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"FINDING OPPORTUNITIES & BUILDING BRIDGES IN THE AUTOMOTIVE INDUSTRY BETWEEN TURKEY AND THE EU" TEBD/019 PROJECT

TEBD
TURKEY-EU BUSINESS DIALOGUE

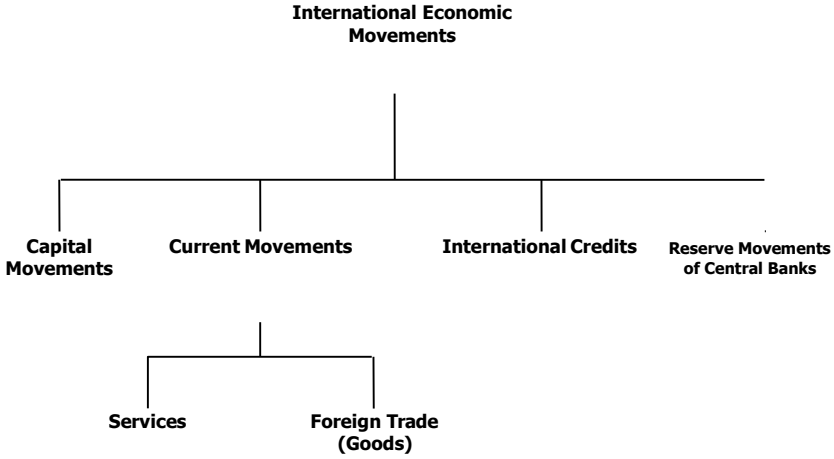
HOW TO GO INTERNATIONAL

CFCU · EUROCHAMBRES · BTSO · POLISH CHAMBER OF COMMERCE · CIVIL SOCIETY SECTOR

HOW TO GO INTERNATIONAL

International current movements, capital movements, international credits and reserve movements of central banks are the main general economic activities taking place between countries. Foreign trade merely falls in the category of "Current Transactions" among many other international economic movements and is comprised of international merchandise trades. Other current transactions are services which are included within the scope of "Invisible Items".

The purpose of foreign trade between countries is either to provide goods and services that are not available within the domestic market or available only with high costs or try to increase the welfare of the country via the income to be obtained by selling the goods and services which have a surplus in the domestic market. However, every economic movement between countries is not considered as foreign trade. Besides the movement of goods and services between countries, there are also various other economic movements such as capital and technology transfer as well as the movement of the labour force. However, these are considered as general economic movements of countries and cannot be included wtihin the scope of foreign trade.



Although foreign trade is only included within the Current Transactions in international economic movements, it constitutes more than half of all the mentioned movements. When goods or services are dispatched from one country to another, a "foreign currency inflow" takes place in return. Vice versa , "foreign currency outflow" taes place in return for goods and services arriving to a destination country.

In summary, Foreign Trade can be defined more clearly as "the sum of the import and export movements between countries and the currencies subject to these movements".

SALES AGREEMENTS

A correct sales management starts with the preparation of a correct offer and a contract sample. Sales contracts are indeed contracts aimed at transferring goods. The ownership of these goods subject to any sales in question is transferred to the buyer once they are "deliveried". Therefore, the sales contract is actually a debtor transaction, and the delivery of the goods subject to sale is an earning transaction.

The basic elements of the sales contract are the existence of a good, certain amount of money and an agreement indicating that both goods and money will be exchanged between parties. Any of these aforementioned elements missing may result in the application of the terms of another contract type, and thus a sales contract cannot be established.

Mutual Rights and Obligations of Buyer and Seller in Sales Contracts

A) Seller's Obligations

The seller has a number of obligations to fulfill in a sales contract regardless of the subject and type of the contract. These debts are as follows;

1. Obligation to Deliver the Goods Sold and Transfer the Ownership to the Buyer

As a rule, the seller has an obligation to deliver the goods and transfer the ownership rights of the goods to the buyer. The delivery of the goods and the transfer of the ownership regarding movables take place simultaneously, as a rule. Although this is the case in ordinary sales contracts, sometimes, we observe that contract of sale is made on the condition that the ownership is reserved, while the goods remains with the seller even if the sold goods are delivered to the actual buyer. On the contrary, in some cases ownership is transferred before the goods are delivered.

As a rule, when the delivery debt is fulfilled, the ownership debt is also fulfilled.

2. Warranty Against Shame (Taking Shame) Debt

The term "shame" refers to the deficiencies that occur in the goods sold which prevent the buyer from benefiting from the goods. The debt to bear the shame holds the seller responsible for such deficiencies and malfunctions. The seller is also responsible for the defect (defect in the necessary qualifications) that should be normally present in the product due to its nature and which – if not available- removes or

restricts

the opportunity to benefit from these goods, even if he/she has not committed the existance of such defects to the buyer regarding the goods in question.

If the item is defective in a way that requires the responsibility of the seller;

- If the buyer wishes, the termination of the contract can be requested, stating that the goods are ready to be returned.
- The good can be detained and a litigation can be initiated in order to claim the deduction of an appropriate amount from the sales monetary value in proportion to the defect of the goods.
- Or, the buyer may request the goods to be replaced with the non-defective ones without resorting to the means mentioned above, provided that they are the same items.

