

The end of DDP – what next for e-commerce?

What are incoterms?

Incoterms are internationally recognised and standardised trade terms that govern the transfer of risk and liability between buyers and sellers. They are used in approximately 90% of all international sales contracts. Incoterms are revised once every 10 years to keep in line with developments in international trade. The next version is due to be published in September 2019 and take effect on 1 January 2020.

A common incoterm used in sales contracts of e-commerce operators is DDP (Delivered Duty Paid), as it ensures the smoothest possible customer experience. Customers will know exactly what they need to pay, and usually not have their item held by Customs pending payment of duties and taxes or issuance of licenses. For the seller, it increases commercial certainty and the ability to price post-importation costs with some accuracy.

However, the DDP term assigns maximum responsibility to the seller, including requirements for the application for any import approvals and licenses, import clearance and payment of any applicable duties and taxes in the country where the buyer is based. It requires the seller to comply with legislation in countries where it may have no presence, and therefore possibly rely on third party logistics providers for compliance and efficiency.

One of the anticipated changes is the disappearance of this DDP term. The commercial difficulty and sometime regulatory impossibility of applying a DDP term in practice has triggered the ICC to abolish it. Early indications are that the DDP term may be replaced with two new incoterms in 2020:

- DTP (Delivered at Terminal Paid); and
- DPP (Delivered at Place Paid, e.g. buyer's location).

Why is the disappearance of DDP relevant to e-commerce operators?

Clearly the disappearance of an incoterm that an e-commerce operator is likely to rely on, in practice if not in contract, has an impact on their business. The proposed new terms may not resolve all the practical and regulatory issues that companies struggled with when using a DDP term.

Regardless, in our experience e-commerce operators are often unaware of the terms of trade they are using, much less the implications of such terms on their business, their third party logistics providers and their customers. They usually rely almost entirely, sometimes even blindly, on the services of a third party. This may very well lead to inefficiencies in their supply chain, hidden unnecessary costs, and unknown legal liabilities.

E-commerce operators operating on a DDP term today will need to update their contracts with their third party providers in destination markets to incorporate a new incoterm, which should clearly define where their risk passes and responsibility ends.

On an operational level, no major changes are anticipated. E-commerce operators today engage a third-party provider to clear customs in a local market and to deliver the goods to the end-customer's chosen address. What e-commerce operators may not have appreciated is how service providers price their services, whether such service providers ever (need to) take title to products, and what regulatory or commercial liabilities the e-commerce operators themselves are taking on.

Based on our experience, customs officials tend to see e-commerce operators as 'easy targets' as they often lack dedicated teams of customs specialists that have experience in customs matters. When challenged, e-commerce operators look to their service providers to manage customs queries, whose commercial interests may not be aligned. New start-up e-commerce operators also tend to lack strong internal controls and place heavy reliance on their service providers without sufficient oversight. This coupled with a strong focus on speed of delivery, tends to lead to higher declaration error rates.

How we can help

PwC can help e-commerce operators take this opportunity to thoroughly understand the terms of trade they are using. Companies with limited knowledge of which incoterms they are using should examine whether they are most appropriate for their business and update them as necessary. In addition, their internal controls should be strengthened, for example by putting the right key performance indicators in place and by conducting regular broker reviews to ensure they are being met. All this will limit their commercial and legal liabilities, and ensure their service providers take compliance seriously.

Let's talk

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