LECTURE NOTE ON INTERNATIONAL COMMERCIAL TERMS

1 INTRODUCTION

International commercial terms (INCOTERMS) represent a codification of international mercantile customs and usages, which have been formulated in an effort to provide a standardized interpretation for trade terms. However, it is very difficult to find consistent commercial practice in different countries and trades, for example practices in the loading of ships under the FOB term and the unloading from ships under CFR and CIF terms (Klotz and Barrett, 2000). Because commercial practice is not the same everywhere, INCOTERMS can merely reflect the most common or dominant practice. In the absence of sufficient precision, INCOTERMS often have to be supplemented by the governing law of the contract or through customs and trade usages prevalent in a particular trade or port or even through a previous course of dealing between the parties to the contract.

The economic market and trade traffic of this century beyond doubt consists of single universal market. The Buyers and Sellers most of the times find themselves on different continents in different parts of the world, they communicate by having a uniform and homogeneous set of trading, chiefly known as International Commercial Terms (INCOTERMS) to help understand and route properly through international transactions and also clarify each of the Buyer's and Seller's role in this supply chain of trade and transactions.

INCOTERMS are a series of various international sales terms, which were first, published by International Chamber of Commerce (ICC) back in 1936, and then in the present dates of 2000, 2009 and now 2010. In the early 1900's, many of the international traders, who were situated in diverse regions of the world, devised a set of short abbreviations used for certain frequently practiced trading terms. On the other hand, due to disparity in culture, associations, language and syntax, knowledge and experience, translations and linguistics, these trading terms had dissimilar meanings for these diverse global members of trade. The rise in confusion and common errors became a consistent stamp and a constant risk in international trading and shipping. For that reason, in order to encourage consistency and eliminate confusion, the International Chamber of Commerce (ICC) in 1936 developed one standard and homogeneous set of IN-(International)-CO-(Commercial)-TERMS for the traders worldwide to accept and

practice. Since then, these INCOTERMS have played a key role in global business of exchange and these terms specifically address certain key responsibilities and compulsions, and help institute momentous and considerable "markers" along the chain of the micro-logistics mechanism.

International Commercial Terms (INCOTERMS) can be defined as the mutual obligations of seller and buyer arising from the movement of goods under an international contract from the standpoint of risks, costs and documents" *UNCTAD, 1990.* Although INCOTERMS purport to standardise trade term definitions, they are still perceived as having particular shortcomings. INCOTERMS have a limited scope of regulation. They do not regulate all the aspects of a sales contract and apply only to the primary obligations of delivery and related issues, such as risk, insurance, documentation and matters incidental to the export and import of goods (ICC *INCOTERMS 2000*). INCOTERMS, therefore, have to function in conjunction with other stipulations of the contract or the governing law to regulate the contractual rights and obligations of the parties to the contract in full. Is this a limitation for the efficiency of INCOTERMS, or is there perhaps scope for interaction with the governing law of the contract, which may supplement and even strengthen both INCOTERMS and the governing law?

It is generally accepted that INCOTERMS will only be applicable when incorporated into the contract of sale. Whether they are capable of enjoying a form of autonomous application independent of party agreement is not clear. This is an aspect that is central to the question whether INCOTERMS are efficient as a means of harmonising and standardising mercantile custom. The investigation, therefore, will have to consider the possibility of application in the absence of express or implied agreement.

INCOTERMS primarily deal with the delivery obligations of the parties. Hence, in a given situation it is possible that aspects concerning delivery and risk allocation could be regulated by both INCOTERMS and the governing law of the contract, such as the United Nations Convention on the International Sale of Goods (CISG) for example. In these instances, will INCOTERMS replace the default rules on passing of risk as would a contractual exclusion? And if that is the case, are the CISG provisions completely excluded or will it still be possible to invoke aspects of the CISG rule where the INCOTERMS rule falls short?

There basic use is to define the relationship between the buyer and the seller, regarding the mode of delivery and to justify the member who is supposed to arrange for customer clearances and licenses. Along with the passage of title, these terms are used to clarify as either who has to obtain insurance of the goods and merchandise during the transport, generally known as the transfer of risks and insurance responsibilities. From the delivery terms to the justified delivery completion and how the costs will be allocated between the parties are all covered in these sets INCOTERMS.