

Complex Issues regarding the Role and Importance of Internationally Codified Rules and Incoterms

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Abstract

The economy and trade of the 21st century do reflect a global market indeed, a market where the delivery is one of the essential clauses of a contract established between international partners through this regulating in fact the transfer of goods and risk from the seller to the buyer, including general economic and legal consequences. Even if buyers and sellers are often on different continents, in different parts of the world, they have used a set of international rules for interpreting trade terms. These are used in international trade to contribute in particular to simplifying the negotiating operations of the sale of goods and concluding commercial contracts.

The complexity of the issues involved in guiding and directing the parties to negotiate and conclude a commercial external contract for the sale of goods requires a thorough knowledge of the technique of negotiations, legislation and practice of foreign trade of International Settlements, of the international shipment and insurance customs, of the calculations of profitability and more. In this context, choosing and including in the commercial contracts the most favorable terms for both seller and buyer, at a certain point in time, have a special significance, the relations between them being managed by the amount of terms stipulated in the concluded contract, some of them being convened in a special way, and others being chosen from among those used in practice, in the international trade.

Key words: *economy, international trade, INCOTERMS, negotiation, external commercial contract, contractual obligation*

JEL Classification: *F15, F36, F59*

Introduction

Since 1936, the International Chamber of Commerce of Paris has published successive editions of a given set of delivery clauses with international scope, known as INCOTERMS rules. (International Commercial Terms). These were reviewed periodically in 1953, 1967, 1976, 1980, 1990 and last edition in 2000. Their mission is to interpret and regulate in a uniform way the negotiation of the international sales contracts. INCOTERMS 2000 edition is the result of the work of a group of 40 members of the Working Committee of the trading practices of the International Chamber of Commerce in Paris. For the first time, there have participated representatives of U.S.A and Japan, which increased the degree of universality of the rules.

INCOTERMS 2000 rules have been validated by the Executive Committee of CIC Paris and published in Publication 560 from January 1, 2000 of the same NGOs. INCOTERMS 2000

rules do not bring significant changes to the INCOTERMS 1990, but cover some shortcomings, being more concise, more precise and ensuring more certainty for exporters and importers from anywhere in the world. The interventions made are meant to clarify several issues related to the stage of negotiation and the conclusion of the international sales contract. They provide a common language for business on any market and in almost any country. They are accepted as such in EU countries, in other countries of free trade areas and basically entered into current use in China, the Middle East, the African and South American countries. There is however one major exception to the universality of INCOTERMS 2000 and this concerns the rules called RAFTD 1941 (Revised American Foreign Trade Definition 1941) still applied by many U.S. retailers. For the main contrast to the INCOTERMS FOB (which has 6 variants in the American) attention should be paid to the threat of the American's FOB contracts with partners in USA.

The last INCOTERMS version was published in 2000. In any international sales contract we have the problem of establishing procedures for the delivery, the transfer of risk and the division of the expenses with the transport of goods (insurance of the goods, the value of transportation) between seller and buyer

INCOTERMS are internationally accepted commercial terms defining the state and the buyer's and seller's operating role in the transport of goods, ownership of goods, ensuring goods. In legal terms INCOTERMS rules are optional and dependent on the will of the parties, i.e. the partners may include in the contract other specific requirements. In a contract, the action of INCOTERMS is limited to specific rights and obligations imposed on parties for the delivery of sold goods.

The realities from the international trade have shown that the implementation of each term regarding the different means of delivery represents costs that can not be neglected; their inclusion in the contract requires clarification. It is particularly important to determine who and what paid, as any omission or any mentioning in this regard may diminish or even null the benefits expected by the seller or buyer in the transaction. The delivery terms shall be regulated according to the stipulation of the contract, the commercial rules and practices. Among the general terms the most important for the foreign trade are those related to the delivery conditions and the international parties.

The Scope and Area of Interest of the INCOTERMS Rules

INCOTERMS represent a codification of rules or customary practice in the field of international sale of goods, customary practice which is applicable within Europe. As a juridical force, these rules are voluntary, applying only if the parties have made clear reference in their contract to INCOTERMS rules. INCOTERMS rules were created to avoid any disputes that may arise from the fact that contracting parties are aware of different business practices in force in the countries of the partners.