3. Warranty Against Seizure (Undertaking so as for Others Not to Claim Any Rights Regarding the Goods)

Obligation of a guarantee against the seizure is to hold the seller liable for preventing a third party from taking the goods from the buyer by claiming a superior right in the product and preventing he/she from using the good in question.

4. Seller's Other Debts

Storing and preserving the sold goods; If the parties have agreed that the goods will be delivered at a specific place but instead they are located elsewhere, it is the seller's other debts to pay the shipping, weighing, measuring costs and transportation costs to the required delivery location.

B) DEBTS OF THE BUYER

1. Debt to Receive the Goods Sold

Receiving the goods sold is not only for the benefit of the buyer, but also a duty. The buyer is obliged to receive the goods when the goods sold in accordance with the conditions agreed in the contract are delivered.

2. Debt to Pay the Purcahse Price

The second debt of the buyer is to pay the purcahse price to the seller in accordance with the conditions agreed upon in the contract. The parties can agree on when the purchase price to be paid. If not agreed, the buyer must pay the price once the goods are delivered to the buyer.

3. Secondary Debts of the Buyer

Besides the main debts mentioned above, the buyer also has some secondary debts.

These are vairous debts such as interest payment, debt to keep the goods sent from elsewhere, payment of useful and compulsory expenses made by the seller regarding the goods prior to the delivery, payment for goods reception and packaging, as well as bills and registration expenses.

Main Principles of Contracts

A. Freedom of Contract Principle
B. Equality Principle
C. The principle of not making any debt affiliations regaridng relativity or third parties
D. Principle of consent to contracts
E. Honesty Principle
F. Flawed liability principle
G. The principle of acceleration in contracts
H. The principle of the judge's discretion

International Sales Contract

In foreign trade; goods are subject to commercial relations between the parties are sent from one country to another, and the loading and unloading of these goods are carried out in different countries and in different time zones.

Even though they are often stated in the agreements, in commercial transactions that some inevitable liabilities that bring additional burdens to the parties during these transactions. In addition, goods may be exposed to various risks such as damage, loss, theft, and spoilage during their transportation and handover. For this reason, it has become obligatory for the buyer and seller to strictly stipulate the terms of the agreement regarding international trade. For this reason, agreements must be made in the format of sales contracts in writing and clearly include the obligations of the parties, how risks will be divided if the obligations are not fulfilled, to which party the risk will belong to if the goods are lost or damaged during transportation.

According to the trade principles widely adopted in international sales contracts, a valid contract is deemed to be made if the other party accepts the terms set forth by one party in writing. For this reason, it is extremely important to arrange sales contracts with the desired conditions.

In addition, the contract must be prepared in an internationally valid and accepted way in case of any dispute. The main elements of an international contract are as follows;

- The parties of the contract,
- Subject of the contract,
- Mutual agreement
- Binding provisions,

International Sales Contract and CISG (Contract for the International Sales of Goods)

There are no laws in international trade, there are rules.

Inevitably the world trade, which started to increase in the second half of the 20th century and experienced its most productive era in the last two decades, brought along problems that push national borders between the parties of the trade in parallel with these developments.

On the other hand, when lawyers from different countries came together for various reasons in order to establish legal unity between countries, which is considered impossible, it was not difficult for them to determine that leagl similarities were much more than differences. For this reason, the "Contract for the International Sale of Goods" (CISG) or

the "Vienna Sales Agreement - which was accepted by the UN in 1980, entered into force in 1988 and is currently being implemented in 66 countries- is an important outcome of the aforementioned developments. Today, 2/3 of the world trade is a party to CISG.

CISG has been accepted by 67 states, most of which are countries that trade and hold two-thirds of the world trade (USA, China, EU Member States). However, there are some factors that make CISG special. In particular, the contract of sale is the most basic contract among the entire legal orders. Since the use of money in human history, there has been a contract of sale. The law on execution limitations in the world has been developed based on the rules of this convention.

On the other hand, Turkey; On April 14, 2009, became a party to the CISG with the Law No. 5870, "The Law Regarding Our Participation in the United Nations Convention on Contracts for the International Sale of Goods".

Thanks to this development, it is anticipated that disputes arising from international sales contracts will be resolved by applying the same rules in many countries across the world as well as Turkey, judges will not be obliged to apply a foreign national law and a global debt law will be formed by sales law undertaking its leading role.

Because, if it is determined that the law to be applied to an international agreement is the law of a party to the agreement, the judge has to apply the CISG instead of the domestic sales law provisions of that country.

Settlement of Possible Disputes in International Business Relations

Various methods are available to resolve disputes arising from international trade relations. It is possible for the parties to apply one of the following methods in order to conclude possible disputes by negotiating among them or to bring the dispute to a national court (in the country of the buyer or seller). In practice, which of these methods to be applied is specified in the sales contract.

1. Amicable Settlement

In the event of a possible dispute regarding international commercial transactions, the principle that the parties reach a solution by negotiating the dispute among themselves without any external intervention is called amicable settlement.

