FOB vs. Incoterms

• This material has been prepared for CITT discussion purposes only and is not intended as legal or professional advice regarding selection of FOB terms or other issues affecting liability, obligations, or responsibilities, of buyers and sellers regarding the sale of goods.

• All content has been prepared for illustrative purposes only.
FOB vs. Incoterms

• Why do companies use delivery terms?
  – Provide a “shorthand” method for assigning responsibilities to buyers and sellers
  – Indicate where cost, and risk of loss, transfer from the seller to the buyer
  – Simplify complexities of logistics
  – Provide a standard, repetitive process for trading partners
FOB vs. Incoterms

FOB
1700's

AFTD
(American Foreign Trade Definitions)
1919 (RAFTD in 1941)
(Recommended to use Incoterms in 1980)

Incoterms
1936 – Present
(Now recommended for International trade worldwide)

UCC
(Uniform Commercial Code)

All included a term for "FOB"

But North American shippers have been using these FOB terms since 1952!
FOB vs. Incoterms

FOB: International vs Domestic Shipments

- “FOB” as an Incoterm is now recognized worldwide for international shipments …
- … but in North America (Canada, USA & Mexico) FOB is also used domestically (originating from AFTD and UCC “FOB” terms)
FOB vs. Incoterms

National Foreign Trade Council
(Developed AFTD in 1919 – Revised 1941)

• Adopted at a Conference participated in by committees representing the:
  • Chamber of Commerce of U.S.A.
  • National Association of Manufacturers
  • American Manufacturers Export Association
  • Philadelphia Commercial Museum
  • American Exporters and Importers Association
  • Chamber of Commerce of New York State
  • New York Produce Exchange
  • New York Merchants Association
FOB vs. Incoterms

• The Uniform Commercial Code (UCC) was developed to address two growing problems in U.S. business:
  – The increasingly unmanageable legal and contractual requirements of doing business
  – Differences in state laws that made it difficult for business people from different states to do business with one another

Developed under the direction of the National Conference of Commissioners on Uniform State Laws, the American Law Institute, and the American Bar Association (ABA)
• First published in 1952, the UCC is a "code" or a "collection of statutes¹", not a federal law, that seeks uniformity among the states by providing legal rules and regulations governing commercial or business transactions.

• Currently, the UCC has been enacted, with some local variation, in all 50 states, the District of Columbia, and in some U.S. territories.

¹Fullerton & Knowles

Note that the emphasis here is on standardizing commercial transactions between States, i.e. ‘domestic’ transactions.
FOB vs. Incoterms

UCC Table of Contents

Article 1: General Provisions
Article 2: Sales (Covers the sale of goods)
Article 2A: Leases (Covers the lease of goods)
Article 3: Commercial Paper (Promissory notes and bank checks)
Article 4: Bank Deposits and Collections (Relationship between banks for checks)
Article 4A: Funds Transfers (Covers modern electronic funds transfers)
Article 5: Letters of Credit
Article 6: Bulk Transfers (The "bulk transfer" of all of a business’ inventory)
Article 7: Warehouse receipts, Bills of Lading and other documents of title
Article 8: Investment Securities
Article 9: Secured Transactions (Covers security interests in personal property, including accounts receivable, equipment and inventory)

The UCC concerns many commercial issues, including the sale of goods, banking and security interests. It does not apply to other areas including the sale of real estate, service agreements or employment contracts.
FOB vs. Incoterms

I’m so confused...

¹American Foreign Trade Definitions 1919
²Incoterms Rules History, International Chamber of Commerce
³Frecon, A. (1986) 'Practical considerations in drafting F.O.B. terms in international sales'
FOB vs. Incoterms

September/October 2004 (Excerpt) Volume XXV Issue 7

UCC Revision Drives Use of Incoterms for Domestic Commerce

With little fanfare, antiquated shipping and delivery terms are being removed from the Uniform Commercial Code governing domestic commerce within the U.S. But fear not, shippers – the International Chamber of Commerce’s longstanding Incoterms provide a logical and vastly simplified successor.

