



Global Trade Considerations

By Paul Denneman

LESSON-1

Welcome in the first lesson of the global trade considerations. In that one we will look at the elements of global trade and trade compliance. Trade compliance is something more than only looking at some regulations. Trade compliance is the part how organizations manage their fulfillment of government regulations. Those regulations can affect the classification of the product, the documentation requirement, valuation of the items and record-keeping practices. That is a lot more than we will discuss in this lesson. But be aware that trade compliance is more than customs regulations. It's also more than incoterms or letter of credit processes. It is a big area of compliance issues. What are we going to discuss in this course? We will start with a lesson about incoterms and specifically incoterms 2020. We will discuss in the second lesson the letter of credit process. Then we will go to the customs processes, import and export procedures. And after that the fourth lesson, dangerous goods handling and regulations. In this first lesson, we are going to discuss why we should use incoterms in contract terms and conditions. First, I'm taking a look at what is in the contract. A contract consists of several elements. What we need to explain. First of all, we have all the physical elements like specifications, quality and quantity and delivery windows. On the other side we will have to arrange something about a payment and in the third level we agree something about responsibility. The fourth main element in any contract is to control what quality standards are we using, what security and IP regulations do we have and what incentives and penalty schedules do we agree? The last element of every contract is of course how we manage the relationship status of the communication, what legal entity we are using? Are we using the standard sales of goods contracts? What are resolution steps? and what do we arrange about termination? Coming back on the two elements, payment and responsibility, there are the elements where we are going to use the incoterms for. In the payment terms, we of course have to agree something. about pricing, packaging and all those elements, what can change during the course of our contract, we will agree some payment terms. We will have most likely exchange rates inside of it. And most important for the incoterms, what is my transport arrangement and who will pay

for the duties? So in the payment terms, the incoterms are playing an important role. The element of responsibility? We have to look at documentation, how we take care of, for instance livestock and not unimportant. What is the transfer of title? In a lot of cases we think that is being arranged with the Incoterms, but that's not true. The incoterms will not say anything about the transfer of title, but it will be used to make sure when the ownership is going over. Last but not least, we have the element of insurance. A lot of people think that insurance is being arranged within the incoterms, but that is also not true. The insurance part is very limited being taken care of by the use of incoterms. I will come back to that element later in this lesson. So what are the incoterms? The incoterms are there for 90 years. There are already nine addition. And if you calculate very carefully, then you know that every ten years approximately a new version is coming. So the latest version is from 2020 and that version will have eleven rules being described. The incoterms are being issued by the International Chamber of Commerce. And in that Chamber of commerce, a lot of international lawyers are going or did define how those trade terms are being used. What are those incoterms? As mentioned, it's a series of internationally recognized standardized trade terms. They are published by the International Chamber of Commerce and they are widely used in international sales. What do they describe? They describe who does what. So the applications who pays for what say something about the cost when risk in the goods passes to the seller. So it tells something about risk. And as mentioned before, it doesn't say anything about ownership or title of the goods that can be arranged in different ways in the contract. It also doesn't say anything about the payment obligations and when we have to pay, how we have to pay what currency we have to use, et cetera, et cetera. It also doesn't say anything about detailed vessels, equipment. So if there are requirements, they should be arranged in a different way. The incoterms are not pre describing what we should use. It doesn't say anything about how to deal in delay, sanctions if export is permitted, if there are other prohibitions available, tariffs, intellectual property rights, et cetera, et cetera. Incoterms describe three basic elements, obligations, cost and risk. And in a lot of cases something about documentation. Who should take care of it. What are the differences between the incoterms? First of all, we have to take into account that the incoterms are there for the forward transport modes. We have sea, rail, road and air. There are seven incoterms which are the general incoterms applicable for those four transport modes. There are also four incoterms which are applicable only for sea transportation. The reason for that the sea transportation is ancient industry which has its own rules is ancient industry which has its own rules and regulations for a long time and didn't want to confirm to those general rules yet . The explanation between the different incoterms I will do later in this lesson.