This method is fast and much less costly than other methods, and parties have the opportunity to resolve their dispute in a short time.

2. Reconciliation

Reconciliation is the process of resolving possible disputes through the involvement of an external person (or people) in order to resolve the dispute among the parties. By doing so, parties provide the resolution of disputes. The conciliator acts as an arbitrator here, however this is not legally binding. The conciliator only advises the parties while this method is rarely applied in practice.

3. Arbitration

Parties, when concluding a contract, decide in advance which party's legal legislation will be applied in case of any disputes. In international sales, parties add detailed provisions regaring the settlement of disputes in their contracts and generally prescribe the arbitration method.

DELIVERY METHODS

Delivery in Foreign Trade

Delivery is the determination of where, when and how the costs and risks will be shared between the seller and the buyer during the transportation of goods from place of loading to the destination point.

The Importance of Delivery in International Trade

1. In foreign trade, money and goods cannot be exchanged at the same time.

In shopping transactions in our daily lives, it is possible for the seller to deliver the goods and the buyer to transfer money concurrently. However, in foreign trade, the delivery of the goods by the seller and the payment of the cost by the buyer cannot be realized simultaneously. For this reason, in foreign trade one of the parties carries a risk regarding the goods or payment.

2. There are many risks that may arise during the transfer in foreign trade.

Some dangers such as burning, theft, deterioration, wastage that may arise during the transfer of goods from the seller to the buyer are also a risk factor for the parties.

3. ForeignTrade is a Costly Business

The transfer of goods from seller to buyer will also result in the parties incurring many extra costs arising from shipping costs, insurance or foreign trade. Who or how these costs and responsibilities will be shared is also an important issue.

4. Time is the Most Valuable Factor in Foreign Trade

During the transfer of goods from seller to buyer, there are many factors arising from the nature of foreign trade and making transactions difficult. It is important to be able to overcome these problems and speed up the processes by standardizing them.

5. There are Often Different Commercial Practices in Foreign Trade

There are commercial structures arising from different customs and traditions between the trading parties. Parties often trade without seeing or even knowing each other. In addition, the number of countries doing foreign trade is increasing day by day. As a result, disputes between the parties about the delivery of the goods are inevitable.

INCOTERMS

The reasons mentioned above have brought about the search for solutions to the problems related to the delivery of the goods between the parties engaged in foreign trade. For this reason, ICC was established in 1919 in Atlantic City, USA with the participation of the leading governmental officials of the time, representatives of the industry, finance and transportation sectors and a set of rules for the interpretation of commercial terms in international trade was published regarding delivery. Incoterms is the abbreviation for "International Commercial Terms". The first Incoterms was published in 1928, then respectively; It was re-published in 1936, 1953, 1967, 1976, 1980, 1990, 2000, 2010 and 2020 respectively by making arrangements in accordance with the current conditions.

Properties of Incoterms

- It determines the duties and responsibilities between the parties.
- It contains the principles regarding how costs and risks that may arise during the transfer of the goods will be transferred.

They are expressed with certain symbols;

Incoterms are predetermined by the abbreviations of their English equivalents, and these expressions consist of internationally accepted three letter abbreviations. These abbreviations have four main starting points in the international literature.

- ✓ Cost
- ✓ Freight
- ✓ Carriage
- ✓ Insurance

C	**I**	**F**
(Cost)	**(Insurance)**	**(Freight)**

"CIF" abbreviation indicates that the goods will be delivered to the designated destination, with carriage cost, insurance and freight paid. If these abbreviations are included in the sales contract by specifying the Incoterms, they are binding on the accepting parties and prevent disputes that may arise in advance.

- Determines the mode of transportation
- It is binding on the parties.

- It plays an active role in determining the supply and demand conditions in the world trade and the delivery method of the product subject to the agreement.

DELIVERY TYPES BASED ON INCOTERMS 2020

According to the latest Incoterms published in 2020, the delivery methods used in international trade are divided into two main groups based on the requirements. Before going into what these two groups are, it is necessary to examine how groups are formed. The formation of the groups is determined based on the transportation methods of the commodity subject to trade. Groups start with the delivery methods where the seller assumes the least responsibility in terms of costs and risks, and ends with the group in which the seller's responsibilities increase and the importers bear the least cost and risk, thus minimizing their liability. Therefore, while determining the duties and responsibilities of the seller, the duties and responsibilities of the buyer must be determined as well (Mirror Method).

First Group: Rules Covering All Types Of Transport

EXW Ex Works – Delivery at work

FCA Free Carrier – Free delivery to carrier

CPT Carriage paid to – delivered with transport paid

CIP Carriage and Insurance paid to – delivered with transport and insurance paid

DAP Delivered at Place

DPU Delivered Place Uploaded

DDP Delivered Duty Paid

Second Group: Specific Rules For Marine And Inland Water Transport

FAS Free Alongside Ship – Free Delivery Alongside Ship

FOB Free on Board – Free Delivery on Board

CFR Cost and Freight - Costs and Freight Paid Delivery

CIF Cost Insurance and Freight - Cost Insurance and Freight paid delivery