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Incoterms in International Trade Law

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Abstract:

Post-World War II, worldwide trade and commerce in products have expanded considerably. This expansion is strongly correlated with the substantial rise in population and the swift advancement of technology and transportation methods. The requirements and expectations of contemporary society have led to significant transformations in international trade and the economy, resulting in heightened associated risks.

A multitude of private and public international lawyers and legal entities, including the United Nations and various international organizations, have endeavored to unify international trade law to substantially mitigate commercial risks and to legally integrate the economic and commercial activities of international actors under uniform regulations.

The International Chamber of Commerce is one such entity that has been issuing a series of three-letter phrases for the structuring of international buy and sale contracts, known as Incoterms, since 1935. These provisions have been essential in resolving international economic disputes. Whether these cases are adjudicated in domestic courts, through arbitration, or at the cross-border and international levels.

Keywords: Incoterms, Vienna Convention, 1980 Convention on the International Sale of Goods, International Chamber of Commerce, UNCITRAL, International Trade Law, Commercial Custom

Introduction

More than seven billion people live on this planet, all of whom have common and different needs, and they need to be met daily, regularly, and without interruption. For this reason, there are many real and legal persons, each of whom, according to their profession and expertise, delivers part of these needs to consumers in the form of commercial and trade duties in continuous and continuous cycles. Although a major part of trade worldwide is met through non-governmental institutions and companies, governments

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also, due to the necessity of sovereignty and the fact that they consider meeting the needs and demands of the various segments of the population that make up the state element as a factor in stabilizing power, supervise the activities of businessmen in a defined and codified manner, and they themselves, in the form of state companies and organs, and in some countries where the overall authority of the economy is still in the hands of the states and are run in a quasi-socialist manner, non-governmental public companies and institutions take action to prepare and distribute the needs and demands of the state and the people. « Humans act in four different ways to satisfy their needs. These four methods are: "self-production", "recruitment from others", and merchants and traders to meet people's demands on the fourth choice.[1] "Exercise of force" and "exchange", that is, the exchange of assigned effort and in the form of trade in the internal (domestic) or external (international) areas, they act to "trade" goods or provide services.

Although in the past, the provision of services was usually not included in the scope of trade, since three decades ago, especially after the GATs agreement, the provision of services has also entered the scope of activities of the World Trade Organization.

For exchange to take place, it is necessary that firstly there are two parties and secondly, both parties have something of value to exchange with each other and finally each party is allowed to accept or reject the offer of the other party.

The diversity of this type of exchange and transaction, especially when it is to be supplied from another country with different economic, political, cultural and social characteristics and crosses numerous geographical-political borders during the transportation process and bears the sovereign actions of the countries of origin, sometimes along the way of transportation (transit) and destination. It has numerous risks and dangers that include specific legal actions.

In this brief speech, we decide to take a brief look at these actions, especially regarding the specific conditions of shipment, transportation and delivery of goods that have been defined and presented by the "International Chamber of Commerce"[2] under the term "Incoterms".

Part One: International Trade and Its Risks

Today, the term economic self-sufficiency or economic independence has lost its color and smell in the world in its full sense. The volume of world trade, especially after World War II, has grown more than any other activity in the world. Especially in recent years, from about 6.6 in 1998 to about 1 trillion dollars[3] and in 2019 to 19.2 trillion[4].

Such a growth rate reflects the fact that over the last twenty years, the volume of trade transactions in the world has increased by almost 3 times, but this growth has never been in a safe and risk-free environment, or in other words, commercial risks.

[1] Rousta, Ahmad et al,2003:7.
[2] International chamber of commerce (ICC)
[3] Esmaeilpour,2000:23.
[4] "World Trade Statistics 2019", https://www.wto-ilibrary.org/content/books/9789287047816.

The existence of intense competition in the supply and distribution of goods and services due to the large number of natural and legal persons involved in the production and supply of various human needs in the form of products and services that can be provided has caused that, to the same extent that suppliers seek to stabilize their market and gain local or international fame and reputation, they also take a series of measures in any way in order to earn more income or penetrate a specific market that cause losses to their counterpart.

