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# An Analysis of Delivery/Transport Documents Content in Relation to the Contract of Carriage under Incoterms 2020 Rules*

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## Abstract

***Purpose*** – The purpose of this study is to review and analyzes the contract of carriage and delivery/transport document in light of the major changes made to the Incoterms® 2020 rules forced into effect on January 1st, 2020.

***Design/methodology*** – This study analyzed responsibility for the loading and unloading of goods under the contract of carriage in Incoterms 2020® rules forced into effect by the ICC from January 1, 2020, and what document must be presented as evidence of delivery by the seller.

***Findings*** – A review revealed that in Rule C, the costs of unloading at the place of destination are determined by the terms of the contract of carriage, and in the DAP and DDP rules, if the seller bears the unloading costs, such unloading costs cannot be recovered from the buyer. To settle this issue, the seller needs to make a contract of carriage by sea with the carrier on FI terms. Furthermore, in the case of containerized goods that the FCA should be used, FOB was misused because the seller could not present an on-board bill of lading in the L/C transaction. However, it was confirmed that in FCA, the parties can use an optional mechanism to issue an on-board bill of lading.

***Originality/value*** – Incoterms 2020® rules are still widely used in international trade by parties to contract sales around the world, just like Incoterms 2010® rules. This study attempts to reduce or eliminate disputes that may arise from interpretative misunderstandings between the parties in the contract of sales concluded by the seller and the buyer.

**Keywords**: Contract of Carriage, Delivery Document, ICC, Incoterms 2020, Trade Terms, Transport Document
**JEL Classifications**: F10, F13, M16, M21

## 1. Introduction

The International Chamber of Commerce (ICC) published a revision to Incoterms 2010 to Incoterms 2020 on September 10, 2019.

The process of preparing Incoterms 2020 was long. The Incoterms® 2020 Drafting Group formed by the ICC in 2016 consisted of nine experts from around the world (ICC, 2019a). The Drafting Group met for the first time in Paris, April 2017, and delivered the final version in May 2019. During these two years, more than 3,000 suggestions and comments were received through ICC National Committees in the different countries that contributed to supplement the text. The final version was published in September of 2019 (Global Negotiator, 2019), and the new final version, Incoterms 2020 (ICC Publication No. 723E),

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came into force on January 1, 2020.

The Incoterms rule has been updated by the ICC every 10 years since 1980. Incoterms 2010 was published on September 27, 2010, and came into force on January 1, 2011, but Incoterms 2020 came into force on January 1, 2020, so it was revised for the first time in nine years. However, since the names of Incoterms rules are Incoterms 1980, Incoterms 1990, Incoterms 2000, Incoterms 2010, and Incoterms 2020, they are generally recognized as 10-year renewals.

Incoterms is an acronym for International Commercial Terms, and are a registered trademark of the ICC, which represents the international standard for the contract for sales of the goods. The rules cover most aspects of the export-import trade. Like its 9 forerunners (Incoterms 1923-2010), Incoterms 2020 provides a set of international rules for the interpretation of the most commonly used trade terms (Ademuni-Odeke, 2020b). The main purpose of Incoterms 2020 is to make the use of these rules as clear and easy as possible.

Accordingly, the purpose of this paper is to provide guidance to traders for accurate use of delivery/transportation documents by analyzing the significance of the contract of carriage and delivery/transport documents associated with the transport of goods, along with major amendments under Incoterms 2020.

## 2. Main Revisions in Incoterms 2020

In Incoterms 2020, significant changes have been made to the rules for the international supply of goods. The Composition of Document and list of party obligations have changed. Each condition of transport is now illustrated. In addition to the changes of appearance and configuration, practical changes have been made. The outline of these rules follows.

### 2.1. Improved Presentation by Changes to Layout in Incoterms 2020

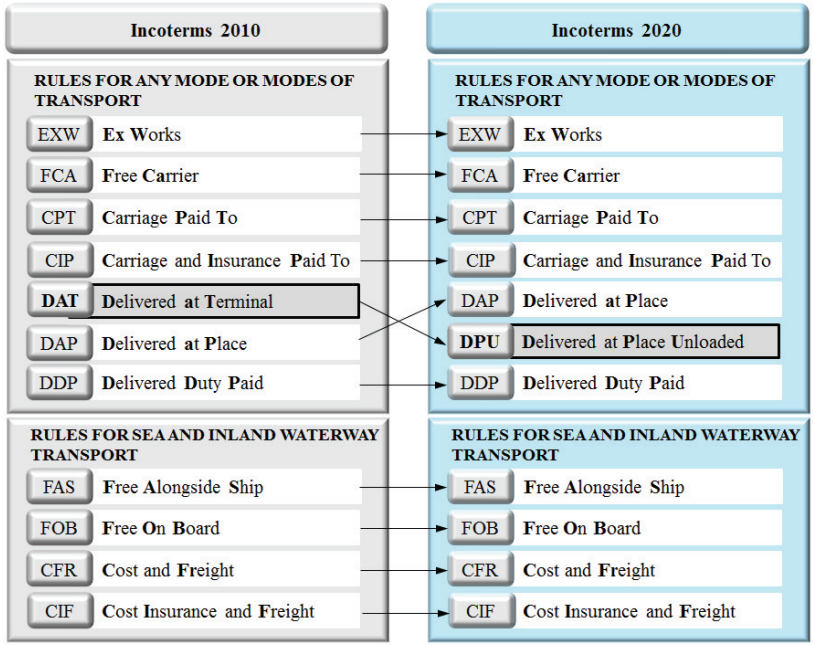
A decade on from the last revision, Incoterms 2020 text has a very different layout and a more user-friendly \ presentation. Incoterms 2020 features many changes to the sequencing and presentation of the rules, with a simplified presentation providing a welcome expansion of the explanatory notes within the Incoterms, rather than in a separate publication (Ademuni-Odeke, 2020a).

