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CONSIDERATIONS REGARDING THE CONDITIONS FOR THE DELIVERY OF GOODS IN FOREIGN TRADE

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ABSTRACT

The evolution of contemporary society, characterized by increasing freedom of action, gives to entrepreneurs a wide field of functional integration in the foreign trade systems of European Union and international system.

Regardless of size or scope of the entities in which they operate, the business development at the international level tends to become a condition of existence for companies, also the affairs strategy has to meet the requirements of globalization.

In the frames of accounting rules in accordance with european directives and International Standards of Accounting, this trend brings into focus the need to rethink, in the appropriate terms, accounting concepts and models appropriate to foreign trade activities.

Because the fact that on the organization and management accounting entities involved in international commercial transactions put their imprint the delivery of goods, influencing the recovery of financial accounting information in the processes of analysis, decision and control, in this paper/work I will address the content of delivery conditions INCOTERMS 2000, the passing of each issue in practice from terms of the various ways of delivery requiring costs that can not be neglected.

Using the correct delivery conditions of INCOTERMS involve/implies from the part of contractual partners not only knowing the content of those rules, but their insertion in the contract with all the details necessary, they should also be correlated fairly with other rules or practices which affect the execution of internationally sale contract, such as: the regular transmission lines (Liner Terms) conditions, port usages, specific rules of professional conduct etc.

1. Introduction

The international business development tends to become a condition for existence of firms, regardless of size or scope of activity and the consequence is that internationalization and globalization are constituted in basic features of this beginning of century and millennium.

The internationalization of commercial trading, understood as the pursuit of such activities across national borders, is not a new phenomenon in the world economy, during the post-war period this taking an unexpected development, influenced by many factors, such as: the postwar reconstruction process, the institutionalization of international economic relations, the progressive reduction of barriers to trade flows and international financial, the decreasing of transport and communications costs, the technical development of transport modalities, the expanding work of transnational corporations.

It is known that an important issue in any international commercial transaction is the moment of time or the place of goods transfer of ownership/property right from the seller to the buyer.

The Vienna Convention on the international sale of goods, governing the transfer of risk without any reference to the transmission of property, because it is unlikely to establish a criterion to identify the time of transfer of ownership, under the conditions when rules of law in many countries define this moment in a different way.

This issue is governed by customs and trade rules laid down in the delivery conditions INCOTERMS 2000 and RAFTD 1941.

Starting from the fact that the supply is an essential component of the sale, in the follows, I will refer to *the delivery conditions of goods in foreign trade*, known as the fact that one of the essential terms of international trade contract is the delivery condition, thereby being settled the transfer of goods and risks from seller to buyer, including legal and economic generated consequences.

2. Theoretical considerations on the delivery provisions/conditions in foreign trade

Because the fact that delivery of goods is an essential component of selling, the business partners paid special attention to establish the conditions for determining the place and time when, same time with the passage of goods from exporter to importer, are taking place the taking over of expenses and risks assumed by the delivery.

Among the activities related to the transfer of goods from the seller to the buyer, can be listed: the obligations of the parties on goods quality control, the packaging, the transportation during the domestic load of the vehicle, the ensuring of goods, the expenses on licenses for the export-import duties etc.

*The delivery condition*¹ represents one of the main terms of an international trade contract, thereby being settled the transfer of goods and risks from seller to buyer, including legal and economic consequences arised.

The delivery conditions are governed by a series of international standards which serve as reference for the business world.

Since 1928, at the initiative of the International Chamber of Commerce in Paris, was made the first regulatory condition of delivery, which included six conditions for delivery which have laid the foundations of rules of uniform interpretation of the obligations, risks and liabilities in international sales area.

Later, in the year 1936, the International Chamber of Commerce in Paris published a series of rules on international delivery, called **INCOTERMS (International Commercial Terms)** comprising 11 international trading terms, known as "terms of delivery."

The delivery conditions of goods in international trade have been revised and supplemented on several occasions between 1953 and 2000.