Despite these issues, the political situation and changes in the economic laws and regulations of countries, environmental and cultural factors, as well as some risks arising from geographical disasters, have caused merchants and traders to be associated with many risks throughout history. These risks can be mainly divided into 4 major categories including: risks rising from economic factors, risks arising from political factors, risks arising from geographical factors, risks arising from the market and competition.

A: Risks arising from economic factors can be likened to the COVID-19 pandemic crisis in a simple example.

Many traders, as usual, spent their capital in the hope of Nowruz purchases, especially for travelers' needs during Nowruz 98, in order to make a profit, but the spread of the coronavirus and the widespread closure of businesses, as well as severe restrictions on movement during Nowruz, caused the situation to not go according to their plans as predicted and traders had analyzed economic factors and market conditions.

This is especially true for large-scale trade, including in the field of energy, and the significant decrease in demand in international markets caused huge losses to traders and trading companies. In addition, severe changes in the macroeconomic environment, especially in less developed countries that rely on a command economy such as Iran, are among the major business risks.

B: Political risks: In many countries, based on some territorial jurisdictions and political and even ideological programs, laws and restrictions are imposed that can disrupt the system of trade planning at national and regional levels.

These factors occur especially in political-ideological challenges that arise between different governments and even in some multi-party or oligarchic systems within the political system, or in macro-political-economic scenes that lead to the confiscation of foreign companies' assets resulting from nationalization, and they create major and potential risks for natural and legal persons active in the economic and commercial fields.

In addition, determining the rules for the entry and exit of goods or changes in their customs is one of the major risks in international trade. Although in recent years, especially with the implementation of World Trade Organization policies in the form of GATs & GAT agreements and other agreements related to that organization, a significant part of these risks have been reduced, such risks are still clearly felt in countries that have not joined that organization or those that have joined and sometimes take unfounded measures based on political considerations in applying maximum contractual tariffs.[1]

[1] In this case, we can specifically mention the Trump administration's imposition of maximum tariffs on European steel products or similar goods, which caused potential risks for many large trading companies in 2017-2019.

C: Risks arising from geographical-cultural factors: Specific geographical conditions and climatic and natural factors have always been a serious challenge for merchants and traders since time immemorial, which has been mentioned as the most serious risk that often causes the loss of goods. In the past, the risk of pirates or robbers of trade caravans, as well as difficult mountainous routes or hot, burning, and waterless deserts, always occupied the minds of merchants in transporting goods, and the intensity or decrease of these factors played a serious role in the price and supply of goods. In addition, the constant risks of maritime transport have also been a problem, which has fueled many legal discussions about how to transfer the risk of loss of goods from the buyer to the seller, with ships carrying goods sinking or getting lost en route and ending up in territories other than the designated destination, in such a way that for the first time, the discussion of goods insurance was founded by large investment companies in London for this reason.

This issue is important because in international trade, the countries of the buyer and seller, and even their distance, have caused many legal challenges, and such issues still exist despite the advancement of technology and the security of means of transportation and communication routes, and are considered one of the serious risks.

Apart from this, cultural factors and the acceptance or non-acceptance of certain goods and services, including the issue of public order, which is important for governments in establishing and applying rules and regulations, especially those that conflict with good morals in society, are among the other risks that involve traders in their international relations and transactions.[1]

D: Risks arising from market and competition factors: Excessive population expansion, the boom in international trade, and a slight increase in the number of producers, intermediaries, and consumers have created numerous markets that, in accordance with the internal rules and regulations of the countries within the sphere of influence of these markets, especially the economic and political treaties between them, as well as the general and specific principles and rules of the individual market groups, have caused traders to find themselves involved in a very extensive and sometimes confusing manner with rules and regulations that are so difficult to remember and implement that they can pose far-reaching risks to the economic life of traders and commercial companies. Among these market groups, the following can be mentioned.

1. Free trade areas: "Refers to a group of countries that have removed trade tariffs among themselves, but each has its own trade relations with other countries," such as NAFTA .[2]

2. Customs unions: "Refers to a group of countries that, in addition to removing trade restrictions between themselves, have imposed the same tariffs or customs restrictions on non-member countries."[3]

3. Common market: "The common market has all the features of a customs union, in addition to the fact that human resources and capital also flow easily among the member countries." 1.