#### *2.1.1. Changing the Order of Rules*

Incoterms 2020 replaced the DAT of Incoterms 2010 with DPU (Delivered at Place Unloaded), and structurally reversed the order of the two rules, as seen in Fig. 1. That is, the DAP rule that the goods are delivered before unloading has been listed before the DAT rule (now DPU rule). In Incoterms 2010, the only difference between the DAT and DAP rule was as follows; under DAT, delivery is completed when the goods, once unloaded from the arriving means of transport, are placed at the disposal of the buyer at a named terminal at the named port or place of destination (ICC, 2010), whereas under DAP, the delivery is completed when the goods are placed at the disposal of the buyer on the arriving means of transport ready for unloading at the named place of destination (ICC, 2019b).

Structurally, Incoterms 2020 contain 11 three-letter acronyms. Seven of the rules are applicable to any mode or modes of transport (i.e., EXW, FCA, CPT, CIP, DAP, DPU – previously DAT –, and DDP), and the four remaining rules are applicable to sea and inland waterway transport (i.e., FAS, FOB, CFR, and CIF).

**Fig. 1.** Change in the Three-letter Initials for DAT to DPU




**Source**: Jeon Soon-Hwan (2020, 135).

### *2.1.2. Changing Clauses of the Party Obligations*

Each individual rule in Incoterms rules includes two sections consisting of ten articles. Section "A" represents the seller's obligations, and section "B" represents the buyer's obligations. The ICC, however, changed the order of the articles to make Incoterms 2020 more transparent. Incoterms 2020 specified "Delivery" in A2/B2, and "Transfer of risks" in A3/B3.

Under Incoterms 2020, the 10 obligation clauses for each party are: A1/B1 (General obligations); A2/B2 (Delivery); A3/B3 (Transfer of risks); A4/B4 (Carriage); A5/B5 (Insurance); A6/B6 (Delivery/transport documents); A7/B7 (Export/import clearance); A8/B8 (Checking/packaging/marking); A9/B9 (Allocation of costs); and A10/B10 (notices).

### *2.1.3. Horizontal Article-by-Article Comparison*

At the back of the ICC Incoterms® 2020 book, an extra tool has been included. This sets the position for each element Incoterm in a way that can be compared across all Incoterms. Therefore, if one wanted to look at the delivery point (set out at A2) across all Incoterms, it is now possible to do so (Khanh, 2020).

## 2.2. Substantive Changes to Incoterms 2020

### *2.2.1. Change in the Three-Letter Initials for DAT to DPU*

In Incoterms 2010, the only difference between the DAT and DAP was as follows; under DAT, delivery is completed when the goods, once unloaded from the arriving means of

transport, are placed at the disposal of the buyer at a named terminal at the named port or place of destination, whereas, under DAP, delivery is completed when the goods are placed at the disposal of the buyer on the arriving means of transport ready for unloading at the named place of destination (ICC, 2010).[1)]

Under Incoterms 2020, the name DAT (Delivered At Terminal) has been removed and DPU (Delivered at Place Unloaded) has been introduced (Hong Jae-Sung and Song Jin-Gu, 2020, 379; Shin Hak-Sung and Kim Dong-Yoon, 2019, 544). That is, the DAT (Delivered at Terminal) rule has been renamed DPU (Delivered at Place Unloaded), highlighting the reality that the destination can be anywhere, not just a "terminal". Under the new name, the seller is still obliged to unload the goods at the destination. The reason for the change is to clear up any possible confusion over the word "terminal". The new term applies to unloading that occurs at any place, not just a terminal (Averitt Express, 2020).

### *2.2.2. Bills of Lading with an On-Board Notation and the FCA Rule*

Under the FCA (Free Carrier) rule, the seller's obligations are deemed to have been fulfilled when the seller delivers the goods to the carrier as arranged by the buyer. However, where goods are sold FCA for carriage by sea and settlement is made under a letter of credit, the seller's or buyer's banks often request a shipped bill of lading (a bill of lading with an on-board notation) to be issued after the goods are loaded on board the vessel.

To cater to this situation, Incoterms 2020 has provided an additional option in FCA A6/B6 (Article A is the seller's obligations and Article B is the buyer's obligations). That is to say, the parties can agree that the buyer will instruct its carrier to issue an on-board bill of lading to the seller at the buyer's cost and risk after loading the goods, and then the seller shall be obliged to present that bill of lading to the buyer, typically through the bank. This new approach solves the problem of the previous Incoterms® FCA 2010 (Brunner, 2019).

However, even if such an optional mechanism is adopted, this presentation by the seller to the buyer has no effect on the transfer of risks set by the general rules of the FCA, nor does the seller assume any obligation to the buyer as to the terms of the contract of carriage.

### *2.2.3. Different Levels of Insurance Coverage in CIF and CIP*

Under Incoterms 2010 rules, A3 of both the CIF and CIP imposed on the seller the obligation to "obtain at its own expense cargo insurance at least cargo insurance complying with the minimum cover as provided by Clauses (C) of the Institute Cargo Clauses (Lloyd's Market Association/International Underwriter Association 'LMA/IUA') or any similar clauses."

However, the protection expected under the CIP (Carriage and Insurance Paid to) has been further increased in Incoterms 2020 (Ghaffar, 2020). That is, CIF, which are often used in bulk cargo ships, continues to be subject to Institute Cargo Clauses (C) in terms of the characteristics of the cargo and risks. On the other hand, CIP, which are used in container shipping, has changed the rule that the seller must have insurance in accordance with Institute Cargo Clauses (A). Needless to say, Institute Cargo Clauses (A) covered by the CIP offer better insurance coverage for the buyer, so the insurance premium will be higher.

However, the insurance coverage may be changed by agreement between parties. In CIP, parties can agree to lower coverage, such as Clauses (B) or Clauses (C) of the Institute Cargo Clauses, or similar clauses (Kim Dong-Chun, 2020, 502). In CIF, parties can agree on a higher

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[1)] The DAF, DES, DDU, and DEQ of Incoterms 2000 were revised to the DAP and DAT of Incoterms 2010. DAT rules were newly introduced such that the place of delivery was restricted only to the named destination terminal (Kim Dong-Chun, 2019, 478).

level of coverage, such as Clauses (A) or Clauses (B) of the Institute Cargo Clauses, or similar clauses.

