



# Incoterms<sup>®</sup> and Customs Formalities

By Dr. Oliver Peltzer  
ARNECKE SIBETH DABELSTEIN  
Hamburg, Germany  
[www.asd-law.com](http://www.asd-law.com)  
[o.peltzer@asd-law.com](mailto:o.peltzer@asd-law.com)



# Incoterms<sup>®</sup> 2020 and Customs Formalities

## What are the obligations for export and import customs clearance?

- Complying with Customs rules and regulations
- Providing the Customs authorities with all necessary export/import documentation
- The payment of Customs duties
- Ensuring the correctness of the documents filed with the Customs authorities for clearance of goods
- Confirming that the exported/imported goods are properly marked

# Incoterms<sup>®</sup> 2020 and Customs Formalities

## What do the Incoterms<sup>®</sup> Rules deal with?

- Export, transit and import clearance
- Assistance of the other party
- Security Clearance
- Pre-shipment inspection
- Cost and risks

# Incoterms<sup>®</sup> 2020 and Customs Formalities

## What do the Incoterms<sup>®</sup> Rules not deal with?

- Export or import prohibitions
- The imposition of tariffs
- The effect of sanctions

# Incoterms<sup>®</sup> 2020 and Customs Formalities

## Customs implications in agreeing on EXW

- The seller is not bound to organise the export clearance
- Often only companies registered for tax purposes are allowed to have customs formalities accomplished in their name
- E.g., European Union, the buyer will have to seek a customs representative, either a direct or an indirect representative, or have to fulfil the AEO-criteria plus certain additional Member State conditions
- If the export customs formalities are fulfilled in the name of the seller – mandatory liability under customs law
- The use of **FCA** should be considered

# Incoterms<sup>®</sup> 2020 and Customs Formalities

## Customs implications in agreeing on DDP

- The seller may not be entitled to carry out customs clearance in the buyer's country unless he is based there
- The seller should have knowledge of the classification rules of the buyer's country
- The seller is the "importer of record" – extensive liability
- If the customs formalities are fulfilled in the name of the buyer – mandatory liability under customs law; e.g. if freight forwarder fulfils the import formalities using the name of the DDP-buyer
- The use of **DAP** or **DPU** should be considered

# Incoterms<sup>®</sup> 2020 and Customs Formalities

## Customs implications in agreeing on FCA/CPT/CIP/FAS

- The main carriage is arranged by the buyer
- The seller has the obligation to declare the goods at the customs office while he is not anymore in control of the goods (not so in FOB sale since “on board” often equals delivery beyond the customs territory)
- The buyer must assist the seller at the seller’s request, risk and cost

# Incoterms<sup>®</sup> 2020 and Customs Formalities

## Customs complications in agreeing to CIF/CFR/CPT/CIP

- The necessary declarations by the Carrier (example entry summary declaration EU)
- Before the goods are brought into the customs territory of the Union, an entry summary declaration shall be lodged at the customs office of first entry
- The party responsible for lodging the entry summary declaration is the carrier
- In the contractual relation with the buyer, it is the responsibility of the seller for the entry summary declaration of the goods in the country of first entry



# Incoterms<sup>®</sup> 2020 and Customs Formalities

## Customs value on the basis of Incoterms (e.g., EU)

- The customs value of imported goods shall be the transaction value, the price actually paid or payable for the goods when sold for export to the customs territory of the European Union
- Elements not to be included in the customs value of the goods:
  - Transport costs after the point of entry into the customs territory of the Union
  - Assembly or maintenance charges incurred after the entry into the customs territory of the Union
- Carrier should split price of transportation into “inland” and “international” transport costs (CPT/CIF/DPU/DAP)

## CURRICULUM VITAE

# Dr. Oliver Peltzer LL.M. (Stellenbosch)

### EXPERIENCE

Oliver Peltzer advises companies in the energy, maritime and transport industries and advises on the purchase and sale of companies and projects in the offshore, maritime, transport and aviation industries. Oliver Peltzer is regularly asked to act as arbitrator. Before joining Arnecke Sibeth Dabelstein, he worked for several years as a consultant to the venture capital industry and as head of the legal and risk management department at Volkswagen Logistics GmbH & Co. OHG. Oliver Peltzer is Vice Chairman of the International Chamber of Commerce (ICC) Trade Facilitation Commission and Head of the Arnecke Sibeth Debelstein Practice Group Transport-Aviation-Logistics.

### EDUCATION

Senior Lecturer at the University of Hamburg in Law & Logistics (since 2011); CFA I and II (Chartered Financial Analyst) (2002-2003); Doctorate, University of Tübingen (1999); Legal clerkship in Berlin and Singapore (1995-1996); LL.M. in Stellenbosch/South Africa (1994); Studies in Berlin, Paris, Stellenbosch, Tübingen and Bonn (1988–1993)

### TRACK RECORDS

M&A transaction involving the sale of the entire offshore wind section of a construction company, combined asset and share deal, transfer of various financing models, negotiation with a number of stakeholders

M&A transaction for the sale of a logistics project, seller due diligence, share deal, defence against unfounded claims by third parties, simultaneous signing and closing

Extensive and complex tender proceedings with several suppliers, preparation of contracts, negotiation with tenderers, contract signing

Support of a Chinese, listed company in the restructuring of numerous projects in the renewable energy industry

Several ICC arbitration proceedings



**DR. OLIVER PELTZER, LL.M.**  
ATTORNEY AT LAW (GERMANY), PARTNER

### PRACTICE AREAS

MARITIME INDUSTRY, TRANSPORTATION,  
AVIATION & LOGISTICS, ENERGY

### CONTACT

Tel. . +49 40 31 77 97 – 66

Fax. +49 40 31 77 97 - 77

[o.peltzer@asd-law.com](mailto:o.peltzer@asd-law.com)

**THANK YOU FOR YOUR ATTENTION!**