

Several Typical Fee Items subject to Customs Duty in Equipment Import Contract

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In international trade, transaction relating to equipment import to China occurs frequently. The seller and the buyer will spend substantial time in negotiating the commercial terms and conditions, but seldom consider the setting of various fee items which may probably bring influence over the customs duty to be imposed. As a result, after the contract is concluded, some unforeseeable customs duty may be imposed during the import process which inevitably brings inconvenience and loss to both the seller and the buyer.

Therefore, it is important to understand the basic knowledge of the customs duty in relation to the equipment import. In this article, we will discuss several fee items involved in equipment import which are relevant to customs duty.

I. Typical fee items in equipment import contract

In a sales contract for equipment import into China, besides the price of the equipment itself, other related fee items may include:

1. Commission
2. Cost of transportation and insurance
3. Special design fee
4. Royalty fee
5. Equipment installation and commissioning fee
6. Technology service fee (technology training fee)
7. Warranty fee
8. Packaging material fee
9. Cost of spare parts for replacement, as well as maintenance and test fee

II. The definition and scope of customs dutiable value for import equipment

The dutiable value of the equipment for import, besides the transaction value of the equipment itself, the above-mentioned fee items may or may not be included into the scope of the dutiable value. The detailed analysis is as below:

1. Commission

In equipment import contract, if a purchase commission payable by the buyer exists, such commission will not be included into the scope of dutiable value. However, other commission or brokerage except purchase commission payable by the buyer shall be part of the dutiable value.

2. Cost of transportation and insurance

All costs of transportation and insurance incurred prior to the arrival of the equipment in designated China port shall be part of the dutiable value. Costs of transportation and insurance incurred after the arrival shall be excluded in the dutiable value.

3. Special design fee

Most of the equipments for import are designed according to special requirements of the buyer. Thus, if the buyer pays special design fee or R&D fee accordingly, such fees will be included into the dutiable value.

4. Royalty fee

Royalty fee refers to the fee payable by the buyer to the seller or IP holders for the license of patent, trademark, know-how, copyright or distributorship in relation to the equipment. Royalty fee shall be included into the dutiable value. However, if the royalty fee is not related to the equipment, or the payment of the royalty fee does not constitute the condition for sale of the equipment to China, such royalty fee shall not be part of the dutiable value.

The following three points shall be taken into consideration in determining whether the royalty fee shall be included into the dutiable value:

- (1) The royalty fee is not included in the transaction value of the equipment;
- (2) The royalty fee is related to the equipment itself;
- (3) The payment of the royalty fee constitutes the condition for sale of the equipment to China. The payment of the royalty fee shall be deemed to constitute condition for sale of the equipment to China if (i) the buyer fails to pay the royalty fee, then the buyer will not be allowed to import the equipment, or (ii) the buyer fails to pay the royalty fee, the equipment cannot be purchased with the conditions as agreed in the contract.

The royalty fee, depending on the negotiation, will be probably paid with a fixed rate, or an agreed % based on the business profit. Once the royalty fee is determined, the customs duty in relation to the royalty fee will be determined according to the duty rate of the equipment.

5. Equipment installation and commissioning fee

Equipment installation and commissioning fee refers to the fee incurred due to the installation and commissioning in relation to the equipment at the place of the buyer or relevant party after the equipment is delivered in China.

Such fee, according to the law, shall not be included in the dutiable value.

6. Technology service fee (Technology training fee)

Technology service fee (Technology training fee) refers to the fee payable by the buyer for the technology training service provided by the seller towards the buyer's workers. Such fee shall not be included in the dutiable value.

7. Warranty fee

Any warranty fee relating to the equipment shall be included in the dutiable value.

8. Packaging material fee

Any packaging material fee payable by the buyer which is separately listed and related to the equipment shall be included in the dutiable value.

9. Cost of spare parts for replacement, as well as maintenance and test fee

Any cost for spare parts for replacement, as well as maintenance and test fee incurred after the import of the equipment, shall not be included in the dutiable value. However, if such fees have been already included in the transaction value of the equipment, then they will be subject to customs duty because they are not separately listed.

III. Our suggestions

In consideration of the fee items as discussed above, some fee items will be included in the dutiable value while the others can be excluded. Therefore, during the course of contract drafting and negotiation, we suggest the followings shall be noted:

1. Those fee items which can be excluded in the dutiable value shall be fully understood. In above-mentioned fee items, the purchase commission, cost of

transportation and insurance incurred after the arrival of the equipment in designated China port, royalty fee with no relation to the equipment, equipment installation and commissioning fee, technology service fee (technology training fee), cost of spare parts for replacement, as well as maintenance and test fee will be excluded in the dutiable value.

2. Any fee items which can be excluded in the dutiable value and exist in the purchase of the equipment, such fee items shall be separately listed in the contract in an explicit way. Otherwise, the fees under these fee items will be deemed part of the transaction value and subject to customs duty because they are not separately listed.

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