The area of action of the INCOTERMS is limited to the issues related to the rights and obligations of parties of the contract of sale, regarding the delivery of goods sold. Thus, INCOTERMS relate to a number of specific obligations imposed on parties. There are 13 INCOTERMS, each being expressed by a three-letter abbreviation, each representing a type of international sale of goods. There are some advantages of using them as the following explained below.

They allow contractual time and space savings - the parties, rather than negotiating the content of the sale-purchase contract obligations of the seller and the buyer, negotiate only the type of sale, namely the INCOTERMS rule which they intend to apply.

The safety, the security of the transaction, regardless of the way the parties negotiate such a contract can not remove the risk of inconsistency between the different clauses, whereas the INCOTERMS rules, being the work of specialists, eliminate these risks completely.

The Structure of INCOTERMS

In the set of rules, INCOTERMS 2000, the merchants can negotiate a total of 13 clauses, of which they choose a single one, which they enter into a contract for complying to it. Each delivery condition of INCOTERMS has a name and an abbreviation of its standard, a logo consisting of three capital letters. Basically, the international sales purchase contract, the chosen delivery condition is indicated by the logo (abbreviation) thereof, supplemented by the place name (critical point) at which the parties agreed to transfer costs, risk and ownership. In 1990, the conditions were grouped into four categories, grouping which has been preserved also after the changes and additions made in 2000.

Group E - departure- comprises one condition:

EXW Ex Works – “Ex works” means that the seller fulfills its delivery obligation in the moment in which he puts the merchandise at the buyer’s disposal in its premises or in another named place (factory, plant, warehouse), without accomplishing the export formalities and without loading the goods in a vehicle sent to pick them up. The condition “E” is the condition according to which the seller has minimum obligations as he only has to put the goods at the buyer’s disposal at the convened place.

Group F - main carriage not paid by the seller- comprises 3 conditions:

FCA Free carrier - “Free Carrier” means that the seller fulfills its delivery obligation the moment he has delivered the goods at the established place, with the export formalities accomplished, to the carrier named by the buyer. The buyer can require the seller to deliver the goods to a person other than the carrier.

FAS Free Alongside Ship – the seller fulfills its delivery obligation when the goods have been placed alongside the vessel in the established expedition port. The buyer will support all costs and risks of loss and waste of the goods at that moment. The seller has the obligation to accomplish the export formalities.

FOB Free On Board – the seller fulfills its delivery obligation when the goods have crossed the “shipstrails” in the expedition port named. From that moment on the buyer will support all costs and risks of loss and waste of the goods. This condition asks the seller to clear customs at export and can be used only for the transportation of goods on sea or internal waterway.

The conditions from “F” group oblige the seller to deliver the goods for transportation according to the decision of the buyer.

Group C – Main carriage paid by seller- comprises 4 conditions:

CFR Cost and Freight - means that the buyer has fulfilled its delivery obligation when the goods cross the ship rail in the expedition port. The seller has the obligation to pay the costs and the freight necessary for taking the goods in the destination port named. The CFR condition obliges the seller to clear customs for export. This condition can be used only for transportation on sea or on internal waterway.

CIF Cost, Insurance and Freight – means that the seller fulfills its delivery obligation once the goods cross the ship rail in the port of expedition. The seller is obliged to pay the costs and freight necessary to bringing the goods in the destination port, and the risks of loss or waste of goods, other additional costs due to future events to the delivery are transferred from the seller

to the buyer. According to this condition, the seller has the obligation to purchase the marine insurance against the buyers' risk of loss or deterioration of the goods during transportation.

CPT Carriage Paid TO – the buyer has to support all the risks and any other costs after the goods have been delivered.

CIP Carriage and Insurance Paid To – this condition can be used for any means of transportation, including multimodal transport. The condition “transport and insurance paid until...” means the buyer's obligation to deliver the goods to the named carrier and to pay the transportation cost for bringing the goods to the named destination. The buyer will bear all risk and any additional costs after the goods have been delivered.

Conditions contained in group "C" require the seller to contract carriage as it is customary, and at its own expense.

Group D - Arrival - includes 5 conditions:

DAF Delivered At Frontier - means that the seller fulfills his delivery obligation when the goods have been supplied to the buyer on the arrival of the means of transport unloaded, with export formalities completed, but before the import customs formalities are completed in the place called “border point”. This condition can be used irrespective of the mean of transport when goods are delivered at a land border. If the delivery is made at the port of destination, on board or on quay, conditions DES or DEQ are to be used.

