Incoterms, Artificial Intelligence, and the Future of International Trade Negotiations

Artificial Intelligence (AI) will transform international transactional contract negotiations by empowering unsophisticated parties to optimize contractual language, reducing compliance risks and enhancing efficiency. Contracts can be as simple as a verbal agreement to pay $3.65 for a Caffè Misto at your local Starbucks. In globalized businesses, contracts can also take on the complexity of cross-border international transactions.[[1]](#endnote-1) The objective theory of assent requires contracting parties to meticulously detail the allocation of responsibilities and liabilities inherent in international trade.[[2]](#endnote-2) As documents get longer and more complex, the legal expert-driven negotiations get more expensive and are more likely to include misunderstandings—or fall through altogether.[[3]](#endnote-3)

The International Chamber of Commerce (ICC) sought to simplify the negotiation of cross-border transactions by creating Incoterms, a set of discrete pre-negotiated distributions of cross-border responsibilities and liabilities.[[4]](#endnote-4) For example, by listing the Incoterm “DDP Incoterms 2020” in a contract, the parties agree to a very specific arrangement where, among other things, the seller agrees to pay for duties and import clearances.[[5]](#endnote-5) Prior to Incoterms, this arrangement would have taken several pages to describe contractually.[[6]](#endnote-6)

Under Incoterms, parties can argue for which Incoterm is most appropriate rather than arguing over the specific legal verbiage of a contract.[[7]](#endnote-7) This provides three advantages: (1) standardization, (2) efficiency, and (3) simplification of the negotiation process.[[8]](#endnote-8) Of note is the simplification of the negotiation process because it allows unsophisticated parties to participate.[[9]](#endnote-9)

Parties with no legal education, an unsophisticated party in contract parlance, can quickly learn the eleven Incoterms and use them when constructing transactional documents.[[10]](#endnote-10) This presents an excellent cost-saving opportunity because less skilled, and therefore less expensive, workers can be used to construct and negotiate cross-border transactions.[[11]](#endnote-11) For example, a contract specialist might be informed that they can agree to “DDP” for X price or “FCA” at Y price. However, the unsophisticated parties must still be careful because the “incorrect use of Incoterms may bind the parties to obligations that… are not only beyond their understanding but also beyond their capabilities.”[[12]](#endnote-12)

To avoid the incorrect use of Incoterms and the accompanying risks of non-compliance, companies often take overbroad measures to apply blanket policies on Incoterms selection where a more tailored approach could result in savings.[[13]](#endnote-13) For example, “one-third of eligible exports miss out on the reduced or exempted duties.”[[14]](#endnote-14) This missed opportunity is a net loss to contracting parties and the consumers who will bear the passed-on costs.[[15]](#endnote-15) However, companies have done the math, and the risk of a tailored approach’s misapplication outweighs the potential cost savings.[[16]](#endnote-16) Hiring sophisticated analysts will also end up a losing proposition when all costs are accounted for.[[17]](#endnote-17)

AI can assist unsophisticated parties in making tailored selections of incoterms with risk profiles similar to those of sophisticated parties.[[18]](#endnote-18) AI can use mathematical modeling to select incoterms and optimize value better than blanket “established practices” because AI can meticulously account for all relevant decision factors.[[19]](#endnote-19) The mathematical modeling of AI allows unsophisticated parties to tailor their Incoterm selection to meet the needs of individual transactions.[[20]](#endnote-20) The cost savings of AI offset the costs of creating a model to optimize Incoterm selection without the need for expensive, sophisticated employees.

In conclusion, pre-negotiated Incoterms facilitate cross-border transactions, and the selection of Incoterms can be optimized most efficiently through AI. Few studies have sought to describe the optimal mathematical modeling to produce balance compliance risks most effectively.[[21]](#endnote-21) Likely, the path forward will be opaque because businesses with historical data on executed transactions will train internal generative AI models protected as trade secrets. In the public interest, an effort should be made to make these mathematical models publicly available so that global trade can be optimized.

1. Sharifah Saeedah Syed-Mohamed, *Goodbye Incoterms 2010, Welcome Incoterms 2020:*

   *A Brief Analysis*, 27 Waikato L. Rev. 62, 62 (2019). [↑](#endnote-ref-1)
2. *Id.* [↑](#endnote-ref-2)
3. *See id.*  [↑](#endnote-ref-3)
4. *Id,* at 63-65, 67. [↑](#endnote-ref-4)
5. *Id,* at 67, 70. [↑](#endnote-ref-5)
6. *See id,* at 67-68*.* [↑](#endnote-ref-6)
7. *See id.* [↑](#endnote-ref-7)
8. *See id.* [↑](#endnote-ref-8)
9. *See id.* [↑](#endnote-ref-9)
10. *See id,* at 70. [↑](#endnote-ref-10)
11. *See id.* [↑](#endnote-ref-11)
12. *Id, at* 76. [↑](#endnote-ref-12)
13. *See* Ralf W. Seifert & Philip Sieber-Gasser, *How AI could help navigate complex trade rules and save billions on tariffs*, Supply Chain (Jul. 4, 2024), https://www.imd.org/ibyimd/supply-chain/how-ai-could-help-navigate-complex-trade-rules-and-save-billions-on-tariffs/. [↑](#endnote-ref-13)
14. *See id.* [↑](#endnote-ref-14)
15. *See id.* [↑](#endnote-ref-15)
16. *See id.* [↑](#endnote-ref-16)
17. *See id.* [↑](#endnote-ref-17)
18. Marta Mańkowska & Monika Pettersen-Sobczyk, *Artificial Intelligence in Optimizing the Selection of Incoterms Rules in Cross-Border Trade. State of Knowledge and Needs for Further Research*, 32 International Conference on Information Systems Development 1 (2024). [↑](#endnote-ref-18)
19. *Id,* at 6. [↑](#endnote-ref-19)
20. *See* *id.* [↑](#endnote-ref-20)
21. *Id,* at 5. [↑](#endnote-ref-21)