

When the twenty-first century is coming, a lot of preparations are made for it. Among them is the Incoterms 2000. It is the publication no. 560 issued by the International Chamber of Commerce (ICC) in Paris in September 1999 and will be effective from Jan.1, 2000. To help exporters and importers apply these terms successfully; we want to present here some problems that we should take care of when applying this new Incoterms.

1. An outline of developments of Incoterms

In the development of international trade, certain practices have taken shape. These practices, however, differ over countries and regions leading to misunderstanding, misinterpretation, disputes and lawsuits that consume a lot of time, money and energy. To solve this problem, the ICC published the International Commercial Terms (Incoterms for short) in 1936 in an effort to interpret the international commercial terms. The Incoterms 1936 included seven terms: EXW, FCA, FOR/FOT, FAS, FOB, C&F and CIF. Since then, the Incoterms have been amended and perfected six times (in 1953, 1967, 1976, 1980, 1990 and 1999) with a view to making these rules appropriate to the international commercial realities.

The Incoterms 1953 included nine terms (adding Ex Ship and Ex Quay terms). The Incoterms 1967: 11 terms (adding DAF and DDP terms). The FOB Airport was added to the Incoterms 1976. In the Incoterms 1980, there were 14 terms: EXW, FCA, FOR/FOT, FOB Airport, FAS, FOB, C&F, CIF, Freight (Carriage) Paid To, Freight (Carriage) and Insurance Paid To, Ex Ship, Ex Quay, DAF and DDP. The Incoterms 1990 including 13 terms which were divided into four groups: E, F, C and D.

In the Incoterms 2000, there are also 13 terms as in the Incoterms 1990 but definitions of these terms are made stricter, and more perfect and reasonable.

It's worth noting that the Incoterms have been amended many times and become more and more perfect but the newer version doesn't annul the old ones. That is why trading partners can choose any Incoterms as they wish.

2. Contents of the Incoterms 2000

a. After two years of preparations, the Incoterms 2000 was issued



SOME POINTS TO CONSIDER WHEN APPLYING INCOTERMS 2000

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to introduce some alterations to the Incoterms 1990. Because the Incoterms is widely used all over the world, editors based this version on previous editions in order to avoid unnecessary changes. Like the Incoterms 1990, the new version includes 14 terms that are divided into four groups:

- Group E: Ex Works ... (named place).

- Group F: Free Carrier ... (named place); Free Carrier ... (named place); Free Alongside Ship; and Free On Board... (named port of shipment).

- Group C: Cost and Freight ... (named port of destination); Cost, Insurance and Freight... (named port of destination); Carriage Paid To... (named place of destination), and Carriage and Insurance Paid To... (named place of destination).

- Group D: Delivered at Frontier... (named place); Delivered Ex Ship... (named port of destination); Delivered Ex Quay... (named port of destination); Delivered Duty Unpaid... (named place of destination); and De-

livered Duty Paid... (named place of destination).

Like in the Incoterms 1990, responsibilities of the seller and the buyer in each term are also described in 10 items in the Incoterms 2000.

b. Characteristics of each group of terms:

- The term of group E represents the minimum obligation for the seller: he simply makes the goods available at his premises to the buyer. If the latter wants him to fulfil more obligations, this should be written down on the contract after negotiation.

- Terms of the group F require the seller to deliver the goods according to instruction given by the buyer who has the right to decide means of transport. The delivery point is the named port of shipment.

- Terms of the group C force the seller to pay the cost and freight necessary to bring the goods to the named port of destination. In terms CIF and CIP, the seller has the same obligations as under CFR but with the addition that he has to procure insurance against the risk of loss or damage to the goods during the carriage. It's worth noting that under these terms, the seller is only required to obtain insurance on minimum coverage. If the buyer wants a higher level, he could negotiate with the seller or covers the difference between two insurance policies. Under terms of the group C, like those of the group F, the risk of loss or damage is transferred to the buyer when the goods are delivered at the port of shipment, instead of after the goods arrive at the port of destination.

- Terms of the group D mean that the seller fulfils his obligation to deliver when the goods have been made available at the named place at the frontier or in the country of importation. The seller has to bear the risk and costs of delivering the goods thereto. Under terms of this group, except for the DDP, the seller has no obligation to obtain import license or carry out customs formalities. It's worth noting that only under terms of the group D, all risk of loss or damage is transferred from the seller to the buyer at the named place of destination.