DES Delivered Ex Ship - means the seller fulfills his delivery obligation when the goods are placed at the buyer's disposal on board the ship, at the established port of destination, without clearing customs at import. This condition can be used only if the goods are to be delivered by sea, by waterway or multimodal transport on a vessel in the port of destination.

DEQ Delivered Ex Quay - means the seller fulfills his delivery obligation when the goods are put at the buyer's disposal, without clearing customs for import, on the quay at the named port of destination. The seller has to bear costs and risks involved in bringing the goods in the named port of destination and unloading of the goods on the quay (pontoon). Provided DEQ it is required that the buyer should fulfill customs formalities for the import of goods and pay all formalities, taxes and fees and other expenses related to the import of goods. This condition can be used only if the goods are to be delivered by sea or by waterway or multimodal transport by unloading from the ship on the quay at the port of destination.

DDP Delivered Duty Paid - if you use this condition, the seller will deliver the goods to the buyer by fulfilling import formalities and unloading on arrival in any means of transportation, at the appointed destination. The seller will bear all the costs that are involved in bringing the goods there, including, where applicable, any duty for import in the destination country. DDP is provided with maximum obligation for the seller. This condition should not be used if the seller can not directly or indirectly obtain the import licenses.

DDU Delivery Duty Unpaid - means the seller delivers the goods to the buyer, without the formalities for import and without unloading on arrival in any means of transport at the named destination. The seller bears the costs and risks involved in bringing the goods there, other than, where applicable, any duty for import in the destination country.

The conditions from group "D" establish the seller's responsibility for the arrival of goods at the point of destination agreed at the border or within the territory of the importing country. The seller has to bear all the risks and costs of transportation of goods at destination. Conditions "D" are "contracts of arrival", unlike the terms "C" which are contracts of departure (shipment).

For an easier distinction between the extent of obligations undertaken by the contracting parties in the INCOTERMS rules 2000 it has been introduced a new concept regarding the time and place of sale. Thus, a notice of the type “Sale to departure” indicates that, during the main

transportation, the risk is assumed by the buyer, while the notice “sale on arrival” requires that the same risk will be assigned to the seller.

In the category “Sale to departure” there have been assigned the following INCOTERMS 2000 conditions: EXW, FCA, FOB, CFR, CIF, CPT and CIP. The category “Sale on arrival” included conditions: DAF, DES, DEQ, DDU and DDP.

In some cases, the preamble INCOTERMS rules recommend the use or non use of a certain condition, which is particularly important in particular with reference to the choice between FCA and FOB.

The Rights and Obligations of Parties in the Sale-Purchase Contract

As stated, the area of action of the INCOTERMS is limited to issues related to rights and obligations of the parties to sale-purchase contract with regard to the delivery of goods sold. Thus, INCOTERMS refer to a series of specific obligations imposed on parties.

The seller's obligations relate to: the supply of goods under the contract, the obligation for obtaining licenses, permits and carrying out other formalities, the obligation regarding the conclusion of contracts of transportation and insurance, the obligation to deliver goods, transfer risks, sharing costs, the obligation to notice the buyer, the obligation to prove delivery, the obligation to check, pack and mark goods, other obligations.

The buyer's obligations relate to: the obligation to pay the price, the obligation to obtain the import licenses or other official authorization and to meet, where appropriate, the customs formalities required to import goods, the obligation to terminate the contract of carriage and insurance; the obligation of taking over the goods, transfer risks, sharing costs, the obligation to warn the seller, the obligation to accept the proof of delivery, transportation document or the electronic message, the obligation to examine the goods, other obligations.

As apparent in figure 1 in the EXW case, this is a price which does not include transportation and other expenses related to delivery. The price increases progressively with costs related to internal transport (FOB), international sea shipping (CIF / CAF), etc, and in the same way the seller's obligations increase as he will have to bear costs of delivery and risks.

Also, meeting the contractual obligations by the two parties it is important to clearly establish the delivery term. This is the moment of achieving the delivery, handing all the merchandise to the buyer. The date or period expressing the delivery term always has to be formulated in accordance with the specificity of the delivery and negotiated delivery condition. When establishing this term the seller's needs and buyer's possibilities are taken into consideration.

