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Introduction to *Incoterms*® 2020

1. The purpose of the text of this Introduction is fourfold:
 - ▶ to explain what the Incoterms® 2020 rules do and do NOT do and how they are best incorporated;
 - ▶ to set out the important fundamentals of the Incoterms® rules: the basic roles and responsibilities of seller and buyer, delivery, risk, and the relationship between the Incoterms® rules and the contracts surrounding a typical contract of sale for export/import and also, where appropriate, for domestic sales;
 - ▶ to explain how best to choose the right Incoterms® rule for the particular sale contract; and
 - ▶ to set out the central changes between *Incoterms*® 2010 and *Incoterms*® 2020.
2. The Introduction follows this structure:
 - I. What the Incoterms® rules do
 - II. What the Incoterms® rules do NOT do
 - III. How best to incorporate the Incoterms® rules
 - IV. Delivery, risk and costs in the Incoterms® 2020 rules
 - V. Incoterms® 2020 rules and the carrier
 - VI. Rules for the contract of sale and their relationship to other contracts
 - VII. The eleven Incoterms® 2020 rules—“sea and inland waterway” and “any mode(s) of transport”: getting it right
 - VIII. Order within the Incoterms® 2020 rules
 - IX. Differences between *Incoterms*® 2010 and *Incoterms*® 2020
 - X. Caution with variants of Incoterms® rules
3. This Introduction gives guidance on the use of, and about the fundamental principles behind, the Incoterms® 2020 rules.

I. WHAT THE INCOTERMS® RULES DO

4. The Incoterms® rules explain a set of eleven of the most commonly-used three-letter trade terms, e.g. CIF, DAP, etc., reflecting business-to-business practice in contracts for the sale and purchase of goods.
5. The Incoterms® rules describe:
 - ▶ *Obligations*: Who does what as between seller and buyer, e.g. who organises carriage or insurance of the goods or who obtains shipping documents and export or import licences;
 - ▶ *Risk*: Where and when the seller “delivers” the goods, in other words where risk transfers from seller to buyer; and
 - ▶ *Costs*: Which party is responsible for which costs, for example transport, packaging, loading or unloading costs, and checking or security-related costs.

The Incoterms® rules cover these areas in a set of ten articles, numbered A1/B1 etc., the A articles representing the seller’s obligations and the B articles representing the buyer’s obligations. See paragraph 53 below.

II. WHAT THE INCOTERMS® RULES DO NOT DO

6. The Incoterms® rules are NOT in themselves—and are therefore no substitute for—a contract of sale. They are devised to reflect trade practice for no particular *type* of goods—and for *any*. They can be used as much for the trading of a bulk cargo of iron ore as for five containers of electronic equipment or ten pallets of airfreighted fresh flowers.
7. The Incoterms® rules do NOT deal with the following matters:
 - ▶ whether there is a contract of sale at all;
 - ▶ the specifications of the goods sold;
 - ▶ the time, place, method or currency of payment of the price;
 - ▶ the remedies which can be sought for breach of the contract of sale;
 - ▶ most consequences of delay and other breaches in the performance of contractual obligations;
 - ▶ the effect of sanctions;
 - ▶ the imposition of tariffs;
 - ▶ export or import prohibitions;
 - ▶ force majeure or hardship;
 - ▶ intellectual property rights; or
 - ▶ the method, venue, or law of dispute resolution in case of such breach.

Perhaps most importantly, it must be stressed that the Incoterms® rules do NOT deal with the transfer of property/ title/ownership of the goods sold.

8. These are matters for which the parties need to make specific provision in their contract of sale. Failure to do so is likely to cause problems later if disputes arise about performance and breach. In essence, the Incoterms® 2020 rules are *not* themselves a contract of sale: they only become *part* of that contract when they are incorporated into a contract which already exists. Neither do the Incoterms® rules provide the law applicable to the contract. There may be legal regimes which apply to the contract, whether international, like the Convention on the International Sale of Goods (CISG); or domestic mandatory law relating, for example, to health and safety or the environment.

