



CBP Vessel Repair Process Improvement

February 2015

Why Improve Process?



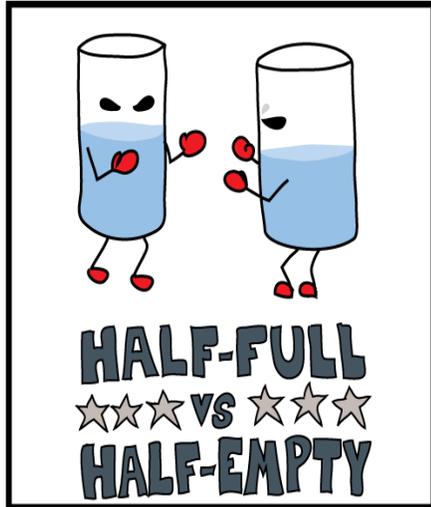
- (1) To increase the chances of getting relief at the earliest possible point in administrative process, i.e., Application for Relief;**
- (2) To enhance chances of success by administrative protest or litigation if not happy with original duty assessment.**

Vessel Repair Statute



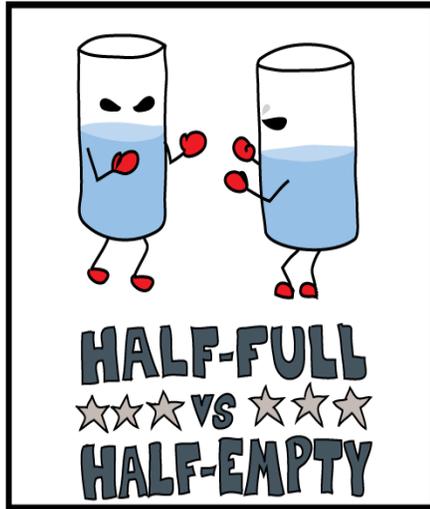
- Generally, imposes a 50% duty on the cost of foreign shipyard work to U.S.-flag vessels;
- Imposes duty on “equipments, . . . repair parts or materials to be used, or the expenses of repairs . . .”;
- Entry must be made upon first arrival back in United States.
- 19 U.S.C. § 1466(a).

“Expenses of Repairs”



- (1) **Single-Purpose Expenses** —
- “Expenses of repairs” covers “all expenses (not specifically excepted in the statute) which, **but for** dutiable repair work, would not have been incurred.”
 - “[D]oes not cover expenses that would have been incurred even without the occurrence of dutiable repair work.”
 - Texaco Marine Servs. v. United States, 44 F.3d 1539, 1544 (Fed. Cir. 1994) (post-repair clean-up & protective coverings).
 - (cont.)

“Expenses of Repairs” (cont.)



(2) Dual-Purpose Expenses —

- Apportionment ruled to be consistent with the “but for” test.
- Court found it rational to impose the duty on only that portion of the expense “fairly attributable” to the dutiable repairs.
- SL Serv. v. United States, 357 F.3d 1358, 1362 (Fed. Cir. 2004) (causally-related dry-docking expenses).

What's Not Dutiable?



- (1) Modification (e.g., cell entry guide upgrade);**
- (2) Non-repair work (e.g., lay-up caused by lack of cargo);**
- (3) Inspection that meets requirements of government, classification society or insurance carrier (even when dutiable repairs result);**

(cont.)

What's Not Dutiable? (cont.)

(4) Commonly used statutory exemptions:

:

- ***§ 1466(d)(2): equipments, repair parts or materials that were manufactured in the United States and associated work done by U.S. labor or by members of the regular crew;***
- ***1466(h)(2): spare parts and materials which are certified by the master for use aboard the vessel but only if HTSUS duty is paid upon first entry into the U.S.;***
(cont.)

What's Not Dutiable? (cont.)

(4) Commonly used statutory exemptions (cont.):

- **§ 1466(h)(3): spare parts necessarily installed before the first entry into the United States, but only if HTSUS duty is paid upon first entry into the United States;**
- **1466(h)(4): Cost of equipment, repair parts and materials installed by regular crew while the vessel is on the high seas, in foreign waters, or in a foreign port;**

(cont.)

What's Not Dutiable? (cont.)

