§ 4.13 [Reserved]

§ 4.14 Equipment purchases for, and repairs to, American vessels.

(a) General provisions and applicability—(1) General. Under section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), purchases for or repairs made to certain vessels while they are outside the United States are subject to declaration, entry, and payment of ad valorem duty. These requirements are effective upon the first arrival of affected vessels in the United States or Puerto Rico. The vessels subject to these requirements include those documented under the U.S. law for the foreign or coastwise trades, as well as those which were previously documented under the laws of some foreign nation or are undocumented at the time that foreign shipyard repairs are performed, but which exhibit an intent to engage in those trades under CBP interpretations. Duty is based on actual foreign cost. This includes the original foreign purchase price of articles that have been imported into the United States and are later sent abroad for use.

(2) Expenditures not subject to declaration, entry, or duty. The following vessel repair expenditures are not subject to declaration, entry, or duty:

(i) Expenditures made in American Samoa, the Guantanamo Bay Naval Station, Guam, Puerto Rico, or the U.S. Virgin Islands because they are considered to have been made in the United States;

(ii) Reimbursements paid to members of the regular crew of a vessel for labor expended in making repairs to vessels; and

(iii) The cost of equipment, repair parts, and materials that are installed on a vessel documented under the laws of the United States and engaged in the foreign or coastwise trade, if the installation is done by members of the regular crew of such vessel while the vessel is on the high seas, in foreign waters, or in a foreign port, and does not involve foreign shipyard repairs by foreign labor.

(b) Applicability to specific types of vessels—(1) Fishing vessels. As provided in §4.15, vessels documented under U.S. law with a fishery endorsement are subject to vessel repair duties for covered foreign expenditures. Undocumented American fishing vessels which are repaired, or for which parts, nets or equipment are purchased outside the United States are also liable for duty.

(2) Government-owned or chartered vessels. Vessels normally subject to the vessel repair statute because of documentation or intended use are not excused from duty liability merely because they are either owned or chartered by the U.S. Government.

(3) Vessels continuously away for two years or longer—(i) Liability for expenditures throughout entire absence from U.S. Vessels that continuously remain outside the United States for two years or longer are liable for duty on any fish nets and netting purchased at any time during the entire absence. Vessels designed and used primarily for transporting passengers or merchandise, which depart the United States for the sole purpose of obtaining equipment, parts, materials or repairs remain fully liable for duty regardless of the duration of their absence from the United States.

(ii) Liability for expenditures made during first six months of absence. Except as provided in paragraph (b)(3)(i) of this section, vessels that continuously remain outside the United States for two years or longer are liable for duty only on those expenditures which are made...
during the first six months of their absence. See paragraph (h)(3) of this section. However, even though some costs might not be dutiable because of the six-month rule, all repairs, materials, parts and equipment-related expenditures must be declared and entered.

(c) Estimated duty deposit and bond requirements. Generally, the person authorized to submit a vessel repair declaration and entry must either deposit or transmit estimated duties or produce evidence of a bond on CBP Form 301 at the first United States port of arrival before the vessel will be permitted to depart from that port. A continuous or single entry bond of sufficient value to cover all potential duty on the foreign repairs and purchases must be identified by surety, number and amount on the vessel repair declaration which is submitted at the port of first arrival. At the time the vessel repair entry is submitted by the vessel operator to the appropriate VRU port of entry as defined in paragraph (g) of this section, that same identifying information must be identified on the entry form. Sufficiency of the amount of the bond is within the discretion of CBP at the arrival port with claims for reduction in duty liability necessarily being subject to full consideration of evidence by CBP. CBP officials at the port of arrival may consult the appropriate Vessel Repair Unit (VRU) port of entry as identified in paragraph (g) of this section, so that it is received within ten calendar days after arrival of the vessel. Claims for relief from duty should be made generally as part of the initial submission, and evidence must later be provided to support those claims. Failure to submit full supporting evidence of cost within stated time limits, including any extensions granted under this section, is considered to be a failure to enter.