4. Economic union: "The economic union is a common market in which all the economic policies of the member countries are coordinated."[4]

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[1] Regarding cultural factors, we can mention the tobacco boycott movement during the Qajar era of Iran.
[2] Esmaeilpour,2000:23.
[3] İbid.
[4] İbid.

5. Political union: "The ultimate level of integration of countries is the political union, in which the member countries, in addition to coordinating economic policies, have also formed a political coalition.[1]

Figure-1 Different aspects of market groups and economic alliances in the strengths and weaknesses of common factors

Trade areas					
Customs union					
Common market					
Economic union					
Political union					
	Removal of domestic tariffs	**Common foreign tariffs**	**Free flow of capital and human resources**	**Harmonization of economic policies**	**Political coalition**

Considering the above-mentioned issues, especially the risks arising from the four factors presented in detail, it can be seen that two major risks always stand out more than others, which are: One is the risk of loss and wastage of cash in the transaction, which may occur due to the seller's failure to fulfill his obligation to deliver the item sold after receiving its price or the delivery of a product other than what was agreed upon (whether due to fundamental defects in the product or the lack of fundamental similarity of the product offered and accepted in the transaction). The other is the risk of loss or serious damage to the product during the transfer of ownership from the seller to the buyer. Given that international transactions have a wide scope and many intervening factors. In the event of any of the aforementioned risks, multiple legal issues arise, the resolution of which often requires long periods of time, sometimes more than one fiscal year for the trader, which may seriously damage his other financial obligations or cause him to go bankrupt until the final resolution of the dispute, and may seriously jeopardize the economic-financial existence and even the reputation and credibility of the trader or the company party to the transaction. Since each of the aforementioned factors is subject to its own specific conditions and is usually faced in different territories with different economic-political and even ideological situations and specific domestic laws of each territory with executive, judicial and legislative competence, they have provided a context that inevitably had to be developed and implemented in the years after the Great Depression of the 1920s and subsequently

[1] Shiravi,2019:65.

after World War II, when countries, especially natural and legal persons, including transnational corporations, took great steps towards international transactions, almost constant and even uniform rules and procedures at the international level.

Part Two: Unification of Commercial Rules and Regulations

Commercial transactions, especially at the global level, involve many minor and major problems in the legal field due to the involvement of business subjects with various countries with different laws and regulations. For a long time, lawyers, legislators, and activists in the field of international economics and trade have sought to create a situation in which, at least in legal discussions related to trade, regulations are formulated and implemented in a uniform and even uniform manner at the international level, so that while conducting transactions, traders and merchants, and even service and production companies, and even commercial intermediaries between international producers and distributors, the basic needs of human societies on both sides of the transaction know what legal conditions and regulations they are dealing with, and that differences and conflicts in the internal laws of countries do not cause legal and administrative challenges and problems. On the one hand, some statesmen, considering their political approaches and territorial competence, especially their macroeconomic programs and policies in the domestic sphere of their country, tended to refrain from any action that would somehow weaken their territorial authority or government programs.

But on the other hand, their urgent and sometimes vital need for economic interactions, both in order to meet the needs of the country and to achieve some political goals, have inevitably led them to amend some domestic regulations or participate in regional and international treaties and conventions. Therefore, "coordination and unification of legal regulations may be achieved in different ways.

This process may be carried out at the national level through amending existing rules and regulations or enactment of new laws and regulations, at the international level through the conclusion of international treaties and conventions or through the voluntary acceptance of some regulations by traders, companies and institutions.[1]

This form of legal unification may cause some countries to be unwilling to accept many of the unified regulations due to political interests and even national sentiments and social considerations. For this reason, some reputable international organizations or institutions have taken steps to compile and publish "model laws" so that countries can amend previous regulations or establish new regulations. One of these international institutions is the "United Nations Trade Commission" (UNTC).

