



# Ibero-American Report on the Use of the Incoterms<sup>®</sup> 2020 Rules

Led by:



**With the support of experts from:**

ICC Bolivia

ICC Guatemala

ICC Paraguay

ICC Costa Rica

ICC Panama

ICC Spain

ICC Ecuador

**Document prepared by the “Ibero-American Group on the Incoterms® 2020 Rules”**

The responsibility for the opinions expressed in this document rests exclusively with the signing authors, and its publication does not necessarily reflect the views of the National Committees of the International Chamber of Commerce (ICC) of Argentina, Bolivia, Costa Rica, Colombia, Cuba, Ecuador, Spain, Guatemala, Mexico, Panama and Paraguay.

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# “Ibero-american Incoterms® Group on Incoterms® 2020 Rules”

The research team, called the “Ibero-American Incoterms® Group”, is made up of professionals appointed by International Chambers of Commerce’s National Committees (ICC NCs) from Argentina, Bolivia, Costa Rica, Colombia, Cuba, Ecuador, Guatemala, Mexico, Panama, Paraguay and Spain. The group does not work under the ICC Global umbrella; it is part of a regional project lead by the NCs.

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The collaboration of Leandro Pugliese, María Marta Simone, Fernando Torres, Marta Castro and Juan Zezza, members of the ICC Argentina Commercial Law and Practice Commission, is gratefully acknowledged.

## Acronyms:

EXW: Ex Works

FCA: Free Carrier

CPT: Carriage Paid To

CIP: Carriage and Insurance Paid

DAP: Delivered At Place

DPU: Delivered at place Unloaded

DDP: Delivered Duty Paid

FAS: Free Alongside Ship

FOB: Free On Board

CFR: Cost and Freight

CIF: Cost, Insurance and Freight

## Introduction

The objective of this report is to disseminate the results of the investigation carried out by the ICC NCs of on commercial practices, the use of the Incoterms® Rules<sup>1</sup> by the business community, and its adherence to the provisions of the 2020 edition in the Ibero-American region.<sup>2</sup>

The study has allowed: a) arriving at a diagnosis of the users’ perception of the rules at the Ibero-American level; b) finding causes for current problems in using the rules; c) segmenting in such a way that the results show specifics of the studied countries, sectors and companies’ size, among other aspects.

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<sup>1</sup> The Incoterms® Rules are terms of commerce created in 1936 by the International Chamber of Commerce with the aim of boosting international trade. Since its first publication, they have been adapted to the evolution of mercantile commerce, being revised and disseminated through new editions. The latest edition was published in 2020.

<sup>2</sup> Ibero-America is the name given to the group of countries that share their languages that came from Spain and Portugal. The word “iberia” refers to the western peninsula of Europe where these two countries are located. Spanish and Portuguese are the most widely spoken languages in Central and South America.

This exploratory effort is unprecedented in the region. We are proud to contribute with this document to improving the use of the Incoterms® Rules, promoting good practices, and further studying potential reforms of the official rules to meet current requirements of international operators.

# Methodology and description of the samples

The study's sample is made up of users of the Incoterms® Rules from Spanish-speaking countries that are part of the Ibero-American region.

This study is exploratory and descriptive; measures particular variables on the use and perception of the Incoterms® Rules, and aims at finding answers to the following questions:

How are the Incoterms® Rules used? Does commercial practice observe the sole and official rules established by the ICC?

Where are discrepancies observed between what the rules establish, what the ICC recommends and what empirically happens?

The study has a mixed approach - qualitative and quantitative - and an exploratory nature. In order to answer the research questions, two methodological instruments were designed.

## 1° Survey-type questionnaire.

The questionnaire was designed collectively within the framework of the Ibero-American Incoterms® Group. Its objective was to find answers about what the business community does and thinks in connection with use of the Incoterms® Rules. The instrument - a form in Google Forms format - was shared with the National Committees involved, which subsequently proceeded with its dissemination. As a result, 244 questionnaires from Argentina, Colombia, Costa Rica, Ecuador, Spain, Mexico and Panama, among other countries, were collected.

The study concentrates companies that work in international trade as exporters and importers (43%), importers (20%), exporters (9%), or provide services necessary for international operations (28%). The data collected reflects the information provided by professionals from companies declared in the survey as large (10%), medium (28%), micro/small (48%) and multinationals (14%); dedicated mainly to trade (28%), industry (16%), logistics and transportation (13%), and customs (11%). Those who completed the form work mostly in the following positions: international negotiation (48%); commercial operations (12%); and administration (9%).

## 2° Content analysis.

A tool was designed to collect information through direct review of documentation corresponding to international trade operations (commercial invoice, transport document, import and export declarations). Its aim at collecting objective data that allows verifying current commercial practices, uses and customs. Information of 158 operations were collected.

In summary, 244 surveys from 22 countries and data corresponding to documentation of 158 cases provided by 5 countries were collected.

# Limitations and future research

The exploratory and descriptive nature of the study has its limitations. Future research could point to the development of a report based on a sample model with a reliability of more than 95% and the participation of a greater number of countries around the world, in order to validate, within this framework, exploratory hypotheses confirmed by this first exercise.

## Contribution to the ICC and the business community

This document contributes to the ICC and the business community in different ways:

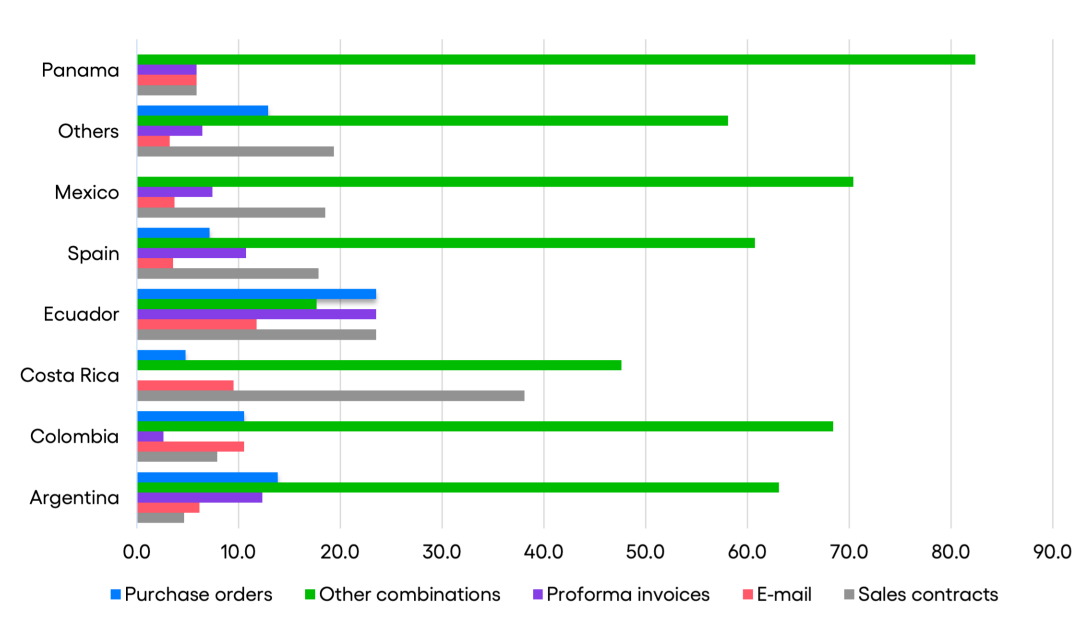
- It is a scientific instrument that allows discovering the gap between official regulation and practices in the trading of goods.
- It is a useful instrument for decision making.
- It is an academy tool for the instruction of the Incoterms® Rules, since it provides certified trainers information that they can transmit to their students, as well as to the companies they advise.
- The information obtained can help to improve the methodology and teaching model in ICC trainings on the Incoterms® Rules.
- The next drafting group of the Incoterms® Rules can adopt the research model and expand it, making it even more robust and generating a confirmatory quantitative and qualitative study which provides in-depth insights about the potential changes on the Rules that the business community needs.

## Descriptive results and correlation analysis between studied variables

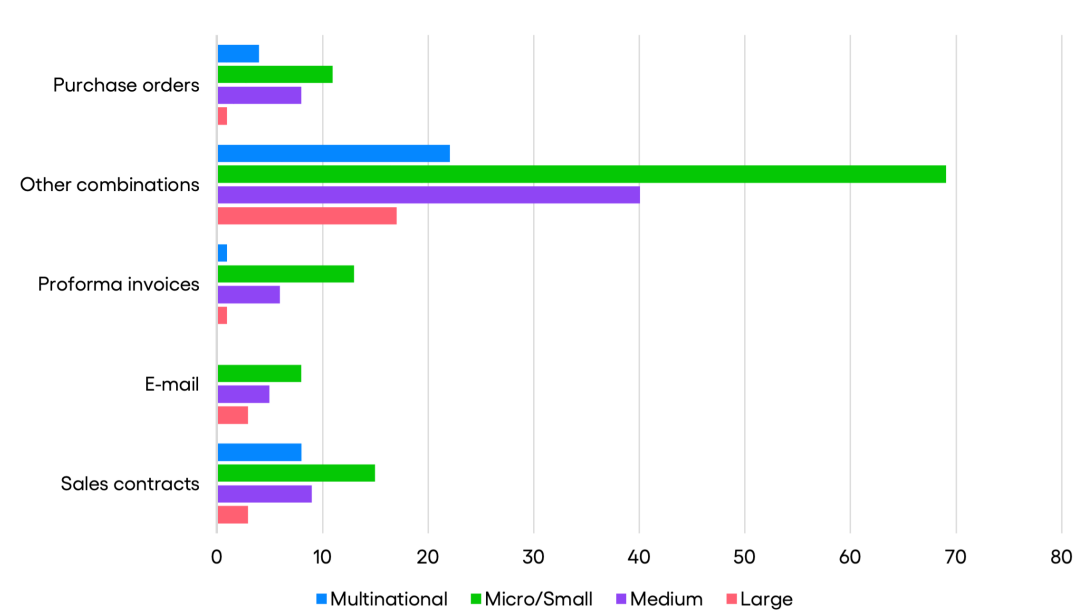
### **The formalization of international transactions for the sale of goods**

Through the questionnaire, the public was asked about the instrument they use to formalize their commercial transactions. The results show the following information: international sales contracts (14%), purchase orders (10%), proforma invoices (9%), emails (8%) and different combinations (61%).

The data by country shows that Costa Rica leads in the use of sales contracts (38.1%), followed by Ecuador with 23.5%, where the use of the proforma invoice amounts to the same percentage. Among the countries covered by this study, Argentina has the highest use of purchase orders (13.9%). When we refer to the use of emails, we again find Ecuador leading the ranking (11.8%), followed by Colombia (10.5%).

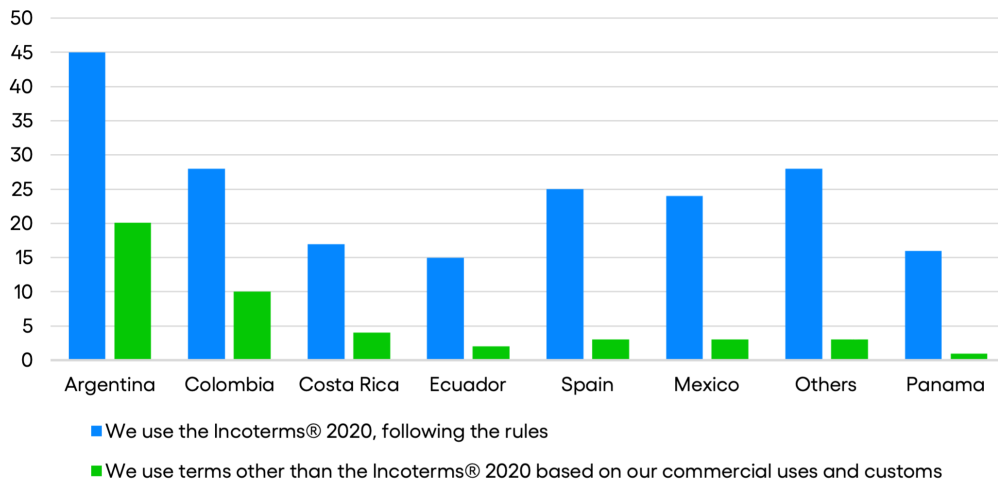


According to the information collected, we conclude that the way contracts are formalized is related to the uses and customs of each country. Regarding the size of the company, it is observed that the formalization of operations through international sales contracts, the option recommended by the ICC, is the most chosen, except for the “Large” segment where the number of responses is equal to that that use emails.

