

Incoterms 2020

Brief summary of the Rules

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Introduction

In 1936, the International Chamber of Commerce (in the followings ICC) published the first Incoterms rules. It was the first time in history, when global effort was made to standardize international trade practices. In the next four decades, changes and updates were made after major events, but it was after 1980, when the today known 10-years cycles were implemented.

Since the 1st January 2020, updated version of the Incoterms rules has taken effect. Although, majority of these rules went through only minor changes, some of them are still significant, considering the digitization of the international trade, which is recently shifting towards the greatest transformation of the 21st century.

In international trade, these rules are often used incorrectly and for many, they are not even clear set of rules, due to their complex, multidisciplinary nature, however, if they are used as intended, they can create a solid and reliable frame for everyday practices.

In this article, I will make an attempt to clarify some of the misconceptions, explain the basic definitions and provide a guide, to get all of us to best practice, which will be essential to be ready for the challenges in the new era of international trade.



Background of the Rules

As mentioned in the introduction, the Incoterms rules have complex nature, defining their status in trade is very difficult, even for scholars. Their origin can help to understand this a bit better.

They are based on pre-existing rules, also they include new, practical elements. These pre-existing rules were the old Scandinavian law (Uniform law on sales, 1905) or the old trade terms from English common law as FOB and CIF. When the ICC was working on the first version of the rules, they preferred not to involve lawyers in the beginning, as they were trying to focus on the practical elements, rather than putting together a legal text, which could have been interpreted as many ways as many legal systems existed in the world.

The raw material was collected by surveys, traders and customs practitioners were able to explain processes and practices, even if those were not legally sound. ICC studied these surveys and the most commonly used sales contracts. Using all the information gathered, they created the trade terms based on repetition and the duration of the repetition.

Basics of the Incoterms Rules

The Incoterms rules are not contracts, but they can be incorporated into sales contracts. To make sure all sides understand their own and the other's obligations, definitions need to be clearly distinguished.

1, The Incoterms rules describe, the obligations and when the transfer of costs and risks happen, between the seller and the buyer. These rules never describe the transfer of property, title or ownership of the goods sold.

2, Delivery Places/Points: understanding these expressions is probably the most vital of all. As written in (1), the cost and risks are transferred when delivery happens, therefore making it clear where and when that exactly happens can prevent a lot of misunderstandings.

Based on the Incoterms rule, place of delivery can be shown right after the 3 letters rule code, but in some cases, place of delivery differs from the location marked in the Incoterms rule. In the followings, it will be explained why, for now just keep in mind that attention needs to be paid later at this point.

3, There are 7 rules which are for multi-modal transports (all types of transports can be used) and 4 rules solely maritime. These are clearly marked in each rule.

4, Correct marking of a rule in a contract: [chosen Incoterms rule], [named place and point], Incoterms 2020

5, There are 10 'mirror referring' terms listed in each Incoterms rule for seller and buyer as well, marked as A1/B1, A2/B2 etc. Names of these terms in order:

A1/B1 - General obligations

A2/B2 - Making/Taking Delivery

A3/B3 - Transfer of Risks

A4/B4 - Carriage

A5/B5 - Insurance

A6/B6 - Delivery/Transport Documents

A7/B7 - Import/Export Clearance

A8/B8 - Checking/Packing/Marking

A9/B9 - Allocation of Costs

A10/B10 – Notices



Incoterms 2020 Rules

(Multi-modal Transports)

EXW - Ex-Works (EXW, [*named place of delivery*], Incoterms 2020)

In sales, this Incoterms rule puts the least burden on the seller, which sounds good at first, but it has some down sides too. Mostly recommended for domestic shipments, e.g. when shipping among member states within EU or USA.



Sellers obligations:

- checking, packing and marking the goods in accordance with the purpose of delivering at own cost
- place the goods ready for collection at the disposal of the buyer (risks and costs transfer immediately), can be seller's premises or a forwarder's warehouse
- providing assistance needed during shipping to the Buyer, if requested at Buyer's risk and cost
- giving sufficient notice to enable the Buyer to receive the goods

Buyers obligation:

