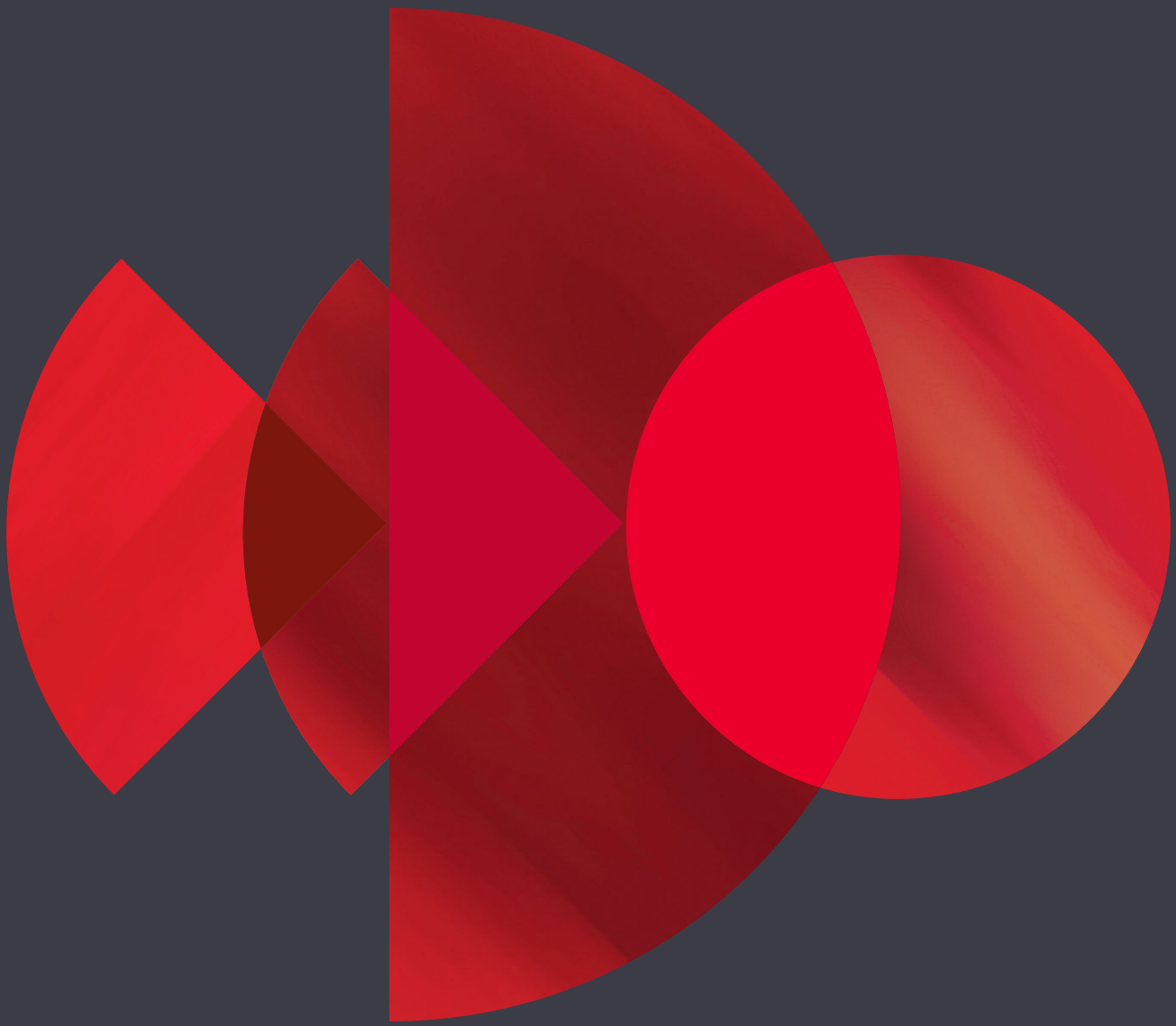
Deneys

The Big Read Book Series Volume 33

Choice of Incoterms International Sales and Insurance Implications

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As the world moves

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Dear Reader

Welcome to *The Big Read Book on the Choice of Incoterms International Sales and Insurance Implications*. In today's interconnected trading environment, the selection of the appropriate Incoterm is far more than a contractual formality. It determines the allocation of risk, responsibility, cost, and insurance obligations between buyers and sellers, often with significant commercial consequences. As businesses navigate increasingly complex supply chains and cross-border transactions, understanding the legal and practical implications of Incoterms has become essential. In this volume, our authors explore the relationship between Incoterms, sales contracts, and insurance arrangements, providing valuable insights into how these internationally recognised trade terms can influence liability, risk transfer, and the protection of commercial interests.