Contracting usually takes place before the merchandise is produced, which means that the delivery term has to take into consideration the specificity of the production process. In practice more types of delivery terms are used: determined delivery term, which can be precise or indicative. The precise delivery term is used in all the situations where the seller can establish the period of time of all the activities accompanying the delivery, up to the moment when the merchandise has to be handed over to the buyer; determinable delivery term cannot be established when signing the contract, so they will establish only the conditions that have to be achieved or in accordance with the delivery term.

The obligation of the seller to deliver goods under the contract - the seller is obliged to deliver both the goods and the commercial invoice or an equivalent electronic message in accordance with the sale-purchase contract. The seller shall provide any other evidence of conformity which may be required in the contract.

The INCOTERMS delivery conditions play a vital role in concluding contracts between parties from different countries, having an important role in the ongoing international transactions.

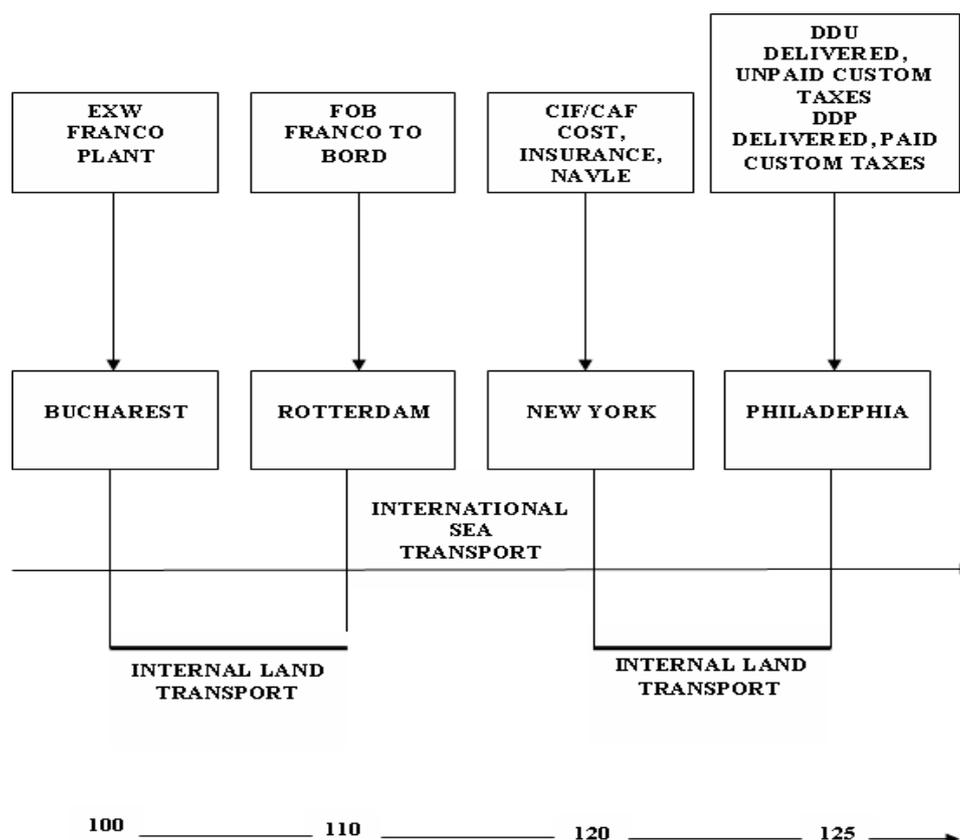


Fig. 1. Price and delivery conditions

Source: Popa, I., *Tranzacții de comerț exterior*, Editura Economică, București, 2002

They allow rigorous determination of the responsibilities of seller and buyer in conducting the operations involved in delivery: packaging goods, warehousing for export, loading on transport vehicle, customs formalities for export, mainly transport, insurance during transport, import customs formalities, unloading at factory or warehouse of destination. The table below lists the obligations relating to operations, the obligation transposed in the costs incurred which are reflected in the contract price.