### *2.2.4. Costs Are Clarified*

The wide variety of costs allocated by various articles within Incoterms 2010 were traditionally listed in each Incoterms rule. Thus, for example, A6 of each Incoterms rule was the article under the heading "Allocation of Costs", and A8 was the article under the heading "Delivery Document". In the FOB rule of Incoterms 2010, the provision "The seller must provide the buyer, at the seller's expense, with the usual proof that the goods have been delivered in accordance with A4" were related to the costs of obtaining a delivery document. Nonetheless, the above provisions were mentioned in A8, but not A6.

However, Incoterms 2020 clearly provides details on the precise allocation of costs between a seller and buyer by gathering all cost obligations and including them in A9/B9 of each Incoterms rule. It is natural that A9/B9, the article under the heading "Allocation of Costs", in Incoterms 2020 are longer than A6/B6 in the previous Incoterms rules.

The purpose is to help the seller or buyer recognize the cost it should bear under a certain Incoterms rule by gathering the list of costs in one place. This is to respond to user feedback that there were increasing disputes about the allocation of costs, especially those in or around the port or place of delivery. The broad principle is that the seller is responsible for costs incurred up to the point of delivery, and the buyer is responsible for costs beyond that (Khanh, 2020).

### *2.2.5. Carriage by Seller's or Buyer's Own Means of Transport in FCA, DAP, DPU, and DDP*

In Incoterms 2010, it was assumed that where goods were to be transported from seller to buyer, a third party carrier appointed by the seller or buyer would carry the goods.

Incoterms 2020, however, changed to allow the seller or buyer to carry goods using its own means of transport. For sellers with their own transportation, this change can cut costs and paperwork, making delivery more efficient (Shipit, 2020). Thus, for example, in the case of the D rule, the seller may carry the goods using its own means of transport to the named place of destination without outsourcing that function to a third party. In the case of the FCA rule, the buyer may use its own vehicle in collecting the goods at the place of delivery and in bringing them to the buyer's premises.

### *2.2.6. Inclusion of Security-Related Requirements*

In Incoterms 2010, security-related requirements were included in the A2/B2 and A10/B10 of each Incoterms rule.

Due to increased security measures in the shipping industry, Incoterms® 2020 puts greater emphasis on responsibilities and costs associated with security requirements (PF Collins, n.d.). Requirements related to transport security, such as mandatory screening of containers, have now become more prominent and prevalent. Thus, in Incoterms 2020, transport-related security requirements and the costs incurred by these requirements have been specified in A4/A7 and A9/B9 of each Incoterms rule.

### *2.2.7. "Guidance Notes" Has Changed to "Explanatory Notes for Users"*

The "Guidance Notes" featured at the beginning of each Incoterms rule in Incoterms 2010 have been renamed "Explanatory Notes for Users" and designed to be easier for users (Jeon

Soon-Hwan, 2019, 138). These notes have added more detailed key features and useful pictures.

These notes deal with the fundamentals of each Incoterms 2020 rule, such as when it should be used, when risk transfers, and how costs are allocated between seller and buyer. The Explanatory Notes help users select the most appropriate Incoterms rule for a particular transaction, and provide users with guidance on matters which may require interpretation in relation to disputes or contracts governed by Incoterms 2020 (ICC, 2019b, 16).

## 3. Obligations to Make a Contract of Carriage and Present Proof of Delivery

Incoterms 2020 is divided into two categories as per the means of transportation; seven are so called "multi-modal" Incoterms rules for any mode or modes of transport (EXW, FCA, CPT, CIP, DPU, DAP, and DDP), and there are four "maritime" Incoterms Rules for sea and inland waterway transport (FAS, FOB, CFR, and CIF).

However, the two above-mentioned categories, as per the order of maximum obligation from the minimum obligation of the seller, can also be divided into four principal categories: Group E (EXW), Group F (FCA, FAS, and FOB), Group C (CFR, CIF, CPT, and CIP), and Group D (DAP, DPU, and DDP).

In this chapter, an explanation of matters related to the contract of carriage and delivery documents based on the above-mentioned four categories is presented.

### 3.1. Party Obligations to Make a Contract of Carriage

Table 1 represents the party obligations to make a contract of carriage from the place of delivery to the place of destination.

**Table 1.** Seller's or Buyer's Obligation to Make a Contract of Carriage

| | **Seller's Obligation to Make a Contract of Carriage (A4)** | **Buyer's Obligation to Make a Contract of Carriage (A4)** |
|---|---|---|
| EXW | No obligation | Buyer's responsibility |
| FCA<br>FAS<br>FOB | No obligation of seller<br>(If agreed, seller's obligation) | Buyer's obligation.<br>(If the contract of carriage is made by the seller, no obligation of buyer)<br>In FCA, a buyer can arrange for carriage with a buyer's own means of transport. |
| CFR<br>CIF<br>CPT<br>CIP | Seller's obligation | No obligation of buyer |
| DAP<br>DPU<br>DDP | Seller's obligation<br>In D rule, the seller can arrange for carriage with the seller's own means of transport. | No obligation of buyer |

First, in group E (Departure), while the seller has no obligation to the buyer to make a contract of carriage, it is up to the buyer to contract or arrange, at its own cost, the carriage of the goods.

Second, in group F (Main Carriage Unpaid), while the seller has no obligation to the buyer to make a contract of carriage, the buyer must contract or arrange, at its own cost, the carriage of the goods from the named "place of delivery" or "port of shipment".

Third, in group C (Main Carriage Paid), while the seller must contract or procure a contract for the carriage of the goods from the agreed point of delivery to the named place of destination, the buyer has no obligation to the seller to make a contract of carriage.

Lastly, in group D (Arrival), while the seller must contract or arrange at its own cost for the carriage of the goods to the named place of destination, the buyer has no obligation to the seller to make a contract of carriage.

As a result, in the E and F rules (EXW, FCA, FAS, and FOB), while the seller has no obligation to the buyer to make a contract of carriage, the buyer has an obligation to make a contract of carriage at its own cost. On the other hand, in the C and D rules (CFR, CIF, CPT, CIP, DAP, DPU, and DDP), while the seller has an obligation to make a contract of carriage, the buyer has no obligation to make a contract of carriage.