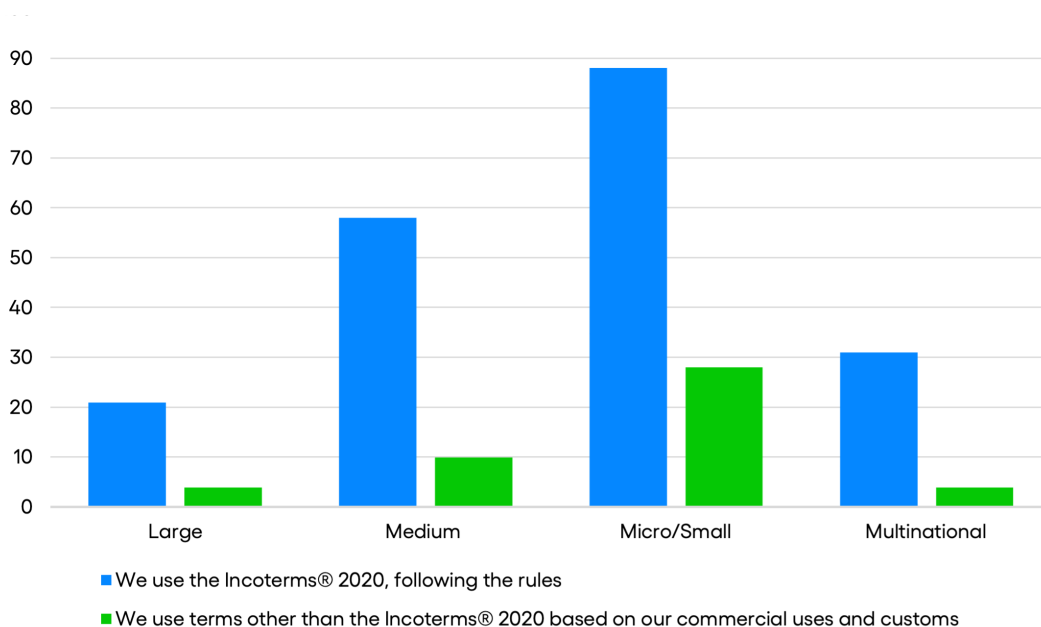


## The Use of Incoterms® versus customs and practices

81% of those surveyed acknowledge using the Incoterms® Rules in accordance with what is established by the rules, while 19% state that they operate in accordance with commercial uses and customs and apply terms other than Incoterms®. Within the second group, as can be seen in the following table, Argentina and Colombia are show the largest number of cases:



Regarding the size of the company, as can be seen below, the respondents affirm that, in most cases, the Incoterms® Rules are applied in accordance with the 2020 edition:

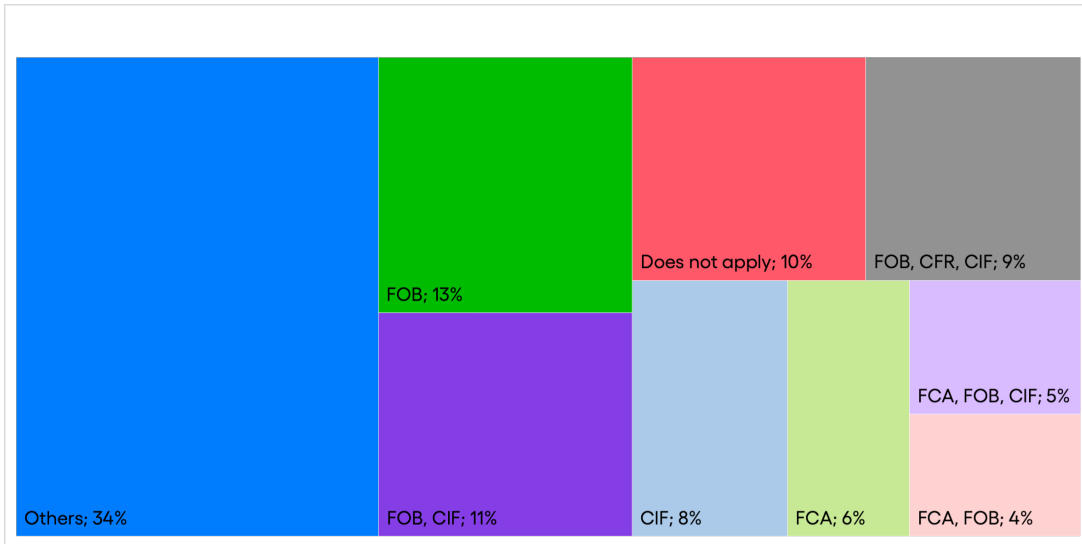


Based on these data we can argue that there would be no correlation between the effective use (or not) of the Incoterms® Rules and the country of residence or the size of the company.

## The use of Incoterms® recommended by the ICC for the transport of goods in containers by sea or inland waterways

Respondents were asked which Incoterms® Rules they used when carrying out containerized operations transported by sea or inland waterways. The responses show 48 combinations, the most frequent being: FOB (13%); FOB - CIF (11%); FOB- CFR- CIF (9%), CIF (8%) and FCA - FOB (4%)

