

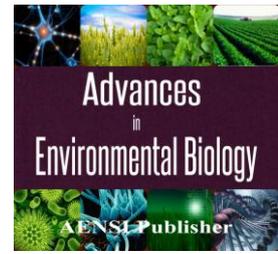


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### Considering revised regulation of incoterms 2010 about product insurance

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#### ABSTRACT

At international good exchanges besides available complexity due to high distance and differences of current rules and traditions in countries there is the possibility of occurrence of time-consuming and costly differences. Therefore in relation to contact of international selling of goods the need to regulations for setting relations and determining commitment of each parties of contract is felt very well. In response to this need, international chamber of commerce wrote incoterms for the first time in 1936 and in next years it has implemented necessary changes due to new conditions and needs. At international contracts of selling that are based on conditions of incoterms regarding the kind of selected rules one party buys insurance cover for the carrying goods according to the agreed selling conditions that reflects transferring insurance benefit from one side to another one when a unit insurance policy agrees all carrying process with selling conditions that reflects transferring insurance benefit from one party to another one when a unit insurance policy covers all carrying process according to the condition of storage to storage. The claim of losses can be introduced by the party that have insurance benefit during occurrence of losses, regarding review of regulations of Lloyds of London about proper insurance covering and allowing that paying losses in each idioms of incoterm and considering threatening risks in each idioms of parties by identifying these risks and transferring it to insurance institutes and choosing proper idiom with extensive and various insurance covering they can decrease future financial problems to some extent. In fact making contract of insurance in regulations of incoterm is affected by time and place of transferring disappearing goods. In fact risk is due to existence of insurance and without risk insurance loses its concept.

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#### INTRODUCTION

In expression of 11 fold about duty of insurance contract and paying its cost is sometimes buyers' and sometimes sellers' duty without the reason of this action is identified. In this research we want to know that whether buyer or seller for contracting insurance based on regulations of incoterm is affected by time and place of transferring risk and cost or other factors? Is buyer or seller commitment for contracting insurance based on incoterms regulations affected by factors such as custom formalities for exporting and importing goods and its cost? And is there a relationship between commitment to insurance and paying its cost with commitment to contract of transportation and paying its cost? How much is the maximum insurance coverage commitment based on each expression?

##### 2- Definition of incoterms:

Incoterms is a combined word that is consist of 3 international commercial terms means international business expressions and has been used widely. This expression is applied for separating costs and responsibilities between seller and buyer. Incoterms responds problems related to carrying goods from seller to buyer. Problems includes carrying goods, good clearance, import and exports and who is responsible for paying and who is responsible for placement and transference of goods in different steps of carrying. Different expressions of incoterms are usually used by mentioning geographical places of the case not titles related to placement. Incoterms has been supplied and written by international chamber of commerce.

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### 3- Transformation done at incoterms:

Merchants for determining the way of distributing duties and also cost and risks related to transference of goods from seller to buyer tend to use short expressions such as b and CIF but unfortunately at correct interpretation of this expression misunderstandings happens. In 1920s international chamber of commerce has done studies about interpreting business expression that have more importance. These studies showed that in different countries expressions are understood differently. Therefore fate of probable difference between seller and buyer depends on the location of solving difference and rules governing it. This action comprises judicial risk for seller and buyer and therefore it could have unfavorable effects on future trade between them. Therefore creating regulations for interpretation of business expressions that is agreed by parties of a contract has taken importance.

#### A- Tendency to expression of delivering goods:

B- In 1953 total review was done in incoterms. The expressions based on delivering goods was added to it in 1976 and one expression related to good air transportation was added to it. In 1980 business requirements resulted from delivering at techniques of transportation leads to adding two other conditions that is delivering goods at distinct point<< that its symbol was (FRC) before and now has changed to (FCA)>> and expression of “ fare of transportation and paid insurance. The main reason of review of 1990 was attention to increasing tendency to trade without document and papers in which parties instead of using documents and papers use electronic messages that is called(EID) electronic exchange of information.