## 3.2. Party Obligations to Load or Unload Goods

### *3.2.1. Seller's Obligation to Load or Unload the Goods*

Table 2 represents the seller's obligation to load or unload goods in the place of shipment or destination. To help users, an explanation of the seller's loading and unloading obligation by dividing the place of shipment into the seller's premises and terminal and by dividing the place of destination into the terminal and the buyer's premises is presented.

**Table 2**. Seller's Obligation to Load or Unload Goods

| | **Loading and Unloading at the Shipment Location** | | **Unloading at the Destination** | |
|---|---|---|---|---|
| | **Seller's Premises** | **Terminal** | **Terminal** | **Buyer's Premises** |
| EXW | No obligation (Loading) | | | |
| FCA | Obligation (Loading) | | | |
| FCA* | | No obligation (Unloading) | | |
| FAS | | No obligation (Loading) | | |
| FOB<br>CFR<br>CIF | | Obligation (Loading) | | |
| CPT/CIP | Obligation (Loading) | | | |
| CPT/CIP* | | Obligation (Loading) | | |

**Table 2.** (Continued)

| | Loading and Unloading at the Shipment Location | | Unloading at the Destination | |
|---|---|---|---|---|
| | **Seller's Premises** | **Terminal** | **Terminal** | **Buyer's Premises** |
| DAP/DDP | | | No obligation (Unloading) | |
| DAP/DDP* | | | | No obligation (Unloading) |
| DPU | | | Obligation (Loading) | |
| DPU* | | | | Obligation (Loading) |

**Note:** * Means the delivery terminal, such as a quay, warehouse, container yard or road, rail, or air cargo terminal. However, in the FAS, FOB, CFR, or CIF rules used for carriage by sea, terminal means port.

If the place of delivery is the seller's premises, in EXW, the seller does not need to load the goods on any collecting vehicle arranged by the buyer, but in FCA, the seller has an obligation to load them on the vehicle. In FCA, if the place of delivery is another place that is not the seller's premises, the seller has no obligation to unload the goods from the seller's means of transport. In CPT and CIP, the seller is responsible for loading the goods on the seller's means of transport at the seller's premises or another place.

In FAS, the seller has no obligation to load the goods on board the vessel because the seller only has to place the goods alongside the ship (e.g. on a quay or a barge) at the named port of shipment. In FOB, CFR, and CIF, however, the seller has an obligation to load the goods on board the vessel at the named port of shipment.

While the seller has no obligation to unload the goods at the named place of destination in the case of the DAP or DDP rules, the seller has an obligation to unload the goods at the named place of destination in the case of the DPU rule.

### *3.2.2. Who Should Pay for the Costs of Unloading under the C and D Rules?*

Table 3 shows who must bear the costs for unloading the goods from the arriving means of transport at the named place of destination. To help users understand, an explanation of the costs for unloading goods by dividing the place of destination into the terminal and the buyer's premises is presented.

In the C and D rules (except DPU), which require a seller to make a contract of carriage, costs related to unloading at the named place of destination is determined by the conditions of contract of carriage contracted by the seller rather than by the parties' unloading obligations under these rules.

When CFR, CIF, CPT, and CIP are used, while the buyer is responsible for unloading the goods from the arriving means of transport at the named port or place of destination, the costs related to such unloading may be borne by the seller, or by the buyer, depending on the conditions under which the seller made the contract of carriage. That is, A9 of each C rule provides that "the seller must pay any charges for unloading at the agreed place of destination (or at the agreed port of discharge in the case of the A9 of each CFR and CIF), but only if those charges were for the seller's account under the contract of carriage", and its B9 provides

that "the buyer must pay unloading cost (or unloading cost including lighterage and wharfage charges in the case of B9 of each CFR and CIF), unless such costs were for the seller's account under the contract of carriage."

When DAP and DDP are used, while the seller has no obligation to unload goods from the arriving means of transport at the named place of destination, the seller must pay costs related to such unloading under A9/B9 of these rules where the costs were for the seller's account under the contract of carriage. In this case, paragraph 5 of the "explanatory notes for users" of these rules provides that "the seller is not entitled to recover such costs separately form the buyer unless otherwise agreed between the parties."

**Table 3**. Unloading Risk and Cost of the Goods under the C and D Rules

| | **Unloading at the Terminal of Destination*** | |
|---|---|---|
| | **Risk** | **Cost** |
| CFR/CIF<br>CPT/CIP<br>DAP/DDP | Buyer's responsibility | Buyer's obligation,<br>but determined by a contract of carriage |
| DPU | Seller's responsibility | Seller's<br>Obligation |
| | **Unloading at the Buyer's Premises** | |
| | **Risk** | **Cost** |
| CPT/CIP<br>DAP/DDP | Buyer's responsibility | Buyer's obligation,<br>but determined by a contract of carriage |
| DPU | Seller's responsibility | Seller's<br>obligation |

**Note**: * means the terminal of destination such as a quay, warehouse, container yard or road, rail, or air cargo terminal. However, in the CFR or CIF rules used for carriage by sea, terminal of destination means port of destination.

## 3.3. Seller's and Buyer's Obligations Related to Delivery/Transport Documents

Table 4 represents a seller's obligation to present "the usual proof of delivery", "the transport document", or "the documents that allow the buyer to take over the goods", and the buyer's obligation to accept such "proof of delivery", "transport document", or "the documents that allow the buyer to take over the goods."

Under the EXW of Incoterms 2020, the seller has no obligation to provide proof of delivery because the seller's obligation to deliver the goods is made when it must place them at the buyer's disposal at its own facilities while necessarily being loaded. In this case, after having taken delivery at the location, the buyer must give the seller a receipt (courier's receipt or FCR) as proof of having taken delivery.

Under the FCA of Incoterms 2020, the seller must provide proof of delivery at the seller's cost, or a transport document, if arranged by the seller. FCA is commonly used in conjunction with a Forwarder's Cargo Receipt (FCR)[2)], a document that proves that cargo has been

[2)] The forwarder's cargo receipt (or FCR) is issued by the freight forwarder or his agent to the shipper of the cargo when the cargo has been handed over to the freight forwarder. It serves only as confirmation that the cargo has been received for shipping (Transporteca, n.d.).