Table 1. The responsibilities of seller and buyer in conducting the operations

Group/Obligations	E	F	C	D
Packaging	exporter	exporter	exporter	exporter
Warehousing	exporter	exporter	exporter	exporter
Load (to plant or warehouse)	importer	exporter	exporter	exporter
Export custom	importer	exporter	exporter	exporter
Main Transport	importer	importer	exporter	exporter
Insurance of main transport	unspecified (importer)	unspecified (importer)	to CIF and CIP exporter	unspecified (exporter)
Import custom	importer	importer	importer	Importer to DDP exporter
Unloading (plant or destination warehouse)	importer	importer	importer	importer

* At DAF when the border is not the destination, the importer.

Source: Popa, I., *Tranzacții de comerț exterior*, Editura Economică, București, 2002

Licenses, authorizations and formalities - the seller is obliged to pay the buyer on his request all the assistance to obtain, where appropriate, any export license or other official permits, required for export goods. The only INCOTERMS rule where the costs of such work are borne by the buyer is EXW. This rule expresses the buyer's obligation to provide the seller with adequate proof of acquisition of goods.

Proof of delivery, transportation document or equivalent electronic message - at its expense, the seller must provide the buyer, the document used to prove delivery of goods. In the case of the transport document, the seller has the obligation to provide the customer, upon his request, at his risk and expense, with all the assistance to obtain a transportation document. The e-mail replaces the document provided the seller and buyer have agreed to communicate electronically. In the case of EXW condition this proof is not mandatory, but the parties may stipulate in the concluded contract the seller's obligation to make this proof.

In the case of DAF condition, if the parties agree to continue transportation beyond the border, the seller has the obligation to provide the buyer, upon his request, at his risk and expense, a direct transportation document, usually obtained in the country of expedition, normally covering the dispatch of goods to the final destination of the importing country, named by the buyer.

Checking, packaging, marking - The seller is obliged to pay all costs of those checking operations, quality checking, measuring, weighing, counting. These operations are necessary in order to make the goods available to the buyer. The seller also has the obligation to pack the goods in a proper transportation, but only to the extent to which the circumstances regarding the transportation reached his attention before the contract of sale-purchase has been concluded.

Inspection of goods – If the contract does not provide otherwise, the costs of inspections of goods, made before shipment will be borne by the buyer, except for the mandated inspection by the authorities of the exporting country. If the inspection was done in order to allow the retailer to comply with mandatory provisions applicable to export goods in his own country, he will be required to pay for that inspection of goods, and if the condition used is EXW the buyer will bear the costs of inspection in this case.

In the case of EXW condition it is provided the buyer's obligation to bear the costs of the inspection also when it is mandated by the authorities of the exporting country.

Other obligations - The seller must offer the buyer, upon his request, at his risk and expense, every assistance to obtain any documents or equivalent electronic messages issued or transmitted in the country of delivery and / or origin which the buyer could claim for export and / or import of goods and, if necessary, for their transit through another country. At the buyer's request, the seller is obliged to provide him with information necessary to ensure procurement. In his turn, the buyer must pay all costs and expenses incurred in obtaining the documents or equivalent electronic messages mentioned above and to reimburse expenses incurred by the vendor in providing assistance.

In the case of DDP condition, the seller is the one that bears all costs and charges resulting from obtaining documents and equivalent electronic messages of the kind mentioned, while the buyer is obliged to provide the seller, at his request, assistance in obtaining the documents. The seller will reimburse expenses incurred by the buyer when giving assistance.

Innovations Brought by INCOTERMS 2000

INCOTERMS 2000 regulations are mainly a compromise between the positions of the representatives of the two main currents in the international commerce: the new current, the renewed one following the integration of world commercial practices for a broad opening that would allow the participation in international trades, under advantageous conditions, of all the states on the planet, and the conservatory current supported by very developed countries like the USA and Japan, that are trying to maintain some advantageous practices coming from the economic supremacy position that they have earned in time.

Although in comparison with INCOTERMS 1990 rules, the new technologies and international commercial practices have not changed, the existence of new gaps and inaccuracies that have appeared and have been perceived by experts lately have caused the drawing-up of new editions of respective regulations, with a more precise content, facilitating the success of international commercial operations providing more safety for exporters and importers in all the countries in the world.

INCOTERMS 2000 include 13 terms, in 4 categories. Every term is coded with three letters. The first designates the category it is part of. While passing from the E terms to the D terms, as presented below, the point where risks and expenses go from the seller to the buyer, passes from the producer's enterprise (the EXW condition) to the receiver's headquarters (DDP condition).

