

People's Republic of China General Administration of Customs Announcement on Issues Concerning the Procedures for Filing Declarations of Dutiable Royalties

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On March 27, 2019, the People's Republic of China General Administration of Customs (GACC) released the "Announcement on Issues Concerning the Procedures for Filing Declarations of Dutiable Royalties," (GACC Announcement No. 58 [2019], hereinafter "Announcement No. 58"), which changed the filing of declarations of dutiable royalties from post-import collection by customs authorities to a self-declaration model by the importing companies. From now on, corporations will need to declare royalties to customs authorities as a type of special goods for import in the form of a customs declaration. Announcement No. 58 went into effect on May 1, 2019.

1. Background of the Policy

According to the GACC, **royalties** are defined as **the fees that the purchaser of imported goods pays to acquire permission to use or receive the rights below¹ from the holder of the intellectual property rights or another party who has received valid authorization from the holder of the rights** (see [Fig.1]). **Dutiable royalties** refers to royalties that **meet certain conditions²** (see [Fig. 2]) **and shall be included in the dutiable value of imported goods.**

[Fig. 1] Main Types of Rights Associated with Royalties

✓ Patent rights	✓ Trademarks	✓ Proprietary technology	✓ Copyrights	✓ Distribution rights	✓ Selling rights
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[Fig. 2] Standards for Determining Inclusion of Royalties in the Dutiable Value of Imported Goods

When the dutiable value is assessed based on the agreed price of the imported goods, **royalties not included in the price actually paid or payable for the goods will be included in the dutiable amount,** with the exception of either of the two conditions listed below:

1. The royalty is unrelated to the goods in question.
2. The payment of royalties is not a prerequisite* for selling the goods in question within the People's Republic of China.

***If the imported goods cannot be sold unless the purchaser pays the royalties, or if transactions using conditions stipulated in the contract cannot be carried out unless the purchaser pays the royalties, the payment of royalties shall be deemed a prerequisite to sell the imported goods within the People's Republic of China.**

¹ Measures of the General Administration of Customs of the People's Republic of China for the Determination of the Customs Value of Imported and Exported Goods (Order No. 213, GACC) Article 51.

² Measures of the General Administration of Customs of the People's Republic of China for the Determination of the Customs Value of Imported and Exported Goods (Order No. 213, GACC) Articles 11, 13, and 14.

Royalties that shall be included in the dutiable value of imported goods	1. When royalties are paid for the use of patents or proprietary technology and when any of the following conditions apply to the imported goods: <ol style="list-style-type: none"> (1) If it includes patents or proprietary technology. (2) If it was produced using a patented method or proprietary technology. (3) If it was specially configured or manufactured for the purposes of implementing a patent or proprietary technology.
	2. When royalties are paid for the purpose of using trademarks and when any of the following conditions apply to the imported goods: <ol style="list-style-type: none"> (1) If there is a trademark. (2) If a trademark is attached after it is imported and it is then available for direct sales. (3) If trademark rights have already been obtained at the time of import and the goods become available for sale if a trademark is attached after minor changes are made.
	3. When royalties are paid for the purpose of exercising copyrights and when any of the following conditions apply to the imported goods: <ol style="list-style-type: none"> (1) The goods contains software, writing, songs, graphs, images, or other similar content (for example: cassette tapes, magnetic disks, optical disks, and other similar media) (2) Other goods with contents that receive copyright.
	4. When royalties are paid for the exercise of distribution, selling, or similar rights and when any of the following conditions apply to the imported goods: <ol style="list-style-type: none"> (1) If direct sales are possible after importing. (2) If minor changes make sales possible.

The GACC has made many announcements in recent years related to declarations of royalties by companies importing goods.

[Fig. 3] Announcements by the GACC in Recent Years Regarding Royalties

No.	Date	Name	Number	Contents Related to Royalties
1	March 24, 2016	Announcement of Revised Instructions of the Customs of the People's Republic of China for Completing the Customs Declaration Forms for Imported and Exported Goods	GACC Announcement No. 20 [2016]	Added confirmation of royalty payments on the customs declaration form. Importing companies are required to determine the royalties on imported goods when they fill in the customs declaration form.
2	January 23, 2019	Announcement on Adding a Customs Supervision Mode	GACC Announcement No. 20 [2019]	Added the customs supervision mode “Deferred Royalty Duty Collection” with code number 9500, which applies to royalty payments made by taxpayers after importation. Declaration to and settlement of duties with the customs authorities should be conducted within a specified period after making the royalty payments.

