested that the EXW Incoterm is better suited for domestic (and not international) trade (D. M. Stapleton, V. Pande, D. O’Brien, EXW, FOB or FCA? Choosing the right Incoterms and why it matters to maritime shippers, 81 *Journal of Transportation Law, Logistics & Policy* 2014, p. 248).

Thus under an Ex Works contract the seller’s obligations are to:

(i) weigh, check, measure and pack conforming goods for delivery;

(ii) supply invoice and any other documents showing conformity;

(iii) deliver the goods by putting them at the buyer’s disposal or otherwise ensuring they may be collected, at the agreed-upon time and place and give the buyer sufficient notice to enable him to take delivery;

(iv) pay costs incidental to placing the goods at the buyer’s disposal; and

(v) provide assistance/information regarding carriage or transport-related security requirements, insurance or export at the request and cost of the buyer.

And the buyer:

(i) accepts delivery and pays for the goods;

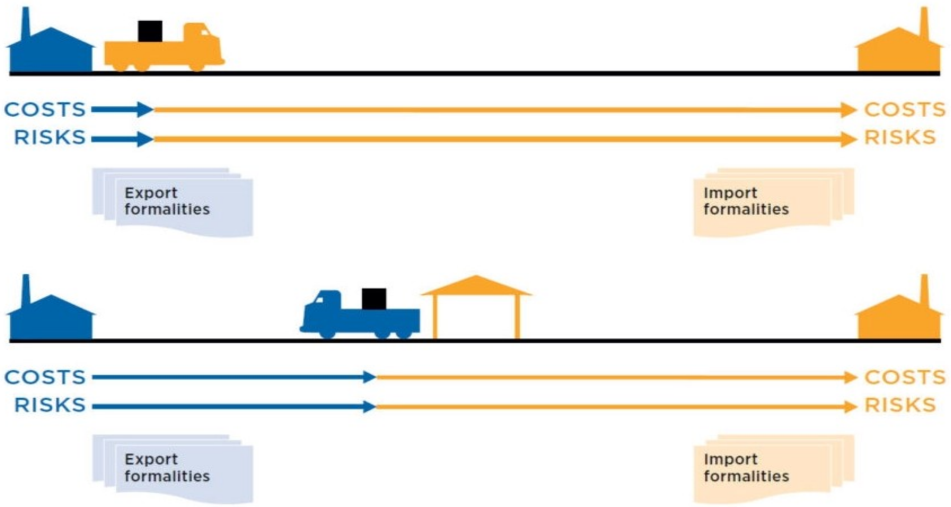
(ii) arranges and pays for exporting the goods, as well as importing them, through carrying out all customs formalities.

Since loading on the collecting vehicle is not the responsibility of the seller’s in an Ex Works contract, the question as to who would bear the risk of loss or damage to goods during loading may arise if such loading operation is carried out by the seller, which is usually the case because the seller is more likely to have the necessary loading equipment at his own premises. In such a case it is advisable for the parties to agree in advance who is to bear such a risk. If the buyer wants to avoid any risk during loading at the seller’s premises, the buyer ought to consider choosing the FCA rule (see below).

Parties sometimes insert a term “loaded” following the reference to EXW Incoterm, i.e., “EXW loaded”, into their sales contract. Such an addition is normally intended to extend responsibility to loading operations, but it is not clear whether such a term means “loaded at seller’s risk” or “loaded at buyer’s risk” and is subject to interpretation in case of dispute.

FCA | Free Carrier

Format: “FCA (named place of delivery) Incoterms 2020”. This Incoterm can be used in any mode of transport.



Under the FCA Incoterms delivery may occur in one of two ways: (1) if the named place of delivery is the seller's premises, delivery occurs when the goods are loaded on the transportation vehicle arranged by the buyer, or (2) if the named place is another place, the goods are delivered when they, having been loaded on the seller's transportation vehicle, reach that named place and are placed at the disposal of the carrier (or another person) nominated by the buyer, ready for unloading from the seller's vehicle. In either case, the seller has the additional responsibility of clearing the goods for export, where applicable. The risk of loss of or damage to the goods will transfer from the time they have been delivered in either of the above manners.

For example, the term may be expressed as "FCA No.123 ABC Street, Singapore Incoterms 2020". If the address is the seller's premises, the seller's responsibility is to load the goods on a vehicle arranged by the buyer at that address. If it is another place, e.g. an airline terminal, the seller will have to load the goods on his vehicle and send it to the airline terminal and place the goods at the disposal of the airline nominated by the buyer, ready for unloading.

