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The study of transfer of risk in international trade contracts

Marjan Madadi Emamchai, *Ahmad Tajee

Department of Private law, Damavand Branch, Islamic Azad University, Damavand, Iran

Abstract
The contracts with the nature of the swap and ownership are the most important tools to get rid of communities from the one-dimensional economy, which the contract of sale is the main and the complete symbol of them. One of the most important issues in relation to such contracts is a transfer of risk issue in these cases. The importance of transferring exchange guarantees or risk in domestic and international contracts is an undeniable and obvious affair. After the conclusion of the contract, in fact, several events may change the initial state of the goods under the contract and cause damage to the product. The incidence of such damages may be happening in different stages, including before submitting, during transportation, during an evacuation and even after the submission. In the internal law of countries, there are predicted different rules to transfer risk from the affirmative party of the contract to the acceptor. In international documents relating to contracts, such as the UN Convention on the International Sale of Goods (CISG) and International Commercial Terms (Incoterms). These rules have mentioned. According to the mentioned words, this study assesses transfer of the risk in international trade contracts.

Keywords: Transferring the risk, the International Convention on the sale of goods, international commercial contracts

1. Introduction
The contracts in various social, individual, national and international aspects follow a foresight which for a long time ago, in the process of perfection spending various periods of its life. In the meantime, it seems that the largest share of developments belongs to its international trade agreements. The agreements that are under influence the political and economic factors of individuals in the international law, constantly changing and evolving in terms of standardization and creating a unique pattern so that most countries have followed the standardized regulations and have become consistent with these rules and have ignored their native regulations. In fact, this process does not violate the national legal culture and civilization, but rather benefit from the useful experience of mankind. As the wise professor of Iranian law states: We live in the era of knowledge and experience.an era that the dominance of formal logic on the wisdom is ending and it replaced by experience, observation, and induction. The life is not logical law; it is an experience.

The liabilities of losses on the products at a distance of conclusion of the agreement up to actual delivery at the customer's desired place, is an issue that for a long time has been considered by the parties to the contracts, especially sale in the international field because of the dimension of distance and the length of the transport route. For example, how long the seller will be responsible for damages to the product and risks and in other words, at what time and place the product will be transferred to the buyer? The answer to various legal systems in this regard are not the same? Therefore, efforts were made in the international arena for the integration of international sales rights that the results of them conventions and rules inserted by international organizations, including rules that have inserted as “Incoterms" in the standard terms of business International Chamber of Commerce and is widely used by businesses and enterprises around the world. Incoterms clearly determines three basic areas including cost, contractual obligations and risks and any rule of Incoterms represent a transferring the risk in certain places geographically and in these transmission factors such surrender and submit, the agreed time of delivery etc. Are essential. Considering that so far has released 8 versions that the latest version is Incoterms 2010. So we attempt to study the new version, especially changes in the time of transferring the risk.as well as the rule of International CISG is studied on many international commerce contracts.so in this paper, we are trying to investigate the subject of transfer of risk in the international contracts under international documents of Incoterms 2010, CISG and other international documents in the field of contracts.

2. Methodology
The method that is selected for identification and clarification of this article, is descriptive-analytical that is done based on library studies. In other words, firstly resources, including, books, articles, thesis, internet resources and present laws about the subject are collected, then by studying different views and comment about the topic, will try to deduce and analyze the issues.

2.1 The definition of a contract and its meaning in international law
The sense of the contract, in the international law, describes as: in the international law, a contract is an agreement that gives legal aspects to the obligations and obliges both parties toward it. The requirements of the contract are the competent parties, the subject of the contract, the mutuality of agreement, and the mutuality of commitment and in some countries (especially those which have the American law system). The contract is signed when the parties have reached an agreement and kindly in the commercial transactions, the agreement exists when the recommendation was definitely and unconditionally accepted by the other party (Tarom Seri, 1995) [25]. However, international treaties refer to contracts and transactions that are

