

**CUSTOMS AND TRADE COMPLIANCE RISKS BY
INCORRECT USE OF INCOTERMS
INCLUDING A RISK MANAGEMENT APPROACH**

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Preface

This thesis is the final part of the Executive Master in Customs and Supply Chain Compliance at Rotterdam School of Management, Erasmus University.

The last three years have been a great experience. Diving into a, for me, brand new topic was very intense. I hardly knew anything about customs, supply chain and compliance. Now I know I still can learn a lot about these subjects.

Herewith I would like to express my sincere gratitude to my academic supervisor at the Rotterdam School of Management / Erasmus University (RSM), Dr. Thierry Verduijn and co-reader Dr. Frank Stevens. Many thanks for the critical remarks and the helping hands when I was struggling (which was often). I am thankful for all the useful input provided during our discussions.

I would also like to thank all the people I interviewed. Their input has been instrumental in writing my thesis. Next to the interviews I regularly discussed the findings with my direct colleagues at FUJIFILM Europe B.V. Their passionate participation and experience enabled me to successfully conduct this research and write my thesis.

Last but not least I would like to thank my family & friends for their ongoing support, patience and critical reading and my kids who very clearly pointed out that Mom has been studying enough now!

Neeltje Beens

Ulvenhout, September 2020

Executive summary

Background

Globalization has created new platforms for trade among companies and countries. However, while it is now easier for trade to occur, globalization has also generated some challenges. Events like Brexit and Covid-19 have made clear how vulnerable and complicated the global value chains have become. Among the most pressing problems that the world faces today is managing the interactions among companies from different countries where varying rules, guidelines, and standards are enforced. For instance, the VAT rules, importing standards, and inspection protocols vary from one country to the next.

In an effort to inject structure and order in global trade, Incoterms, a set of standards and guidelines were developed. While the Incoterms were designed to facilitate global trade, they have not necessarily delivered the desired outcomes. The implementation of these standards has been frustrated by such problems as their misuse. The present study aims to demonstrate that the misuse of Incoterms is a significant challenge that must be addressed if companies and countries are to experience the full benefit of international trade.

Problem Statement

The primary problem that the present study addresses is the lack of research on the misuse of Incoterms. Following a rigorous review of available research literature, it was concluded that little credible and verifiable evidence is available. Much of this evidence is of anecdotal variety whose reliability is rather difficult to establish. The present study therefore fills a research gap by employing standard approaches to investigate the reality of the misuse of Incoterms in international trade. It is hoped that this study will trigger further discussion and action on the need for more stringent enforcement of the Incoterms. With all companies adhering fully to the Incoterms, it can be expected that international trade will become more efficient and better streamlined.

Insights from Literature Review

With the goal of understanding the compliance risks that companies grapple with, an extensive review of literature was carried out. The main insight that emerged from this review is that the research on Incoterms, their misuse, and general trade compliance risks is scant. In fact, the lack

of adequate research served as the primary motivation for the present study. The review also made it clear that there are numerous trade and customs compliance risks that firms face when they engage in international trade. Since these risks have gone largely unaddressed, organizations continue to endure frustration and incur high costs when participating in cross-border trade. Through the review of literature, it also emerged that there are a number of highly effective risk management interventions that firms may adopt to minimize their exposure to the compliance risks.

Methodology

A mixed methods approach was adopted for the current study. This approach combined an evaluation of the data records provided by Fujifilm, the case study for this research, as well as interviews. The purpose of the assessment of the records was to shed light on the prevalence of the misuse of Incoterms by identifying inconsistencies and gaps. On the other hand, the interviews were intended to highlight the views of employees regarding Incoterms and how they are not used correctly. Furthermore, by conducting the interviews, the researcher hoped to gain insight into some of the strategies that Fujifilm has put in place to prevent Incoterms misuse. For the analysis of the data, a descriptive statistics and thematic analysis methods were employed. While the thematic analysis allowed for key messages and points conveyed in the interviews to be better understood, the descriptive statistics revealed the incidence of Incoterms misuse.

Findings

For the most part, the study confirmed what was established from the literature review. It was shown that Incoterms misuse is a common problem for companies like Fujifilm. For example, the review of Fujifilm's records showed that in 75% of the entries, misuse of Incoterms had occurred for the product category bonded incoming goods. Furthermore, the study determined that the misuse generates customs and supply-chain related risks for businesses. If not handled properly, these risks can cause very serious disruptions.

Conclusion

In closing, the study demonstrates that misuse of Incoterms is a highly prevalent problem in practice. Such companies as Fujifilm which have established a global presence are among those that experience the worst effects of this challenge. In order to succeed in creating a culture of

adherence and compliance, these firms need to be more aggressive and stricter in their enforcement of the Incoterms. There is also a need for the firms to educate their employees on how to use the Incoterms correctly.

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Chapter 1: Introduction

In the summer of 2019, FUJIFILM Europe B.V. – hereinafter “FEN” - had sold Flat Panel Detectors – hereinafter “FPD’s” - to its Sales entity in Greece. To this shipment, Incoterms were applicable. In particular, the sales order was earmarked with the Incoterms “FCA Athens”, implying that the purchasing party, FUJIFILM Greece in this case, would have to arrange transport. Unfortunately, in practice this did not happen since FEN made use of its logistics service provider, IDL, to arrange the transport for this shipment and included no additional transport requirements for IDL. IDL then handled the shipment and afterwards it emerged that additional transport conditions - use a refrigerated transport mode to prevent the FPD’s become not usable - were missing. Once the FPD’s arrived in Greece, the truck had to wait one more day to unload due to a national holiday as well as the use of uncooled transport. Consequently, the entire load of FPD’s was rendered unusable. Considering the value of the cargo, estimated at 1 million Euro, the discussion about liability then started and it became clear that in practice, shipments contracted under FCA are not handled as FCA shipments by any of the participants (neither by FEN, nor by IDL, nor by FEN's sales entities).

In addition, the following issue arose last autumn. During a monthly customs declaration, it was revealed that FEN suppliers had severally wrongly indicated that products are being transported CIF, which would imply that the transport costs are borne by the seller and the customs and import taxes are borne by the buyer (FEN in this case). However, evidence based on a match between the financial data (invoice) and the correction spreadsheets showed that in a large number of cases, FEN also pays the transport costs. De facto, CIF is therefore falsely used as FOB. In addition, FEN made an incorrect calculation of its customs valuation (at the time of customs clearance) since the value of the transport costs should also have been taken into account.

As I am currently responsible for customs, export control and supply chain compliance, the subject of this study is of high relevance to me and the company. Furthermore, the topic fits perfectly within my legal background and personal interest in matters which are at the intersection of operational, legal and strategic elements in the supply chain. Therefore, I decided to investigate the phenomenon of customs and trade compliance risks by incorrect use of Incoterms and I posed the following questions:

What exactly is incorrect use of Incoterms and which issues do occur in this respect? What risks do companies encounter in case of improper use of Incoterms? How could potential misuse of Incoterms within companies be monitored and / or mitigated?

In the first part of this thesis, I set the stage with the theoretical background for the actual study, I decided to take a case study approach, based on a data analysis in combination with a series of in-depth interviews. In order to manage the scope of the research, I have decided to focus on one product category, namely the incoming bonded trading products.

Chapter 2: Problem definition

The use of Incoterms should eliminate inconsistencies in the supply chain by giving all parties the same definition of specific terms within a trade agreement.

However the two cases as mentioned above in the introduction are examples of a problem in which Incoterms usage nevertheless leads to compliance risks. This is unwanted for companies and it will lead to problems throughout the supply chain.

Incoterms. There is a limited number of academic articles and relevant additional information about the subject of Incoterms in general (Stapleton & Saulnier, 2001; Căruntu & Lăpăduși, 2010; Malfliet, 2011; Bergami, 2012; Stapleton, 2014; Schaeffer 2017). As noted by Bergami (2013), most research available on Incoterms is from short articles in trade publications.

Academic research in the last few years has just started to explore the Incoterms arena, leaving a wide opening for continued and expanded academic research. This was also confirmed by Schaeffer (2017). Based upon literature review, it can be concluded that there is a scarcity of reviewed academic literature specifically relating to Incoterms misuse.

In addition to there being insufficient literature addressing Incoterms misuse, trade compliance risks have also received inadequate attention in literature. The insufficient coverage offers an opportunity for further research and underscores the practical and research significance of the present study.

2.1 Research objective and research questions

The first part of this thesis aims to identify and examine what can be defined as Incoterms misuse or incorrect use of Incoterms. Furthermore, potential customs- and trade compliance risks will be identified which might occur when Incoterms are not used correctly. An investigation into the outcomes of these risks will also be carried out. Having identified the risks and their impacts, the thesis will shift its focus to exploring some of the strategies that have proven effective in helping organizations to manage the risks.

The following is the primary research question that guided the present study:

“What are the customs- and trade compliance risks when Incoterms are not used correctly and how can firms manage these risks?”

The following sub-questions will be addressed to gain greater clarity:

1. What is Incoterms misuse?
2. What are customs- and trade compliance risks in general?
3. What are the customs- and trade compliance risks when Incoterms are not used properly?
4. How can companies manage customs- and trade compliance risks caused by Incoterms misuse?

The problem has been formulated in a conceptual model to find appropriate literature regarding the problem statement. Figure 1 depicts the research objective in a cause and effect diagram:

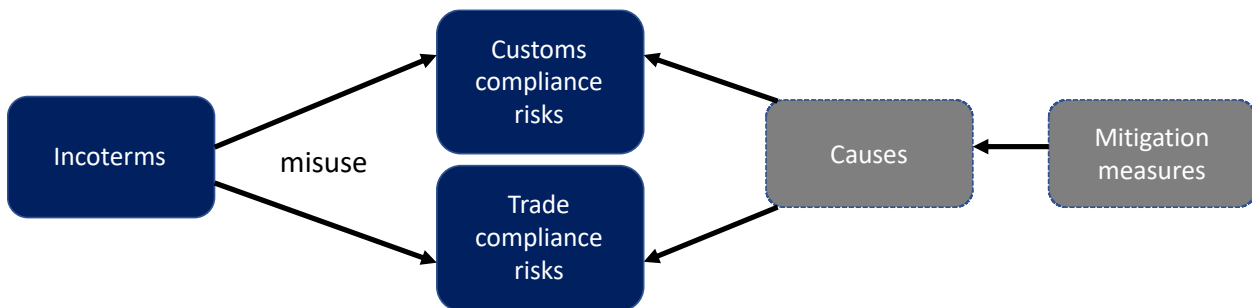


FIGURE 1 CONCEPTUAL MODEL

The research questions are investigated via an explorative case study involving Fujifilm. In the explorative case study, the research is concentrated on the product category incoming bonded goods.

Chapter 3: Review of literature

3.1 Incoterms in general

The volume and complexity of global trade and business has grown dramatically since the 1990s. As global trade became more complex, the risk of misunderstanding among supply chain stakeholders heightened as a result (International Chamber of Commerce – ICC - 2010). To support global trade and to standardize B2B practice when contracting for goods, a set of trade terms called Incoterms rules was designed by the ICC. On their website, the ICC provides a short description of the eleven 2020 Incoterms rules, see **Annex I**.

The Incoterms rules came into existence to tackle interpretation problems among trading partners and to define mutual buyer-seller responsibilities (Stapleton et al., 2014b). When incorporated into a contract of sale, Incoterms designate the responsibilities for tasks, costs, and risks involved in the delivery of goods from sellers to buyers as shown in figure 2 (ICC, 2010).

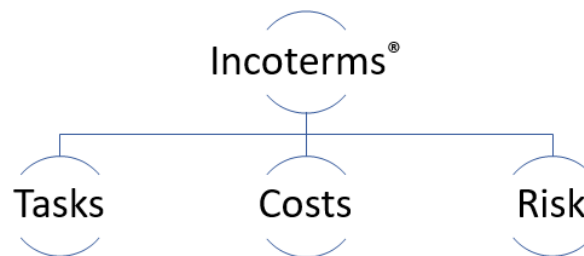


FIGURE 2 INCOTERMS RULES AND RESPONSIBILITIES

Incoterms define mutual responsibilities between buyers and sellers (Stapleton et al., 2014b). They are remarkably useful and simple to adopt as they attempt to provide very detailed operational definitions by using powerful, three-character acronyms only. When used correctly, Incoterms is “an effective risk management tool” (Bergami, 2013).

Despite the clearly significant role that they play, the importance of Incoterms tends to be underestimated, and sometimes parties do not understand the value of these terms in contracts. Further details to understand challenges related to Incoterms will be discussed in 3.2.

3.2 Incoterms misuse

In academic literature, several challenges are known in relation to the concept of Incoterms.

Some of these challenges are listed below:

- It is important for both the buyer and seller to have a common understanding of what is meant by the concept of Incoterms and it is essential for both to have a valid measurement instrument (Mundy, 1997).
- It's also important that the entities involved (e.g. sales and shipping departments) have access to relevant knowledge and understand the rules of the game of international trade. However, it is mentioned that a large number of people in logistics support services need to pay significantly more attention to the correct application of Incoterms (Roos, 2011, p.5)
- As mentioned before, Incoterms are agreed upon between the seller and buyer as part of the sales contract. Incoterms rules include a series of matters related to the law that affects quotations, contracts and sales agreements. (Railas 2016, 25.) Since the content of Incoterms is interpreted differently in different countries, Incoterms must be clearly stated and agreed upon in the contract of sales (Pehkonen 2000, 91). An understanding of how to use Incoterms in a legal context is vital because they are the part of the contract that determines the buyer's and seller's obligations.

The above-mentioned challenges might well be a driver for “potentially wrong usage of Incoterms” and this brings highlights the need to develop a clear and comprehensive definition of “Incoterms misuse”.

In this thesis, “Incoterms misuse” is defined as *incorrectly used Incoterms or Incoterms usage errors*. In this thesis “Incoterms misuse” is not understood as fraud or deliberate incorrect use of Incoterms.

The use of an Incoterm gives a large amount of commercial information to the buyer and seller. As explained above, the 3-letter Incoterm also comprises legal implications dealing with the movement of the goods by the buyer and seller. Therefore, the Incoterms need to be understood in detail before the choice is made, as each one involves legal obligations, costs and responsibilities.

Incorrect use of Incoterms can lead to problems: it can affect payment, impact delivery schedules and may lead to extra costs, resulting in e.g. weak inventory control or a negative customer experience. Therefore, to eliminate these problems, organizations should spare no effort or expense in ensuring that the Incoterms are adhered to properly.

Although the incorrect use of an incoterm could generate unwanted and inefficient results, this is not a shortcoming inherent to this form of standardization. Parties may select an inappropriate term either due to lack of basic knowledge, traditional ways of working or because of limited understanding of the legal implications of a term (Coetzee 2010). Stapleton et al. (2014a) suggest that shippers may use less-than-optimal Incoterms strategies created through a lack of knowledge of vulnerabilities and sloppy implementations. They also mention that traders are “creatures of habit” and many times repeatedly make the same Incoterms usage errors leading to preventable risk. Bergami offers a similar sentiment “there are significant problems in getting traders to change from the established routines to more appropriate and correct use of Incoterms” (2012, p.37). The factors that these scholars explore highlight some of the most common causes of incoterm misuse.

