U.S. Customs and Border Protection

RECEIPT OF APPLICATION FOR "LEVER-RULE" PROTECTION

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: Notice of receipt of application for "Lever-Rule" protection.

SUMMARY: Pursuant to 19 CFR 133.2(f), this notice advises interested parties that CBP has received an application from JUMEX S.A. de C.V. and its subsidiary, COMERCIALIZADORA ELERO, S.A. ("JUMEX") seeking "Lever-Rule" protection for the federally registered and recorded "JUMEX" trademark.

FOR FURTHER INFORMATION CONTACT: Nerissa Hamilton-vom Baur, Intellectual Property Rights Branch, Regulations and Rulings, at *Nerissa.Hamilton-VomBaur@cbp.dhs.gov*, or (202) 325-0204.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 CFR 133.2(f), this notice advises interested parties that CBP has received an application from JUMEX seeking "Lever-Rule" protection against the importation of five JUMEX juice products (Mango Nectar; Pineapple-Coconut Nectar; Guava Nectar; Apple Nectar; and Peach Nectar) made in Mexico and intended for sale outside the United States, that bear the "JUMEX" trademark (U.S. Trademark Registration No. 973,533/CBP Recordation No. TMK 17-00228). In the event that CBP determines that the JUMEX juice products intended for sale outside the United States are physically and materially different from the juice products authorized for sale in the United States, CBP will publish a notice in the Customs Bulletin, pursuant 19 CFR 133.2(f), indicating that the above-referenced trademark is entitled to "Lever-Rule" protection with respect to the physically and materially different juice products.

Dated: October 15, 2019

CHARLES R. STEUART
Chief,
Intellectual Property Rights Branch
Regulations and Rulings, Office of Trade

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(NO. 9 2019)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

SUMMARY: The following copyrights, trademarks, and trade names were recorded with U.S. Customs and Border Protection in September 2019. A total of 151 recordation applications were approved, consisting of 6 copyrights and 145 trademarks. The last notice was published in the Customs Bulletin Vol. 53, No. 34, September 25, 2019.

Corrections or updates may be sent to: Intellectual Property Rights Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street, NE., 10th Floor, Washington, D.C. 20229–1177, or via email at *iprrquestions@cbp.dhs.gov*.

FOR FURTHER INFORMATION CONTACT: LaVerne Watkins, Paralegal Specialist, Intellectual Property Rights Branch, Regulations and Rulings, Office of Trade at (202) 325–0095.

Dated: October 2, 2019

CHARLES R. STEUART
Chief,
Intellectual Property Rights Branch
Regulations and Rulings, Office of Trade

CBP IPR RECORDATION — SEPTEMBER 2019

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
COP 19–00115	09/04/2019	06/04/2020	Miller Manufacturing Bucket Heater Instruction Sheet	Miller Manufacturing Company	No
COP 19–00116	09/09/2019	09/09/2039	PAO Omega-3 Salmon Oil 1000 mg, Item 393950 Label.	Trident Seafoods Corporation	No
COP 19–00117	09/19/2019	09/19/2039	Fortnite.	Epic Games, Inc.	No
COP 19–00118	09/19/2019	09/19/2039	Fortnite (Rev. 3)	Epic Games, Inc.	No
COP 19–00119	09/19/2019	09/19/2039	Fortnite	Epic Games, Inc.	No
COP 19–00120	09/20/2019	09/19/2039	Throw Throw Burrito	Exploding Kittens, LP	No
TMK 19–00953	09/03/2019	01/23/2028	MOJITO COLLECTION	Natural Collection, Corp.	No
TMK 19–00954	09/03/2019	02/27/2023	AMERIGLO	AMERIGLO HOLDINGS, LLC	No
TMK 19–00955	09/03/2019	11/13/2023	CCAS	Trijicon, Inc.	No
TMK 19–00956	09/03/2019	03/18/2029	ETERNALLY PINK	Athena Cosmetics, Inc.	No
TMK 19–00957	09/03/2019	10/07/2025	REGENESIS	Athena Cosmetics, Inc.	No
TMK 19–00958	09/03/2019	07/15/2028	ATHENA COSMETICS	ATHENA COSMETICS, INC.	No
TMK 19–00959	09/03/2019	02/03/2020	CURL EFFECT	Athena Cosmetics, Inc.	No
TMK 19–00960	09/03/2019	02/04/2029	ATHENA and Design	Athena Cosmetics, Inc.	No
TMK 15–00901	09/04/2019	09/01/2029	DRAGON BALL Z	KABUSHIKI KAISHA SHUEISHA	No
TMK 19–00961	09/05/2019	03/16/2028	SRIXON	SUMITOMO RUBBER INDUSTRIES, LTD.	No
TMK 19–00962	09/05/2019	12/10/2023	ZOETIS	ZOETIS SERVICES LLC	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 19–00963	09/05/2019	10/01/2024	REVITALASH and Design	Athena Cosmetics, Inc.3	No
TMK 19–00964	09/05/2019	10/01/2024	REVITALASH	Athena Cosmetics, Inc.	No
TMK 19–00965	09/05/2019	02/08/2027	ATOPISES	SESDERMA, S.L.	No
TMK 04–01083	09/09/2019	09/06/2029	CISCO	Cisco Technology, Inc.	No
TMK 07–01314	09/09/2019	09/29/2029	JAZZ	STAWSKI DISTRIBUTING CO., INC.	No
TMK 09–00804	09/09/2019	09/09/2029	TASIGNA	Novartis AG	No
TMK 10–00936	09/09/2019	09/09/2029	HTC (Stylized)	HTC CORPORATION	No
TMK 18–00173	09/09/2019	11/14/2022	XXIO (Stylized)	SUMITOMO RUBBER INDUSTRIES, LTD.	No
TMK 19–00966	09/09/2019	05/28/2027	DYSON	DYSON TECHNOLOGY	No
TMK 19–00967	09/09/2019	05/05/2029	DYSON AIRWRAP	Dyson Technology	No
TMK 19–00968	09/09/2019	09/06/2027	DYSON SUPERSONIC	DYSON TECHNOLOGY LIMITED	No
TMK 19–00969	09/09/2019	06/25/2024	REVITALASH ADVANCED	Athena Cosmetics, Inc.	No
TMK 19–00970	09/09/2019	04/13/2025	E TYPE	Jaguar Land Rover	No
TMK 19–00971	09/09/2019	04/19/2026	COURAGE = BEAUTY	Athena Cosmetics, Inc.	No
TMK 19–00972	09/09/2019	10/16/2029	DESIGN ONLY (DEFENDER 110 Trade Dress)	Jaguar Land Rover	No
TMK 19–00973	09/09/2019	06/25/2024	REVITALASH ADVANCED and design	Athena Cosmetics, Inc.	No
TMK 19–00974	09/09/2019	10/30/2029	DESIGN ONLY (E-TYPE Trade Dress)	Jaguar Land Rover	No
TMK 19–00975	09/09/2019	06/25/2024	REVITABROW ADVANCED and design	Athena Cosmetics, Inc.	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 19–00976	09/09/2019	06/25/2024	REVITABROW ADVANCED	Athena Cosmetics, Inc.	No
TMK 19–00977	09/09/2019	10/14/2025	REVITASOME	Athena Cosmetics, Inc.	No
TMK 19–00978	09/09/2019	12/05/2027	V'LUMINÉ	Athena Cosmetics, Inc.	No
TMK 19–00979	09/09/2019	03/18/2029	CCELL	SHENZHEN SMOORE TECHNOLOGY LIMITED	No
TMK 19–00980	09/09/2019	10/02/2029	GLISS	General Labor & Industrial Staffing Services, LLC	No
TMK 19–00981	09/10/2019	07/15/2028	DEVA and Design	DEVA NUTRITION LLC	No
TMK 19–00982	09/10/2019	07/09/2029	GIRL & THE GOAT	Lam and the Goat LLC	No
TMK 14–01016	09/10/2019	11/04/2029	STARS	Association for the Advancement of Sustainability in Higher Education AKA AASHE	No
TMK 19–00983	09/10/2019	09/04/2029	SWIPENSNAP	Better Way Goods	No
TMK 10–01040	09/10/2019	11/08/2029	MOSSIMO	ICON DE HOLDINGS LLC	No
TMK 07–01380	09/10/2019	09/09/2029	DESIGN ONLY	STAWSKI DISTRIBUTING CO., INC.	No
TMK 11–00060	09/11/2019	12/12/2029	EAGLE BRAND & Design	BORDEN CO. (PTE) LTD.	No
TMK 17–00479	09/11/2019	01/24/2030	JAGUAR and Leaper Design	JAGUAR LAND ROVER LIMITED	No
TMK 12–00647	09/11/2019	11/03/2029	BARRE GRAY	ROCK OF AGES CORPORATION	No
TMK 19–00984	09/11/2019	07/19/2026	Shield Design	CABH Holdings, LLC	No
TMK 19–00985	09/11/2019	05/14/2027	LIVE SEAMLESSLY	CABH Holdings, LLC	No
TMK 19–00986	09/12/2019	07/03/2028	LIGHT UP YOUR LIFE	Amped & Collection Inc.	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 11–01228	09/12/2019	11/25/2029	PRIORITY MAIL	United States Postal Service	No
TMK 89–00470	09/12/2019	07/08/2019	VICKS	THE PROCTER & GAMBLE COMPANY	No
TMK 19–00987	09/12/2019	04/02/2029	DAYQUIL	The Procter & Gamble Company	No
TMK 19–00988	09/12/2019	02/28/2028	OZBLU	The Trustees of the Dwergie Investment Trust	No
TMK 19–00989	09/12/2019	02/28/2028	OZBLU (Stylized) and Design	The Trustees of the Dwergie Investment Trust	No
TMK 19–00990	09/12/2019	01/10/2028	SOFY	KSG TRADE CO.	No
TMK 04–00150	09/12/2019	10/20/2029	DTS	DTS, INC.	No
TMK 09–00666	09/13/2019	05/31/2029	ATMEL	ATMEL CORPORATION	No
TMK 13–00383	09/13/2019	01/23/2029	CHARMIN	THE PROCTER & GAMBLE COMPANY	No
TMK 19–00991	09/13/2019	11/06/2029	DESIGN ONLY (LOGO River Driver Silhouette)	ALBRECHT HOLDINGS LLC	No
TMK 16–00505	09/16/2019	09/15/2029	CARLSSON	Shar Products Company	No
TMK 16–01261	09/16/2019	01/27/2030	VIEW-MASTER	MATTEL, INC.	No
TMK 19–00992	09/16/2019	11/06/2029	DESIGN ONLY(River Driver Silhouette) (LOGO)	ALBRECHT HOLDINGS LLC	No
TMK 10–00527	09/16/2019	12/29/2029	INTEL with Swirl logo	Intel Corporation	No
TMK 19–00993	09/17/2019	10/13/2024	LOCHINVAR	LOCHINVAR, LLC	No
TMK 19–00994	09/17/2019	03/11/2028	AQUASANA	AQUASANA, INC.	No
TMK 19–00995	09/17/2019	09/06/2027	MY CINEMA LIGHTBOX	ONE11 Imports Inc.	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 13–00294	09/17/2019	12/14/2029	ACCUPOINT	TRIJICON, INC.	No
TMK 19–00996	09/17/2019	12/09/2024	APCOM	STATE INDUSTRIES, LLC	No
TMK 19–00997	09/17/2019	06/15/2023	AMERICAN	AMERICAN WATER HEATER COMPANY	No
TMK 19–00998	09/17/2019	04/26/2020	A. O. SMITH (Stylized) and Design	A. O. Smith Corporation	No
TMK 17–00764	09/18/2019	10/13/2019	METALLICA	Metallica	No
TMK 19–00999	09/19/2019	10/16/2029	BABY SHARK	Smart Study Co., Ltd.	No
TMK 19–01000	09/19/2019	09/05/2028	PINKFONG	Smart Study Co., Ltd.	No
TMK 19–01001	09/19/2019	02/07/2028	PINKFONG	Smart Study Co., Ltd.	No
TMK 19–01002	09/19/2019	10/05/2026	PINKFONG	Smart Study Co., Ltd.	No
TMK 19–01003	09/19/2019	12/01/2027	LONGHORN SILHOUETTE LOGO DESIGN	BOARD OF REGENTS, THE UNIVERSITY OF TEXAS SYSTEM	No
TMK 19–01004	09/19/2019	09/11/2025	LONGHORN SILHOUETTE LOGO DESIGN	BOARD OF REGENTS, THE UNIVERSITY OF TEXAS SYSTEM	No
TMK 19–01005	09/19/2019	12/08/2027	LONGHORN SILHOUETTE LOGO DESIGN	BOARD OF REGENTS, THE UNIVERSITY OF TEXAS SYSTEM	No
TMK 19–01006	09/19/2019	03/30/2029	DESIGN ONLY (LONGHORN SILHOUETTE LOGO)	Board of Regents, The University of Texas System	No
TMK 19–01007	09/19/2019	12/08/2027	DESIGN ONLY (LONGHORN SILHOUETTE LOGO DESIGN)	BOARD OF REGENTS, THE UNIVERSITY OF TEXAS	No
TMK 19–01008	09/19/2019	11/11/2029	TEXAS LONGHORNS	Board of Regents, The University of Texas	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 19–01009	09/19/2019	11/27/2026	TEXAS AND LONGHORN STEER DESIGN	Board of Regents, The University of Texas	No
TMK 19–01010	09/19/2019	12/12/2027	FANATICS	Fanatics, Inc.	No
TMK 19–01011	09/20/2019	02/01/2027	ADORNMONDE	ADORNMONDE, INC.	No
TMK 19–01012	09/20/2019	12/06/2026	A & Design (Stylized)	ADORNMONDE, INC.	No
TMK 19–01013	09/20/2019	11/25/2025	POWER PRO	SHIMANO NORTH AMERICA HOLDING, INC.	No
TMK 19–01014	09/20/2019	09/05/2028	EYESAFE	Healthe LLC	No
TMK 19–01015	09/20/2019	12/13/2021	POWER PRO (Stylized, Color, and Design)	SHIMANO NORTH AMERICA HOLDING, INC.	No
TMK 19–01016	09/20/2019	06/05/2029	IMPLODING KITTENS	EXPLODING KITTENS, INC.	No
TMK 17–01053	09/20/2019	03/13/2029	MAJESTIC	MAJESTIC APPAREL, LLC	No
TMK 19–01017	09/20/2019	06/05/2029	IMPLODING KITTENS and Design	EXPLODING KITTENS, INC.	No
TMK 19–01018	09/20/2019	09/11/2029	JUUL LABS	JUUL LABS, INC.	No
TMK 01–00614	09/20/2019	02/28/2030	RADIA	RADIA INC., P.S.	No
TMK 03–00135	09/20/2019	01/12/2030	Chrome Hearts Plus Dagger Design	CHROME HEARTS, LLC	No
TMK 07–00168	09/20/2019	02/16/2030	Chrome Hearts plus Scroll Design	CHROME HEARTS, LLC	No
TMK 12–00775	09/20/2019	09/22/2029	SOUR POWER	Dorval Trading Co., Ltd.	No
TMK 09–00309	09/20/2019	07/04/2026	REVO	Traxxas LP	No
TMK 09–00310	09/20/2019	04/02/2027	MAXX	Traxxas, L.P.	No
TMK 09–00311	09/20/2019	04/07/2022	TRX	TRAXXAS LP	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 09–00312	09/20/2019	05/06/2027	TRAXXAS	Traxxas, L.P.	No
TMK 09–00566	09/20/2019	07/07/2029	DESIGN ONLY (SCROLL)	Chrome Hearts LLC	No
TMK 19–01019	09/20/2019	08/14/2029	STREAKING KITTENS	EXPLODING KITTENS, INC.	No
TMK 19–01020	09/20/2019	12/03/2029	THROW THROW BURRITO	EXPLODING KITTENS, INC.	No
TMK 19–01021	09/23/2019	04/24/2027	ID	Traxxas LP DBA Traxxas	No
TMK 19–01022	09/23/2019	02/18/2029	THE FASTEST NAME IN RADIO CONTROL	Traxxas, L.P.	No
TMK 19–01023	09/23/2019	04/02/2021	STAMPEDE	TRAXXAS, L.P.	No
TMK 19–01024	09/23/2019	04/30/2027	YOLANDA LEWIS	YOLANDA LEWIS	No
TMK 19–01025	09/23/2019	12/10/2029	XOFLUZA	GENENTECH, INC.	No
TMK 17–00661	09/23/2019	12/15/2029	EDGE	Ford Motor Company	No
TMK 14–01204	09/23/2019	10/21/2029	FORD and Oval Design	Ford Motor Company	No
TMK 05–01046	09/23/2019	12/07/2029	RANGER	FORD MOTOR COMPANY	No
TMK 09–00470	09/23/2019	12/02/2029	ED HARDY	Hardy Life, LLC	No
TMK 15–00061	09/23/2019	09/23/2029	FOMOCO	Ford Motor Company	No
TMK 19–01026	09/24/2019	12/11/2027	GK (Stylized)	Elite Sportswear, L.P.	No
TMK 19–01027	09/24/2019	04/16/2027	DOLFIN	ELITE SPORTSWEAR, L.P.	No
TMK 19–01028	09/24/2019	04/08/2029	DESIGN ONLY	ELITE SPORTSWEAR, L.P.	No
TMK 19–01029	09/24/2019	11/22/2027	LATRAX and Design	Traxxas, L.P.	No
TMK 19–01030	09/24/2019	01/14/2024	TITAN	Traxxas, L.P.	No

CBP IPR RECORDATION — SEPTEMBER 2019

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 19–01031	09/24/2019	04/02/2021	RUSTLER	Traxxas, L.P.	No
TMK 19–01032	09/24/2019	04/17/2027	RALPH BENDEL NEAL	RALPH BENDEL NEAL	No
TMK 19–01033	09/25/2019	01/11/2027	VERSATYRE	Allaeddin Jallad INDIVIDUAL	No
TMK 00–00574	09/25/2019	11/22/2020	READY TO RACE	TRAXXAS, L.P.	No
TMK 04–00279	09/25/2019	09/26/2029	WALTHER	UMAREX GMBH & CO., KG	No
TMK 19–01034	09/25/2019	12/17/2029	CONNECTICUT VOICE	SEASONS MEDIA, LLC	No
TMK 19–01035	09/25/2019	04/04/2021	XEOMIN	MERZ PHARMA GmbH & Co.	No
TMK 19–01036	09/25/2019	12/10/2029	KORTRAX	BP POLYMERS, LLC	No
TMK 19–01037	09/25/2019	07/16/2023	BELOTERO	MERZ PHARMA GmbH & CO. KGaA	No
TMK 90–00387	09/25/2019	03/23/2020	JAZZ BASS	FENDER MUSICAL INSTRUMENTS CORPORATION	No
TMK 19–01038	09/26/2019	04/11/2021	BELOTERO BALANCE	MERZ PHARMA GmbH & CO. KGaA	No
TMK 19–01039	09/26/2019	10/22/2024	LICENSED REELEX PACKAGING SYSTEM & Design	Reelex Packaging Solutions, Inc.	No
TMK 19–01040	09/26/2019	02/07/2028	NIOMISHA RENEE WILSON	NIOMISHA RENEE WILSON	No
TMK 19–01041	09/26/2019	07/07/2025	SOUR POWER SNAX	Dorval Trading Co., Ltd.	No
TMK 19–01042	09/26/2019	12/10/2029	6 and Design	Gridley Brewing LLC DBA Six Bridges Brewing	No
TMK 19–01043	09/26/2019	06/23/2020	REELEX LICENSED PACKAGING SYSTEM & Design	REELEX Packaging Solutions, Inc.	No
TMK 19–01044	09/30/2019	04/22/2023	FUMARI	FUMARI, INC.	No

CBP IPR RECORDATION — SEPTEMBER 2019

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 19–01045	09/30/2019	08/21/2029	DESIGN ONLY (LA MICHOACANA)	PLM OPERATIONS, LLC	No
TMK 19–01046	09/30/2019	08/21/2029	DESIGN ONLY (LA MICHOACANA)	PLM OPERATIONS, LLC	No
TMK 19–01047	09/30/2019	06/26/2029	DESIGN ONLY (Blue handles of hand tools)	Bon Tool Company	No
TMK 19–01048	09/30/2019	10/21/2028	DESIGN ONLY (CHICAGO WOLVES DESIGN IN A CIRCLE)	Rosemont Hockey Partners, L.P.	No
TMK 19–01049	09/30/2019	10/21/2028	DESIGN ONLY (CHICAGO WOLVES AND HOCKEY STICK)	Rosemont Hockey Partners, L.P.	No
TMK 19–01050	09/30/2019	11/11/2028	CHICAGO WOLVES	ROSEMONT HOCKEY PARTNERS, L.P.	No
TMK 19–01051	09/30/2019	07/05/2026	MINT CHOCOLATE CHILL	Fumari, Inc.	No
TMK 19–01052	09/30/2019	08/21/2029	Fumari and Design (Flame Logo)	Fumari, Inc.	No
TMK 19–01053	09/30/2019	03/05/2027	BABY FEET	LIBERTA CO., LTD.	No
TMK 19–01054	09/30/2019	09/19/2028	DESIGN ONLY (AN ASTERISK BETWEEN PARENTHESES)	Samsonite IP Holdings S.àr.l.	No
TMK 19–01055	09/30/2019	09/19/2028	SPECK	Samsonite IP Holdings S.àr.l.	No
TMK 19–01056	09/30/2019	09/19/2028	SPECK (Stylized) and DESIGN (an asterisk between parentheses)	Samsonite IP Holdings S.àr.l.	No
TMK 11–00858	09/30/2019	09/01/2029	9 and Design	ENERGIZER BRANDS, LLC	No

19 CFR PART 177

PROPOSED MODIFICATION AND REVOCATION OF RULING LETTERS RELATING TO CBP'S APPLICATION OF THE JONES ACT TO THE TRANSPORTATION OF CERTAIN MERCHANDISE AND EQUIPMENT BETWEEN COASTWISE POINTS

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed modification and revocation of headquarters' ruling letters relating to U.S. Customs and Border Protection's ("CBP") application of the coastwise laws to certain merchandise and vessel equipment that are transported between coastwise points.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182,107 Stat. 2057), this notice advises interested parties that CBP proposes to modify or revoke several administrative rulings in which it has determined that certain articles transported between coastwise points are vessel equipment pursuant to Treasury Decision ("T.D.") 49815(4). In addition, CBP proposes to modify HQ 101925 (Oct. 7, 1976) to make that ruling more consistent with federal statutes and regulations that were amended or promulgated after HQ 101925 was issued, and to clarify the proper reasoning underlying the conclusions reached regarding the subjects covered in the ruling. CBP also proposes to revoke its rulings that have determined that a non-coastwise-qualified vessel engaging in offshore lifting operations would violate the Jones Act, 46 U.S.C. § 55102, when it moves a short distance to avoid collision with a surface or subsea structure when installing an offshore platform's topside.

CBP also intends to revoke or modify all prior rulings that are inconsistent with the proposed modifications and revocations. Comments on the proposed actions are invited.

DATE: Comments must be received on or before November 22, 2019.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, attention: Cargo Security, Carriers and Restricted Merchandise Branch, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to

inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Chief, Cargo Security, Carriers, and Restricted Merchandise Branch, at (202) 325–0030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Although CBP has previously proposed revoking or modifying several of the letter rulings discussed in this notice, we note that the scope of the instant notice differs from the prior notices. Most recently, CBP proposed in the *Customs Bulletin*, Vol. 51, No. 3, January 18, 2017, to modify HQ 101925 (Oct. 7, 1976) to make it more consistent with certain federal statutes amended after it was issued, and to revoke or modify several rulings determining that certain articles transported between coastwise points are "vessel equipment" pursuant to T.D. 49815(4) (the "2017 Notice"). Subsequently, in the *Customs Bulletin*, Vol. 51, No. 19, May 10, 2017, based on many substantive comments supporting and opposing the proposed action, CBP withdrew the 2017 Notice to reconsider the proposed action. Specifically, the 2017 Notice proposed to revoke or modify the following ruling letters that are not covered by the instant notice, and therefore remain in force: HQ 105644 (June 7, 1982); HQ 108223 (Mar. 13, 1986); HQ 110402 (Aug. 18, 1989); HQ 111889 (Feb. 11, 1992); HQ 111892 (Sept. 16, 1991); HQ 112218 (July 22, 1992); HQ 113838 (Feb. 25, 1997); HQ 114305 (Mar. 31, 1998); HQ 115218 (Nov. 30, 2000); HQ 115333 (Apr. 27, 2001); HQ 115381 (June 15, 2001); HQ 115938 (Apr. 1, 2003); HQ 115771 (Aug. 19, 2002); HQ H029417 (June 5, 2008); and HQ H032757 (July 28, 2008). Of note, ruling letters HQ 112218 (July 22, 1992) and HQ 113137 (June 27, 1994), cited in the 2017 Notice, pertain to cement, chemicals, and other consumable materials, and

remain in force. Furthermore, unlike in the 2017 Notice, CBP now proposes to revoke three letter rulings interpreting the extent to which incidental movements constitute "transportation" with respect to offshore lifting operations.

More specifically, pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP proposes to modify HQ 101925 (Oct. 7, 1976) to make that ruling more consistent with federal statutes that were amended after HQ 101925 was issued, and to modify or revoke certain rulings that have determined articles transported between coastwise points are vessel equipment pursuant to Treasury Decision ("T.D.") 49815(4).[1] In addition, this notice advises interested parties that CBP proposes to revoke three rulings analyzing whether a non-coastwise-qualified lifting vessel would violate the Jones Act, 46 U.S.C. § 55102, when it moves a short distance to avoid collision with a surface or subsea structure when installing an offshore platform's topside.

Although in this notice CBP specifically refers to the revocation and modification of the ruling letters listed below, this notice covers any rulings raising the subject issues that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to those identified. No further rulings have been found. Pursuant to 19 CFR § 177.12(b)(1), CBP invites any member of the public *who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) subject to this notice* that has not been identified to advise CBP during this comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP proposes to modify or revoke any treatment previously accorded by CBP to substantially identical transactions. Pursuant to 19 CFR § 177.12(c), any person involved in substantially similar transactions should advise CBP during this comment period. A party's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the party or its agents for coastwise transportation of merchandise subsequent to the effective date of the final decision on this notice.

In light of the current regulations on general ruling practice set

[1] The terms "revocation" and "modification" reference related, but distinct, concepts. As outlined in 19 U.S.C. § 1625(c)(2) and 19 CFR 177.12, both revocation and modification have the effect of altering the treatment previously accorded by CBP. In revoking a ruling, CBP withdraws the entirety of a ruling based on the rationale outlined in the requisite notice and comment process. In modifying a ruling, CBP leaves the ruling in place but revises specific aspects of the ruling, with the changes outlined in the requisite notice and comment process.

forth in 19 CFR § 177, *et seq*., "[i]t is in the interest of the sound administration of the Customs and related laws that persons engaging in any transaction affected by those laws fully understand the consequences of the transaction prior to its consummation." *See* 19 CFR § 177.1(a)(1). Notably, rulings issued by CBP are not regulations, but rather are written statements that interpret and apply the provisions of the Customs and related laws to the specific set of facts presented by the ruling requester. *See* 19 CFR § 177.1(d)(1). Not only are rulings instructive for the ruling requesters engaging in their specific transactions, but they also provide guidance for CBP field offices relating to these ruling requesters' specific transactions. *See* 19 CFR § 177.11. Therefore, it is in the interest of CBP to issue rulings that will provide guidance not only to the ruling requesters regarding their specific transactions, but also to the individuals in the field that have to enforce these rulings. However, "no other person should rely on the ruling letter[s] or assume that the principles of [those] ruling[s] will be applied in connection with any transactions other than the one[s] described in [those] letter[s]." *See* 19 CFR § 177.9(c). Indeed, subsequent CBP rulings may vary as technological changes or other factors alter CBP's analysis of a given scenario. Thus, if a party seeks clarity regarding a prospective transaction, a ruling request may be submitted for consideration following the instructions found in 19 CFR § 177.2. Requests must "contain a complete statement of all relevant facts relating to the transaction." 19 CFR § 177.2(b)(1).

Importantly, none of the interpretations set forth herein, or in any other administrative ruling or decision, may be used to circumvent the lawful application of the Jones Act. The requirements and restrictions of the Jones Act may no more "be escaped by resort to disguise or artifice" than any other area of Customs law.[2] Accordingly, where the transported materials genuinely qualify as vessel equipment, or where the activity is genuinely a lifting operation, none of these interpretive doctrines may be employed to curtail the scope of the Jones Act simply by artificially structuring or describing such activities in such terms, solely in order to escape the Jones Act's lawful restrictions and without any independent commercial or safety purpose or justification.

Vessel Equipment

Based on our research, the definition of "vessel equipment" that CBP has used in its coastwise trade rulings, has been based, in part, on T.D. 49815(4) (Mar. 13, 1939), which interprets § 309 of the Tariff

[2] *See United States v. Citroen*, 223 U.S. 407, 415 (1912); *Heartland By-Products, Inc. v. United States*, 264 F.3d 1126, 1138–39 (Fed. Cir. 2001) (Friedman, J., concurring).

Act of 1930, codified at 19 U.S.C. § 1309. Section 309 provides for the duty-free withdrawal of supplies and equipment for certain vessels and aircraft.

> The term "equipment", as used in section 309, as amended, includes *portable articles necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board*. It does not comprehend consumable supplies either for the vessel and its appurtenances or for the passengers and the crew. The following articles, for example, have been held to constitute equipment: rope, sail, table linens, bedding, china, table silverware, cutlery, bolts and nuts.

T.D. 49815(4) (Mar. 13, 1939) (emphasis added).

Beginning with HQ 101925 (Oct. 7, 1976) (Attachment A), several CBP rulings analyzing the status of various items as "vessel equipment" departed from the language in T.D. 49815(4) in such a manner that the original meaning was expanded and, thus, used out of context. Although periodically citing the above italicized language in its rulings, CBP also analyzed whether the use of the item in question possessed a nexus to the "mission of the vessel." *See*, *e.g.*, HQ 101925 (Oct. 7, 1976) ("necessary for the accomplishment of the mission of the vessel"); HQ 113841 (Feb. 28, 1997) ("essential to the mission of the vessel"); HQ 114435 (Aug. 6, 1998) ("necessary for the accomplishment of the mission of the vessel"); HQ H004242 (Dec. 22, 2006) ("necessary for the accomplishment of the vessel's mission"); HQ 115487 (Nov. 20, 2001) ("necessary to the accomplishment of the mission of the vessel"); HQ 115938 (Apr. 1, 2003) ("fundamental to the vessel's operation"); and HQ 116078 (Feb. 11, 2004) ("used by a vessel in the course of its business"). In addition, several rulings further expanded the analysis of what constitutes "vessel equipment" to analyze whether an item is used "on or from" the transporting vessel as a determinative factor. *See*, *e.g.*, HQ 108442 (Aug. 13, 1986).

In applying T.D. 49815(4) to 46 U.S.C. § 55102 in these rulings, CBP reasoned that if the article was used in the activity in which the vessel was about to engage, *e.g.*, "in furtherance of the mission," "fundamental to the operation of the vessel," etc., the article would be considered vessel equipment. As such, although T.D. 49815(4) formed the underlying criteria, its original meaning was expanded by the phrases quoted above and, thus, used out of context, with the expanded reading applied as the rule of law in these cases. Such an application, however, is less consistent with the more narrow meaning of "vessel equipment" contemplated by T.D. 49815(4).