#### B) Using electronic exchange of information:

Electronic messages instead of international business documents have increasing tendency to replacing documents with electronic messages that is called electronic exchange of information (EID). Since incoterms of 1980 was based on exchange of document, writing incoterms of 1990 as is agreeable with EID(electronic exchange of information) became necessary. Therefore in incoterms of 1990 all articles of A 8 and B 8 consist sentence of << or equivalent electronic message>> so that to be used in case of seller and buyer agreement (<http://www.rohlig.com/infocenter/incoterms-2010.html> 91/02/30).

At incoterms of 2010 under different expressions this action is stated that electronic documents can replace paper documents. In rules of many countries nowadays messages and electronic signature replaced writing and written signature. In article 6 of electronic trade of Iran message data is known as writing unless about document of possession of immovable property, selling drugs to final consumers and finally claim, error and alerts that issue especial order for using goods. In this rule also due to article 7 electronic signatures has been identified instead of hand signature.

At incoterms of 2010 it was explained explicitly that electronic documents can replace paper document. However this replacement depends on implementation of two following conditions. Firstly replacing electronic documents instead of paper document should be agreed by parties. Or such replacement should be consistent to traditions accepted in that industry or skill

#### C) The treatment about IED:

Incoterms about explaining how electronic connection is done doesn't proceeds. The way of connecting will be practically set in relations between seller and buyer. Since electronic exchange of information needs special language of computer to computer and messages are as processed data so exact following of international systems that are created under supervision of united nations for this goal and so-called ( electronic exchange of information for trade and transportation management ( and unsid) united implementing regulations for exchange of business information through distance communication has high importance.

#### Delivering goods by using EID:

In all expressions except the expression EXW in which documents of delivering goods is not necessary was mentioned that if parties agreed electronic messages can replace mentioned documents in article A 8. When replacing of load policy or marine policy is with electronic messages especial problems are introduced that are resulted from the point that for receiving good from carrier at destination or selling it during carrying good presenting load policy is necessary. At global conference of 1990 international committee of transportation of marine CMI was approved. Regulation (CMI) have mechanisms that by relying on it parties in case of tendency can use electronic communication that responsibility of carriers is not confounded based on contract.

### 4- Consequences of considering risk transference at 11 incoterms expressions:

Generally by considering time and place of risk transference and costs mentioned in 11 expressions it is obvious that many dangers may exist during carrying goods and also different and complicated problems may be created since the beginning of packing, transportation of good and its transference to secretary of transportation on ship up to the time a ship reaches destination and goods should be delivered to the receiver and

it causes the subject to face different problems. The thing that is obvious is that occurrence of losses to the good cause parties of contact to be deprived of probable benefits. Dangers under coverage of transportation insurance that includes firing and car accident, throwing out of car and overturning, losses resulted from loading and discharge and theft of the good are dangers that threat goods during transportation. Another important problem is the direction of moving and type of car that has its own dangers, Incoterms 2010, ICC [10]

Seller and buyer should provide proper insurance coverage by considering available risks from risk transference point. Regarding the type of available insurance coverage in market reach parties by agreeing condition can contract kinds of insurance policy of portage with special conditions such as condition of storage to storage that in fact credit of insurance policy starts when goods leave insurance policy for starting carrying of storage or preserve location mentioned in insurance policy and the insurance finishes at the final storage at destination. Usually duration of credit of insurance policy was from origin storage to the destination and continues of coverage was usual during carrying and its end will be one of the following cases that happen sooner:

- Upon depletion of the goods to the warehouse of destination stipulated in the insurance policy
- Upon the expiration of 60 days from full discharge of the cargo ship
- Upon the expiration of 60 days from entering date of good to the land border
- Upon the expiration of 30 days from full discharge of the good in destination airport cargo

5-Necessity of review at incoterms 2010 in relationship with insurance regulations and its consequences

As incoterms of 2000 the incoterms of 2010 has only in two forms of expressions (CIF and CIP) insurance of good is mentioned but at incoterms 2010 the difference is accuracy of time of covering well from origin to destination. Under expression of CIF in incoterms 2010 good insurance covers good from delivery point that at incoterms 2000 under this expression insurance coverage is from fence of ship at port and but remained without explanation to the destination. Another difference that is introduced in relationship with insurance is mentioned in CIF expression seller should provide insurance and other document of insurance for buyer whereas at incoterms 2000 seller is forced to provide lists and factors of selling.