essentially under civil law and subject to its rules and regulations. So its International description should not cause doubt in terms of its enrollment to the rules and regulations of civil rights.in other words either the abstract of contract and the title of "international treaty" have not any difference in terms of following of them from civil rights and as well as the eligibility of present rules and regulations in the civil rights but the international property of "treaty" word is merely applied to separate this sense that the parties of contract are trade with each other across borders or place of contract execution is overseas (Shirvy, 2011). These types of contract that has happened in spite of International features typically not related to state sovereignty.as a result will not be subject to rules of public international law. Therefore, such contracts despite the existence of foreign elements and its international character still remain subject to the provisions of civil (interior) law.in other words in cases "the international treaty" subjects to the obligations related to the transfer of goods or bought and sold commitments between the Parties 'natural or legal' or government agency is in two different countries because it is subject to civil law of a special country and on the other hand is not related to the sovereignty of countries. Thus do not include in the international law. Therefore, a contract in the interior law (and subject of civil rights) has not a basic difference with an international treaty in terms of nature, quality as well as the legal works and they completely be investigated in a legal line and its internationality is because of a foreign element such as different nationality of parties or the place of conclusion or the subject of contract that related to another country and don't have a relationship with sovereignty of states that is the main subject of international law (Zanjani, 1992) [26]. In this regard, some authors have acknowledged. As the contract in domestic law is a universal word, in international law, as well as is a general term that covers all agreements at the international level. Although Article 125 of the Constitution put it in the treaty, protocols, conventions etc. in fact, each of which is a sort of contract. The contract can cover both oral and the written agreement and formal treaties and simple agreements that don't require legislative approval (Azimi, 2000).

The concept of risk (exchange liability - the danger) in the international law

In international law, the used term to express the mentioned principle is "Risk". In describing the word of "risk" in the international contract states: Risk has different meanings, Regardless of the risk considered in the Vienna Convention and Incoterms 2000 that is Price liability, the sense of risk may contain, Price risk, Political risk, Commercial risk (Day, M.D, 1981) [6].

In relation to the meaning of liability in international contract states: These meanings may include situations such as waste, corruption, or damage to the sold cargo. A common characteristic in all these cases is that the loss of or damage must be coincidental. Therefore, it should not be created by means of an act or omission of an act of one of the parties to the contract. Therefore, the word of liability includes situations such as theft, accidents derived from seawater, high temperature affecting the quality of goods, mixing commodities (especially liquids) with other goods, the corruption of goods, evaporation, warehousing inappropriate or non-conservative control of goods from the transport operator (Fijan, 2011). In the Convention of the International Sale of goods the precise definition of Exchange liability isn't done and in Article 66 of the Convention only refers to the impact of the transfer of liability. About the meaning of liability, we can say that exchange liability means that in the financial contracts if one of the properties losses before reaching to another party, the other property must be delivered to the owner. As a general rule in legal systems, it seems the occurrence of any incident in relation to the product that put the buyer's position as the adverse effects, should be subject to the rules on liability.

But from this generalization cannot conclude any incident that leads to an undesirable subject to this rule is the buyer's position. for example, the decisions of governments about barriers on the import or export goods (after signing the contracts) subjects to the principle of "impossibility of contract execution" and is applicable in special times that the main purpose of the contract after signing it will not do due to unpredicted conditions and the result of applying it releasing the parties to fulfill their obligations. The field of applying this rule is very delicate and about the items that in the sale contract, the ownership of the goods and the liability both have transferred the next wasting of goods is not dissolved the contract. That is, in this case, the vendor has done its commitment and the liability has transferred to the buyer. So the mentioned rule will not apply. If ownership is transferred to the buyer, but the liability belongs to the seller, the seller must bear all the losses. Because it included in the field of article 66 of convention and article 387 of the civil code of Iran and yet the liability not transferred to the buyer.

As a result, it can be said that a contract shall be enforceable that enjoys the condition of the formation and survival of the contract, existence a certain subject. In this regard" If one of the documentable reasons cited by the Exchange liability of wise men so that see the obligations of buyer and customer as a unique body and in swap transactions the purpose of parties reaching to the result and obtaining the mutual exchange and with the consent analysis and correlation of the two considerations and historical foundations of civil rights in Jurisprudence no doubt remains that the rule of losses product before transferring liability is an agreed affair.so the justice demands that wherever this aim that is obtaining swap not reached be subjected to liability rules and implementation of the necessary contracts where that have the contract, the terms accuracy and adherence to its provisions (Mohajer, 2006) [18].