The Executive Committee of the International Chamber of Commerce in Paris has validated the rules INCOTERMS 2000 and it has shown in "Publication 560" of 1 January 2000.

On the other hand, in the United States has adopted, since 1919, a code of practices on international trade, which was revised in 1941, becoming the "Revised American Foreign Trade Definitons", or **RAFTD 1941**².

Even if RAFTD is still used in the american land, particularly in the U.S.A, Canada and Mexico, INCOTERMS tends to impose as code of universal character.

The INCOTERMS 2000 rules gather **13 delivery conditions**, which were grouped into **four different categories**, taking it as the criterion the main obligations of the seller.

INCOTERMS, the latest version, "Publication 560", which came into force on the 1 January 2000, presents a number of **advantages** for internațional³ trade:

- *Offers a precise definition of :*

¹ Radu, F., Paraschivescu, M.D., *The book keeping of foreign trade operations*, The Tehnopress P.H., Iași, 2007, page 18

² Popa, I., *The foreign commerce transactions*, Economic P.H., Bucharest, 2002, page 218

³ Popa, I., op. cit., page 219

- seller's obligations in connection with the delivery;
- risks transfer between the two parties involved, during the transport of goods from seller to buyer;
- sharing of expenses between the two sides, during transport of goods;
- documents – or equivalent electronic messages – due by the seller to the buyer.

- *Have a voluntary basis*, the parties having the freedom to use those rules, but not obliged to do. Once a condition INCOTERMS was inserted in the contract agreement by the parties, compliance is mandatory. Even if you do not have the force of international law, INCOTERMS have proved a particularly useful tool in the practice of foreign trade. In the absence of an explicit reference to INCOTERMS 2000, the parties may find in the face of serious difficulties of interpretation of the contract in its execution. On the other hand, the parties may make reference to a specific condition INCOTERMS bringing him but some changes. In other words, admitting variations, INCOTERMS allow some flexibility in contracting, the publication 560 discourage the abuse of variants.

- *Have an international character*, these conditions do not concern only the international contracts. According to the rules INCOTERMS 2000, the delivery conditions are encoded by three letters and are grouped in **four different categories** whose sequence is determined by the growth of obligations to the seller, such as:

1) **Group E**, that the seller has only the obligation to make the goods available to the buyer in their own spaces, providing minimum requirements for the seller (EXW condition)

2) **Group F**, that the seller must make the goods available to a carrier, named by the buyer, seller not taking the risks and costs for the main transport (the FCA, FAS, FOB conditions).

3) **Group C**, under which the seller is obliged to ensure the main transport, and in some cases (CIF, CIP) even to provide the ensurance of merchandise, following that through the contract price to recover those expenses. The seller does not assume the risk of loss or damage of goods and any additional expenses arising from events subsequent to loading and shipment of goods (the CFR, CIF, CPT, CIP conditions).

4) **Group D**, under which the seller must bear all the risks and costs of transport mainly (the DAF, DES, DEQ, DDU, DDP conditions). The notion of *main transport* means that part of the international transport of goods moving without interruption, on the same contract of carriage, crossing at least one border state.

Referring to the delivery conditions the INCOTERMS 2000 rules introduced a new concept on the sale which may be "sale on departure" and "sale on arrival."

If in the case of "sale to departure", the merchandises are moving in the main transport mainly on the risk and the account of the purchaser, in the situation of "sale on arrival." the merchandises are moving in the transport mainly on the risk and account of the seller.

From the category of "selling on departure" are included the delivery conditions of groups E, F and C, and from the "sale on arrival" conditions are part the conditions of Group D.

In table 1 is presented the 13 rules INCOTERMS 2000 qualify for the 4 groups (families), the delivery conditions, the transport modality and the sales system.