While it is true that Incoterms misuse has not been exhaustively explored in literature, available publications shed light on some common incoterm usage errors (Stapleton & Saulnier, 2001; Reynolds, 2010; Bergami, 2011; Glitz, 2011; Malfliet, 2011; Ramberg, 2011; Roos, 2011; Bergami, 2012; Bergami, 2013; Stapleton, 2014; Stapleton et al., 2014a; Stapleton et al., 2014b, Schaefer, 2017). Based on the above-mentioned academic literature as well as nonacademic literature, researcher has listed the following most common usage errors::

1. Use of a traditional “sea and inland waterway only” rule such as FOB or CIF for containerized goods, instead of the “all transport modes” rule e.g. FCA or CIP.
2. Making implicit assumptions about passing of title to the goods, based on the Incoterms in use since the rules do not specify when title passes from seller to buyer; this needs to be defined separately in the sales contract:
3. Failure to specify the port or place with sufficient precision, e.g. “FCA Chicago”, which could refer to many places within a wide area
4. Consider to use DDP without thinking through whether the seller can undertake all the necessary formalities in the buyer’s country, e.g. paying VAT
5. Consider to use EXW without thinking through the implications of the buyer being required to complete export procedures¹.

¹ In multiple countries it will be necessary for the exporter to communicate with the authorities in a number of different ways, if the buyer hasn’t completed the procedures properly, work arounds might be needed from the exporter side which could come at extra costs, time, etc.

6. Use of CIP or CIF without checking whether the level of insurance in force matches the requirements of the commercial contract – in some instances these Incoterms rules only require a minimal level of cover, which may be inadequate.
7. If there are multiple carriers there is likelihood to overlook the implications of the risk transfer from one carrier to another: so redress may be difficult in the event of loss or damage.
8. Failure to establish how terminal handling charges (THC) are going to be treated at the point of arrival².
9. Where payment is with a letter of credit or a documentary collection, failure to align the Incoterms rule with the security requirements or the requirements of the banks.
10. When DAT, DPU or DAP is used with a “post-clearance” delivery point, failure to think through the liaison required between the carrier and the customs authorities. This may lead to delays and extra costs

The list as given in this thesis is neither exhaustive nor complete. However, the list remains useful and insightful as it sheds light on the Incoterms misuse scenarios that are most common in practice.

As indicated above, much of the evidence of common Incoterm usage errors found in academic literature is somewhat anecdotal. To make a legal foundation underlying this thesis, the ten most common Incoterms usage errors have been analyzed further to potentially identify case law per specific usage error. However, only few legal cases are reported where the dispute is about the misuse of Incoterms. Apart from databases that collect cases dealing with the CISG, it is rather challenging to find case law dealing with Incoterms. The investigation is further impeded by the fact that, in most instances, one has to rely on limited case translations or summaries that lack detail and therefore do not present an accurate account of the ruling.

For example, a search of the Pace Law database, <http://cisgw3.law.pace.edu> (accessed 17-07-2020), using “Incoterms misuse” as search query, retrieved 2 case references and using “Incoterms” as search query, retrieved 39 case references, of which only 4 indicated that the

² Carriers’ practices vary a good deal here, as some carriers absorb THC’s and include them in their freight charges whereas others do not absorb any

contract in dispute had been concluded on the basis of an express incoterm. The general case law analysis gave only 16 hits that are specifically linked to the ten common usage errors.

3.3 Trade- and customs-compliance risks

3.3.1 Trade Compliance

In the Oxford English Dictionary, the phrase “to comply” is defined as “to act in accordance with a wish or command”. According to Veenstra (2019), it means that this explanation already encompasses two types of compliance: one that results from a wish and one that results from a command. Compliance can thus be voluntary or compulsory.

The complex and global business environment of today’s economy also set various compliance challenges for worldwide enterprises. ‘Trade Compliance’ refers not only to comply with rules and regulations, but also includes all activities supply chains perform to ensure correctness, continuity and effectiveness (Sadiq et al., 2007). Trade compliance mainly deals with managing risks in import and export operations and includes multiple activities; export control and reporting, import clearance, anti-bribery, antitrust and competition, third-party agent vetting and management, supply chain security, and overall assessment and management of trade regulatory risk. The responsibilities for these activities are shared along the supply chain from supplier until customer (Crane WW, n.d.).

3.3.2 Trade compliance risks

Risk in a general sense is defined by Business Dictionary.com as: “a probability of damage, injury, liability or loss that is caused by external or internal vulnerabilities, and that may be avoided through preemptive action”. To be more precise a risk is a chance that an outcome will differ from an expectation.

Based on the abovementioned definition of ‘trade compliance’ in combination with the definition of ‘risk’, trade compliance risks can be defined as adverse events caused by violation of import and export regulations and responsibilities. These events, when not properly handled, may lead to shipment delays, goods or document inspection at the border, seizures of cargo, penalties and fines, bad publicity, extra costs or even withdrawal of import and/or export licenses. Accordingly, it is important to understand the numerous possible trade compliance risks and manage them efficiently in order to assure compliance and to reduce the possible negative consequences.

3.3.3 Customs compliance

Globalization and the free market economy require shipping of goods across borders. Maintaining the performance of a supply chain within an international market creates challenges in customs compliance. Thus, customs compliance is concerned with the fulfillment of all relevant legal obligations in relation to border crossing (N.L.C. Gerrits 2017). The prime partners in international trade, importer and exporter (or buyer and supplier respectively), have the responsibility to fulfill all required customs formalities in order to ensure compliance regarding the cross-border movements (Coyle et al., 2012).

3.3.4 Customs compliance risks

Based on the abovementioned definition of ‘customs compliance’ in combination with the definition of ‘risk’, customs compliance risks can be defined as adverse events imposed by not complying with relevant legal obligations in relation to border crossing e.g. customs valuation, tariff classification, country of origin declaration, product marking and duty payments. Failing to comply with customs regulations can be catastrophic and may result in customs restrictions, fines and loss of trade privileges (Ernst & Young LLP, 2006; Branch, 2009). Furthermore, non-compliance may eventually result in logistic inefficiency in the international flow of goods, which might be counterproductive to business and even in the long run an important determinant of the volume of trade between countries (Hausman et al., 2006).

3.4 An overview of Incoterms misuse and customs- and trade compliance risks

As mentioned above, Incoterms misuse may lead to serious problems. In addition to the problems already discussed, the misuse may also lead to compliance risks. Based on the literature (Hausman et al., 2006, Ernst & Young LLP, 2006; Branch, 2009, Sadiq et al., 2007) the following key risks related to Incoterms misuse can be listed:

3.4.1 Customs compliance risks

Customs value risk: A wrong or incomplete calculation of the customs value could lead to a violation of the customs regulation. Precisely stated, the choice of an Incoterm has an impact on the amount of import duties. In fact, the Customs value, which serves as the basis of computation of customs duties, anti-dumping duties, anti-subsidies duties even retaliatory duties, includes the cost of transport and insurance of the goods up to the point of entry in the customs territory of the European Union (EU), may be adversely affected by incoterm misuse.

3.4.2 Trade compliance risks

VAT risk: The basis to calculate the import VAT is the customs value. Depending on the Incoterm chosen, the value of transport, transport-related services and insurance must be added or deducted from the invoice amount to obtain the appropriate value as a basis to calculate the import VAT.

Legal risk: A party might not be able to meet its legal / contractual obligations because of misunderstanding and / or incorrect use of Incoterms or unawareness of for example the need to insure transport. Since goods could be damaged or entirely lost, the specific risk of ‘no insurance’ could be substantial.

Supply chain risk: Supply chain risks are diverse and by incorrect use of Incoterms several risks could occur along the supply chain. Consequently, parties may incur additional costs, delays may occur, and the entire supply chain could collapse. Furthermore, the costs of repairing the damage caused to the supply chain may be prohibitively high. Therefore, to ensure that the supply chain operates smoothly, parties to international trade should use Incoterms properly.

Figure 3 summarizes the 4 identified key risks as described above, Customs value risk and three forms of Trade compliance risks (VAT, Legal and Supply chain risk).

Risk categories	Key risks
Customs compliance risk	Customs value risk
Trade compliance risks	Supply chain risk
	Legal risk
	VAT risk

FIGURE 3 SUMMARY OF IDENTIFIED RISKS

Incoterms misuse risk matrix

In this chapter an introduction to Incoterms and a definition of Incoterms misuse was given. Based on this definition, an overview of the ten most common Incoterms misuses in literature is provided. These misuses were then analyzed further by means of finding suitable case law per defined misuse. In addition to that a literature review was given on potential trade- and customs compliance risks. Based on the case law and based on in-depth analysis of the literature, researcher has linked the various risks that can occur to the most common incoterm misuses, the results are presented in figure 4 below³.

³ In addition to figure 4: for three misuses no case law was found. However, few practical examples in literature are given: Bergami (2013) found that banking practices may place requirements upon sellers that are contrary to the Incoterms® rules. Supporting this finding, Roos (2011) found that banks place secondary importance on Incoterms®, and U.S. Customs does not recognize them. Bergami (2012, 2013) also notes that if FOB is used, there is a mismatch between loss of physical control (e.g. can be handled six to eight times before loading on a vessel) and risk transfer point. He concludes that banks are not knowledgeable about Incoterms®, and that bank requirements increase risk to the seller.

Misuse	Case law	Risk categories			
		Customs risk	VAT risk	Legal risk	Supply chain risk
Use of a traditional “sea and inland waterway only” rule such as FOB or CIF for containerised goods	Scandinavian Trading Co A/B v Zodiac Petroleum SA (The Al Hofuf), [1981] 1 Lloyd’s Rep 81.	No	No	Yes	Yes
	Federal Insurance Co. v. Great White Fleet, Dist. Court, SD New York 2008	No	No	Yes	Yes
Making assumptions about passing of title to the goods, based on the Incoterms rule in use.	Texful Textile Ltd. v. Cotton Exp. Textile, Inc., 891 F. Supp. 1381 - Dist. Court, CD California	No	No	Yes	Yes
	St. Paul Guardian Ins. Co. v. Neuromed Med. Sys. & Support, GmbH, 2002 WL 465312 - 2002 (http://cisgw3.law.pace.edu/cases/020326u1.html)	No	No	Yes	Yes
	BRISTOL-MYERS SQUIBB COMPANY v. MATRIX LABORATORIES LIMITED, Dist. Court, SD New York 2015 (https://scholar.google.com/scholar_case?case=5035550668674053821&q=incoterm+passage+title&hl=en&as_sdt=2006)	No	No	Yes	No
Failure to specify the port/place with sufficient precision	David T. Boyd & Co. Ltd. v Louis Louca [1973] 1 Lloyd’s Rep. 209 (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2423707)	No	No	Yes	Yes
Attempting to use DDP without thinking through whether the seller can undertake all the necessary formalities in the buyer’s country	TIAN LONG FASHION CO., LTD. v. FASHION AVENUE SWEATER KNITS, LLC, Dist. Court, SD New York 2016 (https://scholar.google.com/scholar_case?case=10532721134079775266&q=DDP+export+costs&hl=en&as_sdt=2006)	Yes	Yes	Yes	Yes
	Animal Science Products v. China Nat. Metals & Minerals Import & Export Corp., 702 F. Supp. 2d 320 - Dist. Court, D. New Jersey 2010 (https://scholar.google.com/scholar_case?case=8668936420483993778&q=incoterm+DDP+exporter+obligations&hl=en&as_sdt=2006)	Yes	Yes	Yes	Yes
Attempting to use EXW without thinking through the implications of the buyer being required to complete export procedures	AIRFLOW CATALYST SYSTEMS, INC. v. HUSS TECHNOLOGIES GMBH, Dist. Court, WD New York 2011 (https://scholar.google.com/scholar_case?case=10739986385263798982&q=exw+buyer+obligations&hl=en&as_sdt=2006)	Yes	No	Yes	Yes
Use of CIP or CIF without checking whether the level of insurance in force matches the requirements of the commercial contract	http://www.erevija.org/pdf/articles/eng/Ademuni%20Odeke%20en.pdf	No	No	Yes	Yes
	Smith Co., Limited v. Moscahlades, 193 App. Div. 126, 183 N.Y.S. 500 (N.Y. App. Div. 1920)	No	No	Yes	Yes
Where there is more than one carrier, failure to think through the implications of the risk transferring on taking in charge by the first	no case law found				
Failure to establish how terminal handling charges (THC) are going to be treated at the point of arrival.	no case law found				
Where payment is with a letter of credit or a documentary collection, failure to align the Incoterms rule with the security requirements or the requirements of the banks	Stock v Inglis [1884] 12 Q.B.D. 564.	No	No	Yes	Yes
	Pyrene Co. Ltd. v Scindia Navigation Co. Ltd. [1954] 2 Q.B. 424.	No	No	Yes	Yes
	Kerr LJ in RD Hardbottle (Mercantile) Ltd v National Westminster Bank Ltd [1978] QB 146,155.	No	No	Yes	Yes
When DAT/DPU or DAP is used with a “post-clearance” delivery point, failure to think through the liaison required between the carrier and the customs authorities	no case law found				

FIGURE 4 INCOTERMS MISUSE RISK MATRIX

3.5 Customs- and trade compliance risk management

In a bid to understand how customs and trade compliance risk is mitigated, a review of literature was carried out. The general supply chain risk management literature offered limited help. As Veenstra (2014) states in his text,

Risks addressed in this field of study are mostly external risks, such as fires, earthquakes, strikes and other, more or less, uncontrollable events. Resilient firms are businesses that are fairly robust regarding this type of risk. But what about risks which are primarily driven by internal operations and activities? Risks that are inherent to the way they have organized their supply chains? It is such vulnerabilities, that undermine international trade on a daily basis” (p.15).

Much of the literature now identifies risks in terms of events that happen outside of the supply chain. However, according to Veenstra (2014), risks should be related to the structure of supply chain processes. In this way, one can start to make a link with the design of the mechanics of trade and transport and risk. This kind of risk identification will be a basis for discussion with supervising agencies on measures for control and compliance⁴.

The main and most detailed source (non-academic) for customs risk management is the World Customs Organisation (WCO) Risk Management Compendium. The WCO sees risk management as one component in a more general compliance management approach that also contains the legislative framework, administrative arrangements and threat identification technology. According to the WCO risk assessment approach should involve the following:

- Identification of the risk
- Assessment of the risk significance (likelihood and consequence)
- Definition of response / mitigation strategy

⁴ In the CASSANDRA Project (Common Assessment and Analysis of Risk in Global Supply Chains) the idea was to have companies and government jointly assess risks, and agree on mitigating strategies. Which party then carries out the mitigating strategies should not matter, as long as all parties involved are informed. However the CASSANDRA project less progress was made in this area than expected. One reason is that business and government supervision are far apart in their perception of the world and consideration of risks. Where business sees opportunity, government inspection agencies see risks, and where business see risk (say, late arrival of goods), inspection agencies see a business problem. These perceptions are not aligned very well.

Based on the above and according to Veenstra (RSM class materials 20-02-2019) a compliance management scheme can thus be seen as follows:

- Know the rules
- Monitor adherence to the rules
- Correct mistakes and communicate proactively
- Ensure continuous improvement

While useful in a general sense, the risk management frameworks outlined above may not facilitate customs and trade compliance risk management. A more robust and relevant model is therefore needed. This study aims to develop a risk management approach that firms can use to ensure adherence to Incoterms and prevent the risks that arise from incoterm usage errors.

