

Deliveries to Ukraine: export (re-import) of defective equipment

1. Conditions for the return of equipment and/or compensation

2. Replacement of defective equipment with a new one

3. Compensation for defective (out of order) equipment

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When making deliveries to Ukraine, foreign companies occasionally face the need to replace defective equipment with a new one. Accordingly, the question arises as to how to replace such equipment without re-payment of customs duties (for example, import duties and import VAT).

This article describes the most common situations, namely:

Replacement of defective (out of order) equipment with a new one, i.e., re-export with its subsequent re-import to the territory of Ukraine;

Compensation for defective (out of order) equipment, i.e., without returning the goods to a foreign supplier.

Note! Used equipment cannot be replaced with a new one using the re-export/re-import process. Such equipment can be exported from Ukraine for warranty repairs.

In both of the above cases, all conditions of return and/or compensation must be set out in the supply contract between foreign supplier and Ukrainian buyer. In particular, it has to contain the following conditions for the return of equipment and/or compensation for defective (out of order) equipment:

- warranty period when it is possible to replace defective (out of order) pieces of equipment with new ones;
- terms/periods when defective (out of order) pieces of equipment will be replaced with new ones, after sending them back to the foreign supplier;
- the party to the supply contract (foreign supplier or Ukrainian buyer) that will bear the costs associated with such replacement, and if any costs are borne by the Ukrainian buyer – the method of compensation;

- the possibility of monetary compensation for defective equipment (without returning it to the foreign supplier);
- documentary confirmation of the above actions (relevant acts for the Ukrainian bank and customs authorities of Ukraine), etc.

Replacement of defective equipment with a new one

It should be noted that replacement of defective equipment with a new one is possible within a maximum of one calendar year after the import of equipment into the customs territory of Ukraine.

In case of primary import to Ukraine, during customs clearance of equipment, the customs declaration and invoices must indicate serial numbers of the pieces of equipment imported into the territory of Ukraine. This is necessary for their further identification.

To re-export defective equipment from Ukraine for its further replacement with a new one, it is necessary to refer to the relevant customs authority of Ukraine with an application and a copy of the supply contract (that has to provide for such a possibility). After that, the relevant customs authority of Ukraine issues a permit for re-export of defective equipment from Ukraine.

After obtaining the permission of the customs authority, the equipment is cleared and undergoes a physical inspection and identification with its subsequent photographing at the customs. The customs authorities of Ukraine verify serial numbers of the equipment to check whether it was imported into the territory of Ukraine and is returned. After completing all formalities at the customs, the equipment is sent back to a foreign supplier. As for the foreign supplier, it sends similar new technically serviceable equipment to the Ukrainian buyer.

When returning equipment in the re-import mode, additional (new) customs duties (for example, import duty or import VAT) is not paid, as such customs duties have been paid during the primary import of the equipment into Ukraine.

Compensation for defective (out of order) equipment

The Parties to the supply contract may agree on the so-called Credit Note, so as not to incur unnecessary costs associated with replacement of defective (out of order) equipment. In this case, the foreign supplier may issue a Credit Note for the amount of defective equipment value to the Ukrainian buyer. Such a Credit Note allows the Ukrainian buyer to omit the payment of a certain amount of money to the foreign supplier (the amount a Credit Note is issued for), i.e. not to pay for the defective equipment.

It should be noted that in both of the above cases there is no refund of any customs duties, as when replacing defective (out of order) equipment, the Ukrainian buyer receives new serviceable equipment, and in the case of a Credit Note, the defective (out of order) equipment remains on the customs territory of Ukraine.