2.2 Reasons and documentations of risk of transfer of international contracts

The law of contract, especially the rights of international trade agreements have always been the center of attention and at the forefront of the move towards standardization and harmonization of private law. Because, the domestic laws considered as a barrier for international law. So documentation and reasons of risk of transfer in international law must be searched among international instruments relating to contracts. Meanwhile some of these documents enjoy acceptance and consequently had a more important role in the international community and has funded many users that among them we can refer to Convention on the International Sale of Goods dated 1980.and as well as Incoterms regulation which last revised in 2010. based on the mentioned words, we had a glimpse into the international instruments relating to transnational contracts and discusses the most important of

them to clarify the reasons and resources of risk of transfer of the rights of international contracts:

Risk of transfer in United Nations Convention on Contracts for the International Sale of goods (CISG) Existence international sale contracts between merchants from different countries with different national legal systems, surely, the first issue that raises for them is that what regulations governed these relationships and in the legal system of what countries should be referred to the settlement of disputes? These issues caused that U.N Commission on International Trade Law (UNCITRAL) made many efforts in line with creating unique regulations about the international sale of goods. UNCITRAL at its initial session in 1968, made a study of international sale as one of its first works. Two plans of the Convention were inspired by the Convention of 1964, that one of them related to the works of sale (rights and obligations of the vendor and the customer) and the latter was about to form and conclusion a contract which both plans were approved in 1978 and integrated them into a plan and in the same year was presented to the United Nations and the Association by forming an international conference made an agreement about it. The mentioned conference was held in Vienna from March, 10, 1980 until April, 11, 1980 with the participation of representatives from 62 countries and 8 international organizations, and after discussing the UNCITRAL plan with modifications consisted of 101 articles was approved under title of "United Nations Convention on Contracts for the International Sale of Goods" and was published in the six United Nations official languages (English, Arabic, Chinese, Spanish, French and Russian). After the adoption of this regulation, many countries declared their membership and to try to fit in with their own national legal system.

The Convention begins with an introduction consists of three paragraph that in the introduction the principles and inspiring goals of participating states in the conference that includes establishment a modern economical and international order, and mutual benefit that is an important factor in the promotion of friendly relations between countries, eliminate legal barriers to international trade and providing its development that despite the limited legal value in the interpretation of the articles of the Convention and set common inspiring principles and filling its gaps, it can be used.

After the introduction, the articles of the Convention set in four parts as follows:

1. Sphere of application and general provisions including the articles 1 to 13 that by which expresses sphere of convention application in the place and consisting countries, the excepted contracts from the involvement of convention and contracts that included in the convention.
2. Formation of the contract comprises 10 articles (articles 14 to 24) that express international regulations governing the contract that is, offer and acceptance and related issues.
3. Sale of goods comprises 64 articles (article 25 to 88) with the centrality of regulation related to sale of the main part of the Convention, of course, due to dedicating this section to express the works of Sale, that is, the rights and obligations of buyer and customer, it was better to rather than sale of goods title, the title of Effects of Sale, considered.
4. Final Provisions that comprises articles 89 to 101 of the convention, during which the predicted "reservations rights" in the convention, as well as the sphere of convention implementation in the time that is, the discussions related to the time of applying convention to the implementation stage, acceptance and accession to the Convention after its entry into force The most important parts of the Convention, especially in terms of its comparative studies are second and third sections (Safaee, 2009) [20] that are more attractive and important considering the regulations related to formation of a contract, issues related to the offer and acceptance of sale, rights and obligations in terms of vendor and customer reviews adapting to law of different countries including Iran, especially the jurisprudence issues of sale that regulations of Islamic Republic of Iran completely based on it. Including these cases is the risk transfer in the provisions of the Convention on international sales. Thus always in the writings of interior rights has been considered and yet it has many unknown aspects for many consultations.

The convention is one of the most successful projects in the harmonization the law of trade agreements, in the contracts of international sale contracts which took in force in 1980 as a unified law governing international sale contracts. Currently, about 80 countries which governing more than two-thirds of world trade have joined to the Convention. Therefore, it can be described as the most successful international instrument in the field of contracts (Shoarian, 2015) [22].

