

Customs Issues New Guidance on a Range of LNG Transportation Issues

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U.S. Customs and Border Protection recently issued three rulings on multiple facets of the transportation by water of liquified natural gas. All three rulings addressed how the U.S. Jones Act, which is a set of U.S. laws restricting U.S. domestic maritime commerce to qualified U.S.-flag vessels, applies to LNG transportation. These rulings also have the potential to affect LNG exports.

SHIPMENT OF U.S. GAS THROUGH MEXICO BACK TO THE U.S.

The Jones Act encompasses the transportation “by land and water” between two “points in the United States.” Thus, a qualified U.S.-flag vessel must be used to transport merchandise from the United States when it moves in part over land through Mexico or Canada back to the United States for shipment by vessel to another U.S. port. For example, crude oil shipped by pipeline from the U.S. to Canada and then by tank vessel to a U.S. refinery would have to be transported by a qualified U.S.-flag vessel from the Canadian port to the U.S. port.

One of the only exceptions is when the merchandise is transformed in another country such that it is “new and different,” like the refining of crude oil into gasoline, before being returned to the United States. With respect to LNG, CBP determined as early as 2002 that gasification of LNG did not create a new and different product. Consequently, a foreign vessel could not transport LNG from Alaska to Mexico where the LNG would be gasified and shipped by pipeline to California.

Then in a February 2023 ruling, CBP determined that the liquification of natural gas for use as vessel bunker fuel did in fact result in a new and different product because “multiple components are removed from the gas - components that are separate and independently marketable products.” Moreover, only through this process would the gas become liquified and be useable as marine fuel. CBP indicated, however, that “simple purification or a mere change in phase (such as from a gas to a liquid) is insufficient to change an item into a new and different product.”

CBP confirmed this logic in a November 2023 ruling which only became publicly available in January 2024. CBP determined that U.S. source natural gas delivered by pipeline to a foreign liquification facility that was then liquified could be transported by foreign vessel to the United States for use as bunker fuel. CBP based its decision on its finding that if the resulting LNG was “regassified, the gas would be a different chemical composition than the feeder gas that arrived from the pipeline.” The company which apparently requested the ruling, issued a press release on

January 29, 2024 indicating that LNG could now be delivered from Mexico “to U.S. locations, including Puerto Rico” without mentioning bunker fuel.

OFFSHORE SHIP-TO-SHIP LNG BUNKERING

On January 23, 2024, CBP examined the issue of whether a vessel anchored to the seabed for purposes of an LNG transfer beyond three nautical miles from the U.S. coast is a “point in the United States.” CBP has determined that the Jones Act applies everywhere within three nautical miles but that it only applies outside the three nautical miles in accordance with Outer Continental Shelf Lands Act to “installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources. . .”

In the recent ruling, CBP determined that a vessel anchored beyond three nautical miles for the purpose of a ship-to-ship transfer of LNG bunker fuel was not a “point in the United States” because the anchored vessel would not be there “for a purpose of exploring, developing or producing resources from the seabed.” Therefore, a foreign vessel may transport LNG bunker fuel from a U.S. port to the receiving vessel with either vessel being anchored to the seabed for the fuel transfer.

MULTIPLE EXPORT LNG U.S. LOAD PORTS

CBP also recently considered a situation where a foreign vessel loaded a part cargo of LNG at one U.S. port and then loaded a second cargo at a second U.S. port before departing for a foreign port. The issue was whether it was lawful for the vessel to discharge gas vapor for safety reasons at the second U.S. port which was loaded at the first U.S. port. CBP determined that such vapor is in fact “merchandise” and that the transportation of it between two U.S. ports was a Jones Act violation. CBP affirmed in its ruling, as it has in the past, that safety is not a consideration pertinent to the Jones Act.

3 Min Read

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