III. HOW BEST TO INCORPORATE THE INCOTERMS® RULES

9. If parties want the Incoterms® 2020 rules to apply to their contract, the safest way to ensure this is to make that intention clear in their contract, through words such as

“[the chosen Incoterms® rule] [named port, place or point] Incoterms® 2020”.
10. Thus, for example,

CIF Shanghai Incoterms® 2020, or
DAP No 123, ABC Street, Importland Incoterms® 2020.
11. Leaving the year out could cause problems that may be difficult to resolve. The parties, a judge or an arbitrator need to be able to determine which version of the Incoterms® rules applies to the contract.
12. The place named next to the chosen Incoterms® rule is even more important:
 - ▶ in all Incoterms® rules except the C rules, the named place indicates where the goods are “delivered”, i.e. where risk transfers from seller to buyer;
 - ▶ in the D rules, the named place is the place of delivery and also the place of destination and the seller must organise carriage to that point;
 - ▶ in the C rules, the named place indicates the destination to which the seller must organise and pay for the carriage of the goods, which is not, however, the place or port of delivery.
13. Thus, an FOB sale raising doubt about the port of shipment leaves both parties uncertain as to where the buyer must present the ship to the seller for the shipment and the transport of the goods—and as to where the seller must deliver the goods on board so as to transfer risk in the goods from seller to buyer. Again, a CPT contract with an unclear named

destination will leave both parties in doubt as to the point to which the seller must contract and pay for the transport of the goods.

14. It is best to avoid these types of issues by being as geographically specific as possible in naming the port, place or point, as the case may be, in the chosen Incoterms® rule.
15. When incorporating a particular Incoterms® 2020 rule into a sale contract, it is not necessary to use the trademark symbol. For further guidance on trademark and copyright, please refer to <https://iccwbo.org/incoterms-copyright/>.

IV. DELIVERY, RISK AND COSTS IN THE INCOTERMS® 2020 RULES

16. A named place or port attached to the three letters, e.g. CIP Las Vegas or CIF Los Angeles, then, is critical in the workings of the Incoterms® 2020 rules. Depending on which Incoterms® 2020 rule is chosen, that place will identify either the place or port at which the goods are considered to have been “delivered” by the seller to the buyer, the place of “delivery”, or the place or port to which the seller must organise the carriage of the goods, i.e. their destination; or, in the case of the D rules, both.
17. In all Incoterms® 2020 rules, A2 will define the place or port of “delivery”—and that place or port is closest to the seller in EXW and FCA (seller’s premises) and closest to the buyer in DAP, DPU and DDP.
18. The place or port of delivery identified by A2 is critical both for risk and for costs.
19. The place or port of delivery under A2 marks the place at which risk transfers from seller to buyer under A3. It is at that place or port that the seller performs its obligation to provide the goods under the contract as reflected in A1 such that the buyer cannot recover against the seller for the loss of or damage to the goods occurring after that point has passed.
20. The place or port of delivery under A2 also marks the central point under A9 which allocates costs to seller and buyer. In broad terms, A9 allocates costs before the point of delivery to the seller and costs after that point to the buyer.

Delivery points

Extremes and in-betweens: the four traditional Incoterms® rules groups

21. Versions of the Incoterms® rules before 2010 traditionally grouped the rules into four, namely E, F, C and D, with E and D lying at extreme poles from each other in terms of the point of delivery and the F and C rules lying in between. While the Incoterms® rules have, since 2010, been grouped according

to the means of transport used, the old groupings are still helpful in understanding the point of delivery. Thus, the delivery point in EXW is an agreed point for collection of the goods by the buyer, whatever the destination to which the buyer will take them. At the other extreme in DAP, DPU and DDP, the delivery point is the same as the destination point to which the seller or its carrier will carry the goods. In the first, EXW, risk transfers before the transport cycle even starts; in the second, the D rules, risk transfers very late in that cycle. Again, in the first, EXW and, for that matter, FCA (seller's premises), the seller performs its obligation to deliver the goods whether or not they actually arrive at their destination. In the second, the seller performs its obligation to deliver the goods only if they actually arrive at their destination.

