

INCOTERMS 2020 Update: What Supply Chain Stakeholders Must Know

MARCH 24, 2020

Authors: [Jonathan R. Todd](#), [Kristopher J. Chandler](#)

The long-awaited INCOTERMS 2020 are here! The International Chamber of Commerce (ICC) released its update to the INCOTERMS in September of 2019. Now in effect, it is essential that stakeholders across all manner of supply chain participants relearn those key terms in order to adequately operate in the international marketplace.

The INCOTERMS have long served the international community by offering a “shorthand” for communicating key shipping terms. The ICC publishes and maintains the INCOTERMS as a uniform set of rules to clarify any uncertainty in supply contract interpretation. A single three-character INCOTERM establishes the precise point at which key responsibilities transfer from seller to buyer. Thus, the INCOTERMS are a means of communicating the intent of the parties in a way that is both simple and useful to all participants in international trade, including the importers, exporters, transporters, lawyers, and insurers who rely upon those terms every day.

The first set of INCOTERMS was published in 1936, and that list has been subsequently amended and restated eight times, most recently January 1, 2020 (the new updated list was revealed in September of 2019 but went into effect the beginning of this year). The INCOTERMS have withstood the test of time due to the ICC’s great work in recognizing modernization of international transportation, such as the rise in air travel, proliferation of container traffic, increased use of electronic messages, and need to cooperate on information sharing.^[1] The updates to the official INCOTERMS are likewise narrowly tailored in response to changes in the international flow of goods.

Key Changes in INCOTERMS 2020

The following changes were made to the INCOTERMS in this new round of modifications.

FCA Free Carrier: The buyer and the seller can now agree that the buyer will instruct its carrier to issue an on-board bill of lading to the seller after the loading of the goods, the seller then being obligated to tender that bill of lading to the buyer, typically through the banks.

New Insurance Requirements: Under CIP, the seller is required to purchase insurance complying with Institute Cargo Clause (A). This change has increased the minimum insurance coverage for CIP deliveries for the benefit of the buyer. Under the previous iteration of the INCOTERMS, CIP, similar to CIF, required insurance complying with Institute Cargo Clause (C).

DAT changed to DPU (Delivery at Place Unloaded): The previous iteration of the INCOTERMS include the term “DAT” that required Delivery at Terminal (unloaded). The revised INCOTERMS has changed DAT to DPU to broadly cover “any place, whether covered or not.” Thus, this term is appropriate for any destination, provided it is appropriate for the unloading of the goods.

Rearrangement of Costs: In the 2020 INCOTERMS, costs have been rearranged to instead be listed under each of the INCOTERMS, as well as under the relevant article within the INCOTERMS to which they apply. The purpose behind this change is to provide parties a complete list of all relevant costs in one place in order to make the seller and the buyer more aware of the costs each of them will be responsible for under a specific INCOTERM.

Security Requirements: Security-related allocations have been added to each INCOTERM, and the associated costs for such security requirements have been added to the new cost lists. The emphasis on security in international trade has, of course, grown, and these changes reflect the INCOTERMS changing with the times.

Own Transportation: The previous iteration of the INCOTERMS assumed that transportation from the seller to the buyer would be accomplished by engagement with third-party carriers. The terms did not account for situations in which the transportation would be accomplished by the buyer's or seller's own transportation. The new INCOTERMS allow for own means of transportation by the buyer in the FCA rules and by the seller in the D rules.

INCOTERMS 2020 Takeaways

The majority of the changes to the INCOTERMS focus on increased clarity and incorporation of security changes that have become prevalent in modern global business. The overarching theme of these updates is the INCOTERMS responding to the ever-changing international trade landscape and an effort to provide greater clarity in the application of the terms. These changes are surgical in nature rather than imposing some drastic change to the scope of obligations and the allocation of risk under the INCOTERMS. In short, the 2020 version of INCOTERMS will offer buyers and sellers, and their service providers, a more suitable opportunity to memorialize party intent when participating in the international trades.

It is important for sellers and buyers to review their contractual relationships and make any required amendments to reflect the changes to the INCOTERMS. Further, with these changes comes the increased need for clarity in contract drafting to ensure which version of the INCOTERMS-2010 or 2020-applies to your contractual relationship. Buyers and sellers should explicitly identify which iteration of the terms apply in the contract at issue. As these updated INCOTERMS are placed into practice, the scope and impact of the modifications should continue to be monitored by supply chain stakeholders to ensure that that organizations adequately understand their responsibilities, obligations, and allocated risk under the INCOTERMS.

We very often remind our clients that INCOTERMS are only shorthand. They should not be taken for granted. While simple, INCOTERMS convey the responsibilities, obligations, and risks of both seller and buyer from the point of origin, through transportation, to the point of delivery. Every supplier and importer must consider the totality of its deal terms before looking to memorialize those in contract language. Drafting in plain language, especially on complex issues such as responsibility for duties, is sometimes preferred if the INCOTERMS convey different or conflicting meanings. Some parties take this a step further by expressly stating that the INCOTERMS are for convenience only and do not change the parties' intentions. Clearly drafting deal terms, and taking time to consider unintended consequences, can mean the difference between having the upper hand in price negotiations or accepting a 25% ad valorem increase in duties due to three simple letters.

Jonathan Todd is a partner in Benesch's Transportation & Logistics Practice Group. You may reach Jonathan at jtodd@beneschlaw.com or (216) 363-4658. Kristopher J. Chandler is an associate with the firm who practices in the areas of commercial transactions, transportation, and intellectual property. You may reach Kris at kchandler@beneschlaw.com or at (614) 223-9377.

[1] <https://iccwbo.org/resources-for-business/incoterms-rules/incoterms-rules-history/>