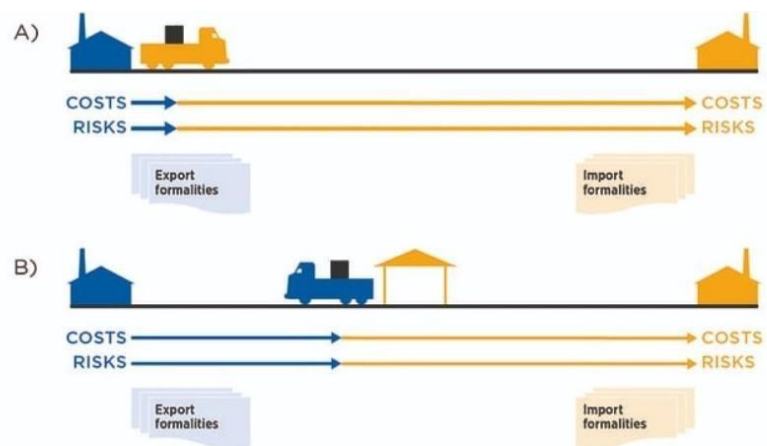
- from loading onto the vehicle of transport, through customs procedures all risks and costs are with the buyer (export-import clearance and costs, transport documentation, carriage)

The problem with EXW is that the seller can easily remain without documentation, making it extremely challenging to process any other possible related tasks, such as compliance audit, letter of credit etc.

The parties are well advised to use FCA, if they truly intend to make an international sale, as when using EXW, it is not necessary to export the goods.

FCA - Free Carrier (FCA, [named place of delivery], Incoterms 2020)

The ICC and most professionals in International Trade are trying to persuade traders to start using FCA instead of EXW, in the last years even more actively. In practice, most of traders are using this Incoterms rule, but on contracts still often EXW is shown.



Unlike EXW, FCA provides a more transparent shipping process, which still carries more risks and costs for the buyer but reduces them where it is most critical and from a seller point of view, it ensures a more secure sale transaction. It is the only Incoterms rule, that has two different versions of delivery, providing further flexibility for each party.

Sellers obligations:

- checking, packing and marking the goods in accordance with the purpose of delivering at own cost
- making delivery by goods being loaded onto the buyer's mean of transport at seller premises OR when goods arrive at the other agreed place, ready for unloading from the seller's mean of transport (if place of delivery is another place, Seller bears the risk and cost to that point)
- clearing goods for export where applicable, assistance with import clearance at Buyer's risk and cost
- providing information that is needed during shipping to the Buyer, if requested on the buyer's risk and cost
- giving sufficient notice to enable the Buyer to receive the goods

Buyers obligation:

- when delivery happens, taking the delivery, either at the other agreed place, unloading the goods from seller's mean of transport OR at Seller's premises by loading the goods onto Carrier's vehicle
- must contract for carriage at its own risk and cost from the named place
- clearing goods for import, transit through third country, pay import duty and dealing with any other Customs formalities
- assisting with export clearance at the Seller's request, risk and cost
- giving sufficient notice to enable the Seller making the delivery at the agreed time

Additional obligation: If the parties agree in the contract, the buyer owes the seller a duty to instruct its carrier to issue a Bill of Lading stating that the goods have been shipped abroad. If and when this on-board Bill of Lading is in the Seller's hands, issued to the Seller by the Carrier

at the Buyer's cost and risk, the Seller must tender the same document to the Buyer, who will need the Bill of Lading in order to obtain discharge of the goods from the Carrier.

This mechanism becomes vital as the Buyer or a Bank, under a letter of credit, might demand such Bill of Lading before paying the Seller.

If Buyer (or its Carrier) fails taking delivery or does not give sufficient notice and goods get lost or damaged, the Buyer bears all the risks.

CPT - Carriage Paid To (CPT, [*named place of destination*], Incoterms 2020)

As mentioned in the 'Basics' section, we need to make sure we understand fully the difference between 'place of delivery' and the named place shown in



the Incoterms rule. This is the first rule, where this difference appears as for this rule, we put the place of destination in the name, but where the goods considered delivered is another place, incorporated in the sales contract.

The goods considered delivered, when loaded onto the Carrier's mean of transport. Risks and costs transfer at this point onto the Buyer, but not the costs of the Carriage, that remains with the Seller.

Sellers obligations:

- checking, packing and marking the goods in accordance with the purpose of delivering
- contract for carriage (only third-party carrier) from place of delivery to place of destination at Seller's cost
- clearing goods for export where applicable, assisting Buyer with import clearance at Buyer's risk and cost
- providing transport document, which enables the Buyer to claim goods from the Carrier (at Seller's cost)
- providing information that is needed during shipping to the Buyer, if requested on the buyer's risk and cost
- giving sufficient notice to enable the Buyer to receive the goods

Buyer obligation:

- carrying out clearance for import, transit through third country, pay import duty and dealing with any other Customs formalities, assisting the Seller with export if required at Seller's risk and cost
- giving sufficient notice to enable the Seller making the delivery at the agreed time
- unloading goods at destination at Buyer's risk and cost

When parties ship via sea and they decide to use as place of delivery at a port, they should consider using CIF, CPT can be used more effectively, when the place of delivery is an inland point.