On the other hand, in addition to governments, many large companies, international unions or private law firms at the transnational level that provide specialized advice to traders and commercial, manufacturing and service companies have also presented specific legal or management practices and methods that have been welcomed by traders and have gradually become common business practices and have become customary commercial and legal rules in a way that their attention and implementation in international trade relations and transactions have become necessary and enforceable. Therefore, in the field of international trade, in addition to the UNCITRAL Model Laws and the "Convention on the International Sale of Goods"

[1] United Nations Commission on International Trade Law (UNCITRAL)

(CISG) that were developed by the United Nations Convention on the International Sale of Goods and many countries have joined it.

The International Chamber of Commerce[1] also began to work in the 1920s to standardize and provide precise definitions of the terms that had been prevalent in maritime transport since the 17th century, and merchants and transport operators used abbreviations and terms to determine their amounts and duties when transferring the risks of goods from the seller to the buyer.[2]

In 1936, it published the first set of these terms and terms with specific and specific interpretations under the title "Incoterms", which included 7 terms and became known as Incoterms 2017. "This is done in order to avoid independent interpretations and interpretations separate from national regulations and common customs in each country where the parties reside.

Therefore, by referring to the terms published by the International Chamber of Commerce, the duties and responsibilities of the buyer and seller are predetermined and unilateral interpretations are prevented."[3]

That is why, in the event of a dispute between the “centers located at the place of residence of each of the parties to the dispute” based on what is specified in the contract or the conflict of laws of the courts of the countries where the dispute is filed or the arbitration, the Chamber of Commerce considers Incoterms as a fundamental condition of the dispute between the parties to the dispute and makes legal proceedings. These terms are reviewed by the International Chamber of Commerce in accordance with commercial practice, the preferences of traders and trading companies in their use, as well as the changes they have made to their conditions in order to facilitate their business affairs, during different periods, which have been every ten years since the 1980s.

New methods of trade, especially technological changes and technologies, as well as fundamental changes in the mode of transportation, are among the factors that are considered in their amendment and revision. The versions of Incoterms have been published and made available to the public since their first publication in 1953, 1967, 1976, 1980, 1990, 2000, 2010 and 2020, respectively.

Since the purpose of this article is not to examine the conditions contained in these terms, we refrain from expressing them, defining and explaining their conditions, and will only examine them legally within the framework of domestic courts, the Convention on the International Sale of Goods, the UN Model Laws, and the Arbitration Rules of the Chamber of Commerce.

Part Three: Are Incoterms Terms of Transaction or Legal Rule?

Long before the Chamber of Commerce formulated and categorized these terms, the terms mentioned in them, especially the two most widely used terms (CIF & FOB), were widely used by traders.

For example, the term "CIF" was used both before and after the definition provided by this Chamber and was even cited as a business custom. It can be acknowledged that the Chamber of Commerce originally codified and categorized the methods and terms used by traders and compiled them in a concise and

[1] International Chamber of Commerce (ICC)
[2] Zeinalzadeh,2017:70.
[3] İbid.

presentable form as a condition of the contract in written and implied contracts or when offering and accepting a transaction. In order to make their use in contracts more convenient, it presented them to the business community in the form of three-letter terms.

Thus, it can be stated that Incoterms cannot be considered as a legal rule in lawsuits filed in courts or in legal dispute resolution procedures and the like in international trade law. For two main reasons; first, the institution that codified these terms never claimed during their presentation that the terms formulated were considered as a legal rule, and nowhere in the world have domestic legislators approved the Incoterms terms as a law or a legal and legal rule.

Second, in no multilateral international treaty or convention have these concepts and terms been considered as legal rules or similar rules between the contracting parties.

Although the Convention on the International Sale of Goods refers to it in paragraph 2 of Article 9, it does not introduce it as a rule but as a commercial practice and as a law, and this principle is clearly clear in domestic and even international law that a matter as a law is never considered as a law itself and will not have the force of law.

Therefore, Incoterms only include the terms or, in a way, the obligations of the parties to the transaction, and there is no binding rule in them that can be considered as a law or legal rule applicable in commercial disputes, such as those contained in the provisions of the Convention on the International Sale of Goods or the GATs & GAT agreements. They are used as a legal rule that can be relied upon in resolving disputes. Rather, in the event of a violation of these terms, arbitrators or judges can issue a binding judicial or arbitral decision by citing domestic legal rules or international treaties.