In absence of relevant academic literature regarding customs- and trade compliance risk management the existing general risk management literature was taken as a starting point. The objective of existing risk management theories is to mitigate the impact of adverse events, with the help of clearly defined strategies and risk management procedures. The general risk management approach consists of the following steps: risk identification, risk analysis and evaluation, selection and implementation of risk management strategies (or risk mitigation strategies) and risk monitoring, in order to meet overall organizational objectives (Manuj and Mentzer, 2008; Arwinge, 2013). This process is illustrated in the graph below.



FIGURE 5 RISK MANAGEMENT FRAMEWORK

3.6 Conclusion

In this chapter, an introduction to Incoterms and a definition of Incoterms misuse was given. Additionally, “Incoterms misuse” has been defined as incorrect use. Moreover, the chapter has offered an overview of 10 of the most common usage errors highlighted in literature. Based on existing literature, an overview of Incoterms misuse and customs- and trade compliance risks has been made. In summary 4 key risks have been identified: Customs value risk and three forms of Trade compliance risks, namely VAT, Legal and Supply chain risk.

By investigating the subject of Incoterms misuse as a cause of customs- and trade compliance, identifying the key risk factors within an international supply chain and laying the basis for a risk management framework on the back of these identified risks, this thesis expands and enriches existing literature. Furthermore, this thesis aims to provide practical usability. An Incoterms misuse risk matrix was drafted to investigate whether potential Incoterms misuses and potential risks are present and linked to each other in a specific case. The empirical research will be performed in order to validate whether potential customs and supply chain risks caused by Incoterms misuse and as described in academic literature can actually be observed within Fujifilm.

Chapter 4: Research methodology

This section focuses on the design of the research. A brief explanation is given on how the research is approached.

4.1 General Overview of Research Procedure

In the first part of the research methodology, an examination of the most common incoterm usage errors was conducted through literature review and assessment of case laws. Additionally, as part of the first phase of the study, desk research was used to identify the various customs and trade compliance risks that result from incoterm usage errors.

On the other hand, in the second part of this research, a case study was done in order to test and validate whether the results of the literature review match the situation at Fujifilm. Through the case study, a test of whether incoterm misuse actually occurs at Fujifilm was conducted.

Furthermore, this case study involved an examination of the specific customs and trade risks that this company grapples with due to the usage errors. This case study was made possible by data records and in-depth interviews involving employees of Fujifilm.

4.2 Research methods: Case Study

4.2.1 General Applications of Case Study Approach

Case study methods are widely recognized in many social science studies, especially when in-depth explanations of a social behaviour are sought after. Case study research allows for the exploration and understanding of complex issues and can be considered a robust research method, particularly when a holistic, in-depth investigation is required. Literature reveals the application of the case study method in many areas and disciplines such as sociology (Grassel & Schirmer, 2006), Law (Lovell, 2006) and medicine (Taylor & Berridge, 2006). In addition, in areas like government, management and education case study methods have been used extensively.

The case study method enables a researcher to closely examine the data within a specific context. Mostly, when using this method, the researcher selects a small geographical area or a very limited number of individuals as the subjects of study. Case studies allow for extensive and rigorous examinations of contemporary real-life phenomenon through detailed contextual analysis of a limited number of events or conditions, and their relationships. Yin (1984:23) defines the case study research method “as an empirical inquiry that investigates a contemporary

phenomenon within its real-life context; when the boundaries between phenomenon and context are not clearly evident. Basically, a case study is a unique way of observing any natural phenomenon which exists in a set of data (Yin, 1984). Unlike quantitative analysis which observes patterns in data at the macro level, case studies observe data at the micro level. They are therefore the ideal tool for exploring specific phenomena such as the prevalence of incoterm usage errors at Fujifilm.

4.2.2 Case study challenges

As the discussion above has shown, case studies are immensely useful. However, this approach has some drawbacks and limitations. Yin (1984) discusses three types of arguments against case study research.

1. Case studies are often accused of lack of rigour. Yin (1984) notes that “too many times, the case study investigator has been sloppy, and has allowed equivocal evidence or biased views to influence the direction of the findings and conclusions” (p.21).
2. Case studies provide very little basis for scientific generalisation since they use a small number of subjects, some conducted with only one subject. The question commonly raised is “How can you generalise from a single case?” (Yin, 1984, p.21).
3. Case studies are often labelled as being too long, difficult to conduct and producing a massive amount of documentation (Yin, 1984).

Yin is just one of numerous scholars who have highlighted the limitations of the case study method. As part of his assessment of this research design, Flyvbjerg (2006) also identifies some shortcomings. Listed below are some of the flaws of case study methods that Flyvbjerg (2006) addresses:

4. General, theoretical (context-independent) knowledge is more valuable than concrete, practical (context-dependent) knowledge.
5. The case study is most useful for generating hypotheses; that is, in the first stage of a total research process, while other methods are more suitable for hypotheses testing and theory building.

The flaws listed above are indeed alarming and raise questions about why the case study approach has been adopted for the present study. As the discussion below shows, while the case study method is imperfect, it has numerous advantages.

Regarding the lack of generalization Flyvbjerg (2006) mentioned:

One can often generalize on the basis of a single case, and the case study may be central to scientific development via generalization as supplement or alternative to other methods. But formal generalization is overvalued as a source of scientific development, whereas ‘the force of example’ is underestimated” (p.228).

Flyvbjerg added further that “The case study has its own rigor, different to be sure, but no less strict than the rigor of quantitative methods. The advantage of the case study is that it can ‘close in’ on real- life situations and test views directly in relation to phenomena as they unfold in practice” (p. 235).

With regard to misunderstanding 2, Flyvbjerg (2006) stated that “the case study contains no greater bias toward verification of the researcher’s preconceived notions than other methods of inquiry. On the contrary, experience indicates that the case study contains a greater bias toward falsification of preconceived notions than toward verification” (p. 237). The point that Flyvbjerg (2006) conveys here is that the case study method is the best available approach. Therefore, even if it had been conducted using some other method, this study would still have significant drawbacks. Thus, as Flyvbjerg (2006) indicates, for in-depth evaluations of real-world phenomena, the case study method is the best.

According to Ragin (1992), Flyvbjerg (2006), and other scholars, researchers who have conducted intensive, in-depth case studies typically report that their preconceived views, assumptions, concepts, and hypotheses were wrong and that the case material has compelled them to revise their hypotheses on essential points. Ragin (1992) calls this a ‘special feature of small-*N* research’, and goes on to explain that criticizing single-case studies for being inferior to multiple case studies is misguided, since even single-case studies ‘are multiple in most research efforts because ideas and evidence may be linked in many different ways’ (p. 225).

Given that the case study method has received staunch defense and support from numerous scholars, there is no question that it is the most appropriate for the present study.

4.2.3 Rationale for use of case study

In this thesis, the causal effect between two phenomena is examined: “Incoterms misuse” and “customs and trade compliance risks”. As described earlier, there is only a limited amount of

academic literature for both phenomena. The case study approach is appropriate as it allowed for an in-depth understanding of the two issues as they manifest within Fujifilm's operations.

Yin (2014) identifies five reasons for conducting a single-case study: critical, unusual, common, revelatory, and longitudinal. For this study, four out of the five reasons are applicable and therefore the choice for a case study-based approach is seen as valid (critical, common, longitudinal, and revelatory):

- i) The single-case study is *critical* to the theory and theoretical propositions (Yin, 2014).
- ii) The *common* case rationale applies because this study captures conditions and circumstances of everyday situations as they relate to theoretical interests.
- iii) The *longitudinal* rationale pertains because some aspects of the single-case study occur at two or more different points in time.
- iv) Lastly, and most importantly, the *revelatory* rationale applies because this study is able to access, observe, and analyze a phenomenon with uninhibited access to the large, (anonymous) international corporation⁵.

Since all the reasons listed above apply to the current study, there is a solid rationale for basing the study on the case study approach. What is most important is that thanks to the case study approach, a clear and in-depth understanding of the challenges that Fujifilm faces with regard to Incoterms compliance was gained.

4.3 Research methods: qualitative research

The present study was conducted at Fujifilm Europe B.V., an international organization with a complex supply chain network and systems. Currently, Fujifilm does not have a formal or well-established risk management framework or policy for Incoterms in place. Therefore, potential risks and the implications thereof may not be known within the company.

The present study comprises largely qualitative⁶ research and theme interviews. The key concept in qualitative research is finding an answer to a question, with the aim of identifying underlying perspectives and insights. The aim of qualitative research is not to find an existing answer or preconceived theory about the research object. Rather, the best outcome of such

⁵ See Schaeffer

⁶ Although data records are analyzed, the amount of data has been limited to a 3 months period and is based on a case study, not a large sample of different companies. Therefore the thesis remains primarily qualitative.

research is gaining a comprehensive view of the object and its causes. Generally, qualitative research happens in a natural environment, and data is collected from professionals and specialists through an interactive relationship with the researcher. The research material is diverse and is collected from text, pictures, interviews and other media. These interviews are a common way of gathering information in qualitative research.

4.3.1 Data analysis

To get a better insight into the potential Incoterms misuse, a data analysis was done. Particular attention was given to bonded goods. This product category was selected because it is clearly defined and well administered as the goods are still under customs supervision (data covering the period October - December 2019⁷).

As mentioned in a previous section, a review of Fujifilm's data records was also performed as part of this study. The data records coming from the following internal and external parties, which fulfill vital roles in the customs and supply chain processes were used to identify potential Incoterms misuse:

- Sales entities: based on an end-customer sales transaction they administer a back-to-back purchase order in FEN's SAP system; data records coming from the SAP purchase orders were used
- Customs affairs department FEN: takes the original supplier invoice as the basis for its checks and balances since it is required by law (art. 70(1) UCC) to take this document as the basis for the customs value calculation; data records coming from the original supplier invoice were used
- External logistics service provider IDL administers the transport mode on the basis of shipping document for the inbound delivery; data records coming from the bill of lading as administered by IDL were used

Since the data was from multiple sources, the reliability and quality of this study is guaranteed. By obtaining records from various stakeholders, it was possible to conduct extensive and in-depth analyses.

⁷ These are the peak months with the majority of shipments from outside the EU and it covers products from all business domains.

4.3.2 Interviews

In addition to the data record analysis described above, the study also involved interviews. Generally, the theme interviews include two components: (i) interviews, in which face-to-face, open conversation of the topic occurs, and 2) themes, which involve the discussion of multiple topics and questions instead of a single general theme. Through the discussion with interview participants, the researcher tries to enhance the knowledge of the topic and grasp the big picture. The discussion proceeds according to the interviewee's terms. More importantly, there is active participation by both the interviewees and the researcher. On the one hand, the interviewee shares details on the topic. On the other hand, the interviewer provides specific questions to have a structured conversation. In some cases, theme interviews require a second round to address more specific follow-up questions. To facilitate a better discussion, the interviewer needs to have a clear view on the topic and knowledge of the topic ensures a more detailed and specified conversation. (Kananen 2017, pp. 95- 96.) As such, theme interviews should consist of open questions, follow-up questions and hypothetical questions (Murchison 2010,109). The procedure outlined here is how the researcher engaged the Fujifilm's employees with the goal of understanding incoterm usage errors that occur at the company.

An in-depth semi-structured interview question list (See **Annex III**) was used to ensure focus of the researcher and participants on the defined research questions. The content of the in-depth semi-structured interview question list is derived from information available from the literature review and the researcher's knowledge of the phenomena. When an in-depth semi-structured interview question list is used, conversations might deviate with open and flexible discourse that allows participants to steer conversations within topic areas. However, to ensure structure and order, the researcher guided the interviewees and the interview questions were sufficiently specific to minimize deviations from the main topic.

Participants were encouraged to draw on either recent or atypical experiences in topic areas and were provided a copy of the structured questions well in advance of the interview, allowing them some preparation time to reflect on relevant experiences. The in-depth semi-structured interview question list facilitated the coding and summary of interviewee responses.

A total of 12 participants were interviewed via telephone. The interviews have been recorded with each participant's permission. Additionally, no effort was spared in explaining the purpose of the study and the role that these participants would be playing. Therefore, this study complied

with the ethics requirement that researchers must obtain informed consent from human subjects taking part in their studies. All 12 participants are working at Fujifilm. The interviews lasted between 27 and 57 minutes. Using the audio recordings, all interviews have been transcribed to enable further analysis. Further details about participants and summaries can be found in **Annex IV**. Transcription of the interviews is available as a separate document as it comprises over 100 pages.

The outcomes of the interviews are based on information provided by experienced personnel. Consequently, the researcher obtained a clear perspective and valuable insight into the potential risk events and their priority. For the most part, the interview method proved reliable. However, during the study, it emerged that this method has some limitations. For instance, as Tversky and Kahneman (1974) state in their article, interview participants are more likely to only recollect recent events. Ultimately, the data that the researcher obtains may not offer a complete account of the phenomenon in question. Another limitation is that the interview participants may be reluctant to share details that paint them in negative light or place them at risk. For example, it could be that the participants deliberately chose to omit details regarding risks and incoterm usage errors that they committed. In an effort to ensure that these limitations did not erode the reliability of the study, multiple data collection methods were used.

Chapter 5: Case study: company description and empirical results

5.1 Case company description

FUJIFILM Corporation was founded in 1934 for the production of photographic film under the name Fuji Photo Film Co. Ltd. Fujifilm offers products for different industries such as electronic imaging, photo finishing equipment, medical systems, biotechnology, printing industry, materials for flat screens and office products. For this there is an extensive portfolio of digital, optical, fine chemical and thin film layer technologies.

In 1982 Fujifilm established a production location in Tilburg, FUJIFILM Manufacturing Europe B.V. (hereinafter: EF), in the Netherlands, for the production of photo paper, film rolls and offset printing plates.

In addition, Fujifilm Europe B.V. (FEN) in Tilburg, was established in the Netherlands. This company is the parent company in Europe and is also the operational headquarters for the European market, specializing in supply chain management activities. FEN fulfills positions in the field of IT, Logistics, Purchasing, Sales, Finance and Customs. FEN is responsible for the purchase, sale and distribution of products for the European market, the Middle East, Africa and South America. FUJIFILM currently has more than 55 group companies in Europe and employs more than 4,000 people. Illustrated below is the company's organizational structure.