Then furthermore, we will have difference in the stages in our process. So at the first stage there is always a seller that seller needs to export its goods and use the customs for it. Then we will have what we call the first lack of transportation, the transportation from the premises of the seller to the terminal where the main lack of transportation will take place. At the terminal we will load goods on the main transportation vehicle, do our main journey on unload goods, be at the terminal, have the last amount of transportation, have most likely importation customs and then we are at the buyers place in making arrangements we can of course bring everything older obligations to the seller and the seller usually wants to bring them all to the buyer. So the incoterms will describe several ways of dealing with that. Those several ways are summarized in four main terms. We will have the D terms, delivered terms, the C terms carriage terms, the F terms, the free terms, and the E term ex works there. I will explain now those eleven terms in detail. First of all, we bring all the responsibility of the transportation, exportation, loading and delivery with the buyer. That is ex work, that is the most common term the seller wants. He has his goods, placed them on the premises and you have to take care for loading and everything else. Although usually they will help you with the Loading. It's important that it's not the application of the seller to do so and especially if you need special equipment for Loading. It might be costly to arrange it. There is another reason why this term is not advised. You are carrying goods from a country where you are not familiar with. In most of the cases you do not know all the customs regulations in detail. So that's why in most of the cases we try and it's also advised by the International Chamber of Commerce, the after the FCA term, the free carrier term. In that case the seller is responsible for loading the goods. The seller is responsible for exportation of the goods. So filling in the exportation formalities and we can arrange that they take care of the first lack of transportation. What often is happening in that case is that I give maybe my ups account number and they use that freight forward account to arrange the transport online costs. So in this case it's not said that the carrier after the seller has to take care for the cost of the first lack of transportation, it's about who is going to arrange it. In the C terms we will have a difference between CPT and CIP. CPT is cost and carriage paid. So the seller is making the arrangements for the first lack, taking care of the cost of the first lack transportation, but also arranges the main lack transportation. So it can be that huge ride with the train, that long flight, or that long sea trip. What is taken care of by the seller. Important to know in that respect is that the risk is going to transfer at the moment it's in the first lack of transportation. So when it's loaded on the truck, but the costs are being taken care of by the seller. In CPT, the risk is being transferred at the moment that it's loaded on the first lack of transportation. But there is no insurance being arranged. Everything. What will happen with the goods during that

transportation part means that the buyer is responsible for it. So therefore there is also the incoterm CIP cost insurance paid. In that way the seller is taking care of insurance of the good and we would expect that that is the most, let's say beneficial option with a lot of global companies have their own insurance companies so they prefer CPT above CIP because the insurance is not adding any value for them. What we also should take into account is that the insurance coverage is quite limited. I will come back to that coverage and that difference in coverage in the remaining of this lesson. As part of the general terms we have three D terms delivered terms delivered at place, delivered at place unloaded and delivered duty paid. So the last one delivered duty paid is the most extensive one. That means that I get the goods at my premises and they are ready for use. I don't have to do anything to get my goods. They are important. They are delivered and I don't have any risk during the complete transportation process. The DAP delivered at place means that the goods are there but still are loaded on the vehicle for last mile transportation. Normally that's not a problem because we have palletized goods or containerized shipments. But in case of bow goods, I as a buyer has to take care of the unloading. If I need special equipment for it or a lot of workers then it might be costly and I should be aware that this is not included in the DAP term. In those situations, we will use the DPU term delivered at place unloaded. In that case the seller is responsible for unloading the goods. All those terms need to have an explanation on the name, place and of destination. So they should be very precise being named where the point of transfer will be. So that might be an ex works that's in Dubai, on a certain address, it might be with CPT that it's on a destination harbor airport in Istanbul, but it should be as precise as possible being this crime. Why is that important? Just because we need to be sure that it's delivered correctly and at the point of transfer of risk and cost is being clear. As mentioned, we have for the sea freight for, let's say, additional or maybe better replacement terms. The FCA term free carrier term is in sea transportation, usually being replaced by the SAS free alongside ship or the free onboard term. That difference is relevant for, let's say on containerized goods. So if I ship out a container, it's preferred to use the general terms. But if I ship out on containerized goods so which should be loose loaded, then we prefer the term FAS free alongside ship. What means that the goods are on the clay and should be loaded on the ship, or that they are brought on board free on-board FOB and loaded in the ship? It's making a difference in the loading and on loading of the goods and who should bear those costs? Furthermore, we have in the sea freight the difference in the C term we have cost and freight. That means that the cost up until the destination harbor are being paid by the seller and we have a different CIF cost insurance freight where the costs are being bagged by the seller for the shipment, but also for the insurance. The insurance is more limited in case of the

