

Incoterms® 2020

European Shippers' Council is contributing to the review process of Incoterms. We are happy to see that the International Chamber of Commerce has taken on board practitioners' criticism as to the readability, clarity, and practical applicability of several Incoterms. Sadly, not all problems as experienced by practitioners are resolved in the currently proposed changes. So, if no further improvements are made, we can still expect issues to arise concerning packaging, EXW, and excise/customs related activities.

The International Chamber of Commerce updates the Incoterms® every ten years to reflect current trade customs. As almost ten years have passed since the last Incoterms® were issued, the review process by all national and regional committees is well on its way. The new Incoterms 2020 will enter into force on 1 January, 2020. Here we reflect on the main changes that ESC experts have proposed to the draft Incoterms 2020.

DAT

The proposed changes are not radically different. Perhaps this is a reflection that international trade has not changed radically since 2010. The only acronym that will undergo a 'facelift' is Delivered At Terminal (DAT). Several organizations have indicated that in practice this acronym was wildly misinterpreted. Many practitioners were under the illusion that the use of the word 'Terminal' meant that a customs terminal had to be used. This is of course not the case. To make sure this acronym is better understood, it will be changed to 'DPU' (Delivered at Place Unloaded). Hopefully, more parties will take this Incoterm® into consideration when choosing the best acronym for their business.

Wording

Other changes that are proposed are also induced from a motivation to provide clearer wording of the agreements, so that practitioners will hopefully encounter less discussions on the execution of the Incoterms®. We as ESC heartily support this, and we have made several suggestions to improve the readability, clarity and practical applicability of several Incoterms® that our members experienced difficulties with in the past.

Current risks resolved?

This is especially true for the acronym ExWorks and all excise and customs related formalities. In this regard, it is our experience that many businesses are unaware of the risks of incorrect selection and application of this incoterm®, due to insufficient knowledge or incorrect interpretation. For instance, the influence on formalities when goods are exported under 0% VAT rate is one of the many challenges faced by practitioners every day. In this regards we found the proposed changes to EXW to be a great improvement. However, these issues are still not entirely resolved. It would be welcomed if more attention was given to the effect of the different Incoterms® on customs duties, VAT and excise formalities. As some of the wording in the Incoterms® regarding these topics is still very broad, multiple interpretations exist, leading to more confusion in the sector.

The text of the Incoterms® 2020 must be made clear and concise and accompanied with clear and practical examples where possible. To a limited extent, practical cases are already part of the official

guide. By including more practical examples and cases per incoterm®, businesses will obtain better insights in the do's and don'ts, allowing them to choose the best incoterm® in the occasion and enabling them to properly apply the selected incoterm®.

Packaging

Another proposed change concerns packaging. The obligation on the buyer to assist the seller in obtaining any information on specific packaging is scratched in all Incoterms®. This is worrying. As the seller has limited resources to investigate all legal requirements for packaging abroad, and the buyer has complete control over access to such information it could lead to significant problems when dangerous goods, or consumer goods are sold, without the proper packaging. We understand that under EXW and the F-conditions the duties on the buyer ought to be minimal, but safety information should always be shared. We understand that responsibility might be felt as a burden. However, we have seen several cases where sellers have used this provision to obtain all necessary information. We would agree to lift the burden to an extent, but by making sure the buyer still needs to assist in obtaining the information, a balance can and ought to be struck.

Conclusion

All in all, we support most changes as proposed. However, as mentioned earlier, not all problems as experienced by practitioners concerning packaging, EXW, and excise/customs activities are resolved in the current draft. We hope these issues can still be covered before the Incoterms® 2020 are finalized!