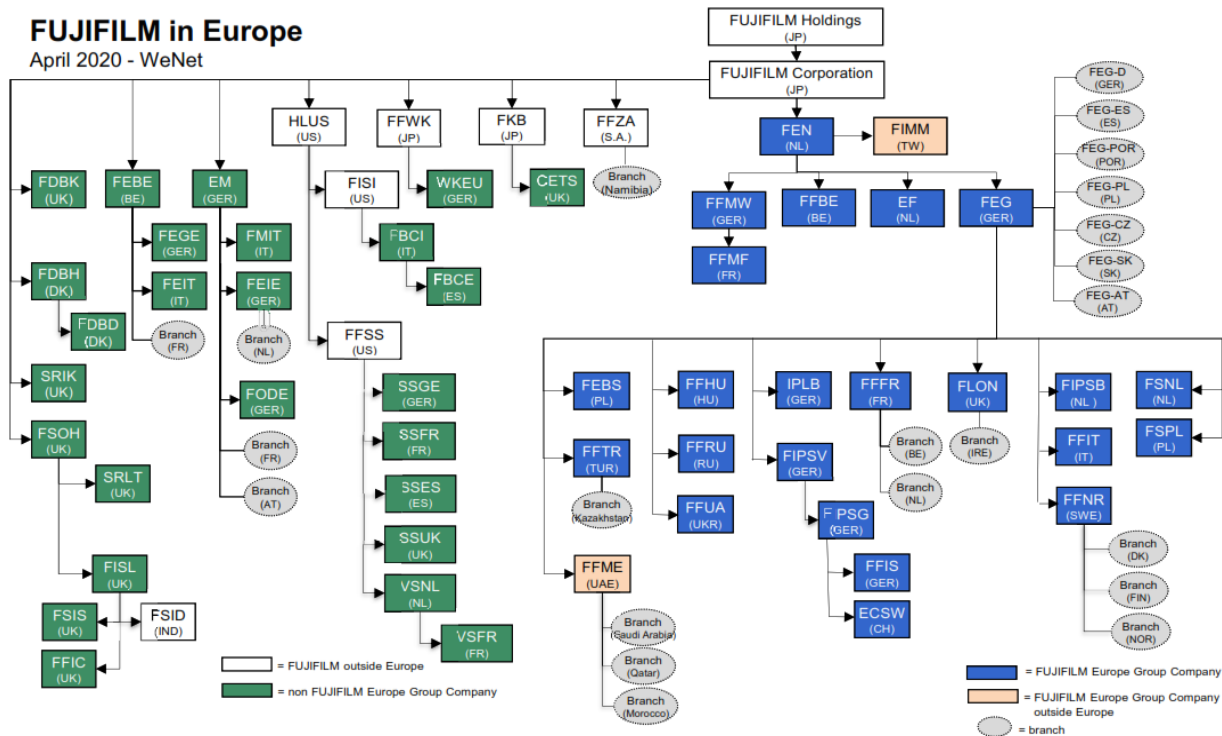


FIGURE 6 FUJIFILM ORGANOGRAM

As described above, in Europe, FEN is responsible for the purchase, sale and distribution of products purchased and sold by the various Business Domains. Since FEN purchases and sells different products, numerous distinct flows of goods and logistics chains can be described. For this study, a specific product flow, the incoming bonded trading goods will be analyzed. The products are produced and supplied to FEN by various manufacturers from outside the EU. The trading goods are sent by the producers and then stored in the central bonded warehouse of FEN in Tilburg. These products are sold from Tilburg and distributed to customers in Europe. The local Fujifilm sales entities (retailers) in Europe are responsible for sales and for customer contact.

In addition, FEN works closely with a logistics service provider (IDL) that supports FEN in the execution of all logistics processes and is responsible for arranging transport, for the storage of goods, as well as for the incoming and outgoing shipments of the products. The retailer does not play a role with regard to the physical flow of goods. They also have no storage locations.

The supply chain looks as follows:

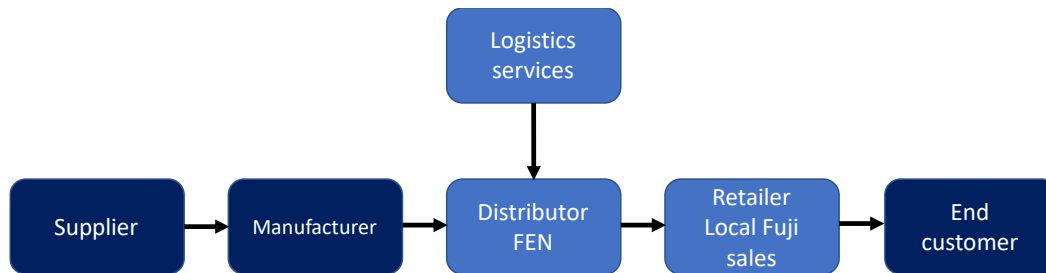


FIGURE 7 FUJIFILM'S SUPPLY CHAIN

For the study, a detailed understanding of the following supply chain processes within FEN was required. Outlined below are some of these processes.

- *Demand management:* Customer orders are created by the order desks of the Fujifilm entities in Europe in the ERP system (hereinafter: SAP). These orders are converted into purchase orders and immediately transferred 1-to-1 to the producer. Orders are then picked at the producer's level at the customer level. This process is done order by order.
- *Order fulfilment:* The customers' orders arrive at the order desks of the respective Fujifilm entities responsible for the sales, and are then created in the SAP system. These orders are converted into a purchase requisition and are converted into a purchase order and forwarded to the producer. The trading goods are sent from the producer to the bonded warehouse of FEN in Tilburg.
- *Procurement:* Products are purchased from the suppliers by various employees of the Fujifilm entities in Europe. They purchase these products in the name of FEN. Purchase orders are created every day and sent to the supplier. The supplier then sends an order confirmation, after which the products arrive at the central bonded warehouse in Tilburg. Based on this, the data of the deliveries can be adjusted in SAP.

The procurement of trading goods is thus not centralized. In Europe, each Fujifilm entity purchases its own stock for the local market, in the name of FEN.

- *Customs affairs:* The Customs affairs department is responsible for fulfilling the requirements levied by the legislative restrictions on product trading. This includes but is

not limited to compliance with the exportation, importation, and reporting requirements as set forth by the various European and international authorities.

FEN has several customs authorizations that have been issued by the Dutch Customs Authorities (DCA). One of them is the bonded warehouse license. Essentially, this license authorizes FEN to keep goods on stock in a secured facility supervised by the DCA, where dutiable goods may be stored, manipulated, or undergo manufacturing operations without payment of duty. To be compliant with this authorization, the DCA monitors the customs value on a monthly basis. The tasks of the DCA department are supported by information coming from the SAP ERP System and by the SAP GTS Module (Global Trade Service).

5.2 Case study: Results Data analysis

In this section, the results obtained from the review of Fujifilm's data records are presented.

To identify potential Incoterms misuse, data records coming from 3 parties (sales entities, customs affairs department and external logistics service provider) as mentioned in 6.3.1 were analyzed in detail. The ultimate goal of the data analysis was to identify:

- 1) potential customs risks related to Incoterms misuse
AND / OR
- 2) potential supply chain risks related to Incoterms misuse

Ad 1: More specifically, Incoterm data records (3 character abbreviation + location, e.g. "CIF Amsterdam") coming from purchase orders (in SAP, managed by Sales entities) were compared with the original invoice coming from the supplier (in GTS, managed by CA). A potential gap or discrepancy can be caused by action(s) of one or more parties. More concretely either the 3-letter abbreviation (labelled as 'gap 1a') and / or the location could have been wrongly used ('gap 1b')

Example: The information on the invoice is leading for the calculation of the customs value (defined by Law). If the SAP data (3-character abbreviation and / or location could be wrong) resulting from the purchase order does not match the invoice which comes from the original supplier and comes with the shipment, the information within SAP is adjusted. Whether the

incoterm was actually used in practice as stated on the shipment documents is not substantively tested by CA.

Ad 2: The transport mode (ship vs airplane) as derived from data records from the bill of lading was compared to the original purchase order in SAP to identify a gap which indicates a potential supply chain risk. This gap is labelled as ‘gap 2’ in the data analysis.

Example: The information on the purchase order in SAP indicates CIF, however the bill of lading, which comes directly from the logistics service provider says FCA. This inconsistency is a clear indicator of potential supply chain risks.

For the bonded goods case, based on a maximum of three different gaps (1a, 1b and 2) and a theoretical maximum of 8 combinations, this leads to the following high-level matrix:

	1A) 3 letter Incoterm GTS vs SAP	1B) Location Incoterm GTS vs SAP	2) 3 letter Incoterm SAP vs Bill of Lading	Customs risk	Supply Chain risk
Combination 1	Gap	Gap	Gap	Y	Y
Combination 2	Gap			Y	Y
Combination 3		Gap		N	Y
Combination 4			Gap	N	Y
Combination 5	Gap	Gap		Y	Y
Combination 6		Gap	Gap	Y	Y
Combination 7	Gap		Gap	Y	Y
Combination 8				n/a	n/a

FIGURE 8 MATRIX WITH GAP RESULTS

Based on 535 data records (Oct-Dec 2019) and the matrix as shown above the results can be summarized as follows:

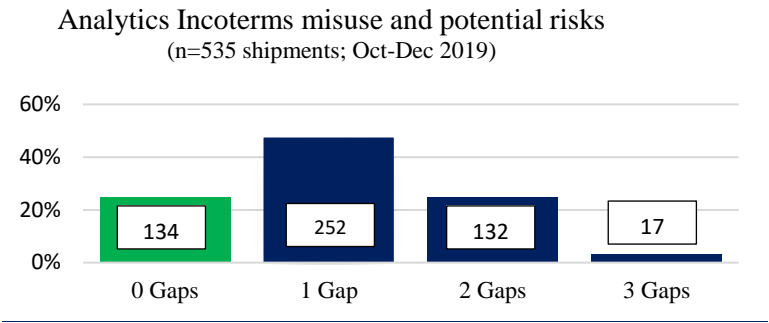


FIGURE 9 ANALYTICS: POTENTIAL CUSTOMS RISKS AND / OR SUPPLY CHAIN RISKS RELATED TO INCOTERMS MISUSE

	OCT	NOV	DEC	TOTAL	AVG
0 Gaps	59	43	32	134	25%
1 Gap	97	82	73	252	47%
2 Gaps	49	45	38	132	25%
3 Gaps	7	6	4	17	3%
Total # records	212	176	147	535	

FIGURE 10 RECORDS: INCOTERMS AND SUPPLY CHAIN

Based on the analysis, it can be concluded that in only 25% of the shipments no inconsistency was observed. This indicates that in 75% of the cases a potential customs or trade compliance risk is looming.

5.2.1 Conclusion Data analysis

The data analysis from SAP was performed in order to validate whether potential customs and supply chain risks related to Incoterms and as described in academic literature can actually be observed within Fujifilm. The data analysis indicates that risks related to Incoterms misuse are real, based on the analysis it can be concluded that in only 25% of the shipments no inconsistency was observed. Since in 75% of the shipments there was at least one error, it can be concluded that in 75% of the cases there is a risk of potential misuse of an Incoterm.

5.3 Case study: Results interviews

In this section, the results obtained from the interviews are presented. The interviews were held in order to get an answer to the problem statement. The questions in the interviews relate to the following research questions, focused on Fujifilm:

1. What is your understanding of Incoterms misuse?
2. What are customs- and trade compliance risks in general?
3. What are the customs- and trade compliance risks that Fujifilm faces when Incoterms are not used properly?
4. How can Fujifilm manage customs- and trade compliance risks caused by Incoterms misuse? What specific solutions has the company adopted to manage these risks?

5.3.1 Incoterms misuse in practice

By asking the interviewees how “Incoterms misuse” can be defined, various explanations were given. Most respondents mentioned that it is a wrong “operation” of an Incoterm. However, they all mentioned that misuse has nothing to do with “intended” wrong use⁸. A few concrete examples of Incoterms misuse as given by the respondents:

- Goods are bought FCA, however the supplier unnecessarily takes care of transport and insurance activities.
- The mode of transport does not match with the mentioned Incoterms, e.g. CIF is mentioned in the purchase order, however in reality the goods arrive by air and not by ship (as implied by CIF)
- Misuse may imply incompleteness of an incoterm. A regularly observed issue is an incoterm that has no or an incorrect place name indication.

To summarize and make it more generally applicable, the following misuses were mentioned mostly⁹ during the interviews:

- Criteria as defined by a specific incoterm are not fulfilled in reality
 - Incoterms on the invoice do not match with the ones on the purchase order
 - Mode of transport on invoice does not match with purchase order
- Wrong or no place name indication

⁸ The following Incoterms are used in relation to bonded goods within Fujifilm: CIF, FOB, CFR, CIP, DAP, DDU, FCA

⁹ Mentioned by at least 4 participants

- Non-existent Incoterms have been selected

Only three of the Incoterms misuses as listed in literature were confirmed by some of the participants:

- Failure to specify the port or place with sufficient precision
- Use DDP without thinking through whether the seller can undertake all the necessary formalities in the buyer's country, e.g. paying VAT
- Use EXW without thinking through the implications of the buyer being required to complete export procedures

However, the participants also mentioned Incoterms misuses, that are not mentioned in the literature list:

- Criteria as defined by a specific incoterm are not fulfilled in reality
- Non-existent Incoterms have been selected
- Mode of transport on invoice does not match with purchase order

5.3.2 Customs- and trade compliance risks caused by Incoterms misuse

The interviewees were asked what possible risks and consequences could occur in the event of Incoterms misuse. The risks as mentioned during the interviews were mapped in-line with the identified customs risks and trade compliance risks as presented before (figure 3).

Customs risks: The employees of CA and VAT indicated that the single largest customs risk is a possibly incorrect customs value calculation¹⁰. Here, the employees defined “Incorrectly” as incorrect use of Incoterms. Another definition that the employees provided is that customs risks refer to hazards that occur when they fail to use the correct incoterm regarding transport costs as they determine the customs value for the buyer.

Trade compliance risks: With regard to trade compliance risks, the respondents mentioned the following risks:

- **Liability / legal risk;** contractual obligations regarding Incoterms are often not known within the Fujifilm organization. Respondents also shared that Fujifilm does not have clear guidelines or policies that define the parties responsible for transport. Furthermore, the

¹⁰ Only employees of CA and VAT were able to answer this question only (n=4, instead of 15).

moment of risk transfer is sometimes not known or understood, which can have significant consequences regarding contractual obligations and lead to unwanted liabilities. An example that one of the respondents gave is a scenario where a shipment will be delivered DAP or CIP and thereby transport costs are borne by counterpart. However Fujifilm will still arrange the transport and pay for it.

- Cost risk; the risk that Fujifilm will pay too much due to the incorrect use of Incoterms is mentioned regularly. Some cases are described:
 - The purchase price for goods is de facto too high when it is contracted under DDP and Fujifilm still arranges and pays for transport and customs clearance, whereas this should have been arranged and paid for by the seller
 - Transport costs that are paid because there is an incomplete or incorrect place name indication. In that case, the local transport from place-name to the warehouse must take place. These local transport costs are not included in the contractual arrangements with the supplier, so the costs are for Fujifilm.
- VAT-related risks; If the Incoterms are wrong or incomplete, the customs value calculation might be wrong or incomplete. When the customs value is wrong or incomplete, the VAT import value is also automatically adversely impacted. In addition, VAT uses the Incoterm to determine which transaction in the chain may have 0% VAT charged. If the Incoterms are incorrectly set up in SAP, this could mean that FUJIFILM calculates 0% VAT on an invoice that should not be 0%. This might lead to unwanted consequences such as fines and delays at the moment a sales transaction takes place.
- Supply chain risks; A limited number of respondents mentioned these risks could arise by means of delays in delivery. For example, goods might be blocked at the border in case incorrect documentation has been provided. Further, the example regarding Flat Panel Detectors from Greece as described earlier fits perfectly into this category.

Based on the outcome of the interviews, it can be concluded that all key risks as mentioned in fig. 4 are mentioned, albeit not by all participants: the VAT and Customs risks were only mentioned by the CA and VAT experts. Another important outcome is that nine of the participants identified cost as a separate risk to which Fujifilm is exposed. This finding is significant because it challenges and contradicts what literature says. As noted earlier, literature categorizes cost as a consequence of the other risks arising from incoterm misuse.

5.3.3 Incoterms misuse: causes and potential mitigation measures

Although the focus in this thesis is not on the definition of mitigation measures, insight in the drivers behind the risk will help Fujifilm to develop a comprehensive risk framework which goes beyond this thesis.