Under FCA contract the seller is also required to clear the goods for export. The shipment is the buyer's responsibility.

Thus, the seller's responsibilities in FCA are:

(i) supply conforming goods, which have been weighed, checked, measured and packed for delivery;

(ii) supply invoice and any other documents showing conformity;

(iii) deliver the goods to the carrier or another person nominated by the buyer at the named place, at the agreed-upon time and give the buyer sufficient notice to enable him to take delivery;

(iv) pay costs incidental to making delivery and provide the buyer with the proof of delivery;

(v) carry out and pay for all export clearance formalities, if required, including preshipment inspections costs etc.;

(vi) provide assistance/information regarding carriage or transport-related security requirements, insurance or export at the request and cost of the buyer.

And the buyer's responsibilities are:

(i) accept delivery and pay for the goods;

(ii) contract for the carriage of the goods from the place of delivery;

(iii) carry out and pay for all import formalities required both by the country of transit and the country of import.

If an FCA seller does not present the goods directly to an international carrier, the carrier will not typically provide him with a bill of lading. But if the seller and buyer had agreed on using a letter of credit as the payment method for this transaction, banks often require the seller to present a bill of lading with an on-board notation before they can get paid. Thus, in case an FCA seller needs a bill of lading, Incoterms 2020 has for the first time provided an optional mechanism. If the parties have so agreed in the contract, the buyer must instruct its carrier to issue a bill of lading with an on-board notation to the seller. If the bill of lading is issued to the seller by the carrier at the buyer's cost and risk, the seller must provide that same document to the buyer, who will need the bill of lading in order to obtain discharge of the goods from the carrier. This optional mechanism becomes unnecessary, of course, if the parties have agreed that the seller will present to the buyer a bill of lading stating simply that the goods have been received for shipment rather than that they have been shipped on board. But even where this optional mechanism is adopted, the seller is under no obligation to the buyer as to the terms of the contract of carriage.

CPT | Carriage Paid To

Format: "CPT (named place of destination) Incoterms 2020". This Incoterm can be used in any mode of transportation.

Note that unlike the first two terms, this term requires insertion of the place of destination, not the place of delivery.

Under the CPT Incoterm, the delivery of the goods occurs when they are delivered by the seller to the carrier, contracted by the seller himself, at the agreed place. The seller has an obligation to contract, at his expense, for the carriage of the goods from the point of delivery to the place of destination.

If a term is expressed as "CPT No.123 ABC Street, Singapore Incoterms 2020", it means that a seller, wherever located, must deliver the goods to a carrier which will carry the cargo to No.123 ABC Street, Singapore. But although this named place is the destination, delivery is deemed to have occurred once the goods are handed over to the carrier at an agreed place; and though the contract of carriage is the responsibility of the seller's, he does not guarantee that the goods will reach the place of destination, because risk of loss to the goods is transferred from the seller to the buyer at the point of delivery, not at the point of destination.

Thus in a CPT contract two locations are important: the place or point at which the goods are delivered, and the place or point agreed as the destination for the goods. Identifying the place or point of delivery with precision is important because risk is transferred at that point.

CPT requires the seller to clear the goods for export. The seller is responsible for all international transportation costs associated with carrying goods to the named foreign place of destination.

Thus under CPT terms the seller will:

(i) supply conforming goods, which have been weighed, checked, measured and packed for delivery;

(ii) supply invoice and any other documents showing conformity;

(iii) deliver the goods to the carrier contracted by him at an agreed-upon place and time and notify the buyer about delivery;

(iv) make a contract of carriage with a carrier at the seller's cost to convey the goods to a named place of destination, and comply with any transport-related security requirement;

(v) pay costs incidental to making delivery and for transportation, including costs of loading and transport-related security costs; and provide the buyer with the proof of delivery;

(vi) carry out and pay for all export clearance formalities, if required, including preshipment inspections costs;

(vii) provide the buyer with transport document(s);

(viii) provide assistance/information requested by the buyer regarding insurance.

And the buyer's responsibilities are:

(i) accept delivery and pay for the goods;

(ii) accept transport documents;

(iii) carry out and pay for all import formalities required both by the country of transit and the country of import.

We shall see below that CPT is similar to CFR (Cost and Freight) which applies only to sea and inland waterway transport.

