International Journal for Multidisciplinary Research (IJFMR)
E-ISSN: 2582-2160 ● Website: www.ijfmr.com ● Email: editor@ijfmr.com

A Critical Analysis of Adopting Inco Terms in Export Import Transactions with View of Export-Import Duty

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Abstract
In today's globalized economy, International trade has become more dynamic than ever, connecting countries, businesses and consumers across borders. Yet, as goods move from one jurisdiction to another, the complexities of shipping terms, customs valuation and duty assessment often pose significant challenges. In this context, Incoterms or International Commercial Terms play a crucial role in shaping the responsibilities, costs and risks involved in cross-border trade. First introduced by the International Chamber of Commerce (ICC), Incoterms are designed to bring clarity and standardization to trade contracts. These terms define at what point the ownership of goods transfers from the seller to the buyer and who is liable for shipping, insurance and customs charges. However, despite their widespread usage, many stakeholders particularly in the Indian trade ecosystem struggle to understand how Incoterms directly impact customs valuation and by extension, the calculation of export and import duties.

INTRODUCTION

In today's globalised economy, International trade has become more dynamic than ever, connecting countries, businesses and consumers across borders. Yet, as goods move from one jurisdiction to another, the complexities of shipping terms, customs valuation and duty assessment often pose significant challenges. In this context, Incoterms or International Commercial Terms play a crucial role in shaping the responsibilities, costs and risks involved in cross-border trade.[1] First introduced by the International Chamber of Commerce (ICC), Incoterms are designed to bring clarity and standardisation to trade contracts.[2] These terms define at what point the ownership of goods transfers from the seller to the buyer and who is liable for shipping, insurance and customs charges. However, despite their widespread usage, many stakeholders particularly in the Indian trade ecosystem struggle to understand how Incoterms directly impact customs valuation and by extension, the calculation of export and import duties.[3]
For instance, the use of CIF (Cost, Insurance and Freight) or FOB (Free on Board) can significantly alter the final dutiable value of a shipment depending on how freight and insurance costs are treated under India's Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.[4] Incorrect

[1] World Trade Organization, *World Trade Statistical Review 2023*, WTO Publications.
[2] International Chamber of Commerce (ICC), *Incoterms 2020: ICC Rules for the Use of Domestic and International Trade Terms*, ICC Publication No. 723E.
[3] Jain, R. (2021). *Impact of Incoterms on Indian Trade Practices*, Journal of International Trade Law & Policy, Vol. 20(1).
[4] Government of India, *Customs Valuation (Determination of Value of Imported Goods) Rules, 2007*, Ministry of Finance, Department of Revenue.

application or documentation of these terms may lead not only to delays at ports but also to miscalculation of duties and even the denial of legitimate duty benefits.[5] Moreover, while Incoterms are globally recognised, their legal standing within Indian customs enforcement remains unclear and inconsistently applied. Traders often find themselves caught between international trade practices and domestic legal procedures, which results in confusion, disputes and underutilisation of available duty schemes. This research aims to critically examine how Incoterms affect export-import transactions in India, especially from the standpoint of duty calculation, valuation practices and customs involvement. The study also seeks to bridge the gap between theory and practice by analysing how greater awareness and proper application of Incoterms can make trade more efficient, predictable and compliant with legal norms.

1. STATEMENT OF THE PROBLEM

In International Trade, INCO TERMS play a vital role in defining who bears the cost, risk and responsibility at various stages of a transaction. However, their impact on customs valuation and the calculation of export-import duties often goes unnoticed or misunderstood, especially in the Indian context. Many traders are unaware that the choice of Incoterm like FOB or CIF can directly affect the dutiable value of goods, particularly when calculating freight, insurance, or handling charges under Indian Customs Valuation Rules. This leads to confusion, delays and in some cases missed opportunities for duty exemptions or benefits.

Moreover, customs authorities in India do not always interpret or apply Incoterms uniformly, creating further uncertainty for exporters and importers. As a result, the practical benefits of using Incoterms such as clarity, cost-effectiveness and better risk management are often underutilised. This study aims to explore how Incoterms influence duty assessment, customs practices and trade benefits and why a better understanding and application of these terms is essential for smoother and more transparent trade transactions.

2. RESEARCH OBJECTIVES

1. To examine the influence of Incoterms on customs valuation and their role in determining dutiable value under Indian trade law.
2. To assess how the choice of Incoterm affects the eligibility for export-import duty exemptions, benefits and drawback schemes.
3. To examine the consistency and awareness of Indian customs authorities in applying Incoterms during trade assessments and clearances.
4. To identify practical challenges faced by exporters and importers in the use of Incoterms and propose ways to improve legal clarity and compliance.

3. RESEARCH QUESTIONS

1. How do different Incoterms influence the customs valuation of goods and the determination of dutiable value under Indian trade law?
2. In what ways does the choice of Incoterm affect an exporter or importer’s eligibility for exemptions, rebates, and duty drawback schemes?

[5] SEZ and Customs Handbook (2022), Institute of Chartered Accountants of India (ICAI), Chapter on Customs Valuation.

3. How clearly do customs officers in India understand and apply Incoterms during export-import procedures?
4. What common issues do traders face when using Incoterms, and how can awareness and guidance be improved?