The interviewees gave several reasons for the incorrect use of Incoterms within Fujifilm:

- It is mentioned regularly that the wrong department is buying the goods. Normally procurement and legal should be involved in order to minimize Incoterms misuse. However, it appeared that neither Procurement nor Legal is involved. In daily practice the order desk employees place an order in SAP and the Incoterms field can be filled in with whatever incoterm.
- All respondents mentioned that there is incompetence and lack of insight amongst the department and the people that are ordering the goods. Respondents state that they do not have enough knowledge about Incoterms in general nor about the business conditions in a specific case to choose the right Incoterms.

Another question that was posed to the respondents was how companies can prevent the customs and trade compliance risks. Listed below are some of their responses regarding preventive interventions:

- All of the respondents mentioned that it is vital to increase awareness and knowledge about Incoterms throughout the organization, but especially in the departments that (should) purchase and order the goods.
- It was sometimes suggested to use only standard Incoterms or, to rule out specific Incoterms.
- Adjust SAP with regard to Incoterms to ensure Incoterms deviations can only be made after consultation of an expert from CA or VAT team.
- Limit the mandate and the possibility of the order desk to adjust or change Incoterms in the master data without prior authorization.
- It was suggested to enhance the awareness of the potential risks by monitoring and reporting any additional cost related to misuse.

All interviewees concluded that the misuse and the identified risks somehow do not have sufficient attention within Fujifilm. According to the interviewees this is most likely caused by the following reasons:

- Most accidents / issues in practice, are solved and dealt with during the daily operation. So although the misuse takes place, and although the risks materialize, it is not structurally monitored and reported since it is solved during the daily operation. Respondents did not know how much time and effort is related to the daily corrections.
- The likelihood whether a trade compliance risk occurs, is not known to Fujifilm as the proper use of Incoterms is not monitored on a structural basis by any department. In the absence of structural monitoring of Incoterms the assessment of the likelihood that a compliance risk materializes and is not mitigated is not possible.

5.4 Conclusion interviews:

Misuse: The overall conclusion is that improper use of Incoterms takes place in various ways. Most of the interviewees (n=11) state that it means that the reality does not reflect/match with the incoterm that is mentioned on an invoice or in an agreement.

If the comparison is made with the list of most common Incoterms misuses as defined in literature and the outcome of the interviews, it can be concluded that only three of the Incoterms misuses as listed in literature are mentioned by the participants. The participants, however, did also mention other Incoterms misuses that were not mentioned in the literature list.

Customs- and trade compliance risks: The interviews concluded that all key risks are mentioned, albeit not by all participants: the VAT and Customs risks were only mentioned by the CA and VAT experts.

Furthermore “Cost” was mentioned as a separate risk, while in literature this is not mentioned as a separate risk, but as an effect/consequence of a risk.

Causes and potential risk mitigation measures: The impact of the risks on the organization seems rather limited in practice since the effects of and the risks itself are mitigated in the daily operation. Having said that it is unclear what the direct effort nor costs is, to manage day-to-day operational issues (not in working hours nor in costs).

According to the participants the causes for Incoterms misuse is un-awareness and lack of knowledge. Moreover, the fact that the risks that take place are not really noticed and/or lead to real problems, makes the correct use of Incoterms not a high priority within Fujifilm. This is in line with the causes for Incoterms misuse as mentioned in the existing literature.

5.5 General findings and conclusions empirical research

The empirical research was performed in order to validate whether potential customs and trade compliance risks related to Incoterms and as described in literature can actually be observed within Fujifilm.

The data analysis indicates that risks related to Incoterms misuse are real. Based on the analysis it can be concluded that in only 25% of the shipments no inconsistency was observed. In as many as 75% of the transactions that Fujifilm handles, some form of incoterm misuse occurs. The prevalence of the incoterm usage errors at this company is somewhat alarming. Fujifilm needs to move with speed to understand why these errors occur and implement some of the solutions that its own employees proposed.

If the outcome of the interviews is compared with the Incoterms misuse risk matrix (figure 4), it can be concluded that only three of the Incoterms misuses as listed in literature are mentioned by the participants. The participants however did also mention other Incoterms misuses that were not mentioned in literature. With regard to risk the participants mentioned all key risks, albeit not by all participants. Furthermore “Cost” was mentioned as a separate risk, whereas in literature this is not mentioned as a separate risk, but as an effect/consequence of a risk.

The outcome of the empirical research is that there is only a limited / partial match between theory and practice at best. It confirms the conclusion from literature review and case law analysis that the misuse list is anecdotal. This finding is an indication for further research, potentially within a larger group of companies, to come to a more robust overview of common Incoterms usage mistakes.

Due to the large variety among the cases, the involvement of multiple people within various international subsidiaries within Fujifilm, further consequences related to individual data records and the effect of solving issues in the daily operation haven't been analyzed further as it is not structurally, centrally monitored and reported.

Having said that, the single fact that 75% of the transactions regarding incoming bonded goods, a very substantial number of transactions, was potentially facing a risk, indicates that a robust risk management framework is crucial to handle these risks properly. This is even more important as the bonded goods represent 3-5% of the FUJIFILM turnover only and are by no means representative for the entire organization.

Therefore, given the importance of the subject and the manpower needed to make a detailed impact assessment that goes beyond just one product category, a special project group has now been brought together. This project group will take the outcome of this thesis as a starting point and has been asked to make a companywide analysis to assess the magnitude of the potential risks and in an additional step to come with a proper risk management approach to limit the risks.

Chapter 6: Conclusions, limitations and future research

In chapter 6.1 the research questions as stated and the key conclusions are summarized and discussed. Limitations of the current study and future research opportunities are addressed in section 6.2.

6.1 Conclusions research questions

Sub-question 1: What is Incoterms misuse?

Among the primary goals that the study aimed to accomplish is to offer a comprehensive definition of Incoterms misuse. This goal was indeed met. As stated in previous chapters, Incoterms misuse refers to practices that are inconsistent and in violation of Incoterms standards and guidelines. For example, when there is a disparity in the records that a company and its suppliers keep regarding the same question, a misuse of the Incoterms is said to have occurred. This definition matches with what is found in available literature. Incoterms

To fulfill its purpose, the present study relied heavily on existing literature. Among the issues that the literature addresses are the most prevalent forms of incoterm misuse. As part of this discussion and most recent Schaefer (2017) provides an overview and description of some of these prevalent forms of Incoterms misuse.

It is true that the list as presented in this thesis is neither exhaustive nor complete. However, the list remains useful and insightful as it sheds light on the Incoterms misuse scenarios that are most common in practice. Furthermore, the list served as the basis for investigating the prevalence and extent of incoterm misuse at Fujifilm. Therefore, a conclusion is hereby made that the list, which covers the ten most common forms of incoterm misuse, is the best available starting point for establishing whether businesses comply fully with the Incoterms.

For the present study, there was an effort to determine whether the ten most common forms of incoterm misuse have been captured in case law. It became evident that courts have not been actively involved in pressuring firms to adhere to the Incoterms. In fact, it emerged that legal cases are not exhaustive manifestations of the 10 forms of Incoterms misuse. Even more, it was determined that only few legal cases are reported where the dispute is about the misuse of Incoterms. Given the fact that only few Court cases could be found, additional research in relation to the theoretical deepening related to the ten most common usage errors confirms that Incoterms usage errors are rather anecdotal and the list is only reflecting individual cases from

practice, not being court cases. This raises questions like ‘why do we see only a limited number of legal cases?’. Furthermore, the significance of this finding lies in the fact that it underscores the need for further and more rigorous research. The academic community should be at the forefront of sensitizing businesses on the vital role that the Incoterms play and the value of full compliance.

The insights that the interviews generated showed that at Fujifilm, only three of the scenarios of the list have occurred at this company. This highlights the most common incoterm misuses that occur in practice. These scenarios are listed below.

- Failure to specify the port or place with sufficient precision
- Use DDP without thinking through whether the seller can undertake all the necessary formalities in the buyer’s country, e.g. paying VAT
- Use EXW without thinking through the implications of the buyer being required to complete export procedures

In addition to echoing the various misuses addressed in literature, the interview participants also mentioned other incoterm usage errors that do not form part of existing literature. These misuse scenarios are listed below:

- Criteria as defined by a specific incoterm are not fulfilled in reality
- Non-existent Incoterms have been selected
- Mode of transport on invoice does not match with purchase order

Given that the three new items pointed out above are not part of the list, questions can be raised about whether they are truly misuses. What makes them misuses is that they amount to serious violations of the Incoterms. For example, as noted above, the participants revealed that Fujifilm sometimes cites non-existent Incoterms. An instance of this is when one of the participants shared that the company exploits Incoterms to demand additional information from its suppliers when there is no particular incoterm that requires the particular information.

It is of high relevance that the participants highlighted misuses that literature has missed. The three additional scenarios listed above suggest that literature lags behind practice.

Sub-question 2: What are customs- and trade compliance risks in general?

In addition to the aims already discussed above, the present study also sought to develop comprehensive definitions for customs and trade compliance risks. In absence of a clear definition in literature and based on the definitions in literature of ‘customs compliance’ and ‘trade compliance’ in combination with the definition of ‘risk’, the following definitions can be derived:

- Customs compliance risks are adverse events imposed by not complying with relevant legal obligations in relation to border crossing e.g. customs valuation, tariff classification, country of origin declaration, product marking and duty payments.
- Trade compliance risks can be defined as adverse events caused by violation of import and export regulations and responsibilities. These events, when not properly handled, may lead to shipment delays, goods or document inspection at the border, seizures of cargo, penalties and fines, bad publicity, extra costs or even withdrawal of import and/or export licenses.

Comparing the outcome of the interviews with the literature, it can be concluded that the risks as defined in literature are confirmed by the participants. Furthermore, it is remarkable that most participants (N=9) mention “Cost” as a separate risk. Whereas in literature this is not mentioned as a separate risk, but as an effect/consequence of a risk. It could be that the mention of cost as an additional risk means that existing literature is insufficient and inconclusive. However, a more plausible explanation is that the present study had some flaws. For instance, it could be that this study defined risks too broadly, thereby prompting the respondents to identify risks that are not necessarily related to incoterm usage. Moreover a lack of know-how of risk management concepts on the interviewees’ side might well have hampered their responses. Therefore, when conducting further studies, other researchers should ensure that the scope of their study is not overly expansive and is instead properly focused on specific elements of trade and customs compliance risks.

Sub-question 3: What are the customs- and trade compliance risks when Incoterms are not used properly?

In order to answer sub-question 3, key risks related to Incoterms misuse are defined by means of desk research. The 4 identified key risks (Customs valuation, VAT, Legal and Supply chain risk) linked to the most common incoterm usage errors were presented in figure 4. In addition the research question was projected at Fujifilm.

As mentioned above the empirical research showed that only three of the scenarios that are mentioned in the list have occurred at Fujifilm. In addition the interview participants also mentioned other incoterm usage errors that do not form part of the list. All newly identified misuses at Fujifilm are included in the matrix below, in addition to the 3 scenarios which match with the list:

Risks	Incoterm Misuse
Customs value risk	<ul style="list-style-type: none"> - Failure to specify the port or place with sufficient precision - <i>Criteria as defined by a specific incoterm are not fulfilled in reality (NEW)</i> - <i>Non-existent Incoterms have been selected (NEW)</i> - <i>Mode of transport on invoice does not match with purchase order (NEW)</i> - Use DDP without thinking through whether the seller can undertake all the necessary formalities in the buyer's country, e.g. paying VAT - Use EXW without thinking through the implications of the buyer being required to complete export procedures
Supply chain risk	<ul style="list-style-type: none"> - Failure to specify the port or place with sufficient precision, e.g. "FCA Chicago",

	<p>which could refer to many places within a wide area</p> <ul style="list-style-type: none"> - <i>Criteria as defined by a specific incoterm are not fulfilled in reality (NEW)</i> - <i>Non-existent Incoterms have been selected (NEW)</i> - <i>Mode of transport on invoice does not match with purchase order (NEW)</i> - Failure to specify the port or place with sufficient precision - Use DDP without thinking through whether the seller can undertake all the necessary formalities in the buyer's country, e.g. paying VAT - Use EXW without thinking through the implications of the buyer being required to complete export procedures
<p>Legal risk</p>	<ul style="list-style-type: none"> - <i>Criteria as defined by a specific incoterm are not fulfilled in reality (NEW)</i> - <i>Non-existent Incoterms have been selected (NEW)</i> - Use EXW without thinking through the implications of the buyer being required to complete export procedures
<p>VAT risk</p>	<ul style="list-style-type: none"> - <i>Failure to specify the port or place with sufficient precision (NEW)</i> - <i>Criteria as defined by a specific incoterm are not fulfilled in reality (NEW)</i>

	<ul style="list-style-type: none"> - <i>Non-existent Incoterms have been selected (NEW)</i> - Use DDP without thinking through whether the seller can undertake all the necessary formalities in the buyer's country, e.g. paying VAT
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FIGURE 11 INCOTERM USAGE ERRORS AND RISKS WITHIN FUJIFILM

In figure 11, the three additional usage errors that emerged from the interviews and their related risks have been highlighted. These risks have been linked to the particular errors thanks to the established understanding of how specific incoterm misuses lead to certain risks.

The data analysis indicates that risks related to Incoterms misuse are real, based on the analysis it can be concluded that in only 25% of the shipments no inconsistency was observed. Since in 75% of the shipments there was at least one error, it can be concluded that in 75% of the cases there is a risk of potential misuse of an Incoterm. It is true that these figures are not necessarily representative of the situation in other firms. However, they are still vital as they show that incoterm usage errors are alarmingly common in a large, global, stock-listed company like Fujifilm and that firms need to institute appropriate risk management strategies.

If it is to secure its operations and relationships with the stakeholders in its supply chain, Fujifilm should take steps to minimize, and if possible, to completely eliminate the identified risks, the various risks can have a severe impact on the company.

Sub-question 4: How can companies manage customs- and trade compliance risks caused by Incoterms misuse?

There are a number of practical and highly effective solutions that companies like Fujifilm can adopt to manage the risks arising from incoterm misuse. One of these solutions is a process that begins with risk identification. At this stage, the company should essentially evaluate existing processes with the goal of highlighting problems and risks.

Next, it is recommended that the firm proceeds to conduct risk analysis and evaluation. This phase of the process is concerned with establishing the impact that the identified risks are likely to have if not addressed in good time. For instance, the firm may determine that VAT risk is resulting in massive losses and damaging its relationship with suppliers. The last step in the risk

management process involves the selection and implementation of appropriate strategies. For example, among the problems that Fujifilm faces is that its employees use outdated Incoterms. As recommendation to resolve this problem, the firm should simply adopt the most recent Incoterms edition. Essentially, individual companies should closely examine the challenges that they face and implement interventions that they find relevant and effective.

Figure 3 is the basis for risk identification and represents as such step 1 in the risk management process. A detailed description of the additional steps to complete the entire risk management process are not within scope of this thesis.

From the literature review, it emerged that there are various causes of Incoterms misuse. These causes include the lack of clear understanding of Incoterms and the implications that they present for trade. Essentially, literature indicates that companies are still largely unfamiliar with Incoterms and potentially lack the insight and competencies required to achieve full compliance. Differences between firms using Incoterms are another cause of the misuse. For example, when two firms have conflicting understanding of particular Incoterms, usage errors often occur. Thanks to literature, it is also clear that many companies do not adequately train their personnel on how to use the Incoterms. It is therefore not surprising that usage errors are worryingly common.