CBP therefore proposes to modify the line of rulings beginning with HQ 101925 to limit the concepts that contributed to the overbroad interpretation of what constitutes "vessel equipment." Specifically, CBP proposes to amend HQ 101925 to interpret "vessel equipment" to include all articles or physical resources serving to equip the vessel, including the implements used in the vessel's operation or activity.[3] As specified in T.D. 49815(4), the scope of vessel equipment includes items which are "necessary and appropriate for the navigation, operation or maintenance of a vessel and for the comfort and safety of the persons on board." Items considered "necessary and appropriate for the operation of the vessel" are those items that are integral to the function of the vessel and are carried by the vessel. These functions include, *inter alia*, those items that aid in the installation, inspection, repair, maintenance, surveying, positioning, modification, construction, decommissioning, drilling, completion, workover, abandonment or other similar activities or operations of wells, seafloor or subsea infrastructure, flowlines, and surface production facilities. CBP also emphasizes that the fact that an item is returned to and departs with the vessel after an operation is completed, and is not left behind on the seabed, is a factor that weighs in favor of an item being classified as vessel equipment, but is not a determinative factor.

Accordingly, CBP proposes to modify the following rulings to the extent they are contrary to the guidance set forth in this notice. In addition, attached to this notice are original and "red line" versions of the modified rulings, which illustrate CBP's proposed modifications and rationale.

Ruling Number	**Summary of Proposed Modification**	**Corresponding Attachments**
HQ 101925 (Oct. 7, 1976)	Limit the concepts that contributed to the overbroad definition of "vessel equipment" and the inappropriate conjoining of coastwise-trade-covered activity with non-coastwise-trade-covered activity.	Original (Attachment A) Red Line (Attachment B)
HQ 108442 (Aug. 13, 1986)	Remove analysis of whether work performed on or from a vessel as determinative of whether an item is merchandise or vessel equipment.	Original (Attachment C) Red Line (Attachment D)
HQ 113841 (Feb. 28, 1997)	Remove the analysis of "mission of the vessel" to determine whether an item constitutes merchandise or vessel equipment.	Original (Attachment E) Red Line (Attachment F)

[3] *See "equipment," in Merriam-Webster.com*. Retrieved Oct. 1, 2019, from https://www.merriam-webster.com/dictionary/equipment.

Ruling Number	Summary of Proposed Modification	Corresponding Attachments
HQ 114435 (Aug. 6, 1998)	Remove analysis of whether certain objects are "necessary for the accomplishment of the mission of the vessel" or "essential to the completion of the mission of the vessel."	Original (Attachment G) Red Line (Attachment H)
HQ 115185 (Nov. 20, 2000)	Remove the analysis of whether the subject items would be used to perform work from the vessel.	Original (Attachment I) Red Line (Attachment J)
HQ 115487 (Nov. 20, 2001)	Remove analysis of whether it is the "mission of the vessel" to install the subject items.	Original (Attachment K) Red Line (Attachment L)
HQ 115771 (Aug 19, 2002)	Remove analysis of whether the subject items are "necessary for the accomplishment of the mission of the vessel, and usually carried on board as a matter of course...."	Original (Attachment M) Red Line (Attachment N)
HQ 116078 (Feb. 11, 2004)	Remove references to other rulings improperly applying the "mission of the vessel" rationale.	Original (Attachment O) Red Line (Attachment P)

In addition, CBP proposes to revoke the following rulings because they are contrary to the guidance set forth in this notice:
HQ 115218 (Nov. 30, 2000) (Attachment Q)
HQ 115311 (May 10, 2001) (Attachment R)
HQ 115522 (Dec. 3, 2001) (Attachment S)
HQ 115938 (Apr. 1, 2003) (Attachment T)
HQ H004242 (Dec. 22, 2006) (Attachment U)

Additional Modifications Arising from HQ 101925 (Oct. 7, 1976)

Headquarters ruling letter 101925 (Attachment A) was issued to a Texas marine construction company and was based on facts provided by the company regarding its proposed use of a foreign-built barge. In addition to the ruling's overbroad approach to vessel equipment described above, several of the holdings in HQ 101925 are no longer applicable due to amendments made to 46 U.S.C. § 55102 (formerly 46 U.S.C. App. 883), the Outer Continental Shelf Lands Act,[4] and 19 CFR § 4.80b(a). Accordingly, we are resolving these issues by proposing to modify HQ 101925 as outlined in the "red line" version of the ruling (Attachment B); the modification does not have retroactive applicability to any transactions already completed by the ruling requestor.

First, CBP ruled that the use of a work barge in repairing pipe is not a use in coastwise trade because there is "no distinction between repairing pipe and the laying of new pipe." CBP proposes to modify

[4] Pub. L. 95–372, Title II, sec. 203 (Sept. 19, 1978) codified at 43 U.S.C. § 1333.

this holding as overbroad. Although it is possible that the subject pipe repair operations could violate the Jones Act, no violation would occur if the materials used are "paid out, not unladen" or if the materials involved qualify as "vessel equipment" under the analysis provided above.

Second, CBP considered whether the installation of an item was "foreseeable" in determining whether the transportation of the item was in violation of the Jones Act. CBP proposes to remove the reference to foreseeability because the analysis of whether the use of an item is foreseeable or unforeseeable is irrelevant under the Jones Act.

Third, CBP considered whether a transportation was "incidental" to the activity in which the vessel ultimately would engage (*i.e.*, pipe repair), to determine whether the transportation of the item to be installed at a coastwise point was covered by the Jones Act. CBP proposes to remove the concept of whether the transportation is "incidental" because the inquiry into whether the transportation is incidental to the vessel's subsequent activity of using the item in an installation or repair is irrelevant.

Fourth, CBP ruled that a non-Jones-Act-qualified vessel could transport and subsequently unlade at a coastwise point items of "*de minimis*" value normally carried aboard the vessel as supplies. However, Public Law 100–329 (100 Stat. 508; effective June 7, 1988) amended the Jones Act to make clear that the term "merchandise" includes "valueless material." *See* 46 U.S.C. § 55102(a)(2). As such, CBP proposes to amend HQ 101925 to clarify that there is no basis for a *de minimis* value rule in determining whether an item is merchandise under the Jones Act.

Fifth, CBP ruled that a non-Jones-Act-qualified vessel could carry items normally carried onboard a vessel as supplies to conduct "unforeseen" repairs to offshore or subsea structures. Once again, CBP proposes to remove the reference to foreseeability because the analysis of whether the use of an item is foreseeable or unforeseeable is irrelevant under the Jones Act.

Sixth, and finally, CBP ruled that a non-Jones-Act-qualified vessel could transport damaged or replaced pipe if the transportation was "incidental" to a pipeline repair operation. Once again, CBP proposes to remove the reference to this concept because the inquiry into whether the transportation is incidental to the vessel's subsequent activity is irrelevant.

Further, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends by this notice to revoke or modify any treatment previously accorded by CBP to substantially identical transactions.

Lifting Operations

CBP has previously held that the movement by lifting of a topside by a dynamically-positioned, non-coastwise-qualified vessel to a coastwise point, subsequent to receiving the topside from a coastwise-qualified vessel that previously laded the topside at a coastwise point, constitutes a violation of the Jones Act. Specifically, HQ H225102 (Sept. 21, 2012) and HQ H235242 (Nov. 15, 2012) (reconsidering HQ H225102) found that a company's proposal to use a dynamically-positioned, non-coastwise-qualified vessel to lift and reposition a topside to a single point anchor reservoir ("SPAR") would violate 46 U.S.C. § 55102 when, after receiving the topside, the non-coastwise-qualified vessel would move a short distance away under its own power to avoid coming into contact with the SPAR before returning to its pivot point to complete the topside installation. *See also*, HQ H242466 (July 3, 2013) (involving the same proposed topside installation and incorporating the same analysis but finding no violation where the vessel pivots on its central axis while lifting merchandise).

In finding a violation of 46 U.S.C. § 55102, CBP relied on several prior rulings in which it has held that the use of a non-coastwise-qualified crane vessel to load and unload cargo or construct or dismantle a marine structure is not coastwise trade and does not violate the coastwise laws, provided that any movement of merchandise is effected exclusively by the crane and not by any movement of the vessel, except for necessary movement which is incidental to a lifting operation while it is taking place. *See*, *e.g.*, HQ 116111 (Jan. 30, 2004); HQ 116680 (June 29, 2006) (involving incidental "jostling movements that may occur due to wave action, the movement of the arm of the crane, or the like"). In this vein, CBP has held that a pivoting motion by a non-coastwise-qualified vessel on its central axis does not constitute transportation of merchandise within the meaning of 46 U.S.C. § 55102. *See*, *e.g.*, HQ 115985 (May 21, 2003) (analyzing the stationary movement of foreign-flagged vessel on its central axis) and HQ 111684 (June 26, 1991) (analyzing the 90 degree rotation of a non-coastwise-qualified barge on its axis). CBP has also held, however, that rotation on a fulcrum (*i.e.*, a swinging motion in which the center of the vessel shifts) by a non-coastwise-qualified crane vessel to create a more "favorable angle" would not be necessary or incidental to the lifting operation, and would therefore constitute transportation of merchandise in violation of 46 U.S.C. § 55102. HQ 116191 (Apr. 15, 2004). CBP has further held that the lateral movement of a non-coastwise-qualified floating crane/barge that is necessary for the

vessel to lift and place its load would similarly constitute coastwise trade within the definition of 46 U.S.C. § 55102. HQ 115630 (Mar. 25, 2002).

In applying these rulings to the proposed movement of the topside by the non-coastwise-qualified lift vessel in HQ H225102 and HQ H235242, CBP analogized the purposeful movement of the lift vessel to that of a crane vessel moving on a fulcrum to create a more "favorable angle" for its operation. It was on this basis that CBP found that the proposed lateral movement of the vessel would violate 46 U.S.C. § 55102 because such movement would not be incidental. *See* HQ 116191 (Apr. 15, 2004). CBP now believes that such an interpretation is overly restrictive and does not accurately reflect the concept of coastwise transportation under the Jones Act.

As such, CBP proposes to adopt a revised interpretation for offshore "lifting operations" to clarify that certain lateral movements do not constitute transportation under the Jones Act. The term offshore "lifting operations" includes the lifting by cranes, winches, lifting beams, or other similar activities or operations, from the time that the lifting activity begins when unlading from a vessel or removing offshore facilities or subsea infrastructure until the time that the lifting activities can be safely terminated in relation to the unlading, installation, or removal of offshore facilities or subsea infrastructure. Lifting operations encompass the initial vertical movement of an item from a lower position to a higher position,[5] and any additional vertical or lateral movement necessary (including incidental movement while lifted items are temporarily placed on the deck of the lifting vessel as necessary for the safety of certain lifted items, as well as surface and subsea infrastructure, and the vessels and mariners involved) to safely place into position or remove an item from the vicinity of an existing structure, facility or installation. Offshore lifting operations are distinct from transportation subject to the Jones Act in that any lateral movement of the vessel or the item in the vicinity of the structure or facility where the item is being positioned or removed is merely subordinate to and a direct consequence of the lifting operations. Safety and practical concerns, including the physical demands of the lifting operations, the mitigation of risk to human life and health, and the avoidance of damage to the surface and subsea infrastructure in the lift operations area,[6] allow for necessary

[5] *See "lift," in Merriam-Webster.com*. Retrieved Oct.1, 2019, from https://www.merriam-webster.com/dictionary/lift.

[6] *See* 30 CFR § 250.714. To illustrate the need to address these safety and practical concerns, a party might point to a dropped objects plan required by the Bureau of Safety

lateral movement in the lift operations area, which does not constitute transportation. The term "transportation" for purposes of Jones Act enforcement is the conveyance of merchandise between points in the United States to which the coastwise laws apply.[7] Thus, the movement of component parts or materials to and from the point or place at which the lifting operations are conducted constitutes transportation and therefore is subject to the Jones Act and must be conducted by a coastwise-qualified vessel.

Accordingly, CBP proposes to revoke the following rulings to the extent that they are contrary to the guidance set forth in this notice and to the extent that the transactions are past and concluded:
HQ H225102 (Sept. 24, 2012) (Attachment V)
HQ H235242 (Nov. 15, 2012) (Attachment W)
HQ H242466 (July 3, 2013) (Attachment X)

CBP does not intend, however, to revoke or modify its previous rulings upon which these three rulings relied where it was held that the use of a non-coastwise-qualified crane vessel to load and unload cargo or construct or dismantle a marine structure is not coastwise trade and does not violate the coastwise laws, provided that any movement of merchandise is effected exclusively by the crane and not by any movement of the vessel, except for necessary movement which is incidental to a lifting operation while it is taking place. *See*, *e.g.*, HQ 116111 (Jan. 30, 2004); HQ 116680 (June 29, 2006) (involving incidental "jostling movements that may occur due to wave action, the movement of the arm of the crane, or the like").

Based on the foregoing, pursuant to 19 U.S.C. § 1625(c)(1), CBP proposes to modify or revoke the above-mentioned rulings to clarify what constitutes vessel equipment pursuant to the Jones Act, 46 U.S.C. § 55102. CBP also proposes to revoke the three rulings related to offshore lifting operations as described above. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: October 11, 2019

KEVIN K. MCALEENAN
Acting Secretary
U.S. Department of Homeland Security

Attachments

and Environmental Enforcement for oil and gas operations in the Outer Continental Shelf as a benchmark that demonstrates its compliance with federal safety regulations and industry best practices.

[7] *See* 46 U.S.C. § 55102(b).

ATTACHMENT A

Oct. 7, 1976
VES-3–06-R:CD:C
101925 NL

MR. J. R. SELLERS
VICE PRESIDENT – MARINE CONSTRUCTION
OCEANEERING INTERNATIONAL, INC.
9219 KATY FREEWAY
HOUSTON, TEXAS 77024

DEAR MR. SELLERS:

In your letter of December 2, 1975, you request advice concerning the proposed operation of a diving support work barge in United States waters. You state that the barge will be constructed in a foreign shipyard, towed to the United States and then used primarily in support of Oceaneering International's diving operations in the construction, maintenance, repair and inspection of offshore petroleum-related facilities.

While there is no requirement in the laws administered by the Customs Service to the effect that such vessel need obtain American registry in order to operate in United States waters, whether or not such registry can be obtained is a question which should be addressed to the Merchant Vessel Documentation Division, United States Coast Guard. It is clear, though, that a foreign-built vessel may not engage in the coastwise trade of the United States. Generally speaking, coastwise trade involves the transportation of passengers or merchandise between points in the United States embraced within the coastwise laws. All points within and the territorial waters surrounding the United States and nearly all the territories and possessions thereof are embraced within those laws.

Title 46, United States Code, section 883, prohibits (with certain exceptions not relevant here) the transportation of merchandise between points in the United States in a foreign-flag vessel, a foreign-built vessel, or a vessel which at one time has been under foreign flag or ownership. Section 289 of title 46 prohibits the transportation of passengers between points in the United States on a foreign vessel.

However, not every movement between points in the United States is deemed to be a transportation within the meaning of the coastwise laws. We will advise you of the permissibility of the proposed operations in United States waters by this foreign-built diving support work barge in the order in which you presented them. It is suggested, though, that the appropriate office of the Coast Guard be contacted in order to ascertain whether any laws or regulations administered by that agency, other than those relating to vessel documentation, would be applicable in this matter.

(1) The Customs Service has held that the sole use of a vessel in laying pipe is not a use in the coastwise trade of the United States, even when the pipe is laid between two points in the United States embraced within the coastwise laws. Further, since the use of a vessel in pipelaying is not a use in the coastwise trade, a foreign-built vessel may carry the pipe which it is to lay between such points. It is the fact that the pipe is not landed but only paid out in the course of the pipelaying operation which makes such operation permissible.

However, the transportation of pipe by any vessel other than a pipelaying vessel to a pipelaying location at a point within United States territorial waters would be considered coastwise trade and would therefore have to be accomplished by a vessel meeting the statutory requirements entitling it to engage in such trade.

(2) Similarly, the Customs Service is of the opinion that for the purpose of the coastwise laws there is no distinction to be made between repairing pipe and the laying of new pipe. Therefore, the sole use of the work barge in repairing pipe is not a use in the coastwise trade, and in view of the unique characteristics of pipelaying operations which take them out of the purview of the coastwise laws, the transportation of pipe and repair materials by the work barge, to be used by the crew of the work barge in the repair of the pipeline, is also an activity that is not prohibited by the coastwise laws.

(3) Although the installation of anodes on a subsea pipeline or offshore drilling platform may have more of a preventative than restorative effect, such installation is considered to be in the nature of a repair and thus not a use of the vessel in the coastwise trade. However, since the installation of a preventative substance is an intrinsically foreseeable operation, the transportation of anodes to the operational location within United States waters must be accomplished by a vessel entitled to engage in the coastwise trade.

(4) The transportation of pipeline burial tools by the work barge for use by the crew of the work barge to accomplish the pipelaying operations is not an activity prohibited by the coastwise laws since such tools are considered to be part of the legitimate equipment of that vessel.

(5) Since a foreign-built work barge may engage in the laying and repairing of pipe in territorial waters, in our opinion, the use of the vessel in the installation of pipeline connectors to offshore drilling platforms and subsea wellheads is likewise not a use in the coastwise trade. In addition, the transportation of pipeline connectors to be installed by the crew of the work barge incidental to the pipelaying operations of the work barge is not an activity prohibited by the coastwise laws.

(6) The Customs Service is of the opinion that the sole use of a vessel in effecting underwater repairs to offshore or subsea structures is not considered a use in coastwise trade. Further, the transportation by the vessel of such materials and tools as are necessary for the accomplishment of the mission of the vessel (i.e., materials to be expended during the course of the underwater inspection and repair operations and tools necessary in such operations) for use by the crew of the vessel is not, generally speaking, an activity prohibited by the coastwise laws since such transportation is incidental to the vessel's operations.

However, while materials and tools, as described above, which are necessary for the accomplishment of the mission of the vessel are not considered merchandise within the meaning of section 883, any article which is to be installed and therefore, in effect, landed at an offshore drilling platform is normally considered merchandise. We are of the opinion that if the necessity for the repair of, or the installation of repair materials on to, the underwater portions of the drilling platform is foreseen and re-

quires a repair material or component of more than *de minimis* value (such as a structural member), the transportation to the repair site must be effected by a vessel entitled to engage in the coastwise trade. Nevertheless, in view of the nature of these underwater operations, a vessel engaging in the inspection and repair of offshore or subsea structures may carry with it repair materials of *de minimis* value or materials necessary to accomplish unforeseen repairs, provided that such materials are usually carried aboard the vessel as supplies.

In summary, none of the aforementioned operations of the diving support work barge in United States waters, as proposed, would be considered a use in the coastwise trade provided such barge does not take on board passengers or merchandise at one point within these waters and discharge the passengers or merchandise at another such point. Crewmembers, including technicians and divers, necessary in the vessel's inspection, installation, and repair operations, are not considered passengers, nor are construction personnel who are on the barge in connection with its business. However, persons transported on the barge between points embraced within the coastwise laws who are not connected with the operation, navigation, ownership, or business of the barge are considered passengers within the meaning of the coastwise laws. Legitimate equipment and stores of the barge for its use are not considered merchandise within the meaning of section 883. However, articles transported on the barge between points embraced within the coastwise laws which are not legitimate stores and equipment of the barge, other than pipe laden on board to be paid out in the course of operations, pipeline connectors, pipeline repair materials, and the other repair materials specified above, are subject to forfeiture under section 883.

It should be emphasized that the transportation of persons or materials as described above takes on a wholly different character if it results in the delivery of such persons or materials to a subsea or offshore structure, such as a drilling platform, for use by such structure. For example, while the transportation of repair materials by the work barge for use by its crew in effecting repairs on or from the barge, or in its service capacity underwater, is not prohibited by the coastwise laws, the delivery of such materials or persons to an offshore drilling platform to effect repairs thereon would be a transportation of something other than the legitimate equipment or crew of the work barge, and as such, would have to be accomplished by a vessel entitled to engage in the coastwise trade.

(7) The use of a vessel in the transportation of "salvaged" materials from offshore drilling platforms or pipelines in United States waters, other than pipe being retrieved incidental to a pipeline repair operation, would be deemed a use in the coastwise trade, and would therefore have to be accomplished by a vessel entitled to engage in the coastwise trade.

(8) The use of a vessel in the transportation of machinery or production equipment to an offshore production platform would be deemed a use in the coastwise trade, and would therefore have to be accomplished by a vessel entitled to engage in the coastwise trade. However, the sole use of the diving support work barge in lifting and depositing heavy loads at a fixed site in the territorial waters of the United States is not considered coastwise trade and such activity would not be prohibited by the coast-

wise laws. Further, the mere movement of the work barge incidental to the lifting and depositing of heavy loads at the site of the lifting would not be deemed coastwise trade.

(9) As was just stated, with regard to the transportation of machinery or production equipment to an offshore production platform, the movement of workover rigs from one production platform to another would be considered to be coastwise transportation, but the mere lifting and depositing of such rigs by the crane of the work barge, for transportation on a vessel entitled to engage in the coastwise trade, would not of itself be considered a use in the coastwise trade.

(10) The use of a vessel in the transportation of a wellhead assembly to a location on the seabed within United States waters would be deemed a use in the coastwise trade. At the same time, though, the sole use of a vessel in the installation of a wellhead assembly at a location within United States waters, after transportation of such assembly by a vessel entitled to engage in the coastwise trade, is not considered a use in coastwise trade, nor is the sole use of a vessel in servicing wellheads. The transportation of wellhead equipment, valves and valve guards to be installed on an already existing wellhead assembly in the servicing capacity of the work barge by the crew of the work barge is not an activity prohibited by the coastwise laws, provided that such materials are of *de minimis* value or necessary to accomplish unforeseen repairs or adjustments and are usually carried aboard the work barge as supplies. On the other hand, if the necessity for specific wellhead equipment or other materials of more than *de minimis* value is foreseen, such transportation to the diving site must be effected by a vessel entitled to engage in the coastwise trade.

The laws on entrance and clearance of vessels are applicable to movements of the diving support work barge to, from and between points in United States waters, with specific requirements depending on whether the vessel is under United States or foreign flag. We will be happy to discuss such requirements when we are made aware of the intended flag of registry of the work barge.

You state that the work barge will be supplied by crewboat or helicopter. Further information about the helicopters, especially their registry, is required before we can rule on the applicability of the air cabotage law (49 U.S.C. 1508(b)). The navigation laws, on the other hand, are fully applicable to supply vessels operating within United States territorial waters. Accordingly, a supply vessel which transports supplies, equipment, etc., or crewmembers between points embraced within the coastwise laws of the United States (including the work barge when located at a point within United States waters) would be considered as operating in the coastwise trade and would have to meet the statutory requirements entitling it to engage in such trade.

Finally, General Headnote 5 of the Tariff Schedules of the United States provides that:

> For the purpose of headnote 1-***(e) vessels which are not "yachts or pleasure boats" within the purview of subpart D, part 6, Schedule 6, "are not articles subject to the provisions of these schedules."

As the vessel in question is not a yacht or pleasure boat, it would not be treated as an article subject to the provisions of the Tariff Schedules and would not, therefore, be subject to duty.

This decision is being circulated to all Customs officers to ensure uniformity in the administration of the customs and navigation laws.

Sincerely yours,

(SIGNED) J. P. TEBEAU

J. P. TEBEAU
Director
Carriers, Drawback and Bonds Division

Cc: R.C., Houston
New Orleans

MLublinski/mjn:10/6/76

Attachment B

OCT 7 1976

VES-3-06-R:CD:C
101925 NL

Mr. J. R. Sellers
Vice President – Marine Construction
Oceaneering International, Inc.
9219 Katy Freeway
Houston, Texas 77024

Dear Mr. Sellers:

In your letter of December 2, 1975, you request advice concerning the proposed operation of a diving support work barge in United States waters. You state that the barge will be constructed in a foreign shipyard, towed to the United States and then used primarily in support of Oceaneering International's diving operations in the construction, maintenance, repair and inspection of offshore petroleum-related facilities.

While there is no requirement in the laws administered by the Customs Service to the effect that such vessel need obtain American registry in order to operate in United States waters, whether or not such registry can be obtained is a question which should be addressed to the Merchant Vessel Documentation Division, United States Coast Guard. It is clear, though, that a foreign-built vessel may not engage in the coastwise trade of the United States. Generally speaking, coastwise trade involves the transportation of passengers or merchandise between points in the United States embraced within the coastwise laws. All points within and the territorial waters surrounding the United States and nearly all the territories and possessions thereof are embraced within those laws.

Title 46, United States Code, section 883, prohibits (with certain exceptions not relevant here) the transportation of merchandise between points in the United States in a foreign-flag vessel, a foreign-built vessel, or a vessel which at one time has been under foreign flag or ownership. Section 289 of title 46 prohibits the transportation of passengers between points in the United States on a foreign vessel.

However, not every movement between points in the United States is deemed to be a transportation within the meaning of the coastwise laws. We will advise you of the permissibility of the proposed operations in United States waters by this foreign-built diving support work barge in the order in which you presented them. It is suggested, though, that the appropriate office of the Coast Guard be contacted in order to ascertain whether any laws or regulations administered by that agency, other than those relating to vessel documentation, would be applicable in this matter.

(1) The Customs Service has held that the sole use of a vessel in laying pipe is not a use in the coastwise trade of the United States, even when the pipe is laid between two points in the United States embraced within the coastwise laws. Further, since the use of a vessel in pipelaying is not a use in the coastwise trade, a foreign-built vessel may carry the pipe which it is to lay between such points. It is the fact that the pipe is not landed but only paid out in the course of the pipelaying operation which makes such operation permissible.

However, the transportation of pipe by any vessel other than a pipelaying vessel to a pipelaying location at a point within United States territorial waters would be considered coastwise trade and would therefore have to be accomplished by a vessel meeting the statutory requirements entitling it to engage in such trade.

(2) ~~Similarly, t~~The Customs Service is of the opinion that pipe repair operations conducted by a foreign-flag vessel could violate the Jones Act, but not if the materials used are "paid out, not unladen," or if the materials involved qualify as vessel equipment. Customs lacks sufficient facts to determine whether the pipe repair operations at issue violate the Jones Act.~~for the purpose of the coastwise laws there is no distinction to be made between repairing pipe and the laying of new pipe. Therefore, the sole use of the work barge in repairing pipe is not a use in the coastwise trade, and in view of the unique characteristics of pipelaying operations which take them out of the purview of the coastwise laws, the transportation of pipe and repair materials by the work barge, to be used by the crew of the work barge in the repair of the pipeline, is also an activity that is not prohibited by the coastwise laws.~~

(3) ~~Although t~~The installation of anodes on a subsea pipeline or offshore drilling platform ~~may have more of a preventative than restorative effect, such installation is considered to be in the nature of a repair and thus not a use of the vessel in the coastwise trade. However, since the installation of a preventative substance is an intrinsically foreseeable operation, the transportation of anodes to the operational location within United States waters~~ must be accomplished by a vessel entitled to engage in the coastwise trade because such items constitute merchandise.~~.~~

(4) The transportation of pipeline burial tools by the work barge for use by the crew of the work barge to accomplish the pipelaying operations is not an activity prohibited by the coastwise laws since such tools are considered to be part of the legitimate equipment of that vessel.

(5) ~~Since a foreign-built work barge may engage in the laying and repairing of pipe in territorial waters, in our opinion,~~Customs lacks sufficient facts to determine whether the use of the vessel in the installation of pipeline connectors to offshore drilling platforms and subsea wellheads is ~~likewise not~~ a use in the coastwise trade. Pipe repair operations conducted by a foreign-flag vessel could violate the Jones Act, but not if the materials used are "paid out, not unladen," or

if the materials involved qualify as vessel equipment.~~In addition, the transportation of pipeline connectors to be installed by the crew of the work barge incidental to the pipelaying operations of the work barge is not an activity prohibited by the coastwise laws.~~

(6) The Customs Service ~~is of the opinion that~~lack sufficient facts to determine whether the sole use of a vessel in effecting underwater repairs to offshore or subsea structures is ~~not~~ considered a use in coastwise trade. Whether items are tools (and as such, vessel equipment used by the vessel's crew) or merchandise depends upon the nature of the item and the facts associated with the operation of the vessel~~Further, the transportation by the vessel of such materials and tools as are necessary for the accomplishment of the mission of the vessel (i.e., materials to be expended during the course of the underwater inspection and repair operations and tools necessary in such operations) for use by the crew of the vessel is not, generally speaking, an activity prohibited by the coastwise laws since such transportation is incidental to the vessel's operations~~.

~~However, while materials and tools, as described above, which are necessary for the accomplishment of the mission of the vessel are not considered merchandise within the meaning of section 883, any article which is to be installed and therefore, in effect, landed at an offshore drilling platform is normally considered merchandise. We are of the opinion that if the necessity for the repair of, or the installation of repair materials on to, the underwater portions of the drilling platform is foreseen and requires a repair material or component of more than de minimis value (such as a structural member), the transportation to the repair site must be effected by a vessel entitled to engage in the coastwise trade. Nevertheless, in view of the nature of these underwater operations, a vessel engaging in the inspection and repair of offshore or subsea structures may carry with it repair materials of de minimis value or materials necessary to accomplish unforeseen repairs, provided that such materials are usually carried aboard the vessel as supplies.~~

~~In summary, none of the aforementioned operations of the diving support work barge in United States waters, as proposed, would be considered a use in the coastwise trade provided such barge does not take on board passengers or merchandise at one point within these waters and discharge the passengers or merchandise at another such point.~~ Crewmembers, including technicians and divers, necessary in the vessel's inspection, installation, and repair operations, are not considered passengers, nor are construction personnel who are on the barge in connection with its business. However, persons transported on the barge between points embraced within the coastwise laws who are not connected with the operation, navigation, ownership, or business of the barge are considered passengers within the meaning of the coastwise laws. Legitimate equipment and stores of the barge for its use are not considered merchandise within the meaning of section 883. However, articles transported on the barge between points embraced within the coastwise laws which are not legitimate stores and

equipment of the barge, other than pipe laden on board to be paid out in the course of operations, pipeline connectors, pipeline repair materials, and the other repair materials specified above, are subject to forfeiture under section 883.

It should be emphasized that the transportation of persons or materials as described above takes on a wholly different character if it results in the delivery of such persons or materials to a subsea or offshore structure, such as a drilling platform, for use by such structure. For example, while the transportation of repair materials by the work barge for use by its crew in effecting repairs on or from the barge, or in its service capacity underwater, is not prohibited by the coastwise laws, the delivery of such materials or persons to an offshore drilling platform to effect repairs thereon would be a transportation of something other than the legitimate equipment or crew of the work barge, and as such, would have to be accomplished by a vessel entitled to engage in the coastwise trade.

(7) The use of a vessel in the transportation of "salvaged" materials from offshore drilling platforms or pipelines in United States waters, other than pipe being retrieved incidental to a pipeline repair operation, would be deemed a use in the coastwise trade, and would therefore have to be accomplished by a vessel entitled to engage in the coastwise trade.

