

## INCOTERMS 2010

By Bonnie Huen<sup>†</sup>



“Incoterms”, short for “International Commercial Terms”, are a series of internationally recognized sales terms that are widely used in commercial transactions. Published by the International Chamber of Commerce (ICC), the three-letter acronyms attempt to clarify the tasks, costs and risks involved in the delivery of goods from sellers to buyers engaged in a transaction.

The first version of the Incoterms was published in 1936, about the same time that the United States adopted the Carriage of Goods by Sea Act (“COGSA”)<sup>1</sup> and the Hague Rules<sup>2</sup> became the world standard for maritime commerce. The Incoterms are revised every 10 years, to adapt to changes in global trade practices. The newest version, Incoterms 2010 will come into effect January 1, 2011. This article will focus on the change from the previous version, Incoterms 2000, to Incoterms 2010.

The Incoterms range from capturing conditions of all risk on the buyer to those of all risk on the seller. For example, the term EXW (Ex Works) means that the buyer bears the responsibility and any costs as soon as the cargo leaves the seller’s location. This imposes the most risk on the buyer and the least risk on the seller. At the other end of the risk scale, the term DDP (Delivery Duty Paid) denotes that the seller bears all costs and risks until the cargo arrives at the buyer’s nominated point of destination. What this means is that the seller must arrange for transportation, loading, unloading and insurance; in other words, the seller bears the most risk and the buyer the least.

The latest revisions to the Incoterms stemmed from considerations including the development of customs free zones, use of electronic data interchange methods, changes to transport practices, the increasing trend toward multimodalism and security for the movement of goods. The

---

<sup>†</sup> Isaacs & Co., Toronto, Ontario.

<sup>1</sup> The COGSA is a United States statute governing the rights and responsibilities between shippers of cargo and ship-owners in the context of ocean shipments to and from the United States. It is the U.S. enactment of the Hague Rules, but with amendments.

<sup>2</sup> The Hague Rules, also known as the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, was signed at Brussels on August 25, 1924 and came into force as of June 2, 1931.

revisions also attempt to simplify the terms and clarify their parameters, as well as eliminate redundant and obsolete terms.

In order to understand the changes to the Incoterms 2010, it is important to understand the terms and categories under Incoterms 2000. The Incoterms 2000 consisted of 13 terms, divided into 4 groups or categories, which reflected the various stages of transportation:

<b>Group</b>	<b>Terms</b>
<b>Group E – Departure</b>	EXW
<b>Group F – Main Carriage Unpaid</b>	FCA, FAS, FOB
<b>Group C – Main Carriage Paid</b>	CPT, CIP
<b>Group D – Arrival</b>	DAF, DES, DEQ, DDU, DDP

The Incoterms 2010 reduces the categories from four to two. The new categories are “Rules for Any Mode of Transport” and “Rules for Sea and Inland Waterway Transport.” These new categories address the *means* of transport, rather than the stages of transportation. This categorization is reflective of multi-modalism and requires users of Incoterms to focus on the mode of transportation used. The Incoterms 2010, although no longer officially associated with the four earlier categories, can still be considered in that framework to better understand the tasks associated with a certain term. (See Appendix)

Further, in the Incoterms 2010, the terms DAT (Delivered at Terminal) and DAP (Delivered at Place) have replaced the terms DEQ, DES, DAF and DDU to create a set of 11 terms.

Therefore, the Incoterms 2010 can be summarized as follows:

<b>Category</b>	<b>Terms</b>
<b>Rules for any mode of transport</b>	EXW, FCA, CPT, CIP, DAT, DAP, DDP
<b>Rules for sea and inland waterway transport</b>	FAS, FOB, CFR, CIF

DAT replaces DEQ as a term that is more suitable for container transportation. The term provides for delivery when goods are unloaded from the arriving means of transport and are placed at the disposal of the buyer at the named terminal. For example, DAT can be used to refer to the situation where a container has been unloaded from a ship and placed in the container yard at the port of delivery. DAP consolidates DES, DAF and DDU by providing for delivery on the arriving means of transport, ready for unloading. DAP, being a term applicable to any mode of transport, can be used when there is delivery by truck to the buyer’s premises, or delivered by ship to a named port. Of the former “D Group” of terms, DDP remains.

The Incoterms 2010 also bring about change to the definitions of some of the more commonly used terms, FOB (Free On Board), CFR (Cost and Freight) and CIF (Cost Insurance and

Freight). Under these terms for marine transport, all references to the “ship’s rail” as the point of delivery has been removed, and instead, goods are deemed to be delivered when they are “on board” the vessel. For example, FOB requires the seller to deliver the goods to the ship as specified by the buyer. Risk and title to the goods pass to the buyer once the goods are on board the vessel, meaning the whole consignment has been loaded. Under the new Incoterms, if half a consignment is loaded, and the ship sinks, then complete loading has not occurred and the risk has not transferred to the buyer.

Under the Incoterms 2010, like the Incoterms 2000, there are only two terms which make procurement of transit insurance an obligation: CIF and CIP. For both CIF and CIP, the seller is only required to obtain cargo insurance complying with the minimum cover provided by Institute Cargo Clauses (C). This is a low level of insurance and covers only major casualties, such as total loss of cargo. Therefore, in many cases, the buyer will want to include in the contract an express requirement for the more extensive Institute Cargo Clauses (A). This additional insurance requirement will form part of the terms of sale, and not the Incoterm itself.

On a related note, users of Incoterms should be aware that the Incoterms are not a contract. They are terms designed to be incorporated into a contract to clarify who does what, and at which party’s cost. Accordingly, Incoterms are a useful shorthand to delineate the contractual obligations of buyer and seller in fulfilling the transportation end of a sale of goods contract. However, the Incoterms do not (and do not purport to), regulate transfer of ownership, the payment process and applicable law and jurisdiction, all of which are important aspects of the sales contract.

In conclusion, the Incoterm(s) chosen should reflect the transportation aspect of an agreement between the buyer and seller. In doing so, the parties should consider the allocation of tasks, costs and risk. Who is supposed to do what to get the goods from Point A to Point B? What does the sale price include? Where does the risk start and where does it end for the parties? In answering these questions, the parties should be able to arrive at the appropriate Incoterm to be used to encapsulate the agreement. The changes to the Incoterms in 2010 are not major, however, the revisions encourage users to put their minds to the mode or modes of transportation required to ensure use of the appropriate term. Users should remember that Incoterms serve to further the contractual agreement between parties, and that the parties should not be afraid to spell out in the contract any agreed term that cannot be captured by the Incoterm used.

### **APPENDIX**

Incoterms 2010 can still be conceptualized in the previous framework based on various stages of transportation:

<b>Stage of transportation</b>	<b>Incoterm</b>
Departure	EXW – Ex Works
Main Carriage Unpaid	FCA – Free Carrier (Named place)

	FAS – Free Alongside Ship (Named loading port)
	FOB – Free On Board (Named loading port)
Main Carriage Paid	CFR – Cost and Freight (Named destination port)
	CIF – Cost, Insurance and Freight (Named destination port)
	CPT – Carriage Paid To (Named destination place)
	CIP – Cost Insurance Paid To (Named destination place)
Arrival	DAP – Delivered at Place (Named place)
	DAT – Delivered at Terminal (Named terminal)
	DDP – Delivered Duty Paid (Named destination place)