CIP | Carriage and Insurance Paid To

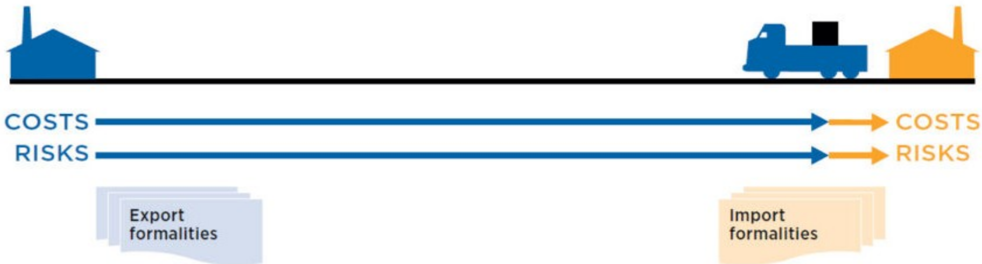
Format: "CIP (named place of destination) Incoterms 2020". This term can be used in any mode of transportation.

Except for the seller's additional obligation to procure insurance coverage against the buyer's risk/damage to the goods, CIP is similar to CPT in all other respects. Here too the seller has to make a contract of carriage with a carrier and hand over the goods to the carrier for onward transportation to a named destination. As in CPT, the seller is responsible for clearing the goods for export. The risk is transferred to the buyer once delivery to the carrier is complete.

The seller must contract with underwriters or an insurance company of good repute in order to entitle the buyer to claim directly from the insurer. It shall be made in conformity with Clauses (A) of the Institute Cargo Clauses, or similar clauses, and shall cover the price provided in the contract plus 10% (i.e. 110%). (Institute Cargo Clauses are a component of marine insurance that was originally developed by ICC). The insurance must cover the goods from the point of delivery to, at least, the named place of destination. The seller must provide the buyer with the insurance policy or certificate or any other evidence of insurance cover. If required by the buyer the seller must provide, at the buyer's cost, any additional cover, if procurable.

DAP | Delivered at Place

Format: "DAP (named place of destination) Incoterms 2020". This term can be used in any mode of transportation.



Unlike the previous terms, EXW, FCA, CPT and CIP, under DAP the delivery is made at the place of destination. Here the place of delivery and the place of destination are the same. For the same reason, the seller's risk continues until the goods reaches the place of destination, where finally the risk is transferred to the buyer.

Under a DAP contract the seller must deliver the goods by placing them at the disposal of the buyer, on a carrier contracted by the seller at his own cost, which has reached the named place of destination, ready for unloading (but not unloaded). The seller is also responsible for clearing the goods for export. The buyer will pay for all costs and risks associated with unloading the goods and clearing customs to import the goods into the named country of destination.

The named place under this term can be a port, the buyer's location or any named place that is agreed upon. In that regard DAP provides flexibility to both parties.

We shall see below that the DAP term can be contrasted with DPU (Delivered at Place Unloaded) in which the seller's responsibility extends to unloading the goods at destination.

Thus in a DAP contract the seller's obligations are:

(i) supply conforming goods, which have been weighed, checked, measured and packed for delivery;

(ii) supply invoice and any other documents showing conformity;

(iii) make a contract of carriage with a carrier to convey the goods to a named place of destination;

(iv) load the goods on the carrier and transport the goods to the named place of destination at an agreed-upon time;

(v) pay all costs for carriage of the goods to destination, excluding unloading at destination;

(vi) carry out and pay for all export clearance formalities, if required, including preshipment inspections costs;

(vii) provide the buyer with transport document(s);

(viii) provide assistance/information requested by the buyer regarding insurance.

And the buyer's responsibilities are:

(i) accept delivery and pay for the goods;

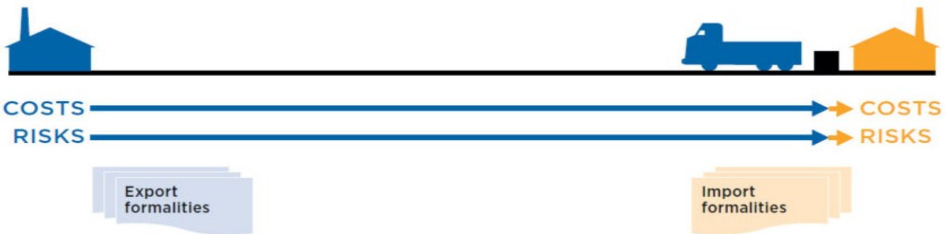
(ii) accept transport documents;

(iii) unload the goods at destination at his own cost; and

(iv) carry out and pay for all import formalities required by the country of import.