The deleted UCC terms were deemed to be inconsistent with modern usage in a draft revision completed in February (2004) by the American Law Institute and the National Conference of Commissioners on Uniform State Laws. The revised UCC awaits approval by each state legislature.
• Domestically, the definition of these terms, as well as a few others, derive from a combination of:
  
  (1) the provisions of the Uniform Commercial Code (the UCC)
  
  (2) the National Motor Freight Classification (the NMFC)
  
  (3) industry usage

• In other words, they have arisen over time through their use by business people and the transportation industry
The most commonly used domestic shipping terms of sale in North America are:

1. FOB Origin, Freight Prepaid
2. FOB Origin, Freight Collect
3. FOB Origin, Freight Prepaid & Charged Back
4. FOB Destination, Freight Prepaid
5. FOB Destination, Freight Collect
6. FOB Destination, Freight Collect and Allowed
**FOB ORIGIN TERMS**

**Key Point:** 
**Title** to the goods (in transit) **transfers** to the Buyer **at the Seller’s shipping dock**

(i.e. Buyer ‘owns’ the goods in transit)
FOB vs. Incoterms

FOB DESTINATION TERMS

Key Point:

**Title** to the goods (in transit) **transfers** to the Buyer **at the Buyer’s shipping dock**

(i.e. Seller ‘owns’ the goods in transit)
Which FOB term should I use? The Buyer and Seller should decide and agree between themselves.
### FOB vs. Incoterms

#### What the Carrier Sees

![Bill of Lading Image](Image)

<table>
<thead>
<tr>
<th>Seller</th>
<th>Buyer</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="Image" alt="Factory Image" /></td>
<td><img src="Image" alt="Factory Image" /></td>
</tr>
</tbody>
</table>

---

**FOB** refers to the point of loading, where the seller's responsibility ends, and the buyer takes full responsibility from that point onwards.

**Incoterms** are a set of internationally recognized terms that define the division of risks and responsibilities between the seller and the buyer at various points in the supply chain. Each Incoterm specifies who is responsible for the transport of goods, the cost of transport, the risk of loss or damage, and the title to the goods.

---

**CITT Webinar Series**

---

Page 16-2
FOB vs. Incoterms

Why (UCC) FOB is Still Customary in the U.S. and Canada

- There are only 6 terms: 3 origin & 3 destination terms
- Long-standing use
- They clearly indicate for both buyer and seller:
  - Who pays for freight charges
  - Who owns the goods in transit
  - Who is responsible for filing freight claims
FOB vs. Incoterms

• Hesitation to make changes that might upset or confuse customers, or send customers to the competition

• Knowledge gap:
  – Confusion about what FOB really means
  – Many North American companies see Incoterms as only for international use
  – ICC recommends Incoterms DAT and DAP for domestic use, but those terms make reference to “Customs” and “vessel”, causing many shippers to think they are still for international use only
FOB vs. Incoterms

• Ability to use UCC FOB terms throughout the NAFTA region

• No mention of Customs brokerage fees, duties or taxes (Note: NRI exception to the traditional process of charging Customs formalities to the inland Buyer)

• No mention of insurance or ancillary charges

• Complemented by customary use of the bill of lading with respect to billing terms, cargo insurance and claims process
NRIs represent a likely exception to the use of FOB as a shipping term for Transborder shipments due to NRI payment of Customs formalities.
FOB vs. Incoterms

INCOTERMS 2010

• Multimodal Terms
  – EXW
  – FCA
  – CIP
  – CPT
  – DAP
  – DAT
  – DDP

• Ocean Terms
  – FAS
  – FOB
  – CFR
  – CIF

UCC FOB TERMS

• FOB Origin Freight Prepaid
• FOB Origin Freight Collect
• FOB Origin Freight Prepaid and Charged Back
• FOB Destination Freight Prepaid
• FOB Destination Freight Collect
• FOB Destination, Freight Collect and Allowed
FOB vs. Incoterms

- FOB is confusing for many shippers
- FOB should be stated completely
- Domestic shipments simply marked “Prepaid” are presumed to be “FOB Origin, Freight Prepaid”...but you never know what a shipper does, or does not, know about the appropriate use of FOB
- In North America some shippers use FOB as a domestic term, some use it as an Incoterm, and some just don’t want to know
In Summary:

- Incoterms “FOB” is used worldwide for international shipments ...
- ... but in North America (Canada, USA & Mexico) it is also used domestically (originating from “UCC” FOB terms)
Webinar Series
Presents:
2017 Salary Survey Results

Presented by:
Lou Smyrlis, Group Publisher, Truck News,
Truck New West, Today’s Trucking

March 29, 2017
12:00-1:00 pm EST
-- FOB vs. Incoterms --


FOB vs. Incoterms

FOB vs. Incoterms