(8) The use of a vessel in the transportation of machinery or production equipment to an offshore production platform would be deemed a use in the coastwise trade, and would therefore have to be accomplished by a vessel entitled to engage in the coastwise trade. However, the sole use of the diving support work barge in lifting and depositing heavy loads at a fixed site in the territorial waters of the United States is not considered coastwise trade and such activity would not be prohibited by the coastwise laws. ~~Further, the mere movement of the work barge incidental to the lifting and depositing of heavy loads at the site of the lifting would not be deemed coastwise trade.~~

(9) As was just stated, with regard to the transportation of machinery or production equipment to an offshore production platform, the movement of workover rigs from one production platform to another would be considered to be coastwise transportation, but the mere lifting and depositing of such rigs by the crane of the work barge, for transportation on a vessel entitled to engage in the coastwise trade, would not of itself be considered a use in the coastwise trade.

(10) ~~The~~ Customs lack sufficient facts to determine whether the use of a vessel in the transportation of a wellhead assembly to a location on the seabed within United States waters would be deemed a use in the coastwise trade. Whether items are tools (and as such, vessel equipment used by the vessel's crew) or merchandise depends upon the nature of the item and the facts associated with the operation of the vessel. ~~At the same time, though, the sole use of a vessel in the installation of a wellhead assembly at a location within United States waters, after transportation of such assembly by a vessel entitled to engage in the coastwise~~

~~trade, is not considered a use in coastwise trade, nor is the sole use of a vessel in servicing wellheads. The transportation of wellhead equipment, valves and valve guards to be installed on an already existing wellhead assembly in the servicing capacity of the work barge by the crew of the work barge is not an activity prohibited by the coastwise laws, provided that such materials are of de minimis value or necessary to accomplish unforeseen repairs or adjustments and are usually carried aboard the work barge as supplies. On the other hand, if the necessity for specific wellhead equipment or other materials of more than de minimis value is foreseen, such transportation to the diving site must be effected by a vessel entitled to engage in the coastwise trade.~~

The laws on entrance and clearance of vessels are applicable to movements of the diving support work barge to, from and between points in United States waters, with specific requirements depending on whether the vessel is under United States or foreign flag. We will be happy to discuss such requirements when we are made aware of the intended flag of registry of the work barge.

You state that the work barge will be supplied by crewboat or helicopter. Further information about the helicopters, especially their registry, is required before we can rule on the applicability of the air cabotage law (49 U.S.C. 1508(b)). The navigation laws, on the other hand, are fully applicable to supply vessels operating within United States territorial waters. Accordingly, a supply vessel which transports supplies, equipment, etc., or crewmembers between points embraced within the coastwise laws of the United States (including the work barge when located at a point within United States waters) would be considered as operating in the coastwise trade and would have to meet the statutory requirements entitling it to engage in such trade.

Finally, General Headnote 5 of the Tariff Schedules of the United States provides that:

> For the purpose of headnote 1-***(e) vessels which are not "yachts or pleasure boats" within the purview of subpart D, part 6, Schedule 6, "are not articles subject to the provisions of these schedules."

As the vessel in question is not a yacht or pleasure boat, it would not be treated as an article subject to the provisions of the Tariff Schedules and would not, therefore, be subject to duty.

This decision is being circulated to all Customs officers to ensure uniformity in the administration of the customs and navigation laws.

Sincerely yours,

(SIGNED) J. P. TEBEAU

J. P. Tebeau
Director
Carriers, Drawback and Bonds Division

6

Cc: R.C., Houston
New Orleans

MLublinski/mjn:10/6/76

ATTACHMENT C

Aug. 13, 1986
VES-3–15-CO:R:CD:C
108442 PH

THOMAS L. MILLS, ESQ.
DYER, ELLIS, JOSEPH & MILLS
WATERGATE – 1000
600 NEW HAMPSHIRE AVENUE, NW
WASHINGTON, D.C. 20037

DEAR MR. MILLS:

With your letter of June 24, 1986, you enclosed a ruling request from Michael K. Bell, Esq., of Clann, Bell, & Murphy in Houston, Texas, on the applicability of the coastwise laws to foreign-flag self-elevating work platforms denominated as "liftboats." The liftboats, which carry at least one crane derrick, move to and from offshore oil structures under their own power. On location the liftboats change from seagoing vessels into stationary bottom-bearing, elevated work platforms by lowering their legs to the seabed and jacking themselves up on their legs to the desired heights.

Mr. Bell states that, typically, the liftboat company contracts with an oil company or oilfield servicing company which provides the maintenance crew to perform the work at the rigs or platforms. The liftboats will carry the tools and supplies of the maintenance crew, as well as the maintenance crew, between and to such offshore worksites. The maintenance crew may include scientific and/or technical personnel necessary to perform the mission of the liftboats. On occasion, the maintenance crew may be transported to or from the worksite by helicopter or non-affiliated crew boat. Mr. Bell states that although the liftboats may be large enough to transport drilling mud, treating fluids, lumber, drill pipe, casing, tubing and other items to and from offshore worksites, the liftboats are not intended to be used to transport such items unless they are to be utilized in connection with the operation or business of the liftboats.

Title 46, United States Code, section 883 (46 U.S.C. 883, often called the Jones Act), prohibits the transportation of merchandise between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States. Section 289 of title 46, as interpreted by the Customs Service, prohibits the transportation of passengers between points in the United States embraced within the coastwise laws, either directly or by way of a foreign port, in a non-coastwise-qualified vessel (see above).

A point in United States territorial waters is considered a point embraced within the coastwise laws of the United States, for purposes of these provisions. The territorial waters of the United States consist of the territorial sea, defined as the belt, 3 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline.

Section 4(a)(1) of the Outer Continental Shelf Lands Act of 1953, as amended (43 U.S.C. 1333(a)(1)) (OCSLA), provides, in pertinent part, that the laws of the United States are extended to "...the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing

resources therefrom ... to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State."

Under the foregoing provision, we have ruled that the coastwise laws are extended to mobile rigs during the period they are secured to or submerged onto the seabed of the outer Continental Shelf (OCS) (Treasury Decision 54281(1)). Subsequent rulings have applied the same principles to drilling platforms, artificial islands, warehouse vessels anchored over the OCS when used to supply drilling rigs on the OCS, and other installations and devices attached to the OCS for any of the requisite purposes.

In our interpretation of the coastwise laws, we have ruled that crewmembers, divers, the maintenance crew, and other personnel carried on a vessel the function of which is to engage in oceanographic research, service or repair of drilling rigs on the OCS, or similar operations are not passengers, for purposes of 46 U.S.C. 289. We have ruled that the supplies and equipment necessary to support the vessel in these activities are not merchandise, for purposes of 46 U.S.C. 883. Thus the coastwise laws would not prohibit the transportation by the non-coastwise-qualified liftboat of such persons and supplies and equipment from a point in the United States to a point on the OCS where the liftboat would engage in the described activities. The liftboat would be prohibited from transporting such persons or supplies and equipment from a coastwise point to a drilling rig or other device or installation attached to the OCS for the requisite purpose if the described activities were to be performed from or on the drilling rig or other device or installation instead of from or on the liftboat.

We have ruled that the use of a vessel in oceanographic research, including marine coring, the laying and repair of underwater cable or pipe, oil well stimulation, including the pumping of cement and other agents into an oil well or oil field on the OCS, and movement of articles by crane on a vessel when such movement is accomplished only by operation of the crane and not movement of the vessel, are not coastwise trade.

The applicability of the coastwise laws to specific uses of the liftboat listed by Mr. Bell in his summary is considered below:

1. *Well maintenance projects*.
   a. Use of the liftboat, equipped with electrical wire, a wireline unit, wireline tools, and other equipment necessary to conduct down hole wireline services would not violate the coastwise laws, assuming these services were performed from the liftboat and the liftboat did not merely transport the necessary personnel and equipment to an OCS drilling rig or other device or installation from which the services were performed.
   b. Use of the liftboat to transport well workover units from a port in the United States to a platform attached to the OCS where well maintenance would be performed by or with the use of the workover unit would violate the coastwise laws because the function of the liftboat in this operation is merely to transport the workover unit between coastwise points.
   c. Use of the liftboat outfitted with disposable burners, transfer pumps, heat exchangers, separators, a laboratory and other equipment essential for production test analysis of OCS oil wells would not violate the coastwise laws if the operation involved the

liftboat jacking up next to a platform with the equipment remaining on board and performing tests by connecting the equipment to the oil wells.

d. Use of the liftboat, with lightweight rotary rigs installed on board, to obtain core samples on the OCS would not violate the coastwise laws.

2. *Construction/repair work*. Use of the liftboat to inspect and/or repair an oil well on the OCS would not violate the coastwise laws *but* transportation of repair materials, structural materials, clamps, sandblasting equipment and the persons necessary to perform these operations by the liftboat to an oil well on the OCS on or from which the construction or repair work was performed would violate the coastwise laws. If the construction or repair work was performed from or on the liftboat, the coastwise laws would not be violated.

3. *Diving operations*. Use of the liftboat to support diving operations at a work site on the OCS, when the liftboat transported the divers and their equipment to the worksite and the diving operations were performed from the liftboat, would not violate the coastwise laws.

4. *Salvage*. Use of the foreign-flag liftboat in salvage operations on the OCS, when the article being salvaged and/or the liftboat are considered to be subject to the laws of the United States by virtue of 43 U.S.C. 1333(a)(1), would violate 46 U.S.C. 316(d), unless the liftboat is authorized to engage in the salvage operations under 46 U.S.C. 316(d) and 19 C.F.R. 4.97.

5. *Pipe-laying*. Use of the liftboat in a joint operation with a pipelaying crane barge to provide an additional work area and a stable platform for underwater pipe-laying would not violate the coastwise laws. Use of the liftboat to transport pipeline burial tools to a job site where they would be used for burying the pipeline and to return them to the point from which they were transported also would not violate the coastwise laws, assuming that the pipeline burial tools were used from the liftboat and the liftboat did not merely transport them to a point on the OCS subject to the coastwise laws by virtue of 43 U.S.C. 1333(a)(1). Mr. Bell should be aware that if the pipeline burial operation is considered dredging, it could be prohibited by 46 U.S.C. 292 when performed by the liftboat if the latter is foreign-built (see ruling VES-10–02/VES-10–03 R:CD:C 103692 MKT, December 28, 1978, and Customs Service Decision (C.S.D.) 85–11, copies enclosed). Use of the liftboat to transport pipeline connectors and tools from a port in the United States to an OCS job site and to connect a pipeline to a drilling platform or subsea wellhead would not violate the coastwise laws if the work was done from the liftboat but would violate the coastwise law if the liftboat merely transported the connectors and tools to the drilling platform or subsea wellhead and the connection operation was not performed on or from the liftboat. The same is true of the use of the liftboat to transport pipe and repair materials from a port in the United States to a construction site for use to repair a pipeline.

6. *Pipe-handling*. Use of the liftboat to handle pipe (e.g., pull and snub it) while jacked up adjacent to an offshore platform would not violate the

coastwise laws, assuming this operation involved no transportation of merchandise (other than movement of the pipe by the pipe-handling unit while the liftboat remains stationary) or passengers.

7. *Drilling mud and treating fluids*. Use of the liftboat to transport drilling mud or treating fluids from a point in the United States to a drilling platform where they are used by liftboat to treat the well would not violate the coastwise laws even though the mud and treating fluids would remain with the well, assuming that the liftboat transported only mud and treating fluids which it would use to treat the well (i.e., the liftboat could not transport mud or treating fluids for use by another vessel or device or installation in treating the well).

Sincerely,

KATHRYN C. PETERSON
Chief
Carrier Rulings Branch

Enclosures

Attachment D

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

13 AUG 1986

REFER TO
VES-3-15-CO:R:CD:C
108442 PH

Thomas L. Mills, Esq.
Dyer, Ellis, Joseph & Mills
Watergate – 1000
600 New Hampshire Avenue, NW
Washington, D.C. 20037

Dear Mr. Mills:

With your letter of June 24, 1986, you enclosed a ruling request from Michael K. Bell, Esq., of Clann, Bell, & Murphy in Houston, Texas, on the applicability of the coastwise laws to foreign-flag self-elevating work platforms denominated as "liftboats." The liftboats, which carry at least one crane derrick, move to and from offshore oil structures under their own power. On location the liftboats change from seagoing vessels into stationary bottom-bearing, elevated work platforms by lowering their legs to the seabed and jacking themselves up on their legs to the desired heights.

Mr. Bell states that, typically, the liftboat company contracts with an oil company or oilfield servicing company which provides the maintenance crew to perform the work at the rigs or platforms. The liftboats will carry the tools and supplies of the maintenance crew, as well as the maintenance crew, between and to such offshore worksites. The maintenance crew may include scientific and/or technical personnel necessary to perform the mission of the liftboats. On occasion, the maintenance crew may be transported to or from the worksite by helicopter or non-affiliated crew boat. Mr. Bell states that although the liftboats may be large enough to transport drilling mud, treating fluids, lumber, drill pipe, casing, tubing and other items to and from offshore worksites, the liftboats are not intended to be used to transport such items unless they are to be utilized in connection with the operation or business of the liftboats.

Title 46, United States Code, section 883 (46 U.S.C. 883, often called the Jones Act), prohibits the transportation of merchandise between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States. Section 289 of title 46, as interpreted by the Customs Service, prohibits the transportation of passengers between points in the United States embraced within the coastwise laws, either directly or by way of a foreign port, in a non-coastwise-qualified vessel (see above).

A point in United States territorial waters is considered a point embraced within the coastwise laws of the United States, for purposes of these provisions. The territorial waters of the United States consist of the territorial sea, defined as the belt, 3 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline.

Section 4(a)(1) of the Outer Continental Shelf Lands Act of 1953, as amended (43 U.S.C. 1333(a)(1)) (OCSLA), provides, in pertinent part, that the laws of the United States are extended to "…the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom … to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State."

Under the foregoing provision, we have ruled that the coastwise laws are extended to mobile rigs during the period they are secured to or submerged onto the seabed of the outer Continental Shelf (OCS) (Treasury Decision 54281(1)). Subsequent rulings have applied the same principles to drilling platforms, artificial islands, warehouse vessels anchored over the OCS when used to supply drilling rigs on the OCS, and other installations and devices attached to the OCS for any of the requisite purposes.

In our interpretation of the coastwise laws, we have ruled that crewmembers, divers, the maintenance crew, and other personnel carried on a vessel the function of which is to engage in oceanographic research, service or repair of drilling rigs on the OCS, or similar operations are not passengers, for purposes of 46 U.S.C. 289. ~~We have ruled that the supplies and equipment necessary to support the vessel in these activities are not merchandise, for purposes of 46 U.S.C. 883.~~ Thus the coastwise laws would not prohibit the transportation by the non-coastwise-qualified liftboat of such persons ~~and supplies and equipment~~ from a point in the United States to a point on the OCS where the liftboat would engage in the described activities. ~~The liftboat would be prohibited from transporting such persons or supplies and equipment from a coastwise point to a drilling rig or other device or installation attached to the OCS for the requisite purpose if the described activities were to be performed from or on the drilling rig or other device or installation instead of from or on the liftboat.~~

Pursuant to 19 U.S.C. § 1401(c), CBP has held that "merchandise" for the purposes of the Jones Act "means goods, wares, and chattels of every description, and includes merchandise the importation of which is prohibited, and monetary instruments…." However, merchandise does not include the equipment of a vessel (*i.e.*, "vessel equipment"). Such articles have been defined to include those which are "necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board." Treasury Decision ("T.D.") 49815(4), March 13, 1939. Decisions as to whether a given article constitutes "vessel equipment" are determined on a case-by-case basis.

We have ruled that the use of a vessel in oceanographic research, including marine coring, the laying and repair of underwater cable or pipe, oil well stimulation, including the pumping of cement and other agents into an oil well or oil field on the OCS, ~~and movement of~~

~~articles by crane on a vessel when such movement is accomplished only by operation of the crane and not movement of the vessel, are~~is not coastwise trade.

The applicability of the coastwise laws to specific uses of the liftboat listed by Mr. Bell in his summary is considered below:

1. Well maintenance projects.

   a. CBP lacks sufficient facts to determine whethe-r ~~U~~use of the liftboat, equipped with electrical wire, a wireline unit, wireline tools, and other equipment necessary to conduct down hole wireline services would ~~not~~ violate the coastwise laws~~, assuming these services were performed from the liftboat and the liftboat did not merely transport the necessary personnel and equipment to an OCS drilling rig or other device or installation from which the services were performed~~. What constitutes vessel equipment versus merchandise would be determined on a case-by-case basis.

   b. Use of the liftboat to transport well workover units from a port in the United States to a platform attached to the OCS where well maintenance would be performed by or with the use of the workover unit would violate the coastwise laws because the function of the liftboat in this operation is merely to transport the workover unit between coastwise points.

   c. Use of the liftboat outfitted with disposable burners, transfer pumps, heat exchangers, separators, a laboratory and other equipment essential for production test analysis of OCS oil wells would not violate the coastwise laws if the operation involved the liftboat jacking up next to a platform with the equipment remaining on board and performing tests by connecting the equipment to the oil wells.

   d. Use of the liftboat, with lightweight rotary rigs installed on board, to obtain core samples on the OCS would not violate the coastwise laws.

2. Construction/repair work. Use of the liftboat to inspect and/or repair an oil well on the OCS would not violate the coastwise laws. However, CBP lacks sufficient facts to determine whether the ~~but~~ transportation of repair materials, structural materials, clamps, and sandblasting equipment ~~and the persons necessary~~ to perform these operations by the liftboat to an oil well on the OCS ~~on or from which the construction or repair work was performed~~ would violate the coastwise laws. ~~If the construction or repair work was performed from or on the liftboat, the coastwise laws would not be violated.~~ A Jones Act-qualified vessel must transport repair materials if those materials do not constitute vessel equipment. What constitutes vessel equipment versus merchandise would be determined on a case-by-case basis.

3. Diving operations. Use of the liftboat to support diving operations at a work site on the OCS, when the liftboat transported the divers and their equipment to the worksite ~~and the diving operations were performed from the liftboat,~~ would not violate the coastwise laws.

4. Salvage. Use of the foreign-flag liftboat in salvage operations on the OCS, when the article being salvaged and/or the liftboat are considered to be subject to the laws of the United States by virtue of 43 U.S.C. 1333(a)(1), would violate 46 U.S.C. 316(d), unless the liftboat is authorized to engage in the salvage operations under 46 U.S.C. 316(d) and 19 C.F.R. 4.97.

5. Pipe-laying. Use of the liftboat in a joint operation with a pipelaying crane barge to provide an additional work area and a stable platform for underwater pipe-laying would not violate the coastwise laws. Use of the liftboat to transport pipeline burial tools to a job site where they would be used for burying the pipeline and to return them to the point from which they were transported also would not violate the coastwise laws, assuming that the pipeline burial tools were used ~~from~~ by the liftboat, and the liftboat did not merely transport them to a point on the OCS subject to the coastwise laws by virtue of 43 U.S.C. 1333(a)(1). Mr. Bell should be aware that if the pipeline burial operation is considered dredging, it could be prohibited by 46 U.S.C. 292 when performed by the liftboat if the latter is foreign-built (see ruling VES-10-02/VES-10-03 R:CD:C 103692 MKT, December 28, 1978, and Customs Service Decision (C.S.D.) 85-11, copies enclosed). CBP lacks sufficient facts to determine whether the ~~U~~use of the liftboat to transport pipeline connectors and tools from a port in the United States to an OCS job site and to connect a pipeline to a drilling platform or subsea wellhead would ~~not~~ violate the coastwise laws ~~if the work was done from the liftboat but would violate the coastwise law if the liftboat merely transported the connectors and tools to the drilling platform or subsea wellhead and the connection operation was not performed on or from the liftboat.~~ The same is true ~~of~~ regarding the use of the liftboat to transport pipe and repair materials from a port in the United States to a construction site for use to repair a pipeline. A Jones Act-qualified vessel ~~must~~cannot transport repair materials if those materials ~~do not constitute vessel equipment~~constitute merchandise and not vessel equipment. What constitutes vessel equipment versus merchandise would be determined on a case-by-case basis.

6. Pipe-handling. Use of the liftboat to handle pipe (e.g., pull and snub it) while jacked up adjacent to an offshore platform would not violate the coastwise laws, assuming this operation involved no transportation of merchandise (other than movement of the pipe by the pipe-handling unit while the liftboat remains stationary) or passengers.

7. Drilling mud and treating fluids. CBP lacks sufficient facts to determine whether the ~~U~~use of the liftboat to transport drilling mud or treating fluids from a point in the United States to a drilling platform where they are used by liftboat to treat the well would ~~not~~ violate the coastwise laws ~~even though the mud and treating fluids would remain with the well, assuming that the liftboat transported only mud and treating fluids which it would use to treat the well (i.e., the liftboat could not transport mud or treating fluids for use by another vessel or device or installation in treating the well).~~ What constitutes vessel equipment versus merchandise would be determined on a case-by-case basis.

Sincerely,

Kathryn C. Peterson
Chief
Carrier Rulings Branch

Enclosures

ATTACHMENT E

HQ 113841

Feb. 28, 1997
VES-3:RR:IT:EC 113841 LLB
CATEGORY: Carriers

MR. GEORGE H. ROBINSON, JR.
822 HARDING STREET
P.O. BOX 52800
LAFAYETTE, LOUISIANA 70505–2008

RE: Coastwise trade; Cable and pipe laying operations; Outer Continental Shelf; Subsea production site; 46 U.S.C. App. 883; 43 U.S.C.1333(a)

DEAR MR. ROBINSON:

Reference is made to your letter of February 17, 1997, in which you request that Customs rule upon the proposed use of a non-coastwise-qualified vessel in the transportation of so-called hydraulic and electrical "umbilicals", the transportation of a Remotely Operated Vehicle (ROY), and the towing of pipeline sections. Our determination is contained in the ruling below.

FACTS:

The company known as BP Exploration & Oil, Inc., intends to initiate a gas and oil exploration project on the outer Continental Shelf of the United States adjacent to the coast of Louisiana. The Company sought and received a Customs Ruling on various aspects of the project (Ruling Letter 113726), and now proposes additional operations for which a ruling is sought.

The specific operation for which the previous ruling was sought involved the proposed installation by a non-qualified vessel of two "umbilicals" which would be laid on the seabed between a production manifold and a fixed production platform on the outer-Continental shelf One of the umbilicals would be for hydraulic purposes and the other would be for electrical uses. The umbilicals were described as being flexible cables. The manifold and the platform would be located some fourteen miles apart. In addition to the umbilicals being placed on the seabed, it was stated that their terminal ends would be affixed to the manifold at one point, and to the platform at the other. In addition to the regular vessel crew, it was proposed that several American technicians ride aboard the installing vessel in order to assist in the attachment process. The role of the technicians, as described in the ruling request and elaborated upon in a telephone conversation of November 6, 1996, would be to monitor the installation process along the fourteen-mile course of umbilical laying by use of specialized equipment (the ROV), as well as to briefly board the semi-submersible vessel for the purpose of further monitoring the attachment process. The technicians would re-board the installing vessel following the manifold attachment process.

In the matter currently under consideration, three questions are posed for our consideration:

1. Whether the foreign-flag installing vessel may call at a United States port with foreign-laden umbilicals and spare umbilicals aboard for the purpose of loading the ROY aboard for transportation to the installation site.

2. Whether that same vessel may return to port at the conclusion of the operation for the purpose of off-loading the ROY and any unused umbilicals.
3. Whether a foreign-flag towing vessel may be utilized to tow seven-mile long pipeline segments from a United States port to the off-shore production platform on the outer Continental Shelf

ISSUE:

Whether the services of non-coastwise-qualified vessels may be utilized to load, transport and unload the Remotely Operated Vehicle to be used in the described operation; to transport and unload unused umbilicals; and to tow pipeline segments between coastwise points .

LAW AND ANALYSIS:

Generally, the coastwise laws prohibit the transportation of passengers or merchandise between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States.

The coastwise laws generally apply to points in the territorial sea, which is defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline.

Title 46, United States Code Appendix, section 883, the coastwise merchandise statute often called the "Jones Act", provides inpart that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, .or for any part of the transportation, in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States.

Not included within the general meaning of merchandise is the equipment of a vessel which will be used by that vessel. Such materials have been defined as articles, "...necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board.I' (Treasury Decision 49815(4), March 13, 1939). Customs has specifically ruled that,. "Vessel equipment placed aboard a vessel at one United States port may be removed from the vessel at another United States port at a later date without violation of the coastwise laws." (Customs Ruling Letter 102945, November 8, 1978). Decisions as to whether a given article comes within the definition of "vessel equipment" are made on a case by case basis.

Section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended (43 U.S.C. 1333(a); "OCSLA"), provides in part that the laws of the United States are extended to: "the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom...to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a state."

Under the foregoing provision, we have ruled that the coastwise laws and other Customs and navigation laws are extended to mobile oil drilling rigs during the period they are secured to or submerged onto the seabed of the outer Continental Shelf ("OCS"). We have applied that principle to drilling

platforms, artificial islands, and similar structures, as well as to devices attached to the seabed of the outer Continental Shelf for the purpose of resource exploration operations.

The Customs Service has previously ruled (Ruling 112866 dated August 3I, 1993) that the laying of cable is not considered coastwise trade. When cable is laid, it is paid out in a continual operation while the vessel proceeds. Customs distinguishes between such an operation and the act of unlading merchandise since there is no single identifiable coastwise point involved in the laying of cable.

With respect to the operation presently under consideration, we find that both the umbilicals (including spares), and the ROY are considered to be equipment of the foreign-flag umbilical laying vessel which are essential to completion of the mission of the vessel. With respect to the umbilicals, even if they were regarded as merchandise the facts indicate that they will be placed aboard the vessel in a foreign port. This being the case, there would be no transportation between coastwise points. In light of our determination that the named articles are considered equipment, the transportation proposed in the first two enumerated questions, above, may be accomplished with the use of a non-coastwise-qualified vessel.

With respect to the third question presented for our consideration, we find the proposed operation to be in the nature of a coastwise transportation of merchandise rather than a laying of pipeline which, as discussed above, would not be a transportation within the meaning of the merchandise statute (section 883). Unlike pipelaying which is accomplished in a continuous operation with no specifically identifiable point of unlading, the proposal under consideration involves the transportation of pipeline segments from a shore point in the United States to an operating site on the OCS which is considered to be a second coastwise point. The transaction will thus involve a lading at one coastwise point and an unlading at a second such point in violation of the statute.

HOLDING:

Following a thorough consideration of the facts and analysis of the law and applicable precedents, we have determined that the matters posed in enumerated questions I and 2, as stated in the Facts portion of this ruling, may be accomplished with the use of a foreign-flag vessel. The transportation posed in enumerated question 3, however, may be lawfully accomplished only with the services of a coastwise-qualified vessel.

Sincerely,

JERRY LADERBERG
Acting Chief
Entry and Carrier Rulings Branch

Attachment F

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

HQ 113841

FEB 2 8 1997

VES-3:RR:IT:EC 113841 LLB

CATEGORY: Carriers

Mr. George H. Robinson, Jr.
822 Harding Street
P.O. Box 52800
Lafayette, Louisiana 70505-2008

RE: Coastwise trade; Cable and pipe laying operations; Outer Continental Shelf; Subsea production site; 46 U.S.C. App. 883; 43 U.S.C.1333(a)

Dear Mr. Robinson:

Reference is made to your letter of February 17, 1997, in which you request that Customs rule upon the proposed use of a non-coastwise-qualified vessel in the transportation of so-called hydraulic and electrical "umbilicals", the transportation of a Remotely Operated Vehicle (ROV), and the towing of pipeline sections. Our determination is contained in the ruling below.

FACTS:

The company known as BP Exploration & Oil, Inc., intends to initiate a gas and oil exploration project on the outer Continental Shelf of the United States adjacent to the coast of Louisiana. The Company sought and received a Customs Ruling on various aspects of the project (Ruling Letter 113726), and now proposes additional operations for which a ruling is sought.

The specific operation for which the previous ruling was sought involved the proposed installation by a non-qualified vessel of two "umbilicals" which would be laid on the seabed between a production manifold and a fixed production platform on the outer-Continental shelf One of the umbilicals would be for hydraulic purposes and the other would be for electrical uses. The umbilicals were described as being flexible cables. The manifold and the platform would be located some fourteen miles apart. In addition to the umbilicals being placed on the seabed, it was stated that their terminal ends would be affixed to the manifold at one point, and to the platform at the other. In addition to the regular vessel crew, it was proposed that several American technicians ride aboard the installing vessel in order to assist in the attachment process. The role of the technicians, as described in the ruling request and elaborated upon in a telephone conversation of November 6, 1996,

would be to monitor the installation process along the fourteen-mile course of umbilical laying by use of specialized equipment (the ROV), as well as to briefly board the semi-submersible vessel for the purpose of further monitoring the attachment process. The technicians would re-board the installing vessel following the manifold attachment process.

In the matter currently under consideration, three questions are posed for our consideration:

1. Whether the foreign-flag installing vessel may call at a United States port with foreign-laden umbilicals and spare umbilicals aboard for the purpose of loading the ROY aboard for transportation to the installation site.

2. Whether that same vessel may return to port at the conclusion of the operation for the purpose of off-loading the ROV and any unused umbilicals.

3. Whether a foreign-flag towing vessel may be utilized to tow seven-mile long pipeline segments from a United States port to the off-shore production platform on the outer Continental Shelf.

ISSUE:

Whether the services of non-coastwise-qualified vessels may be utilized to load, transport and unload the Remotely Operated Vehicle to be used in the described operation; to transport and unload unused umbilicals; and to tow pipeline segments between coastwise points.

LAW AND ANALYSIS:

Generally, the coastwise laws prohibit the transportation of passengers or merchandise between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States.

The coastwise laws generally apply to points in the territorial sea, which is defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline.

Title 46, United States Code Appendix, section 883, the coastwise merchandise statute often called the "Jones Act", provides in part that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States.

Not included within the general meaning of merchandise is the equipment of a vessel which will be used by that vessel. Such materials have been defined as articles, ". . . necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board. (Treasury Decision 49815(4), March 13, 1939).

Customs has specifically ruled that, "Vessel equipment placed aboard a vessel at one United States port may be removed from the vessel at another United States port at a later date without violation of the coastwise laws." (Customs Ruling Letter 102945, November 8, 1978). Decisions as to whether a given article comes within the definition of "vessel equipment" are made on a case by case basis.

Section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended (43 U.S.C. 1333(a); "OCSLA"), provides in part that the laws of the United States are extended to: "the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom . . . to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a state."

Under the foregoing provision, we have ruled that the coastwise laws and other Customs and navigation laws are extended to mobile oil drilling rigs during the period they are secured to or submerged onto the seabed of the outer Continental Shelf ("OCS"). We have applied that principle to drilling platforms, artificial islands, and similar structures, as well as to devices attached to the seabed of the outer Continental Shelf for the purpose of resource exploration operations.

The Customs Service has previously ruled (Ruling 112866 dated August 31, 1993) that the laying of cable is not considered coastwise trade. When cable is laid, it is paid out in a continual operation while the vessel proceeds. Customs distinguishes between such an operation and the act of unlading merchandise since there is no single identifiable coastwise point involved in the laying of cable.