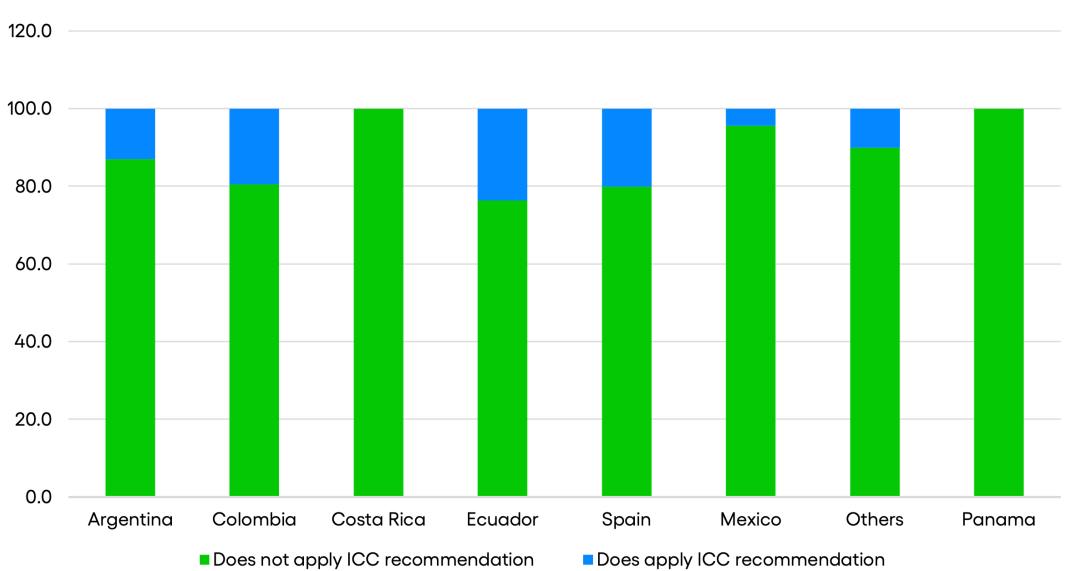


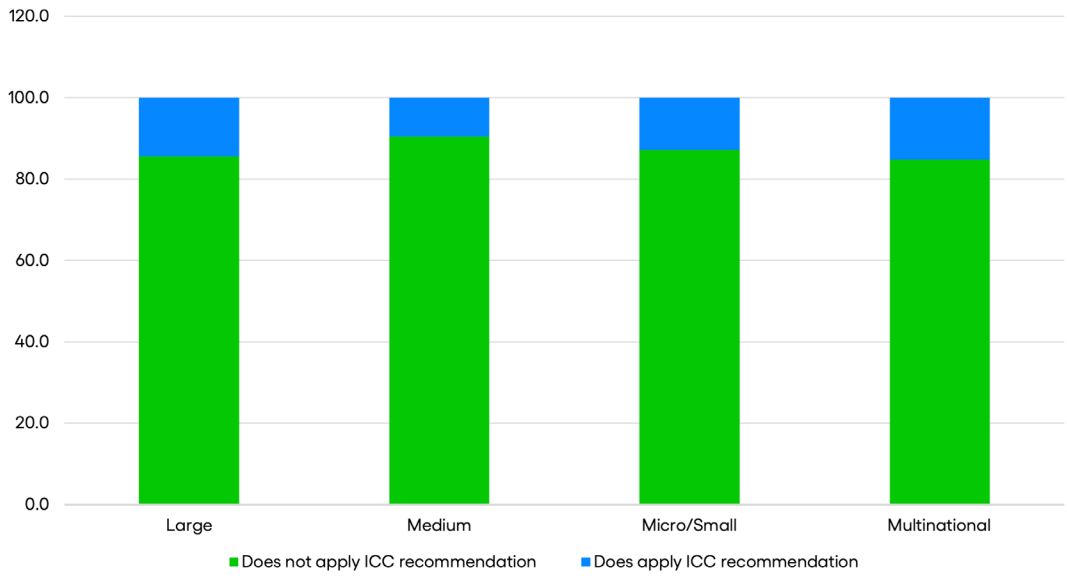


Although the ICC recommends against the use of FAS, FOB, CFR and CIF for container shipments, according to the results obtained through the survey at least 45% does not apply this recommendation.

From the analysis of commercial transaction documents (commercial invoice, transport document, import and export declarations) it was concluded that of all the cases studied under FOB, CFR and CIF modalities, 54% correspond to operations of containers shipped by sea or inland waterways.

Thus, we can conclude that there is a low level of compliance with the recommendation issued by the ICC. It should be noted that this trend is verified in all the countries covered by this study, and it applies to any company size:

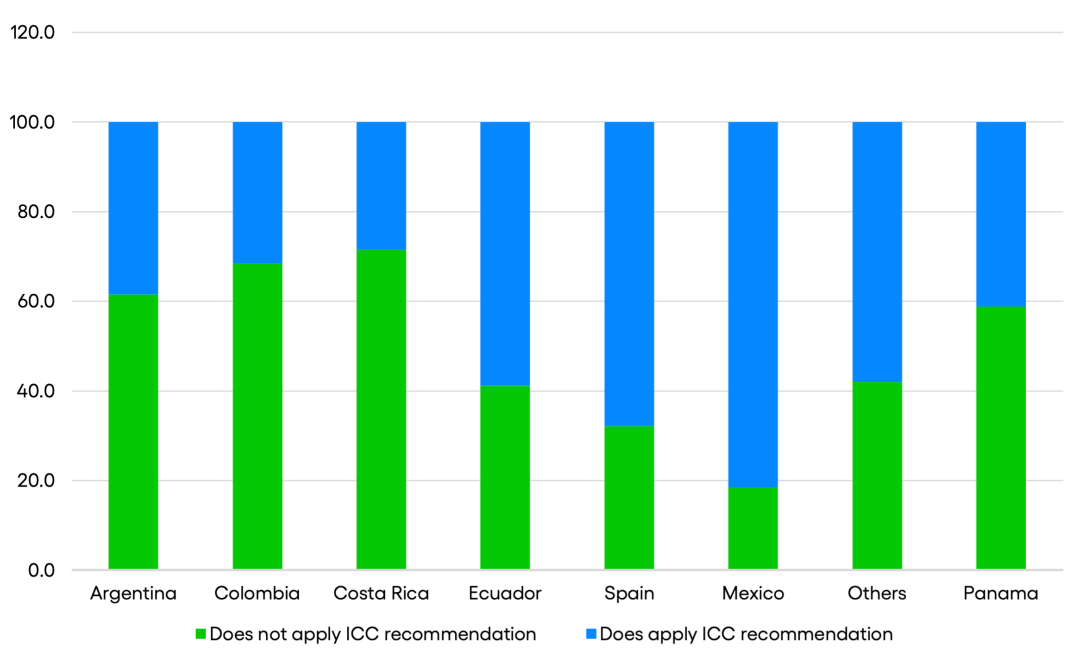




## The correct use of the Incoterms® Rules in commercial documents

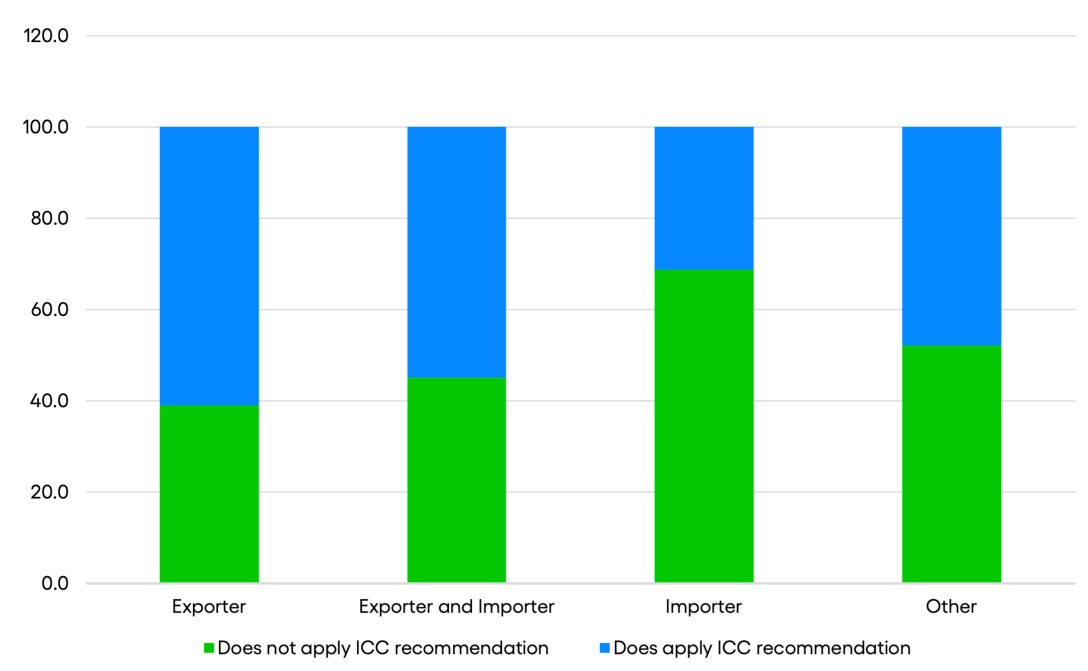
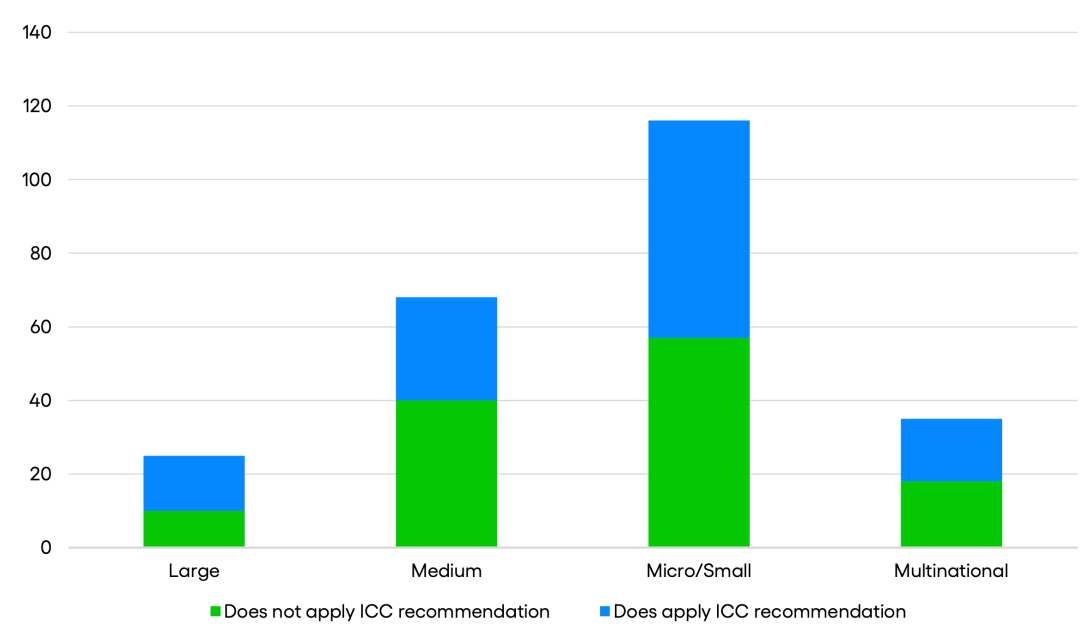
This study consists of determining whether users take into consideration ICC’s recommendation regarding how to include the complete Incoterms® rule in the sales contract, this is: term + port, place or designated point + Incoterms® word and its version. By way of example, the correct use of the FOB clause would be to state it as follows: “FOB port of Sao Paulo Brazil, Incoterms® 2020”.

The survey threw out the following results: half plus one (51%) acknowledge observing the ICC recommendation, thus incorporating the complete “formula”. Companies from Mexico (81.5%), Spain (67.9%) and Ecuador (58.8%) stand out here. On the other hand, there was little adherence to what is suggested by the ICC in this matter in countries such as Costa Rica (71.4%), Colombia (68.4%), Argentina (61.5%) and Panama (58.8%).



It is noteworthy that these trends are not exclusively linked to the size of the company. What is observed is that in importing companies or engaged in an activity of “assistance” to importers

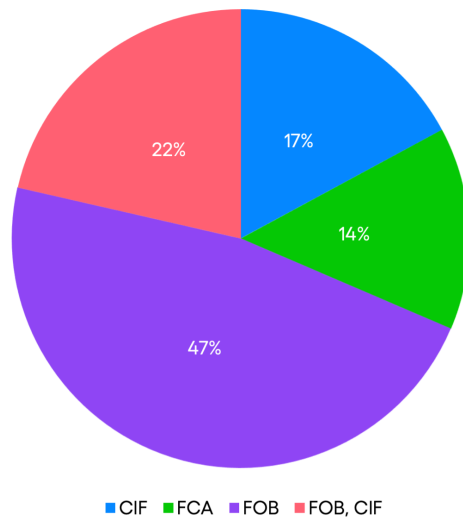
and exporters, there is a tendency not to insert the formula - 68.8% in the first case and 52.2% in the second-; while those who play an exporter or exporter and importer role do - 60.9% and 54.8% respectively.