**Table 4**. Delivery/Transport Documents to Be Provided by Seller and Buyer

| | Delivery/transport document (A6) | Delivery/transport document (B6) |
|---|---|---|
| EXW | · No obligation | · Provides the appropriate evidence of having taken delivery. |
| FCA | · Provides the usual proof of delivery at the seller's cost, and a transport document if arranged by the seller. | · Accepts the proof of delivery. If agreed, the buyer must instruct the carrier to issue to the seller a transport document stating that the goods have been loaded (Bill of lading with an onboard notation). |
| FAS<br>FOB | · Provides the usual proof of delivery at the seller's cost, and a transport document if arranged by the seller. | · Accepts the proof of delivery provided under A6. |
| CPT<br>CIP<br>CFR<br>CIF | · Provides the usual transport document and dated within the agreed shipment period. Full set of originals if the document is negotiable. | · Accepts the transport document provided under A6 if it is in conformity with the contract. |
| DAP<br>DPU<br>DDP | · Provides documents that allow the buyer to take over the goods. | · Accepts the document provided under A6. |

received by a forwarder with the intention to be transported as per the buyer's conditions. FCR is a proof of delivery, and can be used for document compliance instead of a Bill of Lading (International Commercial Terms, n.d.). When the place of delivery is an inland point such as a port, a dock receipt (D/R) is commonly issued. That is, the seller delivers the goods to the operator at the container terminal on the dock prior to being loaded on the vessel, and then receives a dock receipt from the operator. The dock receipt must be provided by the seller to the buyer. In this case, the buyer must accept the dock receipt as proof of delivery.

Under the FAS of Incoterms 2020, after placing the goods alongside the ship ready to be loaded, the seller must provide proof of delivery at the seller's cost, or a transport document, if arranged by the seller. This proof of delivery could be in the form of a shipping order, or a transporter's delivery note signed by the port, terminal, or ship agent when delivery is made (Barrios, 2017). In this case, the buyer must accept the shipping order or delivery note as proof of delivery.

Under the FOB of Incoterms 2020, the seller places the goods on board the vessel nominated by the buyer at port of shipment, and then may receive just a mate's receipt (M/R) as a receipt of goods from the carrier. The mate's receipt must be provided by the seller to the buyer. In this case, the buyer must accept the mate's receipt as proof of delivery.

Where the seller is requested by the buyer to assist in securing a transport document which functions as evidence of the contract of carriage, and also as the receipt of goods, the seller loads the goods on board the vessel and receives a transport document, like a bill of lading, from the carrier. In this case, the seller provides the bill of lading to the buyer, and the buyer must accept the bill of lading as proof of delivery.

Under the CFR and CIF of Incoterms 2020, since the seller makes the contract of carriage for the goods with the carrier at its cost and prepays the costs of freight up to the port of destination, the seller places the goods on board the vessel nominated by the seller at the port of shipment, and then receives the bill of lading from the carrier. The transport document, such as a bill of lading, must be provided to the buyer by the seller as proof of delivery (Lee

Jung-Sun, 2019, 637). In this case, the buyer must accept the shipped bill of lading as the transport document if it is in conformity with the contract.

Under the CPT and CIP of Incoterms 2020, all modes of transport may be used. Under these rules, since the seller makes the contract of carriage for the goods with the carrier at its cost and prepays the costs of carriage up to the named place of destination, the seller hands over the goods to the first carrier contracted by the seller at the agreed place of delivery, and then receives a bill of lading or a multimodal transport document from the carrier. The transport document, such as a bill of lading or multimodal transport document, must be provided to the buyer by the seller as proof of delivery. In this case, the buyer must accept the bill of lading or multimodal transport document as the transport document if it is in conformity with the contract.

Under the D rules (DAP, DPU and DDP) of Incoterms 2020, the delivery is completed at the named place of destination. The difference between DPU and DAP (including DDP) is the obligation to unload goods. Under the DAP and DDP rules, the seller is not required to unload the goods from the arriving means of transport at the agreed place of destination. Under the DPU rule[3)], the seller is obliged to unload the goods from the arriving means of transport at the agreed place of destination. The seller, at its own cost, must provide the buyer with any document the buyer needs to take over the goods. What form this document takes will depend on the agreement in the contract, and might simply be in the form of a receipt which the buyer is to sign. However, it might, in the case of DAP and DPU wherein the buyer must import clear the goods, be a copy of the seller's transport document to evidence the export and the date of shipment (Trade Finance Global, n.d.). In this case, the buyer must accept the document provided under A6.

## 4. Matters to Be Noted by the Parties in Connection with Contract of Carriage and Transport Document

### 4.1. Matters to Be Noted by the Parties in Connection with the Conclusion of a Contract of Carriage

Under A4 and B4 of each Incoterms 2020 rule, in the case of the E and F rules, "the seller has no obligation to the buyer to make contract of carriage", but in the case of the C and D rules, "the seller must contract or procure a contract for the carriage of the goods from the agreed point of delivery, if any, to the named port or place of destination." On the other hand, in the case of the F rule, "the buyer must contract at its own cost for the carriage of the goods from the named place of delivery or from the named port of shipment", in the case of the C and D rules, "the buyer has no obligation to the seller to make a contract of carriage."

In the case of carriage by sea, the legs of carriage can normally be divided into three legs: (a) from the seller's premises to the port of shipment, (b) from the port of shipment to the port of destination, and (c) from the port of destination to the buyer's premises. Leg (a) is called pre-carriage, (b) is called main carriage, and (c) is on-carriage.

If the point or place of delivery is a port of shipment in the F rule, the parties should note that the seller has no obligation to make a contract for leg (b) of the main carriage. The seller,

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[3)] The DPU rule must be used only if the seller is confident to arrange the unloading of goods at the named place of destination because the seller is responsible for unloading the goods at any place of destination, such as port terminals, warehouses, or transshipment points at which unloading the goods can occur.

therefore, needs to make a contract at its own cost for leg (a) of pre-carriage. In this case, it should be noted that the phrase "no obligation" in respect to the seller's obligation for the conclusion of the contract of carriage does not mean that one party does not have to do what it is supposed to do, but that it is not obliged to do something for the other party. It should also be noted that F rule of Incoterms 2020 requires the buyer to make a contract for leg (b) of main carriage in order to enable the seller to deliver the goods on or alongside the means of transport.