With respect to the operation presently under consideration, we find that both the umbilicals (including spares), and the ROV are considered to be equipment of the foreign-flag umbilical laying vessel ~~which are essential to completion of the mission of the vessel~~. With respect to the umbilicals, even if they were regarded as merchandise the facts indicate that they will be placed aboard the vessel in a foreign port. This being the case, there would be no transportation between coastwise points. The ROV constitutes vessel equipment because it is integral to the function of the umbilical laying vessel. Furthermore, the fact that the ROV is returned to and departs with the vessel is weighs in favor of it being considered vessel equipment. In light of our determination that the named articles are considered equipment, the transportation proposed in the first two enumerated questions, above, may be accomplished with the use of a non-coastwise-qualified vessel.

With respect to the third question presented for our consideration, we find the proposed operation to be in the nature of a coastwise transportation of merchandise rather than a laying of pipeline which, as discussed above, would not be a transportation within the meaning of the merchandise statute (section 883). Unlike pipelaying which is accomplished in a continuous

operation with no specifically identifiable point of unlading, the proposal under consideration involves the transportation of pipeline segments from a shore point in the United States to an operating site on the OCS which is considered to be a second coastwise point. The transaction will thus involve a lading at one coastwise point and an unlading at a second such point in violation of the statute.

HOLDING:

Following a thorough consideration of the facts and analysis of the law and applicable precedents, we have determined that the matters posed in enumerated questions 1 and 2, as stated in the Facts portion of this ruling, may be accomplished with the use of a foreign-flag vessel. The transportation posed in enumerated question 3, however, may be lawfully accomplished only with the services of a coastwise-qualified vessel.

Sincerely,

Jerry Laderberg
Acting Chief
Entry and Carrier Rulings Branch

ATTACHMENT G

HQ 114435

Aug. 6, 1998
VES.:J-RR:IT:EC 114435 LLB
CATEGORY: Carriers

MR. J. KELLY DUNCAN
JONES, WALKER, WAECHTER, POITEVENT, CARRERE, AND DENEGRE
201 ST. CHARLES AVENUE
NEW ORLEANS, LOUISIANA 70170–5100

RE: Coastwise trade; Pipe laying operations Outer Continental ·s helf; Subsea production sites; - 46 U.S:C. App. 289; 46 U.S.C. App. 883; 43 U.S.C. 1333(a)

DEAR MR. DUNCAN:

Reference is made to your letter of July 30, 1998, in which you request that Customs rule upon certain operations proposed by your client in international waters overlying the Outer Continental Shelf of the United States. You have requested that we expedite our consideration of your request, and that we accord confidential treatment to this matter.

FACTS:

The overall operation presented for consideration and ruling is extensive and complicated, but reduced to its essence it involves the transportation of certain technical personnel, subsea umbilicals and flowlines, some containing electrical and hydraulic control lines, and equipment for subsea installation work, from both foreign and domestic ports to work areas in waters in the Gulf of Mexico.

The issues for our consideration have.been narrowed by the presentation of three specific questions, which we paraphrase as follows:

1. May a non-coastwise-qualified vessel be used to lay a.so-called "umbilical" on the seabed of the Outer Continental Shelf, and to transport and temporarily discharge certain equipment and personnel necessary for the task.
2. May a non-coastwise-qualified vessel be used to lay so-called "flowlines" on the seabed of the Outer Continental Shel(and to transport and temporarily discharge certain equipment and personnel necessary for the task
3. Would liability for duty on the umbilical be limited to only that portion which is in contact with a production platform which is fixed to the seabed on the Outer Continental Shelf

ISSUE:

Whether the coastwise laws of the United States would prove an impediment to the laying

·of flexible umbilical and flowline tubing on the seabed of the Outer Continental Shelf by a non-coastwise-qualified vessel, and might duty be **assessed** under the Harmonized Tariff Schedule of the United States on any portion of the tubing so laid.

LAW AND ANALYSIS:

Generally, the coastwise laws prohibit the transportation of passengers or merchandise between points in the United States embraced within the coastwise laws in any vessel other than a ves I built in, documented under the laws of, and owned by citizens of the United States.

The coastwise laws generally apply to points in the territorial sea, which is defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline.

Title 46, United States Code Appendix, section 883, the coastwise merchandise statute often called the "Jones Act", provides in part that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States.

The coastwise law applicable to the carriage of passengers is found in 46 U.S.C. App. 289 and provides that no foreign vessel shall transport passengers between ports or places in the United States. either directly or by way ofa foreign port, under a penalty of$200 for each passenger so transported and landed. Section 4.50(b), Customs Regulations (19 CFR 4.50(b)), defines as a.passenger, "any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business."

Not included within the general meaning of merchandise is the equipment of a vessel which will be used by that vessel.· Such materials have been defined as articles, "...necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board." (Treasury Decision 49815(4), March 13:, 1939). Customs has specifically ruled that, "Vessel equipment placed aboard a vessel at one United States port may be removed from the vessel at another United States port at a later date without violation of the coastwise laws." (Customs Ruling Letter 10294S, November 8, 1978). Decisions as to whether a given article comes within the definition of "vessel equipment" are made on a case by case basis.

Section 4(a) of the Outer Continental Shelf Lands Act of 19S3, as amended (43 U.S.C. 1333(a); 11OCSLA"),provides in part that the laws of the United States are extended to: "the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom...to the same extent as if the outer Continental Shelfwere an area of exclusive Federal jurisdiction within a state."

Under the foregoing provision, we have ruled that the coastwise laws and other Customs and navigation laws are extended to mobile oil drilling rigs during the period they are secured to or submerged onto the seabed of the outer Continental Shelf("OCS"). We have applied that principle to drilling platforms, artificial islands, and similar structures, as well as to devices attached to the seabed of the outer Continental Shelf for the purpose of resource exploration operations.

The Customs Service has previously ruled (Ruling 112866 dated August 31,. 1993) that the laying of cable is not considered coastwise trade. When cable is laid, it is paid out in a continual operation while the vessel proceeds.

Customs distinguishes between such an operation and the act of unlading merchandise since there is no single identifiable coastwise point involved in the laying of cable.

With respect to the dutiability of all or a: portion of the umbilical, Customs has had occasion to rule on·similar matters. In Headquarters Letter 1064S4, dated November 16, 1983, the issue of the dutiability of certain flexible pipeline laid on the seabed between two fixed platforms was considered. Customs determined in those circumstances that duty liability is limited to that portion of the pipeline which rises .along the structure of a production platform, beginning with its first point of attachment to the structure. No subsequent rulings have altered this finding.

With respect to the operation presently under consideration, we find it to be akin to the laying of subsea cable or pipe. The umbilicals and tlowlines do not constitute merchandise under the statute but are considered to be in the nature of supplies necessary for the accomplishment of the mission of the vessel. The laying of the umbilicals and flowlines is not an impermissible unlading under the law.

With regard to any technicians transported aboard the vessel, we consider them to be connected with-the operation of the vessel. We are informed that they will be engaged in part-in monitoring the umbilical and flowline laying operation during that process, and are thus necessary to the successful completion of the. task. They may be required to depart the vessel temporarily at a coastwise point (a platform affixed to the seabed of the Outer Continental Shelf), but will re-board the vessel to depart from the site. This is no different than a member of the crew of a vessel getting off temporarily and then re-joining the vessel before its departure.

Further with respect to the operation presently under consideration, we find the Remote Operated Vehicle (ROY) used in the installation process to be equipment of the foreign-flag umbilical and flowline laying vessel, and that it i·s essential to completion of the mission of the vessel. In light of our determination that the named article is considered equipment, the transportation proposed in the first two enumerated questions, above, may be accomplished with the use of a Iion-coastwise-qualified vessel.

HOLDING:

Following a thorough consideration of the facts and analysis of the law and applicable precedents, we have determined that the vessel under consideration may lawfully engage in the laying of flexible umbilicals and flowlines on the Outer Continental Shelf of the United States. Further, technicians and other vessel equipment necessary to the operation of the vessel may be lawfully transported and may be temporarily landed if necessary on a platform fixed to the Outer Continental Shelf, so.long as they are re-joined with the vessel for departure.

Sincerely,

JERRY LADERBERG
Chief
Entry Procedures and Carriers Branch

Attachment H

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, DC

HQ 114435

AUG 6 1998

VES.:J-RR:IT:EC 114435 LLB

CATEGORY: Carriers

Mr. J. Kelly Duncan
Jones, Walker, Waechter, Poitevent, Carrere,
and Denegre
201 St.Charles Avenue
New Orleans, Louisiana 70170-5100

RE: Coastwise trade; Pipe laying operations Outer Continental shelf; Subsea production sites; 46 U.S:C. App. 289; 46 U.S.C. App. 883; 43 U.S.C. 1333(a)

Dear Mr. Duncan:

Reference is made to your letter of July 30, 1998, in which you request that Customs rule upon certain operations proposed by your client in international waters overlying the Outer Continental Shelf of the United States. You have requested that we expedite our consideration of your request, and that we accord confidential treatment to this matter.

FACTS:

The overall operation presented for consideration and ruling is extensive and complicated, but reduced to its essence it involves the transportation of certain technical personnel, subsea umbilicals, flowlines, some containing electrical and hydraulic control lines, and equipment for subsea installation work, from both foreign and domestic ports to work areasin waters in the Gulf of Mexico.

The issues for our consideration have been narrowed by the presentation of three specific questions, which we paraphrase as follows:

1. May a non-coastwise-qualified vessel be used to lay a so-called "umbilical" on the seabed of the Outer Continental Shelf, and to transport and temporarily discharge certain equipment and personnel necessary for the task.

2. May a non-coastwise-qualified vessel be used to lay so-called "flowlines" on the seabed of the Outer Continental Shelf and to transport and temporarily discharge certain equipment and personnel necessary for the task.

3. Would liability for duty on the umbilical be limited to only that portion which is in contact with a production platform which is fixed to the seabed on the Outer Continental Shelf.

ISSUE:

Whether the coastwise laws of the United States would prove an impediment to the laying of flexible umbilical and flowline tubing on the seabed of the Outer Continental Shelf by a non-coastwise-qualified vessel, and might duty be assessed under the Harmonized Tariff Schedule of the United States on any portion of the tubing so laid.

LAW AND ANALYSIS:

Generally, the coastwise laws prohibit the transportation of passengers or merchandise between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States.

The coastwise laws generally apply to points in the territorial sea, which is defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline.

Title 46, United States Code Appendix, section 883, the coastwise merchandise statute often called the "Jones Act", provides in part that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States.

The coastwise law applicable to the carriage of passengers is found in 46 U.S.C. App. 289 and provides that no foreign vessel shall transport passengers between ports or places in the United States. either directly or by way of a foreign port, under a penalty of $200 for each passenger so transported and landed. Section 4.50(b), Customs Regulations (19 CFR 4.50(b)), defines as a passenger, "any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business."

Not included within the general meaning of merchandise is the equipment of a vessel which will be used by that vessel. Such materials have been defined as articles, "...necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board." (Treasury Decision 49815(4), March 13:, 1939). Customs has specifically ruled that, "Vessel equipment placed aboard a vessel at one United States port may be removed from the vessel at another United States port at a later date without violation of the coastwise laws." (Customs Ruling Letter 10294S, November 8, 1978). Decisions as to whether a given article comes within the definition of "vessel equipment" are made on a case by case basis.

Section 4(a) of the Outer Continental Shelf Lands Act of 1983, as amended (43 U.S.C. 1333(a); (OCSLA"),provides in part that the laws of the United States are extended to: "the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom...to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a state."

Under the foregoing provision, we have ruled that the coastwise laws and other Customs and navigation laws are extended to mobile oil drilling rigs during the period they are secured to or submerged onto the seabed of the outer Continental Shelf ("OCS"). We have applied that principle to drilling platforms, artificial islands, and similar structures, as well as to devices attached to the seabed of the outer Continental Shelf for the purpose of resource exploration operations.

The Customs Service has previously ruled (Ruling 112866 dated August 31, 1993) that the laying of cable is not considered coastwise trade. When cable is laid, it is paid out in a continual operation while the vessel proceeds. Customs distinguishes between such an operation and the act of unlading merchandise since there is no single identifiable coastwise point involved in the laying of cable.

With respect to the dutiability of all or a:portion of the umbilical, Customs has had occasion to rule on similar matters. In Headquarters Letter 1064S4, dated November 16, 1983, the issue of the dutiability of certain flexible pipeline laid on the seabed between two fixed platforms was considered. Customs determined in those circumstances that duty liability is limited to that portion of the pipeline which rises along the structure of a production platform, beginning with its first point of attachment to the structure. No subsequent rulings have altered this finding.

With respect to the operation presently under consideration, we find it to be akin to the laying of subsea cable or pipe. The umbilicals and flowlines do not constitute merchandise under the statute ~~but are considered to be in the nature of supplies necessary for the accomplishment of the mission of the vessel~~because they are paid out, and not unladen. The laying of the umbilicals and flowlines is not an impermissible unlading under the law.

With regard to any technicians transported aboard the vessel, we consider them to be connected with-the operation of the vessel. We are informed that they will be engaged in part-in monitoring the umbilical and flowline laying operation during that process, and are thus necessary to the successful completion of the task. They may be required to depart the vessel temporarily at a coastwise point (a platform affixed to the seabed of the Outer Continental Shelf), but will re-board the vessel to depart from the site. This is no different than a member of the crew of a vessel getting off temporarily and then re-joining the vessel before its departure.

Further with respect to the operation presently under consideration, we find the Remote Operated Vehicle (ROV) used in the installation process to be equipment of the foreign-flag umbilical and flowline laying vessel~~, and that it is essential to completion of the mission of the vessel~~because it is integral to the function of the vessel. Furthermore, the fact that the ROV is returned to and departs with the vessel is weighs in favor of it being considered vessel equipment. In light of our determination that the named article is considered equipment, the transportation proposed in the first two enumerated questions, above, may be accomplished with the use of a non-coastwise-qualified vessel.

HOLDING:

Following a thorough consideration of the facts and analysis of the law and applicable precedents, we have determined that the vessel under consideration may lawfully engage in the laying of flexible umbilicals and flowlines on the Outer: Continental Shelf of the United States. Further, technicians and other vessel equipment necessary to the operation of the vessel may be lawfully transported and may be temporarily landed if necessary on a platform fixed to the Outer Continental Shelf, so long as they are re-joined with the vessel for departure.

Sincerely,

Jerry Laderberg
Chief
Entry Procedures and Carriers Branch

ATTACHMENT I

HQ 115185
November 20, 2000
VES-3–15-RR:IT:EC 115185 GEV
CATEGORY: Carriers

KARLA R. HOLOMON, ESQ.
EXXONMOBIL DEVELOPMENT COMPANY
12450 GREENSPOINT DRIVE
HOUSTON, TEXAS 77210–4876

RE: Coastwise Trade; Outer Continental Shelf Lands Act; 43 U.S.C. § 1333(a); 46 U.S.C. App. § 883

DEAR MS. HOLOMON:

This is in response to your letters of October 4, 2000, and November 8, 2000, respectively, requesting a ruling as to whether the use of a foreign-flagged vessel in the proposed installation of certain equipment at locations in the Gulf of Mexico violates 46 U.S.C. App. § 883 (the "Jones Act"). Our ruling on this matter is set forth below.

FACTS:

The first scenario presented for our consideration involves the installation of jumper pipes on the Gulf of Mexico ocean floor. A jumper pipe is a piece of pipe approximately 50–85 feet in length. The jumper pipes will be used to connect subsea wells to a subsea pipeline. This subsea production equipment, which will be in place at the site where the jumper pipe installation will occur, will not be operational at the time of installation. A subsea pipeline will carry produced fluids from the subsea wells to an existing platform. The jumper pipes, which will be fabricated in Louisiana, will be transported to the installation site by a foreign-flagged offshore multi-purpose construction vessel. The vessel will depart from a Louisiana port and proceed to the site where the vessel's crew will install the jumpers. The vessel will then either: (a) return to the port of origin; (b) return to another U.S. port; or (c) proceed to another offshore installation location.

The second scenario presented for our consideration involves the installation of hull mounted risers (HMR) and steel catenary riser spool pieces (SCRSP) on the side of a deep draft caisson vessel (DDCV) that is currently in operation. The HMR and SCRSP are flanged pipe spools approximately 200 feet and 40 feet in length, respectively. Their purpose is to connect pipeline terminations to interconnect piping running to topside processing equipment. The HMR and SCRP will be bolted together and installed in existing clamps that are attached to the side of the DDCV. Produced fluids will be carried through the subsea pipeline and the HMR and SCRP to the topside equipment for processing. The aforementioned subsea equipment (pipelines and interconnect piping) will be in place at the location where the riser installation occurs but will not be operational at the time of installation. When installed, the top 30 feet of the HMR will be above the waterline. The remaining 170 feet of the HMR and SCRSP will be installed below the waterline. The HMR and SCRSP will be fabricated in Texas and transported to the installation site by a foreign-flagged offshore multi-purpose construction vessel. The vessel will depart from a Texas port and proceed to the site where the vessel's crew will install the HMR and SCRSP. The vessel will then

either: (a) return to the port of origin; (b) return to another U.S. port; or (c) proceed to another offshore installation location.

The final scenario presented for our consideration is as follows. Prior to the installation of the jumper pipes and HMR and SCRSP described above, a U.S.-flagged vessel will transport a manifold and pile to be installed on the ocean floor at the site by a foreign-flagged offshore construction vessel. The construction vessel will depart from Galveston, Texas, and proceed to the site where the vessel's crew will install the manifold and pile. The construction vessel will then either: (a) return to the port of origin; (b) return to another U.S. port; or (c) proceed to another offshore installation location. If the manifold or pile is damaged during installation, the preferred course of action will be for the construction vessel to lift the manifold and pile onto its deck and transport same back to the point of origin or to another nearby U.S. port.

ISSUE:

Whether the use of a foreign-flagged vessel in the scenarios described above constitutes a violation of 46 U.S.C. App. § 883.

LAW AND ANALYSIS:

Title 46, United States Code Appendix, § 883 (46 U.S.C. App. § 883, the merchandise coastwise law often called the "Jones Act"), provides, in part, that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than one that is coastwise-qualified (i.e., U.S.-built, owned and documented).

Section 4.80b(a), Customs Regulations (19 CFR § 4.80b(a)), promulgated pursuant to the aforementioned statute, provides, in pertinent part, as follows:

> A coastwise transportation of merchandise takes place, within the meaning of the coastwise laws, when merchandise *laden at a point embraced within the coastwise laws ("coastwise point") is unladen at another coastwise point*,..." (Emphasis added)

The coastwise laws generally apply to points in the territorial sea, defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline, in cases where the baseline and the coastline differ.

Section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended (67 Stat. 462; 43 U.S.C. § 1333(a)) (OCSLA), provides, in part, that the laws of the United States are extended to:

> ... the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom ... to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a State.

The statute was substantively amended by the Act of September 18, 1978 (Pub. L. 95–372, Title II, § 203, 92 Stat. 635), to add, among other things, the language concerning temporary attachment to the seabed. The legislative history associated with this amendment is telling, wherein it is stated that:

> ...It is thus clear that Federal law is to be applicable to all activities or all devices in contact with the seabed for exploration, development, and production. The committee intends that Federal law is, therefore, to be applicable to activities on drilling rigs, and other watercraft, when they are connected to the seabed by drillstring, pipes, or other appurtenances, on the OCS for exploration, development, or production purposes. [House Report 95–590 on the OCSLA Amendment of 1978, page 128, reproduced at 1978 U.S.C.C.A.N. 1450, 1534.]

Under the foregoing provision, we have ruled that the Customs and navigation laws, including the coastwise laws, the laws on entrance and clearance of vessels, and the provisions for dutiability of merchandise, are extended to mobile oil drilling rigs during the period they are secured to or submerged onto the seabed of the OCS (Treasury Decision (T.D.) 54281(1)). We have applied the same principles to drilling platforms, artificial islands, and similar structures, as well as devices attached to the seabed of the OCS for the purpose of resource exploration operations, including warehouse vessels anchored over the OCS when used to supply drilling rigs on the OCS. (see Customs Service Decisions (C.S.D.s) 81–214 and 83–52, and Customs Ruling Letter 107579, dated May 9, 1985)

In regard to the first two scenarios presented for our consideration, we note that both involve the transportation of pipeline connectors by a foreign-flag vessel to the installation site where the installation will be done by the vessel's crew. Customs has held that the use of a foreign-flag vessel to transport pipeline connectors and tools from a port in the United States to an OCS job site and to connect a pipeline to a drilling platform or subsea wellhead would not violate the coastwise laws if the work was done from the vessel but would violate the coastwise laws if the vessel merely transported the connectors and tools to the drilling platform or subsea wellhead and the connection operation was not performed on or from that vessel. (see Customs ruling letter 108442, dated August 13, 1986; see also Treasury Decision (T.D.) 78–387) Accordingly, the proposed use of a foreign-flag vessel in the first two scenarios is not violative of 46 U.S.C. App. § 883.

With respect to the third scenario in question, the use of a foreign-flagged offshore construction vessel to effect the installation of a manifold and pile at the above-referenced sites subsequent to their transportation to those sites by a U.S.-flagged vessel and prior to the installation of the jumper pipes and the HMR and SCRSP would not be prohibited by 46 U.S.C. App. § 883. However, in the event of any damage incurred by the manifold and pile during installation, the transportation of the manifold and pile by a foreign-flagged vessel from that location to another coastwise point is prohibited pursuant to 46 U.S.C. App. § 883. It should also be noted that the aforementioned U.S.-flagged vessel must be coastwise-qualified.

HOLDING:

As discussed in the Law and Analysis portion of this ruling, the use of a foreign-flagged vessel for the transportation of pipeline connectors (jumper pipes and HMR and SCRSP) as describe in the first two scenarios for our consideration does not constitute a violation of 46 U.S.C. App. § 883. In the third scenario, the use of a foreign-flagged vessel to transport the damaged manifold and pile from the installation site on the OCS to another coastwise point does constitute a violation of 46 U.S.C. App. § 883.

Sincerely,

LARRY L. BURTON
Chief
Entry Procedures and Carriers Branch

Attachment J

HQ 115185

November 20, 2000

VES-3-15-RR:IT:EC 115185 GEV

CATEGORY: Carriers

Karla R. Holomon, Esq.
ExxonMobil Development Company
12450 Greenspoint Drive
Houston, Texas 77210-4876

RE: Coastwise Trade; Outer Continental Shelf Lands Act; 43 U.S.C. § 1333(a); 46 U.S.C. App. § 883

Dear Ms. Holomon:

This is in response to your letters of October 4, 2000, and November 8, 2000, respectively, requesting a ruling as to whether the use of a foreign-flagged vessel in the proposed installation of certain equipment at locations in the Gulf of Mexico violates 46 U.S.C. App. § 883 (the "Jones Act"). Our ruling on this matter is set forth below.

FACTS:

The first scenario presented for our consideration involves the installation of jumper pipes on the Gulf of Mexico ocean floor. A jumper pipe is a piece of pipe approximately 50-85 feet in length. The jumper pipes will be used to connect subsea wells to a subsea pipeline. This subsea production equipment, which will be in place at the site where the jumper pipe installation will occur, will not be operational at the time of installation. A subsea pipeline will carry produced fluids from the subsea wells to an existing platform. The jumper pipes, which will be fabricated in Louisiana, will be transported to the installation site by a foreign-flagged offshore multi-purpose construction vessel. The vessel will depart from a Louisiana port and proceed to the site where the vessel's crew will install the jumpers. The vessel will then either: (a) return to the port of origin; (b) return to another U.S. port; or (c) proceed to another offshore installation location.

The second scenario presented for our consideration involves the installation of hull mounted risers (HMR) and steel catenary riser spool pieces (SCRSP) on the side of a deep draft caisson vessel (DDCV) that is currently in operation. The HMR and SCRSP are flanged pipe spools approximately 200 feet and 40 feet in length, respectively. Their purpose is to connect pipeline terminations to interconnect piping running to topside processing equipment. The HMR and SCRP will be bolted together and installed in existing clamps that are attached to the side of the DDCV. Produced fluids will be carried through the subsea pipeline and the HMR and SCRP to the topside equipment for processing. The aforementioned subsea equipment (pipelines and interconnect piping) will be in place at the location where the riser installation occurs but will not be operational at the time of installation. When installed, the top 30 feet of the HMR will be above the waterline. The remaining 170 feet of the HMR and SCRSP will be installed below the waterline. The HMR and SCRSP will be fabricated in Texas and transported to the installation site by a foreign-flagged offshore multi-purpose construction vessel. The vessel will depart from a Texas port and proceed to the site where the vessel's crew will install the HMR and SCRSP. The vessel will then either: (a) return to the port of origin; (b) return to another U.S. port; or (c) proceed to another offshore installation location.

The final scenario presented for our consideration is as follows. Prior to the installation of the jumper pipes and HMR and SCRSP described above, a U.S.-flagged vessel will transport a manifold and pile to be installed on the ocean floor at the site by a foreign-flagged offshore construction vessel. The construction vessel will depart from Galveston, Texas, and proceed to the site where the vessel's crew will install the manifold and pile. The construction vessel will then either: (a) return to the port of origin; (b) return to another U.S. port; or (c) proceed to another offshore installation location. If the manifold or pile is damaged during installation, the preferred course of action will be for the construction vessel to lift the manifold and pile onto its deck and transport same back to the point of origin or to another nearby U.S. port.

ISSUE:

Whether the use of a foreign-flagged vessel in the scenarios described above constitutes a violation of 46 U.S.C. App. § 883.

LAW AND ANALYSIS:

Title 46, United States Code Appendix, § 883 (46 U.S.C. App. § 883, the merchandise coastwise law often called the "Jones Act"), provides, in part, that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than one that is coastwise-qualified (i.e., U.S.-built, owned and documented).

Section 4.80b(a), Customs Regulations (19 CFR § 4.80b(a)), promulgated pursuant to the aforementioned statute, provides, in pertinent part, as follows:

> A coastwise transportation of merchandise takes place, within the meaning of the coastwise laws, when merchandise laden at a point embraced within the coastwise laws ("coastwise point") is unladen at another coastwise point,..."
> (Emphasis added)

The coastwise laws generally apply to points in the territorial sea, defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline, in cases where the baseline and the coastline differ.

Section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended (67 Stat. 462; 43 U.S.C. § 1333(a)) (OCSLA), provides, in part, that the laws of the United States are extended to:

> ... the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom ... to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a State.

The statute was substantively amended by the Act of September 18, 1978 (Pub. L. 95-372, Title II, § 203, 92 Stat. 635), to add, among other things, the language concerning temporary attachment to the seabed. The legislative history associated with this amendment is telling, wherein it is stated that:

> ...It is thus clear that Federal law is to be applicable to all activities or all devices in contact with the seabed for exploration, development, and production. The committee intends that Federal law is, therefore, to be applicable to activities on drilling rigs, and other watercraft, when they are connected to the seabed by drillstring, pipes, or other appurtenances, on the OCS for exploration, development, or production purposes. [House Report 95-590 on the OCSLA Amendment of 1978, page 128, reproduced at 1978 U.S.C.C.A.N. 1450, 1534.]

Under the foregoing provision, we have ruled that the Customs and navigation laws, including the coastwise laws, the laws on entrance and clearance of vessels, and the provisions for dutiability of merchandise, are extended to mobile oil drilling rigs during the period they are secured to or submerged onto the seabed of the OCS (Treasury Decision (T.D.) 54281(1)). We have applied the same principles to drilling platforms, artificial islands, and similar structures, as well as devices attached to the seabed of the OCS for the purpose of resource exploration operations, including warehouse vessels anchored over the OCS when used to supply drilling rigs on the OCS. (see Customs Service Decisions (C.S.D.s) 81-214 and 83-52, and Customs Ruling Letter 107579, dated May 9, 1985)

In regard to the first two scenarios presented for our consideration, we note that both involve the transportation of pipeline connectors by a foreign-flag vessel to the installation site where the installation will be done by the vessel's crew. In order to make a reasoned determination as to whether these items constitute merchandise or vessel equipment, CBP needs -additional facts regarding the nature of the items and how they are used by the foreign-flag vessel. Whether items are tools (and as such, vessel equipment used by the vessel's crew) or merchandise depends upon the nature of the item and the facts associated with the operation of the vessel.~~While the foreign flag vessel is permitted to perform the installation work, it is not permitted to transport the items between the coastwise points, as contemplated in these scenarios. The items being installed are merchandise, and must be transported by a coastwise qualified vessel. And despite the spooled nature of the HMR and SCSRP, these items are not "paid out" in the same sense as discussed in CBP's pipe- and cable-laying rulings, but rather are transported to and installed or attached to~~

~~coastwise points.~~

~~Customs has held that the use of a foreign-flag vessel to transport pipeline connectors and tools from a port in the United States to an OCS job site and to connect a pipeline to a drilling platform or subsea wellhead would not violate the coastwise laws if the work was done from the vessel but would violate the coastwise laws if the vessel merely transported the connectors and tools to the drilling platform or subsea wellhead and the connection operation was not performed on or from that vessel. (see Customs ruling letter 108442, dated August 13, 1986; see also Treasury Decision (T.D.) 78-387) Accordingly, the proposed use of a foreign-flag vessel in the first two scenarios is not violative of 46 U.S.C. App. § 883.~~

With respect to the third scenario in question, the use of a foreign-flagged offshore construction vessel to effect the installation of a manifold and pile at the above-referenced sites subsequent to their transportation to those sites by a U.S.-flagged vessel and prior to the installation of the jumper pipes and the HMR and SCRSP would not be prohibited by 46 U.S.C. App. § 883. However, in the event of any damage incurred by the manifold and pile during installation, the transportation of the manifold and pile by a foreign-flagged vessel from that location to another coastwise point is prohibited pursuant to 46 U.S.C. App. § 883. It should also be noted that the aforementioned U.S.-flagged vessel must be coastwise-qualified.

HOLDING:

As discussed in the Law and Analysis portion of this ruling, ~~the use of a foreign-flagged vessel for the transportation of pipeline connectors (jumper pipes and HMR and SCRSP) as describe in the first two scenarios for our consideration does not constitutes a violation of 46 U.S.C. App. § 883. In the third scenario,~~ the use of a foreign-flagged vessel to transport the damaged manifold and pile from the installation site on the OCS to another coastwise point ~~does~~ also constitutes a violation of 46 U.S.C. App. § 883.

Sincerely,

Larry L. Burton
Chief
Entry Procedures and Carriers Branch

ATTACHMENT K

HQ 115487
November 20, 2001
VES-3–15-RR:IT:EC 115487 GEV
CATEGORY: Carriers

FRED B. BALDWIN, LLC
1321 STATE ST.
NEW ORLEANS, LA 70118

RE: Coastwise Trade; Outer Continental Shelf; Pipe-laying; Umbilical Methanol Line-Laying; 43 U.S.C. § 1333(a); 46 U.S.C. App. §§ 289, 883

DEAR MR. BALDWIN:

This is in response to your letter dated September 10, 2001, with attachments, submitted in conjunction with your letter of September 25, 2001, on behalf of your client, [ ] requesting a ruling concerning the applicability of the coastwise laws to the laying of a methanol line and an umbilical line between a U.S. port and an offshore worksite by a foreign-flag pipe-laying vessel. Our ruling is set forth below.