4. RESEARCH HYPOTHESIS

This study is based on the understanding that the correct use of Incoterms has a significant impact on how customs duties are assessed in export-import transactions. The central idea is that when traders apply the appropriate Incoterm, it can help in more accurate customs valuation and make it easier to claim exemptions, rebates, or other duty-related benefits. Therefore, the research assumes that there is a strong link between the use of Incoterms and the efficiency of duty assessments. However, to maintain objectivity, the study also considers the possibility that the use of Incoterms may not have a significant impact on how duties are calculated or on the benefits available to exporters and importers. This will be tested through analysis and comparison of relevant data, legal provisions, and real-world practices.

5. SCOPE OF THE STUDY

This study explores the legal and practical role of Incoterms in shaping export-import transactions, particularly from the perspective of customs duty assessment in India. It aims to understand how the proper selection and application of Incoterms can influence customs valuation, duty exemptions, and compliance. The research also covers the interpretation of Incoterms under Indian customs law, the awareness among traders and officials, and how Incoterms contribute to transparency in international trade. The study is mainly focused on Incoterms 2020 and their relevance within the Indian trade and taxation framework.

6. LIMITATIONS OF THE STUDY

While the research provides insights into the legal and procedural aspects of Incoterms and customs duties, it is limited by the use of secondary sources such as statutes, case laws, government reports, and scholarly articles. The study does not involve primary data collection or interviews with customs authorities or trade practitioners. It also does not delve into industry-specific logistics or global comparisons beyond India. Furthermore, as international trade rules and Incoterms are subject to change, the findings are based on the current framework and may need to be updated with future policy changes.

7. RESEARCH METHODOLOGY

This study adopts a doctrinal research methodology primarily relying on secondary sources to examine the legal and practical impact of Incoterms in export-import transactions, especially with respect to customs valuation and duty assessment. The research involves a detailed review of relevant international conventions, Indian statutes, CBIC notifications, SEZ and customs regulations and related case laws. It also refers to scholarly articles, trade manuals, WTO guidelines, ICC resources (Incoterms 2020 rules) and official publications by customs authorities.

A comparative analysis is carried out to understand how the application of Incoterms affects customs procedures and duty benefits and how these are interpreted in legal and commercial practice. Emphasis is placed on analysing gaps between the theoretical framework and its actual implementation in Indian trade. The methodology is entirely qualitative as it aims to critically examine legal texts, practical interpretations and procedural nuances rather than rely on quantitative data.

8. LITERATURE REVIEW

Sharma, Anjali in "Importance of Incoterms and CISG in International Commercial Contracts: A Comparative Study."[6]

Sharma's comparative analysis presents a nuanced exploration of how Incoterms and the CISG (United Nations Convention on Contracts for the International Sale of Goods) coexist in global commercial contracts. The paper articulates that Incoterms primarily govern logistical responsibilities, while CISG manages the substantive legal relationship. It emphasizes that misinterpretation or failure to harmonize both instruments could lead to cross-border disputes. The research critically bridges doctrinal and practical concerns making it particularly relevant in understanding how risk, delivery, and obligations under Incoterms influence customs procedures and legal remedies.

Wang, Jing et al. "Reducing Risks and Costs When Working with Incoterms."[7]

This empirical work by Wang and co-authors investigates the real-world issues that logistics and supply chain professionals face due to inappropriate application of Incoterms. The paper brings forward the idea that incorrect choice of terms leads not only to cost overruns but also legal liability confusion at customs clearance points. It is particularly significant for exporters and importers in developing economies like India, where procedural ambiguity often adds to transactional inefficiency. The authors advocate training-based interventions to promote better Incoterm literacy among traders, which could reduce non-compliance and disputes.

Geodis in "The Role of Incoterms in Customs Clearance."8

This practitioner-oriented article sheds light on the practical link between Incoterms and the customs clearance process. It asserts that Incoterms not only influence the point of risk transfer but also directly impact who is responsible for handling duties, taxes, and documentation. The clarity in this article makes it an excellent bridge between legal theory and business practice. For instance, terms like DDP and EXW are decoded in real-world context, offering clarity for traders navigating India's complex customs framework. It's highly relevant for understanding administrative friction at the border points.

Avalara in "Introduction to Incoterms and Their Impact on Indirect Tax."[9]

Avalara's article offers a concise yet sharp explanation of how Incoterms affect indirect taxation like VAT and GST. It addresses the concept of 'Importer of Record' and examines how that status dictated by the Incoterm determines responsibility for customs paperwork and tax liability. This becomes essential in jurisdictions like India, where GST implications on imports can be complex and heavily scrutinized. The article serves as a vital practical aid for tax consultants and compliance officers involved in cross-border trade.

Mukherjee, Arpita in "Customs Valuation in India: Identifying Trade Facilitation Related Concerns."[10]

Mukherjee offers a critical evaluation of customs valuation norms in India, pointing out how inconsistent interpretations by officials create barriers to efficient trade. This paper is pivotal in understanding the disconnect between WTO norms and domestic enforcement in India. Although it does not directly discuss Incoterms, it reveals how lack of transparency in valuation leads to compliance disputes an issue where

[6] Anjali Sharma, *Importance of Incoterms and CISG in International Commercial Contracts: A Comparative Study*, ResearchGate (2023),
[7] Jing Wang et al., *Reducing Risks and Costs When Working with Incoterms*, DiVA Portal (2015),
[8] Geodis, *The Role of Incoterms in Customs Clearance*, Geodis Blog (2022).
[9] Avalara, *Introduction to Incoterms and Their Impact on Indirect Tax*, Avalara (2021).
[10] Arpita Mukherjee, *Customs Valuation in India: Identifying Trade Facilitation Related Concerns*, ResearchGate (2007).

proper Incoterm application can act as a preventive mechanism. It enriches the legal-policy interface of your research.