22. The two rules at the extreme ends of the Incoterms® rules are EXW and DDP. However, traders should consider alternative rules to these two for their international contracts. Thus, with EXW the seller has to merely put the goods at the buyer's disposal. This may cause problems for the seller and the buyer, respectively, with loading and export clearance. The seller would be better advised to sell under the FCA rule. Likewise, with DDP, the seller owes some obligations to the buyer which can only be performed within the buyer's country, for example obtaining import clearance. It may be physically or legally difficult for the seller to carry out those obligations within the buyer's country and a seller would therefore be better advised to consider selling goods in such circumstances under the DAP or DPU rules.
23. Between the two extremes of E and D rules, there lie the three F rules (FCA, FAS and FOB), and the four C rules (CPT, CIP, CFR and CIF).
24. With all seven F and C rules, the place of delivery is on the seller's side of the anticipated carriage: consequently sales using these Incoterms® rules are often called "shipment" sales. Delivery occurs, for example,
 - a) when the goods are placed on board the vessel at the port of loading in CFR, CIF and FOB; or
 - b) by handing the goods over to the carrier in CPT and CIP; or
 - c) by loading them on the means of transport provided by the buyer or placing them at the disposal of the buyer's carrier in FCA.

In the F and C groups, risk transfers at the seller's end of the main carriage such that the seller will have performed its obligation to deliver the goods whether or not the goods actually arrive at their destination. This feature, of being shipment sales with delivery happening at the seller's end early

in the transit cycle, is common to the F and the C rules, whether they are the maritime Incoterms® rules or the Incoterms® rules intended for any mode[s] of transport.

25. The F and the C rules do, however, differ as to whether it is the seller or buyer who contracts for or arranges the carriage of the goods beyond the place or port of delivery. In the F rules, it is the buyer who makes such arrangements, unless the parties agree otherwise. In the C rules, this obligation falls to the seller.
26. Given that a seller on any of the C rules contracts for or arranges the carriage of the goods beyond delivery, the parties need to know what the destination is to which it must arrange carriage—and *that* is the place attached to the name of the Incoterms® rule, e.g. “CIF the port of Dalian” or “CIP the inland city of Shenyang”. Whatever that named destination is, that place is not and never becomes the place of delivery. Risk will have transferred on shipment or on handing over the goods at the place of delivery, but the contract of carriage must have been made by the seller for the named destination. Delivery and destination, then, in the C rules, are necessarily not the same place.

V. INCOTERMS® 2020 RULES AND THE CARRIER

27. In the F and the C rules, placing the goods, for example, on board the vessel or handing them over to, or placing them at the disposal of, the carrier marks the point at which the goods are “delivered” by the seller to the buyer. Therefore this is the point at which risk transfers from the seller to the buyer.
28. Given those two important consequences, it becomes essential to identify who the carrier is where there is more than one carrier, each carrying out a separate leg of transport, for instance by road, rail, air or sea. Of course, where the seller has taken the far more prudent course of making one contract of carriage with one carrier taking responsibility for the entire carriage chain, in a so-called “through” contract of carriage, the problem does not arise. However, where there is no such “through” carriage contract, the goods could be handed over (where the CIP or CPT rules are used) to a road-haulier or rail company for onward transmission to a sea carrier. The same situation *may* arise with exclusively maritime transport where, for example, the goods are first handed over to a river or feeder short-sea carrier for onward transmission to an ocean carrier.
29. In these situations, when does the seller “deliver” the goods to the buyer: when it hands the goods over to the first, second or third carrier?
30. Before we answer that question, a preliminary point. While in most cases the carrier will be an independent third party engaged under a contract of carriage by either the seller or the

buyer (depending on whether the parties have chosen a C Incoterms® rule or an F Incoterms® rule), there are situations where no such independent third party is engaged at all because the seller or the buyer itself will carry the goods sold. This is more likely to happen in the D rules (DAP, DPU and DDP), where the seller may use its own means of transport to carry the goods to the buyer at the delivery destination. Provision has therefore been made in the Incoterms® 2020 rules for a seller under the D rules either to *contract for carriage* or to *arrange for carriage*, that is to say through its own means of transport: see A4.