FACTS:

[ ], a Delaware corporation, is a subsidiary of Saipem Inc., a Texas corporation. Saipem Inc. is a wholly-owned subsidiary of [ ], an Italian energy service company. [ ] is currently under contract to [ ] (hereinafter referred to as the "Customer") to install approximately 290,000 ft. of methanol line and 355,000 ft. of umbilical line across the Gulf of Mexico from a platform in [ ] to a termination point in [ ] on the Outer Continental Shelf ("OCS"). The project is called the [ ] (hereinafter referred to as the "Project"). The procurement of the umbilical line and installation of both the umbilical and methanol lines have been subcontracted to a foreign affiliate of [ ].

The [ ] (hereinafter referred to as the "Vessel") is the foreign-flag vessel to be used to lay the methanol line and umbilical line. It is equipped with a 600-ton crane, reel pipe-laying systems, has a transit speed of 11 knots, and is fully operational in the pipe-laying/line-laying installation mode on a dynamic positioning system (no anchors).

The single methanol distribution line (a 2.875 outer diameter underwater distribution line sometimes referred to as the "Methanol Line") will deliver methanol to each subsea well in order to prevent hydrate formations during the course of production of the three fields. The Methanol Line will be tied into a nearby production platform called Canyon Station (hereinafter referred to as the "Platform"). The Methanol Line will be laid from the Platform to the three subsea developed fields in the Project, respectively identified on Attachment 1 as [ ] and [ ].

In addition, flexible tubular goods or "umbilicals" (a main umbilical line and an infield umbilical line hereinafter sometimes referred to as the "Umbilical Line" or "Umbilical Lines") will provide electric and hydraulic controls to the subsea wells. The Umbilical Line will also be attached to the Platform and will be laid on a course parallel to the Methanol Line on the ocean floor. The Umbilical Lines contain the electrical/ fiber optic systems, each protected with a high density polyethylene sheath and the hydraulic systems composed

of superduplex tubes. The hydraulic system provides for hydraulic supply and chemical injection and the electrical/fiber optic system contains the required signal power conductors for controlling the subsea trees.

The Methanol Line will be wound onto reels in the U.S. and the Umbilical Line will be wound onto a carousel and reels before the Vessel arrives in the U.S. The carousel and reels containing the lines will be carried by the Vessel to the Offshore Worksite and the empty reels will be carried back to a U.S. Gulf Coast Port onboard the Vessel at the end of the installation of the Methanol Line and the Umbilical Lines. The carousel and reels will be mounted on the Vessel and will be used in the laying of the Umbilical Lines and the Methanol Line.

The Umbilical Line Materials shall mean the materials assembled into and used in connection with laying the Umbilical Lines and shall include the Uraduct (protective outer casing for the Umbilical Line), Hang Off Clamp (used to hang off the umbilical from the Platform), Abandonment/Recovery Head (equipment to be used during contingency operations), Pipeline Mattresses, Electro Hydraulic Distribution Units (EHDUs), Mud Mats, Hydraulic Bridges and Flying Leads, Infield Subsea Umbilical Terminations (ISUTs), Main Subsea Umbilical Terminations (MSUTs) and Stab and Hinge-Overs (SHOs) (hereinafter referred to collectively as "Umbilical Line Materials").

While the Umbilical Lines and some of the Umbilical Line Materials such as the Uraduct, the Hang Off Clamp and the Abandonment/ Recovery Head will be foreign-sourced, the remaining Umbilical Line Materials will be U.S.-sourced. The ISUTs, MSUTs and SHOs will be sourced in the United States by the Customer and delivered to [ ] to be assembled into and made a part of the M.U.L.s and I.U.L.s (i.e., the Umbilical Lines) prior to the voyage on the Vessel from Norway to the U.S. Gulf Coast Port. The Pipeline Mattresses, EDHUs, Muc Mats, Hydraulic Bridges and Flying Leads will be sourced in the United States and delivered to the U.S. Gulf Coast Port to be loaded onto the Vessel, transported to the Offshore Worksite and assembled into and used in connection with the laying of the Umbilical Lines.

The Methanol Line Materials shall mean the materials assembled into and used in connection with the laying of the Methanol Line and shall include Methanol Distribution Units (MDUs), flanges and the Cathodic Protection anodes (hereinafter collectively referred to as "Methanol Line Materials"). The flanges will be foreign-sourced and added to the Methanol Line in the U.S. before the Methanol Line is delivered to the U.S. Gulf Coast Port. The Methanol Line and remaining Methanol Line Materials will be U.S.-sourced.

The Umbilical Line and Umbilical Line Materials and Methanol Line and Methanol Line Materials will include all of the functional parts of the lines, which are to be incorporated into the operation of the respective lines. The Umbilicial Line Materials and Methanol Line Materials will be an integral working part of the lines, without which each line would become inoperable. Viewed as a whole distribution line and umbilical line system, the materials will serve as the nerve center of the lines by managing the resources to make the lines function and protect them from damage while in operation.

An additional section of foreign-sourced "spare" Umbilical Line, stored onto one or two foreign-sourced "storage" reels, will be placed on board the Vessel in [ ] and unloaded at the U.S. Gulf Coast Port. The "storage" reels and the "spare" Umbilical Lines will be delivered to the Customer at the U.S. Gulf Coast port and will remain in the United States.

The mission of the self-propelled, multi-service pipelay derrick Vessel will be to perform the laying of the Umbilical and Methanol Lines on the ocean floor at the Offshore Worksite. The transportation of the carousel, reels, Umbilical Line and Umbilical Line Materials and reels, Methanol Line and Methanol Line Materials will be essential to the mission of the Vessel and it is proposed that the respective carousel, reels, lines and materials are to be carried onboard the Vessel between the U.S. Gulf Coast Port and the Offshore Worksite in connection with the laying of the Umbilical and Methanol Lines. No materials, equipment or personnel other than such as are necessary to the mission of the Vessel, shall be loaded onto the Vessel or unloaded from the Vessel while it is in U.S. waters.

Contract project management and field engineer personnel necessary to the mission of the Vessel will visit the Vessel at the Offshore Worksite location and might travel on the Vessel in transit from the U.S. Gulf Coast Port to the Offshore Worksite and back again. The role of the project management and field engineer personnel will be to monitor the laying of the Umbilical and Methanol Lines. They might get off the Vessel at the Platform and might return to the Gulf Coast Port on the Vessel or travel to and from the Vessel at the Offshore Worksite by U.S.-flag crew boat or helicopter.

Two Remotely Operated Vehicles (ROVs) supplied in the U.S. will be placed onboard the Vessel at the U.S. Gulf Coast Port, will be carried to the Offshore Worksite where they will be used in order to support the laying of the Umbilical and Methanol Lines. Once such operations have been completed, these units will be carried back on the Vessel to the U.S. Gulf Coast Port where they will be offloaded.

The Vessel will call on the same U.S. Gulf Coast port each time the carousel, reels, Umbilical Lines or Umbilical Line Materials or reels, Methanol Lines or Methanol Line Materials are unloaded or loaded onboard the Vessel. The Vessel will not unload any lines or materials whatsoever at another U.S. Gulf Coast Port or any offshore platform.

The details of the proposed operating plan and sequence of loading and unloading and transportation activity are contained in Attachment 2 of your letter. The specific activities of the Vessel in this matter are stated to be as follows:

1. transportation of the foreign-sourced carousel, reels, Umbilical Line (including Umbilical Materials sourced in the U.S., sent to [ ] to be assembled into the Umbilical Line) and foreign-sourced Umbilical Materials to a U.S. Gulf Coast Port (some of the foreign-sourced reels containing the Umbilical Line and some of the Umbilical Materials sourced outside the U.S. will be off- Loaded and placed in temporary storage in a bonded area at a U.S. Gulf Coast Port). The remaining foreign- sourced carousel, reels, Umbilical Line and Umbilical Materials will remain onboard the Vessel;
2. transportation (Phase One) of the foreign-sourced carousel, reels, Umbilical Line and Umbilical Line Materials to the Offshore Worksite and the laying of the Umbilical Line and Umbilical Line Materials;
3. transportation of the empty foreign-sourced carousel and reels from the Offshore Worksite to the U.S. Gulf Coast Port;

4. transportation (Phase Two) of the U.S.-sourced reels, Methanol Line and Methanol Line Materials to the Off- Shore Worksite and the laying of the Methanol Line and Methanol Line Materials;
5. transportation of empty U.S.-sourced reels from the Offshore Worksite to the U.S. Gulf Coast Port;
6. transportation (Phase Three) of the remaining foreign- sourced reels and Umbilical Line and Umbilical Line Materials (offloaded at the U.S. Gulf Coast Port for temporary storage in a bonded area) and remaining Umbilical Line Materials (foreign-sourced Umbilical Line Materials left onboard the Vessel) and U.S.-sourced Umbilical Line Materials from the U.S. Gulf Coast Port to the Offshore Worksite and the laying of the Umbilical Line and Umbilical Line Materials at the Offshore Worksite; and
7. transportation of the empty foreign-sourced reels from the Offshore Worksite to the U.S. Gulf Coast Port.

It is noted that the U.S.-sourced reels (and the foreign-sourced "storage reels" containing the "spare" Umbilical Line) will be delivered to the Customer at the U.S. Gulf Coast Port and the foreign-sourced carousel and reels (except the "storage" reels) will be loaded back onto the Vessel for a direct voyage to a foreign port at the end of the Project.

As an alternative to the above transportation plan, some of the Umbilical Lines to be laid on the ocean floor in Phase 3 (stored onto approximately 3 foreign-sourced reels) and the foreign-sourced "storage" reel, or reels, loaded with the "spare" foreign-sourced Umbilical Line would be delivered to the U.S. Gulf Coast Port by a non-coastwise-qualified third party ship or commercial liner and not by the Vessel. Under this alternative scenario, these foreign-sourced reels, that were to be loaded in Norway onto the Vessel, instead would be offloaded from the ship or liner and stored at the U.S. Gulf Coast Port until Phase Three of the Project.

It is proposed that the foreign-sourced articles will be entered into the U.S. on a Temporary Importation Bond (TIB) and some of them will be stored in a bonded area of the U.S. Gulf Coast Port from the time they are offloaded from the Vessel for temporary storage until they are loaded back onto the Vessel to be taken to the Offshore Worksite in connection with the laying of the Umbilical Line. It is also proposed that the foreign-sourced empty reels will also be stored in a bonded area at the U.S. Gulf Coast Port until they are loaded back onto the Vessel for the direct voyage to a foreign country at the end of the Project.

The specific transportation issues presented for our consideration are as follows.

ISSUE:

1. Whether the offloading of the foreign-sourced reels, foreign-sourced Umbilical Line and Umbilical Line Materials from the Vessel at a U.S. Gulf Coast Port following the voyage from [ ], reloading the reels, Umbilicial Line and Umbilical Line Materials onboard the Vessel for transportation to the Offshore Worksite in connection with the laying of the Umbilical Line and Umbilical Line Materials and the transportation of the empty reels back to the U.S. Gulf Coast Port violates 46 U.S.C. App. § 883.

2. Whether the use of the Vessel to transport the foreign-sourced carousel, reels, Umbilical Line and Umbilical Line Materials from the U.S. Gulf Coast Port to the Offshore Worksite in connection with the laying of the Umbilical Line and Umbilical Line Materials and to carry the empty reels back to the U.S. Gulf Coast Port violates 46 U.S.C. App. § 883.
3. Whether the use of the Vessel to carry the U.S.-sourced reels, Methanol Line and Methanol Line Materials from the U.S. Gulf Coast Port to the Offshore Worksite in connection with the laying of the Methanol Line and Methanol Line Materials and to carry the empty reels back to the U.S. Gulf Coast Port violates 46 U.S.C. App. § 883.
4. Whether the use of the Vessel to carry the U.S.-sourced Umbilical Line Materials from the U.S. Gulf Coast Port to the Offshore Worksite in connection with laying of the Umbilical Line and Umbilical Line Materials violates 46 U.S.C. App. § 883.
5. Whether the transportation of contract project management and field engineer personnel on the Vessel from the U.S. Gulf Coast Port to the Offshore Worksite and back again violates 46 U.S.C. App. § 289.

LAW AND ANALYSIS:

Title 46, United States Code Appendix, § 883 (46 U.S.C. App. § 883, the merchandise coastwise law often called the "Jones Act"), provides, in part, that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than one that is coastwise-qualified (i.e., U.S.-built, owned and documented). Pursuant to § 4.80b(a), Customs Regulations (19 CFR § 4.80b(a)), promulgated pursuant to 46 U.S.C. App. § 883, a coastwise transportation of merchandise takes place when merchandise laden at one coastwise point is unladen at another coastwise point.

Title 46, United States Code Appendix, § 289 (46 U.S.C. App. § 289, the passenger coastwise law) as interpreted by the Customs Service, prohibits the transportation of passengers between points in the United States embraced within the coastwise laws, either directly or by way of a foreign port, in a non-coastwise-qualified vessel (i.e., any vessel that is not built in and documented under the laws of the United States, and owned by persons who are citizens of the United States).

For purposes of § 289, "passenger" is defined as "...any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, business." (19 CFR § 4.50(b))

The coastwise laws generally apply to points in the territorial sea, defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline, in cases where the baseline and the coastline differ.

Section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended (67 Stat. 462; 43 U.S.C. § 1333(a)) (OCSLA), provides, in part, that the laws of the United States are extended to:

> ... the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom ...

> to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a State.

The statute was substantively amended by the Act of September 18, 1978 (Pub. L. 95–372, Title II, § 203, 92 Stat. 635), to add, among other things, the language concerning temporary attachment to the seabed. The legislative history associated with this amendment is telling, wherein it is stated that:

> ...It is thus clear that Federal law is to be applicable to all activities or all devices in contact with the seabed for exploration, development, and production. The committee intends that Federal law is, therefore, to be applicable to activities on drilling rigs, and other watercraft, when they are connected to the seabed by drillstring, pipes, or other appurtenances, on the OCS for exploration, development, or production purposes. [House Report 95–590 on the OCSLA Amendment of 1978, page 128, reproduced at 1978 U.S.C.C.A.N. 1450, 1534.]

Under the foregoing provision, we have ruled that the coastwise laws, the laws on entrance and clearance of vessels, and the provisions for dutiability of merchandise, are extended to mobile oil drilling rigs during the period they are secured to or submerged onto the seabed of the OCS. (See Treasury Decisions (T.D.s) 54281(1)), 71–179(1), 78–225 and Customs Service Decision (C.S.D.) 85–54) We have applied the same principles to drilling platforms, artificial islands, and similar structures, as well as devices attached to the seabed of the OCS for the purpose of resource exploration operations, including warehouse vessels anchored over the OCS when used to supply drilling rigs on the OCS. (see Customs Service Decisions (C.S.D.s) 81–214 and 83–52, and Customs Ruling Letter 107579, dated May 9, 1985)

With respect to the proposed use of the Vessel, we note that Customs has long-held that the sole use of a vessel in laying pipe is not considered a use in the coastwise trade of the United States, even when the pipe is laid between two points in the United States embraced within the coastwise laws. The fact that the pipe is not landed as cargo but is only paid out in the course of the laying operation makes such operation permissible. Further, since the use of a vessel in pipe-laying is not a use in the coastwise trade, a foreign-flag vessel may carry pipe which it is to lay between such points. However, the transportation of pipe by any vessel other than a pipe-laying vessel to a pipe-laying location at a point within U.S. territorial waters would be considered coastwise trade and would therefore have to be accomplished by a vessel meeting the statutory requirements entitling it to engage in such trade. (See Customs ruling letter 103668, dated December 12, 1978, published as Customs Service Decision (C.S.D.) 79–321)

Legitimate equipment, supplies and stores of a pipe-laying vessel for use in its mission, including pipe laden on board to be paid out in the course of such operations, are not considered merchandise within the purview of § 883. However, articles transported on the vessel between points embraced within the coastwise laws which are not legitimate equipment, supplies and stores of the vessel are subject to § 883. *Id.*

Crewmembers of a pipe-laying vessel, including technicians necessary to assist in the vessel's pipe-laying operation, are not considered passengers under § 289, nor are employees of the installation contractor and/or its subcontractors who are on the vessel in connection with its business. *Id.*

With respect to the laying of umbilicals, Customs has held that activity "...to be akin to the laying of subsea cable or pipe..." Customs ruling letter

113726, dated November 7, 1996. Furthermore, umbilicals (including spares) and ROVs have been held not to constitute merchandise under 46 U.S.C. App. § 883 but rather are considered to be in the nature of supplies or equipment of a cable/pipe-laying vessel necessary for the accomplishment of the mission of the vessel. (Customs ruling letter 113841, dated February 28, 1997)

In regard to the issues presented for our consideration, we note at the outset that the entry of articles pursuant to a TIB and their placement in a bonded facility are of no consequence for purposes of Customs administration of 46 U.S.C. App. § 883. Furthermore, it is readily apparent that the Platform and the three subsea wells depicted in Attachment 1 are coastwise points pursuant to the OCSLA. However, based on the above-cited precedents, we have determined that the reels (whether empty or not), Umbilicial Line, Umbilical Line Materials, Methanol Line and Methanol Line Materials to be transported between the U.S. Gulf Coast Port to the Offshore Worksite in connection with the laying operations to be conducted by the Vessel are not "merchandise" for purposes of 46 U.S.C. App. § 883. Rather, these articles are equipment and/or supplies of the Vessel in furtherance of its mission. Consequently, the transportation of these articles as described above does not give rise to a violation of 46 U.S.C. App. § 883.

Furthermore, the construction project management and field engineer personnel carried onboard the Vessel pursuant to its mission are not considered to be "passengers" for purposes of 46 U.S.C. App. § 289 so that the transportation between the U.S. Gulf Coast Port and the Offshore Worksite by the Vessel would not give rise to a violation of that statute. However, their transportation between these coastwise points on any other vessel necessitates that vessel being coastwise-qualified.

HOLDING:

1. The offloading of the foreign-sourced reels, foreign-sourced Umbilical Line and Umbilical Line Materials from the Vessel at a U.S. Gulf Coast Port following the voyage from [ ], reloading the reels, Umbilicial Line and Umbilical Line Materials onboard the Vessel for transportation to the Offshore Worksite in connection with the laying of the Umbilical Line and Umbilical Line Materials and the transportation of the empty reels back to the U.S. Gulf Coast Port does not violate 46 U.S.C. App. § 883.
2. The use of the Vessel to transport the foreign-sourced carousel, reels, Umbilical Line and Umbilical Line Materials from the U.S. Gulf Coast Port to the Offshore Worksite in connection with the laying of the Umbilical Line and Umbilical Line Materials and to carry the empty reels back to the U.S. Gulf Coast Port does not violate 46 U.S.C. App. § 883.
3. The use of the Vessel to carry the U.S.-sourced reels, Methanol Line and Methanol Line Material from the U.S. Gulf Coast Port to the Offshore Worksite in connection with the laying of the Methanol Line and Methanol Line Materials and to carry the empty reels back to the U.S. Gulf Coast Port does not violate 46 U.S.C. App. § 883.
4. The use of the Vessel to carry the U.S.-sourced Umbilical Line Materials from the U.S. Gulf Coast Port to the Offshore Worksite in

connection with laying of the Umbilical Line and Umbilical Line Materials does not violate 46 U.S.C. App. § 883.

5. The transportation of contract project management and field engineer personnel on the Vessel from the U.S. Gulf Coast Port to the Offshore Worksite and back again does not violate 46 U.S.C. App. § 289.

Sincerely,

LARRY L. BURTON
Chief
Entry Procedures and Carriers Branch

Attachment L

HQ 115487

November 20, 2001

VES-3-15-RR:IT:EC 115487 GEV

CATEGORY: Carriers

Fred B. Baldwin, LLC
1321 State St.
New Orleans, LA 70118

RE: Coastwise Trade; Outer Continental Shelf; Pipe-laying; Umbilical/ Methanol Line-Laying; 43 U.S.C. § 1333(a); 46 U.S.C. App. §§ 289, 883

Dear Mr. Baldwin:

This is in response to your letter dated September 10, 2001, with attachments, submitted in conjunction with your letter of September 25, 2001, on behalf of your client, [ ] requesting a ruling concerning the applicability of the coastwise laws to the laying of a methanol line and an umbilical line between a U.S. port and an offshore worksite by a foreign-flag pipe-laying vessel. Our ruling is set forth below.

FACTS:

[ ], a Delaware corporation, is a subsidiary of Saipem Inc., a Texas corporation. Saipem Inc. is a wholly-owned subsidiary of [ ], an Italian energy service company. [ ] is currently under contract to [ ] (hereinafter referred to as the "Customer") to install approximately 290,000 ft. of methanol line and 355,000 ft. of umbilical line across the Gulf of Mexico from a platform in [ ] to a termination point in [ ] on the Outer Continental Shelf ("OCS"). The project is called the [ ] (hereinafter referred to as the "Project"). The procurement of the umbilical line and installation of both the umbilical and methanol lines have been subcontracted to a foreign affiliate of [ ].

The [ ] (hereinafter referred to as the "Vessel") is the foreign-flag vessel to be used to lay the methanol line and umbilical line. It is equipped with a 600-ton crane, reel pipe-laying systems, has a transit speed of 11 knots, and is fully operational in the pipe-laying/line-laying installation mode on a dynamic positioning system (no anchors).

The single methanol distribution line (a 2.875 outer diameter underwater distribution line sometimes referred to as the "Methanol Line") will deliver methanol to each subsea well in order to prevent hydrate formations during the course of production of the three fields. The Methanol Line will be tied into a nearby production platform called Canyon Station (hereinafter referred to as the "Platform"). The Methanol Line will be laid from the Platform to the three subsea developed fields in the Project, respectively identified on Attachment 1 as [ ] and [ ].

In addition, flexible tubular goods or "umbilicals" (a main umbilical line and an infield umbilical line hereinafter sometimes referred to as the "Umbilical Line" or "Umbilical Lines") will provide electric and hydraulic controls to the subsea wells. The Umbilical Line will also be attached to the Platform and will be laid on a course parallel to the Methanol Line on the ocean floor. The Umbilical Lines contain the electrical/ fiber optic systems, each protected with a high density polyethylene sheath and the hydraulic systems composed of superduplex tubes. The hydraulic system provides for hydraulic supply and chemical injection and the electrical/fiber optic system contains the required signal power conductors for controlling the subsea trees.

The Methanol Line will be wound onto reels in the U.S. and the Umbilical Line will be wound onto a carousel and reels before the Vessel arrives in the U.S. The carousel and reels containing the lines will be carried by the Vessel to the Offshore Worksite and the empty reels will be carried back to a U.S. Gulf Coast Port onboard the Vessel at the end of the installation of the Methanol Line and the Umbilical Lines. The carousel and reels will be mounted on the Vessel and will be used in the laying of the Umbilical Lines and the Methanol Line.

The Umbilical Line Materials shall mean the materials assembled into and used in connection with laying the Umbilical Lines and shall include the Uraduct (protective outer casing for the Umbilical Line), Hang Off Clamp (used to hang off the umbilical from the Platform), Abandonment/Recovery Head (equipment to be used during

contingency operations), Pipeline Mattresses, Electro Hydraulic Distribution Units (EHDUs), Mud Mats, Hydraulic Bridges and Flying Leads, Infield Subsea Umbilical Terminations (ISUTs), Main Subsea Umbilical Terminations (MSUTs) and Stab and Hinge-Overs (SHOs) (hereinafter referred to collectively as "Umbilical Line Materials").

While the Umbilical Lines and some of the Umbilical Line Materials such as the Uraduct, the Hang Off Clamp and the Abandonment/ Recovery Head will be foreign-sourced, the remaining Umbilical Line Materials will be U.S.-sourced. The ISUTs, MSUTs and SHOs will be sourced in the United States by the Customer and delivered to [ ] to be assembled into and made a part of the M.U.L.s and I.U.L.s (i.e., the Umbilical Lines) prior to the voyage on the Vessel from Norway to the U.S. Gulf Coast Port. The Pipeline Mattresses, EDHUs, Muc Mats, Hydraulic Bridges and Flying Leads will be sourced in the United States and delivered to the U.S. Gulf Coast Port to be loaded onto the Vessel, transported to the Offshore Worksite and assembled into and used in connection with the laying of the Umbilical Lines.

The Methanol Line Materials shall mean the materials assembled into and used in connection with the laying of the Methanol Line and shall include Methanol Distribution Units (MDUs), flanges and the Cathodic Protection anodes (hereinafter collectively referred to as "Methanol Line Materials"). The flanges will be foreign-sourced and added to the Methanol Line in the U.S. before the Methanol Line is delivered to the U.S. Gulf Coast Port. The Methanol Line and remaining Methanol Line Materials will be U.S.-sourced.

The Umbilical Line and Umbilical Line Materials and Methanol Line and Methanol Line Materials will include all of the functional parts of the lines, which are to be incorporated into the operation of the respective lines. The Umbilicial Line Materials and Methanol Line Materials will be an integral working part of the lines, without which each line would become inoperable. Viewed as a whole distribution line and umbilical line system, the materials will serve as the nerve center of the lines by managing the resources to make the lines function and protect them from damage while in operation.

An additional section of foreign-sourced "spare" Umbilical Line, stored onto one or two foreign-sourced "storage" reels, will be placed on board the Vessel in [ ] and unloaded at the U.S. Gulf Coast Port.

The "storage" reels and the "spare" Umbilical Lines will be delivered to the Customer at the U.S. Gulf Coast port and will remain in the United States.

~~The mission of the self-propelled, multi-service pipelay derrick Vessel will be to perform the laying of the Umbilical and Methanol Lines on the ocean floor at the Offshore Worksite. The transportation of the carousel, reels, Umbilical Line and Umbilical Line Materials and reels, Methanol Line and Methanol Line Materials will be essential to the mission of the Vessel and~~ It is proposed that the respective carousel, reels, lines and materials are to be carried onboard the Vessel between the U.S. Gulf Coast Port and the Offshore Worksite in connection with the laying of the Umbilical and Methanol Lines. ~~No materials, equipment or personnel other than such as are necessary to the mission of the Vessel, shall be loaded onto the Vessel or unloaded from the Vessel while it is in U.S. waters.~~

Contract project management and field engineer personnel ~~necessary to the mission of the Vessel~~ will visit the Vessel at the Offshore Worksite location and might travel on the Vessel in transit from the U.S. Gulf Coast Port to the Offshore Worksite and back again. The role of the project management ~~and~~ field engineer personnel will be to monitor the laying of the Umbilical and Methanol Lines. They might get off the Vessel at the Platform and might return to the Gulf Coast Port on the Vessel or travel to and from the Vessel at the Offshore Worksite by U.S.-flag crew boat or helicopter.

Two Remotely Operated Vehicles (ROVs) supplied in the U.S. will be placed onboard the Vessel at the U.S. Gulf Coast Port, will be carried to the Offshore Worksite where they will be used in order to support the laying of the Umbilical and Methanol Lines. Once such operations have been completed, these units will be carried back on the Vessel to the U.S. Gulf Coast Port where they will be offloaded.

The Vessel will call on the same U.S. Gulf Coast port each time the carousel, reels, Umbilical Lines or Umbilical Line Materials or reels, Methanol Lines or Methanol Line Materials are unloaded or loaded onboard the Vessel. The Vessel will not unload any lines or materials whatsoever at another U.S. Gulf Coast Port or any offshore platform.

The details of the proposed operating plan and sequence of loading and unloading and transportation activity are contained in Attachment 2 of your letter. The specific activities of the Vessel in this matter are stated to be as follows:

1. transportation of the foreign-sourced carousel, reels, Umbilical Line (including Umbilical Materials sourced in the U.S., sent to [ ] to be assembled into the Umbilical Line) and foreign-sourced Umbilical Materials to a U.S. Gulf Coast Port (some of the foreign-sourced reels containing the Umbilical Line and some of the Umbilical Materials sourced outside the U.S. will be off-Loaded and placed in temporary storage in a bonded area at a U.S. Gulf Coast Port). The remaining foreign-sourced carousel, reels, Umbilical Line and Umbilical Materials will remain onboard the Vessel;

2. transportation (Phase One) of the foreign-sourced carousel, reels, Umbilical Line and Umbilical Line Materials to the Offshore Worksite and the laying of the Umbilical Line and Umbilical Line Materials;

3. transportation of the empty foreign-sourced carousel and reels from the Offshore Worksite to the U.S. Gulf Coast Port;

4. transportation (Phase Two) of the U.S.-sourced reels, Methanol Line and Methanol Line Materials to the Off-Shore Worksite and the laying of the Methanol Line and Methanol Line Materials;

5. transportation of empty U.S.-sourced reels from the Offshore Worksite to the U.S. Gulf Coast Port;

6. transportation (Phase Three) of the remaining foreign-sourced reels and Umbilical Line and Umbilical Line Materials (offloaded at the U.S. Gulf Coast Port for temporary storage in a bonded area) and remaining Umbilical Line Materials (foreign-sourced Umbilical Line Materials left onboard the Vessel) and U.S.-sourced Umbilical Line Materials from the U.S. Gulf Coast Port to the Offshore Worksite and the laying of the Umbilical Line and Umbilical Line Materials at the Offshore Worksite; and

7. transportation of the empty foreign-sourced reels from the Offshore Worksite to the U.S. Gulf Coast Port.

It is noted that the U.S.-sourced reels (and the foreign-sourced "storage reels" containing the "spare" Umbilical Line) will be delivered to the Customer at the U.S. Gulf Coast Port and the foreign-sourced carousel and reels (except the "storage" reels) will be loaded back onto the Vessel for a direct voyage to a foreign port at the end of the Project.

As an alternative to the above transportation plan, some of the Umbilical Lines to be laid on the ocean floor in Phase 3 (stored onto approximately 3 foreign-sourced reels) and the foreign-sourced "storage" reel, or reels, loaded with the "spare" foreign-sourced Umbilical Line would be delivered to the U.S. Gulf Coast Port by a non-coastwise-qualified third party ship or commercial liner and not by the Vessel. Under this alternative scenario, these foreign-sourced reels, that were to be loaded in Norway onto the Vessel, instead would be offloaded from the ship or liner and stored at the U.S. Gulf Coast Port until Phase Three of the Project.

It is proposed that the foreign-sourced articles will be entered into the U.S. on a Temporary Importation Bond (TIB) and some of them will be stored in a bonded area of the U.S. Gulf Coast Port from the time they are offloaded from the Vessel for temporary storage until they are loaded back onto the Vessel to be taken to the Offshore Worksite in connection with the laying of the Umbilical Line. It is also proposed that the foreign-sourced empty reels will also be stored in a bonded area at the U.S. Gulf Coast Port until they are loaded back onto the Vessel for the direct voyage to a foreign country at the end of the Project.

The specific transportation issues presented for our consideration are as follows.

ISSUES:

1. Whether the offloading of the foreign-sourced reels, foreign-sourced Umbilical Line and Umbilical Line Materials from the Vessel at a U.S. Gulf Coast Port following the voyage from [ ], reloading the reels, Umbilicial Line and Umbilical Line Materials onboard the Vessel for transportation to the Offshore Worksite in connection with the laying of the Umbilical Line and Umbilical Line Materials and the transportation of the empty reels back to the U.S. Gulf Coast Port violates 46 U.S.C. App. § 883.

2. Whether the use of the Vessel to transport the foreign-sourced carousel, reels, Umbilical Line and Umbilical Line Materials from the U.S. Gulf Coast Port to the Offshore Worksite in connection with the laying of the Umbilical Line and Umbilical Line Materials and to carry the empty reels back to the U.S. Gulf Coast Port violates 46 U.S.C. App. § 883.

