



Customs Issues New Vessel Repair Duty Regulations

On October 20, 2009, United States Customs and Border Protection modified its regulations administering the foreign vessel repair duty to incorporate additional exemptions for repairs by the vessel's crew and repairs made in countries with which the United States has a free trade agreement.

The United States foreign vessel repair duty aims to provide opportunities for U.S. shipyards by assessing a 50 percent duty on all repairs to U.S.-flag vessels in foreign yards. Owners are required to declare all equipment, materials, and parts purchased for and repairs made to the vessel upon her first arrival at a United States port. Within 10 calendar days, the vessel must file a formal entry and may subsequently file an application for relief from the duty for items falling within allowed exemptions. The repair duty requires substantial compliance efforts by shipowners and represents a burdensome cost disadvantage to U.S. shipowners, many of whom nevertheless opt to repair their vessels outside of the United States because of the cost and perceived quality advantages of foreign yards.

Regular Crew Repairs Outside of the United States

CHARLOTTE

Following a lengthy comment period, CBP issued a final rule in 2001 that subjected to the duty repairs made to U.S.-flag vessels while on the high seas based upon CBP's interpretation of the *Mount Washington Tanker* case. Provisions of the Miscellaneous Trade and Technical Corrections Act of 2004 amended the repair duty statute to add a new paragraph exempting from declaration, entry, and duty requirements the cost of equipment, repair parts, and materials installed by members of the regular crew while on the high seas. This exception was subsequently expanded by the Pension Protection Act of 2006 to cover repairs in foreign waters or a foreign port. The exemption is retroactive for repairs completed on or after April 25, 2001, although CBP has taken the position that this does not give it the authority to review entries that have already been liquidated.

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The new CBP final rule updates the regulations to include the exemption for crew repairs anywhere outside the U.S., including the cost of crew labor, equipment, repair parts, and materials installed on the vessel, provided that the repair does not involve "foreign shipyard repairs by foreign labor." One point of controversy will likely turn upon whether the individual performing the repair is in fact one of the vessel's "regular crew" where, for example, temporary riding gangs or specialists have been introduced to the vessel to carry out a repair.

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Free Trade Agreements

WASHINGTON, D.C.

Free trade agreements have long provided shipowners some relief from the foreign vessel repair duty. Existing regulations acknowledge the impact of free trade agreements with Israel, Canada, and Mexico, but over the last decade a series of bilateral trade agreements have opened exemptions in Singapore and other nations.

The new regulations acknowledge the existence of additional agreements, but do not specifically enumerate which foreign nations' yards are exempt from the repair duty. In most cases, such repairs must still be declared and entered, even though they may be exempt from duty. Although owners should exercise caution since not all free trade agreements provide full exemption and phase-in schedules vary, these agreements represent a real opportunity for cost savings that owners should consider when planning major repairs.

If you have any questions regarding this briefing, please contact one of the following Winston & Strawn attorneys:

Washington, D.C.

Bryant E. Gardner	bgardner@winston.com	(202) 282-5893
Constantine G. Papavizas	cpapavizas@winston.com	(202) 282-5732

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