Through a collection of expert perspectives, this book aims to equip readers with a deeper understanding of the considerations that should inform the choice of Incoterms in both domestic and international trade. To explore previous volumes in The Big Read Book series, please click here.

Andrew Robinson and Nicholene Mazibuko draw on their experience in shipping, marine insurance and commercial law to examine an area of trade practice that is often overlooked, yet fundamental to the effective management of commercial risk. Their contributions provide practical guidance for businesses, insurers and legal practitioners seeking to navigate the complexities of modern trade with greater certainty and confidence.

1 Introduction

1.1 Most international sales have four components:

- A contract of purchase and sale; a contract for some mode of carriage; a contract for the insurance of the goods; and a mechanism to effect payment.

- In the negotiations, the parties will determine each other's obligations – who has to deliver the goods and where; who must arrange and pay for the goods to be carried to their destination; who must insure the goods and pay the premium. Incoterms, short for International Commercial Terms, assist enormously in this regard.

- Incoterms is a set of eleven internationally recognised rules published by the International Chamber of Commerce (ICC) that define the responsibilities of sellers and buyers in the sale of goods. Each Incoterm rule specifies who is responsible for paying for and managing shipment, insurance, documentation, customs clearance and other logistical activities. They are most commonly incorporated into the contractual terms by reference.

- The Incoterms rules can be used for both international and domestic transactions.

- First introduced in 1936, they have been revised periodically. The most recent revision was in 2020 and reflects evolving practices in global trade.

1.2 Incoterms do not address all the conditions of a sale. They do not identify the goods being sold, list the contract price, reference the method or timing of payment, determine when title or ownership passes from seller to buyer, specify which documents must be provided to facilitate customs clearance, or address liability for failure to provide conforming goods, delayed delivery or dispute resolution mechanisms.

1.3 Incoterms are not laws enacted by governments but rather guidelines that become contractually binding when expressly incorporated into a sales contract.

1.4 When incorporating Incoterms into a contract, the parties must state the abbreviated name of the rule, the named place and the version year. For example, "CIF Rotterdam, Incoterms 2020". Failure to do so may well lead to difficulties. For example where a term that appears to be an Incoterm is used – such as "CIF Rotterdam" only – it will be necessary to determine, with reference to the law applicable to the contract, what that term actually means.

1.5 Incoterms are often applied incorrectly and do not reflect the intended reality of the sale, particularly with regard to containerised cargo. Great care should be taken in making sure that the right term is being used for the shipment in question.

1.6 Where sales are made against letters of credit, banks will only release funds to sellers when documents are presented that match the applicable terms of sale, and care must be taken to ensure that the incorporated terms are appropriate for the method of carriage.

1.7 For insurers, the question of when a seller passes risk of loss or damage in the goods is of paramount importance, because the terms of insurance will always deal with when risk attaches – and it is at that point that an insurer usually goes on risk.

1.8 Delivery by the seller to the buyer remains a key event. Generally speaking, once the seller has effected proper delivery, the buyer is obliged to pay the purchase price. Where the goods are lost or damaged after delivery, the buyer's usual recourse is to the policy of insurance.

2 The eleven Incoterms 2020

2.1 The 2020 Incoterms are divided into two categories of rules based on the intended method of transport.

2.2 Seven rules are designed for any mode or modes of transport (road, rail, air, sea or any combination thereof) and can be used for containerised shipments:

1. EXW – Ex Works (insert named place of delivery)

- The seller is obliged to place the goods at the disposal of the buyer at the seller's premises or another named place. Risk passes at that point. The seller does not need to load the goods on any collecting vehicle nor clear them for export.