3. Whether the use of the Vessel to carry the U.S.-sourced reels, Methanol Line and Methanol Line Materials from the U.S. Gulf Coast Port to the Offshore Worksite in connection with the laying of the Methanol Line and Methanol Line Materials and to carry the empty reels back to the U.S. Gulf Coast Port violates 46 U.S.C. App. § 883.

4. Whether the use of the Vessel to carry the U.S.-sourced Umbilical Line Materials from the U.S. Gulf Coast Port to the Offshore Worksite in connection with laying of the Umbilical Line and Umbilical Line Materials violates 46 U.S.C. App. § 883.

5. Whether the transportation of contract project management and field engineer personnel on the Vessel from the U.S. Gulf Coast Port to the Offshore Worksite and back again violates 46 U.S.C. App. § 289.

LAW AND ANALYSIS:

Title 46, United States Code Appendix, § 883 (46 U.S.C. App. § 883, the merchandise coastwise law often called the "Jones Act"), provides, in part, that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than one that is coastwise-qualified (i.e., U.S.-built, owned and documented). Pursuant to § 4.80b(a), Customs Regulations (19 CFR § 4.80b(a)), promulgated pursuant to 46 U.S.C. App. § 883, a coastwise transportation of merchandise takes place when merchandise laden at one coastwise point is unladen at another coastwise point.

Title 46, United States Code Appendix, § 289 (46 U.S.C. App. § 289, the passenger coastwise law) as interpreted by the Customs Service, prohibits the transportation of passengers between points in the United States embraced within the coastwise laws, either directly or by way of a foreign port, in a non-coastwise-qualified vessel (i.e., any

vessel that is not built in and documented under the laws of the United States, and owned by persons who are citizens of the United States). For purposes of § 289, "passenger" is defined as "…any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, business." (19 CFR § 4.50(b))

The coastwise laws generally apply to points in the territorial sea, defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline, in cases where the baseline and the coastline differ.

Section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended (67 Stat. 462; 43 U.S.C. § 1333(a)) (OCSLA), provides, in part, that the laws of the United States are extended to:

> ... the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom ... to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a State.

The statute was substantively amended by the Act of September 18, 1978 (Pub. L. 95-372, Title II, § 203, 92 Stat. 635), to add, among other things, the language concerning temporary attachment to the seabed. The legislative history associated with this amendment is telling, wherein it is stated that:

> ...It is thus clear that Federal law is to be applicable to all activities or all devices in contact with the seabed for exploration, development, and production. The committee intends that Federal law is, therefore, to be applicable to activities on drilling rigs, and other watercraft, when they are connected to the seabed by drillstring, pipes, or other appurtenances, on the OCS for exploration, development, or production purposes. [House Report 95-590 on the OCSLA Amendment of 1978, page 128, reproduced at 1978 U.S.C.C.A.N. 1450, 1534.]

Under the foregoing provision, we have ruled that the coastwise laws, the laws on entrance and clearance of vessels, and the provisions for dutiability of merchandise, are extended to mobile oil drilling rigs

during the period they are secured to or submerged onto the seabed of the OCS. (See Treasury Decisions (T.D.s) 54281(1)), 71-179(1), 78-225 and Customs Service Decision (C.S.D.) 85-54) We have applied the same principles to drilling platforms, artificial islands, and similar structures, as well as devices attached to the seabed of the OCS for the purpose of resource exploration operations, including warehouse vessels anchored over the OCS when used to supply drilling rigs on the OCS. (see Customs Service Decisions (C.S.D.s) 81-214 and 83-52, and Customs Ruling Letter 107579, dated May 9, 1985)

With respect to the proposed use of the Vessel, we note that Customs has long-held that the sole use of a vessel in laying pipe is not considered a use in the coastwise trade of the United States, even when the pipe is laid between two points in the United States embraced within the coastwise laws. The fact that the pipe is not landed as cargo but is only paid out in the course of the laying operation makes such operation permissible. Further, since the use of a vessel in pipe-laying is not a use in the coastwise trade, a foreign-flag vessel may carry pipe which it is to lay between such points. However, the transportation of pipe by any vessel other than a pipe-laying vessel to a pipe-laying location at a point within U.S. territorial waters would be considered coastwise trade and would therefore have to be accomplished by a vessel meeting the statutory requirements entitling it to engage in such trade. (See Customs ruling letter 103668, dated December 12, 1978, published as Customs Service Decision (C.S.D.) 79-321)

Legitimate equipment, supplies and stores of a pipe-laying vessel ~~for use in its mission~~, including pipe laden on board to be paid out in the course of such operations, are not considered merchandise within the purview of § 883. However, articles transported on the vessel between points embraced within the coastwise laws which are not legitimate equipment, supplies and stores of the vessel are subject to § 883. Id.

Crewmembers of a pipe-laying vessel, including technicians necessary to assist in the vessel's pipe-laying operation, are not considered passengers under § 289, nor are employees of the installation contractor and/or its subcontractors who are on the vessel in connection with its business. Id.

With respect to the laying of umbilicals, Customs has held that activity "…to be akin to the laying of subsea cable or pipe…" Customs ruling letter 113726, dated November 7, 1996. ~~Furthermore, umbilicals (including spares) and ROVs have been held not to constitute merchandise under 46 U.S.C. App. § 883 but rather are considered to be in the nature of supplies or equipment of a cable/pipe-laying vessel necessary for the accomplishment of the mission of the vessel. (Customs ruling letter 113841, dated February 28, 1997)~~

In regard to the issues presented for our consideration, we note at the outset that the entry of articles pursuant to a TIB and their placement in a bonded facility are of no consequence for purposes of Customs administration of 46 U.S.C. App. § 883. Furthermore, it is readily apparent that the Platform and the three subsea wells depicted in Attachment 1 are coastwise points pursuant to the OCSLA. ~~However, based on the above-cited precedents, we have determined that the reels (whether empty or not), Umbilicial Line, Umbilical Line Materials, Methanol Line and Methanol Line Materials to be transported between the U.S. Gulf Coast Port to the Offshore Worksite in connection with the laying operations to be conducted by the Vessel are not "merchandise" for purposes of 46 U.S.C. App. § 883. Rather, these articles are equipment and/or supplies of the Vessel in furtherance of its mission. Consequently, the transportation of these articles as described above does not give rise to a violation of 46 U.S.C. App. § 883.~~ However, there are insufficient facts to determine whether the item at issue constitutes a tool (and as such, vessel equipment used by the vessel's crew). ~~What constitutes vessel equipment versus merchandise would be determined on a case-by-case basis~~Whether items are vessel equipment or merchandise depends on the nature of the item and the facts associated with the operation of the vessel.

Furthermore, the construction project management and field engineer personnel carried onboard the Vessel ~~pursuant to its mission~~ are not considered to be "passengers" for purposes of 46 U.S.C. App. § 289 so that the transportation between the U.S. Gulf Coast Port and the Offshore Worksite by the Vessel would not give rise to a violation of that statute. However, their transportation between these coastwise points on any other vessel necessitates that vessel being coastwise-qualified.

HOLDINGS:

1. ~~The~~ CBP needs additional facts regarding the nature and use of the items in question before determining whether the offloading of the foreign-sourced reels, foreign-sourced Umbilical Line and Umbilical Line Materials from the Vessel at a U.S. Gulf Coast Port

following the voyage from [ ], reloading the reels, Umbilicial Line and Umbilical Line Materials onboard the Vessel for transportation to the Offshore Worksite in connection with the laying of the Umbilical Line and Umbilical Line Materials and the transportation of the empty reels back to the U.S. Gulf Coast Port ~~does not~~ violates 46 U.S.C. App. § 883.

2. CBP needs additional facts regarding the nature and use of the items in question before determining whether the ~~The~~ use of the Vessel to transport the foreign-sourced carousel, reels, Umbilical Line and Umbilical Line Materials from the U.S. Gulf Coast Port to the Offshore Worksite in connection with the laying of the Umbilical Line and Umbilical Line Materials and to carry the empty reels back to the U.S. Gulf Coast Port ~~does not~~ violates 46 U.S.C. App. § 883.

3. CBP needs additional facts regarding the nature and use of the items in question before determining whether the ~~The~~ use of the Vessel to carry the U.S.-sourced reels,
Methanol Line and Methanol Line Material from the U.S. Gulf Coast Port to the Offshore Worksite in connection with the laying of the Methanol Line and Methanol Line Materials and to carry the empty reels back to the U.S. Gulf Coast Port ~~does not~~ violates 46 U.S.C. App. § 883.

4. CBP needs additional facts regarding the nature and use of the items in question before determining whether the ~~The~~ use of the Vessel to carry the U.S.-sourced Umbilical
Line Materials from the U.S. Gulf Coast Port to the Offshore Worksite in connection with laying of the Umbilical Line and Umbilical Line Materials ~~does not~~ violates 46 U.S.C. App. § 883.

5. The transportation of contract project management and field engineer personnel on the Vessel from the U.S. Gulf Coast Port to the Offshore Worksite and back again does not violate 46 U.S.C. App. § 289.

Sincerely,

Larry L. Burton
Chief
Entry Procedures and Carriers Branch

ATTACHMENT M

HQ 115771

August 19, 2002
VES-3–07-RR:IT:EC 115771 GEV
CATEGORY: Carriers

JOSE A. CHABERT LIOMPART
MANAGER
SUBAQUATIC MAIN OPERATION SECTION
WATER COMPANY OF PUERTO RICO
POST OFFICE BOX 7066
SAN JUAN, PUERTO RICO 00916–9990

RE: Coastwise Trade; Pipeline Repairs; 46 U.S.C. App. §§ 289, 883

DEAR MR. LIOMPART:

This is in response to your fax dated August 8, 2002, with supporting documentation, requesting a ruling concerning the use of a foreign-flag vessel for underwater pipeline repairs. Our ruling is set forth below.

FACTS:

The Puerto Rico Aqueduct & Sewer Authority (PRASA) has contracted with Bic Marine, Inc. (BIC) to perform emergency underwater repairs on a water pipeline at the waste water treatment plant at Ponce, Puerto Rico. This work is being performed on an emergency basis due to the fact that a low flow has been detected in several segments of the pipeline and it is necessary to comply with the water quality parameters established by the U.S. Environmental Protection Agency.

Bic has informed your company that they will be using the services of Dockside Marine Contractors, Inc., which will supply a Panamanian-flag vessel (the GREAT CARIBE) to transport the necessary equipment (a remotely operated vehicle (ROV)) to perform the work. The vessel will be operated in a radius of two nautical miles from the Ponce Waste Water Treatment Plant.

ISSUE:

Whether the use of a foreign-flag vessel in effecting repairs to an underwater pipeline as described above is violative of 46 U.S.C. App. §§ 289 and/or 883.

LAW AND ANALYSIS:

Title 46, United States Code Appendix, § 289 of title 46 (46 U.S.C. App. § 289), prohibits the transportation of passengers between points in the United States embraced within the coastwise laws, either directly or by way of a foreign port, in a non-coastwise-qualified vessel (i.e., one that is not U.S.-built, owned and documented). We note that pursuant to § 4.50(b), Customs Regulations (19 CFR § 4.50(b)), promulgated pursuant to 46 U.S.C. App. § 289 and used in Customs administration of that statute, the word "passenger" is defined as " ... any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership or business."

Title 46, United States Code Appendix, § 883 (46 U.S.C. App. § 883, the merchandise coastwise law often called the "Jones Act"), provides, in part, that no merchandise shall be transported between points in the United

States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than one that is coastwise-qualified (i.e., U.S.-built, owned and documented).

The coastwise laws generally apply to points in the territorial sea, defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline, in cases where the baseline and the coastline differ. With respect to Puerto Rico, Customs has long-held that the coastwise laws are applicable thereto pursuant to 48 U.S.C. § 744 and 46 U.S.C. § 877.

In regard to the operation of the vessel in question, it has long been the position of the Customs Service that the transportation by such vessels of equipment, supplies and materials used on or from such vessels in effecting services such as inspections of, and/or repairs to, offshore or subsea structures, including the laying and *repair of pipelines*, does not constitute a use of the vessel in the coastwise trade, *provided*, such articles are necessary for the accomplishment of the vessel's mission, and are usually carried on board as a matter of course. (Customs ruling letters 108442, dated August 13, 1986; 109576, dated July 12, 1988; 113838, dated February 25, 1997, and T.D. 78–387) The underlying rationale for this position is that the aforementioned articles are not considered "merchandise" for purposes of 46 U.S.C. App. § 883. Furthermore, crewmembers of such vessels, including divers and technicians, as well as construction personnel carried on board in connection with the aforementioned services performed on or from the vessels, are not considered "passengers" within the meaning of 19 CFR § 4.50(b). (*Id*., see also C.S.D.s 79–321, 81–214)

Accordingly, our review of the information you provided indicates that the use of the GREAT CARIBE for purposes of repairing the subject pipeline is not prohibited by the above-cited coastwise laws.

HOLDING:

The use of a foreign-flag vessel in effecting repairs to an underwater pipeline as described above is not violative of 46 U.S.C. App. §§ 289 and/or 883.

Sincerely,
Acting Chief
Entry Procedures and Carriers Branch

Attachment N

HQ 115771

August 19, 2002

VES-3-07-RR:IT:EC 115771 GEV

CATEGORY: Carriers

Jose A. Chabert Liompart
Manager
Subaquatic Main Operation Section
Water Company of Puerto Rico
Post Office Box 7066
San Juan, Puerto Rico 00916-9990

RE: Coastwise Trade; Pipeline Repairs; 46 U.S.C. App. §§ 289, 883

Dear Mr. Liompart:

This is in response to your fax dated August 8, 2002, with supporting documentation, requesting a ruling concerning the use of a foreign-flag vessel for underwater pipeline repairs. Our ruling is set forth below.

FACTS:

The Puerto Rico Aqueduct & Sewer Authority (PRASA) has contracted with Bic Marine, Inc. (BIC) to perform emergency underwater repairs on a water pipeline at the waste water treatment plant at Ponce, Puerto Rico. This work is being performed on an emergency basis due to the fact that a low flow has been detected in several segments of the pipeline and it is necessary to comply with the water quality parameters established by the U.S. Environmental Protection Agency.

Bic has informed your company that they will be using the services of Dockside Marine Contractors, Inc., which will supply a Panamanian-flag vessel (the GREAT CARIBE) to transport the necessary equipment (a remotely operated vehicle (ROV)) to perform the work. The vessel will be operated in a radius of two nautical miles from the Ponce Waste Water Treatment Plant.

ISSUE:

Whether the use of a foreign-flag vessel in effecting repairs to an underwater pipeline as described above is violative of 46 U.S.C. App. §§ 289 and/or 883.

LAW AND ANALYSIS:

Title 46, United States Code Appendix, § 289 of title 46 (46 U.S.C. App. § 289), prohibits the transportation of passengers between points in the United States embraced within the coastwise laws, either directly or by way of a foreign port, in a non-coastwise-qualified vessel (i.e., one that is not U.S.-built, owned and documented). We note that pursuant to § 4.50(b), Customs Regulations (19 CFR § 4.50(b)), promulgated pursuant to 46 U.S.C. App. § 289 and used in Customs administration of that statute, the word "passenger" is defined as " ... any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership or business."

Title 46, United States Code Appendix, § 883 (46 U.S.C. App. § 883, the merchandise coastwise law often called the "Jones Act"), provides, in part, that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than one that is coastwise-qualified (i.e., U.S.-built, owned and documented).

The coastwise laws generally apply to points in the territorial sea, defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline, in cases where the baseline and the coastline differ. With respect to Puerto Rico, Customs has long-held that the coastwise laws are applicable thereto pursuant to 48 U.S.C. § 744 and 46 U.S.C. § 877.

In regard to the operation of the vessel in question, it has long been the position of the Customs Service that the transportation by such vessels of equipment, supplies and materials used on or from such vessels in effecting services such as inspections of, and/or repairs to, offshore or subsea structures, including the laying and repair of pipelines, does not constitute a use of the vessel in the coastwise trade.~~,~~ ~~provided, such articles are necessary for the accomplishment of the vessel's mission, and are usually carried on board as a matter of course. (Customs ruling letters 108442, dated August 13, 1986; 3~~

~~109576, dated July 12, 1988; 113838, dated February 25, 1997, and T.D. 78-387)~~ The underlying rationale for this position is that the

aforementioned articles are not considered "merchandise" for purposes of 46 U.S.C. App. § 883, but rather vessel equipment. Furthermore, crewmembers of such vessels, including divers and technicians, as well as construction personnel carried on board in connection with the aforementioned services performed on or from the vessels, are not considered "passengers" within the meaning of 19 CFR § 4.50(b). (Id., see also C.S.D.s 79-321, 81-214)

Accordingly, our review of the information you provided indicates that the use of the GREAT CARIBE for purposes of repairing the subject pipeline is not prohibited by the above-cited coastwise laws.

HOLDING:

The use of a foreign-flag vessel in effecting repairs to an underwater pipeline as described above is not violative of 46 U.S.C. App. §§ 289 and/or 883.

Sincerely,

Acting Chief
Entry Procedures and Carriers Branch

ATTACHMENT O

HQ 116078
February 11, 2004
VES-3–06:RR:IT:EC 116078 TLS
CATEGORY: Carriers

JULIE KNIGHT
ISLANDS' OIL SPILL ASSOCIATION
225 A STREET
P.O. BOX 2316
FRIDAY HARBOR, WASHINGTON 98250–2316

RE: Oil spill containment and cleanup operations; 46 U.S.C. App. §§ 289 and 883; 19 CFR 4.50(b)

DEAR MS. KNIGHT:

This is in response to your letter of November 5, 2003, in which you request clarification regarding the use of non-coastwise vessels to engage in oil spill containment and cleanup operations in U.S. waters. Our ruling on this matter is set forth below.

FACTS:

Islands' Oil Spill Association (IOSA) is a non-profit organization that provides oil spill response and prevention services in Washington. You describe IOSA's services as responding to local spills on a first response basis when local agencies cannot arrive before IOSA, responding to local spills that are too small or short- term to be worthy of response from local agencies, and contribution of local knowledge to longer term spill response procedures. You state that IOSA is reimbursed for operating expenses by either the responsible party or the U.S. Coast Guard.

The vessel IOSA proposes to use for these operations is a Canadian-built vessel. It has been specifically built to perform the following operations: carry a spill response crew and equipment to the spill site, setting a boom for initial containment, deflection, or diversion of oil, stopping a spill source, and providing a platform for removal equipment. You claim that the vessel will not transport any recovered oil and that such transportation will be provided by smaller U.S.-built vessels, which are also owned by IOSA.

ISSUE:

Whether a non-coastwise qualified vessel may engage in the operations described above pursuant to 46 U.S.C. App. §§ 289.

LAW AND ANALYSIS:

Section 27 of the Act of June 5, 1920, as amended (41 Stat. 999; 46 U.S.C. App. § 883 [also referred to as the "Jones Act"]), provides, in pertinent part, that:

No merchandise shall be transported by water, or by land and water, on penalty of forfeiture of the merchandise (or monetary amount up to the value thereof... or the actual cost of the transportation, whichever is greater, to be recovered from any consignor, seller, owner, importer, consignee, agent, or other person or persons so transporting or causing said merchandise to be transported), between points in the United States... embraced within the coastwise laws, either directly or via a foreign port, or for any part of the

transportation, in any other vessel than a vessel built in and documented under that laws of the United States and owned by persons who are citizens of the United States...

We have previously ruled on a case concerning a non-coastwise oil spill recovery vessel. In Customs ruling HQ 110386 (September 29, 1989), we ruled that a non-coastwise-qualified vessel may engage in, among other things, using oil separation equipment to purify water and pump it into barges for disposition. We ruled in HQ 110386 that such operations would not provide transportation of merchandise between coastwise points. HQ 110386 also noted that Customs has long held that the use of a non-coastwise qualified vessel as a stationary facility, whether for lodging, processing, storage, etc., is not a transportation activity which would be prohibited under section 883.

Thus, in this case, the activities contemplated for the subject vessel would not be violative of section 883 when they are stationary activities within the meaning of HQ 110386. *See also* Customs ruling HQ 111372 (March 20, 1991). As noted above, the subject vessel would carry its gear (containment boom, absorbents, anchor systems, drums, etc.) in order to set a boom for initial containment, deflection, or diversion of oil, stopping a spill source, and provide a platform for removal equipment. None of these activities would involve the transportation of merchandise in view of the fact that the gear involved is vessel equipment which does not constitute merchandise for purposes of 46 U.S.C. App. § 883. We have consistently held that equipment that will be used by a vessel in the course of its business is not "merchandise" within the general meaning of that term. *See, e.g.*, Customs ruling 113137 (June 27, 1994); Customs ruling HQ 112218 (July 22, 1992); and Customs ruling HQ 102945 (November 8, 1978). *See also* Treasury Decision 49815(4) (March 13, 1939). We emphasize, however, that any transportation of the recovered oil at any point within coastwise waters must be done by coastwise-qualified vessels.

The passenger coastwise law, 46 U.S.C. App. § 289, provides that "[n]o foreign vessel shall transport passengers between ports or places in the United States, either directly or by way of a foreign port, under a penalty of $300 for each passenger so transported and landed. Pursuant to 19 CFR 4.50(b), a vessel "passenger" is defined as "any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business." Thus, the spill response crew and crew members involved in navigation of the vessel would not be considered passengers within the meaning of section 4.50(b) and therefore are exempt from section 289.

HOLDING:

As specified in the Law and Analysis section of this ruling, the subject non-coastwise vessel may engage in the operations described above since such activities do not violate the provisions of 46 U.S.C. App. §§ 289 and 883.

Sincerely,

GLEN E. VEREB
Chief
Entry Procedures and Carriers Branch

Attachment P

HQ 116078

February 11, 2004

VES-3-06:RR:IT:EC 116078 TLS

CATEGORY: Carriers

Julie Knight
Islands' Oil Spill Association
225 A Street
P.O. Box 2316
Friday Harbor, Washington 98250-2316

RE: Oil spill containment and cleanup operations; 46 U.S.C. App. §§ 289 and 883; 19 CFR 4.50(b)

Dear Ms. Knight:

This is in response to your letter of November 5, 2003, in which you request clarification regarding the use of non-coastwise vessels to engage in oil spill containment and cleanup operations in U.S. waters. Our ruling on this matter is set forth below.

FACTS:

Islands' Oil Spill Association (IOSA) is a non-profit organization that provides oil spill response and prevention services in Washington. You describe IOSA's services as responding to local spills on a first response basis when local agencies cannot arrive before IOSA, responding to local spills that are too small or short-term to be worthy of response from local agencies, and contribution of local knowledge to longer term spill response procedures. You state that IOSA is reimbursed for operating expenses by either the responsible party or the U.S. Coast Guard.

The vessel IOSA proposes to use for these operations is a Canadian-built vessel. It has been specifically built to perform the following operations: carry a spill response crew and equipment to the spill site, setting a boom for initial containment, deflection, or diversion of oil, stopping a spill source, and providing a

platform for removal equipment. You claim that the vessel will not transport any recovered oil and that such transportation will be provided by smaller U.S.-built vessels, which are also owned by IOSA.

ISSUE:

Whether a non-coastwise qualified vessel may engage in the operations described above pursuant to 46 U.S.C. App. §§ 289.

LAW AND ANALYSIS:

Section 27 of the Act of June 5, 1920, as amended (41 Stat. 999; 46 U.S.C. App. § 883 [also referred to as the "Jones Act"]), provides, in pertinent part, that:

No merchandise shall be transported by water, or by land and water, on penalty of forfeiture of the merchandise (or monetary amount up to the value thereof... or the actual cost of the transportation, whichever is greater, to be recovered from any consignor, seller, owner, importer, consignee, agent, or other person or persons so transporting or causing said merchandise to be transported), between points in the United States... embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under that laws of the United States and owned by persons who are citizens of the United States...

We have previously ruled on a case concerning a non-coastwise oil spill recovery vessel. In Customs ruling HQ 110386 (September 29, 1989), we ruled that a non-coastwise-qualified vessel may engage in, among other things, using oil separation equipment to purify water and pump it into barges for disposition. We ruled in HQ 110386 that such operations would not provide transportation of merchandise between coastwise points. HQ 110386 also noted that Customs has long held that the use of a non-coastwise qualified vessel as a stationary facility, whether for lodging, processing, storage, etc., is not a transportation activity which would be prohibited under section 883.

Thus, in this case, the activities contemplated for the subject vessel would not be violative of section 883 when they are stationary activities within the meaning of HQ 110386. See also Customs ruling HQ 111372 (March 20, 1991). As noted above, the subject vessel would carry its gear (containment boom, absorbents, anchor systems, drums, etc.) in order to set a boom for initial containment, deflection, or diversion of oil, stopping a spill source, and provide a platform for removal equipment. None of these activities would involve the transportation of merchandise in view of the fact that the gear involved is vessel equipment which does not constitute merchandise for purposes of 46 U.S.C. App. § 883. ~~We have consistently held that equipment that will be used by a vessel in the course of its~~

~~business is not "merchandise" within the general meaning of that term. See, e.g., Customs ruling 113137 (June 27, 1994); Customs ruling HQ 112218 (July 22, 1992); and Customs ruling HQ 102945 (November 8, 1978). See also~~ Treasury Decision 49815(4) (March 13, 1939). We emphasize, however, that any transportation of the recovered oil at any point within coastwise waters must be done by coastwise-qualified vessels.

The passenger coastwise law, 46 U.S.C. App. § 289, provides that "[n]o foreign vessel shall transport passengers between ports or places in the United States, either directly or by way of a foreign port, under a penalty of $300 for each passenger so transported and landed. Pursuant to 19 CFR 4.50(b), a vessel "passenger" is defined as "any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business." Thus, the spill response crew and crew members involved in navigation of the vessel would not be considered passengers within the meaning of section 4.50(b) and therefore are exempt from section 289.

HOLDING:

As specified in the Law and Analysis section of this ruling, the subject non-coastwise vessel may engage in the operations described above since such activities do not violate the provisions of 46 U.S.C. App. §§ 289 and 883.

Sincerely,

Glen E. Vereb
Chief
Entry Procedures and Carriers Branch

ATTACHMENT Q

HQ 115218
November 30, 2000
VES-3–15-RR:IT:EC 115218 GEV
CATEGORY: Carriers

KEVIN T. DOSSETT, ESQ.
PREIS, KRAFT & ROY
520 POST OAK BOULEVARD
SUITE 800
HOUSTON, TEXAS 77027

RE: Coastwise Trade; Outer Continental Shelf Lands Act; 43 U.S.C. § 1333(a); 46 U.S.C. App. §§ 289, 883

DEAR MR. DOSSETT:

This is in response to your letter of October 23, 2000, requesting a ruling as to whether the use of a foreign-flagged vessel in the transportation and installation of certain equipment at a location in the Gulf of Mexico violates the coastwise laws. Our ruling on this matter is set forth below.

FACTS:

Your client, a large subsea engineering concern, has been awarded a contract to install a pipeline tie-in spool piece between a previously-laid flowline and a subsea manifold in the United States Gulf of Mexico, outside territorial waters but within the Exclusive Economic Zone ("EEZ") in the waters over the Outer Continental Shelf ("OCS").

The piece in question is a "U"-shaped deepwater flowline tie-in spool piece with a horizontal run of 75' and two vertical runs of 25'. It is an essential component of the previously-laid flowline, as without it the flowline cannot be made operative.

Your client intends to use a Panamanian-flagged vessel for this installation operation. The vessel is a multi-purpose vessel, capable of subsea construction, maintenance and inspection, heavy lift, and flexible flowline, umbilical and coiled tube lay operations, among others.

The vessel in question is capable of being fitted with a modular carousel system for pipelaying operations and has been utilized as a pipelaying vessel on previous occasions; however, during the pipeline tie-in spool piece attachment operation this equipment will not be aboard. The vessel is dynamically positioned (DP) but also capable of 4- or 8-point mooring. During the operations in questions, she will be operating under dynamic positioning and will not be moored to the sea floor.

The attachment of the pipeline tie-in spool piece will entail a separate mobilization from the pipelaying phase of the project. In addition, while your client proposes to utilize the above-described non-coastwise-qualified vessel in the follow-on pipeline tie-in spool piece attachment operation, that vessel was not involved in the original pipelaying phase of the operation.

The pipeline tie-in spool piece attachment operation would entail the vessel departing a United States port and proceeding to one or more points in waters over the OCS within the United States' EEZ, and thereafter returning to a United States port. In addition to its crew, other personnel necessary for the performance of the proposed operations, and the pipeline tie-in spool

piece, the vessel will carry consumables and materials and equipment necessary for the completion of those operations.

The attachment of the pipeline tie-in spool piece to the previously-laid flowline and subsea manifold is a diverless operation. The pipeline tie-in spool piece is attached to a "spreader bar," which is in turn attached to the vessel's crane. The pipeline tie-in spool piece is then lowered into the sea and descends to the seabed. Guidance and orientation of the pipeline tie-in spool piece are controlled by remotely operated vehicles (ROVs), which are part of the vessel's equipment. Once the connections of the pipeline tie-in spool piece to the flowline and the subsea manifold are secured, the ROVs release the spreader bar, which is then retrieved by the vessel's crane. The ROVs then return to the vessel and the operations are complete.

ISSUE:

Whether the use of a foreign-flagged vessel in the transportation and installation operation described above constitutes a violation of 46 U.S.C. App. §§ 289 and/or 883.

LAW AND ANALYSIS:

Title 46, United States Code Appendix, § 883 (46 U.S.C. App. § 883, the merchandise coastwise law often called the "Jones Act"), provides, in part, that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than one that is coastwise-qualified (i.e., U.S.-built, owned and documented).

Pursuant to title 19, United States Code, § 1401(c) (19 U.S.C. § 1401(c)), the word "merchandise" is defined as "...goods, wares and chattels of every description, and includes merchandise the importation of which is prohibited."). In addition, Customs has also held the equipment of a vessel to be considered as other than merchandise for purposes of that authority. To that end, vessel equipment has been defined as articles, "...necessary and appropriate for the navigation, operation, or maintenance of the vessel and for the comfort and safety of the persons on board." (T.D. 49815(4), dated March 13, 1939)

Section 4.80b(a), Customs Regulations (19 CFR § 4.80b(a)), promulgated pursuant to the aforementioned statute, provides, in pertinent part, as follows:

> A coastwise transportation of merchandise takes place, within the meaning of the coastwise laws, when merchandise *laden at a point embraced within the coastwise laws ("coastwise point") is unladen at another coastwise point*,..." (Emphasis added)

Title 46, United States Code Appendix, § 289 (46 U.S.C. App. § 289, the passenger coastwise law) as interpreted by the Customs Service, prohibits the transportation of passenger between points in the United States embraced within the coastwise laws, either directly or by way of a foreign port, in a non-coastwise-qualified vessel (i.e., any vessel that is not built in and documented under the laws of the United States, and owned by persons who are citizens of the United States). For purposes of § 289, "passenger" is defined as "...any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, business." (19 CFR § 4.50(b)) Section 4.80a, Customs Regulations (19 CFR § 4.80a) is interpretive of 46 U.S.C. App. § 289.

The coastwise laws generally apply to points in the territorial sea, defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline, in cases where the baseline and the coastline differ.

Section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended (67 Stat. 462; 43 U.S.C. § 1333(a)) (OCSLA), provides, in part, that the laws of the United States are extended to:

> ... the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom ... to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a State.