2.3 Risk transfer in the principles of international commercial contracts (UPICC)

International Institute for uniform private law is an independent, international organization that established in 1926 in Rome with the purpose of making unity among national regulation of countries in the field of private law, as a subsidiary organ of the League of Nations and started the activity from May,30,1928.currently 61 countries joined to this institute and Iran joined to that in 1965.The efforts of the institute based on requirements and procedures for updating, integration, and codification of private rights. The principles include an introduction and eleven chapters including, General provisions, the contract and the authority representatives, validity, interpretation, content, and terms of the contract and suspend rights of third parties, run, do not run, leaving the right to transfer the obligation award of contract, deadlines over time and the number of debtors and creditors (International Institute for unifying Private Law, 2015).

In this provisions, the risk of transfer is not mentioned in its proper sense. But the article 3-2-7 in relation to rectify defects and substitute it, somehow entailing compensate for damage caused by a defect or flaw of the product. The first phrase that has raised risk transfer in the principles of international trade agreements is defined in Article 5-1-5, under the title of determining the type of task. This article stipulates, in determining to what extent doing the maximum attempt in applying an activity or a task to reach a specific result it is necessary to consider the following items: A)the way of expression commitment in the contract, B)the contract price and other terms of the contract, C) The amount of liability resulting from the danger that usually expected result in access to desired entries) the capability of another party to influence the performance of the obligation in question.

As well as the article 7-4-7 in relation to damage that partly caused by a party that loses stipulate such: in conditions that

the damage partly resulted from leave the duty of the lost party or another event that its possible danger is on behalf of a loosed party, the amount of damage must be reduced.

In general, the principles of international trade agreements confined to commercial international trade agreements and governed only on the signed contracts among businessman and other professional specialists. Therefore, it is not applicable to all concluded contracts between ordinary citizens. Also, the principle of international commercial contracts is utilized for two other purposes, firstly in order to interpret and completion of international documentations and second as a model and pattern for national and international legislation.

2.4 Risk transfer in the terms of International Trade Incoterms 2010

Earlier about Incoterms, some materials were mentioned. In Incoterms 2010 which was operational from March 2011. Classification of all prices is in two groups. The first group consists of seven principles that are usable in all transportation methods and includes the principles DDP- DAP- DAT- CIP- CPT- FCA- EXW. The second group includes four rules that are special for transshipment that is CIF- CFR- FOB- FAS. The reasons for this serious rethinking is the importance of transshipment in international trade in recent years. From the basic changes of Incoterms 2010 is removing 4 principles DDU-DES-DEQ-DAF which was available in Incoterms 2010.

The causes of this elimination are the ambiguity and conflict between buyer and seller in case of agreement over this principle. In Incoterms 2010 two principals were added. DAP rules, which means delivering a product at the desired destination and DAT principle that means delivering product in the specified terminal in the destination of the product that to some extent were substituted of 4 deleted principles from the previous version. Among the important points of Incoterms 2010 is the possibility to use principles in the domestic principles of the countries. Of course, EXW would have more usage and will cause significantly reduce disputes and commercial disputes between buyers and sellers. Of course, in the case of using the internal trade of these rules is recommended that specified the conditions clearly defined and written down. Changing regulations in some principles in Incoterms 2010 must be taken into consideration. Such as a change in the place and time of risk of transfer the FOB principle has raised this principle was raised in 1936 but was changed in Incoterms 2010.in the previous versions the ship's rail as the point of delivery and risk transfer was mentioned but in the newer version the point of delivery and transfer of risk of product on the board of the ship, that itself reflects precisely the realistic of modern trade that prevented from the old imagination of risk before and after passing goods from imaginary vertical line.

According to the material that previously mentioned at the following, we will study the most practical principle EXW and two substituted principles that are DAT and DAP in the version 2010.