2. FCA – Free Carrier (insert named place of delivery)

- The seller must deliver the goods to the carrier or another person nominated by the buyer at the seller's premises or another named place.
- Risk passes to the buyer at that point. Under Incoterms 2020, FCA allows for the issuance of a bill of lading stating that the goods have been "shipped on board" whereby the carrier confirms receipt "on board" of the goods reflected in the bill of lading.

3. CPT – Carriage Paid To (insert named place of destination)

- The seller must deliver the goods to the carrier or another person nominated by the seller at an agreed place. Risk passes at that point.
- The seller must contract for and pay the costs of carriage necessary to bring the goods to the named place of destination.
- The buyer must arrange the insurance cover.

4. CIP – Carriage and Insurance Paid To (insert named place of destination)

- The seller has the same responsibilities as under CPT, but must additionally contract for insurance cover against the buyer's risk of loss of or damage to the goods during carriage. Risk passes on delivery.
- Under Incoterms 2020, the seller must obtain insurance complying with Institute Cargo Clauses (A), "all risks" or maximum cover, including, it is arguable, the related War and Strikes clauses. This is a significant change from Incoterms 2010, which required only minimum cover under Institute Cargo Clauses (C).

5. DAP – Delivered at Place (insert named place of destination)

- The seller delivers when the goods are placed at the disposal of the buyer on the arriving means of transport, ready for unloading at the named place of destination.
- The seller bears all risks involved in bringing the goods to the named place. Risk passes to the buyer on delivery.
- The seller has no obligation to arrange the insurance cover but may do so for itself.

6. DPU – Delivered at Place Unloaded (insert named place of destination)

- This term replaced the former DAT (Delivered at Terminal) under Incoterms 2010. The seller delivers when the goods are unloaded and placed at the disposal of the buyer at a named place of destination.
- The seller bears all risks involved in bringing the goods to, and unloading them at, the named place. Risk passes to the buyer on delivery.
- The seller may insure the goods for itself.

7. DDP – Delivered Duty Paid (insert named place of destination)

- The seller delivers the goods cleared for import on the arriving means of transport, ready for unloading at the named place of destination. Risk passes to the buyer on delivery.
- The seller bears all costs and risks involved in bringing the goods to the place of destination and must clear the goods for both export and import, paying any duty for both.
- The seller may insure the goods for itself.

2.3 Four rules are designed exclusively for sea and inland waterway transport and are most suitable for bulk and break-bulk cargoes. They should never be used for containerised shipments:

1. FAS – Free Alongside Ship (insert named port of loading)

- The seller delivers when the goods are placed alongside the vessel nominated by the buyer at the named port of shipment.
- The risk of loss of or damage to the goods passes when the goods are alongside the ship, and the buyer bears all risks and costs from that moment onwards.

2. FOB – Free on Board (insert named port of loading)

- The seller delivers the goods on board the vessel nominated by the buyer at the named port of shipment.
- The buyer becomes responsible for bearing all costs and risks from the moment the goods are on board the vessel.

3. CFR – Cost and Freight (insert named port of destination)

- The seller delivers the goods by loading them on board the vessel.
- The risk of loss of or damage to the goods passes when the goods are on board the vessel.
- The seller must contract for and pay the costs and freight necessary to bring the goods to the named port of destination.

4. CIF – Cost, Insurance and Freight (insert named port of destination)

- CIF is restricted to sea and inland waterway transit.
- The seller delivers the goods by loading them on board the vessel.
- The risk of loss of or damage to the goods passes when the goods are on the ship.
- The seller must contract for and pay the costs and freight necessary to bring the goods to the named port of destination and must additionally contract for insurance cover against the buyer's risk of loss of or damage to the goods during the carriage.
- Under CIF terms, the seller is required to obtain only minimum insurance cover, complying with Institute Cargo Clauses (C) and related War and Strikes clauses.

3 The importance of "named place or port"

3.1 It is important that, wherever possible, the place of collection or delivery be identified as precisely as possible, particularly when it comes to warehouses and terminals.