31. The question asked at paragraph 29 above is not simply a “carriage” question: it is an important “sale” question. The question is not which carrier can a seller or buyer of goods damaged in transit sue under the contract of carriage. The “sale” question is: where there is more than one carrier involved in the carriage of the goods from seller to buyer, at which point in the carriage string does the handing over of the goods mark the point of delivery and the transfer of risk *as between seller and buyer*?
32. There needs to be a simple answer to this question because the relationships between the multiple carriers used, and between the seller and/or the buyer with those several carriers, will be complex, depending as they do on the terms of a number of separate contracts of carriage. Thus, for example, in any such chain of contracts of carriage, one carrier, such as a carrier actually performing a leg of the transit by road, may well act as the seller’s agent in concluding a contract of carriage with a carrier by sea.
33. The Incoterms® 2020 rules give a clear answer to this question where the parties contract on FCA. In FCA, the relevant carrier is the carrier nominated by the buyer to whom the seller hands over the goods at the place or point agreed in the contract of sale. Thus even if a seller engages a road haulier to take the goods to the agreed delivery point, risk would transfer not at the place and time where the seller hands the goods over to the haulier engaged by the seller, but at the place and time where the goods are placed at the disposal of the carrier engaged by the buyer. This is why the naming of the place or point of delivery as precisely as possible is so important in FCA sales. The same situation can arise in FOB if a seller engages a feeder vessel or barge to take the goods to the vessel engaged by the buyer. A similar answer is provided by *Incoterms® 2020*: delivery occurs when the goods are placed on board the buyer’s carrier.
34. With the C rules, the position is more complex and may well attract different solutions under different legal systems. In CPT and CIP, the relevant carrier is likely to be regarded, at any rate in some jurisdictions, as the first carrier to whom the seller

hands over the goods under A2 (unless the parties have agreed on the point of delivery). The buyer knows nothing of the contractual arrangements made between the seller and the first or subsequent carriers, or indeed between that first carrier and subsequent carriers. What the buyer does know, however, is that the goods are “in transit” to him or her—and that “transit” starts as far as the buyer knows, when the goods are put by the seller into the hands of the first carrier. The consequence is that risk transfers from seller to buyer at that early stage of “delivery” to the first carrier. The same situation can arise in CFR and CIF if a seller engages a feeder vessel or barge to take the goods to the agreed port of shipment, if any. A similar answer might be suggested in some legal systems: delivery occurs when the goods are placed on board the vessel at the agreed port of shipment, if any.

35. Such a conclusion, if adopted, may seem harsh on the buyer. Risk would transfer from seller to buyer in CPT and CIP sales when the goods are handed over to the first carrier. The buyer does not know at that stage whether or not that first carrier is responsible for loss of or damage to the goods under the relevant carriage contract. The buyer is not a party to that contract, has no control over it and will not know its terms. Yet, despite this, the buyer would end up bearing the risk in the goods from the very earliest moment of handing over, possibly without recovery against that first carrier.
36. While the buyer would end up bearing the risk of loss of or damage to the goods at an early stage of the transport chain, it would, on this view however, have a remedy against the seller. A2/A3 do not operate in a vacuum: under A4, the seller must contract for the carriage of the goods “from the agreed point of delivery, if any, at the place of delivery to the named place of destination or, if agreed, any point at that place.” Even if risk has transferred to the buyer at the time the goods were handed over to the first carrier under A2/A3, if that first carrier does not undertake responsibility under its contract of carriage for the through carriage of the goods to the named destination, the seller, on this view, would remain liable to the buyer under A4. In essence, the seller should make a contract of carriage to the destination named under the contract of sale.

VI. RULES FOR THE CONTRACT OF SALE AND THEIR RELATIONSHIP TO OTHER CONTRACTS

37. This discussion of the role of the carrier in the delivery of the goods as between the seller and the buyer in the C and F Incoterms® rules raises the question: what role do the Incoterms® rules play in the contract of carriage, or, indeed, in any of the other contracts typically surrounding an export contract, for example an insurance contract or a letter of credit?

38. The short answer is that the Incoterms® rules do not form part of those other contracts: where incorporated, the Incoterms® rules apply to and govern *only* certain aspects of the contract of sale.
39. This is not the same as saying, however, that the Incoterms® rules have no *impact* on those other contracts. Goods are exported and imported through a network of contracts that, in an ideal world, should match the one with the other. Thus, the sale contract, for example, will require the tender of a transport document issued by the carrier to the seller/shipper under a contract of carriage and against which the seller/shipper/beneficiary might wish to be paid under a letter of credit. Where the three contracts match, things go well; where they do not, problems rapidly arise.
40. What the Incoterms® rules say, for example, about carriage or transport documents (in A4/B4 and A6/B6), or what they say about insurance cover (A5/B5), does not *bind* the carrier or the insurer or any of the banks involved. Thus, a carrier is only bound to issue a transport document as required by the contract of carriage it makes with the other party to *that* contract: it is not bound to issue a transport document complying with the Incoterms® rules. Likewise, an insurer is bound to issue a policy to the level and in the terms agreed with the party purchasing the insurance, not a policy which complies with the Incoterms® rules. Finally, a bank will look only at the documentary requirements in the letter of credit, if any, not at the requirements of the sales contract.
41. However, it is very much in the interests of all the parties to the different contracts in the network to ensure that the carriage or insurance terms they have agreed with the carrier or insurer, or the terms of a letter of credit, comply with what the sale contract says about ancillary contracts that need to be made or documents that need to be obtained and tendered. *That* task does not fall on the carrier, the insurer or the bank, none of whom are party to the contract of sale and none of whom are, therefore, party to or bound by the Incoterms® 2020 rules. It *is*, however, in the seller's and buyer's interest to try to ensure that the different parts of the network of contracts match—and the starting point is the sale contract—and therefore, where they apply, the Incoterms® 2020 rules.

