



Commercial Activity ≠ Coastwise Trade

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The Hearing Office occasionally receives a case alleging that a vessel has engaged in coastwise trade without a Certificate of Documentation evidencing a coastwise endorsement. This type of case would involve an alleged violation of 46 U.S.C. § 12102(a), 46 C.F.R. § 67.323, § 67.325, or § 67.327. In order to prove that such a violation occurred, there must be evidence that the vessel was engaged in coastwise trade, among other things.

Coastwise trade is defined in various sections of 46 U.S.C. Chapter 551. The Coast Guard is authorized to enforce the coastwise laws (14 U.S.C. § 100), but Customs and Border Protection is the agency responsible for determining what activities are included within the definition of coastwise trade. It may be that coastwise trade always involves some commercial activity, but it is not true that all commercial activity is coastwise trade. For example, a vessel that lays cable or pipe in a U.S. harbor may not be engaged in the coastwise trade if it does not transport any passengers or merchandise.

In cases where the vessel's activity clearly falls within the statutory definition of coastwise trade, it may be sufficient to provide evidence showing the activity in which the vessel was engaged. For example, a ferry carrying passengers from Orient Point, New York to New London, Connecticut, would fall squarely within 46 U.S.C. § 55103 and there could not be much of an argument that it was not engaged in coastwise trade.

In cases that are more ambiguous, the Hearing Officer will need to be provided with evidence that clearly shows the activity the vessel was engaged in, plus some authority for the Coast Guard's position that the vessel is engaged in coastwise trade. A valid authority would be a ruling by Customs and Border Patrol or a decision by a court of competent jurisdiction. In an ambiguous situation, a determination by the Coast Guard that a vessel activity constituted

coastwise trade would not necessarily be persuasive, because the Coast Guard is not the agency responsible for making those determinations.

In the past few months, the Hearing Office has been presented with two problematic cases. One involved a vessel laying pipe in a harbor. The case file only vaguely described the activity the vessel was engaged in and contained no authority that laying pipe was coastwise trade. In another case, a vessel carried passengers on a harbor cruise that started and ended at the same point. Again, the case file did not include any authority to support the allegation that such an activity is coastwise trade.

In some cases, the issue of proving that the vessel was engaged in coastwise trade can be avoided by using a different approach. For instance, in the passenger vessel case above, it is likely that a Coast Guard Certificate of Inspection (COI) would be required for carrying passengers for hire. If the vessel did not have a valid COI, then a civil penalty case could be based on the invalid or missing COI, rather than on a coastwise trade violation.

A civil penalty case involving proof that a vessel engaged in coastwise trade can require more research and preparation than the typical civil penalty case. If in doubt, contact your servicing legal office for assistance.