DPU | Delivered at Place Unloaded

Format: "DPU (named place of destination) Incoterms 2020". This term can be used in any mode of transportation.



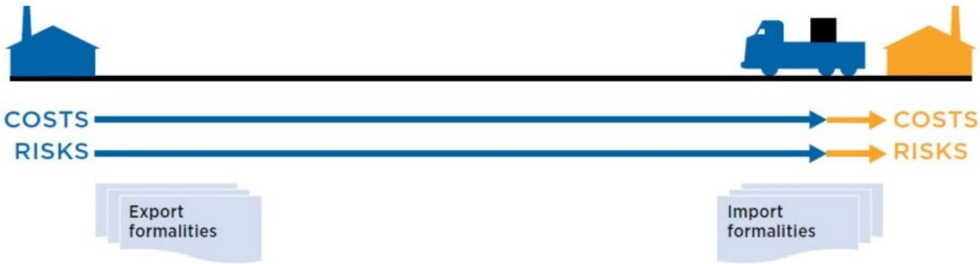
DPU is very similar to DAP except one additional obligation of the seller: unloading the goods at the place of destination. Like DAP, the seller clears the goods for export and bears all risks and costs associated with delivering the goods to the named place of destination, which can be a port or other named location in a foreign country. The buyer is responsible for all costs and risks from this point forward including clearing the goods for import.

It is the only Incoterm that requires the seller to unload goods at destination. Like DAP, the place of delivery and the place of destination are the same under the DPU term. Therefore, the seller bears the risk until it has unloaded the goods at the place of destination, at which point risk is transferred to the buyer.

Previously named Delivered at Terminal (DAT), this Incoterm has been renamed Delivered at Place Unloaded (DPU) because the buyer and/or seller may want the delivery of goods to occur somewhere other than a terminal.

DDP | Delivered Duty Paid

Format: "DDP (named place of destination) Incoterms 2020". This term can be used in any mode of transportation.



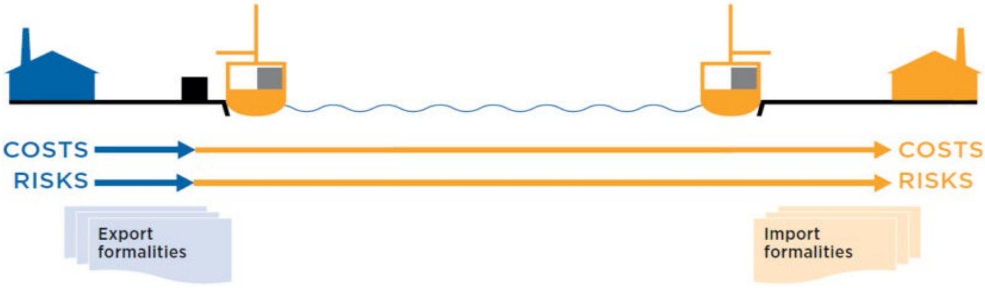
DDP or "Delivered Duty Paid" is an advance mode of DAP, with an additional obligation on the seller to clear the goods for import in the country of destination. Under a DDP contract the seller transports the goods to a named place of destination at his own cost and delivers the goods by placing them at the disposal of the buyer, ready for unloading (but not unloaded). The seller is also responsible for payment of import duty and applicable taxes.

Of all the Incoterms rules, DDP imposes on the seller the maximum level of obligation, with delivery happening at destination and with the seller being responsible for clearing the goods both for export and import, as well for transit. But upon request by the seller the buyer must assist the seller, at the seller's cost, in obtaining documents/information related to import clearance formalities required by the country of import.

DDP is a risky term for the seller, because he may not be fully aware of the import clearance procedures in the country of import or how to find a competent local customs broker. The seller must also deal in a foreign currency, which means he is responsible for the currency exchange and its associated risks. In addition, not all countries allow for non-resident importers, which means the seller must determine how to establish an importer of record. Because of all these hurdles that the seller must overcome, DDP may also have questionable value to importers, since they must depend on the seller to successfully navigate these challenges.

FAS | Free Alongside Ship

Format: “FAS (named port of shipment) Incoterms 2020”. This Incoterm may be used only for sea or inland waterway transport.



FAS or “Free Alongside Ship” means that the seller delivers the goods to the buyer when the goods are placed alongside the ship (e.g. on a quay or a barge), nominated by the buyer, at the named port of shipment. The risk of loss or damage to the goods is transferred from the seller to the buyer when the goods are alongside the ship, and the buyer bears all costs from that moment onwards. The seller also undertakes to clear the goods for export, but not import.