VII. THE ELEVEN INCOTERMS® 2020 RULES—“SEA AND INLAND WATERWAY” AND “ANY MODE(S) OF TRANSPORT”: GETTING IT RIGHT

42. The main distinction introduced in the Incoterms® 2010 rules, that between **Rules for any Mode or Modes of Transport** (comprising EXW, FCA, CPT, CIP, DAP, the newly named

DPU—the old DAT—and DDP), and **Rules for Sea and Inland Waterway Transport**, (comprising FAS, FOB, CFR and CIF) has been retained.

43. The four so-called “maritime” Incoterms® rules are intended for use where the seller places the goods on board (or in FAS alongside) a vessel at a sea or river port. It is at this point that the seller delivers the goods to the buyer. When these rules are used, the risk of loss of or damage to those goods is on the buyer’s shoulders from that port.
44. The seven Incoterms® rules for any mode or modes of transport (so-called “multi-modal”), on the other hand, are intended for use where
 - a) the point at which the seller hands the goods over to, or places them at the disposal of, a carrier, or
 - b) the point at which the carrier hands the goods over to the buyer, or the point at which they are placed at the disposal of the buyer, or
 - c) both points (a) and (b)
 are not on board (or in FAS alongside) a vessel.
45. Where delivery happens and risk transfers in each of these seven Incoterms® rules will depend on which particular rule is used. For example, in CPT, delivery happens at the seller’s end when the goods are handed over to the carrier contracted by the seller. In DAP, on the other hand, delivery happens when the goods are placed at the buyer’s disposal at the named place or point of destination.
46. The order in which the Incoterms® 2010 rules were presented has, as we have said, been largely retained in *Incoterms® 2020* and it is important to underline the distinction between the two families of Incoterms® rules so that the right rule is used for the contract of sale depending on the means of transport used.
47. One of the most frequent problems in the use of the Incoterms® rules is the choice of the wrong rule for the particular type of contract.
48. Thus, for example, an FOB inland point (for example an airport or a warehouse) sale contract makes little sense: what type of contract of carriage must the buyer make? Does the buyer owe the seller an obligation to make a contract of carriage under which the carrier is bound to take over the goods at the named inland point or at the nearest port to that point?
49. Again, a CIF named sea port sale contract where the buyer expects the goods to be brought to an inland point in the buyer’s country makes little sense. Must the seller procure a contract of carriage and insurance cover to the eventual inland destination intended by the parties or to the seaport named in the sale contract?

50. Gaps, overlaps and unnecessary costs are likely to arise—and all this because the wrong Incoterms® rule has been chosen for the particular contract. What makes the mismatch “wrong” is that insufficient regard has been given to the two most important features of the Incoterms® rules, features which are mirrors of each other, namely the port, place or point of delivery and the transfer of risks.
51. The reason for the frequent misuse of the wrong Incoterms® rule is that Incoterms® rules are frequently regarded exclusively as price indicators: this or that is the EXW, FOB, or DAP price. The initials used in the Incoterms® rules are doubtless handy abbreviations for the formula used in the calculation of the price. Incoterms® rules are not, however, exclusively, or even primarily, price indicators. They are a list of general obligations that sellers and buyers owe each other under well-recognised forms of sale contract—and one of their main tasks is to indicate the port, place or point of delivery where the risk is transferred.