If a port is the place of destination to which the seller has to pay the costs of carriage in the C rule, it should be noted that the seller must pay the costs of carriage and make a contract for leg (b) of main carriage, but the risk is transferred from the seller to the buyer at the port of shipment, not the port of destination. In such a case, it should also be noted that the buyer is not obliged to make a contract for leg (b) of main carriage, but it needs to make a contract at its own cost for leg (c) of on-carriage. If the buyer's premises are the destination to which the seller has to pay for the costs of carriage in the CPT or CIF rules, it should be noted that the seller must pay the costs of carriage and make a contract for leg (b) of main carriage and leg (c) of on-carriage, but the risk is still transferred from the seller to the buyer at the place of shipment, not the destination. In such a case, it should also be noted that the buyer is not obliged to make a contract from leg (a) of pre-carriage to leg (c) of on-carriage.

If the point or place of delivery is a port of destination in the D rule, it should be noted that the seller must pay the costs of carriage and make a contract for leg (a) of pre-carriage and leg (b) of main carriage, and the risk is transferred from the seller to the buyer at that port of destination. If the buyer's premises are the place of destination to which the seller has to pay for the costs of carriage in the D rule, it should be noted that the seller must pay the costs of carriage and make a contract for leg (a) of pre-carriage, leg (b) of main carriage, and leg (c) of on-carriage, and the risk is transferred from the seller to the buyer at the buyer's premises. In such case, it should also be noted that the buyer is not obliged to make a contract from leg (a) of pre-carriage to leg (c) of on-carriage.

## 4.2. Matters to Be Noted by the Parties in Relation to the Loading and Unloading of the Goods

One of the important aspects in Incoterms 2020 is where the goods are delivered to the buyer as to where transport risk is transferred. Accidents occur most frequently in international transportation when loading and unloading cargo. When heavy cargo is loaded or unloaded, accidents may occur. Special care should be taken when carrying large precision instruments that can be damaged by strong vibrations or impacts.

Accordingly, Incoterms 2020 clearly states who will bear the risks or costs of loading and unloading. That is, Incoterms 2020 stipulates in principle that the responsibility for loading and unloading the goods is borne by the person who has the loading and landing equipment. However, they stipulate that the obligation to load and unload the goods may vary depending on the place for delivery of the goods and the obligation to conclude a contract of carriage.

### *4.2.1. Loading and Unloading of the Goods in EXW and FCA*

In the event that delivery takes place on a seller's premises, EXW does not require the seller to load the goods on any collecting vehicle, but under the FCA, the seller is obliged to load the goods on the collecting vehicle.

In the case of the EXW Rule, therefore, it is very inconvenient for the buyer to load goods on its own vehicle because the loading equipment needed to load goods at the seller's premises is owned by the seller, not the buyer. In addition, it would be impossible for the buyer to load

the goods on the collecting vehicle at the seller's premises if the buyer's work force cannot enter into the seller's premises due to legal regulations.

In such cases, even if the seller loads the goods at the buyer's request on the buyer's vehicle on behalf of the buyer, the risk and costs of loading the goods are still borne by the buyer. Therefore, it should be noted that it is convenient for the parties to use FCA instead of EXW if it is difficult for the buyer to load the goods on its vehicle at the seller's premises.

It should also be noted that, in FCA, if the delivery takes place in another place other than the seller's premises, the buyer is responsible for unloading the goods at the named other place because the seller's obligation is to place the goods at the disposal of the carrier nominated by the buyer on the arriving means of transport at that place.

### *4.2.2. Loading of the Goods on Board the Vessel in FOB*

In the FOB rule used in bulk cargo, the seller is obliged to load the goods on board the vessel in due time. Such an obligation is the essence of the FOB rule. The FOB rule has some extensions, such as "Stowed" and "Stowed and Trimmed", which are designed to ensure that the seller completes the activity of loading. These are used when trading grains or minerals which may cause stowage issues if left untrimmed, or pipes and logs, which may also cause stowage issues if left unstowed (Barrios, 2017).

It should be noted that if the parties sell the goods on an FOB basis and agree to extensions such as "FOB stowed" or "FOB stowed and trimmed", they should be aware of the exact requirements associated with these words. That is to say, if the contract is concluded under terms such as "FOB stowed" or "FOB stowed and trimmed", the seller's obligation to deliver the goods is considered incomplete unless the seller has stowed or trimmed the goods, even if the goods are loaded on board the vessel.

### *4.2.3. Unloading of the Goods at the Place of Destination in C Rule*

In C rule, in the case of unloading the goods at the named place of destination, there is a question of who is responsible for unloading. In C rule, the buyer is responsible for unloading at the place of destination because the place where the goods are delivered and the risk is transferred is the place of shipment. However, it should be noted that the cost of unloading the goods at the place of destination may vary depending on the condition of the transport contract. This is because in C rule, the seller has to make a contract of carriage "on usual terms" at the seller's cost to the named place of destination.

Therefore, if such usual terms of the contract for carriage include the unloading costs, the seller must pay, and if the terms do not include unloading costs, the buyer must pay. In either case, the risk of unloading the goods at the named place of destination is borne by the buyer.

### *4.2.4. Unloading of the Goods at the Destination in D Rule*

In the case of unloading the goods at the named place of destination in D rule, Incoterms 2020 clearly stipulates responsibility for unloading the goods. In the DAP and DDP rules, the seller is not obliged to unload the goods from the arriving means of transport at the place of destination, but in the DPU rule, the seller is obliged to unload the goods. Therefore, it should be noted that if the goods roll during unloading from the arriving truck at the buyer's premises, the risks and costs related to such unloading are borne by the buyer in the case of the DAP and DDP rules and are borne by the seller in the case of the DPU rule.

In the case of the D rule, which requires the seller to make a contract of carriage to the named place of destination, there is no problem with the unloading costs because the seller is obliged to unload the goods at the DPU. However, in the case of the DAP and DDP rules,

attention is drawn to whether the seller will be able to recover such unloading costs from the buyer if such unloading costs are borne by the seller under the contract of carriage. In such cases, it should be noted that there is a problem that a DPU seller that does not have to pay for unloading costs is forced to pay for unloading costs because Incoterms 2020 clearly stipulates that the seller cannot recover unloading costs from the buyer.