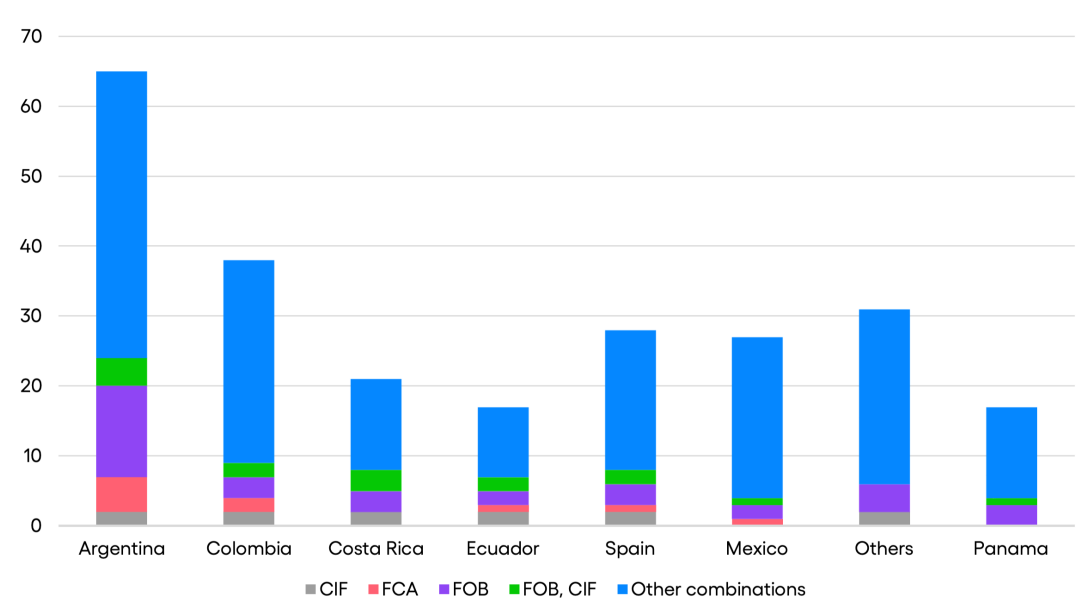
Finally, the documentary review revealed that in 51% of the transactions the users of the rules include the word Incoterms®, but not the year.

## Most used Incoterms® Rules

Within the more than 48 possible combinations, users mostly responded that they use up to three terms. The exclusive use of FOB represents 47% of the cases; FOB and CIF 22%; CIF 22%; and FCA 14%. In summary, FOB and FOB/CIF add up to 69% of the data received from respondents.



Next, we can observe that FOB is the most used rule in all the countries surveyed except Ecuador, where the number is equivalent to the use of CIF:



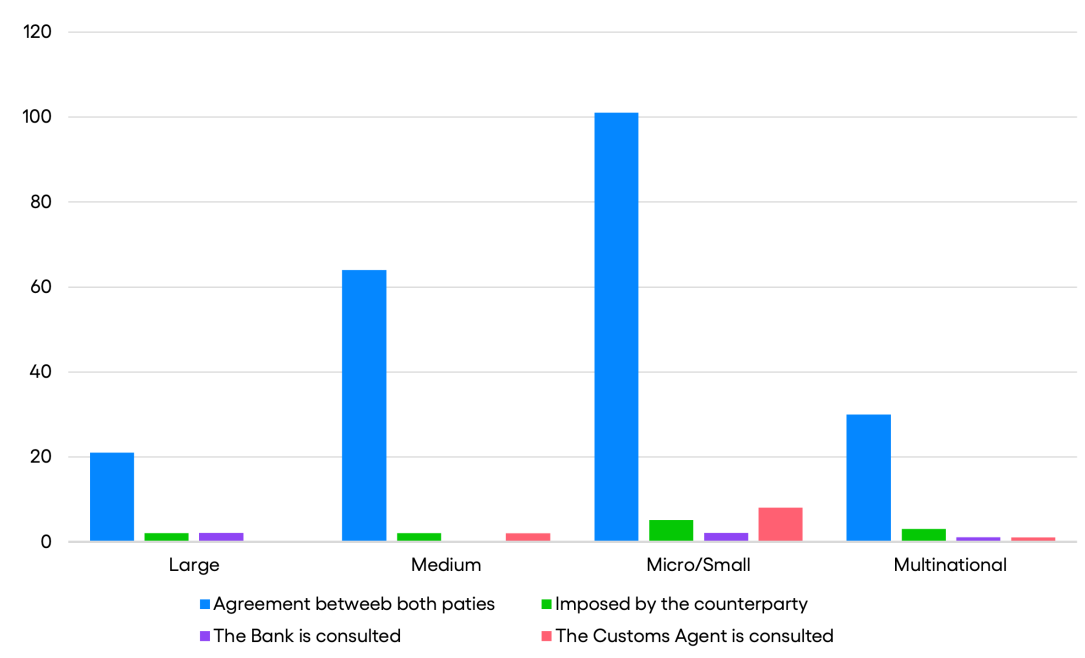
## How parties agree to the Incoterms® Rules

The results showed that the Incoterms® rule include in contracts is 89% determined by agreement between the parties, 5% imposed by the counterparty, 4% defined by the customs agent and 2% by the parties' advisory bank.

If we analyze the information by productive sector it is observed that: in industry the tendency is to reach an agreement between parties, and although the same happens in agriculture, livestock and fishing, a large number of respondents stood that the Incoterms® rule is imposed by its counterpart (17.7%).

When we focus on the type of company we verified that the agreement between both parties is the most representative option for importers, exporters and companies that carry out both activities. In the latter case, the percentage rises to 95.2%.

As will be seen below, the trend holds regardless of the size of the company:

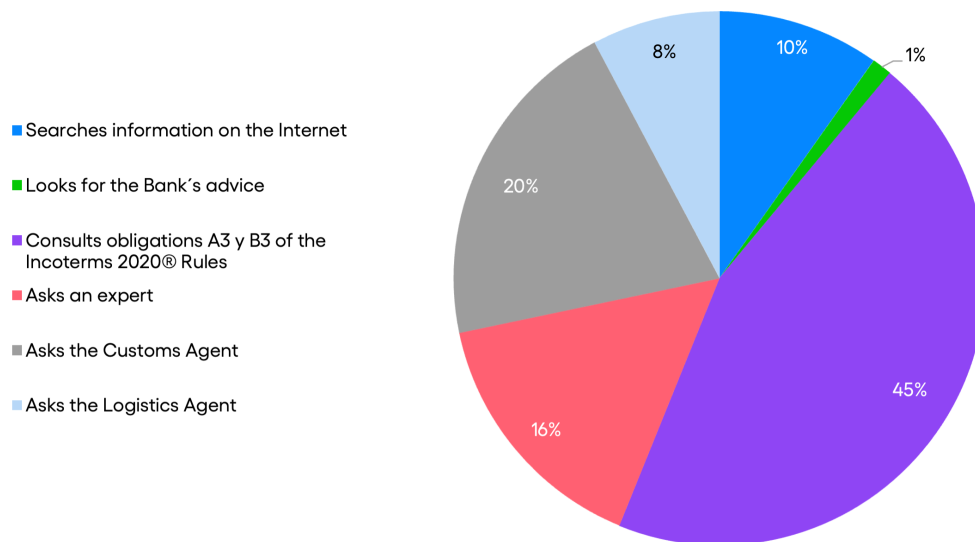


## Insights on international acceptance of Incoterms® in sales transactions of goods

In relation to the perception of users regarding the international acceptance of the Incoterms® Rules, the data collected was conclusive: 96% of those surveyed confirmed that the Incoterms® Rules are observed worldwide.

### How users can clear up doubts about the scope of the Incoterms® Rules

The information collected shows that when there are doubts regarding who should assume responsibility for the damage or loss of goods, 45% of those surveyed consult the Incoterms® Rules. The remaining percentage is made up as follows: 20% seek advice from a customs agent, 16% ask for an expert recommendation, 8% ask their logistics agent, 10% search the internet and the 1% look for information in other ways.



On the other hand, when there are concerns regarding who should bear the costs for transportation, loading and unloading of the goods and other expenses inherent to the operation, it was found that 51% consult the Incoterms® Rules, 24% to a customs agent, 14% to the freight forwarder and 11% to the carrier or its agents.

To know who, between seller and buyer, is responsible for the export and import clearance, as well as customs in transit, if any, 49% consult the Incoterms® Rules, 38% the customs agent, 9% the cargo agent and 4% the carrier or its agents. It should be noted that in Argentina and Costa Rica something pretty unique happens: most of the respondents state that they ask for advice from a specialized professional, particularly the customs agent, instead of directly reviewing sections A7 and B7 of the Incoterms® Rules.

## Obligations and responsibilities set by the Incoterms® Rules

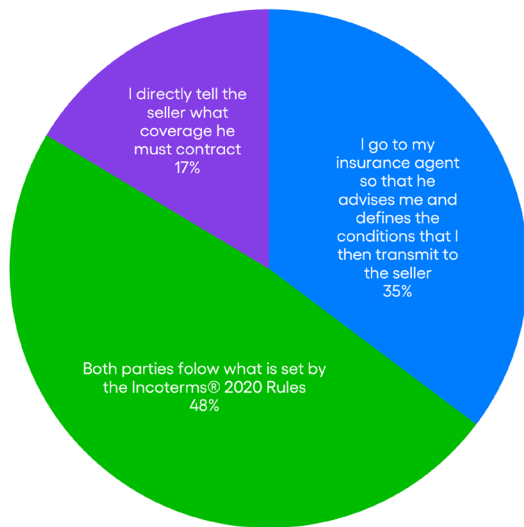
Respondents were asked if they considered that the Incoterms® Rules define who, between the seller and the buyer, is responsible for the risk and cost of loading and unloading maneuvers of the goods from the place of origin to the destination. 93% answered affirmatively, while only 7% declared that they were unaware of this information. They were then asked if they considered that the Incoterms® Rules indicated who, between the seller and the buyer, is responsible for the packing and packaging of the goods. In this regard, 71% of the professionals answered affirmatively. Finally, the following question was raised: do you consider that the Incoterms® Rules are used in international trade regardless of the means of payment and the currency of the transaction and that they apply to all types of goods, as long as these are tangible goods? 82% answered yes and 18% said they did not know the answer.

The results denote a high level of general knowledge about the obligations established by the rules and their scope of application.

## Insurance coverage over the goods when the parties use the Incoterms® Rules

The results show that, in the case of buyers, when they use the CIF and CIP terms, 48% of the insurance conditions and coverage are negotiated in accordance with the Incoterms® Rules, while

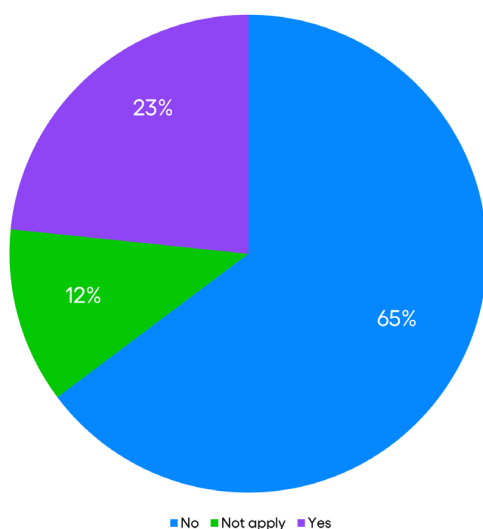
35% go to the insurance agent for them to define the conditions and 17% of those surveyed directly tell the seller what coverage said insurance should have.



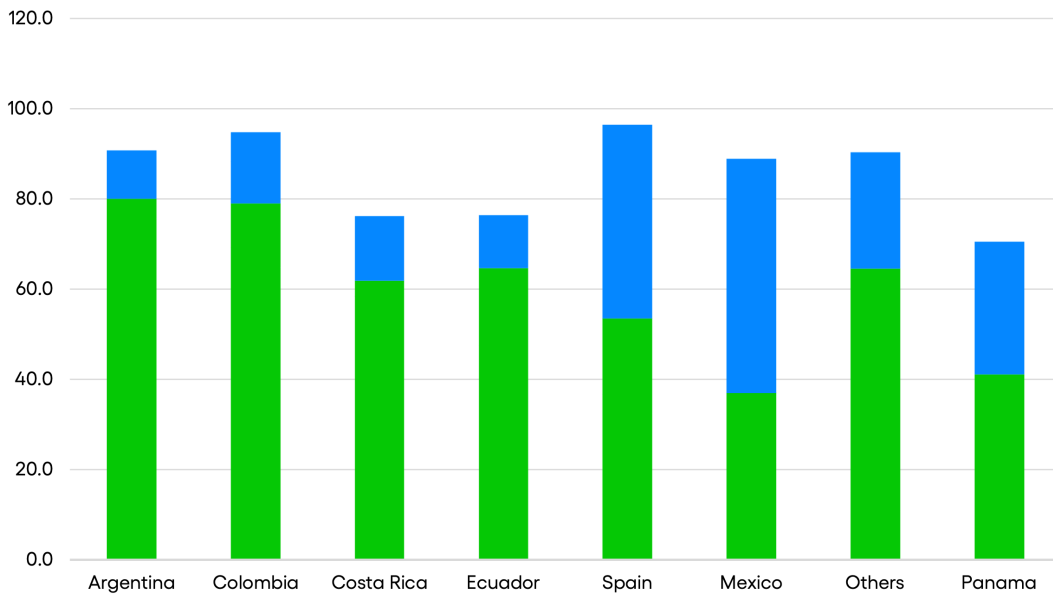
In the cases of Argentina, Colombia and Costa Rica, the situation is different: the respondents say that they prefer going to the insurance agent for advice to define the terms that are later communicated to the seller. The percentages are 49.2%; 52.6% and 42.9%, respectively.