Risk transfer in contracts involves the delivery of the goods to the buyer at the seller's premises (EXW)

This principle represents the minimum obligation for the seller. According to this principles, the seller is responsible for delivering the related goods and documents to the customer or the carrier that designated by a customer. The seller is only required to submit documents which are competent to issue them like the commercial invoice and any other conform documents that the contract of offering them is necessary. The buyer is responsible for obtaining documents and licenses.it is necessary for the seller, in the case of a request, helps the customer depending on the buyer's expense and risk in taking any license or other official permits necessary for the exportation of goods to the buyer. The seller must pack the goods in accordance with the type of the product, distance to the destination, and the condition of the route and how to transport and in the case of determining condition on behalf of customer considers the type and quality of packaging. The costs of packaging are on behalf of the seller unless in a particular business practice that is normally to carry sold goods without packaging (Zoghi, 2012) [27], or by agreement of the parties, to sell the product without packaging. All costs of review goods are on behalf of the seller's product this review means checking quality, measuring, counting and weighing that is done to ensure the proper implementation of the obligations of the seller. The seller must prepare the goods for loading on the means of transport that customer has been sent, and deliver to it. But has no responsibility for the loading of the goods on the means of transport (Khoyeh, 2012). If the parties agree that the seller delivers the goods to the buyer's shipping load. According to regulations of Incoterms 2010 the costs and possible risks resulting from loading will be on behalf of the buyer, unless in the contract after writing down the provided help from the seller in the case of loading, costs, and risks of loading it impacted on the seller and the seller has accepted it. If the parties agree that the seller delivers the goods to load, it should be explicitly included in the contract (after the name of the place of delivery) to be incorporated.

According to regulations of Incoterms 2010 and in the case of choosing the principle of delivery in the place of seller in some cases may exist in the contract the right of selection, place and time. In this case, the buyer must after choosing the time and place of delivery as well as the delivery point in his place of their choice, aware to the seller. And this notification to the seller must be made in good and appointed time in order that the seller to prepare all necessary arrangements for loading goods at the place and in due time. Otherwise, in the lack of notification or failure to observe the time in this notification, the buyer must pay damages to the seller and the additional costs generated as warehousing, etc. to compensate. In the EXW principle, the seller has no obligation for carrying out customs formalities of exportation and taking issued permits (BergamI, Roberto, 2011) [4]. But in the case of demand of a seller based on the help of seller to the buyer for carrying out these affairs the seller obliged to help the buyer in the cost and accept risks of the buyer in obtaining export licenses and customs formalities. Therefore, in the case of failure of the seller to do, he did not at risk or cost and in this case the contract is not terminated and he will not be suffered from damages. The buyer before accept the principles (EXW) obtain necessary knowledge of the conditions of their intended export of the goods, in the seller country that as a foreign country what exporting regulations must be observed and what licenses should be taken and in case that do not have ability to take the license of issue of the product should not use this expression. Taking into account the serious threats that exist against his country and buyer and the Central Bank of Iran has banned the purchase as EXW unless the seller is responsible for licensing exports (Shirody, 2012).

If the buyer wants to be sure to the possibility of export of goods from the country of seller and the seller accepts to help in taking the required export licensing and products, this is must be added as a certain condition to the principle of EXW in the Incoterms 2010 that requires the agreement of the parties toward paying related costs (that is on behalf of seller and buyer) and adding the clause loaded upon departed vehicle at the risk and expense of the Seller (or the Buyer) is after the place of delivery in the contract.

In case of accepting the principle EXW the buyer must consider that lost and ban of the product in the seller country or prohibit of ban the purchased goods with this principle, the seller will not be impossible for acceptance of the cost or cancellation of the contract or refund the demanded price for the product and in any case the buyer is responsible for paying the price of the goods to the seller according to the contract. Also paying inspection costs, including mandatory inspection before shipment, will be on behalf of the buyer even if the mandatory inspection resulted from the regulations of the seller. Of course it worth to say that only in this principle, pay and implementation the mandatory inspection costs of the seller country (Force of regulations or authorities) is on behalf of seller and in other principles is on behalf of buyer. But in case of result of inspection on inconsistent with the contract, paying the inspection costs will be on behalf of the seller.