(d) Time limit for submitting evidence of cost. A complete vessel repair entry must be supported by evidence showing the cost of each item entered. If the entry is incomplete when submitted, evidence to make it complete must be received by the appropriate VRU port of entry as identified in paragraph (g) of this section within 90 calendar days from the date of vessel arrival. That evidence must include either the final cost of repairs or, if the operator submits acceptable evidence that final cost information is not yet available, initial or interim cost estimates given
prior to or after the work was author-
ized by the operator. The proper VRU
port of entry may grant one 30-day ex-
tension of time to submit final cost
evidence if a satisfactory written ex-
planation of the need for an extension
is received before the expiration of the
original 90-day submission period. All
extensions will be issued in writing. In-
adequate, vague, or open-ended re-
quests will not be granted. Questions
as to whether an extension should be
granted may be referred to the Cargo
Security, Carriers & Immigration
Branch, Office of International Trade
in CBP Headquarters by the VRU ports
of entry. Any request for an extension
beyond a 30-day grant issued by a VRU
must be submitted through that unit
to the Cargo Security, Carriers & Im-
migration Branch, Office of Inter-
national Trade, CBP Headquarters. In
the event that all cost evidence is not
furnished within the specified time
limit, or is of doubtful authenticity,
the VRU may refer the matter to the
U.S. Immigration and Customs En-
forcement to begin procedures to ob-
tain the needed evidence. That agency
may also investigate the reason for a
failure to file or for an untimely sub-
mission. Unexplained or unjustified
 delays in providing CBP with sufficient
information to properly determine
duty may result in penalty action as
specified in paragraph (j) of this sec-
tion. Extensions granted for the filing
of necessary evidence may also extend
the time for filing Applications for Re-
lief (see paragraph (i)(1) of this sec-
tion).

(g) Location and jurisdiction of vessel
repair unit ports of entry. Vessel Repair
Units (VRUs) are responsible for pro-
cessing vessel repair entries. VRUs are
located in New York, New York; New
Orleans, Louisiana; and San Francisco,
California. The New York unit pro-
cesses vessel repair entries received
from ports of arrival on the Great
Lakes and the Atlantic Coast of the
United States north of, but not includ-
ing, those located in the State of Vir-
ginia. The New Orleans unit processes
vessel repair entries received from
ports of arrival on the Atlantic Coast
from and including those in the State of
Virginia, southward, and from all
United States ports of arrival on the
Gulf of Mexico including ports in Puer-
to Rico. The San Francisco unit pro-
cesses vessel repair entries received
from all ports of entry on the Pacific
Coast including those in Alaska and
Hawaii.

(h) Justifications for relief from duty.
Claims for relief from the assessment
of vessel repair duties may be sub-
mitted to CBP. Relief may be sought
under paragraphs (a), (d), (e), or (h) of
the vessel repair statute (19 U.S.C.
1466(a), (d), (e), or (h)), each paragraph
of which relates to a different type of
claim as further specified in para-
graphs (h)(1)–(h)(4) of this section.

(1) Relief under 19 U.S.C. 1466(a). Re-
quests for relief from duty under 19
U.S.C. 1466(a) consist of claims that a
foreign shipyard operation or expendi-
ture is not considered to be a repair or
purchase within the terms of the vessel
repair statute or as determined under
judicial or administrative interpreta-
tions. Example: a claim that the ship-
yard operation is a vessel modification.

(2) Relief from duty under 19 U.S.C.
1466(d). Requests for relief from duty
under 19 U.S.C. 1466(d) consist of claims
that a foreign shipyard operation or ex-
penditure involves any of the fol-
lowing:

(i) Stress of weather or other casualty.
Relief will be granted if good and suffi-
cient evidence supports a finding that
the vessel, while in the regular course
of its voyage, was forced by stress of
weather or other casualty, while out-
side the United States, to purchase
such equipment or make those repairs
as are necessary to secure the safety
and seaworthiness of the vessel in
order to enable it to reach its port of
destination in the United States. For
the purposes of this paragraph, a “cas-
ualty” does not include any purchase
or repair made necessary by ordinary
wear and tear, but does include the
failure of a part to function if it is
proven that the specific part was re-
paired, serviced, or replaced in the
United States immediately before the
start of the voyage in question, and
then failed within six months of that
date.

(ii) U.S. parts installed by regular crew
or residents. Relief will be granted if
equipment, parts of equipment, repair
parts, or materials used on a vessel
were manufactured or produced in the United States and were purchased in the United States by the owner of the vessel. It is required under the statute that residents of the United States or members of the regular crew of the vessel perform any necessary labor in connection with such installations.