In order to solve this problem, the seller should consider how to use the stevedore conditions, such as berth term, FI, FO, FIO, FIOS, or FIOST related to the loading and unloading of the goods, especially when the goods are carried by sea.

In particular, in the case of the DAP and DDP rule, when the place of delivery is the destination port , the seller must make a contract of carriage to that destination port , but is not obliged to unload the goods from the arriving means of transport at that port. If the seller was supposed to bear such unloading costs under the contract of carriage even though the seller is not obliged to unload, the seller will not be able to recover such unloading costs from the buyer, and will eventually lose such unloading costs.

Therefore, in order to avoid the loss of unloading costs, it is well advised that the seller make a contract of carriage needed to bring the goods to the destination port on FI terms that the seller does not bear unloading costs.

### 4.3. Matters to Be Noted by the Parties in Relation to the Transport Document in FCA

Under the FCA (Free Carrier) rule, the seller's obligations are deemed to have been fulfilled when the seller delivers the goods to the carrier arranged by the buyer. However, where goods are sold FCA for carriage by sea and the settlement is made under a letter of credit, the seller's or buyer's banks often request a shipped bill of lading (a bill of lading with an on-board notation) be issued after the goods are loaded on board the vessel.

There are usually detailed terms and conditions on the face and back of a bill of lading. In the case of a bill of lading issued by a Korean shipping company, the phrases "Shipped on board the vessel…" or "Received by the carrier from the shipper…" are printed at the top right-hand column on the face of the bill of lading.

A bill of lading stating the phrase "Shipped on board the vessel..." is an on-board bill of lading, and a bill of lading stating the phrase "Received by the carrier from the shipper..." is a received bill of lading. The "on-board bill of lading", called a "shipped bill of lading", is issued after the goods are loaded onto a conventional ship, but the "received bill of lading" is issued after the shipment of the container is received by the carrier at an inland point, such as a container yard (CY for FCLs) or container freight station (CFS for LCL consolidations) before they are loaded on the vessel. That is to say, in FCA, the delivery is completed before the goods are loaded on board the vessel (Park Suk-Jae, 2020, 408).

Thus, in FCA used for containerized cargo, the seller receives a received bill of lading from the carrier. However, the received bill of lading is usually not negotiated by the negotiating bank in the L/C transaction requiring a shipped bill of lading (Woo Kwang-Myung, 2020, 369). For this reason, in reality, most parties still preferred to use FOB rather than FCA in L/C transactions requiring a shipped bill of lading. This is because the seller can complete its obligation of delivery by loading the goods on board the vessel and obtain a shipped bill of lading from the carrier. When the seller presents the on-board bill to the bank, the bank accepts it and pays the seller.

The carrier is usually obliged to issue, and may issue, a shipped bill of lading under the contract of carriage when the goods have actually loaded on board the vessel. Under the FCA rule, delivery is completed before the goods are loaded on board the vessel, but it is not certain

whether the seller will receive the bill of lading from the carrier.

In order to encourage sellers of containerized goods to use the FCA in the L/C transaction, Incoterms 2020 has provided an additional option in FCA A6/B6 (Article A is the seller's obligations and Article B is the buyer's obligations). If the dated "On Board Notation" is added to the received bill of lading, this bill of lading will become the on-board bill of lading, and can be accepted by the bank in the L/C transaction. In the past, carriers have frequently refused to issue a bill of lading with an on board notation to the seller if they received the goods from an intermediary transport (such as a truck) instead of directly from the seller (Thompson, 2020).

That is to say, parties can agree that the buyer will instruct its carrier to issue an on-board bill of lading to the seller at the buyer's cost and risk after loading the goods, and then the seller shall be obliged to present that bill of lading to the buyer, typically through the bank.

However, it should be noted that even if such an optional mechanism is adopted, this presentation by the seller to the buyer has no effect on the transfer of risks set by the general rules of the FCA, nor does the seller assume any obligation to the buyer as to the terms of the contract of carriage.

## 5. Conclusion

Incoterms 2010, widely used by traders around the world, were amended by the ICC. This new revised Incoterms 2020 was published in September 27, 2019, and went into effect on January 1, 2020.

The main revisions of Incoterms are as follows: "Improved presentation by changes to layout (changing the order of rules, changing clauses of the party obligations, and horizontal article-by-article comparison)", "change in the three-letter initials for DAT to DPU", "bills of lading with an on-board notation and the FCA rule", "different levels of insurance coverage in CIF and CIP", "costs are clarified", "carriage by seller's or buyer's own means of transport in FCA, DAP, DPU, and DDP", "inclusion of security-related requirements", "guidance notes has changed to explanatory notes for users", among others.

This paper focused on what traders need to be aware of in relation to the contract of carriage and delivery/transport documents under the new version, Incoterms 2020. In summary, this is as follows.

First, as for party obligations to make a contract of carriage, Incoterms 2020 is greatly classified into (a) C and D rules for which a contract of carriage must be concluded by the seller, (b) an F rule for which a contract of carriage must be concluded by the buyer, and (c) an E rule for which a contract of carriage is concluded by the buyer. Therefore, parties shall accurately identify who should make the contract of carriage and pay attention to the fact that they shall make a contract of sales with appropriate rules .

Second, as for party obligations to load and unload goods, it should be noted that (a) in the C rule the risk is transferred from the place of shipment, but the seller must make a contract of carriage to the named place of destination, the unloading costs from the arriving means of transport at that place of destination are determined by the terms of the contract of carriage, and (b) in the DAP and DDP rules, even if the seller does not oblige to unload the goods from the arriving means of transport at the place of destination, such unloading costs cannot be recovered from the buyer if the unloading costs were borne by the seller under the contract of carriage. It should also be noted that the seller shall make a contract of carriage on FI terms to prevent a loss caused by the seller's inability to recover unloading costs from the buyer.

Third, as for delivery/transport documents to be presented and received by the parties, it

should be noted that the parties can agree that the buyer will instruct its carrier to issue an on-board bill of lading to the seller after the loading the goods in Incoterms 2020 in order to ensure that the FCA continues to be used even in an L/C transaction.