Part 4: Incitarm in Claims of Internal Law

In Incoters, "mainly no discussion of violation of commitment and the way to compensate for damages is not raised, In fact, in the absence of the Convention on the Contract, the Compensation Related to the law is domestic and varies from country to drawer. "[1]

In Afghan law, which has not yet joined the International Convention on International Commodity and does not refer to anistral exemplary laws in domestic law in this regard; With the deficiencies of the Incoterms' obligations for the other party to violate the obligation, the right of cucumber is assumed and according to what is explicit in legal rules, especially civil law, the ways of damages in judicial or arbitration decisions can be paid from the obligation to fulfill the obligation to fulfill the obligation. Damage and revocation of the transaction vary depending on the circumstances of the case. If one of the parties to a national citizen is abroad or in any way a lawsuit is subject to private international law, the lawsuit will be discussed in the judicial courts, and if the treaties of the countries are documented, the lawsuit will be enforced.

Therefore, if Incoterms is considered as the subject of commitment to the business and contract, "the discussion of the time of transfer of risk and the guarantee of the goods is desirable and defined in the judicial and arbitration investigations, as if in the contract of the contract. Incoterms' terms have been used

[1] İbid.

to be the basis of the contract as the main requirements of the contract and on the basis of the will of the parties to the contract.[1]

Part 5: Incitarm in Arbitration Discussions

If the contracts are discussed in the contracts, or if the parties are raised through the contract separate any dispute to the Chamber of Commerce or other methods or arbitration authorities have been referred. Refer to the arbitrator and resolve the disputes through the arbitration ritual as well as the compliance of the parties to the decisions and decisions of the Da Dawi reference. Since "Intequarmers are the only term to represent part of the seller's obligations (and along with the two buyer's obligations) that can be incorporated into the contract"

Previously, about the transactions of Seif as one of the most widely used terms and conditions in Incoterms, it is necessary to add: "Contrary to what has been thought, Saif in Incoterms 2000, such as the previous Incoterms, as a contract, and this mistake. It is great that the term is considered a contract, and there is no definition of Seif's contract in Incoterms. "[2]

Therefore, the arbitration authorities also attempt to decide if the International Consignment International Commodity Compassion or any of the Anistral Exemplary Laws shall be adopted, and if any of the international rules and conventions cannot apply their rules on it. , Through commercial -commercial custom, or ultimately internal legal rules that are qualified to apply the contract, resolve the case. The following are the following two theorems.

According to a complaint filed by the buyer of the United States against the seller of the medical imaging system (MRI) from Germany, cases were filed at 936 at the Federal Court, the Southern New York Judiciary.

The court had decided on March 26, 2002 on the basis of CISG rules. The court first claim the seller on the basis of the principles of conflict of laws of the court headquarters must be the rules and regulations of German (contract of contract) as the substantive rules governing consideration in court because both Germany and the United States members of CISG

Then, given that the parties' contract uses the term CIF and in Article 9 of the Convention, the Convention is also approved. The CIF condition was considered one of the main requirements of the contract and the basis for the commodity guarantee: Therefore, due to the CIF conditions, the shipment of the goods or damages to it was transferred to the buyer from the seller to the buyer and the seller has no responsibility for damages to the device. "[3]

In another case where the matter was referred to international arbitration, it is again observed regarding a commercial dispute regarding Incoterms, where the arbitration commission has also explicitly considered and considered Incoterms as a condition of the contract.

The China International Economic and Trade Arbitration Commission (PRC) [CICTAC] [On April 7, 1997, in a case between a seller from the United States and a buyer from China as claimant with the special case

[1] Darabpour,2013:9-38.
[2] İbid.
[3] İbid.

number 1999/20 CISG[1] regarding the location of PVC exported from the United States to China, the arbitrators, considering the terms of CIF (1990) included in the contract, found the claimant entitled to compensation because although according to the terms of the contract, the seller had to take over the goods by paying the freight and insurance to the port of destination, the guarantee of the goods was transferred from the seller to the buyer from the deck of the ship at the port of departure.