(4) Commonly used statutory exemptions (cont.):

- ***For Casualties (§ 1466(d)(1)), must show:***
 - ***Casualty occurrence***
 - ***Unsafe and unseaworthy conditions***
 - ***Inability to reach port of destination without repairs***
 - ***Remission is limited to minimal repairs to reach U.S. port***



Relevant Regulation (19 C.F.R. § 4.14)

- (1) **Declaration and entry on CBP Form 226 are due upon the first arrival of the vessel in the United States or Puerto Rico. §§ 4.14(a)(1), (c), (d) & (e).**

- (2) **Within 90 days from the date of vessel arrival, CBP must receive Application for Relief (clearly presenting legal basis) and evidence showing cost of each item, unless CBP grants one 30-day extension (must be requested before original 90-day period expires). §§ 4.14(f) & (i)(1).**

DEPARTMENT OF HOMELAND SECURITY U.S. Customs and Border Protection RECORD OF VESSEL FOREIGN REPAIR OR EQUIPMENT PURCHASE 19 CFR 4.7, 4.14				1. Function of this document <input type="checkbox"/> DECLARATION (Complete items 1-1) <input type="checkbox"/> ENTRY (Complete items 1-
2. Owner Name		Address		Phon
3. Represented Locally By: Name		Address		Phon
4. Vessel Name		5. IMO No.	6. Name of Master	
7. Last U.S. Departure Port			8. Last U.S. Departur	
9. Foreign Port Arrived From	10. Voyage No.	11. U.S. Port of Arrival	12. Port Code	1
14. Location (City and Country) and Sailing Date from that Country		15. Description of Work Performed Including Identification of Materials/Equipment Purchased		

Evidence of Cost (§§ 4.14(i)(1)(i)-(vi) & (i)(2))



- § 4.14(i)(1)(i): *“Itemized bills, receipts, and invoices. . . . The cost of items for which a request for relief is made must be segregated from the cost of the other items listed in the vessel repair entry”*;
- § 4.14(i)(2): *“[C]opies of any other evidence and documents the applicant may wish to provide as evidentiary support” (e.g., specs, drawings, change orders);*

(cont.)

Evidence of Cost (cont.)

- **§ 4.14(i)(2): Certification “by the master, owner, or authorized corporate officer” that all submitted documents are “originals or copies of originals”;**
- **§ 4.14(i)(2): If documents are in a foreign language, “an English translation, certified by the translator to be accurate.”**



Decision on Application for Relief

- (1) CBP assesses duties;
- (2) Company compares decision to Application for Relief to determine whether company should file Administrative Protest.

Administrative Protest



- (1) Generally, must provide a “specific description of the merchandise affected” . . . and, for each category of work, must state “nature of, and justification for the objection” (see 19 U.S.C. § 1514(c)(1) and 19 C.F.R. § 174.13(a));**
- (2) Due “within 180 days” of decision on Application for Relief (see 19 U.S.C. § 1514(c)(3) and 19 C.F.R. §§ 4.14(i)(3) and 174.12(e));**
- (3) Can get further relief;**
- (4) Prerequisite to going to court (“exhaustion” of administrative remedies).**

Whether to Appeal to U.S. Court of Int'l Trade



(1) Evaluate as to whether decision denying Protest involves:

- Significant amount of money (usually focus on few items);***
- Precedential issue (remember to protest and summons all other entries involving same issue).***

(2) Discuss with General Counsel's Office.

OBSERVATIONS

Opportunities to Seize:

- Documentation is critical: No silver bullet but together specs, drawings, reports and invoices must clearly depict true nature of work;
- For modification claims, anticipate possible need affirmatively to show prior good working order.

Problems to Avoid:

- Specs that describe non-dutiable modifications in section on repairs;
- Invoices that misdescribe nature of work;
- Overuse of word “repair” (whether in specs, invoices or reports) or of similar words that CBP always interprets as sign of prior disrepair: e.g., “damage,” “wear,” “renewal,” “overhaul,” etc.

Some Ideas



- (1) Anticipation of duty claims at time of dry-dock planning;***
- (2) Checklists for claims of modification, regulatory inspection, parts exemptions, casualty or any expenditure unrelated to repairs;***
- (3) Involvement and mindfulness of Port Engineers regarding documentation requirements;***
- (4) Closer collaboration between Finance and Port Engineers;***
- (5) Proper classification of parts under HTSUS;***
- (6) Contemporaneous certifications / declarations;***
- (7) Improved relationship with CBP;***
- (8) Setting parameters of when to confer with company's General Counsel's Office.***

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