เอกสารประกอบการสัมมนา
เรื่อง "Incoterms 2010 สำคัญอย่างไร
กับการประกันภัยขนส่งสินค้าระหว่างประเทศ"

ในหัวข้อ "แนวทางการเปลี่ยนแปลง Incoterms 2010"

จัดโดย
คณะกรรมการชมรมประกันภัยทางทะเลและโลจิสติกส์
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Revising Incoterms® 2010 rules

by
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ICC Thailand
24 August 2017

Agenda

- 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
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"Incoterms" เป็นเครื่องหมายการค้าจดทะเบียนขององค์การค้านานาชาติ (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.
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- ไม่ใช้ “Incoterms” ในรูปคำคุณศัพท์ไม่ใช่คำนาม
- ไม่ใช้ “Incoterms” โดยตัวอักษรคำนั้นไม่เป็นตัวที่มีพิเศษ

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- 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”.
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- ไม่ใช้ “Incoterm” (โดยไม่มี “s” เป็นตัวอักษรตัวสุดท้าย) แต่จะเรียกให้หมายถึง INCOTERMS® ควรจะต้องถูกใช้กับ INCOTERMS® หรือของในปัจจุบัน ไม่ใช่คำว่า “Incoterm”
- ให้ใช้เครื่องหมายการค้า Incoterm® ต่อจากเครื่องหมายการค้า “Incoterms”
- การใช้เครื่องหมายการค้า “Incoterms” ร่วมกับสินค้าและบริการที่มีใช้ของ หลักการดำเนินการค้า จะต้องได้รับการอนุญาตจากหลักการดำเนินการค้า
Four Contracts in International Trade

Four Main Contracts in International Trade

- Seller
  - Sale contract
  - Buyer
  - Carrier
- Insurer
  - Insurance contract
  - Assured
- Shipper
- Beneficiary
  - Payment contract
  - Bank
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 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)
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
Four Main Contracts in International Trade

- 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 Main Contracts in International Trade

- 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
Introduction

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.
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. Subsequences 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.
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
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*

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**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 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
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.

To avoid being at risk after handling 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 handling over to the carrier.
3 How the goods are handed over for carriage

<table>
<thead>
<tr>
<th>A Seller</th>
<th>C Carrier</th>
<th>B Buyer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk / Cost transfer point under FCA</td>
<td>Risk / Cost transfer point under FOB</td>
<td></td>
</tr>
<tr>
<td>CPT</td>
<td>CFR</td>
<td></td>
</tr>
<tr>
<td>CIF</td>
<td>CIF</td>
<td></td>
</tr>
</tbody>
</table>

Port or Inland Terminal

7 Cautions in using Incoterms® 2010 rules

4 Risk Distribution under CIF

<table>
<thead>
<tr>
<th>A Seller</th>
<th>C Carrier</th>
<th>B Buyer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seller: This is not my risk!</td>
<td>Carrier: I am not liable for navigation errors!</td>
<td>Insurer: I will pay under any of the A, B, or C Institute Clauses!</td>
</tr>
<tr>
<td>Contract of Sale between Seller &amp; Buyer</td>
<td>Contract of Carriage between Seller &amp; Carrier</td>
<td>Contract of Insurance between Seller &amp; Insurer</td>
</tr>
</tbody>
</table>

8 Cautions in using Incoterms® 2010 rules
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

Cautions in using Incoterms® 2010 rules
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.
**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.*

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**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 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.
Revising Incoterms® 2010 rules

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.
Drafting Process (Reported in October 2016)

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.
Drafting Process
(Reported in October 2016)

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.

Timeline

1. March 2016: Announced plan to revise Incoterms 2010
2. October 2016: Drafting Group held its first meeting to discuss the process and working method for preparing the Incoterms@2020 rules
3. November 2016: A questionnaire was sent to CLP Commission, Customs and Trade Facilitation Commission, and NCs
4. March 2017: Drafting Group met to analyze comments received from questionnaire and prepared the first draft.
5. April 2017: Draft 1 was circulated to the CLP Commission, Customs/Trade Facilitation Commission, and NCs with replies due to ICC on 15 June.
6. September 2017: Hold a consultation open meeting in China as part of the Drafting Group meeting
7. Prepare second draft of the Incoterms® 2020 rules, expected to be circulated for comment in Q4 2017
8. 2019: Release Incoterms® 2020 with an effective date of 1 January 2020

Incoterms®@2020 Rules
What are the Changes?

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.

What are the Changes?

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.