The seller is under no obligation to conclude a contract of carriage. It is the buyer who bears all expenses regarding the carriage of the goods from the named port of shipment to the final destination. Consequently, the FAS Incoterm is not suited for cases when the goods are only to be handed over to the carrier, e.g., at a container terminal, before they are placed alongside the ship. For this scenario, the FCA Incoterm is more appropriate.

“Alongside Ship” implies that the goods are placed in the possession of the carrier. Once delivery is made, the actual loading of the goods on board the ship is the buyer’s responsibility, not the seller’s. If the ship cannot enter the port or is moored at the outer anchorage, the seller has to arrange for lighters which will take the goods alongside the ship.

Thus under the FAS Incoterm the seller is required to:

(i) supply conforming goods, which have been weighed, checked, measured and packed for delivery;

(ii) supply invoice and any other documents showing conformity;

(iii) deliver the goods by placing them alongside the vessel nominated by the buyer at the loading port, at an agreed date and time, and notify the buyer;

(iv) pay all costs incidental to delivery of the goods;

(v) provide proof of delivery;

(vi) carry out and pay for all export clearance formalities, including preshipment inspections costs;

(vii) provide assistance/information requested by the buyer regarding insurance.

And the buyer’s responsibilities are:

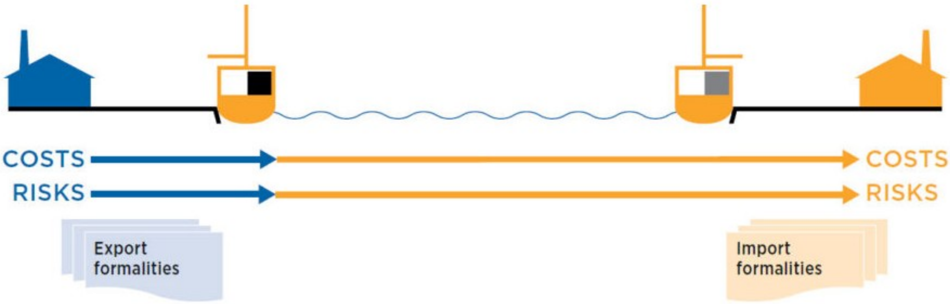
(i) give the seller sufficient notice of the vessel name, loading point, security requirements etc.;

(ii) accept delivery and pay for the goods;

(iii) pay applicable duties, taxes and other costs related to transit or import clearance;

FOB | Free on Board

Format: "FOB (named port of shipment) Incoterms 2020". This Incoterm may be used only for sea or inland waterway transport.



Under the Incoterm "Free on Board" the goods are deemed to be delivered by the seller to the buyer when they are delivered on board the vessel nominated by the buyer that is berthed at the named port of shipment. The risk of loss/damage to the goods is shifted onto the buyer once the goods are placed on board the ship. The seller shall also clear the goods for export. All charges incurred up to and including the delivery on board the ship are borne by the seller, while the buyer has to pay all subsequent charges, such as stowage of the goods on board the ship, freight, insurance, as well as unloading charges, import duties and other incidental charges due on arrival of the consignment in the port of destination.

As in the case of the FSA Incoterm, the seller has no obligation to conclude a contract of carriage. All expenses regarding the carriage of the goods from the named port of shipment shall be borne by the buyer.

If a seller engages a feeder vessel or barge to take the goods to the vessel engaged by the buyer, delivery occurs when the goods are placed on board the buyer's carrier.

Thus under the FOB Incoterm the seller is required to:

(i) supply conforming goods, which have been weighed, checked, measured and packed for delivery;

(ii) supply invoice and any other documents showing conformity;

(iii) deliver the goods by placing them on board the vessel nominated by the buyer at the loading port, at an agreed date and time and in the manner customary at the port, and notify the buyer;

(iv) place the goods on the vessel in the position and manner required;

(v) pay all costs incidental to delivery of the goods;

(vi) provide proof of delivery in the manner agreed;

(vii) carry out and pay for all export clearance formalities, including preshipment inspection costs;

(viii) provide assistance/information requested by the buyer regarding insurance.