Based on the announcements described above, Announcement 58 changes the requirements for declaration of royalties and stipulates surcharges for overdue filing of customs declaration forms.

2. Main Contents of the Announcement

Under Announcement No. 58, those obligated to pay customs duties must (1) **determine whether the imported goods are subject to royalties**, enter “yes” or “no” in the “Confirmation of Royalty Payment” column of the declaration form and confirm, and (2) **check whether royalties have already been paid at the time the declaration form is being filled out** and fill in the appropriate information. The steps for filling out the relevant customs declaration forms are described in [Fig. 4] as follows:

[Fig. 4] Steps for Filling Out Customs Forms (refer to the appendix for detailed images)

Step	Action	Status	Required Information to be Entered	Applied Tax Rate and Taxable Foreign Exchange Rate
1	Determine whether the imported goods include any dutiable royalties.	Yes	Enter “Yes” in the “Confirmation of Royalty Payment” column	/
		No	Enter “No” in the “Confirmation of Royalty Payment” column.	
		*This column does not have to be filled in for exported goods, processing trade, and other customs-supervised bonded goods (excluding bonded goods for domestic sale).		
2	Confirm whether royalties were paid at the time the customs declaration forms were filled out.	Paid	If the dutiable royalties were paid when the goods were declared for import, enter the amount paid in the “Miscellaneous Expenses” column. It is not necessary to fill in the “Total Value” column.	Customs authorities shall collect taxes on royalties at the tax rate and foreign exchange rate for duty collection prevailing on the date when customs accepts the declaration of the goods for import.
		Unpaid	<ul style="list-style-type: none"> ➤ Pay the dutiable royalties to the Customs authorities within 30 days of each payment. ➤ File a customs declaration form. On the form, enter “deferred royalty duty collection” (customs supervision code 9500) in the “Supervisory Mode” column, the name and HS code of the originally imported goods in “Commodity Name” and “Commodity Code” respectively, “0.1” in “Statutory Quantity,” the amount of dutiable royalties in each payment in “Total Value,” and “1” in both “Gross Weight” and “Net Weight.” 	Customs authorities shall collect taxes on royalties at the tax rate and foreign exchange rate for duty collection prevailing on the date when customs accepts the filing of the declaration of dutiable royalties by the taxpayer.

In accordance with Announcement No. 58, Customs authorities will impose a **penalty fee** as set forth below for those who fail to follow the provisions prescribed for the procedures related to royalties.

[Fig. 5] Provisions on Penalty Fees

No.	Condition	Collection of Penalty Fees
1	If the taxpayer fails to fill out the “Confirmation of Royalty Payment” as prescribed by the provisions and underpays or fails to pay any taxes due.	Customs authorities may impose a late payment surcharge of 0.05% of the amount of underpaid or unpaid tax per day for the period from the date when import taxes are paid or goods are released from customs to the date when customs authorities discover the violation of provisions.
2	If the taxpayer fills out the “Confirmation of Royalty Payment” as prescribed by the provisions, but fails to declare the dutiable royalties to the customs authorities within 30 days of each payment, resulting in underpaid or unpaid taxes.	For cases where the enterprises fail to declare dutiable royalties on time but report correctly in “Confirmation of Royalty Payment,” Customs will calculate the period of late payment surcharges from the declaration due date to the date when the taxpayer files the declaration or when customs authorities discover the violation of provisions.

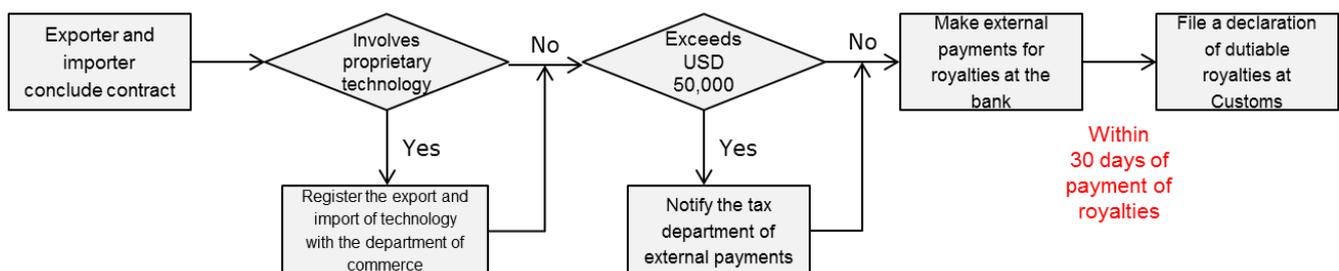
Reductions or exemptions of penalty fees for taxes shall be handled in accordance with the relevant provisions set forth in GACC Announcements No. 27 of 2015 and No. 32 of 2017.

