

Slip Op. 07-186

UNITED STATES COURT OF INTERNATIONAL TRADE

ESSO STANDARD OIL CO. (PR),	:	
	:	
Plaintiff,	:	
	:	
v.	:	Before: Jane A. Restani, Chief Judge
	:	
UNITED STATES,	:	Court No. 98-09-02814
	:	
Defendant.	:	

OPINION

[Partial summary judgment for plaintiff under 19 U.S.C. § 1520]

Dated: December 28, 2007

Grunfeld Desiderio Lebowitz Silverman & Klestadt, LLP (Curtis W. Knauss, Steven P. Florsheim, Frances P. Hadfield, Robert F. Seely, and Robert B. Silverman) for the plaintiff.

Jeffrey S. Bucholtz, Acting Assistant Attorney General; Jeanne E. Davidson, Director; Patricia M. McCarthy, Assistant Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (Tara K. Hogan); Richard McManus, Office of Chief Counsel, U.S. Customs & Border Protection, of counsel, for the defendant.

Restani, Chief Judge: Reference is made to the court’s recent opinion in Eso Standard Oil Co. (PR) v. United States, Slip Op. 07-171, 2007 WL 4125999 (CIT Nov. 20, 2007). The parties have consulted on the judgment to be entered and determined that pursuant to the court’s prior opinion concluding that plaintiff’s entries may qualify for relief under 19 U.S.C. § 1520, judgment should enter for plaintiff on the entries covered by protest numbers 4909-97-100057 and 4909-97-100058. That is, plaintiff’s first attempt to obtain a refund of overpaid Harbor Maintenance Taxes (“HMT”) as to the entries covered by the “57” protest

number, which would be premature if it were a true protest, is not premature as a pre-liquidation request for refund of inadvertently collected charges under 19 U.S.C. § 1520(a)(4). The “58” protest entries are subject to reliquidation under former 19 U.S.C. § 1520(c).

The dispute now focuses on protest number 4909-97-100059. Because the government’s briefing in this matter did not clearly indicate that the entries covered by the “59” protest were the subject of a reliquidation request outside the one-year period allowed by former 19 U.S.C. § 1520(c), the court did not address this issue. Rather, the government claimed that § 1520(c) did not apply at all. Nonetheless, Defendant’s Proposed Findings of Uncontroverted Fact, submitted with its opening brief, reflect that plaintiff’s original request for reliquidation was dated August 25, 1997, more than one year after the last liquidation covered by the “59” protest. Thus, it was administratively time-barred. Plaintiff does not dispute the accuracy of relevant dates asserted by the defendant. Instead, it argues that the court’s prior opinion requires that judgment be granted on the “59” protest.

As judgment has not been entered, it is permissible for both parties to clarify their positions. Accordingly, judgment will be entered on the first two protests in favor of plaintiff, because this is proper under 19 U.S.C. § 1520, and judgment will be denied as to the last protest, as this is also the proper course under § 1520.

/s/ Jane A. Restani

Jane A. Restani
Chief Judge

Dated this 28th day of December, 2007.
New York, New York.

