

# Resolution Method of Claim Demurrage & Port Charge Case in Indonesian EPC Contract for Power Plant Project

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**Abstract**—Import activity is part of the arrangements for the Engineering Procurement and Construction (EPC) contract for a power plant project in Indonesia with International Commercial Term (Incoterm) 2000 Type Delivery Duty Unpaid (DDU). Type Incoterm DDU introduced since the year 2000 - 2010 and is widely used in a country that provides import tax exemption for strategic and special goods for example, power plant equipment. Using DDU Incoterm, International EPC contracts always raises a claim demurrage and port charges when the Owner liability for late processing of custom clearance. Claims filed by the Contractor normally include all costs incurred from the time the material arrived until the material can be sent to the project site. This is very detrimental to the Owner's expense if it's recognized as the final total value of the claim. To avoid more losses on one parties, it can be used a method of calculating the portion separating responsibilities between the Owner and the Contractor that listed in clausal contract.

**Index Terms**—custom clearance, demurrage & port charge, incoterm DDU

## I. INTRODUCTION

In general, international construction contracts related to government policies in a country. This is to control the development of the construction projects. One of the government's policy of providing import tax exemption for strategic goods category for example in Indonesia which provides tax exemptions for imported power plant equipment. However, to use of this facility requires the tax administration process in the preparation phase and the implementation phase through government Tax agencies requires verification in selecting goods that deserve to be considered strategic goods category.

International commercial terms or Incoterms are a series of sales terms that are used by businesses throughout the world. Incoterms are used to make international trade easier. They are used to divide transaction costs and responsibilities between buyer and seller. Incoterms were introduced in 1936 and they have been updated six times to reflect the developments in international trade. The latest revisions are sometimes referred to as Incoterms 2010 defines 11 rules, reducing

the 13 used in Incoterms 2000 by introducing two new rules ("Delivered at Terminal", DAT; "Delivered at Place", DAP) that replace four rules of the prior version ("Delivered at Frontier", DAF; "Delivered Ex Ship", DES; "Delivered Ex Quay", DEQ; "Delivered Duty Unpaid", DDU). Incoterm DDU This term means that the seller delivers the goods to the buyer to the named place of destination in the contract of sale. The goods are not cleared for import or unloaded from any form of transport at the place of destination. The buyer is responsible for the costs and risks for the unloading, duty and any subsequent delivery beyond the place of destination. However, if the buyer wishes the seller to bear cost and risks associated with the import clearance, duty, unloading and subsequent delivery beyond the place of destination, then this all needs to be explicitly agreed upon in the contract of sale [1].

In Indonesia, considering that's government policies some EPC contracts make a modification in clause import activities. Wherein the selected type is a modification that Incoterm DDU Import Clearance, unloading and subsequent delivery beyond the place of destination are borne by the contractor, but the Import Duties shall be borne by the Owner. It requires the Owner resolve the tax liability in the process of custom clearance before importing equipment can be delivered to the Project Site.

## II. DEMURRAGE AND PORT CHARGE CLAIM

In EPC contract for power plant project in Indonesia such as Palabuhan Ratu power plant project and Suralaya Rehabilitation power plant project has regulated Contractor and Owner obligation relating to import custom clearance before material can be move from the harbor to the Project Site. Contractor's obligations are to prepare Intimations shipment letter, shipping documents, perform material handling in ports, and perform administrative process custom clearance. Owner obligations are to issue letter of Authorization to the Contractor and to pay or process tax exemption.

In the Fig. 1 sequence, Intimations shipment is a letter to the Owner which will be performed by the contractor, and then the contractor will apply a Letter of Authorization to handling Import and application document for tax payment. After tax import has been paid

or release for exemption by the Owner, the import goods can be send to the Project Site. Duration required in this sequence is 30 days with Mandatory Days as the time required by the Owner for payment processing LOA and Import Tax. In fact, the administrative processing for import tax exemptions are sometimes subject to constraints that caused Payment / Import Tax Exemption late resulting in demurrage and port charges are borne by the Contractor. Contractor considers that the cost burden due to this problem should be borne by the Owner because Obligations / Import Tax Exemption is the responsibility of the Owner to the sequence can be seen in Fig. 2.