### Use of Incoterms® Rules in domestic transactions (domestic trade) for the sale of goods

Although the rules are usually associated with international operations, the truth is that they can also be used in domestic sale of goods. Within this framework, the respondents were asked if, in the event of carrying out domestic operations, they negotiated and applied the terms. The results obtained show that 65% do not use the rules in their operations, 12% do not apply trade terms and 23% use Incoterms®.

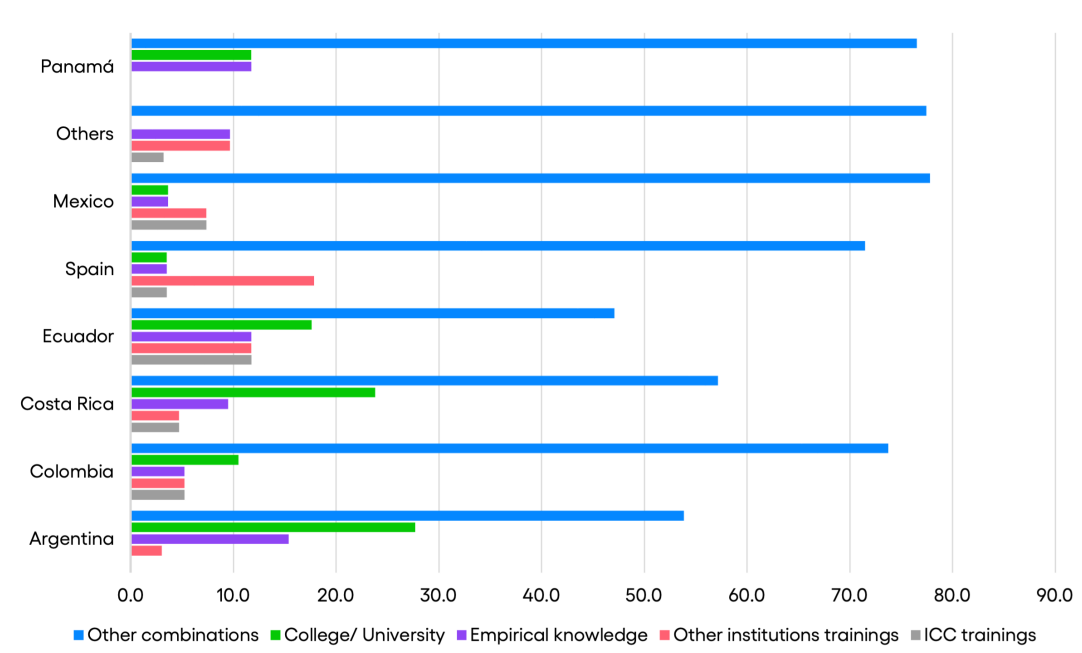


When the information is segregated by country, we note that this 23% is highly representative of the number of companies located in Mexico (51.9% of the total surveys from that country), Spain (42.9% of the total surveys from that country) and Panama, (29.4% of the total surveys from that country).



## Source of knowledge about the Incoterms® Rules

Respondents were asked where their knowledge of the rules came from. Schools and universities are the main sources (41%), followed by experience in trading (28%) and courses given by entities other than the ICC (20%). On the other hand, 11% of people said they had attended an official Incoterms® course. The case of Argentina differs from the rest: commercial practice and training in schools and universities are the main sources of knowledge.





# Additional findings

- 63% of the respondents who has the Incoterms® 2020 book, observe the recommendation of not using the rules FAS, FOB, CFR and CIF for containerized cargo. On the contrary, 37% of the respondents do not follow this recommendation and do not have the book.
- It was found that those who do not have the official publication are more likely to incorrectly include the Incoterms® clause in the commercial documents that cover the sale of goods, 63.1% of this universe of respondents, while those who do have it do so in 28.6% of the verified cases.
- Regarding the clarity of the publication when it comes obligations set by each term, it is noteworthy that 92% of those who consider that the rules are unclear, lack the official publication.
- 67.7% of the people who consider that the Incoterms® Rules ' content is clear consult directly the A7 and B7 obligations when there is any doubt about clearance responsibilities. Those who think otherwise do so only in 28.2%, seeking to a greater extent advice from their customs agent (56.4%).

## Conclusion

The results of this report show that the Incoterms® Rules are widely used - 81% of those surveyed say they use them - and that this is accompanied by a positive perception of their international observance (96%).

When focusing on the perception of clarity that users have about the publication and observance of the ICC recommendations, the possession (or not) of the book makes an important difference. Indeed, 92% of those who consider that the rules are not clear do not have the official ICC publication.

The perception of the clarity of the rules is complemented by the high level of understanding of the obligations established by the rules: 93% of respondents stated that the Incoterms® delimit responsibility for the risk and cost of loading and unloading goods from origin to destination; 71% of the professionals said that the terms determine who, between buyer and seller, is responsible for the packing and packaging of the goods; and 82% stated that the rules apply to all types of goods, as long as they are tangible.

## About the International Chamber of Commerce

The International Chamber of Commerce (ICC) is the institutional representative of more than 45 million companies in over 170 countries. ICC's core mission is to make business work for everyone, every day, everywhere. Through a unique mix of advocacy, solutions and standard setting, we promote international trade, responsible business conduct and a global approach to regulation, in addition to providing market-leading dispute resolution services. Our members include many of the world's leading companies, SMEs, business associations and local chambers of commerce.



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