Tabel 1

INCOTERMS 2000 delivery conditions

Group	Abbreviate	Delivery condition	Transport modality	Sale system
E	EXW ...	EX Works ...	All the modalities	Sale to departure
F	FCA ...	Free CArrier ...	Toate modalitățile	Sale to departure
	FAS ...	Free Alongside Ship	Only on sea (on water)	Sale to departure
	FOB ...	Free On Board ...	Only on sea (on water)	Sale to departure
C	CFR ...	Cost and FREight ...	Only on sea (on water)	Sale to departure
	CIF ...	Cost, Insurance, Freight ...	Only on sea (on water)	Sale to departure
	CPT ...	Carriage Paid To ...	All the modalities	Sale to departure
	CIP ...	Carriage Insurance Paid ...	All the modalities	Sale to departure
D	DAF ...	Delivered At Frontier ...	On land	Sale to arrival
	DES ...	Delivered Ex Ship ...	Only on sea (on water)	Sale to arrival
	DEQ ...	Delivered Ex Quai ...	Only on sea (on water)	Sale to arrival
	DDU ...	Delivered Duty Unpaid ...	All the modalities	Sale to arrival
	DDP ...	Delivered Duty Paid ...	All the modalities	Sale to arrival

In order to understand the responsibilities incumbent on them to run on commercial international trade contracts, knowing the rules INCOTERMS is important for participants in international trade.

In the U.S., Canada and Mexico there is a category of traders who use in the frame of international trading the U.S rules RAFTD 1941, which were designed and adopted in order to clarify and simplify the practice of foreign trade, with a set of definitions on the supply available to trading partners, which can be made in the contract. RAFTD 1941 includes six categories of conditions, in each case of these conditions being specified the obligations of the seller and the buyer.

Lately, there is a tendency of generalizing the INCOTERMS rules, code of practices which saw important improvements in the last period.

In a specialty paper released in the U.S., it is recommended that even U.S. firms to proceed to replace RAFTD with INCOTERMS to ensure more clearly defining of contractual terms and to better protect their commercial⁴ interests.

⁴ Popa, I., op. cit., page 229, adapted after Fargo, W.L., Dulat, K. B., *Exporting: From Start to Finance*, Third Edition, McGraw-Hill, 1996, page 237

The techniques used in these conditions are to indicate the geographical point where cargo is passed from seller to buyer, with the performance of certain conditions.

Normally at this point (also called "critical point") the obligation of organizing the transport of goods - up to the desired destination - and the obligation of bearing the costs and risks are transferred from seller to buyer. But there are certain conditions and delivery - CFR, CIF, CPT and CIP - the point of transferring spending does not coincide with the transfer of risk. Basically, the international contract of sale, provided delivery chosen (or abbreviation thereof) the name of the locality agreed by the parties⁵.

The appropriate use of INCOTERMS involve the trading partners not only knowing the content of the question but their inclusion in the contract with all the details necessary.

3. The content of delivery conditions INCOTERMS 2000⁶

The condition of delivery EXW ... Franco factory (the agreed place)

Under such circumstances, the seller meets its delivery obligations in the moment when the goods put at the disposal of the buyer to the agreed place (plant, factory, warehouse, etc.), without completing the formalities for export (uncustomed to export) and loading goods without any means of transport.

This condition provides minimum requirements for the seller, the buyer is required to bear all the risks and costs of goods since taking over at their place until the agreed destination, such as transport through the country of exporter (seller) clearance of export, transport and insurance on the international way, the international transit fees through the crossing means of transport, customs clearance in the country importer (buyer), the costs of unloading and transport to the final destination of the goods.

The condition of delivery EXW ... is applicable to all modes of transport including multiple modes of transport.

The condition of delivery FCA ... Franco transporter (the agreed place)

Under such conditions, the seller delivers the goods for export carrier (carrier) designated by the buyer to the agreed place, the latter taking over at the same time, the costs and risks from the seller.

If the purchaser shall designate a person other than the carrier to retrieve the goods, the seller obligation is considered an obligation fulfilled as soon as this person took them, the seller having no main risks for main transportation.

The condition of delivery FCA ... is applicable to all modes of transport including multiple modes of transport.

The condition of delivery FAS ... Franco along the vessel (the agreed carriage harbour)

In the case of this condition of delivery, the seller meets its obligation of delivery when the goods are placed along the vessel, on the keys or barges to the vessel in the port of loading agreed, which are taking place the transfer of costs and risks from seller to buyer.