(iii) Dunnage. Relief will be granted if any equipment, equipment parts, materials, or labor were used for the purpose of providing dunnage for the packing or shoring of cargo, for erecting temporary bulkheads or other similar devices for the control of bulk cargo, or for temporarily preparing tanks for carrying liquid cargoes.

(3) Relief under 19 U.S.C. 1466(e). Requests for relief from duty under 19 U.S.C. 1466(e) relate in pertinent part to matters involving vessels normally subject to the vessel repair statute, but that continuously remain outside the United States for two years or longer. Vessels that continuously remain outside the United States for two years or longer may qualify for relief from duty on expenditures made later than the first six months of their absence. See paragraph (b)(3)(ii) of this section.

(4) Relief under 19 U.S.C. 1466(h). Requests for relief from duty under 19 U.S.C. 1466(h) consist of claims that a foreign shipyard operation or expenditure involves any of the following:

(i) Expenditures on LASH barges. Relief will be granted with respect to the cost of equipment, parts, materials, or repair labor for Lighter Aboard Ship (LASH) operations accomplished abroad.

(ii) Certain spare repair parts or materials. Relief will be granted with respect to the cost of spare repair parts or materials which are certified by the vessel owner or master to be for use on a cargo vessel, but only if duty was previously paid under the appropriate commodity classification(s) as found in the Harmonized Tariff Schedule of the United States when the article first entered the United States.

(iii) Certain spare parts necessarily installed on a vessel prior to their first entry into the United States. Relief will be granted with respect to the cost of spare parts only, which have been necessarily installed prior to their first entry into the United States with duty payment under the appropriate commodity classification(s) as found in the Harmonized Tariff Schedule of the United States.

(i) General procedures for seeking relief—(1) Applications for Relief. Relief from the assessment of vessel repair duty will not be granted unless an Application for Relief is filed with CBP. Relief will not be granted based merely upon a claim for relief made at the time of entry under paragraph (e) of this section. The filing of an Application for Relief is not required, nor is one required to be presented in any particular format, but if filed it must clearly present the legal basis for granting relief, as specified in paragraph (h) of this section. An Application for Relief must also state that all repair operations performed aboard a vessel during the one-year period prior to the current submission have been declared and entered. A valid Application is required to be supported by complete evidence as detailed in paragraphs (i)(1)(i)–(vi) and (i)(2) of this section. Except as further provided in this paragraph, the deadline for receipt of an Application and supporting evidence is 90 calendar days from the date that the vessel first arrived in the United States following foreign operations. The provisions for extension of the period for filing required evidence in support of an entry, as set forth in paragraph (f) of this section, are applicable to extension of the time period for filing Applications for Relief as well. Applications must be addressed and submitted by the vessel operator to the appropriate VRU port of entry and will be decided in that unit. The VRUs may seek the advice of the Cargo Security, Carriers & Immigration Branch, Office of International Trade in CBP Headquarters with regard to any specific item or issue which has not been addressed by clear precedent. If no Application is filed or if a submission which does not meet the minimal standards of an Application for Relief is received, the duty amount will be determined without regard to any potential claims for relief from duty (see paragraph (h) of this section). Each Application for Relief must include copies of:

(i) Itemized bills, receipts, and invoices for items shown in paragraph (e)
of this section. 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;

(ii) Photocopies of relevant parts of vessel logs, as well as of any classification society reports which detail damage and remedies;

(iii) A certification by the senior officer with personal knowledge of all relevant circumstances relating to casualty damage (time, place, cause, and nature of damage);

(iv) A certification by the senior officer with personal knowledge of all relevant circumstances relating to foreign repair expenditures (time, place, and nature of purchases and work performed);

(v) A certification by the master that casualty-related expenditures were necessary to ensure the safety and seaworthiness of the vessel in reaching its United States port of destination; and

(vi) Any permits or other documents filed with or issued by any United States Government agency other than CBP regarding the operation of the vessel that are relevant to the request for relief.

(2) Additional evidence. In addition, copies of any other evidence and documents the applicant may wish to provide as evidentiary support may be submitted. Elements of applications which are not supported by required evidentiary elements will be considered fully dutiable. All documents submitted must be certified by the master, owner, or authorized corporate officer to be originals or copies of originals, and if in a foreign language, they must be accompanied by an English translation, certified by the translator to be accurate. Upon receipt of an Application for Relief by the VRU within the prescribed time limits, a determination of duties owed will be made. After a decision is made on an Application for Relief by a VRU, the applicant will be notified of the right to protest any adverse decision.