Taxmann publication- "Nuances of Customs Valuation – Rules, Methods, Practical Insights."[11]

This article gives an exhaustive breakdown of customs valuation methods as prescribed under the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. It elaborates on the primary rule of transaction value and the residual methods. Particularly useful is the discussion on when and why customs reject declared transaction values. For your research, it highlights the scope of using Incoterms strategically to avoid triggering customs scepticism especially under FOB/CIF clauses.

Holla, Prakhar in "The Arbitrary Rejection of the Declared Value by the Customs Authorities: An Indian Perspective."[12]

Holla critiques the discretionary power exercised by Indian customs officials in rejecting declared values based on risk assessment databases, rather than factual irregularities. This arbitrary practice, as the paper suggests, erodes trader confidence and international image. The article gives legitimacy to the argument that well-drafted contracts using suitable Incoterms can reduce the grey areas in valuation, offering clearer benchmarks for authorities and traders alike.

Rao, Kalyan in "Introduction to INCOTERMS for International Trade."[13]

Rao's paper is an excellent primer for beginners and practitioners alike. It decodes all 11 Incoterms 2020 with an emphasis on their commercial relevance. The review discusses how these terms allocate obligations concerning shipping, insurance, and customs clearance. What makes this source particularly valuable is its clarity in presenting complex legal language in accessible terms something that will benefit your research while discussing how Incoterms impact export-import documentation, valuation, and liabilities under Indian customs law.

Carr & Stone – *International Trade Law* (6th Edition)[14]

The sixth edition of *International Trade Law* by Indira Carr and Peter Stone offers a clear and well-structured understanding of how international trade functions legally, especially in the context of cross-border sale contracts. The book explains the practical role of Incoterms in shaping the obligations of buyers and sellers, particularly regarding delivery, cost, and transfer of risk. This is highly relevant to Indian import-export practices where customs valuation depends heavily on such trade terms. Carr and Stone also touch upon the challenges that arise when Incoterms are misunderstood or not properly applied especially by customs authorities in countries like India. Although the book is global in its approach, it provides valuable insights that can be adapted to the Indian legal framework. Their explanation of the link between Incoterms, contract law, and customs compliance helps highlight the very issues your research addresses such as valuation disputes, eligibility for exemptions, and procedural clarity. Overall, this book serves as a strong academic base for analysing the legal and practical complexities faced by traders and authorities when applying Incoterms in real-world trade scenarios.

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[11] Taxmann, *Nuances of Customs Valuation – Rules, Methods, Practical Insights*, Taxmann Blog (2022).

[12] Prakhar Holla, *The Arbitrary Rejection of the Declared Value by the Customs Authorities: An Indian Perspective*, 15(1) GTCJ 47 (2020).

[13] Kalyan Rao, *Introduction to INCOTERMS for International Trade*, ResearchGate (2023).

[14] Indira Carr and Peter Stone, *International Trade Law* (6th edn, Routledge 2018)

TO EXAMINE THE INFLUENCE OF INCOTERMS ON CUSTOMS VALUATION AND THEIR ROLE IN DETERMINING DUTIABLE VALUE UNDER INDIAN TRADE LAW.

In International trade, clarity in assigning responsibilities for the delivery of goods is fundamental. One of the most enduring instruments created to ensure such clarity is the system of *INCOTERMS* (International Commercial Terms), introduced by the International Chamber of Commerce (ICC) in 1936 and most recently updated in 2020.[15] These terms are a universally accepted set of rules that define the roles of buyers and sellers in relation to delivery, transfer of risk, cost allocation, and documentation.

While Incoterms were primarily designed to avoid contractual ambiguities in cross-border transactions, their role has expanded over time, especially in countries like India where customs valuation processes are heavily dependent on identifying who bears the cost, insurance, and freight at each stage.[16] Despite being non-binding unless incorporated into a contract, the influence of Incoterms on customs duty assessment and the valuation of imported goods is profound and often underappreciated.[17]

1.2 Understanding Customs Valuation in Indian Trade Law

India's customs valuation regime is governed by the Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, both of which are aligned with the WTO Agreement on Customs Valuation. The principal objective of these rules is to ensure that the valuation of imported goods reflects their "true" or "transaction" value, zthereby enabling the correct imposition of customs duties.[18]

Under Rule 3, the primary method of valuation is the transaction value defined as the price actually paid or payable for goods when sold for export to India, adjusted for certain components such as:

1. Freight
2. Insurance
3. Commission
4. Cost of containers and packing
4. Engineering, development or design work undertaken outside India

The challenge arises when determining whether these cost components are included in the invoice value or must be added. This is precisely where the chosen Incoterm becomes relevant, as it dictates whether the seller or the buyer is responsible for these components and whether they are part of the declared invoice.[19]

Key Incoterms and Their Customs Implications

The selection of an Incoterm significantly influences how customs authorities assess the dutiable value of goods. The most commonly used Incoterms in India include FOB, CFR, CIF, DAP, DDP and EXW, each of which has unique implications under customs law.[20]

1. **FOB (Free on Board):** The buyer assumes risk and cost once goods are loaded at the port of origin. Since Indian customs require CIF values, freight and insurance must be added to FOB invoices.[21]