Although the seller has an obligation to take care of all arrangements necessary to customs clearance of goods for export, the parties may agree that the clearance of goods for export to the powers of the buyer, in which case it should be clarified through an explicit

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⁶⁵ Popa, I., op. cit., page 222, adapted after Chevalier, D., Duphil, C., *Le Transport*, Les Edition Foucher, Paris, 2000, page 203-239

⁶ *Commercial rules and practices INCOTERMS 2000*, Percomex S.A., page 59-269

clause in the contract. The condition of delivery FAS ... is applicable only for shipping and inland navigable waters.

The condition of delivery FOB ... Franco to board (the agreed carriage harbour)

Under such circumstances, the seller meets its obligations for delivery of goods as they pass the balustrade of vessel at the port of loading agreed, when all the costs and risks of loss or damage of goods are transferred to the buyer.

Where the parties agree that all costs pertaining to the operations of loading of vessels to be split between the seller and buyer, then this should be clarified through an explicit clause in the contract, but the seller is obliged to comply the customs formalities.

The condition of delivery FOB ... is applicable only for maritime transport and inland navigable waters.

The condition of delivery CFR ... Cost and freight (the agreed destination harbour)

Under such circumstances, the seller meets its obligations for delivery of goods as they pass the balustrade of vessel at the port of loading agreed.

The seller must bear the costs and freight rate for bringing the goods to the port of destination agreed, but the risk of loss and damage to goods, and any additional costs caused by events that took place after the goods have been delivered on board the vessel shall be transferred from seller to buyer. Is therefore is a separation between time and place of transfer risk (in the port of embarkation) and the transfer of expenditure (in the port of destination).

Under the terms of this delivery condition, the seller meets the customs formalities, and customer support to ensure the goods.

The condition of delivery CFR ... is applicable only for the maritime transport and inland navigable waters.

The condition of delivery CIF ... Cost, insurance and freight (the agreed destination harbour/port)

Under such circumstances, the seller meets its obligations for delivery of goods as they pass the balustrade of vessel at the port of loading.

In seller burden falls on both the the freight rate of goods to the settled port of destination agreed, also the cost of insurance of risk of loss or damage of goods during the transport, while the risks and additional costs arising from incidents since the time of delivery are transferred to the purchaser's account.

The seller is obliged to comply with the customs formalities and to contract an insurance policy with minimal coverage, but without taking risks.

The condition of delivery CIF ... is applicable only for sea transport and internal navigable water.

The condition of delivery CPT ... Transport payed until (the agreed destination place)

Under such condition, the seller pays the cost of transport of goods to the agreed destination. Risks of loss or damage of goods during transport, as well as any additional costs caused by events that took place after the goods have been delivered, are transferred from the seller to the buyer when the goods were handed over to the custody of the carrier (carter).

If for transporting goods to the destination agreed is used successively several carriers, the risks are transferred from the seller to the buyer when the goods were handed over the first carrier, the seller having the obligation to carry out all the necessary arrangements to customs clearance of goods for export.

The condition of delivery CPT ... is applicable to any mode of transport, including multimodal transport.

The condition of delivery CIP ... Transport and insurance payed until (the agreed place)

Under such circumstances, the seller delivers the goods to the carrier hired by him, paying both the cost of transport to the agreed destination and the cost of insurance the risk of loss or damage of goods during transport.

As provided in the delivery condition CIF, the seller is obliged to contract an insurance policy with minimal coverage and satisfy the customs formalities.

Risks of loss or damage of goods pass from seller to buyer after the goods were handed over to the carrier, any damage found at the destination follow to be recovered by the buyer of the insurer.

The condition of delivery CIP ... is applicable to any mode of transport, including multiple modes transport.

The delivery condition DAF ... Delivery to the border (to the agreed place)

Under such conditions, the seller meets its obligations for delivery of goods when they are available to the buyer, customs clearance for export and unloaded from the vehicle used before the customs border with the neighboring country, the agreed point.