In each expressions of CIF and CIP it was mentioned that least insurance coverage should be bought and but regarding recent changes in condition of institute coverage of policyholder of London it was mentioned that insurer capital in fact good value, carrying fare or other benefits accrued on the good that is mentioned at insurance policy differently and is covered by insurance. Benefits that are under insurance coverage should be “definite and obvious benefits” of course contracts of buying and selling good play main function at determining god value or in fact insurance capital and so we should know that Commodity contracts rish for insurance and traders 9 november2010www.intercargoservices.com.incoterms2010 91/02/14

-good price is based on FOB that is value of origin without considering fare of carrying  
-good price is counted based on c and F that is its value in destination that carrying fare is counted part of its value added.

- good price in destination inserted in contract of buying document of issuing insurance policy that includes naturally “all costs added to it such as carrying fare.

Insurance capital is determined equals to actual price of good and insurance coverage is taken in a way that in case of occurrence of losses, insurer can compensate losses. Therefore regarding that in each expression or both ones the least insurance have been stated. It should be seemed that in any case each parties during losses face problem. Necessity of reviewing at providing least insurance is identified.

#### *Conclusion:*

In response to the question that is mentioned in research introduction that whether there is relationship between commitment to insurance and paying its cost with commitment to making carrying contract and cost payment it seems that there isn't any relationship because seller's commitment ends with delivering goods to the carrier and not the time good arrives destination. In contract the starting point of insurance commitment starts from origin and continues to the final destination or up to the time the good arrives buyer's storage. If buyer has the duty of carrying in contract by delivering good to the carrier his commitment ends and insurance benefit of buyer will be obvious for insurance coverage. Thus generally making contract of carrying and paying its cost is a separate subject of insurance an paying its cost. In the research we can conclude that making insurance contract is affected by time and place of transferring risk of disappearing well in factrisk is the reason of insurance existence and without risk insurance loses its concept. As it is regarded in this research we face the statement of “doesn't have duty”. As it is understood from statements of “seller should” and “buyer should” incoterms merely deals with duties that parties owe each other. Therefore if each party doesn't owe the other one the statement of “doesn't have duty” is pointed out. Therefore if in an expression that seller should set carrying contract and pay its cost we see under another title of “contract of carrying and insurance” the title of “doesn't have duty” about situation of buyer also “if none of parties don't have duty against other ones or about insurance the statement of “ doesn't have duty” is regarded about both parties. It is necessary to mention that even if about implementing a distinct action one party doesn't have duty about another one it doesn't mean that

doing it is not for his benefit therefore in cases that buyer based on CFR doesn't have duty against seller for making insurance contract but it is obvious that such contract is for his benefit because seller doesn't have duty for insurance supply.

In 11 expressions of incoterms 2010 insurance is introduced just in two expressions that is CIF and CIP based on these expressions seller is obliged to supply good insurance to the benefit of buyer. In other cases decision about insurance supply and limitation of its coverage is given to the parties of contract. Since seller acts for supplying insurance to the benefit of buyer he isn't aware of buyer's needs exactly. Regarding what was stated totally and insurance contract that is any kind, the role of buyer and seller as policyholder and insurance company as insurer can be effective more than anything else and also regarding that insurance of transportation strengthen its position at international business the necessity for identification and investigating duties and commitment of each parties at an international exchange gets more importance. By paying attention to the principle of priority of preventing to cure, the necessity of full identification of duties and commitment of each parties of contract will be more obvious because contract by full awareness of parties to duties and commitment of him and others decreases future problems. Another reason of getting importance is that if each parties have full knowledge about duties and commitments of him and other party they are able to implement their considering cases in insurance contract and finally insurance contract changes to a win-win transaction for parties.

Finally it should be told that duties of buyer and seller in insurance contract, insurance benefit and supplying full insurance coverage should be distinguished in each incoterms expressions exactly and the result will be obvious for each party while compensating losses. These conditions causes creation of good business relations between merchants and its greatest achievement is trustworthy and certainty at making contract.

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