3.2 The maritime terms - FAS, FOB, CFR and CIF for example - should never refer to an inland destination, but should identify the port and, where relevant, any berth or terminal.

4 Relevance to marine insurance

4.1 The choice of Incoterm in a sale of goods contract is of direct and practical importance to the marine cargo insurance market.

4.2 Each Incoterm rule specifies the point at which the risk of loss of or damage to the goods passes from the seller to the buyer. This is called the "delivery" point in the Incoterms rules and this risk transfer point is a critical factor in establishing which party has or had an insurable interest in the goods. A party that does not bear the risk of loss at a given stage of transit has no insurable interest in the goods at that stage, and any insurance arranged for the goods for that period would be without any subject matter.

4.3 Marine cargo underwriters rely on the Incoterm rule specified in the contract of sale to determine which party bears the risk during the period of transit and, accordingly, which party should be the insured under the marine cargo policy.

4.4 The distinction between maritime-only terms (FAS, FOB, CFR and CIF) and multimodal terms (EXW, FCA, CPT, CIP, DAP, DPU and DDP) has significant implications for marine insurance. Approximately 70% of all world trade is transported in containers, and contracts of carriage for containerised goods are often on a multimodal and warehouse-to-warehouse basis rather than on a port-to-port basis.

4.5 Maritime-only terms such as FAS, FOB, CFR or CIF can and very often do create problems for sales involving containerised goods where multimodal carriage is almost inevitable. These containerised goods are often delivered to a carrier at an inland place of receipt or to a port-side container terminal days before being loaded on board the carrying vessel. If a loss occurs in the country of origin before the goods are placed on board, a dispute may arise about whether the seller or the buyer bears the loss. For containerised shipments, the ICC recommends FCA or CIP in preference to FOB or CIF.

4.6 The "C" terms (CFR, CIF, CPT and CIP) are "shipment" terms, not "arrival" terms. This distinction is of fundamental importance.

- Under all "C" terms, the risk of loss of or damage to the goods passes to the buyer before the main leg of transport commences.
- At the point of delivery in the country of origin, the risk passes to the buyer, despite the seller having contracted and paid for the main carriage and, in the case of CIF and CIP, the insurance.
- The buyer, rather than the seller, therefore bears the risk that the goods may not arrive, or arrive damaged, at their destination. This means that the insurance arranged by the seller under CIF or CIP is procured for the benefit of the buyer, who holds the insurable interest during the transit. Where the sale is on CFR or CPT terms, the buyer must ensure that it has appropriate cover from the moment it is on risk.

4.7 In practice, when goods are sold on terms other than CIF or CIP, neither party is contractually obliged under the Incoterms rules to arrange cargo insurance, and the party bearing the risk during transit must make its own insurance arrangements or accept the risk of uninsured loss.

5 Terms where the seller is contractually obliged to arrange insurance of the goods

5.1 Only two of the eleven Incoterms® 2020 rules require the seller to procure cargo insurance for the buyer's benefit. These are CIF (Cost, Insurance and Freight) and CIP (Carriage and Insurance Paid To).

5.2 Under CIF terms, the seller must contract for insurance cover against the buyer's risk of loss of or damage to the goods during the sea carriage from the port of shipment to the named port of destination.

- The seller is required to obtain insurance at the minimum level of cover, being Institute Cargo Clauses (C) or similar clauses.
- Institute Cargo Clauses (C) provide cover for a number of listed (named) perils, subject to specified exclusions, and constitute what is commonly described as "minimum cover".
- The insurance must cover at least 110% of the value of the goods as provided in the sales contract. Should the buyer wish to have more comprehensive insurance protection, it must either agree as much expressly with the seller or make its own additional insurance arrangements.
- The insurance policy procured by the seller must be transferable so that the buyer, as the party bearing the risk during transit, can claim directly against the insurer in the event of loss or damage.
- The CIF rule is restricted to sea and inland waterway transport. CIF is most commonly used for bulk commodity shipments transported by sea, where minimum cover may be adequate.

5.3 Under CIP terms, the seller must contract for insurance cover against the buyer's risk of loss of or damage to the goods during the carriage to the named place of destination.