It is important that the border should be defined precisely, giving the place a complete set, because the cost of unloading and reloading the agreed point at the border are in charge buyer who takes the risk of its merchandise.

The condition of delivery DAF ... applies to transport by car or railway.

The delivery conditions DES ... Delivery to the border of vessel (the agreed destination port)

Under such conditions, the seller meets its obligation of delivery when the goods are made available to the buyer on board of the ship at the port of destination agreed.

Seller shall bear all costs and risks related to bringing goods to the port of destination agreed, including the cost of insurance and the buyer performs downloading and clearance of goods at import.

The condition of delivery DES ... is applicable only for transport on sea or inland.

The delivery condition DEQ ... Delivery on quais (the agreed destination port)

Under such condition, the seller meets its obligation of delivery when the goods are made available to the buyer on the quais to the port of destination agreed uncustom for import.

All costs and risks related to bringing the goods in the agreed place, including the costs and risks to download on the quais be borne by the seller, the buyer is obliged to carry out customs formalities for import and pay fees, customs fees and other import expenses.

If the parties agree that these costs are incurred/barried, in whole or in part, by the seller, this must be clearly stated in an explicit clause in the contract.

The seller has the right to choose the place of discharge (the dock) from the port of destination, if this contract is stated explicitly.

The condition of delivery DEQ ... is applicable only for sea or inland transport.

The delivery condition DDU ... Delivery, unpaid custom (the agreed destination place)

Under such condition, the seller meets its obligation of delivery when the goods are made available to the buyer, in the agreed target of the importing country, unloaded from the vehicle and uncustom to import.

The seller must bear all the costs and risks related to bringing goods in the agreed place and the buyer bears the costs for fulfilling customs formalities for import and download of them. The condition of delivery DDU ... is applicable to any mode of transport.

The delivery condition DDP ... Delivery, paid custom (the agreed destination place)

Under such condition, the seller meets its obligation of delivery when the goods are made available to the buyer, in the agreed target place of the importing country, unloaded from the means of transport and customs clearance for import.

In this case the seller bears all the costs and risks related to bringing the goods in the agreed place including customs duties, other taxes and official expenses needed for accomplish the import, also the costs and risks related to the performance of customs formalities, he must obtain, directly or indirectly the import license.

The condition of delivery DDP ... is applicable to any mode of transport.

Using INCOTERMS presents several **advantages** for contract⁷ partners.

❖ *First*, INCOTERMS 2000 allow the exactly establishment of seller and buyer responsibilities for the proceeding process of operations assumed by the delivery. In Tabel no 2 are presented the partners obligations in the frame of international commercial trades, obligations consisting in taken costs and are assumed in contract price.

Tabel 2

The costs distribution between seller and buyer

INCOTERMS 2000 COSTS	EXW ...	FCA ...	FAS ...	FOB ...	CFR ...	CIF...	CPT ...	CIP ...	DAF ...	DES ...	DEQ ...	DDU ...	DDP ...
Individualization package	•	•	•	•	•	•	•	•	•	•	•	•	•
Loading (truck,wagen) Loading cargo in plant or in departure warehouse	◦	•	•	•	•	•	•	•	•	•	•	•	•
Moving/closing to port, airport, turn grouping platform,: departure turn	◦	•	•	•	•	•	•	•	•	•	•	•	•
Export custom formalities	◦	•	•	•	•	•	•	•	•	•	•	•	•
Super passage (passage) inside the port, airport, platform, grouping warehouse, departure turn	◦	◦	◦	• ◦	•	•	•	•	•	•	•	•	•
Main transport	◦	◦	◦	◦	•	•	•	•	• ◦	•	•	•	•
Transport insurance	◦	◦	◦	◦	◦	•	◦	•	• ◦	•	•	•	•
Using/passage platform, ports, airports, warehouse/grouping platform, arrival turn	◦	◦	◦	◦	◦	◦	◦	◦	◦	◦	•	•	•
Import custom formalities (rights and taxes)	◦	◦	◦	◦	◦	◦	◦	◦	◦	◦	◦	◦	•
Moving to the house or arrival warehouse	◦	◦	◦	◦	◦	◦	◦	◦	◦	◦	◦	•	•
Unloading to the domicile (plant) or arrival warehouse	◦	◦	◦	◦	◦	◦	◦	◦	◦	◦	◦	◦	◦
• - Costs barried by the seiller ◦ - Costs barried by the buyer													
<i>Source: Commercial rules and practices INCOTERMS 2000, Percomex S.A., page 55</i>													