[15] International Chamber of Commerce, Incoterms 2020: ICC Rules for the Use of Domestic and International Trade Terms (ICC Publication No. 723E, ICC 2019).
[16] C Rajagopalachari, *Law of International Trade and Customs Valuation* (4th edn, LexisNexis 2020) 198.
[17] Umakanth Varottil, 'Contractual Risk and Customs Duties in India: Why Incoterms Matter' (2021) 8(2) *Indian Journal of International Economic Law* 55.
[18] Customs Valuation (Determination of Value of Imported Goods) Rules 2007, rr 3, 10.
[19] Ramesh Chand, 'Valuation of Imported Goods under Indian Customs Law' (2019) 2(1) *NLS Business Law Review* 123.
[20] International Chamber of Commerce, *Incoterms® 2020: ICC Rules for the Use of Domestic and International Trade Terms* (ICC Publication No. 723E, ICC 2019).
[21] CBIC Circular No. 5/2010-Cus, dated 16 March 2010 https://taxinformation.cbic.gov.in accessed 6 April 2025.

2. **CFR (Cost and Freight):** The seller pays freight, but not insurance. Customs authorities add notional insurance to determine the CIF value.[22]
3. **CIF (Cost, Insurance and Freight):** The most straightforward for customs valuation, as the invoice reflects the full CIF value. Minimal adjustments are required if documents are clear.
4. **DAP (Delivered at Place):** May include inland freight, which is not dutiable. Customs must subtract such components if they are embedded in the invoice.[23]
5. **DDP (Delivered Duty Paid):** Seller pays all costs including duties and taxes. Indian customs must exclude post-import domestic taxes while determining assessable value.
6. **EXW (Ex Works):** Seller assumes minimal responsibility. Customs must estimate missing cost components like freight and insurance to compute the assessable value.

1.4 Indian Customs Valuation Rules and Legal Framework

In India, the valuation of goods for customs purposes is primarily governed by the Customs Act, 1962, and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, which are aligned with the WTO's Agreement on Customs Valuation. These rules aim to ensure that the dutiable value reflects the actual transaction value the price actually paid or payable for the goods when sold for export to India.[24]

However, when Incoterms used in a transaction do not reflect all components required to determine the CIF (Cost, Insurance and Freight) value, the customs authorities must make adjustments. For instance, if the invoice is under FOB or CFR, they are mandated to add notional or actual values for freight and insurance to arrive at a CIF-based assessable value. Rule 10 of the Valuation Rules specifically permits such additions for items like commission, packing costs, transportation, insurance, and related services.

This framework, though well-established, leaves room for interpretation. In practice, different customs offices or officers may vary in their understanding and application of valuation rules, especially in transactions involving less common Incoterms or non-standard documentation. [25]This creates inconsistency, leading to confusion for traders and potential legal disputes.

1.5 Judicial Interpretation and Departmental Clarifications

The Indian judiciary has addressed issues of customs valuation and Incoterms in several key decisions. Courts have emphasised that transaction value must include all costs up to the port of import, as per the legal definition of 'value' under the Customs Act. In **Collector of Customs v. Essar Gujarat Ltd. (1996)**, the Supreme Court clarified that even if the cost of transportation or insurance is not declared, customs authorities are justified in adding a reasonable estimate to arrive at a proper valuation.[26]

Moreover, various **CBIC (Central Board of Indirect Taxes and Customs)** circulars have guided customs officers on acceptable adjustments when documents are unclear or silent on freight and insurance costs. These departmental clarifications serve as supplementary interpretation tools but are not binding legal precedents. While they aim to bring uniformity, traders often find themselves at the mercy of differing levels of officer understanding.[27]

Such judicial and departmental insights underline the importance of correctly applying Incoterms to avoid unnecessary valuation disputes and delays. They also reflect the judiciary's insistence on protecting both

[22] S K Jain, "*International Commercial Transactions and Indian Law*" (3rd edn, Universal Law Publishing 2018) 89.
[23] WTO, *Agreement on Implementation of Article VII of GATT 1994 (Customs Valuation Agreement)* (1994) art 8.
[24] Valuation Rules 2007, r 10(2)(a).
[25] R Srivastava, 'Difficulties in Applying Incoterms: The Indian Perspective' (2022) 5(1) *NLUJ Law Review* 45.
[26] *Collector of Customs v Essar Gujarat Ltd* (1996) 4 SCC 156.
[27] Suneet Jain, 'CBIC Circulars and Legal Interpretation in Customs Valuation' (2020) 12(3) *National Law School Review* 89.

revenue interests and the legitimate expectations of traders under international trade norms.

1.6 Stakeholder Awareness and Market Practices

Despite being fundamental to international trade, awareness and correct application of Incoterms among Indian traders remain patchy. Large export-import houses and multinational corporations tend to have a better understanding, often guided by legal counsel or logistics experts. However, many small and medium-sized enterprises (SMEs) rely heavily on freight forwarders or customs brokers and may not be fully informed about how the choice of Incoterm impacts duty liability or risk exposure.[28]

This lack of awareness often leads to invoices lacking essential details, misuse of Incoterms, or inappropriate pricing structures. For example, a trader using EXW might inadvertently exclude freight and insurance, only to be surprised by an upward valuation by customs. Similarly, using DDP without understanding its impact on dutiable value could result in overpaid duties or disputes over what charges should be included.