general incoterm CIP, it was already limited in what was covered, but in case of the sea freight term CIF, it's very basic what the insurance is. You should be aware that if the goods are being lost that you might not get anything reimbursed or maybe not what you are expecting on it. So in most of the cases with insurance in the incoterms, with the maritime insurance part, the cost you are making for replacing the goods are not fully covered. Currently, the version of incoterms 2020 are active. The version before 2010 is still applicable in cases where companies decide not to go over in use of the 2020 term. That's also the reason why it's important not only mention the incoterm and the named place of destination, but also that we are making use of incoterms and the year of the incoterms. Important elements. Why should we use incoterms? Why should we mention it? For instance, in the US we have a term FOB what is having a completely different meaning as the FOB used in incoterms. So to make it sure that it's understood what you have agreed and that you are speaking the same language, always use the term incoterms in combination with the year that is there. There are four main differences between the incoterms 2010 and 2020. The first one is the level of insurance. Level of insurance. There are three main what we call marine cargo clauses, clause A, B and C for the sea freight incoterms, The shippers have said for all the time that they use the limited version. That is the same coverage as was for all the let's say insurance clauses in the 2010 incoterms. So in the 2020 we have, let's say increased the coverage from clause C to clause A for the CIP term. What is covered in clause C? Fire and explosion on the ship are on the plane Stranding and sinking of the ship, barratry and jettison. Barratry is misconduct of the crew and jettison is wreckage. So the ships is being lost, collision when the ship is crashing and what we call the general average or sacrifice. That last one I will explain in the next slide what the coverage of what that means, the general average. But be aware that these are the only things which are insured when I have an insurance clause and that's quite limited. So basically, the ship can sink, there can be some parts on it, but all the other elements which we are going to discuss now are not part of the insurance. So if there's an earthquake, you are not lucky, it's not covered. If the good are washing overboard or water is coming into the ship, that's clause B, it's not covered in the general sea terms. What is covered in the CIP in the clause A, theft, pilferage and non-delivery. So your goods are not there, but it should be proven that they are stolen, that they are missing for some reason, malicious damage. So somebody is making on purpose damage to your goods shortage I shipped out two containers and there is only one being delivered. Contamination or heavy weather. And that's also quite limited because what is not inside, in older terms it's delay. It's spontaneous combustion, self-heating, currently an issue with batteries, war strikes and civil instability. It's happening. If we look in the area of German currently where

there is war going on, it's not covered in any insurance policy. And last but not least of course terrorism and piracy, it's not covered. So in all the insurance clauses, a big part is not there. If we are taking the example of the Ever Given, what was stranded in the Suez Canal, what is covered in insurance policy? In that pie, most of the ships had tremendous delay and based on the insurance policies, there is no coverage, no liability for that delay. That case is also interesting because for the Ever Given they had to pay several hundreds of millions of dollars to the Port Authority because of the cost of getting it loose in that part. Who is going to pay those costs? Most likely, but I haven't heard it yet. It will be covered under what we call general average. And general average is a very tricky thing in sea freight and sea freight cost. So what is general average or sacrifice? The captain of the ship is facing something, what is harming his ship or its cargo, and he has to make decisions, for instance, to put off board some of the cargo. What they normally will not do is to choose and to say, oh, that one is from BMW, we will not take, or that one is from you, we will not take. They just throw overboard cargo. Then in those cases, it's not how to say fair that the one who was unlucky is losing the cargo and the other one was lucky and doesn't have any damage out of it. And that's what we call the general average clause. So in those cases, when general average is being declared and accepted, all the cargo owners and the ship owners will take care of the cost of that part. There was an example of a piracy event where, let's say the value of the ship was 50% of the total and the cargo was the other 50%. The total costs were about, what is it, \$3.2 million. And then they distribute the cost over the ship owner and the cargo owners. And afterwards you will get the invoice because you had cargo on that ship and you are liable for that part. So in the worst case, you have lost your Cargo and afterwards you also get an invoice. What are typical general average examples? Fire, explosion, wreckage, piracy, all those elements which are not being foreseen. The second change there was on the incoterms 2020 is that there is a bill of lading on board notation added. Why is that? That is a quite technical part in relation with a letter of credit. In a letter of credit there can be a requirement. And in this example, it requires a full set of original bills of lading. It requires that the part of loading was Ho Chi Minh City in Vietnam. You need to deliver proof that the goods are loaded and that the part of this charge was Manila South ports in the Philippines. To clear that letter of credit, you have to hand over proof that it's loaded. You have to hand over the bills of materials and you have to hand over that it's unloaded in a certain harbor. How can I keep that proof? By having what we call an onboard notation. And that onboard notation is something it's clean shipped on board of a certain vessel on a certain date and that there was no damage on it. The problem occurs that officially, when we have a treat FCA free carrier, the goods are free alongside ships, the goods are not on board and normally the shipping company