The Fujifilm case study also sheds light on the underlying causes of incoterm misuse. According to the participants, the cause for Incoterms misuse is un-awareness and lack of knowledge. Also the fact that the risks that take place are not really noticed and/or lead to real problems, makes the correct use of Incoterms not a high priority within Fujifilm. This is in line with the causes for Incoterms misuse as mentioned in the existing literature.

In addition to exploring the causes of incoterm misuse, literature has also shed light on the most promising solutions. Some of these solutions include challenging organizations to abandon the traditional approach to Incoterms and instead update their operations to reflect the most recent changes in the Incoterms. Additionally, literature calls on firms to embrace training and adopt cultures that encourage full compliance with the various incoterm provisions. The employees of Fujifilm echoed what is in literature. For example, they agreed that training and cultural reforms are among the measures that are needed to eradicate incoterm usage errors. Moreover, the employees confirmed that Fujifilm is already taking steps to address these errors. For example,

the firm requires the employees to correct errors as soon as they are detected. This measure has helped the company to limit adverse impacts on its operations as caused by incoterm misuses. While the interventions that Fujifilm has taken are commendable, they are not sufficient. The firm needs to be more proactive and prevent the errors instead of responding after they have occurred.

By asking the respondents how to avoid misuse and how to limit the exposure to customs- and trade compliance risks, they mentioned the following mitigation measures:

- All of the respondents mentioned that it is vital to increase awareness and knowledge about Incoterms throughout the organization, but especially in the departments that (should) purchase and order the goods.
- It was sometimes suggested to use only standard Incoterms or, to rule out specific Incoterms.
- Adjust SAP with regard to Incoterms to ensure Incoterms deviations can only be made after consultation of an expert from CA or VAT team.
- Limit the mandate and the possibility of the order desk to adjust or change Incoterms in the master data without prior authorization.
- It was suggested to enhance the awareness of the potential risks by monitoring and reporting any additional cost related to misuse.

The responses listed above are indeed significant for various reasons. One, they show that the employees understand that the usage errors have adverse impacts. Two, these responses indicated that the employees recognize that there are various simple yet effective solutions that they can implement to eliminate the errors. Three, their replies echo what is found in literature. Therefore, one can conclude that since the insights from the employees match existing literature, Fujifilm was an appropriate case study. Furthermore, one can argue that Fujifilm's situation might well be replicated in other companies that are also grappling with incoterm usage problems. Thus, the very solutions that Fujifilm's employees proposed might well be useful for other companies seeking to insulate their operations against the deleterious effects of incoterm misuse.

6.1.2 Overall conclusion

Research literature indicates that there are 10 incoterm misuses that firms usually encounter.

This study has confirmed that some of these misuses are actually reflected in practice of a single case study. Moreover, the study has shown that there are additional usage errors for which existing literature does not account. Since it identified other misuse scenarios, the study is indeed significant as it enriches and expands literature.

Trade and customs risks are defined and determined in literature research and also in the interviews. The interviews and the data record analysis singled out the most frequent cases of misuse: wrong transport mode and no location mentioned. However, it should be understood that these misuse scenarios may not reflect the specific hardships that other companies face in complying with the Incoterms. Further studies that focus on several cases are certainly needed to determine if the three scenarios are exclusive to Fujifilm or are shared by other firms. Still, these scenarios show that the current study was conducted with appropriate rigor.

The interviews together with the data analysis singled out the risks: '*customs value risk*', '*legal risk*', '*VAT risk*', and '*Supply chain risk*'. This provided an overview of the customs and trade risks caused by Incoterms misuse that could apply and can therefore serve as a valuable input for creating a control framework. Additionally, by shedding light on the various classes of risk, the study could inform the preventive strategies that companies develop. For example, when firms are most concerned about VAT risks, they can implement solutions that particularly address this type of risk. Furthermore, the study demonstrated that each of these risks is the result of different incoterm misuses. Thus, to limit or eliminate the risks, firms must focus their efforts on adhering to the Incoterms.

The contributions that this study makes to science and practice are indeed significant. Firstly, this study has made it clear that incoterm violations are not some theoretical matter. Instead, they are a real issue that presents serious problems for companies. Secondly, the study has shown that left unaddressed, incoterm misuses can have serious consequences. For example, the violations can increase the costs that firms incur, harm their reputation, and strain their relationships with suppliers. It is therefore important for companies to refrain from breaching incoterm provisions. Thirdly, this study could serve as the foundation for further research. For example, researchers can broaden this study by examining multiple organizations instead of just

one company. Lastly, the study is essential because it demonstrates that companies already know how to prevent incoterm misuses.

6.2 Limitations and future research

A first limitation is the research method. Given the fact that a single case study method has been used, this means that the outcome cannot be generalized per se. However, the conclusions from literature research in combination with the interviews and the data analysis offer guidance for further research on these topics. More importantly, when carrying out further research, scholars should give particular attention to the forms of incoterm misuses that were not found at Fujifilm. There is also a need for researchers to examine if the most current Incoterms accurately capture the situation that companies face. They may determine that the most recent edition of the Incoterms is incomplete and outdated and that urgent revisions are needed. All in all, while the single case study approach adopted for this study has its limitations, it allowed for the reality and prevalence of incoterm usage errors to be established.

A second limitation concerns the common background of the interviewees. The interviewees were employees from various departments. However, in the interviews, it appeared that the sales people and the employees working at the order desk are the ones that add the Incoterms in the purchase order in SAP. It is therefore likely that these employees may have provided inaccurate or misleading responses to protect themselves against punitive action that Fujifilm initiatives. Thus, any inaccurate information shared by the participants may have tainted the study. However, given that the employees were from various departments and their responses largely matched insights from existing literature, the study's findings should be accepted with confidence.

A third limitation is the scope of the study, which focuses on the first step of the risk management process only: risk identification. The additional steps within a risk management framework have not been discussed in great detail due to the limited scope of this study. As already noted, the main goal of the study was to establish the reality of incoterm misuse. A detailed and comprehensive outline of risk management strategies would have gone beyond the study's original scope. Hence to come to a comprehensive risk management approach, a follow-up is needed to define a detailed risk assessment method, a series of mitigation measures and to implement a risk monitoring and control process.

Finally the research only addressed the goods flow related to imports of bonded goods. It was not feasible to extend the analysis to non-bonded goods or exports, given the complexity and the limited amount of time and resources. Going forward multiple other goods flows should be explored and the gathered relevant data should be collected in order to extend the model.

In closing, given the importance of the subject and the manpower needed to make a detailed impact assessment that goes beyond just one product category, a special project group has now been brought together. This project group will take the outcome of this thesis as a starting point and has been asked to make a companywide analysis to assess the magnitude of the potential risks and in a second step to come with a proper risk management approach to limit and monitor the risks.

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Annex I: Description of the eleven 2020 Incoterms rules

EXW - Ex Works

term	goods issuing department	1st freight carrier	customs	terminal (departure port)	on board (departure port)	on board (destination port)	terminal (destination port)	customs	ready to unload on truck	buyer	seller	buyer
EXW	risks documents										risks and risks until provision of goods	risks and risks from provision of goods + export, transit, import

Incoterms 2020 + Incoterms 2010: EXW - Ex Works

EXW stipulates that the place of delivery is the seller's. Costs and risks are thus transferred to the buyer as soon as the goods have been made available to the seller at the agreed time or at another agreed place (e.g. factory, warehouse, etc.). The seller has thus fulfilled his contractual obligation as soon as he has packed the goods and marked them accordingly. The transport costs, the procurement of the necessary documents and the associated risks are the sole responsibility of the buyer.

FCA - Free Carrier

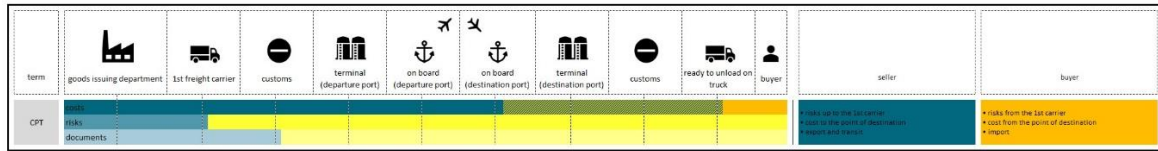
term	goods issuing department	1st freight carrier	customs	terminal (departure port)	on board (departure port)	on board (destination port)	terminal (destination port)	customs	ready to unload on truck	buyer	seller	buyer
FCA	risks documents										risks and risks until the carrier takes	risks and risks from the 1st carrier + transit, import

Incoterms 2020 + Incoterms 2010: FCA - Free Carrier

FCA's costs and risks are transferred to the buyer when the goods are handed over from the seller to the responsible carrier of the main transport. Depending on the agreement, the seller must also load the goods. The seller has fulfilled his contractual obligation as soon as he has made the goods ready for export and brought them to the agreed carrier or place. The buyer is responsible for the transit and import, the costs of the main transport and the associated risks.

The FCA clause **in Incoterms 2020** includes the possibility for the buyer and seller to make an agreement so that the buyer instructs the carrier to send the bill of lading to the seller.

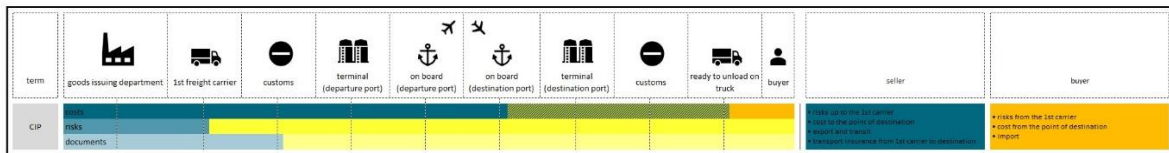
CPT - Carriage Paid To



Incoterms 2020 + Incoterms 2010: CPT - Carriage Paid To

CPT stipulates that the risks of the consignment remain with the seller until he has taken the goods to the carrier designated by him. The costs are not transferred until the goods have arrived at their destination. The seller must therefore have concluded a contract of carriage to the agreed place of destination and bear its costs. In addition, the seller is responsible for export and transit. The buyer is responsible for the import.

CIP - Carriage And Insurance Paid To*

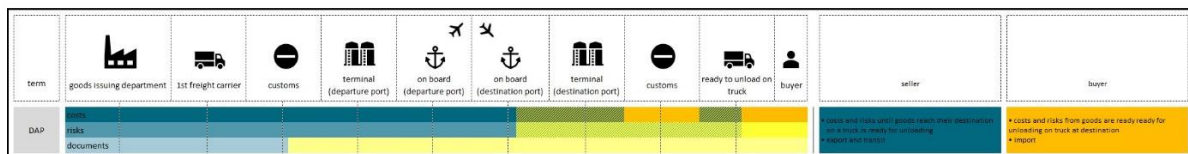


Incoterms 2020 + Incoterms 2010: CIP - Carriage And Insurance Paid To

CIP corresponds to CPT, but the seller must also take over transport insurance for the transport from the time of acceptance by the first carrier to the place of destination and bear its costs.

In the Incoterms 2020 the necessary insurance for deliveries has increased from clause ICC C to ICC A.

DAP - Delivered At Place

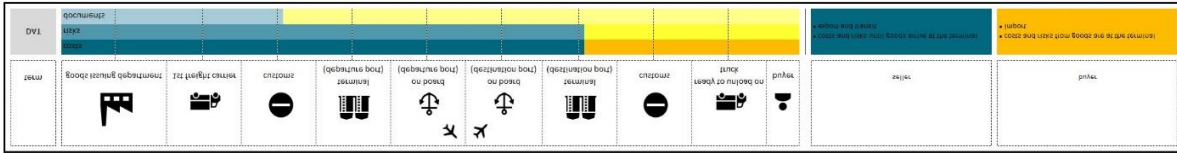


Incoterms 2020 + Incoterms 2010: DAP - Delivered At Place

With DAP, the seller has already fulfilled his obligation to perform, if he has cleared the goods for export and transit and makes them available on the arriving means of transport without having to unload the goods himself. If the goods are available on the means of transport ready

for unloading, costs and risks are already with the buyer. The buyer is responsible for the import.

DAT - Delivered At Terminal

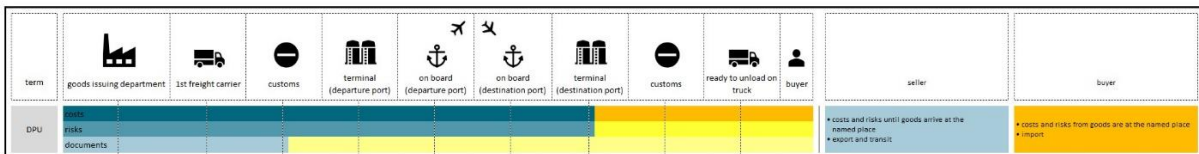


Incoterms 2010: DAT - Delivered At Terminal

If the DAT clause is agreed, the seller undertakes to deliver the goods to a specific terminal (including a port quay, warehouse, container depot, etc.). The seller has therefore fulfilled his contractual obligation when he has prepared the goods for export and transit and unloaded them from the arriving means of transport at the agreed destination. As soon as the seller has made the goods available to the buyer for collection, the costs and risks are transferred to the buyer. The buyer is responsible for the import.

This clause is **only valid within Incoterms 2010** and will be replaced by the DPU clause in Incoterms 2020.

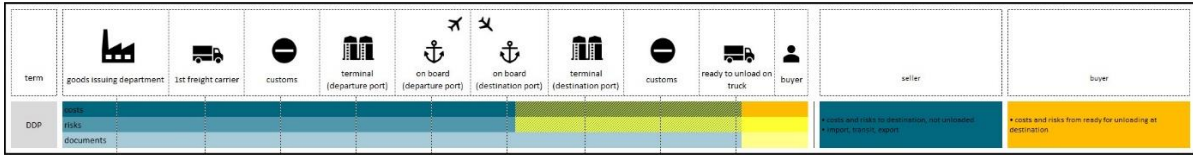
DPU - Delivered Named Place Unloaded



Incoterms 2020: DPU - Delivered Named Place Unloaded

The DAT clause from Incoterms 2010 will be replaced by the DPU clause within Incoterms 2020. In contrast to the DAT clause, it is possible within the DPU clause to agree on any place and not just a specific terminal. The DAT and DPU clauses are otherwise identical in content.

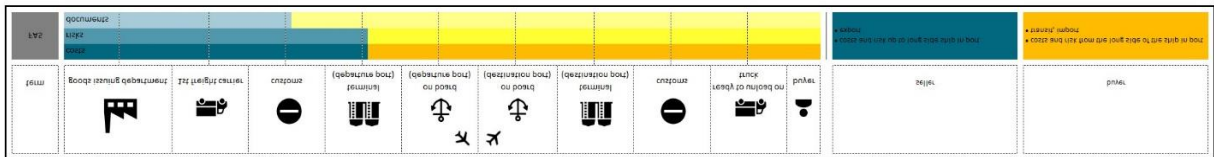
DDP - Delivered Duty Paid



Incoterms 2020 + Incoterms 2010: DDP - Delivered Duty Paid

According to DDP, the seller clears the goods for export, transit and import and makes them available to the buyer on the arriving means of transport ready for unloading at the place of destination. He bears the costs and risks until the goods are ready for unloading.