- A key change introduced by Incoterms 2020 is that CIP requires the seller to obtain insurance complying with Institute Cargo Clauses (A), being "all risks" or maximum cover, rather than the minimum cover under Institute Cargo Clauses (C) that was required under Incoterms® 2010.
- Institute Cargo Clauses (A) provide cover against "all risks" of loss of or damage to the goods, subject only to specified exclusions.
- As with CIF, the insurance must cover at least 110% of the contract value.
- CIP is suitable for any mode of transport or any combination of modes, making it the appropriate term for multimodal and containerised shipments.
- CIP is used for manufactured and higher-value goods transported by multiple modes warranting broader protection.

5.4 The difference in insurance levels between CIF and CIP reflects the ICC's recognition of how each term is used.

5.5 Under both CIF and CIP, it is important to emphasise that although the seller procures and pays for the insurance, the insurance is for the buyer's benefit. The buyer is the beneficiary of the policy because it is the buyer who bears the risk of loss or damage from the point of delivery.

6 Terms where the buyer must insure the goods

6.1 Under Incoterms other than the CIF and CIP rules, there is no Incoterm obligation on either party to procure cargo insurance. The party that bears the risk of loss during transit ought to arrange its own insurance cover. The specific point at which that risk transfers from seller to buyer under each of these terms is set out above.

6.2 It is worth noting that under CFR and CPT terms, the seller pays for carriage to the destination but the risk nonetheless transfers to the buyer at the point of shipment or delivery to the first carrier respectively. This means that the buyer is exposed to transit risk for the entirety of the main carriage without any insurance unless the buyer independently arranges its own cover.

6.3 The absence of a seller's obligation to insure is the principal difference between CFR and CIF, and between CPT and CIP.

6.4 It is prudent for any party bearing the risk of loss during transit to arrange appropriate marine cargo insurance. Reliance on the absence of a contractual insurance obligation under the Incoterms rules can expose the buyer (or, in the case of the "D" terms, the seller) to the full financial consequences of an uninsured casualty.

6.5 Put simply, the buyer and seller must each assess where they are at risk and insure the goods and risks appropriately.

7 Practical examples

7.1 CIF sale of bulk commodities (sea freight):

- A seller in Vietnam agrees to sell 100,000 tonnes of cement to a buyer in Spain on the terms "CIF Barcelona, Spain, Incoterms 2020."
- The seller delivers the cement by loading it on board the vessel at Da Nang Port. At that moment, the risk of loss or damage transfers to the buyer.
- The seller contracts and pays for the ocean freight from Da Nang to Barcelona and arranges insurance under Institute Cargo Clauses (C), minimum cover, in favour of the buyer, covering the goods up to the port of Barcelona.
- The buyer completes import clearance in Barcelona. A marine or ocean bill of lading is issued by the carrier hired and paid for by the seller.
- In this example, if the buyer wishes for broader protection, for instance, against risks excluded by Clause (C) such as earthquake, volcanic eruption or washing overboard, the buyer must either negotiate with the seller for enhanced cover or arrange supplementary insurance at its own cost.

7.2 CIP Sale of Manufactured Goods (multimodal transport):

- A seller in Germany, agrees to sell new motor vehicles to a buyer in Beijing, China, on the terms "CIP Beijing, China, Incoterms 2020."
- The seller delivers the vehicles to the first carrier, a rail company, at its facilities in Stuttgart, with export clearance completed. At that moment, the risk transfers to the buyer. The carrier transports the vehicles by rail to the port of Hamburg, then by ocean vessel from Hamburg to the port of Shanghai, and finally by rail again to Beijing. The buyer completes import clearance in Shanghai.

- The seller arranges and pays for the entire multimodal carriage and procures insurance under Institute Cargo Clauses (A), all risks cover, in the buyer's favour, covering the goods from Stuttgart all the way to Beijing. A single multimodal bill of lading is issued.
- This example illustrates the higher level of insurance protection mandated under CIP compared to CIF, reflecting the greater exposure inherent in multimodal transit of manufactured goods.

7.3 FOB sale (Buyer arranges insurance): A seller in Durban, South Africa, agrees to sell agricultural products to a buyer in Rotterdam on the terms "FOB Durban, Incoterms 2020."