There is a clear need for improved stakeholder education and sensitisation, particularly at the SME level.[29] Industry associations, trade bodies, and customs departments could play a stronger role in offering training sessions and simplified guidance on the legal and practical implications of using different Incoterms.

1.7 Administrative Challenges and Compliance Gaps

From a regulatory standpoint, customs officials often face challenges when dealing with inconsistently documented or ambiguous invoices. When traders do not clearly mention the Incoterm or do not break down cost components, officers must resort to estimation or use of standard values, which may not always reflect the actual cost.[30] This not only complicates the clearance process but also leads to compliance gaps and audit risks.

Moreover, there is limited use of digital tools or real-time valuation mechanisms to support accurate and standardised assessment. Many valuation processes still rely heavily on manual scrutiny, increasing the possibility of human error or interpretative differences. This also leads to a disproportionate burden on honest traders, who may face delays and litigation due to overcautious valuation by customs, while less compliant operators find loopholes to mis declare or under invoice.[31] Therefore, addressing administrative inefficiencies and enhancing systems-based compliance is vital to creating a more transparent trade environment.

1.8 International Best Practices and Comparative Perspectives

Globally, customs authorities in developed jurisdictions like the European Union, United States, and Singapore have implemented more streamlined and transparent customs valuation practices. They typically require detailed Incoterm-based invoicing and use automated systems that automatically adjust valuation according to the declared terms.

For example, the EU's Union Customs Code (UCC) clearly mandates the inclusion or exclusion of cost components based on the Incoterm used and has a centralised valuation database to reduce officer discretion.[32] The U.S. Customs and Border Protection (CBP) provides extensive guidance and training

[28] NASSCOM and FIEO, *SME Trade Handbook: Best Practices and Compliance Standards* (2021).
[29] FIEO, *Incoterm Use in Indian SME Export Transactions – A Training Report* (2022).
[30] Vivek Ahuja, 'Technology in Customs Administration: India vs. Global Benchmarks' (2023) 3(2) *Indian Trade Law & Practice Journal* 15.
[31] D K Srivastava, 'Reforms in Customs Valuation and Administrative Practice in India' (2021) 29 *ELTI Journal of Economic Laws* 203.
[32] European Commission, *Union Customs Code and Implementing Guidelines* (2020).

resources on Incoterms and transaction valuation, which helps both importers and customs officers maintain clarity and compliance.

India could benefit significantly by benchmarking these practices such as better trader education, mandatory cost breakdowns in invoices, and expanded digital tools for valuation. Aligning more closely with international practices would also support India's ambition to become a more seamless hub for global trade under initiatives like 'Ease of Doing Business' and 'Make in India'.[33]

TO ASSESS HOW THE CHOICE OF INCOTERM AFFECTS THE ELIGIBILITY FOR EXPORT-IMPORT DUTY EXEMPTIONS, BENEFITS AND DRAWBACK SCHEMES.

2.1 Export-Import Duty Exemptions and Trade Incentives in India

India's trade policy framework is structured to promote global competitiveness by offering a range of exemptions and incentives to importers and exporters. From Advance Authorisation and EPCG (Export Promotion Capital Goods) schemes to refund-oriented benefits like the Duty Drawback Scheme and RoDTEP (Remission of Duties and Taxes on Exported Products), the government's goal is to ease the cost burden on businesses engaged in international trade.[34] However, an often-overlooked element in claiming these benefits is the choice of Incoterms. These international commercial terms define which party seller or buyer bears the responsibility, cost, and risk during various stages of delivery.[35] Depending on how they are chosen and applied, Incoterms can either simplify or complicate the process of duty exemption and refund eligibility.[36]

2.2 How Incoterms Influence Duty Drawback and Refund Eligibility

The Duty Drawback Scheme allows exporters to claim a refund of import duties paid on goods used to manufacture exported products. For this process to work seamlessly, it's essential that there is clear documentation of who paid the duties and what components formed part of the import value.[37] Let's consider a scenario where an importer opts for a DDP (Delivered Duty Paid) Incoterm. In this case, it is the seller who pays all duties and delivers the goods to the buyer's premises. Because the buyer has not paid the import duty, they may not be eligible for a duty drawback, even if the goods are re-exported.[38]

On the flip side, EXW (Ex Works) terms shift all responsibility to the buyer, but if they don't maintain proper cost records like freight and insurance this can cause customs to reject or delay refund claims.[39] Customs officers often require a full breakdown of these components to ensure that the dutiable value was properly computed. So, when refund schemes rely on accurate and transparent customs valuation, the choice of Incoterm becomes more than a logistical detail it becomes a compliance tool.

2.3 Impact on Advance Authorisation and EPCG Schemes

Under schemes like Advance Authorisation, importers are allowed to bring in raw materials duty-free if they commit to exporting the final products within a specified timeframe. Likewise, the EPCG scheme offers duty exemptions for capital goods that are later used in the production of export goods. However,

[33] Ministry of Commerce, *Ease of Doing Business: Annual Report 2023-24* (Government of India 2024) 62.

[34] Directorate General of Foreign Trade, *Foreign Trade Policy 2023*, Ministry of Commerce and Industry, Government of India

[35] ICC, *Incoterms 2020: Rules and Guidance*, International Chamber of Commerce, 2020.

[36] International Chamber of Commerce, *Incoterms 2020: Rules for Any Mode or Modes of Transport*, ICC Publication No. 723E.

