

[Case Study of the Application of the Incoterms® 2010 Rules](#)

The case below represents questions and challenges of our client with Incoterms® 2010 rules and our interpretation and application of rules to client's situation. At Win Global Partners we address cases individually and always refer to the ICC guidebook as a source.

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Team of Win Global Partners

Challenge

The client imports precious stones and metals to the United States from different countries. The client is currently using CIF (Cost, Insurance and Freight) Air Freight, Clients Facility, as a term of the international sale. The client also requests the Seller to arrange both transport and insurance from the point of shipment to the client's facility and pay customs duties in the United States.

Recommendation

Starting January 1st, 2011, CIF term is not applicable to air transport. The decision to restrict its use has been made by ICC because in the definition of CIF the point of risk transfer between the parties is the board of vessel (or ship's rail in the previous version of rules). Thus, CIF can't be used in air transport by definition.

"The seller must deliver the goods either by placing them on board of the vessel or by procuring goods so delivered."¹ Also, "the seller bears all risks of loss of or damage to the goods until they are delivered in accordance with [the delivery rule]"²

In the mean time, ICC recommends to use the CIP term instead of CIF for other modes of transport.

"CIF may not be appropriate where goods are handed over to the carrier before they are on board the vessel /.../. In such circumstances, the CIP rule should be used."³

There are several reasons, however, why CIP can't be used by the client.

1. Point of Risk transfer. According to the Incoterms® 2010 under CIP risk passes from the Seller to the Buyer when the goods are transferred to the first carrier. In the client's case the first carrier would likely be ground transport delivering goods to the airport of the country of shipment. Thus, if goods are lost or damaged after they are transferred to the carrier, the Buyer will be responsible for this loss or damage and will have to compensate them to the Seller.

"The seller must deliver the goods by handing them over to the carrier /.../on the agreed date or within the agreed period."⁴ Also, "the seller bears all risks of loss of or

¹ Incoterms® 2010, ICC Publication No. 715E, p. 110

² Incoterms® 2010, ICC Publication No. 715E, p. 111

³ Incoterms® 2010, ICC Publication No. 715E, p.106

⁴ Incoterms® 2010, ICC Publication No. 715E, p.47

damage to the goods until they have been delivered in accordance with [the delivery rule]”⁵

2. Import duties. According to the Incoterms® 2010 under CIP the Buyer must pay import duties and perform all customs formalities to clear the goods in the country of destination (USA). The client, on the contrary, requests the Seller to pay import duties and clear the goods

“The buyer must /.../ pay: (e) where applicable, all duties, taxes and other charges as well as the cost of carrying out customs formalities payable upon import of the goods.”⁶

Considering these reasons and the client’s needs the best term to use in this case will be DDP – Delivered Duty Paid.

According to the Incoterms® 2010 under DDP the Seller must arrange the shipment and pay all costs including import and export duties up to the point when the goods are transferred to the Buyer at the final point of destination.

“The seller must pay: (a) /.../ all costs relating to the goods until they have been delivered. (b) any charges for unloading at the place of destination that were for the seller’s account under the contract of carriage, and (c) where applicable, the costs of customs formalities necessary for export and import as well as all duties, taxes and other charges payable upon export or import of goods /.../”⁷

DDP allows the Buyer to request the Seller to arrange the insurance, if the Buyer wants it. However, the Buyer will indirectly pay for the insurance, because it will be included in the price of the goods.

“The buyer has no obligation to the seller to make a contract of insurance. However, the buyer must provide the seller, upon request, with information for obtaining insurance”⁸

At the same time under DDP the Seller has responsibility for the loss or the damage of goods up to the point when the goods are transferred to the Buyer at the final point of destination.

“The seller must deliver the goods by placing them at the disposal of the buyer on the arriving means of transport ready for unloading at the agreed point, if any, at the named place of destination on the agreed date or within agreed period.”⁹ Also, “the seller bears all risks of loss of or damage to the goods until they have been delivered in accordance with [the delivery rule]”¹⁰

When arranging the agreement with the sellers it is important for the client to indicate exact address of the facility. For example, the request for quote will look:

DDP #10, Main St, Austin, TX, USA, Postal Code

⁵ Incoterms® 2010, ICC Publication No. 715E, p.48

⁶ Incoterms® 2010, ICC Publication No. 715E, p.49

⁷ Incoterms® 2010, ICC Publication No. 715E, p.72

⁸ Incoterms® 2010, ICC Publication No. 715E, p.71

⁹ Incoterms® 2010, ICC Publication No. 715E, p.71

¹⁰ Incoterms® 2010, ICC Publication No. 715E, p.72

Outcome

The client put the requirement into the compliance with the Incoterms® 2010 and assured Seller`s full responsibility for the precious cargo.

About Win Global Partners

Headquartered in Toronto, Canada, Win Global Partners work in **the area of export-import consulting and logistics** to assist with clients' unique global expansion needs including breaking into new foreign markets. Win Global Partners offer solutions at all steps of clients' international business development from non-exporters/importers to regular exporters/importers, such as: product adaptation, compliance management, export-import outsourcing and freight forwarding. For more information please visit www.winglobal.ca.

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