INCOTERMS is not the only group used in the field of international delivery terms. Thus RAFD (Revised American Foreign Trade Definitions-1941), for the USA exterior commerce, speaks about the following usual terms:

Ex Point of Origin and according to this delivery condition, the price is understood at the origin place, the seller is obliged to make the merchandise available for the buyer, at the agreed place and date or within the established period;

FOB (named inland carrier at named inland point of departure), according to which the price is established at the inland carrier point, the seller being obliged to load the merchandise in wagons, trucks, barges, planes or other vehicles established in the contract;

FAS and FAS Vessel (named port of shipment), according to which the price includes merchandise delivery expenses at the maritime ship board by or for a buyer in the harbor;

C and F according to which the established price includes the transportation cost up to the destination point;

CIF (cost insurance freight named point of destination), according to which the merchandise price includes the maritime insurance and other expenses up to the established destination point;

Ex Dock, the selling price includes any additional expenses for delivering the merchandise on the dock, in the import harbor, with paid customs taxes.

The option of applying one or another of the delivery conditions or practices known worldwide should consider a number of criteria, such as the following: the ratio of currency and foreign currency contract for payment of transportation, insurance and other charges related to delivery; market situation and the charges of air and land transport, participation in international conventions on transport, which involves preferential rates of transport, customs outlets in markets or supplies. In the case of a saturated market, where there is a strong competition, the exporter can earn a segment of this market, providing certain favorable conditions to the importer within the meaning of risk and minimal costs that the latter must bear. In this situation, the exporter will deliver the merchandise in the DEQ or DDP conditions.

There are situations in which an exporter which sells goods on a regular basis and in large quantity is a position that gives the opportunity to obtain more favorable conditions in the company's freight and insurance, to an occasional importer. Then, the exporter can accept conditions as CFR, CIF, CPT or CIP. The exporter can assume the risk during transport, choosing a delivery in which to take responsibility to a point of destination of merchandise (DAF, DES, DEQ, DDP), only to the extent that the transport system on the route chosen is well organized, the countries that it is to pass have recorded a number of relatively low labor conflicts in this area, and the danger of agglomerations in other areas or ports of destination is limited. If the exporter believes that risks to the importing country are great, then they are fully transferred to the importer (FAS, FOB, CFR).¹

The government authorities can give instructions directly or indirectly, to the economic agents in the country to sell under CIF or CIP conditions, and to buy under FOB or FCA conditions. INCOTERMS give a clear solution for the problem of transfer of risk while delivering the goods in international traffic from seller to buyer. Basically, with two exceptions, the time / place of transfer of expenditure corresponds to the time / place of risk transfer. The exceptions are the CFR and CIF conditions where costs are transferred to destination (as in other conditions in Group 'C'), while the risks are transferred to the port of shipment, for example the dispatch (as in group "F").

The fact that INCOTERMS are not related to the transfer of ownership proves the need to find a solution of operational rights / obligations related to goods in international traffic, according to the inability so far to establish a standard for the transfer of ownership. In fact on this issue there were different views and different solutions. The needs of international trade require a single solution, accurate, unambiguous and easy to apply obligations of the parties relating to the goods.

The contract partners are supposed not only to know the appropriate INCOTERMS, but also to insert them in the contract with all the necessary details, namely:

- specifying geographic point where the expense and risk transfer, therefore, will be inserted in the contract not FOB, but, for example, FOB Constanta;
- indication of responsibilities for handling (eg, multiple modalities of transport).

INCOTERMS conditions must also be properly correlated with other rules or practices which affect the enforcement of international contract of sale, such as: the regular transmission lines (Liner Terms), port usages, specific professional rules, etc.

As an example, we present the next *case*:

Roblux Company delivers valves and fittings to a customer in Fes. We study the compliance with various INCOTERMS.

Calculation elements:

- CASABLANCA CIF value: 18,440.00 EURO
- Customs clearance: 570.00 EURO
- Customs fees: 15% of the CIF
- Local taxes: 22% of duty paid CIF
- Delivery to FES: 2,210.00 EURO

We determine the DEQ value of the delivery and then the DDU and DDP values. What is the difference between DES and CIF INCOTERMS?

The DEQ Incoterm includes overseas shipment cost, insurance costs and commodities unloading, formalities and fees.