[37] Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, Rule 9(1)(c).

[38] M. Govindarajan, *Customs Valuation and Duty Drawback in Light of Incoterms*, Taxmann, 2022.

[39] Customs Valuation Rules, 2007, Rule 10 – Adjustments to transaction value.

to ensure eligibility and to avoid later disputes or audits, it is critical that the value of the imported goods is accurately recorded in accordance with Indian Customs Valuation Rules.

For instance, if a business uses FOB (Free on Board) or EXW Incoterms, their invoices may not reflect the total dutiable value since freight, insurance, and handling costs are excluded. Customs authorities would then have to estimate or add these amounts based on notional values, which could differ from actual figures and potentially affect the eligibility or quantum of benefits granted.[40] CIF (Cost, Insurance, and Freight), by contrast, includes all necessary cost components upfront, making it the preferred choice for businesses seeking minimal friction in customs assessment and compliance with exemption norms.[41]

2.4 Strategic Misalignment and Risk of Ineligibility

What complicates matters further is that many traders, especially small and medium-sized enterprises (SMEs), choose Incoterms without fully understanding their fiscal and regulatory implications. In some instances, importers using CFR (Cost and Freight) or DAP (Delivered at Place) mistakenly believe they qualify for exemptions or input tax credits, when in reality, their invoices lack clarity on who paid for what. This misalignment between contractual arrangements and customs expectations often leads to rejections, audits, or forfeiture of benefits.

Even worse, companies that don't document their cost components clearly may fall afoul of GST and customs laws, making them vulnerable to penalties or procedural delays. At a time when India is working to enhance its "Ease of Doing Business" image, such technical oversights could cost a business valuable time and money.

2.5 Conclusion

In today's compliance-driven trade environment, the Incoterm chosen in a contract is not merely about deciding who pays for shipping or insurance where it directly influences whether an importer or exporter can claim government-provided duty exemptions, drawbacks, or tax refunds. For Indian businesses aiming to benefit from schemes like Advance Authorisation, EPCG, or Duty Drawback, aligning their Incoterm strategy with legal and procedural expectations is not just smart; it is essential.[42] Clear documentation, accurate invoice structuring, and awareness of each term's customs implications will go a long way in ensuring that businesses not only comply with Indian trade law but also enjoy the full benefits that it offers.

TO EXAMINE THE CONSISTENCY AND AWARENESS OF INDIAN CUSTOMS AUTHORITIES IN APPLYING INCOTERMS DURING TRADE ASSESSMENTS AND CLEARANCES.

3.1 Understanding the Role of Customs Authorities in Trade Facilitation

Customs authorities in any country act as the frontline for regulating cross-border trade. In India, their role is not limited to mere duty collection but extends to enforcing trade compliance, verifying documentation, and ensuring accurate valuation of goods. A key part of this process involves understanding the commercial terms of trade specifically, Incoterms. These standardised rules, developed by the International Chamber of Commerce (ICC), help define the obligations of buyers and sellers in international contracts.[43] However, the level of understanding and consistency with which Indian customs

[40] K.R. Chandratre, *Foreign Trade and Investment Law Manual*, LexisNexis, 2021, p. 189.
[41] OECD, *Customs Valuation in Global Value Chains*, Trade Policy Working Papers No. 158, 2020.
[42] Dr. Umakanth Varottil, *Legal Compliance in Cross-Border Trade*, National Law School Review, Vol. 35, Issue 2 (2023), pp. 112–129.
[43] International Chamber of Commerce, *Incoterms 2020: Rules for the Use of Domestic and International Trade Terms* (ICC Pub. No. 723E, 2019).

officers apply Incoterms can significantly impact the efficiency and fairness of the trade clearance process.[44]

3.2 Varying Levels of Awareness Among Officials

One of the core challenges is the inconsistency in awareness levels among customs officers across different ports and regions. While larger ports like Nhava Sheva, Mumbai, and Chennai tend to have more experienced personnel familiar with international trade norms, smaller or inland customs posts may show considerable variance in understanding. This gap in awareness often results in divergent interpretations of similar Incoterms. For instance, officers unfamiliar with the DDP term might mistakenly include non-dutiable components such as post-clearance domestic transportation or local taxes while calculating assessable value.[45]

3.3 Inconsistencies in Interpretation of Freight and Insurance Components

A common issue arises in how freight and insurance are treated under terms like FOB and CFR. Since the Indian Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 require a CIF value for duty calculation, officers must often make additions to the invoice values declared under other Incoterms. However, the way these additions are calculated may vary widely. Some officers use notional values based on standard norms (e.g., 1.125% of FOB for insurance), while others may demand actual documentary proof. The absence of a uniform standard for these additions creates room for discrepancies and delays.

3.4 Documentation and Compliance Gaps

Another practical issue faced by traders is the documentation required to support their declared Incoterms. Customs authorities, in some cases, insist on breakup invoices or separate certificates for freight and insurance, especially when the Incoterm used does not match the typical documentation standards followed by Indian customs. Exporters and importers often find themselves caught in procedural bottlenecks because their documents, though compliant with international norms, do not fit local expectations.[46] This lack of harmonisation hinders seamless trade and puts unnecessary strain on compliant businesses.

