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MULTIMODAL TRANSPORT INSTITUTE (MTI)
Working Group Sea Transport

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Annex I

SOLAS Amendment effective 1 July 2016

FIATA discussion document to aspects of Incoterms 2010 ® with illustrative matrix.

Disclaimer

This discussion document has been produced by FIATA Working Group Sea Transport (WG Sea) with a view to providing a general industry steer to Associations Members.

WG Sea Members have no formal legal training so this document is based upon practical experience and should not be construed as legal advice or guidance in respect of any specific factual situation. Furthermore as legal systems vary from country to country you should satisfy yourself that the document does not breach law in your country. If you need formal advice you should seek the assistance of a qualified professional.

Preamble

The SOLAS Amendment is precise regarding the responsibility on which party provides the Verified Gross Mass (VGM) of a loaded container. It is the Shipper, being the legal entity named on the bill of lading and / or who (or in whose name or on whose behalf) a contract of carriage has been concluded with a shipping company.

Aspects of Incoterms 2010 ® and the VGM declaration

Whilst these responsibilities will lead to related additional overheads for the shipper there will be both direct and indirect costs for all supply chain stakeholders such as (but not limited to) administration associated with determination of the VGM, presentation or submission of the VGM to the carrier or arranging for determination of the VGM under Method 1.

Having established that the SOLAS amendment will lead to additional costs, FIATA is providing herewith a steer covering Incoterms 2010 ® and the assumed division of VGM related costs between the buyer and the seller. Of course the buyer and seller are free to come to other agreements however the document aims to guide parties involved in containerized trade to come to suitable agreements related to any VGM charges or fees.

INCOTERM		PARTY RESPONSIBLE FOR VGM COSTS
EXW	Ex Works*	Buyer
FCA	Free Carrier**	Buyer
FAS	Free alongside Ship***	Seller
FOB	Free on Board***	Seller
CPT	Carriage paid to	Seller
CIP	Carriage and Insurance paid to	Seller
CFR	Cost and Freight	Seller
CIF	Cost Insurance and Freight	Seller
DAT	Delivered at Terminal	Seller
DAP	Delivered at Place	Seller
DDP	Delivered Duty paid	Seller

Notes:

EXW - Ex-Works*

Among professionals it has generally been acknowledged that Ex-Works terms are not suitable for international transportation where the buyer nominates the carrier.

Ex- Works terms can be useful in international trade representing the production cost of the goods but are often not appropriate as a contractual delivery term.

Under Ex-Works terms the seller delivers when the goods are placed at the disposal of the buyer at the seller's premises, however the seller is not responsible for loading the goods onto the means of transport. It is however common practice for the seller to load the goods (among others into containers).

Furthermore, there are other procedures that are not possible for the buyer to complete (e.g. issuing a DG note or making a security declaration). In the International Chamber of Commerce (ICC) Incoterms 2010 ® guidance for Ex-Works such scenarios are covered and there should be awareness of this by both parties as there will be costs for the VGM that will be for the buyer.

FCA - Free Carrier**

“Free Carrier” means that the seller delivers the goods to the carrier nominated by the buyer at the seller’s premises or another named place. For the purpose of this document, it is assumed that the seller delivers at his place.

Contrary to Ex-Works terms, if the term FCA is used then it is the seller’s responsibility to load the goods on the means of transport provided by the buyer. Such loading will also involve other activity (e.g. lashing and securing) the cost of which will be for the buyer. Therefore, any costs associated with a VGM will be for the buyer.

Referring to B3 of the International Chamber of Commerce (ICC) Incoterms 2010 ® guidance for FCA, one comes to the same conclusion, i.e. that the costs associated with a VGM will be for the buyer as it is the buyer who contracts for the carriage of the goods.

FAS – Free alongside Ship***

FOB – Free on Board***

SOLAS clearly refers to containers carrying cargo, but both terms FAS as well as FOB are not recommended to be used in containerized trade. But particularly FOB is still commonly used in containerized trade; consequently, we decided to also include the terms FAS respectively FOB in the matrix.

In the International Chamber of Commerce (ICC) Incoterms 2010 ® guidance for FAS and FOB respectively, under A2 it is indicated:

“Where applicable the seller must obtain, at its own risk and expense, any export license or **other official authorization** and carry out all customs formalities for the export of the goods”.

We conclude therefore that the costs associated with a VGM will be for the seller.

Referring to B3 of the International Chamber of Commerce (ICC) Incoterms 2010 ® guidance for FAS and FOB, there are however strong arguments to conclude that the costs associated with a VGM will be for the buyer as it is the buyer who contracts for the carriage of the goods.

As the Incoterms seem to leave room for different interpretations, it is important for seller and buyer to come to clear agreements.