And the buyer's responsibilities are:

(i) nominate the ship and give the seller sufficient notice of the vessel name, loading point, security requirements etc.;

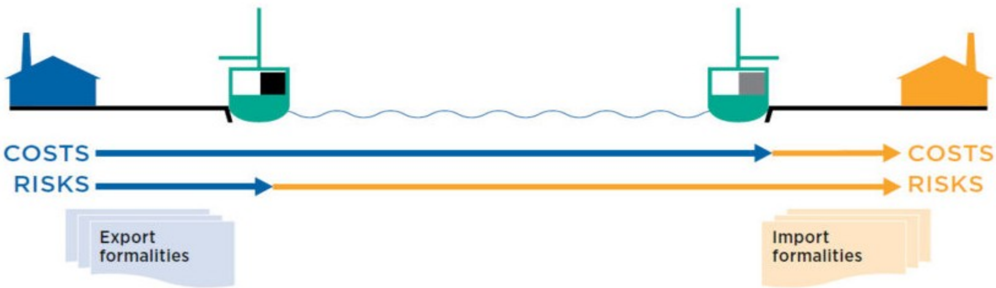
(ii) accept delivery and pay for the goods;

(iii) pay all costs from the time they have been delivered on board the vessel, including freight and applicable duties, taxes and other costs related to transit or import clearance.

FOB is one of the widely used Incoterms. Over the years other variants of the ‘simple’ FOB contracts described above emerged in mercantile custom, such as “classic” or “strict” FOB contracts and FOB contracts “with additional service”. This is because it was felt inconvenient for the buyer, who was in a foreign country, to arrange for freight and insurance. It was easier for the seller to arrange these things who conducted his business in the country where the goods were situated before despatch. And so in the “strict” FOB contract though the buyer nominates the ship, the seller makes the contract of carriage with the carrier, but the contract is made for the buyer’s account. The seller receives the bill of lading which shows him as the consignor and is to his order, and he transfers it to the buyer. Insurance cover is procured by the buyer. In an FOB contract with additional services the shipping and insurance arrangements are made by the seller, but this is done for the account of the buyer. The buyer does not nominate a suitable ship; nomination is done by the seller. Like in classic FOB, the seller enters into a contract of carriage with the carrier by sea, places the goods on board the ship and transfers the bill of lading to the buyer.

CFR | Cost and Freight

Format: “CFR (named port of destination) Incoterms 2020”. This Incoterm may be used only for sea or inland waterway transport.



Unlike FSA and FOB, in CFR the named port is that of destination, not shipment, because in a CFR contract the seller’s responsibility extends up to the port of destination. It is the seller, not the buyer, who makes the contract of carriage and arranges for transportation of the goods to the named port of destination. But the delivery occurs when the goods are placed on board the vessel, at which point the risk will transfer to the buyer.

For example, goods are placed on board a vessel in Shenzhen for carriage to Chattogram. Delivery happens when the goods are on board in Shenzhen, with risk transferring to the buyer at that time, but the seller must bear the cost of transportation of the goods from Shenzhen to Chattogram. In such a case the Incoterm will be expressed as follows: “CFR Chattogram Incoterms 2020.”

Thus under CFR the goods travel at the buyer's risk although the seller is responsible for the payment of freight. The seller is not concerned whether or not the goods actually arrive at their destination in sound condition, in the stated quantity or, indeed, at all.

As in FAS and FOB, clearing the goods for export is also the seller's responsibility. The seller also must pay the charges for unloading of the goods at the port of discharge, if this were for the seller's account under the contract of carriage.

This term is similar to the Incoterm CPT, but it can only be used for sea and inland waterway transport, and the buyer only assumes risk once the goods are loaded on the vessel.

Thus under CFR the seller must:

(i) supply conforming goods, which have been weighed, checked, measured and packed for delivery;

(ii) supply invoice and any other documents showing conformity;

(iii) deliver the goods by placing them on board the vessel at the loading port, at an agreed date and time and in the manner customary at the port, and notify the buyer;

(iv) procure a contract for the carriage of the goods from the port of shipment to the named port of destination;

(v) pay freight and all other costs for delivery and carriage, including cost of loading and transport-related security costs;

(vi) carry out and pay for all export clearance formalities, where applicable, including preshipment inspections costs;

(vii) provide the buyer with usual transport document(s) for the agreed port of destination;

(viii) pay for unloading the goods at the port of destination if it is on the seller's account according to the contract;

(ix) provide assistance/information requested by the buyer regarding insurance.