2.5 Risk transfer in contracts of delivery of goods at the terminal to the buyer (DAT)

This rule that applies to all transportation methods and proposed in Incoterms 2010 and was replaced by former DEQ term. It means that the seller, after acquiring required licenses for export from his country, clearance the goods and delivers it at a certain point to the buyer at the destination terminal. The terminal in this principle includes every place such as ٭indoor or outdoor, docks, warehouses, container yards, freight terminals, road or rail or by air. in this principle all the costs and risks until reaching it to the terminal and discharge at the agreed point in the terminal is on behalf of the seller. For example in a contract of selling in sales contract of radiology equipment between a supplier in the United States and a buyer in Russia that is used from mentioned principle of Incoterms®2010 with the clause "deliver in terminal of Moscow, the conflict raises about who is responsible for damage of the product and the referee according to agreements of the contract first specify that the presented commercial term is related to Incoterms 2010 then it is necessary to the point of entering damage is determined. According to the mentioned information and observing paragraph 4 and clause (b) on the Incoterms book 2010 delivery time will be perfect when the goods are loaded in full accuracy in the Moscow aviation terminal. So if document of delivery receipt shows that the cargo prior to loading terminal in Moscow terminal is damaged, the seller will be responsible for damages and if the damage after loading in the Aviation warehouse the buyer is responsible for it.in the case of using this rule, the seller and the buyer must take delivery of the considered terminal with the clearest possible method and also given that may in the entrance of the country there would be some terminals, if possible must have a particular point in freight terminal located at the port or place of destination based on their agreement, because the risk and possibility of the risks and the costs resulting from it to that point is on behalf of the seller.in the case of using this principle, the seller should a carrying method and make the contract with the carrier companies that completely consistent with the type of terminal and delivery point in the terminal. Obtaining export licenses for the export of goods from the country of origin and registering it are on behalf of the seller but the seller has not liabilities to taking entering goods licensing to the countries and payment of related customs and clearance of imported goods and the seller should prepare his cost and risk and fulfill all customs formalities.

Although Incoterms rules was not referred on providing information to the consequences of default seller to the buyer but lack of awareness, in this case, may lead to violation of interpreted contract and this, in turn, has implications such as cancellation of the contract, the penalty for the operator of termination (that here is seller) and payment of compensation for the operator of terminator. If the product reaches earlier than the due date or time period to the destination the buyer will not be obliged to deliver it up to date or due date and if the goods later than the due date reaches to the buyer, according to the contract the seller is responsible and the buyer can charge him and cancel the contract.

The seller must at his own expense, disposal a portable document to the buyer that will be able him to deliver the product. The buyer also responsible, if the goods delivered to him directly, issues a receipt and gives to the carrier. If the product during shipping be inconsistent with documents it is necessary to insert the non-conforming in the receipt that issues (Karimi, 2012) [16]. Destination Inspection (coordination of inspections and pay its costs) is on behalf of the buyer unless in the contract agreed in another method. Of course, if the result of inspection represents not consistence of delivered goods with the contract and documents, the seller is obliged to pay inspection costs to the buyer and acceptance the implications arising from it. If the agreed terminal, is the domestic terminal in the country of destination, given that in this principle the importing occurrence and payment of customs for entering goods is on behalf of the buyer, the buyer must by his own cost in the due time does custom formalities and if failure to do duties or behave in such a way that a losses occurred he is responsible for it, thus hazards of the product before final delivery to the buyer in the due terminal early transferred to the buyer.

Risk transfer in delivery contracts at the destination specified by the buyer (DAP)

This rule, also is one of the rules of the first group of Incoterms 2010 and applicable for all shipping methods and substituted for three deleted rules of DAF, DES, DDU.in this rule the delivery point maybe in the beyond the terminal but the seller is not possible for import clearance of customs but he is responsible for taking business export licenses, export clearance of goods in the country of origin, conclusion the shipping contract and pay its costs, accepting risks and unpredictable costs during transport to the destination and finally must deliver the goods in the du place to the buyer. In this rule, delivery of goods and transition responsibility from seller to buyer, is on the vehicles of transporting the goods in in a certain place of destination. Therefore, the seller will not have any responsibility about unloading of the goods from the means of transport and the risks relating to it, while in the rule of DAT the delivery stage after unloading goods from the vehicle of transportation to the certain terminal in the

destination and the seller was responsible for unloading goods from the vehicle of transportation and costs and risks related to it during unloading. But if the seller at the rule of DAP according to shipping contract that signed with the carrier, in this rule the unloading responsibility is for the carrier and its cost has paid and he will not have the right to demand the extradition right from the buyer unless it is agreed in the contract with the other method.

