

U.S. Customs Re-Clarifies Foreign Vessel Scope for Offshore Wind Cable Installation

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U.S. Customs and Border Protection in a September 2, 2022 ruling narrowed the scope of what a foreign cable lay vessel can lawfully do on U.S. offshore wind projects. CBP partially altered its views on October 28 with regard to the transportation of cable remaining after a cable lay operation is complete.

CBP has long held that a foreign vessel may pick up pipe or cable in a U.S. port and lay it from that point to another point in the United States or otherwise between two U.S. “points.” What constitutes a U.S. “point” offshore is the subject of several CBP rulings. The rationale is that the laying of pipe or cable is not the “transportation” of “merchandise” between two U.S. points which is proscribed by U.S. coastwise law known as the “Jones Act.”

With respect to excess cable, CBP determined in 1982 that a cable lay vessel could return to a U.S. port a *de minimis* amount of excess cable it had loaded at a different U.S. port. On September 2, CBP indicated that its 2019 guidance on what constitutes “vessel equipment”—which is an exception from the Jones Act—eliminated the *de minimis* excess cable determination. CBP reasoned that the 2019 guidance, which did away with prior *de minimis* reasoning in the context of vessel equipment, also did away with the excess cable ruling reasoning which was not based on the vessel equipment exception.

On October 28, CBP noted that the 1982 determination was preserved in the 2019 guidance and so revived the excess or *de minimis* cable rule. CBP indicated that “the outcome” of the 1982 determination “with regard to the surplus cable remains intact, in that, after the cable-laying operation has been performed, a small amount of surplus cable aboard a non-coastwise qualified vessel maybe landed at a U.S. port.” CBP defined “small amount” as “five percent by quantity or less of the total amount laid.”

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