

Case Study of the Application of the Incoterms® 2010 Rules

The case below represents questions and challenges of our client with Incoterms® 2010 rules and our interpretation and application of rules to client's situation. At Win Global Partners we address cases individually and always refer to the ICC guidebook as a source.

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Team of Win Global Partners

Challenge

The client imports precious metals to United Arab Emirates (UAE) for the purpose of the refining and sends it back to the foreign owner. The client is looking for the right rule of the Incoterms® 2010 for that case.

Recommendation

The Incoterms® 2010 cannot be used in the contract of refining due to following reasons:

1. The Incoterms® 2010 by definition is the framework that regulates international sale of goods.
"The Incoterms® rules explain a set of three-letter trade terms reflecting business-to-business practice in the contracts for the sale of goods"¹
In the client's case we have international sale of the service (refining), rather than the sale of good.
2. The word "sale" refers to the transfer of ownership between the Buyer and the Seller. In this case the client doesn't own the goods, but uses them temporarily to perform the service.

In the mean time the Incoterms® 2010 can be a good guideline to draft the responsibility clause of the contract of refining. Since it is not of the interest of the client to be responsible for the goods, the client must specify in the contract that the owner of the precious metal is:

- Responsible for arranging and paying for the transportation of goods and insurance from owner's premises to the refinery in UAE, and back.
- Liable for the loss and damage all time except when the goods are in the client's refinery.
- Responsible for import and export clearance and paying applicable duties on the way to the client's refinery and back.
- Responsible for packaging and labeling of the goods before they leave owner's premises

In the mean time the client is:

- Responsible for packaging and labeling the product of refining process

¹ Incoterms® 2010, ICC Publication No. 715E, p.5

- Liable for the loss and damage when the goods are in the client's refinery.

The client must specify exact address of the refinery in the contract.

The contract of refining must contain other clauses and responsibilities of both parties, specific to the refining industry.

Outcome

The client drafted specific contract of refining that, although using the Incoterms® 2010 as a guideline, doesn't specifically refer to any of the rules.

About Win Global Partners

Headquartered in Toronto, Canada, Win Global Partners work in **the area of export-import consulting and logistics** to assist with clients' unique global expansion needs including breaking into new foreign markets. Win Global Partners offer solutions at all steps of clients' international business development from non-exporters/importers to regular exporters/importers, such as: product adaptation, compliance management, export-import outsourcing and freight forwarding. For more information please visit www.winglobal.ca.

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