



THE GLOBE

The newsletter of the Illinois State Bar Association's Section on International & Immigration Law

Editor's comments

By Lewis F. Matuszewich

This issue of *The Globe* includes four articles, starting with, "New INCOTERMS 2010" by International and Immigration Section Council Member, Lynne R. Ostfeld. Howard Stovall provides information to us from time to time, concentrating on commercial law matters in the Middle East. In this issue he provides, "Registration of Commercial Agency and Distributor Agreements in the Arab Middle East."

Elena Sabkova last appeared in our January, 2011 issue with her article, "Important Development in the Bulgarian Law on European Union Funding," which is followed up in this issue with, "Energy from Renewable Sources in Bulgaria:

Embracing the Feed-In Tariff"

We have also included the second installment of information concerning setting up businesses in Flanders, based on the material provided to us by Ian Robberechts of the Flanders Investment and Trade Office in Chicago.

Thank you to all of our contributors. ■

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New INCOTERMS 2010

By Lynne R. Ostfeld

INCOTERMS are terms designed to specify which party in an international contract for the sale of goods takes responsibility for which tasks, costs and risks associated with the transportation and delivery of the goods. They are intended to clarify each party's responsibility and to avoid confusion and misinterpretation. Use of the terms determines when the sale takes place, and where transfer of title takes place. They do not deal with the formation of the contract, liability, jurisdiction, breach, etc.

The word INCOTERMS is an abbreviation for International Commercial Terms. These are commercial terms drafted and published by the International Chamber of Commerce (ICC), in Paris. First published in 1936, the terms were just updated in 2010 and are often referred to as INCOTERMS 2010.

There is no INCOTERM obligating the seller to hand the goods over to the buyer. It does not exist under the U.N. Convention for the Interna-

tional Sale of Goods (CISG). It is considered impractical with international sales.

Domestic transactions are now included. The UCC now refers to INCOTERMS, because they make more sense.

Also, the transactions can now be done electronically. String sales are also addressed in the INCOTERMS 2010.

The application of a clause of the INCOTERMS results in the appliance of the ICC rules for the use of domestic and international trade terms. INCOTERMS are not law, except for being a part of the contract. Different jurisdictions rule differently about whether the site of delivery is also the site of legal jurisdiction.

The parties to a contract can modify the terms but do so at their own risk. Some abbreviations have been accepted as INCOTERMS, some have not. COD and FOB are not INCOTERMS.

The obligations of the buyer and seller which

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New INCOTERMS 2010

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are regulated by the INCOTERMS rules address:

- Responsibility for export, import and transit clearance including security clearance
- Contracts of carriage and insurance
- Place/point of delivery and of taking delivery
- Act of delivery, loading and unloading
- Transfer of risks
- Allocation of costs
- Notices and assistance with information
- Packaging and marking

There are now 10 identical headings, and 11 terms. They were reduced from the previous 13, which were used in INCOTERMS 2000.

Two new rules have been introduced:

- DAT - Delivered at Terminal
- DAP - Delivered at Place

These replace four rules of the prior version:

- DAF - Delivered at Frontier. This was used only with truck and train transport because the goods were delivered at the border. It was hard with air transport.
- DES - delivered ex ship
- DEQ - delivered ex quay
- DDU - delivered duty unpaid

The 11 clauses are arranged in:

- two groups according to the mode of transportation, method of delivery
- four groups according to systematic characteristics.

There is a larger group of seven rules which applies regardless of the method of transport, with the smaller group of four being applicable only to sales that solely involve transportation over water, ocean and inland water transport.

The four rules where transportation is entirely conducted by water are:

- FAS - free alongside ship (named loading port)
- FOB - Free on board (named loading port)
- CFR - cost and freight (named destination port)
- CIF - cost, insurance and freight (named destination port)

C Group

CFR - cost and freight

This is only for sea or inland waterway

transport. It involves placing the goods on board the vessel or procuring goods already so delivered.

CIF - cost insurance and freight

This is only for sea or inland waterway transport. It involves placing the goods on board the vessel or procuring goods already so delivered. The seller provides insurance cover during transport of the goods.

CPT - carriage paid to

This involves any mode of transport, and the handing the goods over to the carrier.

CIP - carriage and insurance paid to

Any mode of transport is covered. The seller hands the goods over to the carrier, insurance cover is paid by the seller during the transport of the goods.

With CPT and CIP, the place of delivery may be designated as being at the seller's place of business or at any place between the seller's place of business and the site of transport.

Export clearance is up to the seller to obtain.

The import and transit clearance are up to the buyer to obtain.

D Group

DAP, DAT, DDP - all three deal with any mode of transport.

DAP - delivered at place

This term involves any mode of transport, and the placing of the goods at the buyer's disposal, ready for unloading.

DAT - delivered at terminal (new)

This term involves any mode of transport, with the goods unloaded and placed at the buyer's disposal.

Between DAP and DAT, the only difference is the loading.

DDP - delivered duty paid

This allows for any mode of transport, placing the goods at the buyer's disposal ready for unloading. The clearance for export, transit and import are up to the seller.

In the D Group, the place of delivery may be at the buyer's place of business or any place between the buyer's port of entry and his place of business. Import clearance is up to the buyer to obtain, except for DDP where

the seller must obtain it. Export and transit clearance are up to the seller to obtain.

E Group

EXW - ex works

This covers any mode of transport. The seller places the goods at the disposal of the buyer, without loading the goods onto the carrier. The export and import clearance is up to the buyer to obtain.

F group

FCA - free to the carrier at a named place

Any mode of transport is covered. This is especially designed for transport in containers, as well as the handing over of the goods or placing them at the buyer's disposal.

The place of delivery may be fixed at the place of business of the seller or at any place between the seller and the port.

Import and transit clearance are up to the buyer to obtain while export clearance is up to the seller to obtain.

This is designed for the seller to place the goods on board or procuring their placement on board the carrier. It allows the seller of a commodity to resell it to someone while the good is in transit. It is already on board and the impossibility of putting it on board as part of the sale is eliminated.

FAS - free alongside ship

This is only for sea or inland waterway transport, and placing the goods at the buyer's disposal.

FOB - free on board

This is also only for sea or inland waterway transport. This involves the seller placing the goods on board the vessel or the buyer procuring goods already so delivered. It is not designed for goods in containers.

Who packed the goods and where is not important for commercial purposes but is important for U.S. Customs. The Importer Security Filing (ISF) must be filed or Customs will not allow the goods in. ■

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