And the buyer's responsibilities are:

(i) accept delivery and pay for the goods and receive them at the port of destination;

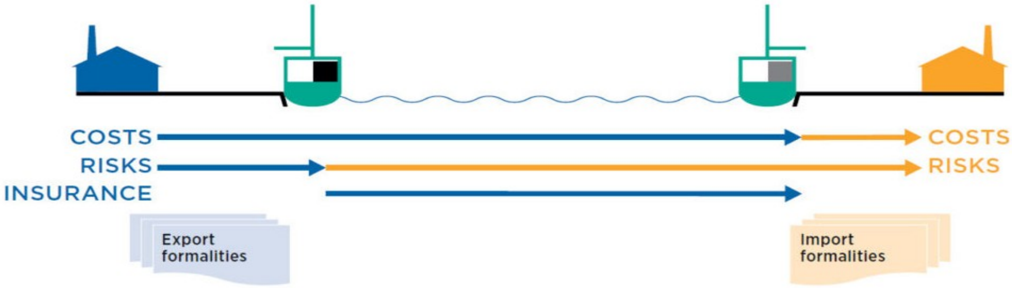
(ii) accept transport documents if in conformity with the contract;

(iii) pay all costs from the time they have been delivered on board the vessel, including applicable duties, taxes and other costs related to transit or import clearance.

(iv) pay for unloading the goods at the port of destination if it is on the buyer's account according to the contract

CIF | Cost Insurance and Freight

Format: CIF (named port of destination) Incoterms 2020



The principal difference between CIF and CFR is in the additional requirement under CIF for the seller to contract for marine insurance cover against the buyer's risk of loss of or damage to the goods from the port of shipment to the port of destination. Like in CFR, in CIF too delivery is complete when the goods are placed on board the vessel. The seller will also enter into a contract with the carrier and arrange carriage of goods to the named port of destination. But once delivery is done and the goods are on board, the risk transfers to the buyer. The seller will not be liable for any loss of or damage to the cargo, for which the buyer will have to look for a remedy against the carrier or the insurer.

As in all other Incoterms except EXW, in CIF too clearing the goods for export is the seller's responsibility. The seller also pays costs of unloading of the goods at the port of discharge, if this were for the seller's account under the contract of carriage.

This term is similar to the Incoterm CIP, but CIF can only be used for sea and inland waterway transport. Also, in CIF the risk is transferred once the goods are loaded on the vessel, unlike CIP where the risk is transferred when the goods are handed over to the carrier. In CIF the seller is required to obtain a minimum insurance according to Clauses (C) of the Institute Cargo Clauses, or other clause, not Clauses (A) as required for the CIP Incoterm.

Thus under a CIF contract the seller has to:

(i) supply conforming goods, which have been weighed, checked, measured and packed for delivery;

(ii) supply invoice and any other documents showing conformity;

(iii) deliver the goods by placing them on board the vessel at the loading port, at an agreed date and time and in the manner customary at the port, and notify the buyer;

(iv) procure a contract for the carriage of the goods from the port of shipment to the named port of destination;

(v) procure marine insurance cover against the buyer's risk of loss of or damage to the goods from the port of shipment to the port of destination

(vi) pay freight and all other costs for delivery and carriage, including cost of loading and transport-related security costs;

(vii) carry out and pay for all export clearance formalities, where applicable, including preshipment inspections costs;

(viii) provide the buyer with usual transport document(s) for the agreed port of destination;

(ix) pay for unloading the goods at the port of destination if it is on the seller's account according to the contract;

(x) provide assistance/information requested by the buyer regarding insurance.

And the buyer's responsibilities are:

(i) accept delivery and pay for the goods and receive them at the port of destination;

(ii) accept transport documents if in conformity with the contract;

(iii) pay all Customs duties as well as any other duties and taxes payable upon importation;

(iv) pay for unloading the goods at the port of destination if it is on the buyer's account according to the contract

The significance of the CIF Incoterm is enormous. As Lord Wright observed in the case of *TD Bailey Son & Co v Ross T Smyth & Co Ltd* (1940) 56 T.L.R. 825 at 828, the term CIF "is a type of contract which is more widely and more frequently in use than any other contract used for purposes of seaborne commerce. An enormous number of transactions, in value amounting to untold sums, is carried out every year under the c.i.f. contracts."

From the business point of view, it has been said that the purpose of the CIF contract is not a sale of goods themselves but a sale of the documents relating to the goods. Scrutton J. in his famous judgment given in *Arnold Karberrg & Co v Blythe, Green Jourdain & Co*. [1915] 2 K.B. 379) said:

> "I am strongly of opinion that the key to many of the difficulties arising in CIF contracts is to keep in mind the cardinal distinction that a CIF sale is not a sale of goods, but a sale of documents relating to goods. It is not a contract that goods shall arrive, but a contract to ship goods complying with the contract of sale and to tender those documents against payments of the contract price. He buys the documents, not the goods, and it may be that under the terms of the contracts of insurance and affreightment he buys no indemnity for the damage that has happened to the goods."