3. Impact on Corporations

The method of declaring royalty payments has changed since Announcement No. 58 went into effect. In addition, companies that import goods are being presented with greater demands with regards to determining the declaration of relevant customs duties. To avoid the imposition of penalties resulting from erroneous judgments, it is recommended that companies that royalty payments pertain to immediately reevaluate the appropriateness of their existing dutiable royalties in accordance with Announcement No. 58 and change their method of declaration.

Since numerous procedures are involved when companies pay royalties for goods that they import into China, it is recommended that companies affected by these regulations immediately adjust the related operational workflows. The figure below illustrates possible procedures related to dutiable royalties that may be necessary if separate payments are made for the imported goods and related royalties.

[Fig. 6] Procedures for Royalty Payments (if payments for imported goods and related royalties are made separately)



Importing companies are facing heightened requirements for compliance, as they must not only handle the above procedures for the payment of royalties appropriately, but must also consider the existence of transfer pricing risk. We will continue to monitor the situation and provide further information as necessary.

Appendix

Declaration of Royalties on the Customs Declaration Form

The contents related to royalties on the customs declarations form are explained below using images based on the Import Declaration Form on the China International Trade Single Window (<https://www.singlewindow.cn/>).

1. Determine whether there are dutiable royalties for imported goods and fill in the “Confirmation of Royalty Payment” column.

This column does not need to be filled in for exported goods, processing trade, and other customs-supervised bonded goods (excluding bonded goods for domestic sale).

Where the buyer needs to pay dutiable royalties related to imported goods directly or indirectly to the seller or a relevant party, regardless of whether such royalties have been included in the price actually paid or payable for the imported goods, the buyer shall enter “Yes” in the “Confirmation of Royalty Payment” column.

Where the buyer does not need to pay dutiable royalties related to imported goods directly or indirectly to the seller or a relevant party, the buyer shall enter “No” in the “Confirmation of Royalty Payment” column.

[Fig. 1] Filling in the “Confirmation of Royalty Payment” Column

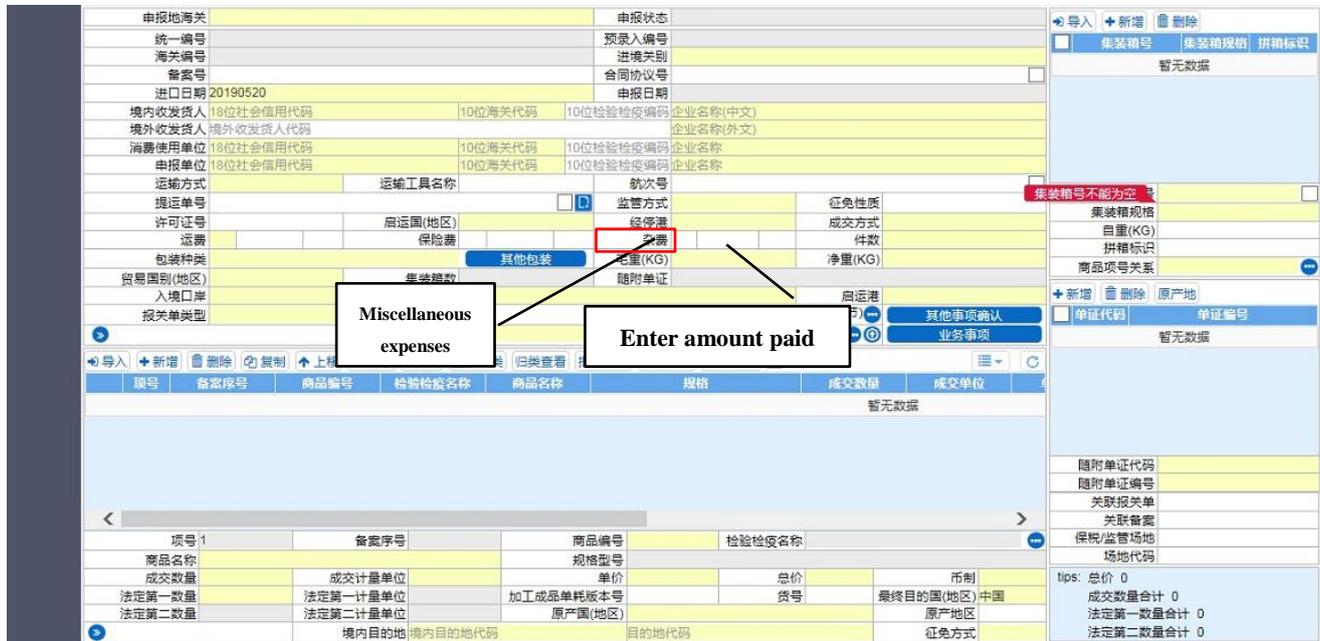
Condition	Entry Method
Exported goods, processing trade, and other customs-supervised bonded goods (excluding bonded goods for domestic sale)	Not applicable
When dutiable royalties on imported goods exist	Enter “Yes”
When dutiable royalties on imported goods do not exist	Enter “No”