The Chinese buyer claimed that he received the goods damaged after the containers were opened at the destination and the seller should pay compensation for the damaged goods. The seller, on the other hand, claimed that according to the inspection documents at the port of departure and before the containers were sealed, all the goods were intact and their integrity was confirmed by a representative of the inspection company and they were immediately transferred on board the ship.

Therefore, from the deck of the ship onwards, he is not responsible for damage to the goods. However, the Arbitration Commission, considering that according to the customs declaration of the port of destination, the container inspection officers have confirmed that all the seals were intact.

Also, since the seller was responsible for packaging and transferring the goods into the container based on CIF, and during the transportation process from the ship's deck to the port of destination, based on the official declaration of the carrier, the ship's captain and the review of the ship's logbook, no special event that led to damage to the items inside the container occurred during the sea voyage and unloading of the ship.

Based on the existing circumstances, it can be concluded that the loss and damage to the goods were due to improper packaging and incomplete arrangement in the containers, and since in the term used, the seller is responsible for the packaging and transferring them into the container.

Therefore, the damage caused by this action of the seller before delivery on the deck of the ship and due to failure to comply with the packaging standards and arrangement of the goods in the container, and the seller is liable for compensation.

There are other judicial and arbitration decisions and procedures that cannot be mentioned in this brief article due to the limited volume of material, but all of them mention Incoterms as the terms determining the place and manner, and most importantly, the manner and time of transfer of ownership of goods and the guarantee of their destruction. They examine the breach of obligation of each party to the transaction regarding the specified Incoterms terms and make a decision based on the law governing the contractual relationship between the buyer and the seller.

Part Six: Incoterms in the Vienna Convention of 1980

From the mid-1930s when the "International Institute for the Unification of Private Law" [2]proposed the first draft of a proposed commercial law until 1978 when the first draft of the United Nations Convention on Contracts for the International Sale of Goods was presented. Model laws and unsuccessful commercial conventions were presented that were not accepted by governments regarding the unification of commercial

[1] Naeimi,2007:105.
[2] www.cisg.law.pace.edu/cisg/wais/db/cases2/020326u1.html

rules. In the aforementioned convention, which was formed in 1980 and became known as the "Vienna Convention of 1980".

The aforementioned law concerns the contract for the international sale of goods, which was initially ratified by 62 countries and has now reached 89 countries. Its Persian translation has become popular in Afghanistan under the title of the Convention on the International Sale of Goods, and although Afghanistan was among the 62 countries that ratified it in 1980, it has not yet joined it and has not submitted an instrument of accession.[1]

This convention has been in force since the beginning of 1988 between member countries and governs contracts for the international sale and purchase of goods, derived from the perspectives of the world's major legal systems, which indicate the obligations of the buyer and seller in international transactions. As the law governing contracts, if they are applied by the parties, it is applied in judicial settlement methods in member countries, and arbitration authorities, subject to the applicability of the convention to contracts in accordance with the existing rules of the convention itself, base their arbitration on its provisions.

"The general provisions contained in Articles 31 and 67, 68, and 69 of the convention are determined by Incoterms. The main difference between Incoterms and the Vienna Convention is that Incoterms tells the parties what to do, and the Convention tells what will happen if they do not do so, because the guarantee of performance of the breach of contract obligations is not generally addressed in Incoterms.

The provisions of the convention are supplementary in nature and the parties can agree against them. When the parties agree on an Incoterms term and the provisions of that term conflict with the provisions of the Convention, then the provisions of that term, as set out in the Incoterms, shall prevail over the provisions of the Convention.[2]

Considering the above, it can be concluded that although, due to the importance of freedom of will in contracts, the terms contained in Incoterms take precedence over the Convention on the International Sale of Goods in case of conflict, since Incoterms lacks any enforcement guarantee, in the event of a dispute arising from the failure to fulfill the obligations of the parties to the contract, the matter should be resolved by referring to the provisions and rules of the Convention, taking into account the terms of Incoterms.[3]

Conclusion

In light of what has been mentioned in this brief article, it can be concluded that Incoterms are never applicable as a contract or as legal rules in resolving international commercial and economic disputes, and their only duty is to clarify the status of the obligations of the buyer and seller solely in the field of goods, not services and human resources. They can be referred to as the main terms of contracts and as general or specific terms, depending on the nature of the contracts.