- The seller delivers the goods by loading them on board the vessel nominated by the buyer at the port of Durban.
- The risk transfers to the buyer at that point.
- The buyer arranges and pays for the ocean freight from Durban to Rotterdam and is solely responsible for arranging its own marine cargo insurance for the voyage. The seller has no obligation to insure the goods. If the buyer fails to arrange insurance and the goods are lost or damaged during the ocean transit, the buyer bears the full loss.

7.4 EXW (maximum buyer responsibility):

- A seller in a factory in China agrees to sell electronics to a buyer in Johannesburg, South Africa, on the terms "EXW Seller's Warehouse, Incoterms 2020".
- The seller makes the goods available at its warehouse. The buyer arranges collection, inland transport to the port of departure, export customs clearance (noting that in practice EXW can create difficulties where the buyer is a foreign party unable to complete export formalities in the seller's country), ocean carriage, import clearance and delivery to Johannesburg.
- The buyer bears the risk from the moment the goods are placed at its disposal at the seller's warehouse and is responsible for arranging insurance for the entire journey from warehouse to final destination.

7.5 CFR versus CIF (the insurance gap):

- A seller in Mumbai agrees to sell steel to a buyer in Mombasa on the terms "CFR Mombasa, Incoterms 2020."
- The seller pays the freight to Mombasa, but the risk of loss transfers to the buyer when the goods are loaded on board the vessel in Mumbai.
- Unlike CIF, the seller has no obligation to arrange insurance. If the cargo is lost or damaged during the voyage from Mumbai to Mombasa, the buyer bears the entire loss unless it has independently arranged marine cargo insurance.
- Had the parties agreed to CIF Mombasa instead, the seller would have been obliged to arrange at least minimum insurance cover under Institute Cargo Clauses (C) for the buyer's benefit, providing the buyer with a safety net against transit losses.

7.6 Containerised goods sold on FOB terms (the insurance gap)

- A seller in Johannesburg sells perishable goods to a buyer in London on FOB (Johannesburg) terms. The buyer arranges to insure the goods for its own account.
- The seller arranges for the carrier to deliver the empty reefer boxes to its warehouse in Johannesburg. The carrier then arranges for the filled reefers to be delivered by road to the Durban Container Terminal and issues a bill of lading reflecting the place of receipt as Johannesburg and the place of delivery as a warehouse London. The ports of loading and discharge are reflected as Durban and London Gateway respectively
- The goods are damaged whilst in the stack in Durban, prior to being loaded onto the vessel, i.e. before delivery has been effected under the FOB term.

- As the goods had not been delivered on board, risk had not passed to the buyer. So the buyer had no insurable interest. The seller had not insured the goods and had no recourse under the buyer's insurance, as the seller was not a party to the insurance contract.

8 Key considerations

8.1 It is important to always specify the full Incoterm, the named place and the version year in the sales contract. Failure to specify the version year can create ambiguity, particularly where the same Incoterm carries different obligations under different editions (as with CIP, which required only minimum insurance cover under Incoterms 2010 but requires all-risks cover under Incoterms 2020).

8.2 Do not use maritime-only Incoterms (FAS, FOB, CFR and CIF) for containerised cargo or for transport by road, rail or air. Using these terms for non-maritime transport is a common error that can create legal ambiguity regarding the point at which risk transfers.

8.3 Avoid mixing Incoterms with inconsistent freight, insurance or risk provisions elsewhere in the contract. A contract that specifies "DDP Buyer's Dock" but then provides that the buyer is responsible for shipping costs and that risk transfers at the seller's dock creates internal contradiction and potential for dispute.

8.4 Parties should confirm that their insurance arrangements align with the chosen Incoterm. Where the Incoterm does not oblige the seller to insure (i.e. all terms other than CIF and CIP), the party bearing the transit risk must independently arrange adequate cargo insurance.

8.5 Certain jurisdictions impose restrictions on the use of particular Incoterms. Countries including Brazil, Kenya and Mexico restrict foreign insurers from providing coverage under CIF and CIP. Some jurisdictions impose practical limits on DDP, where a foreign seller cannot legally act as importer of record. It is therefore important for compliance requirements in both origin and destination countries to always be verified.