2. Confirm whether dutiable royalties were paid at the time the goods were declared for import and fill in the “Confirmation of Royalty Payment” column.

(1) If dutiable royalties were paid at the time the goods were imported:

Enter the amount that was paid in the “Miscellaneous Expenses” column. There is no need to enter it in the “Total Value” column.

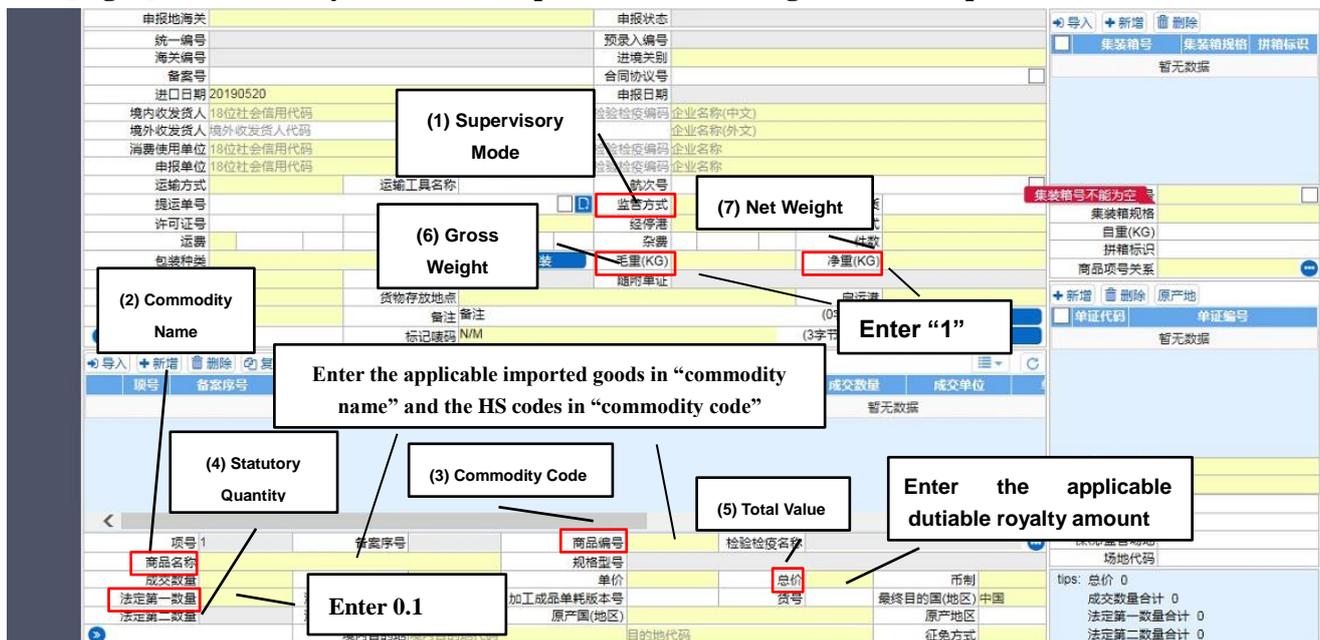
[Fig. 2] If dutiable royalties were paid at the time the goods were imported



(2) If dutiable royalties were not paid at the time the goods were imported:

The procedures for filing declarations of dutiable royalties with customs authorities shall be carried out within 30 days after each royalty payment. On the customs declaration form, enter (1) “deferred royalty duty collection” (customs supervision code 9500) in the “Supervisory Mode” column, (2) the product name of the originally imported goods in “Commodity Name,” (3) the HS code of the originally imported goods in “Commodity Code,” (4) “0.1” in “Statutory Quantity,” (5) the amount of dutiable royalties in each payment in “Total Value,” and “1” for both (6) “Gross Weight” and (7) “Net Weight.”

[Fig. 3] If dutiable royalties were not paid at the time the goods were imported:



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