3.5 Role of Training and Policy Clarifications

In recent years, CBIC (Central Board of Indirect Taxes and Customs) has taken steps to improve the training of officers, particularly in specialised subjects such as valuation and trade facilitation. However, there is still room for better dissemination of knowledge regarding the use of Incoterms. Policy circulars or internal training manuals may not always adequately explain the implications of each Incoterm on customs valuation. This can result in inconsistent application of rules during clearance, especially in ambiguous cases like DAP or EXW where cost components are not always clearly separated.

3.6 Implications for Traders and Legal Compliance

For businesses, the inconsistency in customs application of Incoterms leads to real commercial consequences. These include delayed shipments, disputes over duty assessment, or even imposition of penalties for alleged misdeclaration. Legal recourse exists through the appellate system, but this is often time-consuming and expensive. More importantly, the lack of predictability in how customs will treat

[44] R Srivastava, 'Difficulties in Applying Incoterms: The Indian Perspective' (2022) 5(1) *NLUJ Law Review* 45
[45] Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, r 10(2)(a)
[46] NASSCOM and FIEO, *SME Trade Handbook: Best Practices and Compliance Standards* (2021).

certain terms discourages exporters and importers from opting for Incoterms that might otherwise provide better risk distribution or logistical advantages.[47]

3.7 Conclusion

The current landscape reflects a mixed picture while India's customs framework has evolved and modernised in several areas, the application of Incoterms remains inconsistent due to varying awareness and training levels across regions. This results in a disconnect between international commercial practices and domestic implementation. To bridge this gap, there is a pressing need for standardised protocols, enhanced training, and clearer policy guidance from authorities such as CBIC.[48] Ensuring consistency in applying Incoterms will not only reduce legal disputes and trade friction but also promote smoother, more transparent, and trader-friendly customs procedures across the country.

TO IDENTIFY PRACTICAL CHALLENGES FACED BY EXPORTERS AND IMPORTERS IN THE USE OF INCOTERMS AND PROPOSE WAYS TO IMPROVE LEGAL CLARITY AND COMPLIANCE.

In the dynamic landscape of international trade, the practical application of Incoterms presents a number of legal and operational hurdles for both exporters and importers. While these standardised trade terms are intended to simplify the division of responsibilities, risks, and costs between the contracting parties, their real-world usage often leads to confusion and inconsistency. In India, these challenges are further magnified by gaps in legal interpretation, documentation mismatches, and limited awareness among stakeholders.[49] As trade volumes grow and digital customs procedures take centre stage, addressing these bottlenecks becomes critical to ensuring smooth compliance, minimising disputes, and maximising the intended benefits of duty exemption and export promotion schemes.

Practical challenges: -

1. **Lack of Understanding and Training Among Stakeholders**

One of the foremost challenges in the practical use of Incoterms is the limited understanding among exporters, importers, and even freight forwarders about what each term precisely entails. In many cases, contractual parties misuse or misinterpret terms like FOB, CIF or DDP without fully comprehending the implications on cost allocation, risk transfer, and customs valuation. Smaller traders or first-time exporters/importers are particularly prone to errors due to the absence of formal training. These mistakes can result in disputes over who bears certain costs or responsibilities and may also affect duty computation during customs assessments.[50]

2. **Inconsistent Documentation and Contractual Practices**

Another major challenge lies in the lack of standardisation in trade documentation. Commercial invoices, bills of lading, and shipping instructions often do not reflect the correct Incoterm or fail to mention it at all. This ambiguity can create confusion during customs clearance, where officers must rely on precise transactional data to assess duties and determine liability.[51] At times, the agreed-upon Incoterm in the sales

[47] Umakanth Varottil, 'Contractual Risk and Customs Duties in India: Why Incoterms Matter' (2021) 8(2) *Indian Journal of International Economic Law* 55

[48] Ministry of Finance, *Ease of Doing Business in Indian Customs: Annual Report 2023–24*, Government of India, 2024.

[49] International Chamber of Commerce, *Incoterms 2020: ICC Rules for the Use of Domestic and International Trade Terms* (ICC Publication No. 723E, 2019).

[50] Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, r 10(1)(a).

[51] C Rajagopalachari, *Law of International Trade and Customs Valuation* (4th edn, LexisNexis 2020) 191.

contract is inconsistent with the shipping documents, resulting in a mismatch that can trigger compliance issues or delay cargo release.

3. Ambiguity in Risk Transfer and Cost Allocation

Although Incoterms aim to clarify who bears the risk and cost at each stage of delivery, practical enforcement often becomes ambiguous. This is especially true in multi-modal transport scenarios, where goods move through various transit points. In real-world transactions, the moment of risk transfer say, from seller to buyer may not be as clear-cut as the term suggests.[52] In the absence of legal or procedural clarity, this can result in inadvertent breaches of contract, increased liability for one party, and inconsistent duty assessments by customs authorities.[53]

4. Lack of Alignment Between Incoterms and Domestic Law

There are occasions where Indian domestic trade and tax laws do not fully align with the implications of international Incoterms. For instance, while an importer may believe that a CIF contract has included all required charges, Indian customs might still question the declared freight or insurance values. Such misalignment leads to valuation disputes and makes compliance harder. Additionally, rules governing duty drawbacks, exemption claims, or IGST reimbursements often don't clearly integrate with Incoterm-based cost allocation, which can discourage exporters from claiming lawful benefits.[54]

5. Limited Technological Integration

A growing but under-addressed issue is the lack of digital integration between trade platforms, customs systems, and stakeholders' logistics software. When Incoterms are incorrectly entered in digital declarations like the Bill of Entry or Shipping Bill, it can result in automated errors in valuation or compliance.[55] This is especially problematic in a system driven by faceless assessments, where human interaction is minimal and digital accuracy becomes paramount.