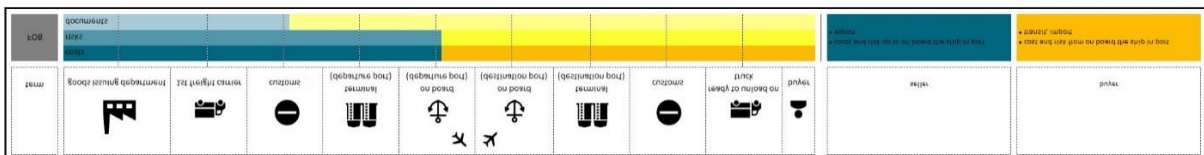
FAS - Free Alongside Ship**



Incoterms 2020 + Incoterms 2010: FAS - Free Alongside Ship

With FAS, the seller takes over the export and transport of the goods to the long side of the transport ship at the agreed port of shipment. The main transport costs and the transit and import are the responsibility of the buyer. If the goods are on the long side of the ship, both costs and risks are transferred to the buyer.

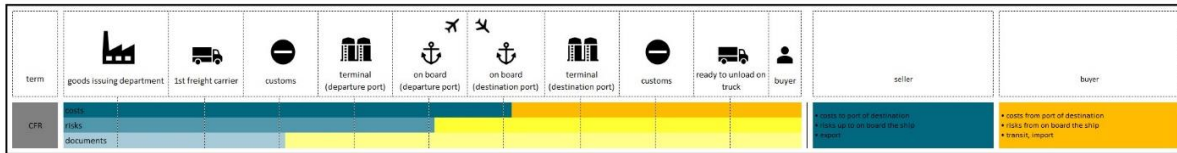
FOB - Free On Board**



Incoterms 2020 + Incoterms 2010: FOB - Free On Board

FOB extends FAS by the transport of goods on board the ship.

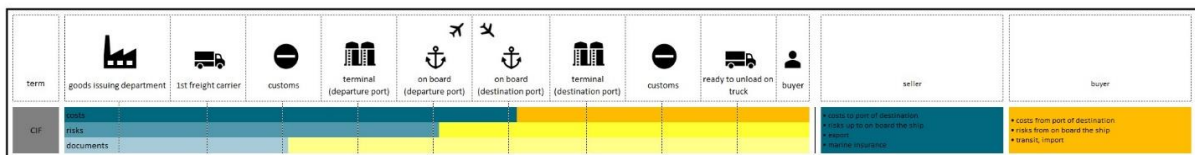
CFR - Cost And Freight**



Incoterms 2020 + Incoterms 2010: CFR - Cost And Freight

CFR corresponds to FOB, with the difference that with FOB the buyer pays for the ship transport and with CFR the seller. The risks are therefore transferred to the buyer after the goods have been loaded on board the ship, but the costs are not transferred until the seller has had the goods transported to the port of destination.

CIF - Cost, Insurance And Freight*/**



Incoterms 2020 + Incoterms 2010: CIF - Cost, Insurance And Freight

CIF corresponds to CFR, but the seller must also take over sea transport insurance for carriage by sea.

This infographic states each Incoterm and explains obligations and charges that are accepted by the buyer and seller.

Incoterms® 2020 Rules Responsibility Quick Reference Guide



Groups	Freight Collect Terms						Freight Prepaid Terms				
	Any Mode or Modes of Transport		Sea and Inland Waterway Transport				Any Mode or Modes of Transport				
Incoterm®	EXW	FCA	FAS	FOB	CFR	CIF	CPT	CIP	DAP	DPU	DDP
	Ex Works (Place)	Free Carrier (Place)	Free Alongside Ship (Port)	Free On Board (Port)	Cost and Freight (Port)	Cost Insurance & Freight (Port)	Carriage Paid To (Place)	Carriage & Insurance Paid to (Place)	Delivered at Place (Place)	Delivered at Place Unloaded (Place)	Delivered Duty Paid (Place)
Transfer of Risk	At Buyer's Disposal	On Buyer's Transport	Alongside Ship	On Board Vessel	On Board Vessel	On Board Vessel	At Carrier	At Carrier	At Named Place	At Named Place Unloaded	At Named Place
Obligations & Charges:											
Export Packaging	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading Charges	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Delivery to Port/Place	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Export Duty, Taxes & Customs Clearance	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Origin Terminal Charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading on Carriage	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Carriage Charges	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Insurance	Negotiable	Negotiable	Negotiable	Negotiable	Negotiable	*Seller	Negotiable	**Seller	Negotiable	Negotiable	Negotiable
Destination Terminal Charges	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller
Delivery to Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller
Unloading at Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Buyer
Import Duty, Taxes & Customs Clearance	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller

Annex II: Interview question list

Theme interview

Interviewer: Neeltje Beens

Incoterms misuse

- How can Incoterms effect on trading?
- What is Incoterms misuse according to you?

Customs- and Trade compliance risks

- What can go wrong in Incoterms use?
- What are the risks and consequences of misuse?
- What are the effecting aspects when the chosen incoterm is applied differently?

Incoterms within Fuji

- Do you think there are many mistakes made on Incoterms use?
- What is the cause for the mistakes made?
- Do you think there is a lot of misunderstanding on Incoterms?

How to avoid and control the risk

- Do you think that (correct) Incoterms use is monitored?
- Is there an incoterm policy?
- What do you think of the knowledge on Incoterms throughout the organization?
- How could customs and trade compliance risks caused by Incoterms misuse be avoided and/or assessed?

Annex III: Background interview participants

In this thesis the following various employees, representing different internal stakeholders, within the incoming goods process flow have been interviewed:

- 2 Customs experts
- 3 supply chain team experts
- 3 procurement experts
- 1 legal counsel
- 2 VAT specialists

Participants' years of experience in a supply chain environment ranged from a minimum of 5 years to a maximum of 27 years with an average of 19 years of experience.

Because of privacy regulation the names of the participants have not been mentioned. If needed a connection to participant can be provided on demand.

Annex IV: Summary of the interviews

Samenvatting interview senior buyer:

De interviewer heeft een aantal vragen over het effect van Incoterms op handel en dan met name bonded goederen bij inkoop. De respondent geeft aan niet veel te maken te hebben met bonded goederen, dat de interviewer beter in de business domains vragen kan stellen. Interviewer geeft aan dat, omdat de afdeling inkoop niet betrokken wordt, er dus dingen niet gaan zoals ze eigenlijk wel zouden moeten gaan.

Verbeterpunten/knelpunten:

- Er is binnen de organisatie een gebrek aan kennis over Incoterms.
- Er wordt te veel betaald voor inkomende goederen lijkt het, doordat er vaak betaald wordt exclusief transportkosten, daardoor moeten offertes vaak achteraf aangepast worden.
- Mensen weten ook vaak binnen het bedrijf niet dat ze niet tekenbevoegd zijn en ze weten ook vaak niet wat de consequenties zijn van de aanpassingen. Naar de General terms and conditions wordt ook niet gekeken: mensen uit de business domains accepteren alles.
- Er is geen inhoudelijk check op de Incoterms.
- Door de onduidelijkheid weet je niet wanneer er tijdens het transport iets gebeurt en waar je het moet verhalen.
- Er wordt alleen gemonitord in geval van een VAT probleem.
- Douanewaardebepaling gaat fout: het is belangrijk om te weten of je transportkosten wel of niet mag berekenen in je douanewaarde. Dit vloeit voort uit de toepasselijke incoterm. Het bedrag op de invoice is vaak hoger dan op de Bill of Lading of Air Waybill. Wie het verschil betaalt is niet duidelijk. Dit gaat over een derde van alle zendingen.
- Er worden wel spullen bonded ingekocht, maar door wie, dat is niet duidelijk.
- Binnen het bedrijf lijkt er geen Incoterm-policy te zijn. Mensen van de orderdesks kunnen willekeurige Incoterms invullen, daar komt de afdeling inkoop niet aan te pas.
- Er wordt geen contractuele check uitgevoerd op zendingniveau binnen de afdeling inkoop en wie dat wel doet is haar onduidelijk.
- De kennis binnen de organisatie over Incoterms laat eigenlijk nogal te wensen over.

- Met een oplossing kan je kosten besparen en wordt het proces efficiënter. Er worden te vaak transportkosten onnodig betaald en/of een te hoge prijs. Er zijn compliancerisico's, omdat Fuji er geen zicht op heeft.

Samenvatting interview custom affairs medewerker:

- Risico's van Incoterms: je kan sturen op hoe je producten zo goedkoop mogelijk bij de klant kan krijgen en je kan sturen op wat je wel en niet wil m.b.t. verantwoordelijkheden. Dit staat los van de eigendomsoverdracht.

- Wat kan er misgaan in Incoterms-gebruik: - zich niet houden aan de Incoterms, anders handelen dan in de Incoterms beschreven staat.

- Consequenties van Incoterms misuse: onduidelijkheid waar de verantwoordelijkheid ligt (er gaat iets mis bij transport, er gaat iets mis bij douane, et cetera)

- Worden er veel fouten gemaakt binnen Fujifilm m.b.t. Incoterms? Ja, zowel op import als export. Er wordt bijvoorbeeld niet gelet op verschillende specificaties van producten, men kijkt niet naar zendingen. Oorzaak: gebrek aan kennis. Voorbeeld: de order desk wordt pas aan het einde van een klantorder betrokken. Er is geen track & trace check. Ander voorbeeld: een klant kan een willekeurige Incoterm invullen en geïnterviewde veronderstelt dat dit niet gecheckt wordt bij Export.

- Het zou slim zijn om een flow chart te maken over hoe om te gaan met Incoterms. Mits er een koppeling is tussen mensen die de orders zien en mensen die de contractafspraken doen. Zijn er risico's waarvan we het bestaan niet weten? Ja. Voorbeeld: douane, "zolang het niet bij de grens vast komt te staan dan zien we dat niet".

- Geïnterviewde stelt dat de trade compliance risico's groter zijn dan de customs compliance risico's en geïnterviewde stelt dat er meer misgaat op Export t.o.v. Import → vraag interviewer hierop: omdat we dat zelf moeten regelen; antwoord: ja. Aan de andere kant is er op Import meer risico m.b.t. kostenefficiëntie vanwege afhankelijkheid van leveranciers. Dit is echter een financieel risico en geen compliance-risico.

Samenvatting interview legal counsel

Geïnterviewde ziet wel risico's omdat er vaak verkeerde condities worden vermeld. Ten aanzien van Incoterms kunnen er verkeerde verwachtingen ontstaan, omdat vaak niet duidelijk is welke partij voor de risico's aansprakelijk is.

Het is heel belangrijk bij grote orders de Incoterms te checken. Er komen goederen vanuit Japan en China binnen, als er verkeerd gecontracteerd is met de verkeerde Incoterms, is het bedrijf aansprakelijk.

Geïnterviewde vraagt zich af of er wordt overeengekomen wat er werkelijk gebeurt en of er iemand binnen de organisatie is die dit checkt. Hij denkt dat het überhaupt niet gecheckt wordt.

Binnen de organisatie zijn er maar een paar mensen die bezig houden met Incoterms, de rest is er totaal niet in geïnteresseerd en men maakt zich daar niet druk over.

Je zou verwachten dat een commercieel iemand rekening zou houden met Incoterms, omdat ze effect kunnen hebben op kosten of prijs.

Voor geïnterviewde is het tradinggood gebeuren een blackbox. Geïnterviewde bedoelt de flow, trade goods, die voor hem totaal niet zichtbaar zijn. Soms ploppen contracten zomaar op, of er zijn geen contracten. De basis ontbreekt. Geïnterviewde wordt hier totaal niet in betrokken

Geïnterviewde is een voorstander van technologie, om de problemen te kunnen ondervangen, maar heeft geen verstand welk systeem ervoor gebruikt zou kunnen worden. Het zou onderdeel van de masterdata moeten zijn, waarbij bij het aangaan van een nieuwe relatie de relatie kan worden gecheckt. Op dit moment kunnen een aantal mensen aanpassingen in het systeem maken en die worden gevoed met verzoeken. Ook hier kunnen fouten insluipen door het invoeren van verkeerde condities.

Er worden vanuit Legal geen trainingen gevolgd over Incoterms, terwijl daar wel budget voor in Nederland zou zijn.

Samenvatting interview inkoop manager

- B geeft aan dat binnen de afdeling gebruik wordt gemaakt van Incoterms. De Incoterm DDP is standaard. Er wordt niet gekeken of dat in bepaalde gevallen wel de meest efficiënte en optimale incoterm is. Er wordt door inkoop niet gecheckt op zending nivo of de overeengekomen incoterm ook daadwerkelijk zo is uitgevoerd. Niet qua verzekering, niet qua vervoermodus niet qua plaatsnaam. Er is bij zijn weten geen beleid omtrent Incoterms.
- Kennis omtrent Incoterms bij medewerkers is beperkt. Hij schat dat vijftien van de 700 mensen bekend is met Incoterms, waarbij zes à zeven medewerkers over gedetailleerde kennis beschikken. Hij ziet het belang in van kennis over Incoterms; gebrek aan kennis leidt mogelijk tot juridische- en kostenrisico's. Aansprakelijkheid bij import is niet altijd duidelijk, en bij het hanteren van een verkeerde Incoterm kunnen leverings- en invoerkosten kunnen mogelijk dubbel betaald worden.
- B schat dat 80-90% van de business langlopende bestaande processen zijn met vaste leveranciers. De risico's voor nieuwe processen zijn hoger, en kennis omtrent Incoterms en verfijning van deze termen zijn wenselijk om aansprakelijkheid duidelijk te maken. Hier is echter nog geen beleid voor: "het gaat goed, totdat het ergens fout gaat". Stroom waar veel geld naartoe gaat, zoals bijvoorbeeld aluminium, zijn wel goed uitgewerkt.
- De meeste fouten worden zijn inziens gemaakt in de plaatsnaam aanduiding en de uitvoering van de incoterm. De kosten hiervan zijn niet inzichtelijk. Ook de risico's niet, want het wordt in de praktijk wel opgelost of verrekend.
- Risico's omtrent Incoterms worden laag ingeschat, wat gerelateerd kan zijn aan onwetendheid over deze Incoterms. Eventuele problemen omtrent invoer en aansprakelijkheid worden ad hoc opgelost, of weggemoffeld.
- De afdeling inkoop wordt bij trading goederen zo goed als niet betrokken. Dit betekent dus dat er ingekocht wordt zonder kennis. Dit is wel degelijk een risico: Beerens doelt hierbij

met name op juridische/aansprakelijkheids risico's. Of er ook een customs risico is durft hij niet te zeggen. Wellicht dat het leidt tot vertraging aan de grens, maar dat weet hij niet zeker.

Samenvatting interview VAT specialist

Wat is verkeerd gebruik van Incoterms: dat de Incoterms die in SAP staan geregistreerd niet aansluit bij de daadwerkelijke afspraken. Incoterms kloppen erg vaak niet met de werkelijkheid. De ene keer staat er bijv in SAP exworks als Incoterm en in de werkelijkheid blijkt dat wel degelijk is afgesproken dat de leverancier het transport regelt, voor de verzekering verantwoordelijk is en dat is dus gewoon een duidelijke fout.

Dit wordt voor BTW opgepikt door de SAP engine of door een verschil tussen factuur en Incoterm.

Bij een verschil in plaatsnaam leidt dit tot extra transportkosten.