VIII. ORDER WITHIN THE INCOTERMS® 2020 RULES

52. All the ten A/B articles in each of the Incoterms® rules are important—but some are more important than others.
53. There has, indeed, been a radical shake-up in the internal order in which the ten articles within each Incoterms® rule have been organised. In *Incoterms® 2020*, the internal order within each Incoterms® rule now follows this sequence:
 - A1/B1 General obligations
 - A2/B2 Delivery/Taking delivery
 - A3/B3 Transfer of risks
 - A4/B4 Carriage
 - A5/B5 Insurance
 - A6/B6 Delivery/transport document
 - A7/B7 Export/import clearance
 - A8/B8 Checking/packaging/markings
 - A9/B9 Allocation of costs
 - A10/B10 Notices
54. It will be noticed that concerning the Incoterms® 2020 rules, after recording in A1/B1 the basic goods/payment obligations of the parties, Delivery and the Transfer of risks are moved to a more prominent location, namely to A2 and A3 respectively.
55. The broad sequence thereafter goes:
 - ▶ ancillary contracts (A4/B4 and A5/B5, carriage and insurance);
 - ▶ transport documents (A6/B6);

- ▶ export/import clearance (A7/B7);
 - ▶ packaging (A8/B8);
 - ▶ costs (A9/B9); and
 - ▶ notices (A10/B10).
56. It is appreciated that this change in the order of the A/B articles will take some time—and cost—to become familiar. It is hoped that with delivery and risk now made more prominent, traders will find it easier to identify the differences among the various Incoterms® rules, i.e. the different points in time and place at which the seller “delivers” the goods to the buyer with risk transferring to the buyer from that time and point.
57. For the first time, the Incoterms® rules are published both in the traditional format setting out the eleven Incoterms® rules and in a new “horizontal” format setting out the ten articles within each Incoterms® rule under each of the headings listed above in paragraph 53, first for the seller and then for the buyer. Traders can therefore now far more easily see the difference, for example, between the place of delivery in FCA and the place of delivery in DAP; or the items of cost which fall on a buyer in CIF when compared with the items of cost which fall on a buyer in CFR. It is hoped that this “horizontal” representation of the Incoterms® 2020 rules will further assist traders in choosing the Incoterms® rule most appropriate to their commercial requirements.

IX. DIFFERENCES BETWEEN *INCOTERMS® 2010* AND *2020*

58. The most important initiative behind the Incoterms® 2020 rules has been to focus on how the presentation could be enhanced to steer users towards the right Incoterms® rule for their sale contract. Thus:
- a) a greater emphasis in this Introduction on making the right choice;
 - b) a clearer explanation of the demarcation and connection between the sale contract and its ancillary contracts;
 - c) upgraded Guidance Notes presented now as Explanatory Notes to each Incoterms® rule; and
 - d) a re-ordering within the Incoterms® rules giving delivery and risk more prominence.

All these changes, though cosmetic in appearance, are in reality substantial attempts on the part of ICC to assist the international trading community towards smoother export/import transactions.

59. Apart from these general changes, there are more substantive changes in the Incoterms® 2020 rules when compared with *Incoterms® 2010*. Before looking at those changes, mention must be made of a particular development in trade practice

which occurred since 2010 and which ICC has decided should *not* lead to a change in the Incoterms® 2020 rules, namely Verified Gross Mass (VGM).

60. *Note on Verified Gross Mass (VGM)*—Since 1 July 2016, Regulation 2 under the International Convention for the Safety of Life at Sea (SOLAS) imposed on shippers in the case of the shipment of containers the obligation either to weigh the packed container using calibrated and certified equipment, or to weigh the contents of the container and add the weight of the container when empty. In either case, the VGM is to be recorded with the carrier. A failure to comply bears the sanction under the SOLAS Convention that the container “should not be loaded onto a ship”: see paragraph 4.2, MSC1/Circ.1475, 9 June 2014.

These weighing operations obviously incur expense and failure may lead to delay in loading. As this happened after 2010, it is unsurprising that there was some pressure in the consultations leading to *Incoterms® 2020* for a clear indication to be given as to who, as between seller and buyer, should bear such obligations.