Documents play a central role in the CIF contract. The seller performs the contract by tendering to the buyer the bill of lading, insurance policy and commercial invoice. These documents represent the goods, and protect the buyer against most risks of loss during transit. They enable him to deal with the goods before they arrive at the port of destination. Transfer of the bill of lading operates as constructive delivery of the goods and may pass to the buyer title to the goods, the right to obtain possession, and rights of action against the carrier in the event of loss, delay etc; the policy of insurance gives protection against the perils of the sea. The CIF buyer, whatever happens to the goods, will have either a cause of action on the bill of lading against the ship or a cause of action against the underwriters on the policy. The importance of the documents is illustrated by the rule that allows the seller to tender documents even after the goods they represent have been damages or lost in transit. Similarly, if the documents conform to the contract, the buyer must accept them; if he rejects them, he is in breach of contract even if the goods themselves do not comply with the contract when they arrive, although if the documents have been accepted, the buyer may reject the goods themselves if they prove defective.

The relationship of Incoterms rules with various contracts

Goods are exported and imported through a network of contracts, such as contract of sale, contract of carriage, contract of insurance, letter of credit. etc. If incorporated, the Incoterms rules apply to and govern only certain aspects of the contract of sale only; they do not form part of those other contracts. However, the Incoterms rules do have an impact on those other contracts. The contract of sale, for example, will require the tender of a transport document issued by the carrier to the seller/shipper under a contract of carriage and against which the seller/shipper/beneficiary might wish to be paid under a letter of credit. Where the three contracts match, things go well; if they do not match, problems may arise. It is in the best interests of all the parties to the different contracts in the network to ensure that the carriage or insurance terms they have agreed with the carrier or insurer, or the terms of a letter of credit, comply with what the sale contract says about ancillary contracts that need to be made or documents that need to be obtained and tendered.

Conclusion

In all but EXW Incoterms the seller may procure the goods after delivery. This is common in the commodity trades: there may be multiple sales down a chain. But no reference to this procurement by seller has been made in this essay, in an attempt at simplification.

International trade presents a spectrum of risk, which causes uncertainty over the timing of payments between the exporter (seller) and importer (foreign buyer). For exporters, any sale is a gift until payment is received. Therefore, the exporters want to receive payment as soon as possible, preferably as soon as an order is placed or before the goods are sent to the importer. For importers, any payment is a donation until the goods are received. Hence the importers want to receive the goods as soon as possible but to delay payment as long as possible, preferably until after the goods are resold to generate enough income to pay the exporter.

That is why a seller and a buyer should agree to employ a particular Incoterm, each accepting the corresponding obligations and responsibilities as clearly set forth and defined under that particular Incoterm, so that both parties can win. Incoterms reduce the risk of legal complications by giving buyers and sellers a single home base from which to reference trade practices.

Choice of wrong Incoterm frequently causes problem. Instead of giving sufficient regard to the two most important features of the Incoterms rules, i.e. point of delivery and transfer of risks, the Incoterms are often regarded exclusively as price indicators: this or that is the FOB, CFR or CIF price. While the Incoterms are doubtless excellent abbreviations for the formula used in calculation of the price, Incoterms are not meant to be price indicators: they are a list of obligations that sellers and buyers owe each other under a contract of sale, and one of their main tasks is to indicate the port, place or point of delivery where the risk is transferred.

All but CIP, DDP and CIF are allowed by our Import Policy Order. Imports under CIP and CIF require permission from the ministry concerned. Most imports in Bangladesh are carried out using CFR Incoterm, while exports are usually done through FOB.

Importers in Bangladesh had opened LCs worth $92.23 billion to import goods in the fiscal year 2021-22, which is 37.59 percent more than the previous fiscal year. As to export, Bangladesh made 52.08 billion dollars’ worth of export in the fiscal year 2021-2022, which is 34 percent more from the previous year. The RMG sector alone made 42.61 billion dollars’ worth of export, which is 81.82% of the total export from Bangladesh. This huge imports/exports require contracts of sale incorporating the correct Incoterm. By correctly using Incoterms the traders will be able to partner more harmoniously, transport and deliver goods more easily and get paid more quickly and efficiently. These Incoterms therefore should be learnt by traders, bankers and lawyers alike.