The statute was substantively amended by the Act of September 18, 1978 (Pub. L. 95–372, Title II, § 203, 92 Stat. 635), to add, among other things, the language concerning temporary attachment to the seabed. The legislative history associated with this amendment is telling, wherein it is stated that:

> ...It is thus clear that Federal law is to be applicable to all activities or all devices in contact with the seabed for exploration, development, and production. The committee intends that Federal law is, therefore, to be applicable to activities on drilling rigs, and other watercraft, when they are connected to the seabed by drillstring, pipes, or other appurtenances, on the OCS for exploration, development, or production purposes. [House Report 95–590 on the OCSLA Amendment of 1978, page 128, reproduced at 1978 U.S.C.C.A.N. 1450, 1534.]

Under the foregoing provision, we have ruled that the Customs and navigation laws, including the coastwise laws, the laws on entrance and clearance of vessels, and the provisions for dutiability of merchandise, are extended to mobile oil drilling rigs during the period they are secured to or submerged onto the seabed of the OCS (Treasury Decision (T.D.) 54281(1)). We have applied the same principles to drilling platforms, artificial islands, and similar structures, as well as devices attached to the seabed of the OCS for the purpose of resource exploration operations, including warehouse vessels anchored over the OCS when used to supply drilling rigs on the OCS. (see Customs Service Decisions (C.S.D.s) 81–214 and 83–52, and Customs Ruling Letter 107579, dated May 9, 1985)

In regard to the scenario presented for our consideration, we note that it involves both the transportation of a pipeline tie-in spool piece by a foreign-flag vessel to the installation site on the OCS where the installation will be done by the vessel's crew, including technicians and personnel carried on board in connection with the operation. Customs has previously held that the use of a foreign-flag vessel to transport pipeline connectors and tools from a port in the United States to an OCS job site and install it thereby connecting a pipeline to a drilling platform or subsea wellhead would not violate the coastwise laws if the work was done from the vessel but would violate the coastwise laws if the vessel merely transported the connectors and tools to the drilling platform or subsea wellhead and the connection operation was not performed on or from that vessel. (see Customs ruling letter 108442, dated August 13, 1986; see also Treasury Decision (T.D.) 78–387)

Customs position that no violation of the coastwise laws would occur in scenarios such as those discussed in the above-referenced rulings is predi-

cated on the understanding that all equipment, consumables and tools/materials carried on board the vessel are not "merchandise" for purposes of 46 U.S.C. App. § 883, provided such articles are to be utilized in furtherance of the vessel's mission. (Customs ruling letter 113838, dated February 25, 1997) The same rationale renders crewmembers of such vessels, including divers and technicians, as well as any other personnel carried on board in connection with the services performed on or from such vessels, to be other than "passengers" within the meaning of 19 CFR § 4.50(b). *Id.*

Accordingly, since the use of the Panamanian-flag vessel under consideration would be in accordance with the aforementioned Customs rulings, it would not be violative of 46 U.S.C. App. §§ 289 and/or 883.

HOLDING:

As discussed in the Law and Analysis portion of this ruling, the use of a foreign-flagged vessel for the transportation and installation operation described above does not constitute a violation of 46 U.S.C. App. §§ 289 and/or 883.

Sincerely,

LARRY L. BURTON
Chief
Entry Procedures and Carriers Branch

ATTACHMENT R

HQ 115311

May 10, 2001
VES-3–15-RR:IT:EC 115311 GEV
CATEGORY: Carriers

PHYLLIS PRICE
CONTRACT ENGINEER
COFLEXIP STENA OFFSHORE INC.
7660 WOODWAY, SUITE 390
HOUSTON, TEXAS 77063

RE: Coastwise Trade; Outer Continental Shelf; Flexible and Umbilical Pipelay; 43 U.S.C. § 1333(a); 46 U.S.C. App. § 883

DEAR MS. PRICE:

This is in response to your letter dated March 1, 2001, requesting a ruling regarding the use of a foreign-flagged installation vessel on the Outer Continental Shelf (OCS) that is scheduled to commence operations on June 1, 2001. Our ruling is set forth below.

FACTS:

Coflexip Stena Offshore Inc. ("Coflexip") is to engage in an operation involving a foreign-flagged vessel to be used for the connection of four subsea wellheads on the OCS with a tension leg platform ("TLP") that is moored in the Typhoon Field Development, Green Canyon blocks 236 and 237, in the Gulf of Mexico. The wellheads will be linked to the TLP with flexible flowlines and risers manufactured in France and umbilical lines from the U.S. The flowlines will include three 4.5-inch inside diameter lines and one 5.3-inch inside diameter line with varying lengths of 0.9 to 2.3 miles.

The planned installation will begin following the shipment of the flexible flowlines and risers by commercial vessel from Le Trait, France, to a U.S. port, where that equipment will be temporarily offloaded onto a dock or barge for immediate loading aboard a foreign-flag installation vessel. During the course of the installation, the flexible flowlines and umbilical lines will not be unloaded like cargo but will be paid out from carousels and reels on board the installation vessel during the course of the installation operation on the OCS.

ISSUE:

1. Whether the use of a foreign-flagged vessel for the installation of flexible flowlines, umbilical lines and risers on the OCS as described above constitutes a violation of 46 U.S.C. App. § 883.
2. Whether the temporary offloading of the flexible flowlines and risers onto a dock or barge in a U.S. port, and their immediate loading aboard an installation vessel for transportation to and installation on the OCS, renders such articles nondutiable

LAW AND ANALYSIS:

Title 46, United States Code Appendix, § 883 (46 U.S.C. App. § 883, the merchandise coastwise law often called the "Jones Act"), provides, in part, that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign

port, or for any part of the transportation, in any vessel other than one that is coastwise-qualified (i.e., U.S.-built, owned and documented). Pursuant to § 4.80b(a), Customs Regulations (19 CFR § 4.80b(a)), promulgated pursuant to 46 U.S.C. App. § 883, a coastwise transportation of merchandise takes place when merchandise laden at one coastwise point is unladen at another coastwise point.

The coastwise laws generally apply to points in the territorial sea, defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline, in cases where the baseline and the coastline differ.

Section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended (67 Stat. 462; 43 U.S.C. § 1333(a)) (OCSLA), provides, in part, that the laws of the United States are extended to:

> ... the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom ... to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a State.

The statute was substantively amended by the Act of September 18, 1978 (Pub. L. 95–372, Title II, § 203, 92 Stat. 635), to add, among other things, the language concerning temporary attachment to the seabed. The legislative history associated with this amendment is telling, wherein it is stated that:

> ...It is thus clear that Federal law is to be applicable to all activities or all devices in contact with the seabed for exploration, development, and production. The committee intends that Federal law is, therefore, to be applicable to activities on drilling rigs, and other watercraft, when they are connected to the seabed by drillstring, pipes, or other appurtenances, on the OCS for exploration, development, or production purposes. [House Report 95–590 on the OCSLA Amendment of 1978, page 128, reproduced at 1978 U.S.C.C.A.N. 1450, 1534.]

Under the foregoing provision, we have ruled that the coastwise laws, the laws on entrance and clearance of vessels, and the provisions for dutiability of merchandise, are extended to mobile oil drilling rigs during the period they are secured to or submerged onto the seabed of the OCS. (See Treasury Decisions (T.D.s) 54281(1)), 71–179(1)m 78–225 and Customs Service Decision (C.S.D.) 85–54) We have applied the same principles to drilling platforms, artificial islands, and similar structures, as well as devices attached to the seabed of the OCS for the purpose of resource exploration operations, including warehouse vessels anchored over the OCS when used to supply drilling rigs on the OCS. (see Customs Service Decisions (C.S.D.s) 81–214 and 83–52, and Customs Ruling Letter 107579, dated May 9, 1985)

With respect to the issues presented for our consideration, we note at the outset that the flexible flowlines and umbilical lines will be installed in the same manner as cable or pipe laid on the ocean floor (i.e., paid out, not unladed). Customs has long-held that the laying of cable between two points embraced within the coastwise laws of the United States is not coastwise trade. (see C.S.D. 79–346) It is therefore our position that the installation of flowlines and umbilical lines as described above is not coastwise trade and the use of a foreign-flagged vessel to effect such installation is not a violation of 46 U.S.C. App. § 883.

The risers to be installed are part of the connection apparatus used to link the wellheads to the TLP. Although the risers will not be "paid out" as will the flexible flowlines and umbilical lines described above, we note that Customs has held that the use of a foreign-flag vessel to transport pipeline connectors and tools from a port in the United States to an OCS job site and to connect a pipeline to a drilling platform or subsea wellhead would not violate the coastwise laws if the work was done from the vessel, but would violate the coastwise laws if the vessel merely transported the connectors and tools to the drilling platform or subsea wellhead and the connection operation was not performed on or from that vessel. (see Customs ruling letter 108442, dated August 13, 1986; see also Treasury Decision (T.D.) 78–387) Accordingly, the proposed use of a foreign-flag vessel in installing the risers is not violative of 46 U.S.C. App. § 883 provided such installation is performed on or from that vessel.

With respect to the second issue presented for our consideration, all goods imported into the Customs territory of the United States from outside thereof are subject to duty or exempt therefrom as provided for by the Harmonized Tariff Schedule of the United States (HTSUS). General Note 1, HTSUS. The term "importation" is generally defined as "the bringing of goods within the jurisdictional limits of the United States with the intention to ulade them." (See C.S.D. 89–39, *Hollander Co. v. United States*, 22 C.C.P.A. 645, 648 (1935) and *United States v. Field & Co.*, 14 Ct. Cust. App. 406 (1927). Merchandise arriving on a vessel is deemed imported on "the date on which the vessel arrives within the limits of a port in the United States with intent then and there to unlade such merchandise." (See *United States v. Commodities Export Co.*, 733 F.Supp. 109 (1990) and 19 CFR § 101.1)

Accordingly, the subject flowlines and risers arriving from France will be deemed imported at the time when they are offloaded at a U.S. port. Pursuant to § 141.1(a), Customs Regulations (19 CFR § 141.1(a)), duties and the liability for their payment accrue upon imported merchandise on arrival of the importing vessel within a Customs port with intent then and there to unlade. Furthermore, § 141.4(a), Customs Regulations (19 CFR § 141.4(a)) provides that all merchandise imported into the United States is required to be entered, unless specifically excepted. Such exceptions, provided in § 141.4(b), Customs Regulations (19 CFR § 141.4(b)), do not include the flexible flowlines and risers under consideration. Consequently, these articles will be subject to Customs entry requirements and will be dutiable in their entirety when offloaded at a U.S. port notwithstanding their immediate reloading aboard an installation vessel and immediate transportation to and installation on the OCS.

Parenthetically, it should be noted that the procedures regarding immediate exportation (IE) set forth in § 18.25, Customs Regulations (19 CFR § 18.25) may not be implemented to obviate the aforementioned duty and entry requirements for this merchandise in view of the fact that a portion of it will either be attached to and rising along the platform to which U.S. Customs laws apply (see Customs ruling letters 110403, dated September 15, 1989, and 106454, dated November 16, 1983), while the remainder, although lying on the OCS, is not intended to be united to the mass of things belonging to a foreign country and therefore is not exported within the meaning of the applicable Customs laws and regulations. (See definition of the term "exportation" set forth in 19 CFR § 101.1)

HOLDING:

1. The use of a foreign-flagged vessel for the installation of flexible flowlines and umbilical lines on the OCS as described above does not constitute a violation of 46 U.S.C. App. § 883. With respect to the risers, their installation must be performed on or from the aforementioned vessel in order to be in compliance with 46 U.S.C. App. § 883.
2. The temporary offloading of the flexible flowlines and risers to a dock or barge in a U.S. port and their immediate loading aboard an installation vessel for transportation to an installation on the OCS does not render such articles nondutiable.

Sincerely,

LARRY L. BURTON
Chief
Entry Procedures and Carriers Branch

ATTACHMENT S

HQ 115522
December 3, 2001
VES-3–15-RR:IT:EC 115522 GEV
CATEGORY: Carriers

MATTHEW D. EISELE, ESQ.
VINSON & ELKINS L.L.P.
2300 FIRST CITY TOWER
1001 FANNIN STREET
HOUSTON, TEXAS 77002–6760

RE: Coastwise Trade; Outer Continental Shelf; Flexible Pipeline; Riser Pipe; Umbilical Tie-Ins; 43 U.S.C. § 1333(a); 46 U.S.C. App. § 883

DEAR MR. EISELE:

This is in response to your letter dated October 18, 2001, requesting a ruling regarding the use of foreign-flagged installation vessels for subsea operations. Our ruling is set forth below.

FACTS:

A deepwater foreign-flagged installation vessel fully equipped for subsea work will arrive from a foreign port to load reels of flexible flowlines at a U.S. port. The vessel will then proceed to an offshore location on the Outer Continental Shelf (OCS). The flexible flowline will be paid out from the reels on board the installation vessel during the course of the installation operations. A Remotely Operated Vehicle (ROV) equipped aboard the vessel will then monitor the retrieval of the end of the flowline/riser to the platform. A platform winch will be used to assist in the retrieval of the flowline/riser to the platform. The installation vessel will be dynamically positioned during the installation operation. Upon completion of the installment work the installation vessel will return to the same port in the U.S. at which the reels were loaded to offload the empty reels.

The same or a similar foreign-flagged installation vessel will be used for offshore work on the OCS to install riser pipe and umbilical tie-ins between wells, pipelines, manifolds, and platforms. The vessel is specially outfitted for such operations with a ROV, onboard crane, dynamic positioning capability, and other essential systems to perform subsea tie-ins. It is envisioned that the riser pipe, umbilicals, and other tie-in materials will be loaded aboard the vessel at a U.S. port and carried to the installation site. The subsea connection and installation work will be performed on or from the installation vessel.

ISSUE:

1. Whether the use of a foreign-flagged vessel for the installation of flexible flowlines on the OCS as described above constitutes a violation of 46 U.S.C. App. § 883.
2. Whether the use of a foreign-flagged vessel for the installation of riser pipe and umbilical tie-ins on the OCS as described above constitutes a violation of 46 U.S.C. App. § 883.

LAW AND ANALYSIS:

Title 46, United States Code Appendix, § 883 (46 U.S.C. App. § 883, the merchandise coastwise law often called the "Jones Act"), provides, in part, that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than one that is coastwise-qualified (i.e., U.S.-built, owned and documented). Pursuant to § 4.80b(a), Customs Regulations (19 CFR § 4.80b(a)), promulgated pursuant to 46 U.S.C. App. § 883, a coastwise transportation of merchandise takes place when merchandise laden at one coastwise point is unladen at another coastwise point.

The coastwise laws generally apply to points in the territorial sea, defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline, in cases where the baseline and the coastline differ.

Section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended (67 Stat. 462; 43 U.S.C. § 1333(a)) (OCSLA), provides, in part, that the laws of the United States are extended to:

> ... the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom ... to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a State.

The statute was substantively amended by the Act of September 18, 1978 (Pub. L. 95–372, Title II, § 203, 92 Stat. 635), to add, among other things, the language concerning temporary attachment to the seabed. The legislative history associated with this amendment is telling, wherein it is stated that:

> ...It is thus clear that Federal law is to be applicable to all activities or all devices in contact with the seabed for exploration, development, and production. The committee intends that Federal law is, therefore, to be applicable to activities on drilling rigs, and other watercraft, when they are connected to the seabed by drillstring, pipes, or other appurtenances, on the OCS for exploration, development, or production purposes. [House Report 95–590 on the OCSLA Amendment of 1978, page 128, reproduced at 1978 U.S.C.C.A.N. 1450, 1534.]

Under the foregoing provision, we have ruled that the coastwise laws, the laws on entrance and clearance of vessels, and the provisions for dutiability of merchandise, are extended to mobile oil drilling rigs during the period they are secured to or submerged onto the seabed of the OCS. (See Treasury Decisions (T.D.s) 54281(1)), 71–179(1)m 78–225 and Customs Service Decision (C.S.D.) 85–54) We have applied the same principles to drilling platforms, artificial islands, and similar structures, as well as devices attached to the seabed of the OCS for the purpose of resource exploration operations, including warehouse vessels anchored over the OCS when used to supply drilling rigs on the OCS. (see Customs Service Decisions (C.S.D.s) 81–214 and 83–52, and Customs Ruling Letter 107579, dated May 9, 1985)

With respect to the issues presented for our consideration, we note at the outset that the flexible flowlines in question will be installed in the same manner as cable or pipe laid on the ocean floor (i.e., paid out, not unladed).

Customs has long-held that the laying of cable between two points embraced within the coastwise laws of the United States is not coastwise trade. (see C.S.D. 79–346) Consequently, we have held that the installation of flexible flowlines in this manner is not coastwise trade. (Customs ruling letter 115311, dated May 10, 2001) It is therefore our position that the installation of flowlines as described above is not coastwise trade and the use of a foreign-flagged vessel to effect such installation is not a violation of 46 U.S.C. App. § 883.

The riser pipe and umbilical tie-ins to be installed are part of the connection apparatus used to link the wells, pipelines, manifolds, and platforms. Although the risers and tie-ins will not be "paid out" as will the flexible flowlines described above, we note that Customs has held that the use of a foreign-flag vessel to transport pipeline connectors and tools from a port in the United States to an OCS job site and to connect a pipeline to a drilling platform or subsea wellhead would not violate the coastwise laws if the work was done from the vessel, but would violate the coastwise laws if the vessel merely transported the connectors and tools to the drilling platform or subsea wellhead and the connection operation was not performed on or from that vessel. (see Customs ruling letter 108442, dated August 13, 1986; see also Treasury Decision (T.D.) 78–387) Accordingly, the proposed use of a foreign-flag vessel in installing the subject riser pipe and umbilical tie-ins is not violative of 46 U.S.C. App. § 883 provided, as stated above, such installation is performed on or from that vessel.

HOLDING:

1. The use of a foreign-flagged vessel for the installation of flexible flowlines on the OCS as described above does not constitute a violation of 46 U.S.C. App. § 883.
2. The use of a foreign-flagged vessel for the installation of riser pipe and umbilical tie-ins on the OCS as described above does not constitute a violation of 46 U.S.C. App. § 883.

Sincerely,

LARRY L. BURTON
Chief
Entry Procedures and Carriers Branch

ATTACHMENT T

HQ 115938

April, 1, 2003
VES-3–06-RR:IT:EC 115938 LLO
CATEGORY: Carriers

J. KELLY DUNCAN, ESQ.
JONES WALKER
201 ST. CHARLES AVE.
NEW ORLEANS, LOUISIANA 70170–5100

RE: Coastwise Trade, Outer Continental Shelf; 43 U.S.C. §1333(a); 46 U.S.C. App. §§289, 883

DEAR MR. DUNCAN:

This is in response to your letter dated March 6, 2003, on behalf of your client, [ ], requesting a ruling on the use of non-coastwise qualified liftboats for various activities within United States waters and waters overlaying the Outer Continental Shelf (OCS). You have requested that we expedite our consideration of your request, and that we accord confidential treatment to this matter. Our ruling on the matter follows.

FACTS:

[ ] liftboats are U.S. documented self-propelled, self- elevating work platforms with legs, cranes and living accommodations. When furnishing well services, the liftboats serve as work platforms, equipment staging areas and crew quarters for liftboat personnel engaged in oil and gas well drilling, completion, intervention, construction, maintenance and repair services. The liftboats perform work for and alongside offshore oil or gas platforms. The liftboats also provide services necessary to produce and maintain offshore wells as well as plug and abandonment services at the end of their life cycle. The larger, multipurpose liftboats also are used in well-intervention and perform heavy lifts, support pipeline tie-ins and other construction related projects. [ ]. Services furnished by the liftboats include the installation of compressors, generators, pumps and other oilfield equipment, decks, heliports, well-jackets, stairways, grating, handrails, boat landings and similar equipment and pre-fabricated structural components by the personnel and technicians aboard the liftboats as part of the construction and maintenance operations performed by the liftboats. Other services furnished from the liftboats include fishing for tools, thru-tubing services, logging, multilaterals, milling and cutting, cementing operations, casing patch, wellhead services, completions, coiled tubing, pumping and stimulation, blowout control, snubbing, recompletion, pipeline services (including cleaning, commissioning, testing, flooding and dewatering), well workover, nitrogen jetting, welding, offshore construction, engineering and well and reservoir evaluation services.

These services are furnished in connection with oil and natural gas wells, and platforms on the OCS and shallow waters of the Gulf of Mexico and, from time to time, in internal waters and bays of the United States. The personnel transported on board these liftboats would be involved in the furnishing of these services and would be crew employed by [ ].

With respect to the liftboats equipped with cranes, such cranes are used for lifting and moving equipment to and from a customer's platform or wellhead

in connection with construction, maintenance and other services furnished by the liftboats. You indicate that the liftboats are stationary, with their legs imbedded in the seabed, during any lifting or setting operation. Accordingly, any movement of cargo lifted by a liftboat crane is effected exclusively by the operation of the crane and not by movement of the liftboat. You note that the only persons and goods transported on the liftboats would be personnel, third party technicians and equipment and materials utilized in the furnishing of the services of the liftboats.

You further state that at no time would such personnel, technicians or equipments or materials be moved from one coastwise point to another where they would be discharged except for such personnel, third party technicians and equipment and materials utilized in performing the services from which the liftboat has been engaged. You indicate that the only time that any persons might permanently disembark from a liftboat that is servicing an offshore platform and board the platform is in the event of safety considerations, such as work schedules requiring crew changes, personal health reasons or significant inclement weather, i.e. a hurricane that threatens the seaworthiness of the liftboat and well-being of those aboard. You go on to note that in such an event, such persons will return to a U.S. port by means of coastwise - qualified vessels or helicopters. Thus, there would be no carriage or discharge of any goods, equipment or personnel, other than such as are necessary to the mission, operation and/or navigation of the liftboats.

You further indicate that the subject liftboats will sometimes be time -chartered to customers but will always be operated and crewed by [ ]'s personnel. You state that the liftboats may leave from a U.S. port and travel to one or more coastwise points, carrying its equipment, personnel, third party technicians and one or more representatives from the customer for whom [ ] is performing services and, upon completion of the services, the liftboat will return with its equipment, personnel, technicians and the customer's representatives to a U.S port. You indicate that on other occasions, the liftboat may travel to another platform to perform services for the same or another customer, but that in no event would any person permanently disembark from the vessel at the offshore site except for safety and health reasons as discussed above.

ISSUE:

Whether the proposed activities may be accomplished by non-coastwise-qualified liftboats as described above in compliance with the coastwise laws.

LAW AND ANALYSIS:

Generally, the coastwise laws prohibit the transportation of passengers or merchandise between points in the U.S. embraced within the coastwise laws in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the U.S. Title 46, United States Code Appendix, §289 (46 U.S.C. App. §289), prohibits foreign vessels from transporting passengers between ports or places in the U.S. either directly or by way of a foreign port, under penalty of $200 for each passenger so transported and landed. Title 46, United States Code Appendix, §883 (46 U.S.C. App. §883), the coastwise merchandise statute often called the "Jones Act," provides in part that no merchandise shall be transported between points in the U.S. embraced within the coastwise laws, either directly or via a foreign port, or for any part

of the transportation, in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the U.S.

The coastwise laws generally apply to points in the territorial sea, which is defined as the belt 3 nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters landward of the territorial sea baseline.

The Customs Bulletin and Decisions Vol. 36, No. 23, dated June 5, 2002, outlined Customs' position regarding which persons transported on a vessel are considered "passengers" as that term is defined in §4.50(b), Customs Regulations (19 C.F.R. §4.50(b)). Under this interpretation, persons transported on a vessel will be considered passengers unless they are directly and substantially connected with the operation, navigation, ownership, or business of that vessel. Additionally, persons transported free of charge as an inducement for future patronage or good will are considered passengers. Finally, persons transported on a vessel for reasons connected to business interests not directly related to the business of the vessel itself would be considered passengers.

Section 4(a) of the Outer Continental Shelf (OCS) Lands Act of 1953 (43 U.S.C. §1333(a) (OSCLA), provides in part that the laws of the U.S. are extended to:

> the subsoil and seabed of the OCS and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom...to the same extent as if the OCS were an area of exclusive Federal jurisdiction within a state.

Under the foregoing provision, we have ruled that the coastwise laws and other Customs navigation laws are extended to mobile oil drilling rigs during the period they are secured to or submerged onto the seabed of the OCS. We have applied that principle to drilling platforms, artificial islands, and similar structures, as well as to devices attached to the seabed of the OCS for the purpose of resource exploration operations.

As noted in the facts, several different scenarios are put forth by the inquirer for consideration. With respect to the applicability of 46 U.S.C. App. §883 to the proposed activities, we note as follows

In Ruling Letter 112218 dated July 22, 1992, which involved non-coastwise qualified barges used as oil and gas well drilling, workover, and service vessels, certain of the facts were described as follows:

> ..."workover" and "service" barges are used as platforms or transport vessels for work to be performed at a well. Such work may consist of removing broken tools from a well shaft, repairing tools aboard a barge and placing them in a well shaft, well cleaning and well stimulation (the injection of chemicals into a well in order to stimulate the production of oil and gas). Transportation services may include the carriage of cement, chemicals, and other materials for use in drilling, as well as crew stores. Ruling 112218 went on to hold that: In view of the fact that the vessels in question will have aboard only necessary equipment and crew members during their movements, we have determined that no coastwise laws will be violated in the course of the proposed vessel voyages. (See also, Ruling Letter 113137)

Additionally, in Ruling Letter 108223, dated March 13, 1986, which involved the provision of stimulation services to OCS wells, Customs stated as follows:

> ...we have held that the use of a vessel to blend, mix and place cement in oil wells is not a use of the vessel in coastwise trade. On the basis of this ruling, we have ruled that the use of a non-coastwise qualified vessel in oil well stimulation, described as the blending of specific mixtures of water, hydrochloric acid and other agents and then pumping the blended mixture into an oil field, is not coastwise trade. We have ruled that the transportation of the cement used in the oil wells and that of the chemicals, etc. used in the oil well stimulation is not coastwise trade subject to 46 U.S.C. App. 883 because such transportation is only of supplies incidental to the vessel's service which are consumed in that service. (See also Ruling Letter 113137)

Furthermore, it should be noted that Customs has held that the equipment of a vessel which will be used by that vessel, is not included in the general meaning of "merchandise" for purposes of 46 U.S.C. App. §883. Such articles include that which is "necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board." (Treasury Decision 49815(a), dated March 13, 1939). Customs has specifically ruled that, "Vessel equipment placed aboard a vessel at one U.S. port may be removed from the vessel at another U.S. port at a later date without violation of the coastwise laws." (Ruling Letter 102945) Decisions as to whether a given article comes within the definition of "vessel equipment" are made on a case - by - case basis. The articles necessary to carry out the vessel functions described above, constitute equipment that is fundamental to the vessel's operation and is not "merchandise" for purposes of 46 U.S.C. App. §883. Any additional cargo that does not constitute equipment, and is transported coastwise in the non-qualified liftboats would be transported in violation of coastwise laws.

With respect to the liftboats equipped with cranes, such cranes are used for lifting and moving equipment to and from a customer's platform or wellhead in connection with construction, maintenance and other services furnished by the liftboats. The liftboats are stationary, with their legs embedded in the seabed, during any lifting or setting operation.

Customs has held that the use of a non-coastwise qualified crane vessel to load and unload cargo is not coastwise trade and does not violate 46 U.S.C. App. §883, provided that any transportation of the cargo is effected exclusively by the operation of the crane and not by movement of the vessel except for necessary movement which is incidental to a lifting operation while it is taking place (see Ruling Letter 111446). In the present matter it is stated that the crane vessel will remain stationary during actual lifting and setting operations. In light of these facts we find that the proposed lifting and setting operations are permissible under 46 U.S.C. App. §883.

In regard to the applicability of 46 U.S.C. App. §289, the inquirer states that the only persons transported on the liftboats would be crew and such personnel utilized in the furnishing of the services by the liftboats. At no time would such personnel be transported from one coastwise point to another except for safety considerations, crew changes, health reasons, or inclement weather. As such, these personnel would not be "passengers" within the meaning of 19 C.F.R. §4.50(b). Consequently, their proposed transportation would not violate 46 U.S.C. App. §289.

In view of the fact that the vessels in question will have aboard only necessary equipment and personnel during the activities in question, we have determined that no coastwise laws will be violated in the course of their proposed usage.

HOLDING:

As detailed in the Law and Analysis portion of this ruling, the proposed activities as described above do not constitute coastwise trade therefore those activities may be accomplished by the subject non-coastwise qualified liftboats.

Sincerely,

GLEN E. VEREB
Chief
Entry Procedures and Carriers Branch

ATTACHMENT U

HQ H004242
December 22, 2006
VES-3–15/VES-10–01-RR:BSTC:CCI H004242 rb
CATEGORY: Carriers

STUART S. DYE
HOLLAND & KNIGHT LLP
2099 PENNSYLVANIA AVENUE, NW., SUITE 100
WASHINGTON, D.C. 20006

RE: Coastwise transportation; Installation/repair operations; Salvage; Debris removal; Outer Continental Shelf; 43 U.S.C. 1333(a); 46 U.S.C. 55102, 55103, 80104

DEAR MR. DYE:

In your letter of December 7, 2006, you request an expedited ruling, on behalf of "Geo Rederi II AS," and "Geo Century Ltd.," the managers and time charterer, respectively, of the foreign-flagged vessel, SV GEOHOLM, as to whether the intended use of this vessel on the United States Outer Continental Shelf would violate the coastwise merchandise and passenger laws, 46 U.S.C. 55102 and 55103 (formerly, 46 U.S.C. App. 883 and 289), or the statute on salvaging operations, 46 U.S.C. 80104 (formerly, 46 U.S.C. App. 316(d)). Our ruling on your request follows.

FACTS:

A foreign-flagged vessel would be employed in support of new sub-sea oil wellhead and pipeline installation, and related survey/inspection, operations on the United States Outer Continental Shelf (OCS) in the Gulf of Mexico. The installations would be in new fields or would supplement wells and pipelines damaged or destroyed by hurricanes last year. The vessel would operate two remote underwater vehicles (ROVs) and associated equipment in the sub-sea survey/inspection/installation operations. Also, the vessel would similarly support the maintenance and repair of damaged or existing sub-sea wells and pipelines. For these purposes, the vessel would load, at a United States port, necessary equipment, supplies, materials, pipeline controls, and technical personnel as needed to undertake the described activities. Furthermore, in the course of its offshore operations, as outlined, the vessel might collect debris strewn along the OCS ocean floor from previously damaged/destroyed platforms, rigs, wells or pipelines, and transport such debris to a United States port.

ISSUE:

Whether the proposed survey and inspection activities, wellhead and pipeline installations, and any repairs to damaged wellheads and pipelines, may be performed on or from the foreign-flagged vessel without violating 46 U.S.C. 55102, 55103, or 80104 (formerly 46 U.S.C. App. 883, 289, or 316(d), respectively); and whether the removal of debris from the OCS ocean floor and its transportation to, and unlading at, a United States port, would violate section 46 U.S.C. 55102 or 46 U.S.C. 80104.