(3) Application for Relief; failure to file or denial in whole or in part. If no Application for Relief is filed, or if a timely filed Application for Relief is denied in whole or in part, the VRU will determine the amount of duty due and issue a bill to the party who filed the vessel repair entry. If the bill is not timely paid, interest will accrue as provided in §24.3a(b)(1) of this chapter.

(4) Administrative protest. Following the determination of duty owing on a vessel repair entry, a protest may be filed under 19 U.S.C. 1514(a)(2) as the only and final administrative appeal. The procedures and time limits applicable to protests filed in connection with vessel repair entries are the same as those provided in part 174 of this chapter. In particular, the applicable protest period will begin on the date of the issuance of the decision giving rise to the protest as reflected on the relevant correspondence from the appropriate VRU.

(j) Penalties—(1) Failure to report, enter, or pay duty. It is a violation of the vessel repair statute if the owner or master of a vessel subject to this section willfully or knowingly neglects or fails to report, make entry, and pay duties as required; makes any false statements regarding purchases or repairs described in this section without reasonable cause to believe the truth of the statements; or aids or procures any false statements regarding any material matter without reasonable cause to believe the truth of the statement. If a violation occurs, the vessel, its tackle, apparel, and furniture, or a monetary amount up to their value as determined by CBP, is subject to seizure and forfeiture and is recoverable from the owner (see §162.72 of this chapter). The owner or master of the vessel who fails to timely pay the duty determined to be due is liable for interest as provided in §24.3a(b)(1) of this chapter.

(2) False declaration. If any person required to file a vessel repair declaration or entry under this section, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement, that person will be subject
§ 4.15 Fishing vessels touching and trading at foreign places.

(a) Before any vessel documented with a fishery license endorsement shall touch and trade at a foreign port or place, the master shall obtain from the port director a permit on Customs Form 1379 to touch and trade. When a fishing vessel departs from the United States and there is an intent to stop at a foreign port (1) to lade vessel equipment which was preordered, (2) to purchase and lade vessel equipment, or (3) to purchase and lade vessel equipment to replace existing vessel equipment, the master of the vessel must either clear for that foreign port or obtain a permit to touch and trade, whether or not the vessel will engage in fishing on that voyage. Purchases of such equipment, whether intended at the time of departure or not, are subject to declaration, entry, and payment of duty pursuant to section 466 of the Tariff Act of 1930, as amended (19 U.S.C. 1466). The duty may be remitted if it is established that the purchases resulted from stress of weather or other casualty.

(b) Upon the arrival of a documented vessel with a fishery endorsement which has put into a foreign port or place, the master shall report its arrival, make entry, and conform in all respects to the regulations applicable in the case of a vessel arriving from a foreign port.

(c) If a vessel which has been granted a permit to touch and trade arrives at a port in the United States, whether or not the vessel has touched at a foreign port or place, such permit shall forthwith be surrendered to the port director.

§ 4.17 Vessels from discriminating countries.

The prohibition against imports in, and the penalty of forfeiture of, certain vessels from countries which discriminate against American vessels provided for in subsections 2 and 3 of paragraph J, section IV, Tariff Act of 1913, as amended by the act of March 4, 1915 (19 U.S.C. 130, 131), shall be enforced only in pursuance of specific instructions issued and published from time to time by the Secretary of the Treasury or such other officer as the Secretary may designate. (See also §§ 4.20(c) and 159.42 of this chapter.)

§ 4.20 Tonnage taxes.

(a) Except as specified in § 4.21, a regular tonnage tax or duty of 2 cents per net ton, not to exceed in the aggregate 10 cents per net ton in any 1 year, shall be imposed at each entry on all vessels which shall be entered in any port of the United States from any foreign port or place in North America, Central America, the West Indies, the Bahamas, the Bermudas, the islands of the coast of South America bordering on the Caribbean Sea (considered to include the mouth of the Orinoco River), or the high seas adjacent to the U.S. or the above listed foreign locations, and on all vessels (except vessels of the U.S., recreational vessels, and barges, as defined in § 2101 of Title 46) that depart a U.S. port or place and return to the same port or place without being entered in the United States from another port or place, and regular tonnage tax of 6 cents per net ton, not to exceed 30 cents per net ton per annum,