3. Differences between the Incoterms 2000 and Incoterms 1990

Although there is no difference in the number of terms and their structure between the Incoterms 2000 and Incoterms 1990, the former gives clearer and more exact details of these terms. Particularly, there are two basic adjustments:

- The seller has to carry out customs formalities and bear the costs and risk involved in bringing the goods to the delivery point (including duties and other official charges) under the FAS and DEQ terms.

- More details of the loading of goods under the term FCA are also given.

More exactly, new regulations under these terms are as followed:

+ Free Carrier ... (named place) or FCA: This term means that the seller has to hand over the goods, cleared for export, into the charge of the carrier named by the buyer at the named place or point. It's worth noting that the selected point of delivery affects the obligation to perform the loading of cargo. If the goods are handed over at the seller's premises,

he has to undertake the loading. If the goods are handed over at another point, he won't have to.

This term may be used for any mode of transport, including multimodal transport.

"Carrier" means any person who, in a contract of carriage, undertakes to perform or to procure the performance of carriage by rail, road, sea, air, inland waterway or by a combination of such modes. If the buyer instructs the seller to deliver the cargo to a person who isn't a "carrier", the seller is deemed to have fulfilled his obligation when the goods are in custody of that person.

+ Free Alongside Ship... (named port of shipment) or FAS means that the seller fulfils his obligation to deliver when the goods have been placed alongside the vessel on the quay at the named port of shipment. The buyer has to bear all costs and risks of loss or damage to the goods from that moment. The FAS term requires the seller to clear the goods for export. This regulation is opposite to previous Incoterms that required the buyer to do this work. If the parties wish the seller to carry out customs formalities, this has to be made clear in the contract.

This term can only be used for sea or inland waterway transport.

+ Delivered Ex Quay ... (named port of destination) or DEQ means that the seller fulfils his obligation to deliver when he has made the goods available to the buyer on the quay at the named port of destination before the goods are cleared for importation. The seller has to bear all risks and costs of bringing the goods thereto and putting them on the quay. The DEQ term requires the buyer to carry out customs formalities for importation and pay all taxes and charges payable upon importation.

This regulation is opposite to previous Incoterms that required the seller to do it.

If the parties wish the seller to bear some or full responsibilities for clearing the goods for importation, this has to be made clear in the contract.

This term can only be used for sea or inland waterway transport, or for multimodal transport the last leg of which is by sea.

If the parties wish the seller to bear some of the risks and costs of bringing the cargo from the quay to another place, inside or outside the named port, they had better use the DDU or DDP terms.

These changes result from studies of feedback and questions from users of the Incoterms in the past 10 years and they will make the Incoterms more perfect and useful to users all over the world.

4. Points to consider when using the Incoterms 2000

The Incoterms have been used widely by Vietnamese exporters and importers in the past 10 years. Many businesspersons, however, have wrong understanding of the Incoterms because of a lack of a careful study with the result that they applied the Incoterms ineffectively and sometimes suffered losses. To use the Incoterms 2000, they should pay full attention to the following points:

a. The Incoterms provide the uniform interpretation of common contract clauses in export-import transactions and describe responsibilities of the seller and the buyer. Thus, these terms are used in export-import contracts, not in transport contracts as many Vietnamese businesspersons have thought.

b. The Incoterms provide many definitions and interpretations of obligations and responsibilities of the parties, but they couldn't replace all clauses in export-import contracts. They don't provide regulations on the transfer of ownership, settlement of disputes or exemption from obligations in case of force majeure, etc.

c. The Incoterms could be used in both foreign and domestic trading.

d. The Incoterms aren't compulsory. The parties should state in the contract what term, and from what version of the Incoterms they want to use.

e. The Incoterms don't determine all clauses of the contract because it also depends on laws of the home countries of the parties involved.

f. In the Incoterms, such terms as FOB, CFR and CIF still refer to the traditional way of delivery "over the ship's rail". Practices of delivering goods experience many changes now. So if the ship's rail serves no practical purpose, the FOB term could be replaced by the FCA term, CFR by CPT, and CIF by CIP.

g. In the Incoterms, the FOB, CFR and CIF terms ensure the same safety, so it isn't practical and profitable to use only the FOB when exporting and CIF when importing. Vietnamese exporters and importers had better study the Incoterms carefully in order to choose the terms most appropriate to their conditions and most beneficial to local party.