

Vessel Repair Duty Application for Relief Denied on Procedural Grounds

JULY 15, 2014

On July 10, 2014, the Court of International Trade dismissed for lack of subject matter jurisdiction the complaint of Puerto Rico Towing & Barge challenging Customs and Border Protection's denial of its application for relief from the 50% *ad valorem* duty applicable to repairs made to U.S.-flag vessels outside of the United States (*Puerto Rico Towing & Barge Co. v. United States*, Slip. Op. 14-80, 2014WL3360779). Before Customs, Puerto Rico Towing had claimed relief from the duty on the grounds that the repairs were conducted in a Caribbean Basin Initiative trade agreement nation, but Customs denied the request because it could not determine, based upon the invoice submitted, which portion of the materials used were the product of the beneficiary country. Puerto Rico Towing then emailed to Customs several updates and additional evidence aimed at addressing the deficiencies, but was told by Customs that its only option was to file a protest with the agency. Upon review, the court denied Plaintiff's claims that the follow-on submissions constituted valid protests of the denial which could be appealed to the court because they were not clearly identified as protests and did not meet the strict requirements of the statute and regulations. The decision is a cautionary tale both as to the importance of building a solid evidentiary record of the nature of foreign repairs while at the yard to support the claim for relief, and the rigid procedural requirements necessary to protect an owner's rights as it navigates the foreign repair relief process.

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