6. Compliance Risks and Penalties

The culmination of these challenges results in heightened compliance risks for both exporters and importers. Misuse or misunderstanding of Incoterms can attract penalties, demand notices for differential duty, or in severe cases, seizure of goods. Traders who operate without clarity often lose out on benefits under MEIS, RoDTEP, or Advance Authorisation Schemes, simply because the transactional value was not presented in accordance with acceptable Incoterm practices.[56]

Proposed Suggestions:

1. **Issuance of CBIC Guidelines/Circulars on Incoterms Application:** The Central Board of Indirect Taxes and Customs (CBIC) can issue clear operational circulars explaining how different Incoterms should be interpreted in customs valuation and duty assessments.[57] This will bring uniformity and reduce ambiguity at field formations.
2. **Mandatory Declaration of Incoterms in Shipping and Import Documents:** Make it compulsory for exporters and importers to mention the exact Incoterm (with version year) in invoices, shipping

[52] Umakanth Varottil, 'Contractual Risk and Customs Duties in India: Why Incoterms Matter' (2021) 8(2) *Indian Journal of International Economic Law* 55.
[53] R Srivastava, 'Difficulties in Applying Incoterms: The Indian Perspective' (2022) 5(1) *NLUJ Law Review* 45.
[54] Ministry of Finance, *Report of the Committee on the Revision of Foreign Trade Policy*, 2021.
[55] Vivek Ahuja, 'Technology in Customs Administration: India vs. Global Benchmarks' (2023) 3(2) *Indian Trade Law & Practice Journal* 15.
[56] FIEO, *Incoterm Use in Indian SME Export Transactions – A Training Report* (2022).
[57] CBIC Instruction No. 20/2020-Customs, dated 17 September 2020 on uniformity in assessment.

bills, and bills of entry helping customs officers interpret the terms correctly during assessment.
3. **Customs Officer Training and Capacity Building:** Institutionalise capacity-building programmes for customs officials through NACIN (National Academy of Customs) to enhance their understanding of how Incoterms affect valuation, exemptions, and trade compliance.
4. **Industry-Specific Standard Contract Templates Including Incoterm Clauses:** Export Promotion Councils (EPCs) and trade bodies (like FIEO or ICC India) can create and circulate sector-specific model contract clauses that incorporate appropriate Incoterms usage, helping especially MSMEs and new exporters avoid legal and logistical errors.[58]

Conclusion

The practical challenges surrounding the use of Incoterms in India are rooted in legal ambiguity, inconsistent application, and limited awareness. For Indian exporters and importers to gain maximum benefit from trade facilitation and duty schemes, there needs to be an active effort to harmonise contract drafting, valuation principles, and digital declarations with global Incoterm standards. Bridging this gap through legal reform, better training, and policy-level guidance can lead to a far more compliant and efficient trade ecosystem.

CONCLUSION

The present study critically examined the nuanced interplay between Incoterms and Indian customs law, with a focus on how these internationally accepted trade terms influence customs valuation, eligibility for export-import benefits, administrative consistency, and the overall compliance environment for Indian traders. Through a doctrinal and practical lens, the research revealed that while Incoterms are designed to streamline international trade, their real-world application within India's regulatory framework remains uneven and, at times, unclear. Firstly, it became evident that the choice of Incoterm significantly shapes the customs valuation process. Indian authorities, while operating under the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, often need to reconstruct the assessable value due to incomplete or inconsistent cost breakdowns in invoices especially when terms like EXW, FOB or DDP are used. This not only affects valuation accuracy but also opens the door to disputes, delays, and additional compliance burdens.

Secondly, the study found that Incoterms directly impact the ability of traders to claim exemptions, duty drawbacks, and incentives under schemes like SEIS, MEIS or the RoDTEP. Where Incoterms are improperly understood or documented, exporters and importers risk losing out on benefits due to non-compliance with procedural or valuation guidelines. The regulatory gap between WTO-aligned Incoterms and India's internal customs practices needs urgent alignment to preserve the economic competitiveness of Indian trade.

Further, the inconsistency in how customs officials interpret and apply Incoterms has been a recurring concern. The lack of formal training, combined with procedural ambiguities, often leads to arbitrary decisions, especially in decentralised ports and customs stations. While some ports, particularly the major ones, demonstrate a commendable grasp of these trade terms, smaller customs offices often rely on subjective or outdated interpretations. This not only creates unpredictability but also erodes trader confidence and increases litigation.

[58] ICC India and FIEO, *Model Trade Contract Templates for Indian Exporters* (2023).

Lastly, exporters and importers face several practical hurdles in complying with Incoterms effectively, including language barriers, low contractual literacy, and poor inter-departmental coordination. However, the study also points towards viable solutions such as incorporating Incoterms education in customs training, developing standardised templates, encouraging electronic data harmonisation, and establishing a national helpdesk for trade clarifications.

In sum, while Incoterms are a powerful tool for clarifying trade responsibilities, their impact on legal and fiscal outcomes in Indian trade cannot be ignored. For India to truly harness the efficiency promised by these terms, a more consistent, transparent, and well-informed application is essential both at the level of regulation and ground-level enforcement. Bridging this gap would not only enhance compliance but also promote India's ambitions of being a reliable and efficient trading hub in the global marketplace.

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