will not provide that on board notation and that causes issues with the letter of credit process. So in the 2020 incoterms, they have agreed that also in those cases, an on board notation may be given. The third difference of the incoterms 2020 is a change from the previous one DAT delivered at terminal to DPU. So in the 2020 version that change has been made. What is the reason for it? DAP appears now before let's say DAT Why is that? Because it reflects better the actual situation. So in DAP the goods are still loaded and in DAT delivered a terminal unloaded. The second change they made was that the word DAT was DAT delivered at terminal. The terminal could be more places than an actual terminal. So therefore they decided to rename that term to DPU delivered at place unloaded and that makes it more logical in the full concept. So now we will have DAP delivered at place and we will have DPU delivered at place unloaded. In the previous version what you still can see is that people can use DAT what is basically the same as DPU only the term is named differently. The Fourth element what has been changed is the use of own transportation formally in the terms it was described with FCA, DPA, DPU and DDP that I have to contract for transportation. What officially means that I have to hire somebody to do the transportation for me? Formally speaking I could not use my own transportation. So in the incoterms 2020 they have corrected this by using the description the buyer seller must contract or arrange at its own cost for the carriage of goods to the named place of destination or to the agreed point. So especially the term must contract or arrange gives the room that I use my own transportation. Of course there are more minor differences between the 2010 and the 2020. Most of it is in small wordings and in how they organize the information in the book. But the four main points are those. Now after this introduction, we are going to apply what we have learned in a small case, diamonds on the rock. How do we apply the incoterms? In diamonds on the rock we have a company, a fixtures company, Diamet Incorporated, which is located at Ten Main Street in Austin, Texas, USA. And that company imports precious stones and metals to the United States from different countries. Diamet Incorporated is currently using incoterms 2010 CIF air freight to its facility term of international sale. Diamet Inc., requests on the other hand, the sellers to arrange both transport and insurance from the point of shipment to their facility and that the seller is taking care of paying older duty payments in the United States. I have three questions for you. The first one is they are using a certain incoterm CIF air freight. What should be the correct incoterm 2010 Diamet Inc. should use? Is that A - CIF, Airfreight, 10, Main St, Austin, TX, USA Is that B - CIP (10, Main St, Austin, TX, USA) Incoterms 2010 Is that answer C - CIF Incoterms 2010 (Austin, TX, USA) simply CIP incoterms 2010. Take a moment to think of your answer? The correct answer is not A whata lot of people think, but CIF. When do we use that term? Only in case of sea freight? Never in combination with air freight so.

It should be something what they should use now it's CIP, then it could be D incoterms 2010 but then we miss the named, place and destination. So, the correct answer in this case is B The next question, what is the correct incoterm 2020 they should use now and they request their clients. Is that A - CIF? Is that B - CIP? Is that C - DDU? Is it D - DDP? Of course, this one is D delivered duty paid and why they want that the duties are being covered by the seller. And what about insurance? That's not relevant because it's not the risk of the buyer, it's the risk of the seller. If they want to insure, that's good. But the buyer basically doesn't care. The third and the last question, how should the income term correctly be noticed in the quote and on documents? Is that A - DDP incoterms? Is that B - Delivered duties paid incoterms 2010? Will that be C - DDP Ten Main Street, Austin, Texas, USA incoterms 2020 or will it be the D - DDP incoterms 2010? Austin, Texas, USA? This one might be tricky for some of you, but of course the answer is C delivered duty pay. We need to have a name, place and destination and a term incoterm 2020. Of course, all the answers with 2010 are not correct.