¹ Popa, I., *Tranzacții de comerț exterior*, Editura Economică, București, 2002

Another calculation: DDU = CIF + unloading + shipment.

The difference between CIF and DES: the first one is a sale Incoterm at shipment, the transfer of risks being in the seller's country. The latter is a sale Incoterm at arrival, the transfer of risk being on the ship, at the destination harbour. But, the costs paid by the seller are identical: overseas shipment and insurance to the destination harbour. The two INCOTERMS are used exclusively for overseas shipment.

Table 2. Determining the DEQ, DDU and DDP values

Calculation	EURO
CIF	18,440.00
Unloading	570.00
DEQ	19,010.00
Customs fees 18.440 x 0,15	2,766.00
Local fees 21.776 x 0,22	4,790.00
Shipment	2,210.00
Local benefits fees	486.20
DDP Fes	29,262.20
DDU value equal DDP value minus customs fees and taxes:	29,262.20
DDP	-4,790.00
Formalities and fees:	-2,766.00
	-486.20
DDU Fes	21,220.00

“EX...” and “FREE...” group.

“E” group.

“EXW ... EX Works” (... named place).

All shipment ways – VD

The only liability of the seller is to deliver the commodities to the buyer at its location. The seller shall not be liable for loading the commodities in the vehicle provided by the buyer, except for a contrary agreement. The buyer shall pay all the commodity delivery related fees and risks, from this point to destination. This is the minimal liability for the seller.

“F” Group.

“FCA ... Free Carrier” (... named place).

All shipment ways – VD.

Recommendations for choosing the delivery terms:

- *general recommendations:*
 - the state wants to save foreign currency and stimulate development of its own overseas or air shipment companies;
 - the exporter and importer have the opportunity to conclude long-term agreements with various shipment and insurance services providers;
 - the trader has to follow the choice of the terms depending on costs minimization and providing the best quality for its services;
 - the choice of the terms has to allow a good long-term collaboration with the partner.
- *use depending on the shipment way*

- EXW, FAC, CPT, CIP, DAF, DDU and DDP can be used for any type of shipment;
 - FCA, CPT and CIP are used only for air and railway transport
 - FAS, FOB, CFR, CIF, DES, DEQ are used for overseas shipment especially for bulk commodities;
 - FCA, CPT and CIP are used for tank shipment and Ro-Ro shipment.
- *depending on the shipment place:*
 - E, F, and C groups – the seller complies with its shipment obligation in its country.
 - D group, except for the DAF term – the seller complies with its shipment obligation in the destination country.
 - *best methods:*
 - combined shipment (multimodal) – the exporter wanting to improve the global cost of shipment and control multimodal transit has to use CIP, DAF, DDU or DDP term. The importer who normally wants to minimize costs and risks within the entire shipment chain, shall choose EXW or FCA terms.
 - conventional shipment (from harbour to harbour) – the exporter shall choose the CIF term, which gives him the opportunity to ship the load with a ship or plane under national pavilion, benefiting from certain advantages from the state and insurance with its own brokers. The importer shall choose the FOB term for similar reasons.

Conclusions

We have noticed lately a generalization trend of usage code that has undergone significant improvements lately. In a specialised paper published in the USA, American companies are even recommended to replace RAFTD with INCOTERMS, in order to provide greater clarity to the definition of contractual terms and for a better protection of their trade interests.

INCOTERMS regulations are extending their effects upon all the stages and operations involved in commodities' transfer from the supplier to the beneficiary, by explicit reference to the following *elements*:

- seller's obligation to deliver and purchaser's obligation to receive and pay the commodities. Thus, the seller has to deliver the commodity in compliance with the agreement from the point of view of quality, quantity, delivery term and delivery spot and submit the delivery related proofs (documents), and the purchaser has to receive the commodity at the due term and pay the commodity price according to the agreement;
- paying the packing expenses, are usually due to the seller, except for the case in which commodities are delivered without packing;
- quantitative and qualitative control – the seller has to develop all the operations (and pay all the costs) for the control, in order to make the commodity available to the purchaser, complying with the contracting terms;
- establishing the passing point of the expenses and risks from the seller to the purchaser;
- the seller's obligation to inform the purchaser that the commodity has been placed at his (or the conveyor's) disposal and if the conveyance has to be provided by the purchaser, his obligation to inform the seller upon the terms of delivering the commodity to the assigned conveyor;
- concluding the transport contract and acquiring the delivery related documents;
- acquiring other export (import) related documents: permit, origin certificate, consular invoice etc.;

- organization of customs clearance and paying customs tax.