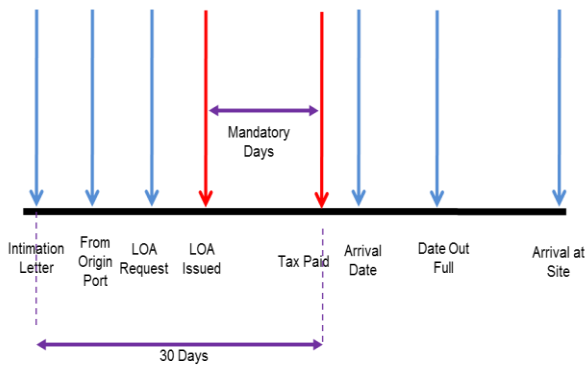


Figure 1. Normal sequence of import material in contract

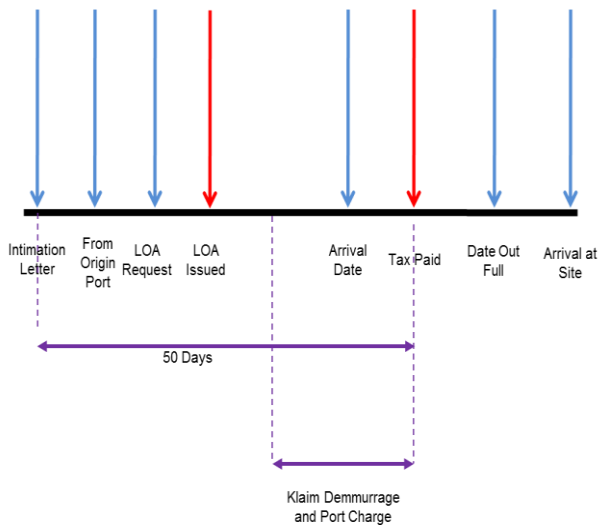


Figure 2. Sequence of import material in contract arise a claim

Example Contract clausal said : “The plant which by delay or failure on the part of the owner to give such intimation as is mentioned in sub clause 52.1 of this clause or from any cause for which the owner or some other contractor employed by him is responsible, the contractor is prevented from delivering to the site at the time specified for the delivery thereof or, if no time is specified, at the time when it reasonable for it to be delivered having regard to the date by which the work ought to be completed, or The plant that has been delivered to the site but which by delay or failure on the part of the owner or from any cause for which the owner is responsible the contractor is for the time being prevented from erecting” [2]-[3].

And Another Contract clausal said:

“There shall be added to the contract price the reasonable additional expense incurred in storing and taking reasonable measures to protect and preserve the delayed plant from and insuring it against loss, deterioration and damage however caused ...”[2]-[3].

With two clauses above concluded that the contractor has the right to claim expenses related to the cot and Port Charge demurrage due to late payments / Tax Exemption by Owner.

### III. METHOD OF RESOLUTION CLAIM

With the respective obligations between Owner and the Contractor, then the calculation is based on the duration of the implementation of the obligations of each party. Duration determines how much cost should be borne by the contractor and Owners due to delays in the process of Custom Clearance.

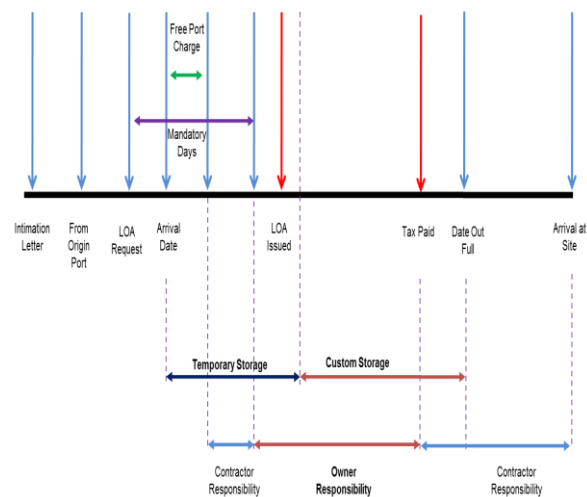


Figure 3. Resolution method for claim demurrage and port charge

Matters relating to claims and Port Demurrage Charge including the following:

- Letter of Authority (LOA)

LOA issued by Owner after receiving the application shipment documents from the Contractor to Forwarder appointed.

- Port Charge

Port cost that including material handling, temporary storage, and custom storage.

- Temporary Storage

Place of material accumulation in the port area for custom clearance processed and the duration approximately one month, and when more of these deadlines then the material should be transferred to the Custom Storage.

- Custom Storage

Place stockpiling material for custom clearance.

- Tax Pay

Tax payment or exemption process by the Owner.

- Demurrage Container

Additional container rental costs incurred due to expiration of the deadline in the agreement on the shipping line.

- Free of Charge Container

Container fee waivers granted by the Shipping Line which is calculated from the boats coming up to the day in harbor (usually to 7 days).

- Free of Port Charge

Landfill fee waivers for 3 days provided by the port.

- Mandatory Days

The time required by the Owner for payment processing LOA and Import Tax.

#### IV. CONCLUSION

By using the above method of resolution can know the costs to be borne by each party in the event of demurrage and port charges additional cost. This method is to avoid unfairly particularly burdensome risk to one party alone. All parties that allocating or sharing risk fairly can ultimately save time and money for all parties.[4]

#### REFERENCES

- [1] International Chamber of Commerce, *Incoterms*, 2010.
- [2] EPC Contract PLTU 2 Jabar Palabuhan Ratu Power Plant Project. 2007.
- [3] EPC Contract Rehabilitation Power Plant Suralaya Unit 1 – 4 Project. 2008.
- [4] R. A. Rubin, S. D. Guy, A. C. Maevis, and V. Fairweather, *Construction Claim, Analysis, Presentation, and Defense*. 1983



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