However, the scope of Incoterms, especially after repeated changes and revisions, has been defined and determined in such a way that it usually covers all the demands and needs of the buyer and seller in an international and even domestic transaction in the field of how to deliver and guarantee the loss of goods

[1] www.cisg.law.pace.edu/cisg/wais/db/cases2/990407c1.html
[2] The International Institute Of The unification Of Private Law (UNIDROIT)
[3] Shiravi,2019:12.

in different categories. Whether the goods are transported, delivered and transformed through domestic transport networks (whether by air, road, rail or inland waterways) or transported, delivered and transformed through air, rail, road or sea transport networks at the cross-border and international level. Therefore, by simply referring to each of the three-letter Incoterms terms, traders can specify the conditions of delivery of the goods and the guarantees related to their loss. Although in the maritime domain, the guarantee of the goods is summarized by its loading by the seller on the deck of the ship at the port of departure, which can also be due to the existence of detailed and complete maritime transport laws as well as detailed insurance coverage in this domain.

However, in land transportation, it includes the period from the loading of the goods on the truck at the terminal in the seller's country to the complete unloading of the goods from the truck of the seller's contracting party at the terminal or the buyer's desired location in the country of destination of the goods. Usually, this covers such a wide range of time when the ownership of the goods is transferred and its loading that it can cover any condition and request of the parties. By referring the contract to each of these terms, taking into account the conditions contained in them, it can be acknowledged that the obligations of each party to the contract are clearly and clearly stated.

However, it is necessary to mention that Incoterms are never considered as a contract and never enter into all the relationships between the buyer and the seller and all the obligations between them, and they cannot be recognized as rules with a guarantee of execution.

Incoterms never enter into the conditions and manner of transferring financial funds and have nothing to do with financial transactions between the buyer and the seller. It only determines the payment of costs, especially transportation costs and their contracts, insurance costs and inspection of goods, solely on the basis of which party will be responsible for paying these costs, and does not enter into the details and methods of payment of amounts. What is considered in Incoterms, especially in the changes implemented in Incoterms 2020, is limited to the following:

1. Method of transportation, including domestic or international transportation.

2. Place of delivery of the goods.

3. Place and method of transfer of ownership of the goods and, consequently, the guarantee of loss of the goods.

4. Obligation to pay transportation costs, insurance and inspection of the goods.

5. Obligation to pay customs and administrative costs within or outside the border.

6. Packaging of goods and obligations related to their unloading and loading within and outside the border.

But what is important is that Incoterms only deals with expressing these conditions in each category of terms and does not enter into the guarantee of implementation of the conditions and is satisfied only with expressing the obligations and does not deal with what the reactions or legal rules between the parties will be if these obligations are not implemented.

Also, based on the freedom of will of the parties, if they agree, they can be canceled at any stage, and the breach of the obligation is only legally actionable if it is against the requirements and wishes of one of the parties without obtaining his consent.

Therefore, it can be concluded that Incoterms only describes the conditions between the buyer and the seller regarding each of the six above-mentioned cases, with an emphasis on the guarantee of loss of the sold item, and its legal effects are limited to these six cases only, without there being any enforcement guarantee in Incoterms itself. Considering the connection between the Convention on the International Sale of Goods and Incoterms, if the governments of the parties to the contract are members of the Convention or have concluded the contract in such a way that it is possible for it to govern the contract.

The best legal source for resolving disputes between the parties in contractual transactions that include the terms of Incoterms is the same provisions and rules contained in the Convention, otherwise the matter of the claim should be resolved by considering the violation of the laws in the case of referring to the courts of law, in the rules established by the court, or other customs and arbitration regulations in the case of referring to the arbitration of the Chamber of Commerce, or any other method of dispute resolution. Therefore, each of the six items mentioned regarding the determination of the obligations of the parties are not considered as legal rules that can be classified as mandatory or supplementary, and are only considered as essential terms of the contract that can be considered as mandatory terms that cannot be violated without the consent of the parties.