8.6 There are risks at stages of the transit that are not dealt with in the Incoterms which need to be covered.

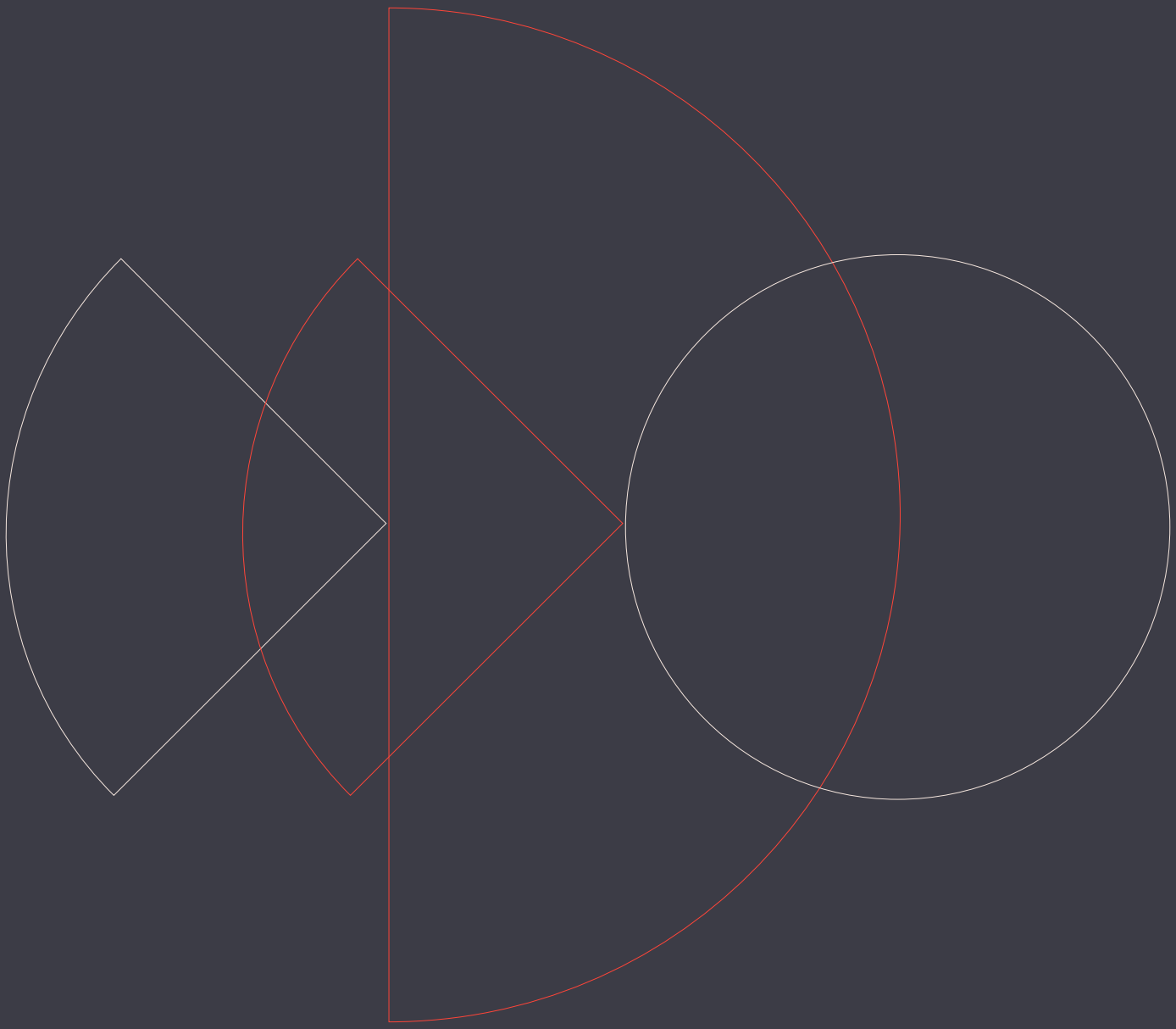
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