⁷ Popa, I., op. cit., page 229-230

❖ *Second*, INCOTERMS 2000 settle the parties obligations regarding the acquisition of delivery documents, the invoice, the export licence, the goods verify certificate, the origin certificate, the consular invoice, the document certifying delivery, the consular invoice, the transport document, the insurance policy, the import licence. (See Tabel no 3)

Tabel 3

The necessary documents accordingly to INCOTERMS

INCOTERMS 2000	EXW	FCA	FAS	FOB	CFR	CIF	CPT	CIP	DAF	DES	DEQ	DDU	DDP
DOCUMENTS													
Invoice	v	v	v	v	v	v	v	v	v	v	v	v	v
List of colisaj	(v)	(v)	(v)	(v)	(v)	(v)	(v)	(v)	(v)	(v)	(v)	(v)	(v)
Export licence*	c	v	v	v	v	v	v	v	v	v	v	v	v
Control certificate*	c	c	c	c	c	c	c	c	c	c	c	c	c
Origin certificate*	(c)	(c)	(c)	(c)	(c)	(c)	(c)	(c)	(c)	(c)	(c)	(c)	(v)
Consular invoice*	(c)	(c)	(c)	(c)	(c)	(c)	(c)	(c)	(c)	(c)	(c)	(c)	(v)
Documents certifying delivery	c	v	v	v	-	-	-	-	v	v	v	v	v
Transport documents	(c)	c	c	c	v	v	v	v	v	v	v	v	v
Insurance policy	(c)	(c)	(c)	(c)	(c)	v	(c)	v	(v) (c)	(v)	(v)	(v)	(v)
Import licence*	c	c	c	c	c	c	c	c	c	c	c	c	v
Legend:													
v = documents on seller expenses													
c = documents on buyer expenses													
() = is not specified in INCOTERMS who will carry the document expenses													
* = if necessary													
<i>Source: Popa, I., op. cit., page 231 adapted after Chevalier, D., Memo Guide, Moci, no. 3/1999</i>													

❖ *Third*, although no law governing the transfer of ownership rules INCOTERMS give a clear solution by using the term "transfer of risk" that part of the contract which is at risk or who has taken his obligation to ensure whether or not the owner, so that in case of damage, nor the seller nor the buyer will not suffer any damage, regardless the moment of transfer the property rights.

3. Conclusions

The correct use of delivery conditions of INCOTERMS involve from the part of contractual partners not only knowing the content of those rules, but also their insertion in the contract with all the necessary details.

As in the transposition into practice of every mention from the various modes of delivery, are costs that can not be neglected, it is important and who pays and what pays, any omission or unspecify in this regard can reduce or even cancel the benefits expected by the seller or buyer at the conclusion of the transaction.

As in the EU Member States have abolished customs barriers and remove customs control of the movement of goods *within the Community space* of the 13 conditions of delivery INCOTERMS 2000 only a few are used currently in intra community relations. EXW

condition ... is not used because practically the seller assumes the operation of loading the goods and the buyer exceptionally.

Because there is no need for drawing up customs formalities, the use of commercial transactions in terms of delivery DDU ... and DDP ... become one single sense, including both automatically download the costs of operations, situations in which the seller must provide at their destination, in the agreed place, the goods free of any obligations and costs.

The delivery conditions INCOTERMS 2000 is a very useful guide for entities which carry out international trade transactions, enabling/allowing precise definition of the extent of the obligations of parties in connection with the delivery, as an essential component in contract execution.

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