61. It was felt by the Drafting Group that obligations and costs relating to VGM were too specific and complex to warrant explicit mention in the Incoterms® 2020 rules.
62. Returning to the changes made by ICC to the Incoterms® 2010 rules in the Incoterms® 2020 rules, these are:
- [a] Bills of lading with an on-board notation and the FCA Incoterms® rule
 - [b] Costs, where they are listed
 - [c] Different levels of insurance cover in CIF and CIP
 - [d] Arranging for carriage with seller’s or buyer’s own means of transport in FCA, DAP, DPU and DDP
 - [e] Change in the three-letter initials for DAT to DPU
 - [f] Inclusion of security-related requirements within carriage obligations and costs
 - [g] Explanatory Notes for Users

[a] Bills of lading with an on-board notation and the FCA Incoterms® rule

63. Where goods are sold FCA for carriage by sea, sellers or buyers (or more likely their banks where a letter of credit is in place) might want a bill of lading with an on-board notation.
64. However, delivery under the FCA rule is completed before the loading of the goods on board the vessel. It is by no means certain that the seller can obtain an on-board bill of lading from the carrier. That carrier is likely, under its contract of carriage, to be bound and entitled to issue an on-board bill of lading only once the goods are actually on board.

65. To cater for this situation, FCA A6/B6 of *Incoterms® 2020* now provides for an additional option. The buyer and the seller can agree that the buyer will instruct its carrier to issue an on-board bill of lading to the seller after the loading of the goods, the seller then being obliged to tender that bill of lading to the buyer, typically through the banks. ICC recognises that, despite this somewhat unhappy union between an on-board bill of lading and FCA delivery, this caters for a demonstrated need in the marketplace. Finally, it should be emphasised that even where this optional mechanism is adopted, the seller is under no obligation to the buyer as to the terms of the contract of carriage.
66. Does it remain true to say that where containerised goods are delivered by seller to buyer by handing over to a carrier before loading onto a ship, the seller is well advised to sell on FCA terms rather than on FOB terms? The answer to that question is Yes. Where *Incoterms® 2020* have made a difference, however, is that where such a seller still wants or needs a bill of lading with an on-board notation, the new additional option in the FCA term A6/B6 makes provision for such a document.

[b] Costs, where they are listed

67. In the new ordering of the articles within the *Incoterms® 2020* rules, costs now appear at A9/B9 of each *Incoterms®* rule. Apart from that re-location, however, there is another change that will become obvious to users early on. The various costs which fall to be allocated by various articles within the *Incoterms®* rules have traditionally appeared in different parts of each *Incoterms®* rule. Thus, for example, costs related to the obtaining of a delivery document in FOB 2010 were mentioned in A8, the article under the heading “Delivery Document”, but not in A6, the article under the heading “Allocation of Costs”.
68. In the *Incoterms® 2020* rules, however, the equivalent of A6/B6, namely A9/B9, now lists all the costs allocated by each particular *Incoterms®* rule. A9/B9 in the *Incoterms® 2020* rules are consequently longer than A6/B6 in the *Incoterms® 2010* rules.
69. The purpose is to provide users with a one-stop list of costs, so that the seller or buyer can now find in one place all the costs for which it would be responsible under that particular *Incoterms®* rule. Items of cost are also mentioned in their home article: thus, for example, the costs involved in obtaining documents in FOB still also appear at A6/B6 as well as at A9/B9. The thinking here was that users interested in discovering the specific allocation of documentary costs might be more inclined to go to the specific article dealing with delivery documents rather than to the general article listing all the costs.

[c] Different levels of insurance cover in CIF and CIP

70. In the Incoterms® 2010 rules, A3 of both CIF and CIP imposed on the seller the obligation to “obtain at its own expense cargo insurance complying at least with the minimum cover as provided by Clauses (C) of the Institute Cargo Clauses (Lloyd’s Market Association/International Underwriting Association ‘LMA/IUA’) or any similar clauses.” Institute Cargo Clauses (C) provide cover for a number of listed risks, subject to itemised exclusions; Institute Cargo Clauses (A), on the other hand, cover “all risks”, again subject to itemised exclusions. During the consultations leading to the Incoterms® 2020 rules, the case was made for moving from Institute Cargo Clauses (C) to Institute Cargo Clauses (A), thus increasing the cover obtained by the seller for the benefit of the buyer. This could, of course, also involve an additional cost in premium. The contrary case, namely to stay with Institute Cargo Clauses (C), was equally strongly put, particularly by those involved in the maritime trade of commodities. After considerable discussion within and beyond the Drafting Group, the decision was made to provide for different minimum cover in the CIF Incoterms® rule and in the CIP Incoterms® rule. In the first, which is much more likely to be used in the maritime commodity trades, the status quo has been retained, with Institute Cargo Clauses (C) as the default position, although it is, of course, open to the parties to agree to higher cover. In the second, namely the CIP Incoterms® rule, the seller must now obtain insurance cover complying with Institute Cargo Clauses (A), although it is, of course, again open to the parties to agree on a lower level of cover.