As a rule, DAT, as well as in this rule should clearly specify where you want to deliver the goods at the destination and the point of delivery at the agreed location with the rigorous and determined manner must be defined. If at the agreed place of destination, there not been elected a certain point for delivery, the seller about selecting a point of delivery will be free. Of course, in this case, the seller must provide the buyer with the necessary information to allow the buyer to take over the preparation of the product and predict the necessary measures (presence at the location designated points in time and due date, possible coordination with Customs and means of transport, the unloading of means of transport and most importantly preparing import licenses, etc.). If the parties have agreed to the contract that the right choice of a delivery point in the desired location is on behalf of the buyer, the buyer is responsible for that in due time given sufficient information to the seller about that selected point of delivery.

As stated in this rule the export clearance is on behalf of the seller but the seller has not any obligation about export clearance of goods and paying the related costs.IN a case that parties want to import clearance and doing custom formalities of import on behalf of the seller, they must use DDP rule. If agreement on DAP rule, the seller must provide a transport document at his own expense for the buyer that the buyer by it can at the designated place and point deliver the product. If the goods to be delivered directly to the buyer and do not match with the contract, the buyer shall write on submission receipt. In this rule fee for any inspection that is mandatory on the country of origin, will be the responsibility of the seller. Unless the cost of goods inspection will be on behalf of the seller and after doing an inspection at the destination if the result of goods inspection is that the goods not match with the contract and documents, the pay of the costs will be on behalf of the seller.

According to use of this rule (that is practical in all shipping methods including rail or road transport) sometimes the buyer in rail or road transport is not willing to unload the goods from the rail or road vehicle and wants to transport the goods with the same vehicle to the final destination in the destination country (to save time and costs and risks of unloading and reloading). This subject that is known as one-way transportation in custom terms is done with two following methods:

1. The buyer and seller agree on the location and delivery point (For example, the inner border customs in the country of destination) the buyer gives the necessary information to the seller about the rest of the path and to pay the extra cost to the seller. In this case, the seller writes down the continue of the path to the final destination in the contract with the carrier and pay the rest of the cost.in this way, the seller must deliver an overall map of the path to the buyer in order to prevent unloading and reloading in the place of delivery.
2. The buyer and seller do not any agreement about the final route in the point of destination and after the place of delivery and the buyer at the time of purchasing the goods at the point of delivery, himself makes an agreement about one-way transportation.

It is worth to say in both methods the seller according to Incoterms regulations do not have any responsibility toward costs and risks related to the transportation of goods in the direct transportation and the transportation to the destination point is done with the responsibility of buyer. Although at the point of delivery, the physical delivery is not done but the buyer will have responsibility for accepting costs and possible risks from that point to next (Karimi, 2012) [16].

In this rule, although the seller is not responsible for costs and the risks of getting importing licenses. However, given that some of the required documents for import of goods produced and verified in the country of the seller the seller must help the buyer for getting licensing and documents required for customs of importing clearance. So the expense resulting from these licenses with the risks that may have for entering goods will be on behalf of the purchaser and the seller has not any obligation about expenses and its risks. Mutually the buyer must help the seller about required information and documents for transportation and issue the product and transporting them from any country with the costs of the seller. Therefore, ban or change or an increase in customs duties or commercial benefit does not relate to the seller and these cause cannot be the pretext to refusing the buyer from paying the cost of the transaction (Zoghi, 2009).

If the product reaches earlier to designated date to the destination, the buyer is not being obliged to deliver it up to date or due date. But usually, given that this is in his favor, with the proper and on time information, the buyer will be welcomed it. In this rule, if the product lately from due date reaches to the buyer, the buyer can charge the seller and according to the contract charge the seller to violate the contract and cancel the contract and pursue its implications (Karimi, 2012) [16].

As noted, the phase of transition costs and risks from the seller to the buyer with the beginning of unloading of the goods from the carrier delivers the goods to the designated point of delivery is in place. But if the buyer had failed to fulfill their obligations then the costs and risks as early as transferred to him. For example, if the buyer failure of customs formalities for entry of goods or the provision of other official authorization or license the importation of goods or when he has the rights of determine delivery time in the agreed deadline or determine the point of goods delivery in the destination and failure to do these, he will be responsible for all risks resulting from loss of or damage to the product.

3. Discussion and Conclusion

Transfer of risk and its moment in a transaction especially in the international and multi division treaties can make the contracts with various deviations. Thus this caused that the seller or buyer every moment be sensitive to the contract and make the conditions more intensive. In fact, in relation to the issue of risk of transfer, they answer this question that if or even the goods accidently losses or be destroyed the buyer is also obliged to pay the price and in that case the seller can demand and commodity prices?