CIP - Carriage and Insurance Paid To (CIP, [named place of destination], Incoterms 2020)

This rule largely imitates CPT, delivery and transfer of risks happens, when goods are placed onto the Carrier's mean of transport, Seller must make contract for carriage, but the key difference is the insurance.



The Seller must also contract for insurance against the Buyer's risk of loss of and damage to the goods from the point of delivery to the point of destination. The Seller is required to obtain maximum insurance cover of the Institute Cargo Clauses A or similar.

Sellers obligations:

- checking, packing and marking the goods in accordance with the purpose of delivering
- contract for carriage (only third-party carrier) from place of delivery to place of destination at Seller's cost
- obtaining insurance cover from the place of delivery to the named destination (Institute Cargo Clause A or similar)
- clearing goods for export where applicable, assisting Buyer with import clearance at Buyer's risk and cost
- providing transport document, which enables the Buyer to claim goods from the Carrier (at Seller's cost)
- providing information that is needed during shipping to the Buyer, if requested at the buyer's risk and cost
- giving sufficient notice to enable the Buyer to receive the goods

Buyers obligation:

- carrying out clearance for import, transit through third country, pay import duty and dealing with any other Customs formalities, assisting the Seller with export if required at Seller's risk and cost
- unloading goods at destination at Buyer's risk and cost
- provide any information the Seller requires to assist obtaining insurance cover
- giving sufficient notice to enable the Seller making the delivery at the agreed time

DAP - Delivered at Place (DAP, [*named place of destination*], Incoterms 2020)

First of the three 'D' rules, placing greater responsibility on the seller. In this rule the named place is the destination, goods are considered delivered when placed at the disposal of the Buyer. at the named place of destination.



Sellers obligations:

- checking, packing and marking the goods in accordance with the purpose of delivering
- contract for carriage, third party carrier or arranged transport
- clearing goods for export where applicable and assisting with import clearance if required at the Buyer's risk and cost
- giving sufficient notice to enable the Buyer to receive the goods

Buyers obligation:

- clearing goods for import, transit through third country, pay import duty and dealing with any other Customs formalities, assisting the Seller with export if required at Seller's risk and cost
- unloading the goods when they arrive at the named place of destination
- giving sufficient notice to enable the Seller making the delivery at the agreed time

If the Buyer fails to obtain import clearance, by the time the goods arrive at the Buyer's country and the goods get lost or get damaged, the Buyer bears the risks (despite the goods have not reached the named place of destination), as the delay at the terminal was caused by the Buyer's failure to clear the goods for import.

DPU - Delivered at Place Unloaded (DPU, [*named place of destination*], Incoterms 2020)

The only difference from the previous rule (DAP) is that the unloading is part of the Seller's obligations.

This means, if something happens to the goods during unloading that risk lies with the Seller, as does the cost of the procedure.



The ICC renamed DAT to DPU, because it became apparent that sometimes the buyer and/or seller want the delivery of goods to occur somewhere other than a terminal.

Sellers obligations:

- checking, packing and marking the goods in accordance with the purpose of delivering
- contract for carriage, third party carrier or arranged transport
- clearing goods for export where applicable and assisting with import clearance if required at the Buyer's risk and cost
- giving sufficient notice to enable the Buyer to receive the goods
- unloading the goods when they arrive at the named place of destination at Seller's risk and cost

Buyers obligation:

- clearing goods for import, transit through third country, pay import duty and dealing with any other Customs formalities, assisting the Seller with export if required at Seller's risk and cost
- giving sufficient notice to enable the Seller making the delivery at the agreed time

If the Buyer fails to obtain import clearance, by the time the goods arrive at the Buyer's country and the goods get lost or get damaged, the Buyer bears the risks (despite the goods have not reached the named place of destination), as the delay at the terminal was caused by the Buyer's failure to clear the goods for import.

DDP - Delivered Duty Paid (DDP, [*named place of destination*], Incoterms 2020)

This Incoterms rule places the greatest responsibility on the Seller. Except for the unloading at destination, all the risks and costs,



including import customs formalities and duties are with the Seller. This rule is only advised to use for any traders, if they have knowledge of the customs formalities in the country of destination or have a local agent who does. Anything happens to the goods during the shipping, before placing them ready for unloading at the Buyer's disposal at the named destination, it lies with the Seller.