LAW AND ANALYSIS:

Under 46 U.S.C. 55102 and 55103, respectively (recodified from former 46 U.S.C. App. 883 and 289; Pub. L. 109–304, October 6, 2006), merchandise and passengers may not be transported between ports or places in the United States embraced within the coastwise laws in any other vessel than one which is coastwise-qualified (*i.e.*, built in and documented under the laws of the United States, and owned by persons who are citizens of the United States); and, under 46 U.S.C. 80104 (recodified from former 46 U.S.C. App. 316(d)), with certain exceptions not here relevant, a foreign vessel is prohibited, inter alia, from engaging in salvaging operations in the territorial waters of the United States in the Gulf of Mexico.

In pertinent part, the coastwise laws apply to any point in the territorial waters of the United States, defined as the belt, three (3) nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline (T.D. 78–440). In addition, under the Outer Continental Shelf Lands Act (OCSLA), as amended, 43 U.S.C. 1333(a), the laws of the United States are extended to the subsoil and seabed of the OCS and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom to the same extent as if the OCS were an area of exclusive Federal jurisdiction within a State. Thus, the laws applicable to the OCS include the customs and navigation laws, as well as the coastwise laws, which encompass sections 55102, 55103, and 80104 (*see* T.D. 54281(1)).

Surveys, Inspections; Well and Pipeline Installation, Repairs

It has long been the position of Customs (now Customs and Border Protection (CBP)) that section 883 [now 55102] does not apply to the transportation of equipment, including ROVs, and supplies and materials, that are used on or from the transporting vessel in effecting such services as inspections/surveys and/or installations of, and/or repairs to, offshore or subsea structures, including the laying and repair of pipelines, provided such articles are necessary for the accomplishment of the vessel's mission, and are usually carried on board as a matter of course; likewise, the carriage aboard the vessel of crew members, and personnel such as divers and technicians, as well as construction personnel, to accomplish the aforementioned services performed on or from the vessel is not precluded by section 289 [now 55103] (*E.g.*, HQ 113838, of February 25, 1997 (involving, inter alia, survey/inspection/maintenance/repair of oil and gas pipelines and production platforms; and installation of pipelines and wellheads); HQ 115218, of November 30, 2000 (installation of pipeline tie-in spool piece to previously laid flowline); HQ 115771, of August 19, 2002 (pipeline repairs).

Accordingly, the transportation of a charterer's personnel, along with equipment, supplies, and materials, aboard the vessel, as necessary to inspect submerged structures, including pipelines, and/or to engage in construction activities, such as the installation of wellheads and associated pipelines, and/or repair operations concerning wellheads and pipelines, that are performed with such equipment and by such personnel *on or from* the subject vessel would not violate the coastwise laws.

Specifically, the equipment, supplies, and materials, as well as the personnel so transported would, under the foregoing circumstances, be connected to the business of the vessel so as not to be merchandise or passengers under section 55102 or 55103, respectively (*E.g.*, HQ 113838, *supra*; and HQ 115218, *supra*, citing HQ 113838 ("provided such articles are to be utilized in furtherance of the vessel's mission...[and] [t]he same rationale renders crewmembers of such vessels, including divers and technicians, as well as any other personnel carried on board in connection with the services performed on or from such vessels, to be other than 'passengers' within the meaning of [section 55103]"). Nor would the employment of the support vessel in this regard constitute salvaging operations under section 80104 (*see* HQ 113838, *supra*, and authorities cited and discussed therein).

Possible Recovery/Removal of Debris on OCS Floor

When the OCSLA, *supra*, was amended in 1978 in relation to temporary attachment, the legislative history further made clear that:

> Federal law is to be applicable to all activities or all devices in contact with the seabed for exploration, development, and production. The committee intends that federal law is, therefore, to be applicable to activities on drilling rigs, and other watercraft, when they are connected to the seabed by drillstring, pipes, or other appurtenances, on the OCS for exploration, development, or production purposes.

H.Rept. No. 95–590, *reprinted at*, 1978 U.S. Code Cong. & Admin. News 1450, at 1534.

Consequently, the possible recovery/removal of debris strewn along the OCS ocean floor from previously damaged/destroyed platforms, rigs, wells or pipelines, and the transportation of such debris to, and its unlading at, a United States port, would not implicate section 55102 or 80104. In this respect, such debris cannot legally be perceived as being affixed or attached to the OCS seabed for exploration, development or production purposes pursuant to the OCSLA; and, hence, "such debris locations would not be considered coastwise points under the OCSLA" (HQ 116634, of March 29, 2006; *accord*, HQ 116593, dated January 6, 2006 (debris strewn along OCS seabed not affixed or attached thereto for purposes of, and, as such, not coastwise points under, OCSLA); HQ 116624, of March 17, 2006; *see also*, HQ 115850, of November 12, 2002 (severed leg remnants of wrecked/overturned production platforms, still clinging to OCS seabed, not coastwise points)).

HOLDING:

Under the facts presented herein, the proposed survey and inspection activities, wellhead and pipeline installations, and any repairs to damaged wellheads and pipelines, may be performed on or from the foreign-flagged vessel without violating 46 U.S.C. 55102, 55103, or 80104 (formerly 46 U.S.C. App. 883, 289, or 316(d), respectively); and the removal of debris from the OCS ocean floor and its transportation to, and unlading at, a United States port would not violate 46 U.S.C. 55102 or 46 U.S.C. 80104.

Sincerely,

/S/ GLEN E. VEREB

GLEN E. VEREB
Chief
Cargo Security, Carriers, & Immigration Branch

ATTACHMENT V

HQ H225102
September 24, 2012
VES-3–02 OT:RR:BSTC:CCI H225102 LLB
CATEGORY: Carriers

ALEXANDER W. KOFF, ESQUIRE
WHITEFORD, TAYLOR AND PRESTON LLP
SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202–1636

DEAR MR. KOFF:

This letter is in response to your July 6, 2012, ruling request, and your August 28, 2012, supplement thereto, on behalf of your client, [ ] (hereinafter "the requester"). In your letter, you request that this office determine whether the proposed lifting and installation operations of your client's vessel the [ ] (hereinafter "the non-coastwise qualified vessel") would violate 46 U.S.C. § 55102. Our decision follows.[8]

FACTS:

The requester proposes to use the subject non-coastwise qualified vessel to transfer a topside to a single point anchor reservoir (SPAR). The topside will be laden aboard a coastwise-qualified launch barge at a point in a U.S. port as indicated in the supplement to the ruling request. The launch barge will be towed by coastwise-qualified tugboats. The launch barge will be towed to your client's non-coastwise qualified vessel which, using dynamic positioning, will be stationary and adjacent to the SPAR. The topside will then be lifted from the launch barge by the non-coastwise-qualified vessel using its [ ] which will also temporarily suspend the topside. Thereafter, the non-coastwise-qualified vessel, under its own propulsion, will begin a 90-degree pivoting rotation on its central axis. Because the 90-degree pivoting rotation will cause the side of the non-coastwise qualified vessel to come in contact with the SPAR, the non-coastwise-qualified vessel, under its own propulsion, will move a short distance away from the SPAR and return to its pivoting point. The non-coastwise-qualified vessel will then unlade the topside onto the SPAR.

ISSUE:

Whether the transportation of the topside by the subject dynamically-positioned, non-coastwise-qualified vessel to a coastwise point (the SPAR), subsequent to receiving the topside from a coastwise-qualified vessel that will have previously laden the topside at a coastwise point (a point in a U.S. port), would constitute a violation of 46 U.S.C. § 55102.

[8] In your request and supplement, you have asked this office for "confidential treatment" of the name of your client; the name of the project; the vessel in question, including specific capabilities of the vessel; and the specific location of the proposed activity. If this office receives a request Freedom of Information Act for your submission, CBP Regulations (19 C.F.R. § 103.35, *et seq*.) regarding the disclosure of business information provide that the submitter of business information will be advised of receipt of a request for such information whenever the business submitter has in good faith designated the information as commercially or financially sensitive information. We accept your request for confidential treatment as a good faith request.

LAW AND ANALYSIS

Pursuant to 46 U.S.C. § 55102, which provides, in pertinent part:

> Except as otherwise provided in this chapter or chapter 121 of this title, *a vessel may not provide any part of the transportation of merchandise by water*, or by land and water, between points in the United States to which the coastwise laws apply, either directly or via foreign port, unless the vessel—
>
> (1) is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade; and
> (2) has been issued a certificate of documentation with a coastwise endorsement under chapter 121 or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement.

(emphasis added). The regulations promulgated under the authority of 46 U.S.C. § 55102(a), provide in pertinent part:

> A coastwise transportation of merchandise takes place, within the meaning of the coastwise laws, when merchandise laden at a point embraced within the coastwise laws ("coastwise point") is unladen at another coastwise point, regardless of the origin or ultimate destination of the merchandise.

19 C.F.R. § 4.80b(a). The coastwise laws are extended by Section 4(a) of the OCSLA, as amended, to:

> ... the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State.

See 43 U.S.C. § 1333(a)(1).

As an initial matter, we note that the requester does not dispute that the topside is merchandise or that the SPAR is a coastwise point pursuant to the OCSLA. Insofar as the vessel will not be anchored or otherwise attached to the seafloor; rather, it will maintain its position next to the SPAR using dynamic positioning, consistent with CBP rulings, and as argued by the requester, the subject non-coastwise qualified vessel would not be considered a coastwise point. *See* HQ H008396 (holding that a floating hotel that remains stationary on the OCS using dynamic positioning is not a coastwise point pursuant to the OCSLA insofar as it is not attached to the seabed); HQ 115134 (Sept. 27, 2000)(stating that floating offshore facility vessel would not be subject to Customs and navigation laws pursuant to the OCSLA insofar as "onboard propulsion system," rather than anchoring was used to maintain the vessel's position next to a drilling unit). Therefore, the remaining issue for our consideration is whether the transportation and unlading of the topside by the subject non-coastwise qualified vessel, once it receives the topside from the coastwise-qualified vessel, would be a violation of 46 U.S.C. § 55102.

As stated above, pursuant to 46 U.S.C. § 55102, "a vessel may not provide

any part of the transportation of merchandise by water, or by land and water, between points in the United States to which the coastwise laws apply" unless it is coastwise-qualified. In W116737 (Feb. 16, 2007), the requester proposed to use a non-coastwise-qualified drill ship to drill and test wells on the OCS. During the drilling and testing process, the non-coastwise-qualified vessel, using dynamic-positioning, would gather hydrocarbons and produced water (merchandise); move to a location on the high seas; and transship the merchandise to a coastwise-qualified barge. The coastwise-qualified barge would subsequently transport the merchandise to a Gulf Coast refinery. CBP ruled that the transportation of the merchandise by the non-coastwise qualified vessel was a violation of 46 U.S.C. § 55102. CBP reasoned that 46 U.S.C. § 55102 prohibits vessels from engaging in any part of the transportation of merchandise between coastwise points unless they are coastwise-qualified and the non-coastwise-qualified vessel provided part of the transportation between the drill site where the merchandise was laden and the Gulf Coast refinery where it was unladen.

Similarly here, a coastwise-qualified vessel will lade the topside at a point in a U.S. port in Texas or Louisiana (a coastwise point); transship it onto a dynamically-positioned, non-coastwise-qualified vessel that will pivot on its central axis; move a "short distance" back; and return to the same point where it pivoted on its central access.

Subsequently, the non-coastwise qualified vessel will unlade the topside onto the SPAR (the second coastwise point). Based on the foregoing, insofar as the subject non-coastwise-qualified vessel will move a short distance off its central axis in order to avoid hitting the SPAR before it unlades the topside onto the SPAR, the vessel has provided part of the transportation of the topside between a point in the U.S and the SPAR.

The requester argues that CBP rulings have held that a pivoting motion by a non-coastwise-qualified vessel on its central axis does not constitute transportation of merchandise within the meaning of 46 U.S.C. § 55102.- *See* HQ 115985 (May 21, 2003) (holding that the stationary movement of foreign-flagged vessel on its central axis did not constitute transportation of a truss spar between two coastwise points) and HQ 111684 (June 26, 1991) (holding that the 90 degree rotation of a non-coastwise-qualified barge on its axis did not constitute transportation of a hull between two coastwise points). However, in the present case, the subject vessel will do more than pivot on its central axis while in a stationary position--it will move off of its central axis before it unlades the topside onto the SPAR and therefore, the foregoing cases are not applicable.

In conclusion, because the subject vessel will provide part of the transportation of the topside between a U.S. port and the SPAR such transportation would be in violation of 46 U.S.C. § 55102.

HOLDING:

The transportation of the topside by the dynamically-positioned, non-coastwise-qualified vessel to a coastwise point (the SPAR), subsequent to receiving the topside from a coastwise-qualified vessel that previously laded the topside at a coastwise point (a point in a U.S. port) constitutes a violation of 46 U.S.C. § 55102.

Sincerely,

GEORGE FREDERICK MCCRAY
Supervisory Attorney-Advisor / Chief
Cargo Security, Carriers and Restricted
Merchandise Branch Office of International Trade,
Regulations & Rulings

ATTACHMENT W

HQ H235242
November 15, 2012
VES-3–02 OT:RR:BSTC:CCR H235242 LLB
CATEGORY: Carriers

ALEXANDER W. KOFF, ESQUIRE
WHITEFORD, TAYLOR AND PRESTON LLP
SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202–1636

DEAR MR. KOFF:

Re: Reconsideration of HQ H225102 (Sept. 24, 2012); 19 U.S.C. § 1625(b); 46 U.S.C. § 55102; 43 U.S.C. § 1333(a)(1); 19 C.F.R. § 4.80b(a).

DEAR MR. KOFF:

This letter is in response to your November 8, 2012, letter in which you request reconsideration of HQ H225102 (Sept. 24, 2012) that was issued to you on behalf of your client [ ]. In HQ H225102, CBP held that the proposed transportation of a topside by a dynamically-positioned, non-coastwise-qualified vessel to a SPAR on the OCS, subsequent to receiving the topside from a coastwise-qualified vessel that previously laded the topside at a coastwise point, would constitute a violation of 46 U.S.C. § 55102. We have reviewed your request for reconsideration. Our decision follows.[9]

FACTS:

The following facts are from the FACTS section in H225102. We note your request for reconsideration does not set forth any new facts.

The requester proposes to use the subject non-coastwise qualified vessel to transfer a topside to a single point anchor reservoir (SPAR). The topside will be laden aboard a coastwise-qualified launch barge at a point in a U.S. port as indicated in the supplement to the ruling request. The launch barge will be towed by coastwise-qualified tugboats. The launch barge will be towed to your client's non-coastwise qualified vessel which, using dynamic positioning will be stationary and adjacent to the SPAR. The topside will then be lifted from the launch barge by the non-coastwise-qualified vessel using its [ ] which will also temporarily suspend the topside. Thereafter, the non-coastwise-qualified vessel, under its own propulsion, will begin a 90-degree pivoting rotation on its central axis. Because the 90-degree pivoting rotation will cause the side of the non-coastwise qualified vessel to come in contact with the SPAR, the non-coastwise-qualified vessel, under its own propulsion, will move a short distance away from the SPAR and return to its pivoting point. The non-coastwise-qualified vessel will then unlade the topside onto the SPAR.

[9] In your request, you have asked this office for "confidential treatment" of the name of your client; the name of the project; the vessel in question, including specific capabilities of the vessel; and the specific location of the proposed activity. If this office receives a request Freedom of Information Act for your submission, CBP Regulations (19 C.F.R. § 103.35, *et seq*.) regarding the disclosure of business information provide that the submitter of business information will be advised of receipt of a request for such information whenever the business submitter has in good faith designated the information as commercially or financially sensitive information. We accept your request for confidential treatment as a good faith request.

ISSUE:

Whether the transportation of the topside by the subject dynamically-positioned, non-coastwise-qualified vessel to a coastwise point (the SPAR), subsequent to receiving the topside from a coastwise-qualified vessel that will have previously laden the topside at a coastwise point (a point in a U.S. port), would constitute a violation of 46 U.S.C. § 55102.

LAW AND ANALYSIS:

Pursuant to 46 U.S.C. § 55102, which provides, in pertinent part:

> Except as otherwise provided in this chapter or chapter 121 of this title, *a vessel may not provide any part of the transportation of merchandise by water*, or by land and water, between points in the United States to which the coastwise laws apply, either directly or via foreign port, unless the vessel—
>
> (1) is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade; and
> (2) has been issued a certificate of documentation with a coastwise endorsement under chapter 121 or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement.

(emphasis added). The regulations promulgated under the authority of 46 U.S.C. § 55102(a), provide in pertinent part:

> A coastwise transportation of merchandise takes place, within the meaning of the coastwise laws, when merchandise laden at a point embraced within the coastwise laws ("coastwise point") is unladen at another coastwise point, regardless of the origin or ultimate destination of the merchandise.

19 C.F.R. § 4.80b(a). The coastwise laws are extended by Section 4(a) of the OCSLA, as amended, to:

> ... the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State.

See 43 U.S.C. § 1333(a)(1).

In W116737 (Feb. 16, 2007), the requester in that case proposed to use a non-coastwise-qualified drill ship to drill and test wells on the OCS. During the drilling and testing process, the non-coastwise-qualified vessel, using dynamic-positioning, would gather hydrocarbons and produced water (merchandise); move to a location on the high seas; and transship the merchandise to a coastwise-qualified barge. The coastwise-qualified barge would subsequently transport the merchandise to a Gulf Coast refinery. CBP ruled that the transportation of the merchandise by the non-coastwise qualified vessel was a violation of 46 U.S.C. § 55102. CBP reasoned that 46 U.S.C. § 55102 prohibits vessels from engaging in any part of the transportation of merchan-

dise between coastwise points unless they are coastwise-qualified and the non-coastwise-qualified vessel provided part of the transportation between the drill site where the merchandise was laden and the Gulf Coast refinery where it was unladen.

CBP held in HQ 225102, insofar as the foreign-flagged vessel will be providing part of the transportation of the topside between a point in the U.S and the SPAR, such transportation would violate 46 U.S.C. § 55102. CBP reasoned that similar to the drill ship in W116737, a coastwise-qualified vessel will be lading the topside at a point in a U.S. port; transshipping it onto a dynamically-positioned, non-coastwise-qualified vessel that will pivot on its central axis; move a "short distance" back; return to the same point where it pivoted on its central access and unlade the topside onto the SPAR (the second coastwise point). The requester argued that CBP rulings have held that a pivoting motion by a non-coastwise-qualified vessel on its central axis does not constitute transportation of merchandise within the meaning of 46 U.S.C. § 55102.- *See* HQ 115985 (May 21, 2003) (holding that the stationary movement of foreign-flagged vessel on its central axis did not constitute transportation of a truss spar between two coastwise points) and HQ 111684 (June 26, 1991) (holding that the 90 degree rotation of a non-coastwise-qualified barge on its axis did not constitute transportation of a hull between two coastwise points). However, CBP correctly found the foregoing cases were not applicable insofar as the subject vessel will do more than pivot on its central axis while in a stationary position--it will move off of its central axis before it unlades the topside onto the SPAR.

In its reconsideration request, the requestor does not address whether W116737 is applicable to the present case or otherwise addresses the basis for CBP's holding in HQ 225102 other than to argue that the movement of the foreign-flagged vessel does not constitute any part of the transportation of the topside to the SPAR. Rather, the requester asserts that the transportation contemplated by the subject foreign-flagged vessel is similar to several cases in which CBP held that movement of a vessel was permissible. We address these arguments below.

The requester argues, as it did in its initial ruling request, that "mere movement" of a vessel does not constitute transportation of merchandise. In support of its argument, the requester cites several rulings in which CBP ruled that non-coastwise-qualified vessels did not violate 46 U.S.C. § 55102 when such vessels proposed to unlade merchandise at the same coastwise point where the merchandise was laden.[10] The requester asserts, as it did its initial ruling request, that these rulings apply to the movement of the subject foreign-flagged vessel because it moves off of its pivot point and returns to the exact same pivot point; however, the requester has failed to address how a central axis coordinate point of a dynamically-positioned vessel, e.g. the

[10] *See* H152956 (Aug. 10, 2011) (holding no violation of 46 U.S.C. § 55102 would occur when a foreign-flag vessel lades cargo at a U.S. point, unlades part of the cargo on a vessel located on the high seas, and unlades the residual cargo at the same U.S. point where the cargo was originally laden); H105415 (May 27, 2010); H046797 (Dec. 12, 2008) (holding no violation of 46 U.S.C. would occur if cargo laden by a foreign-flag vessel at a dock in Chalmette, Louisiana was unladen by that vessel at the same dock); and H008396 (June 4, 2007) (holding that the proposed transportation in which cargo would be laden and passengers would embark from a moored production facility on the OCS to a distance 500 feet away and then returned to the same production facility where the cargo would be unladen and the passengers would disembark, would not be a violation of 46 U.S.C. § 55102).

location in the water where the vessel does its pivot, becomes a coastwise point under the OCSLA when the vessel itself is not a coastwise point. Further, in order for the foregoing cases cited by the requester to be applicable to the proposed transportation, the topside would have to be unladen at the original point where the topside was laden, e.g. a point in a U.S. port as indicated in the ruling request. Insofar as the point of unlading will be the SPAR, a second coastwise point, the rulings cited by the requester are inapplicable.

The requester also argues that any movement of the foreign-flagged vessel should be considered an "incidental movement" to the lifting operation of the vessel. In support of its argument, the requester cites HQ 113858 (Apr. 4, 1997), in which CBP held that a non-coastwise qualified crane barge may be used to transfer merchandise from a lightering barge to ships at anchor in the San Francisco Bay provided that any movement of merchandise is *effected by the operation of the crane and not by the movement of the vessel*, *except for necessary movement which is incidental to a lifting operation while the lifting is taking place*. (emphasis added). Because you have requested confidentiality relating to the certain aspects of the lifting operation, including the capabilities of the vessel, we are limited in our statement how certain facts in HQ 113858 are distinguishable from the proposed transportation in your ruling request. In the present case, since the movement of the topside is effected by [ ] and not the movement of a crane, HQ 113858, is inapplicable to the proposed transportation; thus, the movement of the subject foreign-flagged vessel is not "incidental movement" necessary for a lifting operation.

Accordingly, based on the foregoing analysis, the movement of the foreign-flagged vessel in question does not constitute a lading and unlading of merchandise at the same coastwise point and does not constitute "incidental movement" necessary to a lifting operation; therefore, part of the transportation of the topside provided by the foreign-flagged vessel between coastwise points would be in violation of 46 U.S.C. § 55102.

HOLDING:

The transportation of the topside by the dynamically-positioned, non-coastwise-qualified vessel to a coastwise point (the SPAR), subsequent to receiving the topside from a coastwise-qualified vessel that previously laded the topside at a coastwise point (a point in a U.S. port) constitutes a violation of 46 U.S.C. § 55102.

HQ H225102 (Sept. 24, 2012) is affirmed.

Sincerely,

GLEN E. VEREB
Director
Border Security and Trade Compliance Division

ATTACHMENT X

HQ H242466

July 3, 2013
VES-3–02 OT:RR:BSTC:CCR H242466 LLB
CATEGORY: Carriers

ALEXANDER W. KOFF, ESQUIRE
WHITEFORD, TAYLOR AND PRESTON LLP
SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202–1636

DEAR MR. KOFF:

Re: 46 U.S.C. § 55102; 43 U.S.C. § 1333(a)(1); 19 C.F.R. § 4.80b(a)

DEAR MR. KOFF:

This letter is in response to your May 23, 2013, letter in which you request a ruling determining whether the proposed transportation of a topside by a dynamically-positioned, non-coastwise-qualified vessel to a single point anchor reservoir (SPAR) on the Outer Continental Shelf (OCS), subsequent to receiving the topside from a coastwise-qualified vessel that previously laded the topside at a coastwise point, would constitute a violation of 46 U.S.C. § 55102. We have reviewed your request. Our decision follows.[11]

FACTS:

The requester proposes to use the subject non-coastwise-qualified vessel to transfer a topside to a SPAR that is anchored to the OCS. The topside will be laden aboard a coastwise-qualified launch barge at a point in a U.S. port. The launch barge will be towed by coastwise-qualified tugboats to your client's non-coastwise-qualified vessel which, using dynamic positioning will be stationary and adjacent to the SPAR. The topside will then be lifted from the launch barge by the non-coastwise-qualified vessel using its [ ] which will also temporarily suspend the topside. Thereafter, the non-coastwise-qualified vessel, under its own propulsion, will begin a 90-degree pivoting rotation on its central axis. In order for the non-coastwise-qualified vessel to avoid coming in contact with the SPAR, the SPAR will be retracted. The non-coastwise-qualified vessel will then unlade the topside onto the SPAR.

ISSUE:

Whether the proposed movement of the topside by the subject dynamically-positioned, non-coastwise-qualified vessel to a coastwise point (the SPAR), subsequent to receiving the topside from a coastwise-qualified vessel that will

[11] In your request, you have asked this office for "confidential treatment" of the name of your client; the name of the project; the vessel in question, including specific capabilities of the vessel; and the specific location of the proposed activity. If this office receives a Freedom of Information Act request for your submission, CBP Regulations (19 C.F.R. § 103.35, *et seq*.) regarding the disclosure of business information provide that the submitter of business information will be advised of receipt of a request for such information whenever the business submitter has in good faith designated the information as commercially or financially sensitive information. We accept your request for confidential treatment as a good faith request.

have previously laden the topside at a coastwise point (a point in a U.S. port), would constitute a violation of 46 U.S.C. § 55102.

LAW AND ANALYSIS:

Pursuant to 46 U.S.C. § 55102, which provides, in pertinent part:

> Except as otherwise provided in this chapter or chapter 121 of this title, *a vessel may not provide any part of the transportation of merchandise by water*, or by land and water, between points in the United States to which the coastwise laws apply, either directly or via foreign port, unless the vessel—
>
> (1) is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade; and
> (2) has been issued a certificate of documentation with a coastwise endorsement under chapter 121 or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement.

(emphasis added). The regulations promulgated under the authority of 46 U.S.C. § 55102(a), provide in pertinent part:

> A coastwise transportation of merchandise takes place, within the meaning of the coastwise laws, when merchandise laden at a point embraced within the coastwise laws ("coastwise point") is unladen at another coastwise point, regardless of the origin or ultimate destination of the merchandise.

19 C.F.R. § 4.80b(a). The coastwise laws are extended by Section 4(a) of the Outer Continental Shelf Lands Act (OCSLA), as amended, to:

> ... the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State.

See 43 U.S.C. § 1333(a)(1).

As an initial matter, we note that the requester does not dispute that the topside is merchandise or that the SPAR is a coastwise point pursuant to the OCSLA. Insofar as the vessel will not be anchored or otherwise attached to the seafloor and it will maintain its stationary position next to the SPAR using dynamic positioning, consistent with CBP rulings the subject non-coastwise-qualified vessel would not be considered a coastwise point. *See* HQ H008396 (June 4, 2007)(holding that a floating hotel that remains stationary on the Outer Continental Shelf using dynamic positioning is not a coastwise point pursuant to the OCSLA insofar as it is not attached to the seabed); HQ 115134 (Sept. 27, 2000)(stating that floating offshore facility vessel would not be subject to Customs and navigation laws pursuant to the OCSLA insofar as "onboard propulsion system," rather than anchoring, was used to maintain the vessel's position next to a drilling unit). Therefore, the remaining issue for our consideration is whether the movement and unlading of the topside by the subject non-coastwise-qualified vessel, once it receives the topside from the coastwise-qualified vessel, would be a violation of 46 U.S.C. § 55102.

As stated above, pursuant to 46 U.S.C. § 55102, "a vessel may not provide *any part of the transportation of merchandise* by water, or by land and water, between points in the United States to which the coastwise laws apply" unless it is coastwise-qualified. In the present case, the topside will be laden aboard a coastwise-qualified vessel at a point at a U.S. port and then transferred to a stationary, dynamically-positioned, non-coastwise-qualified vessel that will subsequently pivot on its axis, without any other movement, and unlade the topside onto the SPAR. Although the non-coastwise-qualified vessel moves on its axis to unlade the topside onto the SPAR, without any other movement, CBP has previously determined that movement by a vessel on its axis does not constitute point-to-point transportation within the meaning of the coastwise laws. *See* HQ 115985 (May 21, 2003) (holding that the stationary rotation of a non-coastwise-qualified vessel on its central axis was a permissible movement rather than a transportation between two coastwise points) and HQ 111684 (June 26, 1991) (holding that the 90 degree rotation of a non-coastwise-qualified barge upon its axis was not a point-to-point transportation).

In conclusion, because the subject non-coastwise-qualified vessel will be pivoting on its central axis, without any other movement, before it unlades the topside onto the SPAR, it will not be providing part of the transportation of the topside between a U.S. point and the SPAR. Therefore, such movement would not be in violation of 46 U.S.C. § 55102.

HOLDING:

The movement of the topside, as described herein, by the subject dynamically-positioned, non-coastwise-qualified vessel to a coastwise point (the SPAR), subsequent to receiving the topside from a coastwise-qualified vessel that previously laded the topside at a coastwise point (a point in a U.S. port) would not constitute a violation of 46 U.S.C. § 55102.

Sincerely,

GEORGE FREDERICK MCCRAY
Supervisory Attorney-Advisor / Chief
Cargo Security, Carriers and Restricted
Merchandise Branch Office of International Trade,
Regulations & Rulings

AGENCY INFORMATION COLLECTION ACTIVITIES:

Prior Disclosure

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted no later than December 3, 2019 to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0074 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions

from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Prior Disclosure.

OMB Number: 1651–0074.

Form Number: N/A.

Abstract: The Prior Disclosure program establishes a method for a potential violator to disclose to CBP that they have committed an error or a violation with respect to the legal requirements of entering merchandise into the United States, such as underpaid tariffs or duties, or misclassified merchandise. The procedure for making a prior disclosure is set forth in 19 CFR 162.74 which requires that respondents submit information about the merchandise involved, a specification of the false statements or omissions, and what the true and accurate information should be. A valid prior disclosure will entitle the disclosing party to the reduced penalties pursuant to 19 U.S.C. 1592(c)(4).

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 3,500.

Estimated Number of Annual Responses: 3,500.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 3,500.

Dated: October 1, 2019.

SETH D. RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

[Published in the Federal Register, October 4, 2019 (84 FR 53164)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Petroleum Refineries in Foreign Trade Sub-Zones

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than December 3, 2019) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0063 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) Mail. Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center

at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Petroleum Refineries in Foreign Trade Sub-zones.

OMB Number: 1651–0063.

Abstract: The Foreign Trade Zones Act, 19 U.S.C. 81c(d) contains specific provisions for petroleum refinery sub-zones. It permits refiners and CBP to assess the relative value of such products at the end of the manufacturing period during which these products were produced when the actual quantities of these products resulting from the refining process can be measured with certainty.

19 CFR 146.4(d) provides that the operator of the refinery subzone is required to retain all records relating to the above mentioned activities for five years after the merchandise is removed from the sub-zone. Further, the records shall be readily available for CBP review at the sub-zone.

Instructions on compliance with these record keeping provisions are available in the Foreign Trade Zone Manual which is accessible at: *http://www.cbp.gov/document/guides/foreign-trade-zones-manual.*

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 81.

Estimated Number of Total Annual Responses: 81.

Estimated Time per Response: 1000 hours.

Estimated Total Annual Burden Hours: 81,000.

Dated: October 1, 2019.

SETH D. RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

[Published in the Federal Register, October 4, 2019 (84 FR 53163)]