In conclusion, the use of INCOTERMS has various *advantages* for the contractual partners as follows:

- they allow to accurately establish the seller's and purchaser's responsibilities in developing the operations related to delivery: packing, storage for export, loading in the conveyance means, export customs formalities, import customs formalities, unloading at the destination enterprise or warehouse;
- they establish the parties' obligations regarding the delivery-related documents acquiring: invoice, packing list, export licence, commodity inspection certificate, origin certificate, consular invoice, delivery document, transport document, insurance policy import licence;
- although they do not regulate the transfer of the ownership right, INCOTERMS give a clear solution to the problem of risk transfer regarding commodity delivery in the international trade from the seller to the purchaser.

INCOTERMS conditions have to be adequately correlated at the same time with other regulations and uses of the international sales contract, such as: lines' scheduled conditions (Liner Terms), harbour regulations, specific professional rules etc.

References

1. *** Reguli și uzanțe comerciale Incoterms 2000, Ediția a doua, Editura Percomex, 2001.
2. Alexa, C., *Transporturi internaționale*, Editura ASE, București, 2003.
3. Baicu, M., *Tranzacții economice internaționale. Fundamentarea și contractarea unei operațiuni de comerț exterior*, Editura Fundației România de Măine, București, 2000.
4. Ciobanu, G., *Contractarea în comerțul internațional*, Editura Universitaria, Craiova, 2008.
5. Futrell, M. C., *Principiile vânzătorilor*, Editura Rosetti Educațional, București, 2008.
6. Ișan, V., *Tranzacții comerciale internaționale*, vol. I, Editura Sedcom Libris, Iași, 2005.
7. Prisecaru, P., *Politici comune ale Uniunii Europene*, Editura Economică, București, 2004.
8. Ralph, F. H. et al., *International Business Transactions*, Editura West Group, 2009.
9. Roșu-Hamzescu, I., *Tratat privind tranzacții internaționale*, Vol. II, Editura Universitaria, Craiova, 2006.
10. Rotaru, I. et al. - *Managementul tranzacțiilor economice internaționale, Manual practic pentru oamenii de afaceri*, Editura Mirton, Timișoara, 2002.
11. Schadowald, M. S., Misesy, R. J. - *Practical Guide to U.S. Taxation of International Transactions*, Editura Cch Inc, 2009.

Aspecte complexe privind rolul și importanța regulilor și uzanțelor comerciale codificate pe plan internațional

Rezumat

Economia și comerțul secolului 21 reflectă cu adevărat o piață globală, o piață în care condițiile de livrare reprezintă una din clauzele esențiale ce se stabilesc între partenerii unui contract internațional, prin acestea reglementându-se în fapt transferul mărfurilor și al riscurilor de la vânzător la cumpărător, inclusiv consecințele juridice și economice generale. Chiar dacă cumpărătorii și vânzătorii de cele mai multe ori se găsesc pe continente diferite, în diferite părți ale globului, ei dispun de un set de reguli internaționale utilizate pentru interpretarea condițiilor comerciale. Acestea sunt folosite în comerțul internațional pentru a contribui în special la simplificarea operațiunilor de negociere a vânzării mărfurilor și de încheiere a contractelor comerciale.

Complexitatea problemelor legate de orientarea și dirijarea părților implicate în negocierea și încheierea unui contract comercial extern de vânzare-cumpărare de mărfuri presupune cunoștințe temeinice în domeniul tehnicii negocierilor, a legislației și uzanțelor de comerț exterior, a decontărilor internaționale, a expediției și asigurărilor internaționale vamale, al efectuării calculelor de rentabilitate și multe altele. În acest context, alegerea și includerea în contractele comerciale a celor mai favorabile clauze, la un moment dat, atât pentru vânzător, cât și pentru cumpărător, prezintă o importanță deosebită, relațiile dintre aceștia fiind guvernate de totalitatea clauzelor stipulate în contractul încheiat, unele dintre acestea fiind convenite în mod special, iar altele alese dintre cele folosite în practica curentă, integrată a comerțului internațional.