[d] Arranging for carriage with seller’s or buyer’s own means of transport in FCA, DAP, DPU and DDP

71. In the Incoterms® 2010 rules, it was assumed throughout that where the goods were to be carried from the seller to the buyer, they would be carried by a third-party carrier engaged for the purpose either by the seller or the buyer, depending on which Incoterms® rule was used.
72. It became clear in the deliberations leading to *Incoterms® 2020*, however, that there were some situations where, although the goods were to be carried from the seller to the buyer, they could be so carried without any third-party carrier being engaged at all. Thus, for example, there was nothing stopping a seller on a D rule from arranging for such carriage without outsourcing that function to a third party, namely by using its own means of transportation. Likewise, with an FCA purchase, there was nothing to stop the buyer from using its own vehicle for the collection of the goods and for their transport to the buyer’s premises.

73. The rules appeared not to take account of these eventualities. The Incoterms® 2020 rules now do, by expressly allowing not only for the making of a contract of carriage, but also for simply arranging for the necessary carriage.

[e] Change in the three-letter initials for DAT to DPU

74. The only difference between DAT and DAP in the Incoterms® 2010 rules was that in DAT the seller delivered the goods once unloaded from the arriving means of transport into a “terminal”; whereas in DAP, the seller delivered the goods when the goods were placed at the disposal of the buyer *on* the arriving means of transport *for* unloading. It will also be recalled that the Guidance Note for DAT in *Incoterms® 2010* defined the word “terminal” broadly to include “any place, whether covered or not..”.
75. ICC decided to make two changes to DAT and DAP. First, the order in which the two Incoterms® 2020 rules are presented has been inverted, and DAP, where delivery happens before unloading, now appears before DAT. Secondly, the name of the rule DAT has been changed to DPU (Delivered at Place Unloaded), emphasising the reality that the place of destination could be any place and not only a “terminal”. However, if that place is not in a terminal, the seller should make sure that the place where it intends to deliver the goods is a place where it is able to unload the goods.

[f] Inclusion of security-related requirements within carriage obligations and costs

76. It will be recalled that security-related requirements made a rather subdued entry into the Incoterms® 2010 rules, through A2/B2 and A10/B10 in each rule. The Incoterms® 2010 rules were the first revision of the Incoterms® rules to come into force after security-related concerns became so prevalent in the early part of this century. Those concerns, and the associated shipping practices which they have created in their wake, are now much more established. Connected as they are to carriage requirements, an express allocation of security-related obligations has now been added to A4 and A7 of each Incoterms® rule. The costs incurred by these requirements are also now given a more prominent position in the costs article, namely A9/B9.

[g] Explanatory Notes for Users

77. The Guidance Notes appearing at the start of each Incoterms® rule in the 2010 version now appear as “Explanatory Notes for Users”. These Notes explain 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 are intended (a) to help the user accurately and efficiently steer towards the appropriate

Incoterms® rule for a particular transaction; and (b) to provide those deciding or advising on disputes or contracts governed by *Incoterms® 2020* with guidance on matters which might require interpretation. For guidance on more fundamental issues that cut across the Incoterms® 2020 rules more generally, reference may, of course, also be made to the text of this Introduction.

X. CAUTION WITH VARIANTS OF INCOTERMS® RULES

78. Sometimes the parties want to alter an Incoterms® rule. The Incoterms® 2020 rules do not prohibit such alteration, but there are dangers in so doing. In order to avoid any unwelcome surprises, the parties would need to make the intended effect of such alterations extremely clear in their contract. Thus, for example, if the allocation of costs in the Incoterms® 2020 rules is altered in the contract, the parties should also clearly state whether they intend to vary the point at which delivery is made and the risk transfers to the buyer.

Charles Debattista*
Special ICC Advisor
Incoterms® 2020 Drafting Group
36 Stone
Gray's Inn
London

* I am very grateful for comments received on earlier drafts of this personal Introduction to the new rules, both from ICC national committees and from my colleagues on the Drafting Group. The views expressed in this Introduction, however, remain my own and do not therefore form part of the Incoterms® 2020 rules themselves.