Sellers obligations:

- checking, packing and marking the goods in accordance with the purpose of delivering
- clearing goods for export and clearing goods for import, transit through third country, pay import duty and dealing with any other Customs formalities
- contract for carriage, third party carrier or arranged transport
- giving sufficient notice to enable the Buyer to receive the goods

Buyers obligation:

- unloading the goods when they arrive at the named place of destination at own risk and cost (except the cost was included in contract of carriage)
- giving sufficient notice to enable the Seller making the delivery at the agreed time

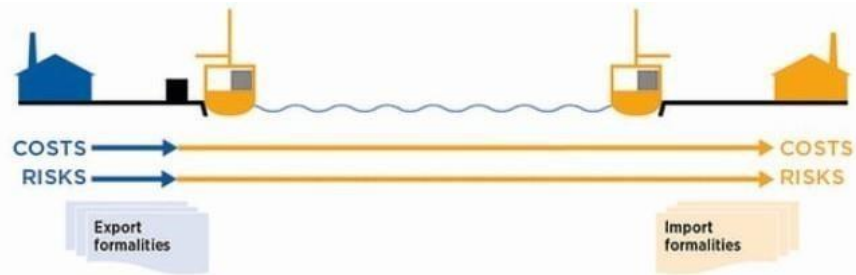
If the Buyer fails to give sufficient notice to the Seller and because of that the goods get damaged or lost, the Buyer bears the risks (despite the goods have not reached the named place of destination).

Incoterms 2020 Rules

(Maritime Transport)

FAS - Free Alongside Ship (FAS, [*named port of shipment*], Incoterms 2020)

For this maritime rule, the goods are considered delivered, when placed alongside the ship nominated by the Buyer at the named port of shipment on the agreed date or within the agreed period. Risks and costs transfer to the Buyer from that moment onward.



Sellers obligations:

- checking, packing and marking the goods in accordance with the purpose of delivering
- clearing goods for export where applicable and assisting with import clearance if required at the Buyer's risk and cost
- giving sufficient notice to enable the Buyer to receive the goods

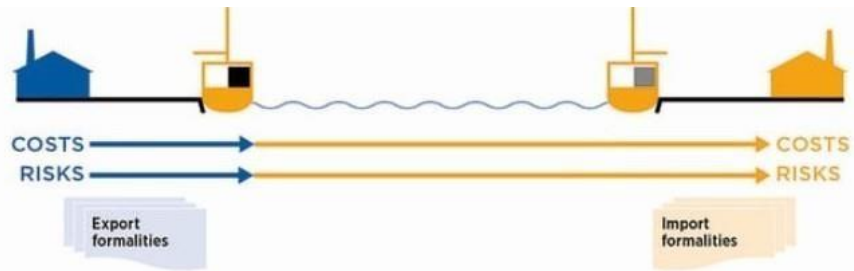
Buyers obligation:

- must contract for carriage from the name port of shipment at own cost
- carrying out clearance for import, transit through third country, pay import duty and dealing with any other Customs formalities, assisting the Seller with export if required at Seller's risk and cost
- unloading the goods at the port of destination at own risk and cost
- giving sufficient notice to enable the Seller making the delivery at the agreed time

The parties are well advised to specify the loading point as clearly as possible at the named port of shipment, where the goods are to be transferred from the quay or barge to the ship, as the costs and risks to that point are for the account of the Seller and these costs and associated handling charges may vary according to the practice of the port.

FOB - Free on Board (FOB, [*named port of shipment*], Incoterms 2020)

For this maritime rule, the goods are considered delivered, when secured on board of the ship nominated by the Buyer on the agreed date or within the agreed period. Risks and costs transfer to the Buyer from that moment onward.



Sellers obligations:

- checking, packing and marking the goods in accordance with the purpose of delivering
- clearing goods for export where applicable and assisting with import clearance if required at the Buyer's risk and cost
- loading the goods onto the ship nominated by the Buyer at own cost*
- giving sufficient notice to enable the Buyer to receive the goods

Buyers obligation:

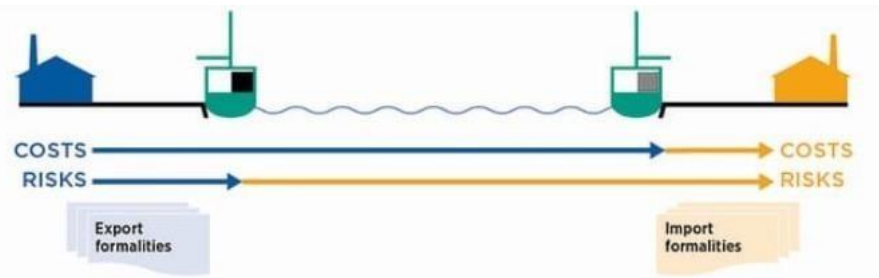
- making arrangements for carriage at its own cost
- carrying out clearance for import, transit through third country, pay import duty and dealing with any other Customs formalities, assisting the Seller with export if required at Seller's risk and cost
- unloading the goods at the port of destination at own risk and cost
- giving sufficient notice to enable the Seller making the delivery at the agreed time

*Typically, the carrier will invoice the party who is paying the freight charges for the loading of the container on the vessel as a part of the ocean freight; if the ocean freight is prepaid, the loading is included in the charge to the seller.

If the buyer is paying the freight charges under freight collect, then the carrier will automatically include the loading in the bill to the buyer. The vessel loading charge is not separately invoiced unless there are goods that are oversize or require special handling.

CFR - Cost and Freight (CFR, [*named port of destination*], Incoterms 2020)

Delivery occurs at the Seller's end, when the goods are secured on board of the vessel at the origin port just as with FOB, but the difference is that the Seller must make arrangements for carriage to the port of destination.



As insurance is not organised on Seller's side, Buyer is well advised to get its own cover.

Sellers obligations:

- checking, packing and marking the goods in accordance with the purpose of delivering
- clearing goods for export where applicable and assisting with import clearance if required at the Buyer's risk and cost
- making contract of carriage to the named port of destination, covering the transit to an agreed point within that port
- giving sufficient notice to enable the Buyer to receive the goods

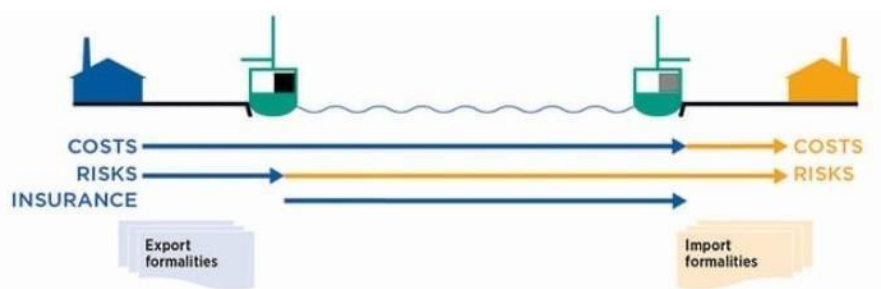
Buyers obligation:

- carrying out clearance for import, transit through third country, pay import duty and dealing with any other Customs formalities, assisting the Seller with export if required at Seller's risk and cost
- unloading the goods at the port of destination at own risk and cost
- giving sufficient notice to enable the Seller making the delivery at the agreed time

If there are multiple carriers (transshipment), the default position is that the risk passes when the goods have been delivered to the first carrier. If the parties would like the risks to be transferred at a later stage, they need to specify in their contract.

CIF - Cost, Insurance and Freight (CIF, [*named port of destination*], Incoterms 2020)

This rule operates the same way as CFR (Seller delivers when goods are on board, contracts for carriage to the agreed port of



destination), however the Seller must also contract for insurance against the Buyer's risk of loss of and damage to the goods by obtaining insurance only on a minimum cover, complying with the Institute Cargo Clauses C or similar.

Sellers obligations:

- clearing goods for export where applicable and assisting with import clearance if required at the Buyer's risk and cost
- making contract of carriage to the named port of destination, covering the transit to an agreed point within that port
- giving sufficient notice to enable the Buyer to receive the goods
- obtaining insurance cover from the place of delivery to the named destination (Institute Cargo Clause C or similar)

Buyers obligation:

- carrying out clearance for import, transit through third country, pay import duty and dealing with any other Customs formalities, assisting the Seller with export if required at Seller's risk and cost
- unloading the goods at the port of destination at own risk and cost
- giving sufficient notice to enable the Seller making the delivery at the agreed time
- provide any information the Seller requires to assist obtaining insurance cover

The parties are well advised to specify the loading point as clearly as possible at the named port of shipment, where the goods are to be transferred from the quay or barge to the ship, as the costs and risks to that point are for the account of the Seller and these costs and associated handling charges may vary according to the practice of the port.

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