Wat zijn in jouw optiek de consequenties van dat verkeerd gebruik, van de verschillende vormen van verkeerd gebruik? Incoterms zijn belangrijk voor de BTW-bepaling. Wanneer dat verkeerd wordt gedaan leidt dit tot naheffingen, boetes en zelfs persoonlijke straffen in sommige gevallen

Als je puur naar de inkomend bonded kijkt, naar die diepe flow. Afhankelijk van de transportkosten en dergelijke maken jullie natuurlijk de douanewaarde, die bepalen jullie. Dus als de Incoterms verkeerd zijn is de douanewaarde verkeerd en als de douanewaarde verkeerd is, dan is de BTW-importwaarde automatisch ook verkeerd en dat is een heel groot risico. Als wij een te laag bedrag als importwaarde hebben, dan hebben we ook te weinig BTW aangegeven. Is hij te hoog, dan is het ook fout, want dat is in ons nadeel. Daarnaast gebruiken we de Incoterm om te kijken welke transactie in de keten de 0% mag hebben, maar ook daarnaast welke triangulatie binnen de BTW. Dat heeft een speciale regeling en ook daar is het afhankelijk van wie het transport doet van of die regeling van toepassing is of niet. Dus heb je de Incoterms verkeerd ingeregeld, dan kan dat betekenen dat wij ergens 0% op de factuur zetten die we er niet op mogen zetten. Omdat het niet de intercommunautaire transactie geweest is. Of dat wij dus de triangulatie toepassen, terwijl die niet van toepassing is in de werkelijkheid. En dat is dus een naheffing.

Ook is er een kostenrisico omdat verzekeringskosten en transportkosten kunnen verkeerd komen te liggen. Daarnaast zijn er aansprakelijkheids risico's: we regelen dingen niet die je wel had moeten regelen op basis van de afspraken en de verantwoordelijkheid die daaruit volgt

Er gaat best veel niet goed, waarom wordt dit niet als een probleem gezien? Ik denk omdat het vaak niet gezien wordt, en als het al gezien wordt, dan lossen we het altijd op voor iedereen. En het is onkunde, en onwetendheid. Daarnaast is ook nog eens zo dat iedereen die een purchaseorder of salesorder kan maken ook de Incoterm kan wijzigen in die order.

De oplossing: awareness en het systeem zo aanpassen dat de Incoterm altijd de werkelijkheid is en dat dat losgekoppeld wordt van de prijsstelling

Samenvatting interview VAT specialist

Intern is er veel onduidelijk over Incoterms, er zijn mensen die een PO of FO aanmaken op basis van gewoonte: “deze vendor is altijd een Ex Works en deze vendor is altijd een FCA”. Ze weten niet wat de afspraak is tussen de vendor en FEN.

Het verkeerd gebruik betekent dat in het ERP systeem een andere incoterm gebruikt wordt dan de incoterm die is afgesproken. De afgesproken incoterm staat in het contract. De incoterm in SAP is ingegeven bij het aanmaken van een PO. De incoterm die in de PO wordt aangegeven is dan vaak een andere dan die in het contract staat.

Het verkeerd gebruik zit hem met name in het feit dat er Incoterms worden gebruikt als prijsaanduiding in plaats als vervoers- en transportconditie.

Wij zien ook vaak dat goederen die bijvoorbeeld naar Duitsland gaan ergens anders heen genoteerd staan. Voor de btw uitkomst is het alleen maar van belang of het een Ex Works, CIF of DDP is, de plaats die erachter staat maakt voor ons niet uit.

De consequenties van verkeerd gebruik kan zijn dat je een Ex Works toepast, op de factuur staat dan de lokale btw maar het is een andere incoterm met 0%. Dan heb je dus een foutieve factuur en dat komt ook terug in onze aangiftes. Bij controle van de fiscus moet FEN dan alsnog btw afgedragen met interest en boetes.

Incoterm die heeft ook betrekking op verzekering en transferkosten. Als je een andere incoterm gebruikt dan de vendor of klant kun je daar een issue hebben als er iets gebeurt.

Een foutieve aangifte herstellen we, maar als een transport geregeld wordt en het komt toch gewoon op de juiste plaats aan zonder vertraging dan merkt niemand dat die incoterm niet overeenkomt met wat het had moeten zijn. De kosten zullen niet opvallen omdat die gewoon in de bulk van IDL staan.

Het probleem is niet echt voor de organisatie voelbaar maar zorgt voor een hele hoop extra werk.

De monitoring achteraf gebeurt alleen door VAT en customs op dit moment.

Oplossingen?

- Als er een andere incoterm op een low van toepassing is dan gaat degene die de PO moet inleggen hiermee naar masterdata. Masterdata gaat dat navragen bij het FTM team. Als masterdata dan een akkoord krijgt dan kunnen zij dat in SAP zetten. Dan hou je altijd de juiste check. Als we zeggen bij die vendor kan alles dan heb je geen controle meer.
- Je kunt het ook doortrekken dat alleen diegene die de onderliggende overeenkomst maakt de incoterm in de MDR tool mag zetten en wijzigen. Als een shipment anders overeengekomen wordt dan is dat meteen reden tot overleg met een multidisciplinair team in plaats van dat iedereen het kan wijzigen.

Er is geen incoterm procedure.

Vanuit btw optiek is het grootste risico dat Fuji loopt dat ze 0% tarief toepassen wat geen 0% tarief had moeten zijn. Zo'n check als op bonded inkomende goederen doen wij niet op die 0%. Voor ons is het eigenlijk ook nog een out of scope.

Samenvatting interview douane zaken specialist

Incoterms misuse komt veel voor. Bijvoorbeeld wordt CIP en CIF vaak door elkaar gehaald en komen de douanewaardes en transportkosten vaak niet overeen. Dit is een risico. Eén derde van de Incoterms moet worden aangepast.

En dan heb je daar meteen een douane, Is die waarde die op de factuur staat, die jij ontvangt, is dat wel de juiste waarde om de douanewaarde te kunnen berekenen.

Wij gebruiken de factuur, omdat dat het eerste handelsdocument is wat ontstaat na het contract, en dat is het document waarop wij de douanewaarde gaan bepalen. Als het met de luchtvracht komt, of met de boot, dan zit daar een bill of lading of een airway bill bij en dan zien wij wel de waardes die daarop staan. En die stemmen niet altijd overeen met de waarde die op de factuur staat. Dit is een douane waarde risico maar ook een kostenrisico en een schade risico.

Ik denk dat we in de basis bij Fujifilm eerst moeten starten met een contract. We zien vaak dat er geen echte contractuele afspraken worden gemaakt en op papier worden gezet. Als je dat wel vastlegt en goed vastlegt in je systemen, want het contract zou om moeten worden gezet naar SAP, één op één, en in sommige gevallen gebeurt dat ook keurig, maar bij heel veel dingen is er geen basis en wat doe je dan. Ja, dan wordt het voor de orderdesk een heel lastig ding, De kennis van de orderdesk is daarvoor ook vaak te beperkt.

Een realistische oplossing is het ontwerpen van een flowchart, een flow waardoor het altijd, gestandaardiseerd en op wereldwijd niveau goed gaat.

Summary interview with Supply chain manager

- Respondent states that employees have too little knowledge on what Incoterms to use and the risks of not using them correctly. There are no clear rules or flowcharts. They seem to pick randomly, and problems only arise down the chain so it doesn't impact them. If problems arise nobody feels responsible or takes accountability. Furthermore Fujifilm has no idea of problems because everything gets solved down the chain so there is no visible impact. Financial consequences of errors all go under 'logistics' so it is not visible. As long as the budget is made nobody asks questions.
- Respondent states that contracts are made by one department but do not always make sense in terms of other departments. Departments are not checking with each other to see if something is possible before agreeing to it.
- Upon request respondent states that she sees misuse of Incoterms in Fujifilm as people not understanding what an incoterm does, therefore just picking one and not seeing the consequences.
- Respondent feels problems are caused because of the complicated structure within Fujifilm. She sees a broken link between the operational, commercial and legal side.
- Respondent states that improvements are slowly being made, but it all depends on people remembering what they are told and implementing that down the line: e.g. involving different departments, checking the Incoterms. The company depends on people remembering because there is no checklist to go through to check all the points to go ahead. Therefore training is needed so that people learn what to do and what the consequences of their actions are.
- Respondent feels a solution to problems might be to centralize. If regions have freedoms to do their own thing you get differences within the company, causing to a loss of money left and right. Centralization of the process is needed. However, this is difficult because of political stakes.

Samenvatting SCM specialist

In de data is te zien dat het afspreken van Incoterms en het eraan houden moeilijk is. De Incoterms an sich zijn duidelijk maar ze worden door mensen als hinderlijk ervaren. Er zitten beperkingen aan de Incoterms. Althans, de mensen willen andere dingen dan de Incoterms toestaan. Er is blijkbaar een barrière of onkunde om de correcte incoterm te pakken, of die incoterm bestaat niet.

Hoe zou de interviewer verkeerd gebruik van incoterm definiëren? Wat zou hij daaronder verstaan?

Het verschil tussen de intentie en wat er feitelijk gebeurt. Dat verschil kan niet worden vastgesteld. De intentie en de uitvoering is dan een mismatch.

Of bijvoorbeeld dat de incoterm niet de financiële doelstellingen dekt. Dan blijkt de marge daardoor onder te lijden.

Daarnaast heb je natuurlijk ook gewoon de technische fouten. Dat zit hem dan meer in de plaatsnaamaanduiding bijvoorbeeld. Maar ook de uitvoering als voorbeeld van verkeerd gebruik. De incoterm is eenduidig maar het uitvoeren van de taak zoals die bedoeld is, is lastig.

Bijvoorbeeld een plaatsnaam fout kan gebeuren door luiheid. Vaste bestaande relaties zijn vaak leidend boven hetgeen wat er administratief opgeschreven wordt. Dan gaat het mee met de bulk en daarmee ondervangen we ook dat er dingen niet goed gaan

Wat zijn dan eigenlijk de risico's van Incoterms? Wat zou mis kunnen gaan als dat verkeerd gebruik zich wel zou verwezenlijken?

Het key word daarbij is vertraging. Plus dat je dan voorraadopslag moet hebben als er een fout is of je moet quarantaine area's hebben die je moet managen. Dat kost een hoop geld en administratief werk. Plus dat je schade kunt maken. Uiteindelijk komt het ook verkeerd terecht in de master data.

Gaat het vaak mis? Hebben we daar enig zicht op? Ik heb er nooit last van gehad.

Is er een afdeling of iemand binnen onze organisatie of wat dan ook, die überhaupt checkt of dingen correct verlopen?

De compliance afdelingen maar denk niet dat dit soort controles op die manier gedaan worden. Plaatsnamen wisseling checken bijvoorbeeld zijn hoge kosten, waar wij geen zicht op hebben.

Hebben wij een soort van incoterm policy? Nee, dat weet ik niet. Marion met haar afdeling checkt dat maar alleen specifiek vanuit BTW optiek. Dat is de enige plek waarvan ik merk dat iemand zich zorgen maakt over de incoterm.

Je verwacht dat bij inkoop daar wel een bepaalde basiskennis aanwezig van Incoterms. Hoe loopt in de praktijk de bestelling?

Bij Japanse inkoop is het, Japan bepaalt en wij zeggen ja. Of dat allemaal correct gaat weet ik niet maar dat is een vorm van inkoop. Dan heb je natuurlijk de inkoop die gedaan wordt door de BD's. Dat lijkt mij echt een zwakke plek. Er zijn heel veel plekken waar professionele inkoop niet erkend wordt als partij.

Wat zou in jouw ogen een goede aanpak kunnen zijn om hier uit te geraken?

Het simpelste is natuurlijk als mensen geen keuze hebben. Dat betekent dat je eigenlijk met de correcte boodschap op stap gaat. Een tweede, dat je in feite de boodschap meteen goed begint en professioneel bent.

Daarnaast het kennisniveau vergroten en ook gewoon een aantal mogelijkheden uitsluiten, dus niet dat hele pallet aan Incoterms veranderingen toelaten, daarmee beperk je al wel een hele hoop gedoe. Ik denk dat dat bij de contracten die wij zelf hier managen echt wel kan, en dat we dat ook wel doen. We kunnen alleen nul managen op de de contracten die de business domain sluit en die vanuit Japan komen. Maar wat wel kan doen is vaststellen of ze de wenselijke incoterm hebben.

Samenvatting interview SCM medewerker

- Definitie volgens geïnterviewde van verkeerd gebruik van Incoterms: een vervoerder pakt pallets zelf op en is ook verantwoordelijk voor het laden – onnodig risico. Ander voorbeeld: jaar en dag verkeerd toepassen van de Incoterm zonder dat men daarvan op de hoogte is.

- Er is weinig kennis van Incoterms, met name bij salesmensen.

- Aan de inkomende kant, geïnterviewde zegt nauwelijks betrokken te worden en er is onder werknemers aldaar “weinig begrip van de feitelijke kennis van Incoterms”.

- Verkeerd gebruik, maar geen schade, wat dan wel? Voorbeeld financiële impact/kostenrisico a.g.v. extra diensten door logistieke dienstverlener IDL → deze kosten vallen in de grote hoop en zijn niet per case traceerbaar. Er is controle hierop vanuit IDL, maar dit wordt niet teruggekoppeld aan de inkoper, m.a.w. het is niet bekend of dit in lijn is met wat contractueel is afgesproken.

Samenvatting manager SCM afdeling:

Wat zou in jouw woorden verkeerd gebruik van Incoterms kunnen zijn?

Bijvoorbeeld van CIF incoterm gebruik in plaats van FCA. Ook ex works noemen en dan vervolgens heel het transport regelen klopt niet. Ook dat de plaatsnaamaanduiding niet hetzelfde is, is een voorbeeld van verkeerd gebruik van introterms.

Er is vanuit de afdeling geen zicht op deze fouten maar het zal waarschijnlijk wel kosten met zich mee brengen voor de organisatie. De supplier doet het altijd goed, maar de kosten zijn voor ons. Inkoop heeft hier in dit soort gevallen minimaal mee te maken.

Welke risico's zie jij daar ontstaan?

Dat je verborgen kosten hebt die je bij de prijsafspraken en bij de onderhandelingen niet ziet. Dat is dus echt financieel. En dat je heel veel risico loopt op het moment dat het fout gaat, dat mensen zich onttrekken aan hun verantwoordelijkheden.

Douanetechnisch heb je issues en VAT technisch ook. En juridisch gezien, je haalt wellicht onverplicht veel meer verantwoordelijkheden op de hals dan wat je had moeten doen.

Doen we er iets mee? En gebeurt veel?

Ik denk dat we er niets mee doen en dat het heel veel voorkomt. Wij hebben weinig invloed op Incoterms: wij staan aan de zijlijn, en vaak onbewust. Wij zijn vaak denk ik onbewust onbekwaam. Voor een hele hoop goederen stromen zit dat denk ik in allerlei BD's en mensen die van daaruit alles regelen, maar die maar weinig van Incoterms af weten.

Wat zou de organisatie helpen, om dit soort dingen anders te laten stroomlijnen?

Laten zien dat het om serieus geld gaat. En een eventuele oplossing zou zijn dat minder mensen kunnen bestellen en diegenen die het kunnen moeten expert zijn in Incoterms. Bij ons binnen weten ze dat wel maar de BD's of in Japan is de vraag. Denk van niet

Is er bij jouw weten een incoterm policy?

Nee, niet dat ik weet. Extern zijn er wel Incoterms trainingen.

Monitort iemand bijvoorbeeld bij jullie afdeling of bij de inkoopafdeling, of de praktijk ook matcht met de incoterm?

Ik denk het niet, het merendeel sowieso niet. Ik weet uiteindelijk niet of het heel slecht is, want evt fouten worden wel opgelost in de operatie, maar het is niet geregeld in onze organisatie. Bij een audit op het correcte gebruik van Incoterms is dit wel een issue.