The importance of answering this question caused that various agreements and conventions be concluded in different levels. Among these conventions, we can refer to international sale

convention that was contracted in Vienna in 1980. as well as, international Standard com metrical terms, known as Incoterms which in wide ranges involves so many users of the rights of contracts from the businessman to their lawyers and jurisdictions of countries. In other words, improving the regulations related to the risk of transfer in the international law and beyond countries, documents are high to the extent that, even its examples are not observed in the law of some countries that have the powerful history of legislation. However, there is no need to this issue because these type of countries mostly at the time to the mentioned documents and follow them.

The risk of transfer is based on losing rule and this rule that is of the items of the inability to deliver have the dubious issues and it cannot be studied under the risk. These items are including: Theory of contract sterilization, force majeure and theory of unforeseen events that meanwhile being sterilized of the contract as one of the causes of failing the obligation such as risk of transfer leads to release the obligation, of the committed in contrast who is obliged to. Generally, there are different views about transition guarantee that its upshot can be written down as following:

1. With the conclusion of the contract of sale, the ownership of product transferred to the buyer and along with ownership transfer as well as the Exchange Guarantee transfers to him. Therefore, in case of loss or damage of sale just the buyer as the owner must bear their own losses even though it has submitted to him before the waste. In other words, the submission of sales has no role in the transfer Exchange Guarantee and upon conclusion of the contract, ownership is transferred to the buyer and Exchange Guarantee transfers to the buyer. Unless the parties have agreed otherwise of the contract of sale. This theory is accepted in Britain and France law. According to this view, when the sales were transferred to the buyer, as he is the same owner and its interests, and has the right to seize any material or legal if the product before delivery damages he should be responsible for losses and his liability toward seller is still remained.
2. However, the mere conclusion of the contract of sale, ownership is not transferred. However, despite the existence of Exchange Guarantee with the liability of losing the product before submit deposed on the buyer. Because under the sale of the contract the seller must submit the product to the buyer and a buyer that benefited from the possible interests must tolerate the losses resulting from damages. Accordingly, although ownership is not done to give the buyer until the submission definitely not be achieved but since in the case of the submission he would be benefited of its interests, must pay the cost of the transaction to the seller.
3. The conclusion of the contract alone would not transfer the property transfer unless the submission of the property is done and the submission is done, transferring the property and guarantee to the buyer would not do. In other words, before submission, the product belongs to the seller and it transfers with the submission and consequently, Exchange Guarantee will be transferred to the buyer.
4. With the formation of the contract of sale, the transfer of ownership or possession takes place and the sale belonged to the buyer and the price belongs to the seller. However, prior to submission of sales to the buyer, Exchange Guarantee or the threat resulted from wasting sales remain and the seller in case that paid the price have the right to refund it unless he is not charged about it. This theory is Convention on the International Sale of Goods Act of 1980 is accepted. Because of the Convention of the International Sale of 1980, knows the time of transfer of guarantee from the moment of submission the sales. Therefore, according to the provisions of the Convention on the International Sales, the Exchange Guarantee is on behalf of the seller and when it transfers to the buyer that the product is submitted to the buyer or in accordance with the contract, it transports to the first operator to transport to the buyer and in the case of the seller required to submission of the product to the operator in certain place, when the goods in the same certain place submitted to the operator of the transport, the Exchange Guarantee also transfers to the purchaser.

Despite what was stated in the Convention on the International Sale the International Commercial Terms (Incoterms) is considered a variety of regulations, to transfer the Exchange Guarantee that by which Incoterms is divided into two groups with dependent terms to each group. The first group consists of seven principles that can be used in all modes of transport and includes rules DDP - DAP- DAT- CIP- CPT- FCA- EXW. The second group consisted of four rules that are special to maritime transport, that is, CIF- CFR- FOB- FAS. Based on any of the mentioned items and on the basis of Incoterms, transferring the Exchange Guarantee about goods that are transported or sold is identified with according to a geographical region and area. Hence has the high practical and scientific logical and considered and documented in many national and international businesses and its rules are written in the form of a stipulation.

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