In other words, in the case that an FCA was being used for containerized goods, the seller receives a received bill of lading from the carrier. Such a received bill of lading is not accepted by the bank in an L/C transaction requiring the seller to present the on-board bill of lading. For this reason, in the case of containerized goods, the parties were still using the FOB rather than FCA. However, as the Incoterms rules have been revised, it is important to be aware that, even in L/C transactions, if the contracted goods are containerized goods, the FCA can be used to present the on-board bill of lading to the bank.

As above, the seller and the buyer should be accurately aware of the provisions set out in Incoterms 2020 relating to contract of carriage and transport documents. This is because without an accurate understanding of these provisions, it is not possible to reduce or eliminate disputes that may arise from interpretative misunderstandings between parties in the contract of sales concluded by the seller and the buyer.

## References

Ademuni-Odeke, X. (2020a), "The Insurance Clause in Incoterms 2020: The Latest Stage in Its Evolution and a Progressive Development 1980-2020 (PART II)", *European Insurance Law Review*, 2020(2), 48. Available from http://www.erevija.org/pdf/articles/eng/XXX%20Ademini%20Odeke%20engl.pdf

Ademuni-Odeke, X. (2020b), "The Insurance Clause in Incoterms 2020: The Latest Stage in Its Evolution and a Progressive Development 1980-2020 (PART I)", *European Insurance Law Review*, 2020(1), 28-29. Available from http://www.erevija.org/pdf/articles/eng/Ademuni%20Odeke%20engl.pdf

Averitt Express (2020, May 20), *Incoterms 2020: What Shippers Need To Know*. Available from https://blog.averittexpress.com/incoterms-2020-what-shippers-need-to-know

Barrios, K. (2017, October 10), *Understanding Incoterms (International Commercial Terms)*. Available from https://www.xeneta.com/blog/incoterms

Brunner, R. (2019, October 29), *Incoterms® 2020: New Rules for International Trade*. Available from https://www.lexology.com/library/detail.aspx?g=6cb8bec9-6e93-4205-a34e-94c450ae45e1

Ghaffar, F. (2020, June 1), *Incoterms 2020: What Has Changed & How It Impacts International Trade?*. Available from https://menaentrepreneur.org/2020/06/incoterms-2020-what-has-changed-how-it-impacts-international-trade

Global Negotiator (2019), *Practical Guide to Incoterms 2020*, London: Author. Available from https://globalnegotiator.com/files/incoterms-2020-book.pdf

Hong, Jae-Sung and Jin-Gu Song (2020), "Misuse Challenges of Container Loading Conditions and Practical Points to Note in the FCA Rules of Incoterms 2020®", *Journal of International Trade & Commerce*, 16(5), 375-388. http://dx.doi.org/10.16980/jitc.16.5.202010.375

International Chamber of Commerce (ICC) (2010), *Incoterms® 2010: ICC Rules for the Use of Domestic and International Trade Terms*, Paris: ICC Services Publications.

International Chamber of Commerce (ICC) (2019a, April 1), *ICC Prepares to Launch Incoterms® 2020*. Available from https://iccwbo.org/media-wall/news-speeches/icc-prepares-launch-incoterms-2020

International Chamber of Commerce (ICC) (2019b), *Incoterms® 2020: ICC Rules for the Use of Domestic and International Trade Terms*, Paris: ICC Services Publications.

International Commercial Terms (n.d.), *FCA: Free Carrier (Place of Delivery): Incoterms 2020*. Available from https://internationalcommercialterms.guru/incoterms-fca (accessed June 11, 2020)

Jeon, Soon-Hwan (2019), "An Assessment of the Major Revision of Incoterms® 2020 Rules", *Journal of International Trade & Commerce*, 16(2), 125-151. http://dx.doi.org/10.16980/jitc.16.2.202004.125

Khanh (2020, January 3), *Incoterms 2020 Major Changes*. Available from https://voltransvn.com/incoterms-2020-major-changes

Kim, Dong-Chun (2019), "A Study on the Delivered at Terminal (DAT) Term under Incoterms 2010", *Journal of International Trade & Commerce*, 15(1), 473-490. http://dx.doi.org/10.16980/jitc.15.1.201902.473

Kim, Dong-Chun (2020), "A Review and Analysis of the Modified Clauses of Insurance under Incoterms® 2020", *Journal of International Trade & Commerce*, 16(2), 495-507. http://dx.doi.org/10.16980/jitc.16.3.202006.495

Lee, Jung-Sun (2019), "Issues in Trade Documents Resulting from the Misuse of Trade Terms in Incoterms: A Literature Review", *Journal of International Trade & Commerce*, 15(6), 633-652. http://dx.doi.org/10.16980/jitc.15.6.201912.633

Park, Suk-Jae (2020), "A Study on the Problems Related to International Multimodal Transport in International Trade Rules", *Journal of International Trade & Commerce*, 16(1), 401-410. http://dx.doi.org/10.16980/jitc.16.1.202002.401

PF Collins (n.d.), *What Are Incoterms®? Introducing Incoterms® 2020*. Available from https://www.pfcollins.com/incoterms (accessed September 18, 2020)

Shin, Hak-Sung and Dong-Yoon Kim (2019), "An Examination of the Revised Contents of Incoterms®2020 Rules", *Journal of International Trade & Commerce*, 15(5), 537-552. http://dx.doi.org/10.16980/jitc.15.5.201910.537

Shipit (2020, April 7), *Incoterms 2020 Explained: 11 Terms, 5 Changes: American Export Lines*. Available from https://www.shipit.com/archives/2020/04/07/incoterms-2020-explained-11-terms-5-changes-american-export-lines

Thompson, B. (2020, January 20), *Incoterms® 2020 Explained: The Complete Guide*. Available from https://incodocs.com/blog/incoterms-2020-explained-the-complete-guide

Transporteca (n.d.), *What You Need to Know: Shipping Documentation*. Available from https://transporteca.co.uk/shipping-documentation (accessed June 15, 2020)

Woo, Kwang-Myung (2020), "A Study on the Problems and Practical Precaution of Container Shipping Terms in Incoterms® 2020", *Journal of International Trade & Commerce*, 16(5), 353-374. http://dx.doi.org/10.16980/jitc.16.5.202010.353