References

Abbasov, H. (2024). The Determined Struggle of Nakhchivan's Population for Freedom and Independence Before Autonomy. *Global Spectrum of Research and Humanities* , *1*(2), 38-43. https://doi.org/10.69760/gsrh.01022024004

Bakhshaliyev, E. (2024). The Role of Painted Pottery from Nakhchivan Tepe in Early Azerbaijani Civilizations. *Global Spectrum of Research and Humanities* , *1*(2), 55-64. https://doi.org/10.69760/gsrh.01022024006

Darabpour, Mehrab, (2013) "Sif and conditions contrary to its standard requirements", Publisher. Journal of Legal Research, Year 2, Issue 4, Fall, 9-37. For access: https://tinyurl.com/mwrjkhfa

Esmaeilpour, Hassan, (2000) Book, International Marketing Management, Publisher: Negah Publishing, Second Edition, Tehran, Iran. For access: https://tinyurl.com/nhzk248v

Global Asset Management, speeches presented at the GAM Conference 1995. 13th-14thJune, Jerusalem.

Naeimi, Seyyed Morteza, (2007) "Transfer of Ownership in Safe Contracts", Publisher. International Trade and Economic Law. Issue 10, Trans Iran. For access: https://tinyurl.com/mvmecn2e

Ekram Yawar, M., & Qurban Hakimi, M. (2025). Analysis and review of research in the field of medical ethics in the international arena. *Global Spectrum of Research and Humanities* , *2*(2), 3-17. https://doi.org/10.69760/gsrh.01012025009

Ekram Yawar, M., & Qurban Hakimi, M. (2025). Explaining the Digital Health Marketing Model in Gaining Health Welfare Support from Nonprofits. *Acta Globalis Humanitatis Et Linguarum*, *2*(2), 4-28. https://doi.org/10.69760/aghel.02500201

Ekram Yawar, M., & Amani, A. (2025). Features of international trade contract. Acta Globalis Humanitatis Et Linguarum, 2(1), 276-296. https://doi.org/10.69760/aghel.02500137

Rebecca M.M Wallace (2005), International Law, 15th Ed, LONDON. Sweet & Maxwell.

Rousta, Ahmad et al., (2023) Marketing Management, Publisher. Samt Publications, Tehran, Iran. For access: https://tinyurl.com/2p39mp9s

Sadr, Javad, (2003) Book, Diplomatic and Consular Law, Publisher: Tehran University Press, Institute of Publications and Printing, for access: https://lib.ut.ac.ir/site/catalogue/856969

Seljuqi, Mahmoud, (2019) The Essentials of Private International Law, Publisher: Mizan Publishing, Year of Publication: 2019. Tehran, Iran. For access: https://tinyurl.com/fb9s2yxe

Shiravi, Abdolhossein, (2019) Book, International Trade Law, Samat Publications, Tehran, Iran. For access: https://tinyurl.com/2vesu6x5

Solhjoo, Mohammad Ali and Nejhndinjad, Heybat Allah, (2008) Book, Peaceful Resolution of International Disputes, Publisher. Mizan Legal Foundation Publications, Tehran, Iran. For Access :https://tinyurl.com/355absb9

Successful policies for the development of small industries in 20 industrialized and developing countries (converging policies), prepared and compiled by the Iranian Small Industries Organization, Tehran, Publisher: Basirat Entrepreneurs, for access: https://vista.ir/m/a/n2cze

Zeinalzadeh, Iraj, (2017) Purchasing Management Book: A Guide to Foreign Purchasing and "Advanced and Operational" Purchasing Systems, Publisher: Institute of Business Studies and Research. For access: https://tinyurl.com/6zrm9cc2

Zidal Homan-Feldren, (2019) Book, International Economics, Translated by: Seyyed Abolghasem Zamani, Tehran, Publisher: Shahr Danesh, Legal Studies and Research, for access: https://tinyurl.com/baxe3ts9

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